

ORIGINAL

UNITED STATES
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

DOCKET NO: 50-322-OL-5

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power Station,
Unit No. 1)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of: :
LONG ISLAND LIGHTING COMPANY : Docket No. 50-322-OL-5
(Shoreham Nuclear Power Station, :
Unit No. 1) :

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Nuclear Regulatory Commission
Fifth Floor Hearing Room
4350 East-West Highway
Bethesda, Maryland
Thursday, February 28, 1985

The conference in the above-entitled matter convened at
9:00 a.m.

BEFORE:

JUDGE JAMES L. KELLEY, Chairman
Atomic Safety and Licensing Board
JUDGE GLENN O. BRIGHT, Member
Atomic Safety and Licensing Board
JUDGE ELIZABETH B. JOHNSON, Member
Atomic Safety and Licensing Board

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P R O C E E D I N G S

2 JUDGE KELLEY: We will go on the record.

3 Good morning. My name is James Kelley. I have
4 been designated as the lawyer-chairman of this Board.

5 To my left is Elizabeth Johnson. I believe you
6 know Judge Johnson.

7 On my right is Glenn Bright, whom you also know.

8 As the first order of business could we have the
9 introduction of Counsel, perhaps left to right, going around
10 the room.

11 MR. PERLIS: Thank you, Judge.

12 My name is Robert Perlis. I represent the NRC
13 Staff in this proceeding.

14 With me at counsel table is Ralph Caruso, the
15 project manager from the NRC's Division of Licensing.

16 MR. IRWIN: Judge Kelley, my name is Donald Irwin
17 from the firm of Hutton and Williams, in Richmond,
18 representing Long Island Lighting Company.

19 With me, immediately to my left, is Robert Rolfe,
20 also with the same firm, representing Long Island Lighting.

21 MR. PALOMINO: My name is Fabian Palomino, and I
22 am representing the State of New York.

23 MR. LANPHER: Lawrence Coe Lanpher, representing
24 Suffolk County, from the law firm of Kirkpatrick and
25 Lockhart.

1 To my right, Herbert H. Brown, of the same firm.
2 And on my left, Michael S. Miller.

3 JUDGE KELLEY: Good morning, gentlemen. Thank
4 you.

5 We are here this morning in the conference of
6 counsel which the Board called the other day, on the 25th, I
7 believe. We are on the record, and we did ask that each
8 party submit a set of agenda points, and we appreciate
9 receiving those.

10 We do have before us, and I take it you all have
11 been served with-- I'll read them off here:

12 LILCO's proposed agenda for the February 28th
13 conference of counsel;

14 A letter from Mr. Palomino addressed to the
15 Judges.

16 Mr. Palomino, you essentially endorsed the
17 intervenors' agenda but you added two points. Is that a
18 fair statement?

19 MR. PALOMINO: That's correct.

20 JUDGE KELLEY: A list of topics to be discussed
21 from Suffolk County.

22 And the NRC Staff's suggested agenda for today.

23 So again we thank you for those. They are brief
24 and to the point, and I think are very useful for our
25 present purposes.

1 Our basic purpose this morning is to discuss the
2 present posture of this proceeding, and where we ought to go
3 from here, most particularly in light of the Appeal Board's
4 decision in ALAB-800.

5 We might just take a minute first, though, to get
6 a fix on the status of matters. Now as I understand it--
7 Maybe I should interject, gentlemen:

8 I tried to become pretty familiar with ALAB-800
9 and a few other things, but don't assume any particular
10 familiarity or knowledge on my part beyond that this
11 morning, and I will be trying to get up to reasonable speed
12 on these matters as time goes by. But I would appreciate
13 references to pleadings and places in the record or whatever
14 that would give someone like me the right things to look at
15 to make a judgment about your positions.

16 As I understand it, the company had a four-phase
17 plan under this request that they proceed with an alternate
18 means of power, and my understanding is that Phase I is over
19 with. That was just fuel loading.

20 Is that correct, Mr. Irwin?

21 MR. IRWIN: Yes, sir. Phase I was fuel load.
22 That is completed.

23 Phase II was testing to .001 percent of rated
24 power. That has also been completed.

25 JUDGE KELLEY: Phase II is completed?

1 MR. IRWIN: Yes, sir.

2 JUDGE KELLEY: So so far as low power testing is
3 concerned, you've come to a halt at this point?

4 MR. IRWIN: Yes, sir, pending the completion of
5 this proceeding.

6 JUDGE KELLEY: Let me ask you. We want to get
7 some fix on where you stand.

8 We all I am sure are familiar with the
9 Commission's statement of policy on the conduct of licensing
10 proceedings of the summer of '81, I guess it was, and Boards
11 are in the position of paying attention to when facilities
12 are ready to operate, except the Board hasn't completed its
13 process. This happens sometimes. We in light of that do
14 want to have a fix on where things are.

15 Let me add and emphasize that our directive in
16 the statement of policy -- and I am paraphrasing now -- is
17 to attempt to bring these proceedings to a close, to a
18 conclusion consistent with a fair and full hearing on
19 litigated issues. And the latter part is equally important.

20 As a practical matter from what I hear from you,
21 Mr. Irwin, this case is impacted this morning. Is that
22 correct?

23 MR. IRWIN: I believe--

24 JUDGE KELLEY: In that sense or not?

25 MR. IRWIN: Yes, sir. And as a practical matter

1 I believe we could proceed to Phase III virtually any time,
2 like tomorrow.

3 JUDGE KELLEY: So that's relevant to us, but it
4 doesn't set schedules for us. We have things to look at,
5 and we will look at them as we need to, and we will take
6 such time as it takes.

7 We expect, though, that we would like to also--
8 I guess I would assume, Mr. Perlis, and I might ask you
9 separately whether the Staff has the same perspective on the
10 world as Mr. Irwin just said. Is that the case?

11 MR. PERLIS: Yes, the information he gave was
12 correct.

13 I think out of fairness I should add that there
14 was a stay request filed in Federal Court by the County
15 which they can tell you more about, which-- I believe a
16 ruling was held up because of ALAB-800.

17 JUDGE KELLEY: It might be useful to have that at
18 least as background.

19 MR. PERLIS: All right. But the plan itself is
20 ready to go to Phase III. Yes, that is correct.

21 JUDGE KELLEY: Okay.

22 Do you want to comment on that, Mr. Lanpher? You
23 don't need to, but I'm just trying to get some information.

24 MR. LANPHER: I guess two comments.

25 Yes, a stay request was filed on February 13th,

1 seeking a stay of the Commission's decision in CLI-85-1.

2 JUDGE KELLEY: The effectiveness decision?

3 MR. LANPHER: The effectiveness decision.

4 And when ALAB-800 was issued all the parties
5 agreed that it was no longer necessary for the Court of
6 Appeals to rule on that stay request.

7 The second thing that I think merits just brief
8 mention -- if the Board is inclined to go into it in
9 any further detail I think it merits a lot more mention --
10 it the idea that somehow because this plant has finished
11 Phases I and II, there is at least an implication in your
12 statements, Judge Kelley, that there is some need to push
13 this plant rapidly.

14 All of a sudden it is obvious to at least Suffolk
15 County that this plant is on no critical path. The very
16 significant decision of the State Supreme Court was issued
17 last week -- I am not sure if this Board is familiar with it
18 -- that held that LILCO's emergency plan is illegal under
19 state law. As of now that is the law. It has not been
20 reversed.

21 And so there is simply no need for low power
22 testing, especially in Phases III and IV, that could lead to
23 significant contamination. So that when you talk about
24 critical path and that type of thing, there are many factors
25 out there.

1 I am sure LILCO disagrees with some of what I
2 have said just then, but if you are going to consider that,
3 it requires much more detailed, factual statements than have
4 been put on the record so far.

5 JUDGE KELLEY: I was really saying what I said
6 for the sake of context. It seems to me that you get to --
7 and there may be a dispute as to whether the plant is ready
8 to go or it is not ready to go, and whatever bearing that
9 may have on the schedule that we might set, and we may have
10 to get into something like that in some depth, and we
11 haven't attempted to do that this morning.

12 I am just saying, I guess for the sake of the
13 record, I would like to know where things stand in regard to
14 these various phases, so we asked. But it doesn't foreclose
15 anything in our minds at this point. We are trying to put
16 the thing in context.

17 MR. IRWIN: Judge Kelley, let me just corroborate
18 one thing that Mr. Lanpher said, and that is that LILCO does
19 have a different view about the incidents of prejudice to
20 LILCO from the course and the timing of this proceeding than
21 Suffolk County would have.

22 JUDGE KELLEY: Very well. So this may be a
23 disputed point, is what I think both of you are saying. We
24 may have to address that more fully later.

25 We have not made up our own agenda this morning.

1 I listed the four that we got. And in considering whether
2 we should sort of cull from that our own list or use the
3 lists themselves, we thought it might make more sense to go
4 ahead and talk on the basis of the various papers that were
5 submitted.

6 For one thing, you have had them for a day or so
7 and I assume you have read the other parties' papers and
8 have some notion of what your position is on it. Again when
9 I say "position," we are not trying to get definitive
10 necessarily this morning; we are just trying to get a better
11 fix on where things stand and where the parties stand as to
12 the main points.

13 So I am going to tell you what we have
14 tentatively decided to do by way of an approach, and then
15 I'll be happy to hear your comments on it.

16 We thought that we would go through the four
17 sets, that we would begin with the applicants, one reason
18 being that at least in the view of some and perhaps in the
19 view of all, what the applicants decide to do as a matter of
20 option is going to affect what the other parties may say.
21 And if we can learn this morning some things about what they
22 have in mind insofar as it is theirs to decide, that would
23 undoubtedly affect what it is we have to deal with.

24 We thought we would go through it in this sense:
25 We've got an agenda with several points. We

1 would like to try to go through it, go point by point, take
2 paragraph 1 or paragraph A, let's say, and if we have a
3 question about it, Counsel who is presenting it might want
4 to expand a bit, and then we will hear from the others.

5 What we don't want to do is have a sort of
6 Mulligan-stew record with positions all over the place. We
7 would prefer to have the positions of the parties more or
8 less in the same place in the transcript.

9 Now there may be reasons to proceed somewhat
10 differently, and we will be happy to hear from you in that
11 regard, but that is what we are going to propose.

12 We would then go through the LILCO submission,
13 and then we would go through the other three submissions,
14 probably the intervenors' second. And we would see as we go
15 along whatever party covered the point essentially. There
16 is a lot of commonality between these submissions as to the
17 points, not as to the positions necessarily, but at least as
18 to what it is in dispute.

19 So we wouldn't have to spend, I wouldn't think,
20 the same amount of time on each of them. The further we get
21 into it, the more will have been said.

22 On some points it seems to us, at least on the
23 face of it, that it really is a legal question. It seems to
24 be a thought by most, if not everybody, that it makes a
25 difference whether this is an exemption proceeding or a

1 compliance proceeding. And the Board's immediate question
2 is what difference does it make? And that sounds to me like
3 a legal memorandum submission more than an argument this
4 morning.

5 We might hear a little bit about that, but then
6 ask for a memo some time in the fairly near future and deal
7 with that in that fashion.

8 Well, let me ask you, gentlemen. That's what we
9 have in mind. How does that sound to you, Mr. Perlis?

10 MR. PERLIS: That sounds like a fine way to
11 proceed.

12 JUDGE KELLEY: Mr. Irwin, okay?

13 MR. IRWIN: Okay.

14 JUDGE KELLEY: Mr. Lanpher?

15 MR. LANPHER: Fine.

16 JUDGE KELLEY: All right.

17 Let me add that some Board commitments are going
18 to require us to finish up by around three today. It may
19 not take anywhere near that long. I have no feel for it,
20 having not been in this case and not knowing you. It may be
21 that it won't take that long.

22 I would say, though, that if we get toward a
23 lunch break and we've got a lot of work to do, we can
24 consider where we are. We can take a short lunch instead of
25 a long lunch, maybe do a little prioritizing and leave a

1 thing or two to handle on the phone later. That is another
2 option. But I wanted to mention that we have that as an
3 outside parameter.

4 What we are really going to try to do obviously
5 is to identify and clarify as much as we can areas of
6 agreement and disagreement. There seem to be some of both,
7 based on your outlines.

8 We can see then at the end of the day where that
9 has taken us. Maybe it will have taken us to a point where
10 the Board would take your arguments and points under
11 consideration and write some sort of memorandum and order
12 next week as a next step. We don't know right now, but
13 that's the kind of thing that we have in mind.

14 And we may or may not call for further written
15 submissions when we quit today. We may call you up later
16 and say give us a memo on this or that, but we are flexible
17 right now, and we just want to, as I've said, get a good
18 assessment of ALAB-800 and where we should go next.

19 I think with that we would like to turn first to
20 LILCO's memorandum.

21 Insofar as you've got a simple statement that
22 seems pretty clear, Mr. Irwin, I won't ask you to repeat
23 it. I might have a question about it and if I don't, we can
24 ask the other parties to comment on what you are saying.

25 I gather that Paragraph 1 is a statement of

1 historical facts primarily. Is that right?

2 MR. IRWIN: That's correct, Judge Kelley. And in
3 fact Paragraphs 1 through 4 on pages 1 and 2 really are
4 intended to be what I hope to be basically undisputed
5 background.

6 JUDGE KELLEY: I had a question about 1, and that
7 is this:

8 Insofar as you're saying we worked out this plan
9 a long time ago, everybody stipulated to it, the Board
10 approved it and that was that, I understand that.

11 Are you saying also that the questions raised
12 about the offsite power sources, if you're getting into a
13 contention, that they are somehow covered and subsumed by
14 that plan? Then I would have a problem. But you are not
15 saying that. Is that correct?

16 MR. IRWIN: That's correct, Judge Kelley, we are
17 not saying that.

18 All the existence of that plan does is set a
19 framework, namely that all parties and the Licensing Board
20 concluded that the security arrangements for the
21 pre-existing plant operating at any power level through full
22 power would be adequate.

23 That plan obviously did not have in mind
24 specifically the addition of a 20-megawatt turbine or the
25 EMD diesels. But as for the pre-existing plant, I think

1 there is agreement among the parties and the Board.

2 There is also a procedural aspect of that plan
3 which is important and that is that there is a notice
4 requirement to all parties of impending changes, opportunity
5 to review them, and the requirement that all parties to it,
6 and including Suffolk County, be provided with a copy of the
7 proposed changes and of changes as they are implemented.

8 LILCO believes that that opportunity for comment
9 is relevant in determining whether or not that is a
10 preferable means to resolve potential disputes of a
11 technical nature such as security disputes than litigation.
12 And that is a factor which will come in only later perhaps.

13 JUDGE KELLEY: It is essentially a background
14 statement.

15 MR. IRWIN: That's correct.

16 JUDGE KELLEY: Viewed in that light, Mr. Perlis,
17 any comment?

18 MR. PERLIS: I think the statement is true as far
19 as it goes.

20 JUDGE KELLEY: All right.

21 A comment from Mr. Palomino?

22 MR. PALOMINO: Yes, Judge Kelley.

23 I think we have to be very careful about talking
24 about all parties, or all parties to the agreement. That
25 agreement was settled in November 1982. At that time,

1 New York State did not participate in that agreement or that
2 settlement. New York State was merely on the service list
3 in this proceeding for the purpose of tracking it.

4 It wasn't until I think October 1983 that New
5 York State was invited into this proceeding as a litigant,
6 and didn't appear in the proceeding until January 1984, so
7 we were never part of the settlement of that plan. It is a
8 vital concern to New York State because it affects the
9 welfare of the people of the State.

