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NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY
GENERAL INVESTIGATIVE
DIVISION

In the Matter of:

LONG ISLAND LIGHTING COMPANY

CLOSED MEETING

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Location: BETHESDA MARYLAND

Pages: S1-S94

Date: August 16, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges
Marshall E. Miller, Chairman
Glenn O. Bright
Elizabeth B. Johnson

SECURED MEETING

In the Matter of)
LONG ISLAND LIGHTING COMPANY)
(Shoreham Nuclear Generating Plant,)
Unit 1))

Docket No.50-322-OL-4
(Low Power)

August 16, 1984

AUTHORIZED PERSONS FOR TODAY'S HEARING:

- R. PERLIS
- R. ROLFE
- A. EARLEY
- F. PALOMINO
- H. BROWN
- K. LETSCHE
- D. IRWIN

1 MR. MILLER: We're on the record now. We're on the
2 record. Our reporter has signed the affidavit of non-dis-
3 closure which makes him and the persons who type or work on
4 the transcript authorized persons within the meaning of the
5 affidavit of non-disclosure. There is some question about
6 the necessity of other persons signing. We realize that
7 rather than tie things up we've asked those who are authoriz-
8 ed persons in one capacity or another to sign the affidavits
9 and we'll sort out later. This is without prejudice to any
10 of you in any other proceedings, as I guess Mr. Brown is.
11 -- but we'll start, which probably doesn't have to do -- as
12 much of this. But, nonetheless, now that this -- proceeding
13 going we're proceeding now with the affidavits of non-dis-
14 closure. We are then going to ask everyone in the room, be-
15 cause no one should be in the room now who is not an author-
16 ized person, to identify himself or herself for the record.

17 Then, hopefully, we'll get down to some of the merits
18 of this. Let the record show that temporarily we're turning
19 over these executed affidavits of non-disclosure to Judge
20 Bright for safekeeping. They will be kept in a safe. And
21 now the red ceiling lights and everything - yes, ma'am?

22 MS. LETSCHE: --

23 MR. MILLER: Oh, I'm sorry. We'll catch it.
24 We're on the record. Now, you had some statements --

25 MR. BROWN: I wanted to mention that the affidavit

1 of intentions of intentions as being Suffolk County's con-
 2 tentions and they're actually joint contentions of Suffolk
 3 County and New York State. So I actually added the words
 4 "and New York" to my affidavit. I understand Mr. Palomino
 5 did not, but perhaps it could be stated for the record that
 6 when this phrase Suffolk County is used, it refers jointly
 7 to the contention shared by both governments.

8 MR. MILLER: Yes. We will have the record show,
 9 pending these affidavits of non-disclosure are not numbered
 10 pages at the moment, is that correct?

11 UNIDENTIFIED: Correct.

12 MR. MILLER: Off the record.

13 (BRIEF RECESS.)

14 MR. MILLER: Anyway the affidavits of non-disclosure,
 15 which have now been executed and notarized by every person in
 16 this room who will identify himself or herself in a moment
 17 for the record, contain a reference, in at least one place,
 18 if you turn to page 4, to information obtained and so forth
 19 in matters directly pertaining to Suffolk County Security
 20 contentions and so on. That should read, and we will correct
 21 the record, and deem our affidavits so to read as pertaining
 22 to Suffolk County and the State of New York security conten-
 23 tions. Now that's in the second mask in the last tape. Are
 24 there any other pages counsel would -- also?

25 UNIDENTIFIED : We've seen it only on the second to

1 last and also on the third page.

2 MR. MILLER: Oh, the third page also?

3 UNIDENTIFIED : Yes.'

4 MR. MILLER: Alright, the same exception is being
5 made for the record on the third page also, at the very bottom,
6 numbered paragraph 5, Matters Directly Pertaining to Suffolk
7 County and the State of New York inserted, security contentions.
8 We'll consider these affidavits allowed and amended.

9 Alright, I think now perhaps we should have every
10 person in the room - this being an in camera proceeding -
11 identify himself or herself for the record, please. We'll
12 start here and just go right around the room.

13 Can we have the spelling of the name? We better
14 get this - ok. Spell the names on the record, if you will,
15 so we'll have --

16 MR. GASCN. John Gascn.

17 MR. RNMSS:

18 MR. ROBERT --: I'm Robert -- I'm with the NRC's
19 Office of Executive Legal Director.

20 MS. CAMPONONI: Mary Jo Campononi with the Division
21 of Licensing. C-A-M-P-A_G-N-O-N-E.

22 MR. IRWIN: I'm Donald P. Irwin, I-R-W-I-R-N with
23 Hunton and Williams.

24 MR. EARLEY: Anthony Earley with the firm of Hunton
25 and Williams representing LILCO.

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1 MR. ROLFE: Robert M. Rolfe, R-O-L-F-E with the firm
2 of Hunton and Williams, representing LILCO.