10 As I said in my letter, one of my requests is
11 that we have -- under proper security orders, that we permit
12 the Terrorism Section of the New York State Police to look
13 it over and to raise any objections or inadequacies that
14 they find with it as far as this proceeding.

15 JUDGE KELLEY: Was there anything to prevent the
16 State from involving itself in the case earlier, and
17 participating in what went on earlier?

18 MR. PALOMINO: Well, the question never arose
19 until we had this question on the exemption. Security never
20 arose. And then Judge Miller ruled that it was not in
21 order.

22 JUDGE KELLEY: I guess I'm-- Insofar as you are
23 suggesting in your point 1-- And this pulls us off one
24 agenda to another, but that is maybe the best way to go with
25 this to some extent.

1 Does the Terrorism Section -- has that got
2 anything to do with this alternate offsite power means
3 .sofar as terrorism attacking--

4 MR. PALOMINO: Well, let me say the reason I
5 point to them is they would be the experts in state
6 government who would know about security. Certainly I
7 don't, and other people don't. The Health Commissioner
8 doesn't. They were the people who would know about securing
9 a plant like this in the interest of common defense and
10 welfare. That's why I mentioned that.

11 JUDGE KELLEY: Okay.

12 I just want to register some concern insofar as
13 we may be going beyond the issues that have been before the
14 Board so far into a whole new area, but I understand your
15 concern and I think you understand mine.

16 Mr. Lenpher, any comment on point 1?

17 MR. LANPHER: No.

18 JUDGE KELLEY: Okay, fine.

19 Mr. Irwin, is Paragraph 2 essentially a
20 restatement of your reading of ALAB-800, other than the
21 security points?

22 MR. IRWIN: That's correct, Judge Kelley. And
23 once again I think that it is simply there to help set a
24 framework or a bound around issues that are likely to arise
25 in this portion of the case because there is, as the Appeal

1 Board noted, even in the remand portion of its opinion on
2 security matters, evidence in the record concerning the
3 reliability of the EMD diesels, for instance, and other
4 technical facts which we don't believe need to be
5 relitigated. The equipment is the equipment that is there.

6 If I might address myself just for a moment to
7 Mr. Palomino's remark of a minute ago, so we can get
8 everything in this part of the transcript, New York State
9 was participating in this proceeding as an interested State
10 at the time the security issues came up for litigation in
11 1982, and nothing would have prevented their taking a
12 different role than they took.

13 And we have no objection, under proper security
14 restrictions, to qualified experts from the State having
15 access to a plan. In fact, Mr. Palomino has a copy of the
16 plan right now.

17 What we do think, though, is that he is entitled
18 to take the proceeding as he finds it, and limit his scope
19 of inquiry to the same issues as have been set by the Appeal
20 Board for the other parties.

21 MR. PALOMINO: May I reply to that, your Honor?

22 JUDGE KELLEY: Yes, go ahead.

23 MR. PALOMINO: New York State was not
24 participating and was not a member to this proceeding at the
25 time. All we were was on the service list, collecting it

1 for the purpose of tracking it.

2 MR. IRWIN: I think you were listed as an
3 interested State, Mr. Palomino.

4 MR. PALOMINO: But as a matter of fact, it wasn't
5 until Commission Palladino invited us that we participated
6 in the proceeding.

7 JUDGE KELLEY: I gather that we-- We can go back
8 to the record and look it up. There is some dispute about
9 the degree of the State's participation in '82 that is not
10 crucial here this morning.

11 MR. IRWIN: We will stipulate that they weren't
12 active. I think we will also be able to demonstrate that
13 they were an interested State and would have been entitled
14 to become active.

15 JUDGE KELLEY: Okay.

16 Mr. Perlis, any comment on Paragraph 2 from the
17 Staff, from the State's perspective -- excuse me, from the
18 Staff's perspective?

19 MR. PERLIS: Oh, I'm sorry. I did want to
20 comment about-- I don't have any comment about what is in
21 Paragraph 2.

22 I did want to make one brief comment about the
23 role of the State.

24 Under NRC precedent -- and I don't have the cases
25 to cite right now, but I could supply them to the Board at

1 a later date -- whether or not the State was an active
2 participant or an interested State, I believe they were a
3 participant under 27.15. But regardless of whether they
4 were or not, they certainly had the opportunity to be
5 involved way back at any stage in this proceeding.

6 They chose, for reasons of their own, not to get
7 involved in the security settlement.

8 JUDGE KELLEY: Well, we really have to grapple
9 with it, do we not, when Mr. Palomino -- if and when he
10 comes in with a contention that you think he should have
11 brought in in 1982, but until he does that, let's drop it
12 and move on.

13 MR. PERLIS: Fair enough.

14 JUDGE KELLEY: Okay.

15 Mr. Lanpher, any comment on Paragraph 2, or
16 Mr. Irwin's comments about it?

17 MR. LANPHER: No. I think it is more appropriate
18 to save any comments when we get down to the nature of the
19 proceeding because I think what the prior holdings of the
20 Miller Board were, or the Commission's review--

21 JUDGE KELLEY: We all view this as background.

22 MR. LANPHER: I think it will become significant
23 later when we talk about the nature of the proceeding.

24 JUDGE KELLEY: You are certainly not stopped from
25 mentioning something in here later on that is relevant to

1 to a point you want to make. I just want to get through it
2 and see if we can't get the framework set.

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1 As to number three, and again understanding it as
2 a background statement, I guess I have no question on it.

3 Mr. Irwin?

4 MR. IRWIN: No.

5 JUDGE KELLEY: Anyone els ?

6 Mr. Perlis?

7 MR. PERLIS: No.

8 MR. LANPHER: Yes, I disagree with the
9 characterization that this Board was merely instructed to
10 reconsider the proposed contentions in the light of
11 ALAB-800. I think the Board, the Appeal Board did a good
12 bit more than merely instructing, laying out the law of the
13 case, highlighting the need for an exemption and saying that
14 an exemption would have to be under 73.5, that sort of
15 thing. We can all read ALAB-800. I just think this is a
16 bit too summary in terms of how it attempts to characterize
17 what this remand proceeding is about.

18 JUDGE KELLEY: Well if you are getting to an
19 issue, perhaps you don't need to. For example, there may be
20 some dispute about whether this Board is limited to the
21 contentions that were before it before or whether new
22 contentions are going to come in and to what extent. I can
23 see that debated among counsel and maybe the Board would
24 want to debate that, too. Is that what you are referring
25 to?

1 MR. LANPHER: I am referring to that, but it is
2 not -- this Board was not merely instructed to relook at
3 those contentions, this Board was instructed that there is a
4 specific provision of Part 73, if an exemption needs to be
5 sought, and that any exemption from Part 73 would have to be
6 under 73.5 and that was the kind of issue I was taking with
7 this statement; I think the Appeal Board gave a bit more
8 guidance.

9 JUDGE KELLEY: Okay.

10 MR. LANPHER: Particularly in terms of the law
11 that would need to be applied and went beyond just talking
12 about take another look at the contentions.

13 JUDGE KELLEY: I expect Mr. Irwin might agree
14 with that.

15 MR. LANPHER: He never agrees with me.

16 JUDGE KELLEY: Okay.

17 MR. IRWIN: I was going to say that for once I
18 don't disagree with what Mr. Lanpher said.

19 JUDGE KELLEY: Almost.

20 Okay. Well number four here, I did have a
21 question here, Mr. Irwin:

22 Is LILCO now relying on the EMD diesels and has
23 it ceased to rely on the 20-megawatt turbine?

24 MR. IRWIN: If I have to answer in one word, the
25 word is no, but that gets us into paragraph one of the

1 questions that -- it gets us out of the background statement
2 and into the issues. Maybe I ought to elaborate on that.

3 JUDGE KELLEY: Go ahead.

4 MR. IRWIN: The low power hearing record -- and
5 let me add at the outset that Mr. Rolf at my left was the
6 one who tried the low power case, and I hope you will free
7 to interrupt or supplement what I say on that -- the low
8 power case establishes a network of alternate AC power
9 sources, including the 20-megawatt turbine, including the
10 four EMD diesels, including various off-site power sources.
11 LILCO continues to rely on them for purposes of the safety
12 analysis that underlie the exemption from GDC-17 that this
13 Board granted and which the Appeal Board and Commission have
14 now ratified.

15 In terms of security implications of reliance,
16 though, we do not believe that the Appeal Board's decision
17 required a -- we don't believe, first of all, that it
18 necessarily follows from the logic of the posture of the
19 case that both the EMD diesels and the 20-megawatt turbine
20 must be qualified according to what I will call the cookbook
21 characteristics of Section 73.55(b) through (h) as vital
22 equipment.

23 There is language in the Appeal Board's decision
24 that refers to them both as being vital because of their
25 safety function. If one follows that language, we believe

1 that there are ways of properly qualifying those pieces of
2 equipment without either meeting the cookbook approach of
3 73.55(b) through (h) -- which we have followed for the
4 EMD's, we have followed the so-called cookbook approach for
5 the diesels, we have not followed them for the 20-megawatt
6 turbine, we don't propose to try to. We believe that the
7 regulation permits us without resource to an exemption to
8 show that there is adequate security for the low power
9 system as a whole.

10 I can go into that in more detail right now, if
11 you want, or I can wait until we get to it.

12 JUDGE KELLEY: Put it however you think is
13 clearest.

14 I read page 19 of the Appeal Board's decision --

15 MR. IRWIN: Right.

16 JUDGE KELLEY: -- and let me read it again. We
17 can all take a look at it.

18 MR. IRWIN: The discussion which -- I think the
19 discussion one really has to look at begins really at the
20 bottom of page 18 and continues through the top of page 20.
21 And that discussion -- which, by the way, is not in the
22 context of a discussion of a Part 73 exemption -- says that
23 there are -- there may be things the Board will want to look
24 at based on such factors as the demonstrated reliability of
25 the EMD diesels, the circumstances of low power operation,

1 the difficulty of protecting the 20-megawatt turbine to the
2 full extent normally called for by the prescriptions of
3 section -- the Appeal Board did not mention specifically
4 73.55 and the subparts but they referred to the normal level
5 of protection afforded under Part 73 -- and without
6 discussing these things in terms of an exemption from Part
7 73, suggested that this Board might want to consider LILCO's
8 qualification of these two pieces of equipment and its
9 effect on overall plant security.

10 That kind of consideration, overall plant
11 security as a function of overall plant safety, is what
12 LILCO is going -- believes the Appeal Board left it room to
13 try to prove and we believe it is consistent also with the
14 basic regulation in Part 73 -- Section 73.55(a), which
15 states that in addition to the -- or as an alternative to
16 the so-called cookbook approach of subparagraphs (b)
17 through (h), that the Commission:

18 "...may authorize an Applicant or
19 Licensee to provide measures for the protection
20 against radiological sabotage other than those
21 required by this Section if the Applicant or
22 Licensee demonstrates that the measures have the
23 same high assurance objective as specified in
24 this paragraph and that the overall level of
25 system performance provides protection against

1 radiological sabotage equivalent to that which
2 would be provided by paragraphs (b) through (h)
3 of this Section and meets the general performance
4 requirements of this section."

5 Now that we believe gives us, under the
6 regulations without the need for exemption, the opportunity
7 to demonstrate that the overall functioning of these pieces
8 of equipment -- even though they may both be classified as
9 vital individually -- can be protected sufficiently without
10 both of them getting the full so-called cookbook protection,
11 that we do not need to file for an exemption.

12 I can go into more detail yet, if you would like,
13 but that is the basic -- that is the way we read the Appeal
14 Board's decision and that's the way we understand it to be
15 consistent with Part 73, Section 73.55.

16 JUDGE KELLEY: I'm not sure I followed you.
17 Maybe that's my newness here.

18 MR. IRWIN: Well we don't think we have to apply
19 it for an exemption.

20 JUDGE KELLEY: Okay. We are sort of jumping
21 ahead to what I think are some more important issues here
22 and we will hear from everybody.

23 MR. IRWIN: I think that is sort of the heart of
24 what everybody sees as a structural issue in this proceeding
25 and I don't think there is any point in hiding the ball

1 from anybody. And if the Board doesn't follow us or wants
2 to follow us only at a safe distance, maybe we had better
3 try it again because I think it is pretty important.

4 JUDGE KELLEY: Let me take you back to the two
5 different kinds of equipment.

6 MR. IRWIN: Yes.

7 JUDGE KELLEY: The 20 megawatt and the -- How do
8 you differentiate these in the record? Is there an accepted
9 piece of jargon that handles this?

10 MR. IRWIN: I think one is generally referred to
11 as the 20-megawatt turbine and the other is referred to as
12 the EMD diesels which in fact are a set of four diesels, any
13 one of which would be sufficient by itself.

14 JUDGE KELLEY: All right. I am in a wonderful
15 position here. I can ask whether this Board made the
16 findings, I wasn't on it at the time.

17 Did this Board find that all of those things put
18 together from a safety standpoint was enough?

19 MR. IRWIN: Yes.

20 JUDGE KELLEY: -- or did it find that the
21 temporary diesels all by themselves were enough?

22 MR. IRWIN: They found that all of these pieces
23 of equipment together were enough.

24 JUDGE KELLEY: Okay.

25 And yet I seem to hear you saying you are going

1 to come to us now and prove to us that the temporary diesels
2 alone, if properly safeguarded, will be adequate.

3 MR. IRWIN: Not for Part 50 but for the Part 73.
4 And the logic of Part 73, as I believe it exists, is that
5 you protect -- first of all, Part 73 doesn't -- bear in
6 mind, Part 73 doesn't require you to protect any specific
7 piece of equipment as vital, there is no list of what is
8 vital and what is not, and different pieces of equipment at
9 different plants are considered vital.

10 And we, frankly, believe that the Appeal Board
11 was incorrect in stating that we had to treat both of these
12 pieces of equipment as vital, but that is not a matter that
13 is before this Board.

14 But even if the pieces of equipment are both
15 regarded as vital, Part 73 says two things, as I understand
16 the passage which I just read in excessive length to the
17 Board:

18 One is you don't have to necessarily follow each
19 of the prescriptive aspects of 73.55(b) through (h), you can
20 do different things if you can show it will accomplish the
21 same goal.

22 And second, the goal is not a
23 component-by-component goal but a structural system goal.
24 So as we look at the goal of providing plant safety -- which
25 is that of providing alternative backup AC power as provided

1 by a combination of two sets of on-site pieces of equipment
2 and a set of off-site or a network of off-site transmission
3 lines, we can do what we need to, which is protect that
4 system adequately to keep a supply of backup AC power coming
5 into the plant and we don't believe that requires following
6 the cookbook of 73.55(b) through (h) with respect to each of
7 them. We have already done it for the EMD diesels but we
8 don't believe we have to do it for the others as well.

9 JUDGE KELLEY: So you're saying, if I follow you,
10 that -- and I want to hear from other counsel before we get
11 too far away or too many issues into the pot -- but if I
12 understand it you are saying that you don't have to apply
13 for an exemption to Part 73?

14 MR. IRWIN: That's correct, as we understand it.

15 JUDGE KELLEY: These systems that you now have in
16 place, which primarily or maybe exclusively protect the
17 temporary diesels, is enough to satisfy 73, so you are in a
18 compliance posture, as it were.

19 MR. IRWIN: That's correct.

20 JUDGE KELLEY: Well why don't we stop there and
21 hear some from -- I think Mr. Lanpher. I don't understand
22 the sequence.

23 Do you want to be next or do you want to be last?

24 MR. LANPHER: I don't care whether I am next or
25 whatever.

1 Are we through with paragraph four? Do you want
2 me to just respond to what Mr. Irwin said? I mean, there
3 are a lot of things I think -- you started out your
4 question, Judge Kelley --

5 JUDGE KELLEY: Why do you at least raise your
6 points? If you have got a problem with paragraph four, at
7 least check them off.

8 And then I think what I would like to get -- we
9 have sort of run off the agenda for a moment and maybe that
10 was inevitable. But we have now heard the utility say a
11 couple of things, they don't need the exemption and they are
12 going to comply, they are going to make a showing of
13 compliance with respect to the temporary diesel.

14 Is that a fair statement?

15 MR. IRWIN: We believe that we can demonstrate
16 compliance with the so-called cookbook approach as to the
17 temporary diesels.

18 JUDGE KELLEY: Right.

19 MR. IRWIN: And that that in combination with the
20 protections which exist for the others are sufficient for
21 Part 73.

22 JUDGE KELLEY: I think I understand that. Okay.

23 Now would you say further then that -- maybe we
24 can get more of this in the same package -- would you say
25 that the other parties could at this point come in with

1 contentions on the changes you've made in the security
2 system since the -- I don't really want to pick a date, but
3 your recent changes that are up for contention -- is that
4 true?

5 MR. IRWIN: Yes, sir, I believe the other parties
6 could. And I believe they could be pretty specific because
7 the changes we have made are all embodied in Amendment 9 or
8 Revision 9 to the security plan which they have had since
9 last November.

10 JUDGE KELLEY: That covers a lot of ground. Let
11 me go back to Mr. Lanpher.

12 If you want to make comments on paragraph four
13 and then move over to the points that Mr. Irwin has made,
14 that would be good, I think.

15 MR. LANPHER: Well Judge, I would prefer not to
16 comment on aragraph four. A lot of that characterizes what
17 the Staff believes or has found and I would rather hear from
18 Mr. Perlis with respect to paragraph four first. But I
19 would be happy to respond right now to some of the points
20 that Mr. Irwin made.

21 JUDGE KELLEY: Fine.

22 MR. LANPHER: First, this characterization of
23 so-called cookbook approaches, I think the regulations
24 provide what they provide. I don't think that is a
25 cookbook. It tells you what is supposed to be done. But

1 more important I think Judge Kelley really identified the
2 key issue and we tried to highlight it in our proposed
3 comments: what is the law of the case?

4 The Appeal Board said that fully qualified
5 diesels, if you had the TDI's, have to be vital equipment.
6 That is the way they read Part 73. That means that if you
7 had had the three TDI's that were being relied on, all three
8 of them would have been vital equipment, not one of them,
9 not two of them, all three. That is what the Appeal Board
10 said.

11 Now what the Miller Board or this Licensing Board
12 with the other chairman said is we looked at what the
13 alternate system is here and it is a system and you are
14 exactly right, they didn't look at the EMD's alone, they did
15 not look at the gas turbine alone, they looked at a system,
16 an alternate system.

17 And there was a reason for that. There is a
18 considerable dispute on whether the "alternate system" met
19 the single failure criterion or not. And Suffolk County was
20 criticized because we allegedly looked only at one component
21 or the other and they said no, look at the whole system, we
22 are dealing with a system here. It is not just the EMD's,
23 it is the EMD's plus the gas turbine. That is what has been
24 approved by the Appeal Board and by the Commission. Our
25 appeals are pending with respect to that.

1 And it is that system, the gas turbines and the
2 EMD's, which substitutes for the fully-qualified AC power
3 system. That was the basis for the Part 50 exemption.

4 ALAB-800 --

5 JUDGE KELLEY: Let me just interject here,
6 though: I hear Mr. Irwin saying, I think, that for purposes
7 of Part 50 we may have all of these systems in place but for
8 purposes of Part 73, we don't have to approach it the same
9 way, we don't have to protect all those systems to the same
10 extent.

11 Can you make that bifurcation in your mind?

12 MR. LANPHER: No.

13 My next point is that the Appeal Board addressed
14 that. It made very clear that for fully-qualified diesels
15 you had to have -- they needed to be protected as vital
16 equipment. They said what you have here is a system, EMD's
17 and gas turbine, which are the substitute for the
18 fully-qualified system. The Appeal Board held that the
19 substitute is required under the straight reading of Part 73
20 regulations to be vital equipment.

21 It said at the bottom of page 13, going on to
22 page 14 of its opinion:

23 "... the gas turbine and the temporary
24 diesels therefore are to be considered vital
25 equipment if they are necessary to protect the

1 public health and safety...."

2 We believe they are. I mean, the decision is
3 clear.

4 And it goes on on page 17. It says:

5 "...given the critical nature of the
6 gas turbine and the temporary diesels to the
7 safety of the public, security must be
8 assured..."

9 It was looking at a system. The holding of the
10 Appeal Board I think is clear, that for full compliance with
11 Part 73 you need to protect the alternate system, i.e., both
12 the diesels and the gas turbine, as vital equipment.

13 Now the Appeal Board went on and said we
14 recognize that that may be hard, this is the system they
15 came up with, and we aren't ruling out the possibility of an
16 exemption but we want to point out it is not an exemption
17 under Part 50, it is an exemption under 73.5, and wen't on
18 to talk about how an exemption might be sought.

19 I disagree completely with Mr. Irwin's statement
20 that the discussion on pages 18 and 19 is not in the
21 exemption context. Everything following the bottom of page
22 17 really is in the exemption context because the Board says
23 at the bottom of 17:

24 "We do not suggest that such assurance
25 cannot be forthcoming consistent with the use of

1 the exemption authority."

2 I think you have just got to accept the reading
3 -- the holding of the Appeal Board that the alternate
4 system, to comply fully with Part 73, needs to be vital. It
5 did not foreclose LILCO the opportunity of trying a
6 different route, i.e., an exemption.

7 So I think LILCO really has to make a choice
8 here. If it wants to go under a Part 73 compliance mode,
9 it's got to demonstrate that it complies with the holding of
10 this Board, of the Appeal Board. If it doesn't want to go
11 the compliance route, it needs to file for an exemption.

12 JUDGE KELLEY: Let me just inject -- you won't
13 get any quarrel from us that we have to follow the Appeal
14 Board's holding if we can be real clear what it is. And
15 that's what we are doing now is trying to decide that. I'm
16 not suggesting it is unclear, I don't mean to say that, I
17 don't mean to be flip. But sometimes when we apply their
18 ruling to our facts as they unfold, it may not be
19 crystal-clear what we are supposed to do.

20 Let me just interject that at this point, this
21 seems to be a question that everybody is raising. I think I
22 mentioned it before.

23 What difference does it make if the company comes
24 in saying they want an exemption or their posture is we
25 don't need an exemption, we are in full compliance and then

1 they go on to litigate various contentions designed to show
2 that they are not in full compliance. What is the
3 difference?

4 MR. LANPHER: Well I think there is a very big
5 difference, this was the follow-up point I was coming to.

6 Mr. Irwin stated -- and this is a paraphrase, I
7 don't have his quote -- that the way they read 73.55(a) is
8 -- and they emphasized the word "equivalent" in the
9 regulations where it talks about you could come up with
10 another system such that the level of protection would be
11 equivalent to that which would be provided by compliance
12 with parts (b) through (h).

13 But if you comply with -- if you protect both the
14 gas turbine and the EMD's to full vital equipment level, you
15 would have one level of protection. What is the difference?

16 If they were to apply for an exemption they are
17 going to somehow have to show that the protection provided
18 to the EMD's alone is so substantial that it in effect
19 compensates for the fact that one part of the alternate
20 system is essentially unprotected. They are going to have
21 to come up with a very high level of protection to show that
22 it is as secure as having protected both to vital equipment
23 levels.

24 So I think there is a very clear distinction that
25 would have to be made if you protect both --

1 JUDGE KELLEY: Is the standard of performance
2 higher, is that what you're saying?

3 MR. LANPHER: Yes, the standard of performance
4 would definitely be higher because there you are down to one
5 part of a system. And while there are four diesels -- just
6 for your information, Judge Kelley, since you were involved
7 earlier in the case -- yes, there are four diesels but they
8 have got a lot of components that are -- you know, there is
9 a single k bulb, there is the single switchgear module and
10 all of that. So it is not as if you have four independent
11 sources of power, there are the EMD's. They flow together
12 at various points. So I think there is a great practical
13 distinction whether you are going to the compliance mode or
14 the exemption mode.

15 JUDGE KELLEY: Is there any -- we may want a memo
16 on this, it is kind of a legal question. But my reaction,
17 in reading the points this morning and not being that
18 conversant with all of these things, is what difference does
19 it make? And I guess it matters as far as the burden of
20 proof goes --

21 MR. LANPHER: The burden of proof would be on
22 LILCO in all circumstances. I think you are going to have
23 to show a higher level -- my point is if you were relying on
24 only a single portion of the alternate power system --
25 talking about a system that has two main components -- if

1 you were relying on only one of them as being protected to
2 Part 73 levels, I think there has got to be a higher degree
3 of protection for that one component to compensate for the
4 fact that the other component is sitting out in the 69 Kv
5 switchyard essentially unprotected.

6 JUDGE KELLEY: Okay. This is complex.

7 (Laughter.)

8 JUDGE KELLEY: At this point, Mr. Perlis, do you
9 want to put yours in?

10 MR. PERLIS: Thank you. I would like to maybe
11 muddy the water a little further.

12 I think the guts of Part 73 is found in 73.55(a)
13 and that is where the general performance objection of the
14 regulation is outlined, and that is to provide high
15 assurance that essentially acts of sabotage are not going to
16 happen, are not going to threaten the public health and
17 safety. I think ultimately that is the standard whether you
18 go via exemption or via compliance with the regulation.

19 JUDGE KELLEY: Do you think it is the company's
20 option to go either way at their choice in our
21 circumstances?

22 MR. PERLIS: I think it is up to the company to
23 apply for an exemption if they think -- if they would like
24 an exemption, yes.

25 JUDGE KELLEY: They are indicating they don't

1 want to do that, as I hear Mr. Irwin. That's their choice,
2 too, right?

3 MR. PERLIS: That's their choice.

4 JUDGE KELLEY: They may lose. Who knows.

5 MR. PERLIS: It is a possibility.

6 JUDGE KELLEY: That's their option, is it not?

7 MR. PERLIS: I would agree.

8 JUDGE KELLEY: Go ahead.

9 MR. PERLIS: Okay.

10 But in terms of an exemption hearing or a
11 non-exemption hearing, I think the factual issues are going
12 to be the same. Assuming the utility maintains the position
13 of protecting the EMD's and not the gas turbine --, which is
14 what they have indicated, there are two real questions:
15 One, is the protection they are giving the EMD's good
16 enough. And secondly, is it good enough that they are not
17 protecting the gas turbine as well? Those are what we see
18 as the two crucial factual issues and those aren't going to
19 change whether it is called an exemption hearing or a
20 compliance hearing.

21 JUDGE KELLEY: So you are expressing disagreement
22 with Mr. Lanpher as to what has to be proved, is that right?

23 MR. PERLIS: I don't know that I am expressing
24 disagreement. I am disagreeing with him as to what has to be
25 proved. I will leave that up to Mr. Lanpher.

1 MR. LANPHER: I hate to interrupt. We have no
2 burden of proof here and it is not up to us to demonstrate
3 something here -- if you can clarify that -- because I worry
4 when I see someone saying I have got a burden here when
5 there is non-compliance with the regulations.

6 MR. PERLIS: No, I understand that. The burden
7 of proof is clearly on the utility, whether it is a
8 compliance hearing or an exemption hearing. Those are the
9 rules which this proceeding has to follow.

10 All I'm saying is that the 73.55(a) high
11 assurance standard is ultimately the one that has to be
12 met. It has to be met in a compliance hearing. It would
13 have to be met in an exemption hearing -- or the 73.5
14 standard has to be met but I think that really relates back
15 to the high assurance as well. So I don't think the factual
16 issues are going to be any different.

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1 JUDGE KELLEY: So if you are correct, though --
2 Maybe I should ask Mr. Irwin.

3 But why do you find it so preferable, Mr. Irwin,
4 if Mr. Perlis is right, why do you care what you ask for,
5 what your posture is? What difference does it make as you
6 see it?

7 MR. IRWIN: It may not make much of a
8 difference. It depends on how one construes the
9 regulations.

10 I suppose my reaction is a visceral one by now.
11 It is just that every time you have another procedural hoop
12 it takes a while to jump through it. And we believe the
13 regulations are flexible enough to permit us to jump through
14 the hoop of compliance without having to jump through the
15 second hoop of an exemption.

16 As a practical matter, though, I think Mr. Perlis
17 is right. And I think Mr. Lanpher is right in saying that
18 the factual -- I may have misunderstood Mr. Lanpher, but I
19 believe he said we are looking at a system. That is what we
20 are looking at. We are not making a fetish of looking at
21 one piece of equipment and another piece of equipment and
22 another piece of equipment.

23 That is -- one thing that is clear from CLI 85-01
24 is that it is a system of low power operation and protect of
25 it that we are looking at. It is that kind of integrated

1 look that we intend to show for security. And we think that
2 the regulation, as it is written, permits us to take that
3 kind of a look as well.

4 But as long as we come to grips with the real
5 issue -- which is whether that system provides adequate
6 assurance, the high level of protection designed or set out
7 in 73.55(a) -- as long as that is what the Board is getting
8 at, I frankly don't care whether it is called compliance,
9 exemption, vacation or what, in all seriousness. And I
10 don't mean to be flip about it.

11 But we think -- Let me add one other thing about
12 the burdens of proof.

13 I agree with Mr. Lanpher that under the rules the
14 Applicant has the burden of proof. But this is not a
15 construction permit hearing. This is the tail-end of an
16 operating license hearing that has been going on for three
17 years where everybody is familiar with everybody else's
18 specks of dust, and where we have had lots of paper and lots
19 of people crawling all over the paper for a long time.

20 I think while the burden of proof may not change,
21 the standard of pleading a specificity may be -- really has
22 to be fairly high.

23 JUDGE KELLEY: Why don't we take ten minutes to
24 stretch and then we'll pick up with you, Mr. Lanpher.

25 (Recess.)

1 JUDGE KELLEY: We can go back on the record.

2 It was Mr. Lanpher's turn when we took a break.
3 Would you like to pick up where we left off?

4 MR. LANPHER: Yes, Judge Kelley. I will try to
5 be brief.

6 I think there are some disagreements here, and
7 probably as we go around the room we are not going to solve
8 them. And this may be an area where legal memoranda really
9 are going to be called for. But let me make just a couple
10 of brief additional points.

11 If the Company decides that it wants to go on a
12 so-called compliance proceeding -- in other words, argue
13 that it is in compliance with Part 73, it doesn't need to
14 seek an exemption -- there is a threshold legal issue that
15 this Board has to address. And that is, what is the
16 holding, what is the law of the case given ALAB-800.

17 If ALAB-800 stands for the proposition that the
18 alternate AC power system must be vital equipment unless an
19 exemption is applied for and obtained, then LILCO's choice
20 of going by compliance presents that threshold legal
21 question up front, and we believe this Board can dispose of
22 their so-called compliance proceeding as a matter of law,
23 ruling that since the gas turbine clearly is not vital
24 equipment that they do not comply with Part 73. And there
25 is a threshold legal issue out there if LILCO chooses to go

1 by the so-called compliance proceeding.

2 Second, I heard Mr. Perlis say that the findings
3 whether it be an exemption proceeding or a compliance
4 proceeding are basically the same. We disagree completely
5 with that.

6 Section 73.5 is the exemption proceeding. I am
7 not going to go through that in exhaustive detail. But one
8 of the findings that you would have to make if they seek an
9 exemption is that not protecting the alternate AC power
10 sources to the full levels required by Part 73 would
11 otherwise be in the public interest.