3 INAUDIBLE

4 MR. PALOMINO: Fabian Palomino, P-A-L-O-M-I-N-O,
5 representing the State of New York.

6 MR. BROWN: Herbert H. Brown, B-R-O-W-N with the law
7 firm of Kirkpatrick Lockhart, Hill, Christopher and Phillips,
8 one of counsel for Suffolk county.

9 MS. LETSCHE: Karla J. Letsche, L-E-T-S-C-H-E,
10 also with Kirkpatrick, Lickhardt, Hill, Christopher and
11 Phillips, representing Suffolk County.

12 MR. MCCAFFREY: I'm Brian McCaffrey from Long
13 Island Lighting Company, that's Mc C-A-F-F-R-E-Y.

14 MR. GARY: I'm Rod Gary, Ciconda. I work for the
15 Long Island Lighting Company, the last name is spelled G-I-S-
16 O-N-D-A.

17 MR. MILLER: Alright, in this afternoon's proceed-
18 ings in camera I'm going to ask Judge Bright to act as lead
19 Administrative Judge - that's a new title...but what we would
20 like to do, first of all, we have now received the security
21 contentions of Suffolk County and the State of New York. Do
22 you want those marked in some way? We're developing now a
23 record in camera. We're starting to nu number our trans-
24 script pages, S-1, S-2 and the like, so they'll be separate
25 and distinct from the other transcript exhibits. What is
your

1 pleasure in this regard? 5-10

2 MS. LETSCHE : I'm not sure what you had in mind, Judge
3 Miller are you talking about binding them into the record or..

4 MR. MILLER: Well, identify them in some way. We
5 keep ours in a locked safe and I guess you people all do what-
6 ever you're supposed to do with reference to security mater-
7 ials. Now, for the.. this is an in camera proceeding. How
8 are we going to identify what we're going to be talking about?
9 I'll entertain suggestions from you, staff, anybody?

10 MS. LETSCHE: Well, the contentions are identified
11 as the contentions of the county and the state and they are
12 separately numbered. So I think we can just refer to them
13 that way, unless you have something else in mind.

14 MR. MILLER: Well, contentions come and go. How are
15 we going to have a record, S-14, Contention 5 - how are we
16 going to have that identified a year from now when we've got
17 a lot of water over the dam? I'm just thinking now, simply
18 from the housekeeping aspects of developing our own record
19 which is in camera and dealing with secured and other types
20 of information of that kind. -- the staff, they should have
21 some suggestions for us. What do you suggest staff?

22 MR. PERLIS: I think, if you're just talking about
23 the contentions at this point, they could be bound into the
24 record and I would suggest paginating the record, starting at
25 S-1.

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1 MR. MILLER: We'll take care of that if that's your
2 suggestion. We can get it in the record, transcript if that
3 be the suggestion. Is that what everybody wishes us to do?
4 How are we going to handle these things?

5 MR. PERLIS: That would be our suggestion.

6 MR. MILLER: Alright. Any objections to it? LILCO
7 you're the primary ...

8 MR. IRWIN: No objections.

9 MR. MILLER: .. party to maintain a high degree of
10 confidentiality and security, so ..

11 MR. EARLEY: Judge Miller, we don't object. We
12 assume these are in camera transcripts that ..

13 MR. MILLER: Alright, let us say, for the record,
14 that we're going to maintain, as I said before, in camera
15 transcripts which will be kept separately and will be numbered
16 consecutively and various proceedings, from time to time, in
17 camera with regard to security and safeguards .. ask that the
18 pagination start with S-1, S-2, S-3 and the like. It has been
19 our practice with testimony or documents similar to that id-
20 entified by the Board to have them made a part of the trans-
21 cript. In other words, this document, which I will give to
22 the reporter, be nominated "Security Contentions of Suffolk
23 County and the State of New York".. you don't want an exhibit
24 number, huh?

25 MS. LETSCHE: I don't think it makes sense to have

1 it as an exhibit.

2 MR. MILLER: Alright, ok...will be made a part of
3 the transcript of the in camera proceedings. It will have
4 its own numbers...going consecutively. In other words, what
5 ever number there are or not on this, it will be appearing,
6 transcript page S...as far as copied verbatim.

7 Now, are there any replies? No one has tried to
8 reply, I assume. At least I've seen none, either a double
9 envelope or anything else, that addresses these projected
10 security contentions of Suffolk County and the State of New
11 York. What is the state of our record on that, Counsel?