12 We would intend to put in evidence that shows
13 that it is not in the public interest for this Commission to
14 be authorizing an Applicant to operate a nuclear plant with
15 AC power supplies which are vulnerable to sabotage. And
16 that would be the effect of authorizing an exemption without
17 protection, the full protection of the EMD diesels and the
18 gas turbine. We don't think that this Commission could find
19 that that is in the public interest.

20 I don't want to get into the evidence, but the
21 findings that are required under 73.5 are not just the
22 73.55(a) findings. 73.5 specifies specific findings that
23 have to be made.

24 Finally, Mr. Irwin said that whatever outcome, be
25 it exemption or compliance, we should keep in mind that this

1 has been a long proceeding and everyone has had papers for
2 a long time. Well, this is a new configuration that came up
3 last year.

4 We attempted to get discovery last May, and LILCO
5 went to this Board and got -- filed a motion and got
6 discovery stopped. We've never had discovery on this. So
7 whether this has been a long proceeding or not, we have a
8 new configuration on which we have never had discovery, and
9 that has to be kept in mind also.

10 JUDGE KELLEY: Let me just follow up on a couple
11 of things.

12 Looking at your paragraph three, that corresponds
13 to much of what we have been talking about for a while --
14 and I think I am really just restating what you said, but I
15 want to be sure I understand you correctly.

16 MR. LANPHER: It is a little hard to hear you.
17 I'm sorry.

18 JUDGE KELLEY: I'm sorry.

19 As I understand you -- and this is a rough
20 paraphrase -- you are saying that LILCO would have to
21 upgrade and qualify on a security basis both the gas turbine
22 and the other temporaries before they could be in a posture
23 of claiming that they are in compliance. And if they don't
24 do that their only open option is to seek an exemption. Is
25 that fair?

1 MR. LANPHER: My colleague, Mr. Brown, points out
2 or to wait until the TDIs are qualified, if ever.

3 JUDGE KELLEY: Sure.

4 MR. LANPHER: So that is a third option.

5 JUDGE KELLEY: Right, that seems to be.

6 One question that may be a little different from
7 what we have been talking about which I would like to get
8 your reaction to at least, I'm looking at page 19 of the
9 Appeal Board's decision again, and the sentence that reads,
10 in the middle:

11 "This being so, the Board might need to
12 determine whether, when considering the limited
13 operating conditions of the exemption request,
14 reliability of the temporary diesels is sufficient
15 to provide adequate protection for the public."

16 Does this mean that the Board might be in the
17 business of at least reviewing the record anew or de novo or
18 starting all over again to decide whether the temporaries
19 all by themselves are enough to meet the reliability -- that
20 is to say the safety test, not the safeguards question.

21 Is there a safety issue looking at us here? And
22 I don't know. I ask you.

23 Do you have a view on that Mr. Lanpher?

24 MR. LANPHER: Well, it seems to me as if that is
25 what LILCO in effect is asking for, because they are asking

1 you to now look at only part of the system. And if that
2 were the substance of the LILCO exemption request -- and
3 we're all in a vacuum because it's clear from our papers we
4 think that LILCO's only option is either wait for the TDIs
5 or to apply for an exemption. Until we see what their
6 exemption would argue we're speculating a bit.

7 But under an exemption I think you would probably
8 have to go back and look de novo at the reliability and
9 other characteristics of the EMDs standing alone.

10 JUDGE KELLEY: It seems to be implied by the
11 sentence.

12 Mr. Irwin.

13 MR. IRWIN: I guess that would follow if one
14 assumed that we were relying alone on the EMDs for backup AC
15 power or safety analysis. And, as we've indicated, at this
16 point we are not planning on doing that. We are going to
17 continue to rely -- at least it is our present intention to
18 rely on the system of components we have out there.

19 I agree with you also that if one -- Well, that
20 you interpreted the Appeal Board's language properly if
21 that's what we were choosing to do.

22 There are a couple of points Mr. Lanpher made
23 that we ought to respond to at some point, but this may not
24 be the appropriate time.

25 JUDGE KELLEY: Why don't you go ahead.

1 MR. IRWIN: Mr. Rolfe can speak better to them
2 since they relate specifically to the low power proceeding.

3 JUDGE KELLEY: All right.

4 MR. ROLFE: Judge Kelley, I'm sorry for
5 interrupting, but it seems to me that it doesn't necessarily
6 follow that you have to do a re-evaluation of the EMDs to
7 look at them alone in determining whether it would be
8 sufficient from a security standpoint to just protect them
9 because --

10 JUDGE KELLEY: I'm not talking about a security
11 standpoint; I'm talking about a safety standpoint.

12 MR. ROLFE: I know. I know what you mean.

13 But what I'm saying is that the issue here is the
14 security and whether the security protection there is
15 sufficient to ensure the overall safety of operation of the
16 plant. That's what the Commission said in its July 18th
17 order last year, that security contentions would only be
18 admissible to the extent they were relevant to the pending
19 exemption application and decision criteria cited and
20 explained in CLI 84-8.

21 And I think taken in that context what you're
22 looking at is what level of security do you need for these
23 things to make sure that the safety of operation of the
24 plant at low power will be sufficient to protect the
25 public.

1 And one thing I think you can't lose sight of
2 here is that the risks of any adverse -- of any accident
3 that would affect the public from a radiological standpoint
4 are very low because we only need this backup AC power in
5 the event you have a LOCA. So what you're talking about is
6 a situation where you have a LOCA coincident with a sabotage
7 event.

8 And when you look at those low risks it may be
9 enough to protect just one of the backup sources of power,
10 such as the EMD diesels, even though you're relying on a
11 combined system. And I think that's what the Appeal Board
12 may be saying here on page 19.

13 JUDGE KELLEY: Is it possible, though -- Maybe it
14 is.

15 But is it possible to put these two sets of
16 consideration in completely separate and isolated boxes in
17 the sense that when I'm worrying about safety and
18 reliability of a backup source of power I'm over here and
19 I've got the 20 MW machine and I've got the temporary
20 machine and maybe two or three other things; and then when I
21 start worrying about security I forget about all that and I
22 just look at the temporaries?

23 MR. ROLFE: I didn't mean to suggest that. I
24 don't think you can necessarily separate the two.

25 But what I am suggesting I think is that when

1 we're talking about the safety of operation of the plant
2 there's some risks that are so remote that you don't need
3 the full complement of protections that you might need at
4 full power, where the risks would be much greater. And I
5 think the record here would support that analysis. And I
6 think that's one of the things the Appeal Board was pointing
7 out where it says:

8 "As an alternative the Board might need
9 to consider whether the level of protection of
10 the temporary diesels and the gas turbine
11 is adequate to satisfy the concerns of the
12 physical security of this equipment for low
13 power testing even though that level may be
14 somewhat less than is normally provided to
15 vital equipment."

16 JUDGE KELLEY: Okay.

17 Mr. Irwin, at some point I had a question in my
18 own mind this morning: Why don't you just ask for both?
19 Why don't you claim compliance and seek an exemption at the
20 same time?

21 MR. IRWIN: Well, it's possible we might, Judge
22 Kelley. It would be -- In fact if there were to be
23 threshold pleadings in this I think one of the issues that
24 would be useful to be cleared up would be what kinds of
25 tests would have to be met. Mr. Lanpher mentioned public

1 interest findings, for instance, that would have to be met
2 under Part 73 for an exemption. There is a public interest
3 requirement for a Part 50 exemption as well.

4 A group has taken on that and the Commission has
5 spoken on that, and the Appeal Board accepted the
6 Commission's decision. We don't believe the proof would be
7 significantly different, if at all different, here.

8 So it is clearly one thing we will be thinking of
9 because to the extent that the issues are congruent, I admit
10 they may just all collapse into basically the same size
11 pot. And I think that would be one of the advantages of the
12 opportunity for the parties to try to brief what their
13 perception of the issues is after this hearing is over, or
14 after this session today is over.

15 JUDGE KELLEY: Just as a matter of efficiency,
16 let's suppose that there is some doubt about your
17 entitlement to an exemption and some doubt whether you're in
18 compliance. If, as some of you have been suggesting at
19 least, the facts are the same, why not ask for both? Is
20 there any reason not to? Why not?

21 MR. ROLFE: Judge Kelley, I think that the reason
22 -- as long as it were clear that we weren't writing on a
23 clean slate, that we could build upon the record that has
24 already been developed here and that the public interest
25 findings that supported the other exemption would also be

1 applicable here, I don't think it does make a difference if
2 we are talking about safety issues.

3 But what I hear Mr. Lanpher suggesting is
4 something quite different that might greatly expand the
5 proceeding, we believe unnecessarily. But that would make a
6 difference in terms of the scope of this proceeding.

7 JUDGE KELLEY: There may be some reasons along
8 those lines, and I asked for information. And I am not
9 hiding the answer up here, believe me.

10 Mr. Lanpher, as I understand it you're
11 essentially saying --

12 MR. LANPHER: I think Mr. Palomino wanted to
13 speak.

14 JUDGE KELLEY: I'm sorry, let me get back to
15 Mr. Lanpher on one point.

16 MR. PALOMINO: Sure. Go ahead.

17 JUDGE KELLEY: You're saying that really the only
18 option they have got is to go down the exemption route.

19 MR. LANPHER: No, I wanted it to be clear they've
20 got another option.

21 JUDGE KELLEY: Or wait for the TDIs.

22 MR. LANPHER: Right. They shouldn't be wasting
23 any of your time on it. If they want a proceeding their
24 only option is the exemption route.

25 JUDGE KELLEY: Okay.

1 Could you just tell me once more -- I'm sure
2 you've said it, but just so I can get it -- what is the
3 legal bar to them seeking to show they are in compliance
4 right now?

5 MR. LANPHER: There is no legal bar. I just --
6 If they want to choose to attempt to show compliance with
7 Part 73, that's LILCO's option. Let them try to do that.

8 JUDGE KELLEY: Okay.

9 MR. LANPHER: But I think on its face, given
10 their pleading where they say that the gas turbine they have
11 done nothing to protect essentially -- they certainly
12 haven't made it vital equipment -- on its face then, given
13 ALAB-800, you can hold right here and now that they do not
14 comply with Part 73; the proceeding is over.

15 JUDGE KELLEY: Okay. I think I understand that.
16 Thank you. That is helpful. That might be something you
17 could brief.

18 So our orderly trip down Mr. Irwin's outline --
19 Let me get back to you, Mr. Palomino; I'm sorry. Do you
20 want to comment at this point?

21 MR. PALOMINO: Well, I just wanted to briefly say
22 that I don't think the findings that are otherwise in the
23 public interest could be the same insofar as operation is
24 concerned and insofar as security is concerned.

25 In security we are concerned with the

1 vulnerability of this equipment from a design basis attack
2 by sabotage, terrorists, or whatever. And certainly if you
3 are going to create an attractive nuisance which would
4 attract terrorism -- I mean terrorists from the Middle East
5 to come in and sieze this equipment, not related to
6 operation but to sieze it for the purpose of getting
7 somebody free from a prison in Paris or in Louisiana or
8 whatever -- it is certainly not otherwise in the public
9 interest.

10 These sort of things were not considered when we
11 were discussing operations, safety of operations, so that
12 there is no way these findings could be substituted. We
13 have totally different objectives. They may ultimately
14 reach the same point as far as protecting the public, but
15 they are different as far as specifics are concerned.

16 JUDGE KELLEY: I understand, I think, your
17 point. It seems to me again that probably that issue would
18 be joined at a point where somebody proposes a contention
19 along those lines and then we'll just argue about it.

20 Let me take a minute to go back to the outline.

21 MR. PERLIS: Excuse me, Judge Kelley. Could I
22 make two comments?

23 JUDGE KELLEY: Please do.

24 MR. PERLIS: First of all, what the Appeal Board
25 says on page 19, just so the Staff's position is clear, we

1 believe the record shown in the previous hearing stands for
2 the proposition that for Part 50 purposes, Part 50 design
3 purposes, you need both the temporary diesels and the gas
4 turbine.

5 JUDGE KELLEY: Okay.

6 MR. PERLIS: Now there is some question as to
7 whether Part 50 design is coterminous with Part 73 security
8 protection. But insofar as we are talking only about Part
9 50 design, you need both.

10 JUDGE KELLEY: Okay.

11 MR. PERLIS: And that is not to say that
12 presumably someone couldn't come in and try to argue that
13 the diesels by themselves could qualify for Part 50, but
14 that would then require revisiting a whole new safety
15 hearing.

16 JUDGE KELLEY: So you're reading page 19, if I
17 hear you correctly. And I'm glad you came in at this point
18 for the Staff's position.

19 If there were to be reliance now for safeguards
20 purposes on just the temporaries, are you saying you would
21 have to make a determination -- possibly based on the old
22 record -- but a determination that the temporaries alone
23 meet Part 50 needs?

24 MR. PERLIS: No.

25 JUDGE KELLEY: You're not saying that?

1 MR. PERLIS: I'm saying based on the old record I
2 think it is clear that the temporary diesels alone are not
3 sufficient to meet Part 50.

4 Now that does not answer the question of whether
5 what is necessary for Part 50 is the exact equivalent of
6 what is necessary for Part 73. But insofar as we're talking
7 about Part 50, I think the record showed -- and it is the
8 Staff's position that the record showed -- that you need
9 both the diesels and the gas turbine.

10 JUDGE KELLEY: As to the latter issue, the issue
11 of whether temporaries alone will do for Part 73 purposes,
12 is it possible that is something for briefing? Do you have
13 a position on that?

14 MR. PERLIS: We have a position on it, and I
15 would think it is probably something that would best be
16 briefed.

17 Our position is that if the protection of the
18 EMDs by itself could satisfy the high assurance of 73.55(a)
19 -- and we believe that a factual case can be made that it
20 could -- then that alone would be sufficient.

21 JUDGE KELLEY: The County disagrees with that, I
22 understand.

23 MR. PALOMINO: Yes.

24 MR. PERLIS: I do think it is fair to say that
25 they do.

1 The only point I wished to mention briefly -- and
2 I don't think it is worth getting into a long argument about
3 it today -- is the public interest standard for 73.5
4 exemption.

5 From what both Mr. Lanpher and Mr. Palomino have
6 said, I think what they are arguing is if there is a safety
7 problem that would affect the public interest. I don't know
8 whether it is necessary to get into that because if there is
9 a safety problem it is also going to affect the other
10 standards in the 73.5 exemption, particularly the protection
11 of the public health and safety.

12 If in an exemption hearing one could show that
13 you meet the high assurance standard of 73.55(a) -- which
14 LILCO has said it thinks it can show -- then I don't believe
15 you would need to revisit the public interest standard.

16 If you couldn't, you might need to revisit the
17 public interest standard, but you have got other problems as
18 well.

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1 JUDGE KELLEY: Okay.

2 Mr. Brown.

3 MR. BROWN: Yes, I would like to respond to that
4 if I may.

5 The prior hearing in no way embraced
6 security-related information and the evaluation of whether
7 the standard in the public interest is satisfied. Here is a
8 piece of equipment which, as Mr. Palomino characterized it,
9 became an attractive nuisance because it wasn't protected;
10 it sat out as a target, and that target could lead to
11 attacks which would cause great difficulty for law and order
12 in Suffolk County and in New York State that isn't in the
13 public interest.

14 That goes beyond even a question of safety. It
15 goes to a question of whether it would be responsible to
16 create an attractive nuisance and to put a burden on law and
17 order in the community that could not be dealt with because
18 of failure of the company, LILCO here, which created that
19 dangerous attractive nuisance, was turning its eyes from the
20 problem.

21 So we would want to look into that. Clearly it
22 is an important element in the public interest.

23 JUDGE KELLEY: Okay. Thank you.

24 If we could just take a minute to re-orient the
25 paper.

1 (Pause.)

2 It is our general reaction that, getting back to
3 Mr. Irwin's paper, this point Number 1 on the nature of the
4 proceeding is really what we have been talking about for a
5 good while. Unless there are any other particular points
6 that anybody would like to raise at this point, we would
7 like to go on to the next points, and then get on into the
8 other papers. Okay?

9 Looking at 2-A, the Miller Board's rejection of
10 existing protections, that goes on to state the company's
11 position.

12 MR. LANPHER: Judge Kelley?

13 JUDGE KELLEY: Yes?

14 MR. LANPHER: Can we go back to Number 4?

15 I had said before that I was-- I may know now
16 from Mr. Perlis' earlier comment, but I would like to know
17 if the Staff agrees with LILCO's characterizations of the
18 Staff position in Number 4. That might be helpful to all of
19 us.

20 My understanding is that LILCO is saying that the
21 Staff agrees that what has been done for the EMDs makes them
22 protected fully as vital equipment. I would like to know if
23 that is the Staff's position.

24 JUDGE KELLEY: Good question it seems.

25 Mr. Perlis, have you got an answer?

1 MR. PERLIS: I would be happy to answer it.

2 The Staff did a preliminary review and determined
3 that in fact this protection was sufficient to meet Part
4 73. That is not reflected in the SER for the simple reason
5 that the previous Board decision, in our view, really
6 prevented us from making any findings in an SER on that
7 issue.

8 I would anticipate, now that that matter is once
9 again open, that the Staff would be addressing that matter
10 in more depth. I don't expect our ultimate conclusion to
11 change. There may be slight modifications, depending upon
12 what the safeguards people find.

13 I would expect the ultimate position would be the
14 same but again, what LILCO was talking about there was a
15 preliminary determination that was not made in any more
16 depth for the simple reason that we felt the Licensing
17 Board, as a matter of law, precluded us from going into the
18 matter in such depth.

19 JUDGE KELLEY: Let me ask you: In that sentence
20 that Mr. Lanpher has called our attention to, it ends with
21 the phrase "satisfy the requirements of Part 73 for the EMD
22 diesels."

23 Did you mean that and that alone, or did you mean
24 satisfy the requirements of Part 73 for the Shoreham site,
25 if you follow me?

1 MR. PERLIS: I think I do, and I will take it in
2 two steps.

3 We found-- Actually it is all one step. We
4 found that the protection provided for the diesels was
5 sufficient under Part 73 for the protection of the ultimate
6 power system and therefore, the site as a whole.

7 JUDGE KELLEY: I guess that's an important
8 distinction in view of the discussion we've had earlier.

9 MR. PERLIS: Right. To make it clearer, it is
10 the Staff's position that the gas turbine need not be
11 protected.

12 JUDGE KELLEY: You say you've made this finding,
13 and it is not in an SER. Where is it at this point?

14 MR. PERLIS: It is in a letter. I don't have the
15 date--

16 JUDGE KELLEY: Has it been served on the Board
17 and the parties?

18 MR. PERLIS: Yes, it has.

19 JUDGE KELLEY: All right.

20 MR. PERLIS: It is a letter from back in October,
21 1984, from Al Schwenzer to John Leonard, I believe.

22 MR. IRWIN: It is a letter of October 16th from
23 Mr. Schwenzer to Mr. Leonard.

24 MR. LANPHER: October 10th.

25 MR. IRWIN: Yes.

1 Two other letters, a letter of October 12th from
2 Mr. Perlis to the Secretary of the Commission, and an
3 October 10th letter from Mr. Schwenzer to Mr. Leonard.
4 Those are responses to a letter from Mr. Leonard of LILCO to
5 Harold Denton at the Commission, dated October 2nd.

6 JUDGE KELLEY: And these are records that have
7 been served but not in any evidentiary record at this point,
8 I take it.

9 MR. IRWIN: That is correct.

10 JUDGE KELLEY: All right.

11 Back to Mr. Lanpher.

12 MR. LANPHER: Yes. I would just like to say
13 that-- I've got a copy of the letter, and I know the
14 previous Board, this Board minus you, was served with this
15 letter also. I am talking about the October 10th letter
16 from Mr. Schwenzer to Mr. Leonard which is the Staff's
17 so-called sign-off on this.

18 This doesn't-- I am familiar with SERs. This
19 nowhere comes close to an SER, obviously. And I must say
20 Suffolk County, based on its preliminary review, disagrees
21 quite strenuously that the level of protection for the EMDs
22 constitutes vital equipment. And we would be very
23 interested in seeing the Staff's analysis on that point.

24 Maybe the Board can inquire of Mr. Perlis when
25 the SER is going to be available because that is obviously

1 a pertinent factor.

2 JUDGE KELLEY: Are you doing an SER supplement on
3 these topics?

4 MR. PERLIS: We would intend to do an SER
5 supplement. Frankly, the events have moved so quickly that
6 we haven't -- one is not in planning right now.

7 I don't disagree with Mr. Lanpher's
8 characterization of the letter. It was a preliminary
9 review. The reason we didn't do a full SER review was
10 because we had a Board order which said that as a matter of
11 law, the Staff couldn't require anything, any protection of
12 this equipment.

13 Now that that law we believe has changed, the
14 Staff would plan on doing a detailed SER review. I
15 understand the problem Mr. Lanpher is highlighting. I don't
16 have a schedule for it. I assume it would probably be part
17 of our testimony in this case, or perhaps done even before
18 that, certainly no later than that.

19 JUDGE KELLEY: I think it is a question you can
20 take back home and look into, but I think you might raise it
21 again at some more appropriate point, if we're talking about
22 discovery or whatever.

23 MR. PERLIS: Just to make clear, we were planning
24 on addressing it in more detail than that letter.

25 JUDGE KELLEY: Okay.

1 Did that cover your point?

2 MR. LANPHER: Yes.

3 JUDGE KELLEY: Okay.

4 2-A, as I started to refer to on page 3 of the
5 company's submission, seems straightforward in terms of what
6 it says.

7 If I could just ask Mr. Lanpher to react to it,
8 agree, disagree, modify or whatever?

9 MR. LANPHER: I really have to respond to both
10 2-A and 2-B together.

11 JUDGE KELLEY: Okay.

12 MR. LANPHER: I think our first position is that
13 this is-- Keep in mind that we think this is an exemption
14 proceeding where the burden is on LILCO to come in with an
15 application for an exemption. We believe no contentions are
16 required at all in an exemption proceeding.

17 We have laid out in our paper that if there is a
18 focusing of issues that at the appropriate time proves to be
19 necessary, we think an awful lot of events have taken place,
20 not the least of which is ALAB-800 and some enhancements by
21 LILCO which we have not had an opportunity to review, and
22 there is a need for the contentions clearly to be refocused,
23 rewritten, in view of the holdings in ALAB-800 as well as
24 based upon the new factual information that has been
25 developed since then, plus several of the contentions

1 pertain to Section 50.12 and would have to be -- 50.12(A)
2 and would have to be refocused in the context of 73.5.

3 So we think it is premature to even be discussing
4 contentions at this time but if, at the appropriate time, if
5 the Board were to decide that contentions are necessary,
6 they do need to be redrafted in light of all the new
7 circumstances.

8 JUDGE KELLEY: So you're saying assuming
9 contentions might be in the case, they should be rewritten
10 in the light of new information in 800 and other things--

11 MR. LANPHER: That's correct.

12 JUDGE KELLEY: -- before the Board look at it.

13 MR. LANPHER: That's correct.

14 JUDGE KELLEY: Okay, fine.

15 Mr. Perlis, what do you think about that?

16 MR. PERLIS: I agree that before the Board looks
17 at the contentions, I think the County should be given an
18 opportunity to revise them in light of both ALAB-800 and the
19 modifications to the EMDs.

20 Mr. Lenpher also mentioned addressing 73.5 as
21 opposed to 50.12. We would agree to that as well.

22 I guess I would like to make clear that if we
23 view those as the supervening events, I think it is fair and
24 proper that the contentions be revised to reflect those
25 events. They shouldn't be revised to reflect additional

1 events that occurred earlier.

2 JUDGE KELLEY: "Earlier" being-- What is the
3 cutoff date for purposes of that statement?

4 MR. PERLIS: Well, in other words that the
5 contentions should be revised to reflect these events,
6 period, if there wasn't enough specificity in contentions
7 earlier, as we allege -- as we assert, because we just don't
8 think the contentions contain sufficient information.

9 I don't think that ALAB-800 is an opportunity to
10 rewrite those contentions which could have been written
11 earlier.

12 JUDGE KELLEY: So, for example, if there's a
13 contention in the case that had fatal defects in it that
14 were fatal at the time and hadn't been affected by other
15 events, they're just out? That's what you would argue?

16 MR. PERLIS: That's my position, yes.

17 JUDGE KELLEY: Could you expand a little on this
18 notion of refining contentions in light of ALAB-800? And I
19 ask the question because I thought contentions had to do
20 mostly with facts, what is at the site. What changes have
21 that opinion brought in these contentions?

22 MR. PERLIS: Well, I think contentions have to
23 raise factual issues; that's true. But they also need a
24 regulatory basis, and in this case, ALAB-800, it could be
25 argued, presents a legal and regulatory basis for certain

1 contentions.

2 I am not suggesting necessarily that they have to
3 be revised to reflect ALAB-800. What I am suggesting is
4 that the County should be given the opportunity to revise
5 them if they so choose in light of the EMD modification and
6 ALAB-800.

7 If the County chooses to submit the same
8 contentions they have submitted earlier, that would be their
9 choice, but I think the opportunity should be given to them,
10 and it is a decision they have to make, and the State of New
11 York as well.

12 JUDGE KELLEY: Mr. Irwin, any comment on what
13 you've heard, from your standpoint?

14 MR. IRWIN: I agree basically with what
15 Mr. Perlis just said. I think it is important that we not
16 create a new and open season on contentions because it would
17 neither be fair to LILCO nor logical.

18 My preliminary review of the contentions and
19 stacking them against the Board order last fall indicates to
20 me that there were some contentions which -- whose rejection
21 was partly tied to ALAB-800 and partly not. There was at
22 least one contention which had alternate independent
23 grounds, one of them being ALAB-800 and the other -- excuse
24 me -- the question of vitalization of backup equipment and
25 the other ground being totally independent of that question,

1 and four contentions which bore no relationship at all to
2 the question of whether -- what is needed to be vital.

3 So I think that the Board's disposition of this
4 issue will be material to how the issues are framed in this
5 proceeding.

6 JUDGE KELLEY: Do you think we are in any posture
7 now to do anything about contentions, to reconsider them,
8 and if so, what should we do?

9 MR. IRWIN: Well, I think the Board is in a
10 position now to take another look at the contentions and to
11 reject Contentions 3, 5, 6 and 7, and the subject matters
12 they bring up, absent a showing that they have been somehow
13 raised by events since the contentions were first filed.

14 There was an independent basis for rejection of
15 Contention 4, and that as to Contentions 1 and 2, they
16 probably should withhold judgment until -- and give the
17 County an opportunity to refine those contentions in light
18 of the modifications to the EMD diesels and whatever it
19 considers the implications of ALAB-800 to be.

20 Then obviously LILCO would want to respond.

21 I think some of the contentions, as I say, can be
22 disposed of now. Others cannot.

23 JUDGE KELLEY: I'll get you in just a second on
24 that.

25 One more question on that point:

1 You are saying then that on the basis of not just
2 the contentions but I assume pleadings were filed on them at
3 some earlier date, there is really nothing new and in your
4 view, we should look at them again and decide to reject
5 them.

6 MR. IRWIN: I think the Board could do that and
7 it would be properly within the scope of ALAB-800. All that
8 ALAB-800 said was that the Board should look anew at its
9 rejection of contentions to see whether that rejection was
10 tainted by its decision that as a matter of law, backup
11 power sources didn't have to be vital equipment.

12 To the extent that that was not a factor in its
13 rejection, I don't see anything in the Appeal Board's
14 decision that upsets it.

15 JUDGE KELLEY: Mr. Lanpher, you had a comment?

16 MR. LANPHER: Yes.

17 We still have this threshold issue: Are
18 contentions even appropriate to be discussed in this
19 proceeding?

20 JUDGE KELLEY: I understand.

21 MR. LANPHER: And this Board is going to have to
22 address that threshold first. And we strongly believe that
23 they aren't because there is no way this can be anything but
24 an exemption proceeding.

25 The other thing, I really want to state almost a

1 sense of frustration. The purpose of contentions is to put
2 people on notice of what is to be litigated, and the
3 contentions that were previously submitted in all respects
4 put everybody on notice. People knew where things stood.

5 And to spend time going back through another set
6 of contentions with specificity -- I'll be blunt -- it
7 sounds like a bunch of garbage to us. Let's get on with the
8 proceeding if we are going to have one. People know where
9 we stand. Let us have our discovery which we never had, and
10 move on with it if we are going to have a proceeding.

11 We can make them-- We can go through another
12 round of this and reflect ALAB-800, but the basic points
13 that everyone knows are going to be central are not a
14 surprise to the litigants here. You are new to this
15 proceeding, obviously, and so it may seem new, and maybe
16 that has some benefit. But if we are going to have a
17 proceeding, let's just go.

18 And what we're talking about now is get another
19 round of things. We don't think contentions are appropriate
20 at all. Let us have our discovery. Let's have LILCO file
21 its exemption request, and get on with it.

22 JUDGE KELLEY: I understand. We don't have a
23 view on it, one way or another. We are just collecting
24 views.

25 MR. BROWN: I would add-- I think as a matter

1 of procedural order I'll submit this for consideration.

2 It seems clear there is a threshold issue whether
3 as a matter of law LILCO's proposal is even entitled to the
4 tentative characterization of being vital equipment, given
5 the fact that part of the system proposed is admittedly not
6 going to be protected at all. We don't know the rationale
7 at this point that would even make a purported argument of
8 that kind have a color of dignity.

9 Perhaps the first thing to do if LILCO wants to
10 make this or refer to this as a compliance case is to have
11 their arguments come forward which explain why technically
12 they believe this constitutes vital equipment, to get from
13 the Staff its SER that shows why in fact this would, in
14 their view, constitute vital equipment, and then we could
15 proceed to make our argument first as a matter of law.

16 If that is not the case we would ask for the
17 Board to reject as a matter of law that proposition and then
18 we would move on to this as an exemption proceeding.

19 In the event the Board held contrary to us, then
20 presumably we would have to come forth with specification
21 through contentions, but until we know exactly how one can
22 make the suggestion that there is vital equipment when part
23 of it is not protected at all, I don't think anybody can go
24 forward at all. It, just on its face, doesn't make sense.

25 It is not worthy of our going forward in a

1 serious proceeding on the proposition that something is
2 vital equipment when it is not being protected. We ought to
3 get the rationale; we ought to understand it. We ought to
4 have a chance to make a motion to have that rejected if we
5 believe that is correct. The Board would then rule, and we
6 would move on.

7 JUDGE KELLEY: On the point that Mr. Brown was
8 making, as I understand it, your supplement of last
9 November, was it, describes-- I have not seen it myself,
10 but at least it addresses certain modifications in your
11 security arrangements. Is that right?

12 MR. IRWIN: That's correct, Judge Kelley.
13 Attachment 3 to the Security Plan as revised last November
14 contains a written description of that which we intend to
15 do, plus a plot plan.

16 I want to come back to this question of discovery
17 which the County keeps alleging they haven't had because
18 there have been probably several dozen site trips over the
19 past several years, including at least one detailed site
20 trip since the installation of this equipment, in addition
21 to complete document exchange.