12 MR. EARLEY: Judge Miller, the LILCO has not filed a
13 written reply, LILCO intends to reply here in this conference

14 MR. MILLER: Alright. Staff the same?

15 MR. PERLIS: That was the staff's anticipation as
16 well.

17 MR. MILLER: Alright. Now, let me be sure I under-
18 stand the procedure which we've discussed preliminarily up
19 in Long Island, New York, namely that in order to address
20 these matters with a reasonable degree of intelligence we
21 have to know, first of all, with some specificity, such as is
22 available at this point to the county and the state what the
23 contentions are, but realizing you have not seen the plan
24 now, have you? That is, at least in this proceeding. Is
25 that correct?

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MS. LETSCHE: No, we have not had any discovery at all related to the low power security contentions or those issues.

MR. MILLER: Then you haven't seen the plans, in that sense?

MS. LETSCHE: That... in the original security plan .. authorized persons did see, in connection with the prior security proceedings. We have not had any...we have not received any information or documents or plan revisions or anything relating to this low power proceeding.

MR. MILLER: Ok. So these are the contentions you made as specific as you reasonably could in view of the fact you haven't yet seen the plan as it sought to be applied to the exemption portion, is that right?

MS. LETSCHE: I think that's right, yes, I think that's right.

MR. MILLER: Now, let me inquire now of LILCO's Counsel. What is the situation in that regard?

MR. IRWIN: The plan which Suffolk County has had possession of since the Fall of 1982 is the plan as it now exists and as it has been reviewed and approved by the NRC Staff and as it existed, with a couple of minor subsequent modifications, at the time of the security settlement agreement in November of '82.

MR. MILLER: Well, that's the settlement agreement

1 and the plan .. at that time.

2 MR. IRWIN: That's right, it's the same plan.

3 MR. MILLER: Has there been anything added, any
4 supplements, anything that focuses upon the plan as tailored
5 now to the contentions sought to be made in this low power
6 exemption request proceeding?

7 MR. IRWIN: No, sir. There have been no modifica-
8 tions to the plan that expressly deal with low power modifi-
9 cations.

10 MR. MILLER: Is it your position then that you're
11 just going to go with that same plan and that we tailor it as
12 we go or what are you going to do?

13 MR. IRWIN: That has been our position all along,
14 Judge Miller. I should add one thing concerning discovery,
15 obviously, since the plan has been in Suffolk County's poss-
16 ession they have knowledge of it, as does the staff, New York
17 State does not have a copy of it. There has also been one
18 other form of discovery, at least with respect to the site,
19 and Mr. Earley can pinpoint the exact date, but I do know
20 that representatives of Suffolk County, including both law-
21 yers and technical experts, and Suffolk County Police Depart-
22 ment members have visited the site recently to examine the
23 layout of the low power configuration.

24 MR. MILLER: What kind of a record do we have of
25 that? What troubles me is I realize that a good deal of work

1 went in. You had a lot of people who were conversant with
2 the original plan as developed and I think it was a subject
3 of stipulation or agreement, ok. That's existing for a cou-
4 ple of years or whatever.

5 MR. IRWIN: That's right.

6 MR. MILLER: Now, my problem is this, how are we
7 going to address the issues in this proceeding separate and
8 apart because we don't want to retry that original security
9 thing?

10 MR. IRWIN: Well, all I'm saying, Judge Miller, is
11 that the documentation on the basis of which issues such as
12 there may be, if there are any, to be tried in this proceed-
13 ing, that documentation exists and it is in Suffolk County's
14 possession already and it's ..

15 MR. MILLER: Well, what is identified by that docu-
16 mentation?

17 MR. IRWIN: Alright. It is the Shoreham Nuclear
18 Power Station Security Plan through, I believe, revision 7.

19 MR. MILLER: Revision 7? Do you know the approxi-
20 mate date of that?

21 MR. IRWIN: Revision 7 was filed, I believe, in
22 March of this year, approximately March of this year. Suf-
23 folk County, under the agreement of November '82, receives
24 copies of all modifications to the plan at the time they are
25 filed with the NRC and, indeed, receives them in advance of

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1 their submission to the NRC.

2 MR. MILLER: Is that Suffolk County?

3 MR. IRWIN: Yes, sir. Copies are sent ...

4 MR. MILLER: Hold it, hold it, hold it. Suffolk
5 County, now, does that information get to Counsel for Suffolk
6 County?

7 MR. LETSCHE: The ... as I understand it, and I can't
8 speak personally with respect to this because Mr. Miller is
9 the lead Counsel on that particular proceeding, my under-
10 standing is that Mr. Irwin's correct revisions are sent, I
11 believe, to Mr. Miller who then forwards them to people with
12 the Suffolk County Police Department. I do not ..