22 And I just don't think it is fair of them to say
23 -- strike "fair" -- accurate for them to say that they
24 haven't had very complete discovery. The Suffolk County
25 police have been all over that site, time and time again,

1 and so have their lawyers. It is just not accurate.

2 JUDGE KELLEY: The discovery discussion though,
3 the discovery qua discovery is not really before us this
4 morning for the reason that we haven't got any contentions
5 in this case yet, assuming we are going to have any
6 contentions. And if we are in an exemption mode, what do we
7 have instead? But we are not into a timing discussion, are
8 we?

9 MR. IRWIN: I understand. A misimpression, once
10 left and discussed, may remain.

11 JUDGE KELLEY: All right.

12 LILCO's last topic is discovery. I suggest we
13 pass that for the moment, and possibly come back to it, but
14 pass it for the moment, and pass on to Mr. Lanpher's
15 two-page topics that he discussed.

16 I anticipate we have been over a good deal of
17 this by now. You may want to add something, whatever, but
18 following a similar process, I would question, Mr. Lanpher,
19 your phrase "law of the case."

20 Does that mean any more in your mind than that
21 the Appeal Board has spoken on certain things and we are
22 bound by that?

23 MR. LANPHER: That's correct. The Appeal Board
24 has spoken and we think has spoken with clarity. And I have
25 already explained our view of it, and since there is some

1 disagreement, that's why I, after the break, submit you need
2 some legal memoranda along the lines that my colleague,
3 Mr. Brown, has alluded to to get these threshold issues
4 under control so we know where we are going. And it would
5 necessarily involve a look at ALAB-800.

6 JUDGE KELLEY: Yes.

7 I only raised the question because the "law of
8 the case" rings a certain distant bell with me. It has
9 certain kind of common-law connotations that I don't think
10 we necessarily mean here. But if we are just talking about
11 the fact that we are going to follow 800 and understand it
12 as best we can, that seems to be true.

13 MR. LANPHER: Well, it means that-- What is so
14 important about it is it seems as if the parties disagree
15 with what ALAB-800 means. If that is what we are going to
16 follow, we shouldn't waste time by going down various routes
17 until this Board rules what it means.

18 JUDGE KELLEY: I think we have to make some
19 ruling on those disputes. Yes, that's right.

20 think we have been over Number 2. Haven't we
21 talked about that pretty much? Views vary, but I think we
22 have talked about it.

23 MR. LANPHER: I think so. I think we have been
24 over Number 3 also.

25 JUDGE KELLEY: Yes, it seems so.

1 MPBeb

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MR. LANPHER: And Number 4-A, and we are

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deferring 4-B.

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JUDGE KELLEY. Yes, for the moment.

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1 I think my colleagues know about 4C, and I really
2 don't. Maybe for the record and for me, can you expand on
3 that a little bit, what the problem is?

4 MR. LANPHER: Yes.

5 Judge, this Board previously entered into a
6 protective order and attorneys, secretaries, et cetera,
7 filed affidavits of non-disclosure. Judge Miller expressed
8 quite strongly the view that when in doubt anything that
9 arguably might be safeguarded information was going to be
10 safeguarded information and admonished all of us to that
11 fact on several occasions.

12 The Commission's February 8th order quite frankly
13 surprised us because it de-safeguarded a lot of information
14 which I would have thought was safeguards information. And
15 at some point we're going to have to address whether we
16 operate under the strictures of what Judge Miller and this
17 Board said before or under some new interpretation of what
18 the Commission has said.

19 And it really is something that we take very
20 seriously because, you know, if you are not in a safeguards
21 mode you can do things, quite frankly, a little more
22 efficiently and quickly.

23 If you are in a safeguards situation it takes
24 longer just because you can only use a particular secretary
25 for something and that kind of thing. It's a practical

1 problem of a real magnitude that we have experienced in this
2 case and in other security cases as well.

3 JUDGE KELLEY: The Commission's order, I frankly
4 haven't read it and don't know about it.

5 Does it operate in futuro as far as this case is
6 concerned?

7 MR. LANPHER: No. It just -- What it does is
8 take the entire record of the prior security case and said
9 that it is entirely de-safeguarded except for the following,
10 and then lists those items that aren't safeguarded.

11 JUDGE KELLEY: Yes.

12 MR. LANPHER: And basically what surprised me was
13 the entire draft contentions were de-safeguarded except for
14 a couple of small areas where -- the number of armed
15 responders and a couple of things. And there just ought to
16 be a little better guidance, I think.

17 JUDGE KELLEY: So it seems the Board and the
18 Commission were marching to a different drum in that
19 matter.

20 MR. LANPHER: That would be my impression.

21 JUDGE KELLEY: Yes.

22 MR. IRWIN: Judge Kelley, let me see if I can
23 address that a little bit.

24 I think there is an unavoidable tension in
25 security hearings because it is the proverbial cat that gets

1 out of the bag; it is very hard to get it back in. And I
2 think licensing boards inevitably have to find themselves
3 operating a little more preclusively than someone can with
4 hindsight and a couple of months to pour over a sum total of
5 13 documents, which I think the Commission had and did.

6 From our standpoint security is also important to
7 us, not only procedurally but because it is our plant. And
8 we do care that security be observed. We have not discussed
9 anything today that gets toward it.

10 I do think that what the Commission left as
11 safeguards information in its order a couple of weeks ago
12 was a little -- it left in the safeguards information some
13 more things than the numbers of armed responders; it left
14 the things that related specifically to equipment and its
15 qualification and character, and such things as technical
16 detail.

17 I think that the Licensing Board and the parties
18 are inevitably going to find themselves having to make
19 judgment calls. And my suggestion is that in the first
20 instance the appropriate judgment call is that in favor of
21 protection rather than release simply because you can't
22 recapture it. Now I don't like saying that, but that is I
23 think a fact of life.

24 JUDGE KELLEY: Do you favor -- Where we are now,
25 I gather, is that we have this Board's order, which was to

1 some extent countermanded -- or choose your verb -- by the
2 Commission.

3 But Mr. Lanpher is saying that, as I hear you,
4 loosen up the order.

5 MR. LANPHER: No, I'm not.

6 JUDGE KELLEY: No?

7 MR. LANPHER: No, I'm not necessarily advocating
8 that. I'm saying do you want us to continue to operate
9 under that? That's still the protective order that we're
10 all operating under.

11 JUDGE KELLEY: Right.

12 MR. LANPHER: I think you ought to read the
13 February 8th order and see if you think there ought to be
14 some change.

15 JUDGE KELLEY: Just as a general proposition,
16 though, are you favoring change or just favoring that the
17 Board look at it at this point?

18 MR. LANPHER: I'm not favoring change, no --

19 JUDGE KELLEY: Not necessarily.

20 MR. LANPHER: I think you should look at it.

21 JUDGE KELLEY: Okay.

22 MR. LANPHER: We do take it seriously, and
23 line-drawing is pretty darned hard. But you may want to --
24 You ought to look at it.

25 JUDGE KELLEY: All right.

1 MR. LANPHER: I was just raising it for that
2 purpose.

3 JUDGE KELLEY: Okay.

4 Staff.

5 MR. PERLIS: Judge Kelley, I understand the
6 problem, I think. The solution, my suggested solution would
7 be to proceed pretty much the way we proceeded before Judge
8 Miller: When in doubt protect.

9 But I guess it should be understood at the
10 beginning, I'm sure the Commission will do the same with
11 this proceeding as it did with the previous one: At some
12 point there is going to be a review of all the material to
13 determine whether or not it needed to have been protected,
14 and if it is later determined that it could have been open
15 to the public that material will be released.

16 I don't think that's necessarily a problem here.
17 I think we should sort of assume, wherever there is a
18 question start off by protecting it; if it is later
19 released, it is later released.

20 JUDGE KELLEY: We can talk about it and look at
21 the pertinent papers, at least in my case.

22 I might just say that if anybody, any party has
23 some specific proposed change, feel free to make it. And we
24 can always amend the order in various respects and work from
25 that rather than turning it all around.

1 MR. LANPHER: I would just like to maybe ask for
2 one change as a matter of record. My colleague, Mr. Miller
3 -- instead of Ms. Letsche -- will be the person to be served
4 with safeguarded information, just so that everyone is on
5 notice.

6 MR. IRWIN: Should Ms. Letsche still be kept on
7 the list?

8 MR. LANPHER: She is still participating in the
9 proceeding, but Mike is going to take over.

10 JUDGE KELLEY: All right. Can we just consider
11 that that change has been made.

12 (The Board conferring.)

13 MR. IRWIN: Judge Kelley, if we are talking about
14 scheduling, may I make a suggestion?

15 For those of us here, if it is of interest to the
16 Board -- and that is my instinct -- we have covered 90
17 percent of the issues that are going to come up this morning
18 simply because I think all our papers tend to converge. And
19 if we can mush on we may be able to get through the end of
20 them before what would be a logical lunch break. And that I
21 think makes sense.

22 JUDGE KELLEY: We were asking ourselves the same
23 question.

24 MR. IRWIN: It sounded like it.

25 JUDGE KELLEY: Concurrence or dissent?

1 Mr. Lanpher?

2 MR. LANPHER: We all agree.

3 MR. PALOMINO: We all agree.

4 JUDGE KELLEY: Okay. So we will do that. And
5 we'll expect to be done in the not too distant future.

6 Looking at the Staff's agenda, let's see if there
7 are pieces in there that we haven't really hit on yet and
8 should.

9 Point two I think is for briefing, gentlemen.
10 We've talked a lot about it.

11 Again I may be the only one who doesn't know,
12 Mr. Perlis, but could you indicate in what respects
13 traditional Staff practice deviates from CLI-84-8?

14 MR. PERLIS: It depends how long we have.

15 I don't think it's really necessary, at least
16 from what I've heard from the parties; on reflection I don't
17 think it would matter -- given the record we have from the
18 earlier proceeding -- what standard is applied to this.

19 To very briefly answer your question, 84-8 seems
20 to establish both a safeguards criterion and an exigent
21 circumstances criterion which are neither specifically
22 stated in the regulation nor has either been a part of
23 traditional Staff practice over the years. I'm told that's
24 true for Part 73 exemptions; it was certainly true for Part
25 50 exemptions.

1 The Commission, after having an open meeting with
2 various members of the Staff, issued a Chilk-o-gram, a
3 message from the Secretary stating that CLI 84-8 and the
4 standard that was set there should be applied only to
5 Shoreham. Whether that meant Part 50 exemption, any
6 exemption that involves Long Island Lighting Company or
7 something else, we don't know.

8 JUDGE KELLEY: The Chilk-o-gram that you referred
9 to -- maybe you all know that's the name of the Secretary is
10 Mr. Chilk; he sends grams to the Staff -- is that in the
11 record? Does everybody know about that?

12 MR. PERLIS: Everybody knows about it. I don't
13 know if it's in the record. I believe it was 84-290(a); it
14 was some time last summer.

15 JUDGE KELLEY: That's a SECY paper. That's the
16 number?

17 MR. PERLIS: Yes, that's correct.

18 JUDGE KELLEY: I think it --

19 MR. PERLIS: I'm not quite sure if it was a SECY
20 paper.

21 I'd be happy to supply the Board and parties with
22 copies, although I'm pretty sure everyone has seen it.

23 JUDGE KELLEY: I'd like to see it at least.

24 MR. PERLIS: I know Judge Miller had seen it.

25 JUDGE KELLEY: Is this a page or two, or a huge

1 MPBmpb 1 volume?

2 MR. PERLIS: It is very short, and I would be
3 happy to send copies to the Board and copies to the
4 parties.

5 JUDGE KELLEY: Would you, please? I would
6 appreciate that. Okay.

7 Has the Staff's practice changed significantly
8 since, say, last summer? Is that still the same, to your
9 knowledge?

10 MR. PERLIS: To non-Shoreham exemptions. However
11 84-290(a) is limited.

12 The Staff practice on exemptions has remained as
13 it was before 84-8 was issued.

14 JUDGE KELLEY: Thank you.

15 MR. PERLIS: I should add that the Staff, I
16 believe in conjunction with the Office of General Counsel,
17 is considering new policy for exemptions in light of 84-8.
18 But while that process is going on the traditional practice
19 is being applied.

20 JUDGE KELLEY: But we have this procedure that is
21 unique to this case, correct?

22 MR. PERLIS: Yes, it is certainly unique to this
23 case.

24 JUDGE KELLEY: Okay.

25 MR. PERLIS: I will leave it at that.

1 JUDGE KELLEY: Okay. Thank you.

2 MR. BROWN: There are other aspects, though, that
3 aren't unique to the case.

4 There is a little more flavor to this than
5 Mr. Perlis has put forth because there is case law dealing
6 with the infrequency with which the Commission attempts to
7 issue exemptions and extraordinary conditions under which
8 the Commission would do it, the need for exigent
9 circumstances and the fact that the Commission doesn't favor
10 under its approach as written in the case law.

11 I think there are a couple -- the Clinch River
12 case which is frequently cited, and Vermont Yankee are two
13 of them which are independent to what is covered on page two
14 of the Staff's statement.

15 MR. PERLIS: I don't think it is really necessary
16 to pursue this very far. I just would like to say that
17 those cases all deal with 50.12(b) exemptions, which in the
18 Staff's view involve a completely different standard than
19 what I would call more normal or routine 50.12(a)
20 exemptions.

21 As a matter of fact, the Commission frequently
22 issues 50.12(a) exemptions. It does not apply an
23 exceptional circumstances test. And it has issued a lot
24 more than the precedent cited by Mr. Brown would lead one to
25 believe. I don't think it is necessary that we go into

1 that. I just want to be clear.

2 JUDGE KELLEY: Be that as it may, do we have the
3 CLI 84-8 to guide us?

4 Well, the general principle I think you were
5 referring to, Mr. Brown, that couldn't apply anyway. I
6 understand your point.

7 MR. BROWN: But I'm afraid it is necessary to
8 reply.

9 Mr. Perlis made his statement and then announced
10 that it wasn't necessary for me to reply to it. There are
11 two things:

12 I think it would be very useful for the Staff to
13 provide to the Board, in light of his comments, a list of
14 all the exemptions that have been granted by the Commission
15 from Part 73. I think we could learn something from that.

16 But this certainly is a much more compelling case
17 for an extraordinary showing in order to be granted an
18 exemption because let's recall that for a safety finding we
19 have a standard of reasonable assurance, and for a security
20 finding we have a standard of high assurance. And the
21 regulations approach these differently.

22 A fortiori, if one were to insist upon an
23 extraordinary finding under Part 50 it would have to be at
24 least as extraordinary, if not more extraordinary -- if one
25 can say within a block category of extraordinary there are

1 matters of degree. But surely there is no basis on which
2 somehow that one could distinguish away Section 73 and say,
3 'Well, it doesn't mean anything.' It is as important as
4 Part 50. It in this context means more.

5 JUDGE KELLEY: Mr. Irwin. Okay. We'll move
6 along.

7 MR. IRWIN: I just can't help resisting -- noting
8 that the text of 73.5 is virtually verbatim, if not in fact
9 verbatim, with the language in Section 50.12(a).

10 JUDGE KELLEY: Okay.

11 Let's move ahead.

12 It looks like we have discussed number four.

13 Any disagreement with that? At least in a
14 general way we've discussed it.

15 MR. PERLIS: Yes.

16 I think there is one matter which really hasn't
17 been discussed. It may be that we don't need to discuss it
18 now.

19 JUDGE KELLEY: Okay.

20 MR. PERLIS: And that is whether, if this is an
21 exemption proceeding, it would be useful to have
22 contentions. In our view it would, just to focus issues.