13 MR. MILLER: What about your own office? You and
14 your other ...

15 MS. LETSCHE: Mr. Miller is one of my associates and
16 so he... they are passed through him to the Suffolk County
17 Police. I'm not certain, however, that the county actually
18 has or that the police have the plan. There are none of
19 those accidents are in Counsel's office. The revisions are
20 not there and the plan is not there. We have never had a
21 copy of the plan in our office and I don't know if the police
22 has a copy.

23 MR. MILLER: Ok, let me interrupt you now because
24 we're all confused up here. We don't know what you've been
25 doing and we're trying to understand that so we can relate it

1 to this. Now you've...LILCO has been filing, apparently
2 LILCO U.S. Counsel or whatever, documents with the county in
3 accordance with the terms of that original two year old plan,
4 but it's our understanding that doesn't, as such, get to
5 Counsel in this proceeding and, of course, they haven't
6 been authorized until now either, so we're not quarreling
7 about it, but we want to set up some kind of procedures to
8 where we, not only update, but we address in some way what-
9 ever issues of the security plan are cognizable in this pro-
10 ceeding because we may be mistaken, but it's our belief we
11 don't want to look at the whole plan and we don't want to
12 have to repeat what was done a couple years ago.

13 MR. IRWIN: Right, we don't either, Judge Miller.
14 Let me just make...

15 MR. MILLER: How do we make it in a simple, under-
16 standable way then?

17 MR. IRWIN: Well, let me try one more time. Suffolk
18 County has two copies of an up-to-date version of the plan,
19 as it now exists and as it exists, as the basis on which
20 LILCO is seeking a low power license. The staff has the
21 same copy. Now that Mr. Palomino has executed an affidavit
22 of non-disclosure we can make a controlled copy of the plan
23 available to him as well. I should also add that Suffolk
24 County receives two copies, not only of every amendment to
25 the plan, but of every security procedure and instruction
that is issued

1 at Shoreham also pursuant to that agreement. So in the true
2 sense...

3 MR. MILLER: Hold it a minute.

4 MS. LETSCHE: Judge Miller?

5 MR. MILLER: Yes?

6 MR. IRWIN: Let's try again. I believe every party
7 except New York State has complete, up-to-date versions of
8 the plan and of all the procedures that have been produced
9 by LOCA to implement it. In addition, in terms of actual
10 access, Ms. Letsche is, I believe, the only one of Suffolk
11 County's attorneys who was not on the prior access list, so
12 Mr. Brown and Mr. Miller, if Mr. Miller is working on this
13 part of the case, should be familiar with the plan. Mr.
14 Lanfer also was on the previous access list. I don't know
15 whether he'll be working on this part of the case.

16 So, the long and short of it is, although there is
17 material in the Shoreham Security Plan which, as you recognize
18 and as we believe also, is outside the scope of issues in
19 this case that material exists and everybody has it and we
20 would expect that the parties would simply focus on those
21 aspects of the material which are germane to this case. We
22 can't and don't propose to take back that which Suffolk Coun-
23 ty has because the agreement says they are entitled to copies
24 of the agreement. We just simply focus on that portion or
25 those portions of it which are germane to such issues as the

1 Board may admit, if it admits any.

2 MR. MILLER: Well, our problem is, how are we going
3 to identify those portions which are germane to that which
4 is in issue in this low power exemption proceeding. You don't
5 have any easy label for us, I can see that now. You don't
6 have supplement 13 that says in the case of low power we're
7 going to do so and so. You don't have it that nicely arrang-
8 ed.

9 MR. IRWIN: That's correct because it is LILCO's
10 contention that no such special arrangements are necessary,
11 which we'll get to in more detail later when Mr. Earley will
12 present that argument. But I think if these issues are ad-
13 mitted, what we should simply do is make copies of the Se-
14 curity Plan as it exists, available to the Board and to the
15 parties, expecting them to abide by the procedures set forth
16 in the Commission's regulations and if those parts of the plan
17 are referred to or adduced in testimony or ..

18 MR. MILLER: Well, they're going to be in camera,
19 the whole things is going to be... more restricted than that,
20 can you?

21 MR. IRWIN: Well, it's not that big a document. It's
22 a one volume document. There may be, it turns out... it may
23 turn out that various procedures or excerpts from it become
24 relevant, assuming any issues are admitted, but, again, those
25 would be like any kind of exhibits. We are concerned, as is

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1 the Board, with having a controllable and controlled record.
2 My expectation is that Counsel in this room are all profess-
3 ionals and will do what the regulations tell us to do.

4 MR. MILLER: I think that is correct. Now, the
5 question is whether the regulations tell us to do about re-
6 fining the contentions which are framed as well as they can
7 and I don't mean by that that they're not well framed, but
8 at least lead Counsel in this proceeding, low power, has not
9 seen the plan. Hence, in drafting, I take it, correct me,
10 Counsel, if I'm wrong, you have not seen the plan and you
11 haven't been able or even attempted probably to relate the
12 safeguards plan, the security plan, to the framing of your
13 contentions, have you?

14 MS. LETSCHE: Well, I... it was. Let me explain it
15 this way. In working on the drafting of these contentions
16 the contentions set forth the pertinent facts relating to
17 the plan and as Mr. Irwin stated, I believe, the plan does not
18 now contain provisions dealing with the new configurations,
19 which is what the subject of these, of this hearing will be
20 about. So, insofar as the contentions identify particular
21 portions, particular elements of the plan that need to be
22 changed to reflect that configuration, I mean that is set
23 forth in the contentions and I was able ...because the plan
24 doesn't have anything pertinent in it to look at, it didn't
25 matter that I didn't have to see it.

1 MR. MILLER: I see.

2 MS. LETSCHE: The...so, as a factual matter I have
3 not looked at it, but drafting the contentions was based upon
4 my knowledge from my discussions with Counsel who were famil-
5 iar with the plan, that the plan did not contain any provi-
6 sions related to the new configuration.

7 MR. MILLER: That, I guess, Counsel has now told us
8 for LILCO that is the situation.

9 MR. IRWIN: That's right, but I think that if the
10 Board is eliciting any question about it, I don't think that
11 we're dealing from a situation which Counsel have been trying
12 to work in ignorance. The items of equipment that are referred
13 to are shown on plot plans that are contained not only in the
14 security plan, but also in the FSAR and Counsel have been
15 working on this case for 2½ years as have their technical
16 consultants. So I don't think there is any suggestion from
17 Suffolk County that they have been handicapped in access to
18 such information as exists and I think they've got it all.

19 MR. MILLER: Well, I didn't hear any such suggestion,
20 in fact Counsel said that she had all the information that she
21 needed...so we can proceed with contentions.

22 MS. LETSCHE: As far as the plan, that's correct.

23 MR. MILLER: Well now, first of all, we can furnish
24 one copy. The Board would like to have two copies and they
25 will be kept locked up and all the rest. One copy that Judge

1 Bright and I will have here in our Bethesda offices in a lock-
 2 ed safe and so forth. One other copy to be sent with approp-
 3 riate security provisions and so forth to Judge Elizabeth
 4 Johnson at Oak Ridge. We'll see that you get the address,
 5 but Oak Ridge also has the appropriate safe security arrange-
 6 ments and the like. So we'd like to have two. One here and
 7 one in Oak Ridge.

8 MR. IRWIN: We'll take care of that and also send
 9 one to Mr. Palomino.

10 MR. MILLER: Yeah, right, ok. Now, I guess, we've
 11 all seen the contentions now and we have some idea of where
 12 it fits in in terms of the existing security plan. So who
 13 wishes to be heard now on the adequacy, sufficiency and the
 14 like of the security contentions propounded by Suffolk Coun-
 15 ty and the State of New York?

16 MR. EARLEY: Judge Miller, LILCO wishes to be heard.

17 MR. MILLER: Very well.

18 MR. EARLEY: Judge, LILCO opposes the admission of
 19 any security contention on three separate grounds . Each of
 20 these grounds stands by itself and any one of which is
 21 sufficient to exclude all of the security contentions that
 22 the county has proposed. Let me summarize those grounds and
 23 then go into an explanation of them.

24 First, LILCO has an approved security plan, as we
 25 have discussed. There is nothing in the low power application

1 which affects security for the plant itself, the reactor
2 building, the turbine building, that security plan is already
3 in place and has been approved.

4 Therefore, there is no reason to assume that secur-
5 ity for those particular buildings is going to be affected.
6 Therefore, we don't have to make the assumptions, as the
7 county suggests in many of their contentions, that we have
8 to assume a security induced (LOCA), that some saboteur could
9 get into the plant and induce a (LOCA). We already have that
10 taken care of because we have a plan that protects the plant.

11 Now, as you'll recall from oral argument this morn-
12 ing and from the hearings on low power, in the absence of a
13 LOCA, during low power operations, essentially unlimited time
14 LILCO said more than 30 days and the staff has gone beyond
15 that and said it's really an unlimited amount of time is
16 available to restore power. Therefore, the security of the
17 supplemental power sources is immaterial.

18 The second ground that LILCO opposes the contentions
19 on is that LILCO and Suffolk County have in place a compre-
20 hensive security agreement and that that security agreement
21 precludes litigation of security issues because it provides
22 a framework for a resolution of security issues.