23 I think either Mr. Brown or Mr. Lanpher intimated
24 earlier that they would disagree with that, but that may
25 have been in the written pleading, I'm not sure.

1 JUDGE KELLEY: Okay.

2 Mr. Lanpher, any comment?

3 MR. LANPHER: Well, if it is an exemption
4 proceeding, presumably LILCO would be directed or would have
5 the option to file an application for an exemption, and that
6 presumably would focus the issues.

7 I don't understand-- I mean in the Miller Board
8 proceeding last summer, we had on May 22 LILCO's filing of
9 an application for exemption which served to focus the
10 issues, and the proceeding went forward without contentions,
11 but I think we are probably premature. Again we have these
12 threshold issues that have to be decided first on just what
13 we are involved with.

14 JUDGE KELLEY: You did have-- At least you
15 proffered the security contentions, did you not?

16 MR. LANPHER: We proffered the security
17 contentions. They came up at a late time in the 50.12
18 proceeding.

19 My recollection is that the Commission's order
20 reversing an earlier Licensing Board order came out the very
21 day that testimony was filed, or just after testimony had
22 been filed, and that this Licensing Board basically said,
23 "Put together contentions or something. We are going to
24 have to deal with it afterwards because we have got a
25 hearing scheduled for July 31, and we will take it up

1 later."

2 I don't think that was ever given any real
3 consideration.

4 Yes, we did prefer contentions as the Board
5 directed us to do.

6 JUDGE KELLEY: Again without perhaps belaboring
7 this in great detail, if you don't have the contention
8 procedure and what you have got instead is an application
9 from LILCO for an exemption, aren't you going to get into
10 contentions in any event? Maybe you don't call them that,
11 but there have to be issues in the case.

12 MR. LANPHER: The issues get focused, that's for
13 sure.

14 JUDGE KELLEY: I'm not sure you said we shouldn't
15 have them, but you just pointed out that you don't
16 necessarily have them in an exemption proceeding.

17 Are you opposed to the idea of using contentions
18 in the traditional sense?

19 MR. LANPHER: Yes, I am very much opposed to
20 contentions in the traditional sense because we end up
21 spending weeks and weeks fighting about is it specific, and
22 is there a basis. And my friends across here are very good
23 at arguing about this nit and that nit, and I think we have
24 wasted an enormous amount of time.

25 JUDGE KELLEY: Well, if we don't have any

1 contentions, how are we going to focus the issues?

2 MR. LANPHER: The issues are do they get an
3 exemption, and they are focused by their application and the
4 testimony that is submitted in support thereof, and in
5 opposition thereto. And people know what that testimony is
6 going to be because everyone has had an opportunity for
7 discovery.

8 JUDGE KELLEY: Well, okay. I think it is
9 premature to push this any further at this point.

10 Mr. Palladino's letter, mentioned earlier, agrees
11 with the County's items. We had some discussion of Point
12 1, about whether this case is open for--

13 MR. PALOMINO: May I point out something in that
14 respect, your Honor?

15 JUDGE KELLEY: Yes, go ahead.

16 MR. PALOMINO: This is a new proceeding and this
17 equipment wasn't there at the time the settlement was made,
18 and so we don't examine it isolatedly. We have to examine
19 it in context with the total plant security and how it
20 affects it.

21 And certainly under that situation we would be
22 entitled to look at it, but we have never followed it up.
23 We have never been involved, aside from the fact that we
24 weren't participating at the time, we were just on a service
25 list just like some newspapers are.

1 On the second point--

2 JUDGE KELLEY: Just on that point first, I think,
3 Mr. Irwin, do you dispute the notion that the State can file
4 a contention on the recent changes?

5 MR. IRWIN: On the recent changes?

6 JUDGE KELLEY: Yes.

7 MR. IRWIN: No. But as to issues which exist
8 which predated the low power configuration, most certainly.
9 The Commission addressed that issue in an order dated last
10 July 18th, and foreclosed any issues except those which were
11 specifically related to the subject matter of the low power
12 configuration.

13 JUDGE KELLEY: But I thought Mr. Palomino was
14 talking about the low power configuration.

15 MR. IRWIN: I'm sorry, I thought he was saying
16 that because he and his client had not had an opportunity,
17 for whatever reason, or taken the opportunity to become
18 involved in security before then, he wanted the opportunity
19 basically to do the entire security plan and configuration
20 of the plan.

21 MR. PALOMINO: On the grounds that I didn't
22 participate, also on the ground of the impact the equipment
23 has on it.

24 MR. IRWIN: I think I understood him and I think
25 he is foreclosed by the decision of last July.

1 MR. BROWN: Well, I think it is important for the
2 County to make its position clear.

3 MR. PALOMINO: May I say something?

4 The decision last July was based on the grounds
5 that we had participated and had an opportunity to
6 participate.

7 MR. IRWIN: That is not correct. The decision
8 last July took no note of who had participated in what. It
9 took note of the fact that there was a low power proceeding
10 pending and the motion to admit contentions and a Licensing
11 Board decision rejecting motions to admit contentions on the
12 basis that there was a comprehensive security agreement and
13 the position that that agreement foreclosed any inquiries.

14 The Commission said if you can show matters
15 related to the effect of the low power changes in the plant
16 configuration that's fine, but outside that, no.

17 MR. BROWN: Now taking Mr. Irwin's exact words as
18 the predicate for this, Mr. Palomino's conclusion was
19 correct, and the County supports it.

20 Now the Commission ruled that there is a final
21 settlement agreement and we all know that that final
22 settlement agreement embraced a configuration entirely
23 different from the configuration that is at that plant now.

24 Some of the configuration is identical, but there
25 is an additional appendage and the addition of that

1 appendage, these extra diesels and the problems from a
2 security standpoint that they raise affects the security
3 plan as a whole.

4 Now we went, in safeguarded proceedings, into
5 some detail. The Licensing Board made a monumental blunder,
6 in our view, by not paying attention to that. We will raise
7 it again.

8 But there is no conceivable basis for anyone here
9 to say on the one hand that the issues are legitimately
10 related to the new configuration and to say that the new
11 configuration is not affecting and is not a part of the
12 totality of LILCO's security plan. And if we can close the
13 door, I will give specific examples again.

14 JUDGE KELLEY: My reaction to that is that we may
15 very well have to address the issue now being debated. I
16 don't see how in the world this Board at this point could do
17 anything very helpful on the subject. We are going to have
18 to grapple with certain threshold points just to move
19 ahead. One has to start someplace.

20 But it still seems to me that we are talking
21 about -- at least if this is a compliance case, we are
22 talking about a contention that makes some criticism of the
23 plant and it is related to new parts or it is not, in that
24 concrete setting, and then we can make a decision.

25 But I don't think we are going to walk away from

1 here this morning thinking we are going to decide what we
2 just argued. We heard the positions in a very general way.
3 It alerts us to where people are coming from on certain
4 things. That's helpful. But I don't see it as a basis for
5 a discussion or that there is any real need to decide it at
6 this point.

7 MR. PERLIS: Judge Kelley, can I just briefly
8 address the point Mr. Brown made because I think there are
9 two separate issues, and I think it might be helpful if the
10 Board could keep them separate.

11 I think Mr. Brown is stating that it would be
12 acceptable or that it is relevant to this proceeding for
13 contentions to address whether the new configuration affects
14 the previous security for the plant as a whole; in other
15 words not EMDs but other areas. We agree with him as a
16 threshold issue that yes, that's an acceptable issue for
17 contentions to address.

18 We agreed with the Licensing Board that the
19 County hadn't provided any factual basis to inquire further
20 into the protection of the rest of the plant because they
21 just hadn't shown any real connection between the new
22 configuration and security deficiencies elsewhere, but I
23 would agree with him that that is an acceptable issue.

24 The issue Mr. Palomino raises is a different one,
25 and it is the Staff's position that the fact that New York

1 State did not participate in the settlement of the original
2 security plan is irrelevant, that they are given the same
3 right that the County has to raise contentions based on the
4 new configuration, and that is all they are given.

5 The fact that they weren't a part of the security
6 agreement and didn't participate back then in the hearing
7 was a choice made by the State. They have to take the
8 proceeding as they find it now.

9 JUDGE KELLEY: And if the contentions-- If we
10 get the contentions to come in on this subject are all
11 confined to the changes, this will never be an issue.

12 MR. PERLIS: I agree. They have the same leeway
13 that the County has. And that is an acceptable issue
14 provided they can link it to the new configuration, but it
15 has got to be the new configuration which is the focus.

16 JUDGE KELLEY: Okay.

17 Your Point 2, Mr. Palomino,--

18 MR. PALOMINO: My Point 2 is that LILCO has
19 argued in all of their pleadings, in all of their briefs and
20 arguments, that we must look at this system as a total
21 system. When we pointed out that the single failure of the
22 EMD diesels in six or seven different areas, that they
23 failed to meet the single-failure rule, then they turned to
24 the turbine, and then they would also turn to these external
25 turbines they have at seven different locations on the

1 Island; that the low power license which was granted by this
2 Board and affirmed by the Commission was all based on this
3 total system.

4 Now given that as the case, then if it comes to
5 security, the same standard should apply, that every aspect
6 of the system should be secure, and as Mr. Irwin said just a
7 moment ago or a brief time ago, that the language between
8 exemptions, whether it is the 50 exemption or 73 exemption,
9 is practically identical, I think he said literally
10 identical.

11 But if it is, then the same policy should apply.
12 It just doesn't make any sense to say that the system is
13 safe to operate and protect the public because we have this
14 backup in case this fails, and this backup in case this
15 other part fails, and then finally this total backup with
16 all of this, and say you look at it as a whole for
17 operational purposes.

18 But to say it is all right if we secure the EMD
19 diesels with a high degree of security-- If they are
20 subject to the single-failure rule, the fact that the other
21 systems, backup systems, may be out because of security
22 exposes the public to the same hazards, and that certainly
23 is not otherwise in the public's interest. And it certainly
24 warrants an equal consideration of every aspect as far as
25 security is concerned.

1 And here is something that hasn't been addressed.
2 It is these offsite-- I guess there are peaking
3 power plants that you have that are at seven different
4 locations which they rely upon. And I think they should be
5 open to security examination.

6 JUDGE KELLEY: I think I understand your point.

7 What if the utility were to come back and say
8 well, we have reevaluated it and the temporary diesels are
9 all we really need for a Part 50 and a Part 70. And they
10 say let's go back and look at the record and you will see
11 that they do everything that needs to be done, and that is
12 all we need to look at.

13 MR. PALOMINO: Fine. Then we would have to go
14 back to the Commission and have determined whether they
15 would grant the license on that basis, and we would have to
16 have a court review on that basis because the license wasn't
17 granted on that basis.

18 JUDGE KELLEY: You mean the effectiveness review,
19 it assumed that all parts were operating?

20 MR. PALOMINO: Yes, sir, it did. They argued a
21 total system at all times, including before the Commission
22 in the final affirmance proceeding.

23 JUDGE KELLEY: I understand.

24 MR. ROLFE: Judge Kelley, may I respond briefly
25 to that?

1 I believe -- and I can't put my finger on it
2 right this minute, but if you look at the Board's initial
3 decision you will find that it did look at the offsite
4 sources of power and find that they contributed and they
5 provided additional assurance.

6 But the initial decision went on to find that
7 just looking at the EMDs and the 20 megawatts by themselves
8 provided sufficient assurance to support the grant of the
9 exemption. So the argument that Mr. Palomino has just made
10 doesn't fly under the initial decision. There is an
11 independent finding in there that excludes the offsite
12 system, so I don't think you need to look at those at all
13 for security purposes.

14 JUDGE KELLEY: Where does that get you, though,
15 as far as the 20 megawatt facility is concerned, because
16 you're saying you are going to fix the temporaries and not
17 the 20 megawatt. Right? I am too loosely paraphrasing
18 perhaps, but it did rely on both there, didn't it?

19 MR. ROLFE: Yes, sir. And I think that gets us
20 back to where we were discussing before.

21 We have got a basic difference of opinion. It is
22 our view that when you look at the safety of operation, as
23 the Commission instructed and as the Appeal Board said at
24 page 19 of its order, if you can show the risks that you are
25 talking about are sufficiently low, that you may not have to

1 provide the same level of protection, even under Part 73,
2 that you would normally provide for full power.

3 And we believe that we can show that given the
4 lower risks, given the fact that you don't need any of this
5 equipment except in a LOCA, given the low combined risk of
6 having a LOCA at the same time you have a security sabotage
7 event threatening the plant, that you have the requisite
8 high assurance that you need under Part 73 by just
9 protecting the EMD diesels.

10 JUDGE KELLEY: I find that difficult to follow.

11 MR. PERLIS: Excuse me, Judge Kelley. Can I also
12 address this point?

13 I think it is unclear but if the factual
14 predicate of this is that again looking at Part 50, to
15 satisfy Part 50 design you had to rely on the gas turbine,
16 the EMDs and these additional seven gas turbines, we can
17 address it later in writing but I think the factual
18 predicate is just incorrect.

19 For Part 50 design purposes we were focusing on
20 two different sources, the EMDs and the gas turbines. We
21 were focusing on both of them. We were not relying on these
22 additional seven pieces of equipment that Mr. Palomino
23 cites. So I think the factual predicate to this is just
24 incorrect, but that is a matter to address if this is
25 admitted as a contention.

1 And I have a second problem with it if it is
2 admitted as a contention; it is just late. The situation
3 hasn't changed from earlier this summer in terms of what
4 they are relying on here, and there is no reason why this
5 contention could not have been submitted back when Suffolk
6 County submitted theirs. The situation just has not
7 changed.

8 JUDGE KELLEY: I don't hear Mr. Palomino saying
9 precisely that. I thought he was saying you have narrowed
10 your concern and you have beefed up protection to the
11 temporaries, and you are not going to take those steps with
12 regard to this 20-megawatt facility -- machine. And so you
13 have got a broader-- You've got more parts involved in the
14 safety finding than you are now holding forth in the
15 security finding.

16 And I hear him questioning that, if I hear him
17 correctly.

18 MR. PERLIS: Judge, no one disagrees that for the
19 safety finding you needed the gas turbine and the EMDs, the
20 20-megawatt gas turbine and the EMDs. And for the security
21 finding right now LILCO is proposing to rely solely on the
22 EMDs.

23 I think if you look at this, the gas turbines he
24 is talking about are not the 20-megawatt gas turbine
25 located at the Shoreham site but are seven additional

1 turbines that are located well offsite. Mention was made of
2 them in the exemption application, but for the Part 50,
3 replacing the TDIs finding under GDC-17.

4 The Staff didn't rely on these and I don't
5 believe the Licensing Board relied on these seven additional
6 gas turbines in its finding.

7 JUDGE KELLEY: Well, maybe I am putting words in
8 Mr. Palomino's mouth, and I shouldn't do that. That is my
9 concern. My concern is you were relying on the 20-megawatt
10 in the temporaries for the Part 50 exemption. Now you are
11 turning around and saying all you have to protect are the
12 temporaries, and I have trouble following that --

13 MR. PERLIS: I understand that, and I think it is
14 certainly legitimate for someone to get up and say you
15 should be protecting the gas turbine as well. We may
16 disagree--

17 JUDGE KELLEY: -- unless you can find that the
18 temporaries are enough for Part 50 purposes, which maybe you
19 can. I don't know. That's what I thought the Appeal Board
20 was saying on page 19.

21 MR. PERLIS: All I am trying to point out here is
22 that the gas turbines he is talking about are not -- were
23 not involved in the Part 50 finding. He is now talking--

24 JUDGE KELLEY: The offsite turbines.

25 MR. PERLIS: He is not talking about the

1 20-megawatt gas turbine. He is talking now about additional
2 equipment which was not part of the Part 50 finding.

3 JUDGE KELLEY: Okay.

4 Mr. Palomino, any response? Anything further
5 from you?

6 MR. PALOMINO: I just want to point out that
7 there is a factual predicate for it. They pointed out at
8 all times that if the power went out at the plant after they
9 had this 55 minutes and then the latter period, they
10 certainly could supply the power through these.

11 It was part of a total system they told us, that
12 we couldn't just look at the single failure; we just
13 couldn't look at the gas turbine onsite, that we had to look
14 at these others and we had to take them into consideration.
15 And that being the case, not only should we be looking for
16 security at this gas turbine since that was a predicate for
17 the license, but we should also be looking at these
18 offsites.

19 I agree with you, Judge, that it doesn't make
20 sense to say you shouldn't just look at the EMDs and not the
21 gas turbine onsite, but you should extend it beyond that and
22 look at the offsite.

23 MR. PERLIS: Judge, first of all, again we don't
24 need argument now. I think if you look at the Board's
25 decision, its factual predicate is incorrect in terms of

1 the Part 50 finding.

2 But secondly, if in fact, as Mr. Palomino says --
3 and we agree with him on this -- the existence of those
4 seven gas turbines was mentioned from the very beginning of
5 this proceeding, if the State wishes to raise a contention
6 on this issue, that contention should have been raised when
7 the other contentions were raised. We can address that
8 whenever the contention is filed as well.

9 JUDGE KELLEY: All right.

10 Gentlemen, we think that we have gotten somewhere
11 this morning, and perhaps we have about exhausted the
12 usefulness of this approach. I think it has been helpful to
13 get us into it.

14 Let's talk now about what next, and very
15 specifically, do you think one option is to have Counsel go
16 back and think it over and suggest briefing questions if
17 they want to do that?

18 I suppose we could just adjourn and go over the
19 transcript and at least some of these things we could come
20 to grips with. There may be yet other ways. Let me hear
21 your preferences.

22 Mr. Irwin, what do you think would be the most
23 fruitful?

24 MR. IRWIN: Could I have about 30 seconds to
25 consult with my colleague?

1 JUDGE KELLEY: Do you want to confer, take a
2 stretch and confer on this?

3 MR. IRWIN: Yes. Could we maybe take five
4 minutes?

5 JUDGE KELLEY: We'll take five minutes and talk
6 about it off the record.

7 (Brief recess.)

8 JUDGE KELLEY: We will go back on the record.

9 We would like to hear from you as we indicated on
10 essentially what you think we should do next in the way of
11 briefing or whatever.

12 Mr. Irwin, do you want to lead off?

13 MR. IRWIN: I'll try.

14 I have a proposal which I have discussed with the
15 other parties. I believe the Staff agrees. I am not sure
16 whether Suffolk County or the State of New York would agree.

17 It seems to us that there is a threshold
18 question as to whether or not each piece of equipment on
19 which we rely for backup A power for Part 50 analyses must,
20 as a matter of law, also be qualified to the full extent of
21 Part 73 for us to make what has been referred to as a
22 compliance showing.

23 The County is, as I understand it, claiming that
24 each individual piece of equipment must be so qualified. We
25 don't believe each such piece of equipment need be. So I

1 think that is a threshold issue that needs to be resolved
2 and can be resolved by briefing because I think the facts
3 are not in dispute.

4 My proposal would be that the parties file
5 simultaneous briefs on that issue pretty quickly, and I
6 would suggest that we could probably do it by next Friday, a
7 week from tomorrow, on March 8th, with briefs exchanged,
8 actually delivered to each other that day, and that parties
9 file reply briefs the following Friday, March 15th, on that
10 issue, and then the Board rule on that as a threshold so
11 that we can determine whether or not we are in a so-called
12 compliance posture or a so-called exemption posture.

13 JUDGE KELLEY: Okay. That's your proposition.

14 MR. IRWIN: Yes, sir.

15 JUDGE KELLEY: All right. Okay.

16 Mr. Lanpher, how does that strike you?

17 MR. LANPHER: Two observations:

18 First, we think that the Appeal Board's holding
19 was clear, Judge. We don't think that briefing is
20 necessary. We think you can rule right now that since they
21 are not going to qualify the gas turbine to vital levels
22 that, under the Appeal Board's holding, you've got to rule
23 that they cannot comply with the requirements of Part 73.

24 I have said that before; I just want to make it
25 clear again.

1 JUDGE KELLEY: I don't think it is that clear to
2 us. If you think it is that clear you can write a short
3 brief.

4 MR. LANPHER: The second factor I want to say:

5 During our discussions I am afraid we are going
6 to see a moving target because of the way LILCO defines the
7 issue, as I understand it, and Mr. Irwin had better correct
8 me. They are not going to try to qualify the gas turbine to
9 vital levels, but they apparently are thinking of doing
10 something short of that, or are not ruling out doing
11 something short of that to the gas turbine, some other level
12 of protection. What is is I don't know.

13 I am very concerned that we are about to have a
14 moving target. I am not sure that it makes sense to submit
15 any briefs unless we get a stipulation that what we have got
16 here is what we are going to be litigating.

17 JUDGE KELLEY: Well, it certainly ought to be
18 clear. Mr. Irwin suggested that the facts are not in
19 dispute so--

20 MR. IRWIN: I think what is clear is that the
21 County insists that we must fully qualify each component and
22 we are saying that we are not going to try, at least as of
23 today, to qualify each component, and I don't expect that to
24 change because I don't believe that we could go through the
25 cook book and Part 73 on the 20-megawatt gas turbine.

1 Mr. Lanpher is right in saying we may do
2 something less to that gas turbine, but that doesn't affect
3 his perception that that would be, by definition,
4 insufficient. He is saying we have to fully qualify it
5 under the cook book approach. We are saying we don't.

6 MR. LANPHER: But are they going to rely on
7 this--

8 MR. IRWIN: But that situation isn't going to
9 change whether we have nothing done to it or whether we have
10 almost everything necessary under the cook book approach.

11 So I think that issue, that threshold issue, is
12 ripe for briefing because once we resolve that, we will then
13 know what the factual terrain is. We don't have-- In other
14 words there position is an absolutism; we have to fully
15 qualify everything. We are just saying no, we don't. And
16 that is a legal question.

17 And whether we would qualify something halfway or
18 a quarter of the way or 99 percent of the way underneath
19 that threshold doesn't affect that question. That is why I
20 think it is ready for briefing.

21 MR. BROWN: This is really a little bit off the
22 target. I think that the issues here are dealing with the
23 language of the Appeal Board's decision and that decision
24 stated the equipment, the precise equipment here falls
25 within the functions and the words used in the definition

1 of "vital equipment."

2 And if in fact this equipment is what the Appeal
3 Board told us, within that definition, it is vital
4 equipment, ipso facto, period.

5 I don't personally see what Mr. Irwin is
6 suggesting to be anything in fact other than a means of
7 reopening what the Appeal Board did. It was a
8 straightforward, definitional conclusion. The earlier Board
9 had ruled that, for a variety of reasons, this equipment,
10 though we argued it fell within the definition of vital
11 equipment, wasn't vital equipment. And the Appeal Board
12 said the definition embraces this equipment.

13 Now either LILCO does what it has to do to that
14 vital equipment or it doesn't. And if Mr. Irwin says, as he
15 just admitted, that LILCO won't, then by definition they
16 have to get -- LILCO has to get an exemption. This
17 collateral attack upon the Board through indirection and
18 this back door is just going to get us spinning our wheels
19 by coming back ultimately to that same fact.

20 MR. IRWIN: I don't like to be accused of
21 collateral attacks--

22 JUDGE KELLEY: We can have, by the way, more than
23 one issue for briefing. I think the Board, as I indicated
24 before, is not prepared this morning to announce on the
25 issue that Mr. Irwin propounded, and it would be useful to

1 get briefs on it.

2 You may have another way of phrasing a similar
3 issue, some different issue. You can do briefs on that,
4 too.

5 I would say, Mr. Irwin, from my standpoint that
6 while I understand your way of putting the issue, that is to
7 say the 20 is not going to be fully qualified under Part 73
8 under your plans, to the extent that you may be relying on
9 some partial improvement of the status of the safeguard
10 status of that piece of machinery, that ought to be clear.

11 MR. IRWIN: Oh, I agree, Judge Kelley.

12 And in terms of development of a factual record
13 and LILCO's demonstrating that the system as a whole
14 complies with the requirements of Part 73, the parties would
15 have to know exactly what it is we are planning on doing
16 with the 20-megawatt turbine, if anything, and what it is we
17 are doing with anything else we rely on, if anything.

18 They are entitled to know that because we would
19 certainly be inclined to rely on it ourselves.

20 But I think that is a different matter from the
21 threshold question of whether you have to have an absolute
22 level of qualification, 100 percent following the cook book,
23 for each piece of equipment you are relying on for your
24 safety analysis in order to even assert that you comply with
25 Part 73.

1 And I don't think it is a collateral attack on
2 the Appeal Board's decision. Section 73.55 (A), the part
3 that I read this morning, which is written in light of vital
4 equipment, it says you can do other things than those which
5 are specified in the cook book and still demonstrate that
6 you meet the requirements and performance objectives of Part
7 73 without having to seek an exemption.

8 That is going to be our case and I think we are
9 entitled to proceed with it. But I think we would also like
10 to be able to help the Board with briefs on it because they
11 have an absolutist view over there.

12 MR. BROWN: Well, I would like to correct
13 something in light of what Mr. Irwin said.

14 He is not making a collateral attack on ALAB-800;
15 he is making a direct attack on ALAB-800 because it is a
16 straightforward definitional question.

17 The equipment has been ruled to be vital and now
18 LILCO is suggesting that it not be vital.

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1 JUDGE KELLEY: That's not what they're saying
2 exactly, Mr. Brown, but we'll see what their memorandum
3 shows and what yours shows.

4 That is one proposition.

5 Let me ask Mr. Lanpher: What do you suggest we
6 do as the next step, whether by way of briefing or whatever
7 else is appropriate?

8 MR. LANPHER: Well, if the Board is not prepared
9 to rule at this point then I think there should be briefing
10 on what has been referred to as the threshold legal issue.

11 I don't think it would be useful to go forward
12 really spinning our wheels until the Board has decided
13 whether it is a compliance proceeding or an exemption
14 proceeding. To have a hybrid of the two I think is really
15 illogical. We'll end up doing far more work and it would be
16 far more inefficient.

17 So I think it might be useful for everyone to sit
18 down and try to figure out exactly what the issue is that is
19 going to be briefed. We tried to scratch out some things
20 during the break; there wasn't enough time to do that.

21 JUDGE KELLEY: One option I suppose -- Mr. Irwin
22 has formulated one issue and suggested it for briefing.

23 If you wanted to go back and read the transcript
24 and suggest an issue Monday you could do that too. I'm not
25 saying that is a good idea necessarily, but if you feel

1 there are issues here but you haven't quite had time to
2 frame them, that is an approach we might take.

3 MR. LANPHER: I would appreciate that opportunity
4 to submit Monday morning a statement of what we think the
5 issue should be that is briefed before this Board, and then
6 I think approximately a week or eight days to brief it, and
7 then approximately a week or eight days to put in responses
8 would be appropriate.

9 MR. IRWIN: We wouldn't object to that.

10 MR. LANPHER: You know, for that time frame to
11 run from the time this Board says, 'Okay, this is what the
12 issue is going to be.' Hopefully that would be relatively
13 soon after Monday.

14 JUDGE KELLEY: I think so.

15 Mr. Perlis.

16 MR. PERLIS: I think that is an acceptable way to
17 proceed.

18 MR. PALOMINO: That is acceptable.

19 MR. PERLIS: Excuse me, Judge Kelley, I think
20 Mr. Palomino has something.

21 MR. PALOMINO: That is acceptable.

22 JUDGE KELLEY: Thank you, sir.

23 MR. LANPHER: Is it the Board's order, then, that
24 by some time on Monday we --

25 JUDGE KELLEY: Not quite. We are almost there,

1 I think. But we are just thinking among ourselves.

2 Mr. Irwin has stated one issue for briefing. We
3 have got that. But what we would envision, I gather, is
4 hearing by Monday morning -- I think I heard Monday
5 morning--

6 MR. LANPHER: How about if we get it to you by
7 noon?

8 JUDGE KELLEY: Noon is fine, Monday noon, if you
9 can get it in our hands, your proposed issue or issues for
10 briefing, then we will include the one -- Do you have
11 another filing? You can include the one you just stated,
12 Mr. Irwin, or not.

13 I would like to ask you to think about including
14 in your consideration some of the things that have come up
15 here today already that seem to me to be legal issues.

16 I'm still unclear on the difference between an
17 exemption proceeding and a compliance proceeding and why
18 anybody cares. One point has been that you don't
19 necessarily have contentions in an exemption proceeding. I
20 frankly didn't know that. But why it would matter is not
21 clear to me. So you could comment on that.

22 A little more broadly perhaps than what we have
23 already stated, the ALAB-800 decision has been referred to a
24 number of times this morning, and it has a direct bearing on
25 the issue as stated by Mr. Irwin. And I know we realize

1 that. But in the course of our discussion if there are
2 other things that have surfaced that involve matters that
3 are significant, where we seem to have some differences of
4 view, could you take that into account when you go over the
5 transcript, and comment on those things, too, if it seems
6 appropriate, or suggest it for briefing if it seems
7 appropriate.

8 Okay; then with that the Board's order will be
9 that you will get to the Board, in our hands, by noon Monday
10 any suggested issues for briefing. About a week seems
11 reasonable to do that. After you're told by us what you
12 want us -- what you want to brief, could we set a telephone
13 conference for next Tuesday sometime? I should think we'll
14 turn right to your submissions, and we could speak to the
15 point then.

16 Would two o'clock next Tuesday be a good enough
17 time for us to go on the phone? And we will try to have
18 worked out exactly what we want to say. We will
19 essentially be reading something over the phone, I should
20 think, and then we can take questions, if it is unclear, or
21 if for any reason you want to raise a question.

22 Let me ask you in this connection: Generally
23 speaking, I would anticipate that if we are going to be
24 doing business over the phone, arguing a point, or whatever,
25 we should get a reporter lined up, and we could do it with

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a reporter.

Would you, in the gray areas, lean toward getting a reporter, if we can?

MR. LANPHER: Yes.

MR. IRWIN: I'm willing to trust the Board's discretion

MR. PERLIS: We don't have much of a feeling either way.

JUDGE KELLEY: Okay. If we think, or anticipate it is going to get into a discussion or disagreement on points, we will try to get a reporter. We usually need a day's notice on that, but we can do it.

So we would envision calling you, then, next Tuesday afternoon.

It seems to me we should set the time that the comments are due. It ought to depend partly on whether it is two questions or five questions. So we have talked about a week roughly as to the time in which to write them. And I think you can assume that. And the exact time we can set in light of the way things look at that time.

Any other questions, points to be raised?

Okay. Well, I'm happy to meet you. Thank you very much. We'll talk to you next Tuesday.

(Whereupon, at 1:33 p.m., the conference of counsel was concluded.)

CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the UNITED STATES NUCLEAR REGULATORY COMMISSION in the matter of:

NAME OF PROCEEDING: LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station,
Unit No. 1)

DOCKET NO.: 50-322-OL-5

PLACE: BETHESDA, MARYLAND

DATE: THURSDAY, FEBRUARY 28, 1985

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission.

(sigt) Madelon P. Bloor
(TYPED)

Official Reporter

Reporter's Affiliation