23 The third ground LILCO opposes the contentions on
24 is that the contentions themselves are inadequate. They do
25 not meet the requirements for specificity in basis that are

1 in the regulations. They are merely an open-ended attempt
2 to provoke prolonged litigation.

3 Before I go into the details of each of those three
4 grounds, let me emphasize that nothing in the contentions has
5 anything to do with phases 1 and 2 of LILCO's proposed low
6 power operation. No power is required for operation of the
7 plant at low power. Therefore, the security for those
8 supplemental power sources is just irrelevant, immaterial,
9 and immaterial. Nothing prevents the Board from approving
10 stages 1 and 2 now, regardless of whether the Board decides
11 to admit a security contention or not.

12 As I stated, LILCO's first ground was that we have
13 an approved security plan in place. That plan was negotiated
14 by the parties, approved by the NRC Staff. The agreement
15 that approved the plan was approved by the Atomic Safety and
16 Licensing Board. Therefore, there is adequate security to
17 protect the plant itself. The only change we're talking
18 about in low power that can be considered here is the addi-
19 tion of the supplemental power sources. The only potential
20 issue then involves security of those power sources. As I
21 noted, the uncontradicted testimony in the proceeding shows
22 that absent a loss of coolant accident, essentially unlimited
23 time is available to restore power. If that's the case, it
24 doesn't matter whether there is security for those particular
25 pieces of equipment. And, in fact, as the Board knows from

1 observation, there is security because the EMD diesels are
2 inside the control area and the gas turbine is within the
3 Shoreham site and in a switch yard.

4 But, that's irrelevant. Even if there were no
5 security, it would not matter because there is an unlimited
6 time available to restore power and the record shows there
7 are many ways to restore power to the plant over a period of
8 time. It is not necessary to assume that a loss of coolant
9 accident will occur concurrent with some sort of sabotage or
10 security event.

11 First of all, because there is the approved security
12 plan in place that plan prevents a potential saboteur from
13 causing a loss of coolant accident. To assume that a loss of
14 coolant accident is caused by saboteurs would be contrary to
15 the regulations. The regulations require that you do certain
16 things, have in place a certain security program and now the
17 county, in its contentions, asks the Board to ignore that
18 existing security program and assume that the saboteur is
19 successful and causes the loss of coolant accident.

20 We just don't think that that is proper. In addi-
21 tion, it would be incredible to assume that if a loss of
22 coolant accident occurs, which is a very unlikely event I
23 think as the record reflects from the low power proceedings,
24 that at that same time some potential saboteur elected that
25 very moment, independently, to make an attack on all of the

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1 power sources that are available and we've discussed a number
2 of and variety of power sources that are available to the
3 Shoreham plant.

4 It's analagous to the situation that the staff had
5 described of assuming a seismic event in a loss of coolant
6 accident occurring independently. It just is an incredible
7 event that need not be taken into account.

8 Now, LILCO's approach to this is consistent with
9 the approach of the staff taken in staff SSER #5. There, in
10 section 13, and I believe around pages 13-2 and 13-3, the
11 staff concluded that the plant would be protected from a
12 sabotage induced LOCA because there is an approved security
13 plan. And there the staff said there is no technical reason
14 to protect a temporary diesel and a gas turbine generator as
15 vital equipment.

16 The staff echoed that same position, I believe it
17 was when this Board first took up security matters in re-
18 sponse to LILCO's motion for a protective order, the staff
19 reply there on June 19, at page 3, again said that there is
20 no technical reason to protect off-site power sources or the
21 augmented power sources in the absence of a LOCA. And they
22 went on to say there are safeguards in place with this sec-
23 urity plan to prevent this sabotage induced LOCA. Suffolk
24 County, in their contentions, has provided no credible basis
25 why this Board should ignore the fact that there is a security

1 plan, that that security plan has been approved by all of the
 2 parties and by the NRC Staff and endorsed by the Licensing
 3 Board that heard security issues, that this Board should
 4 ignore it and go on to assume that there will be such a
 5 sabotage induced LOCA.

6 The second ground for dismissing the contentions
 7 is the **existence** of the security agreement. That agreement
 8 was negotiated over several months in the licensing proceed-
 9 ing for **Shoreham**. It was submitted to the Licensing Board and
 10 approved by the Licensing Board. Within that security agree-
 11 ment there is a mechanism for dealing with changes in secur-
 12 ity. Where changes to security matters are contemplated that
 13 directly affect something that was agreed to in that security
 14 agreement, for example, the number of guards that LILCO will
 15 have is a subject of that security agreement. If LILCO
 16 elected to change that number, under the agreement they must
 17 get Suffolk County's approval to do that. Now, obviously,
 18 that security agreement didn't affect every conceivable
 19 thing with respect to security, so the agreement went on to
 20 say that where security matters are not specifically included
 21 that those things must be discussed with Suffolk County.

22 Suffolk County doesn't have the right to approve it,
 23 but those matters must be discussed with Suffolk County and
 24 the agreement, itself, in the preamble to the agreement it
 25 requires the parties to act in good faith. LILCO would have

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1 been required to listen to Suffolk County's concerns regarding
 2 low power security and make good faith efforts to engage those
 3 concerns. And, in fact, LILCO attempted to follow that reso-
 4 lution mechanism. And the sequence of events that was followed
 5 is contained in LILCO's July 16th response to Suffolk County's
 6 motion for directed certification of security issues. That
 7 was filed with both the Commission and this Board.

8 And let me just summarize that sequence of events.
 9 Suffolk County had sent some letters to LILCO and the NRC
 10 that raised some uncertainty about whether the county would
 11 abide by the agreement during low power testing. There was
 12 an exchange of correspondence...

13 MR. MILLER: Hold it a minute.

14 (BRIEF RECESS.)

15 MR. EARLEY: Alright, describing the sequence of
 16 events that illustrate LILCO's attempt to follow the security
 17 dispute resolution mechanism that was set up in the security
 18 agreement, as I stated, there was an exchange of correspon-
 19 dence between LILCO and Suffolk County and, finally, in the
 20 spring of 1984 the staff called a meeting to discuss low
 21 power security matters. And Suffolk County and LILCO were
 22 notified of that meeting. It was originally scheduled for
 23 May 18th.

24 The Counsel for the Suffolk County informed the
 25 NRC staff on May 14th that their lawyers would not be

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available. The meeting was rescheduled.

The county was notified of the rescheduled meeting, yet the county failed to attend that meeting. At that meeting LILCO and the staff discussed how LILCO's existing security plan and the provisions in that existing plan would, in fact, be adequate for a low power operation. So, in summary, with respect to the second reason for excluding the security contentions there is a comprehensive security agreement in place. That agreement has a mechanism for resolving changes in security matters over the life of the plan. Suffolk County has voluntarily, for whatever reason, declined to participate in that resolution mechanism. And the county now should not be permitted, because they've declined to follow that agreement that they signed in 1982, they should not be permitted to litigate security issues.

Let me emphasize that LILCO is obligated, by the agreement, to make a good faith effort to engage any issues raised by Suffolk County in this informal dispute resolution mechanism and LILCO stood ready to do so. Moreover, just because Suffolk County might be barred from litigating security issues doesn't mean that this Board would be ignoring low power security issues and, in fact, the staff has reviewed the security provisions for low power and has concluded that the security provisions are adequate, as reflected in the various SSER's.

1 The third ground for excluding the contentions is
2 that the contentions fail to state adequate bases, they're
3 vague and they're open-ended. Now let me go through briefly
4 each of the contentions. Contention 1 is an overly broad
5 contention which seems to deal with the whole plant security
6 in the adequacy of the whole security plan. It doesn't focus
7 on the new power sources. It attempts to shift the burden
8 at this stage to LILCO. Suffolk County picks on various
9 requirements of the regulations that there be a security
10 force, that there be physical barriers, that there be isola-
11 tion zones. And say that LILCO has failed to demonstrate
12 that we have adequately met those requirements of the regu-
13 lations for low power.

14 But, as Mr. Irwin indicated, the county has a
15 security plan. They know what kind of security we have.
16 They know what kind of barriers there are. They know there
17 are television cameras that look and can observe the whole
18 site. At the contention stage the burden is on the county
19 to raise a particularized issue with an adequate basis. If
20 they had an issue to come in and say we don't think camera X
21 can see the EMD diesels, then that's a particularized issue.
22 If they've got a basis to conclude that that is, in fact, to
23 make that allegation. The county hasn't done it. Instead
24 they are trying to shift the burden to LILCO and say, well,
25 we just haven't seen anything. I think the Board has to

1 consider the unique circumstances here that the county has
2 had information with respect to the actual security that's
3 going to be in place during low power.

4 With respect to the second contention, again, we
5 believe that that contention has an inadequate basis. As I
6 discussed earlier, there is an approved security plan in
7 place. Therefore, there is no basis for concluding that there
8 would be any event that would cause you to need the 20 mega-
9 watt gas turbine, any security event that would cause you to
10 need the 20 megawatt gas turbine or the 4 EMD diesels within
11 any reasonable period of time, as I discussed earlier, almost
12 an unlimited time unless you assume that you've got this
13 concurrent LOCA.

14 And because there is an approved security plan in
15 place, we don't think that that's a fair assumption. We be-
16 lieve that the staff has consistently said in their SSER that
17 there is no technical reason for requiring these supplemental
18 power sources to be in vital areas.

19 Contention three talks about the design basis threat.
20 There is no change in the design basis threat. The design
21 basis threat is a generic threat that was set out as a per-
22 formance standard in the regulations. The regulations then
23 go on to say in 7355 that there are certain things that you
24 must do to meet the design basis threat. The same type of
25 claim that the county makes here in contention three that

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1 that LILCO has failed to identify, characterize, analyze,
2 prepare for the design basis threat, a similar claim was
3 raised in the Diablo Canyon case. And that was ALAB653, the
4 ~~cite~~ is 16 NRC 55. If you look at page 75 of that case,
5 you'll find very similar language is found. The intervenor
6 there claimed it wasn't, that you had to understand and anal-
7 yze and characterize the attributes of the attackers, the
8 design basis threat. Well, it's no coincidence that the
9 language is the same.

10 The same attorneys were involved in the case and
11 those attorneys knew that the Diablo Canyon Appeal Board rul-
12 ed that you didn't have to characterize the design basis
13 threat. That it was a generic threat. You didn't have to
14 go through what contention three now suggests that LILCO
15 should have to do. Moreover, the Appeal Board ruled against
16 the intervenors on that particular issue.

17 With respect to that contention also, there are no
18 specific allegations of inadequacies in the existing security
19 plan. Given the design basis threat, they know what we have
20 in the security plan and there are no specific deficiencies
21 listed that we can engage. We don't know what to litigate
22 if this contention is admitted. Moreover, since the design
23 basis threat is generic as the Appeal Board has held in Diablo
24 Canyon, sub-parts A through D are irrelevant. It doesn't
25 matter what reasons an attacker might have. It doesn't

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1 matter ...the details of why somebody might choose to attack
 2 a LILCO site as opposed to why somebody might choose to
 3 attack a PG&E site or a Philadelphia Electric site doesn't
 4 matter according to the Appeal Board in Diablo Canyon. That
 5 design basis threat was just set up as a generic performance
 6 standard and not as something that people had to take into
 7 account in site specific analysis.

8 Contention 4 specifically alleges that LILCO has to
 9 take into account a sabotage induced LOCA. In essence, it's
 10 a restatement of contention 2 because in contention 2 the
 11 county said it has to be a vital area because you need to
 12 rely on it. In order to need to rely on it, you have to
 13 postulate this sabotage induced LOCA, so contention 4 is
 14 very similar to contention 2 and for the same reasons con-
 15 tention 4 ought to be denied.

16 So I won't go through the discussion of the sabotage
 17 induced LOCA. I will note that that contention references
 18 10CFR, Section 73.1A and it says that it includes actions
 19 executed by external attackers working in conjunction with a
 20 dedicated, knowledgeable insider. The contention goes on to
 21 say that based on the definition in section 73.1A, the design
 22 basis threat could involve a LOCA caused by a knowledgeable
 23 insider. The regulations don't say that. All 73.1A does is
 24 define the design basis threat and it says it includes an
 25 insider. It doesn't say what the insider is doing and, in

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1 fact, if you have an approved security plan, that is designed
2 to meet the design basis threat.

3 And, therefore, by having the approved security plan
4 you don't have to assume that this insider is going to cause
5 the LOCA. I might add that in order to cause a LOCA you've
6 got to get at the inside of the primary containment. The
7 primary containment is a vital area that's protected by the
8 security plan. You can't get in there.

9 Also, one other point on contention 4, if the Board
10 will direct their attentions to the sub-parts, which seem to
11 be the specifics, items A through C deal with the adequacy
12 of the NRC Staff review. The issue here isn't whether or
13 not the staff has done their homework properly, whether their
14 review is adequate, it's whether the security plan is adq-
15 quate for operation of the plant at low power. So, conten-
16 tions that allege the staff hasn't done its job are really
17 irrelevant.

18 The only time that type of evidence or that type of
19 claim might be relevant if they were trying to attack credi-
20 bility of witnesses, of staff witnesses after a contention
21 was admitted, but it can't form the basis for admitting a
22 contention.

23 Contention 5 is another restatement of contention 2
24 in just different wording. It claims that under certain
25 conditions during low power operation emergency AC power is

1 required. Well, as I've said before, the only condition where
2 AC power is required is in the event of a loss of coolant
3 accident. We know, from uncontested testimony, if you don't
4 have a LOCA you don't need power for an unlimited period of
5 time, even up through phase 4 of low power testing.

6 So this is just a different twist on the allegation
7 that his insider is going to cause your design basis loss of
8 coolant accident and that's protected by the existing secur-
9 ity plan. And, in fact, I believe there is staff guidance
10 and the staff may be able to confirm this. Review guideline
11 17 says you don't have to postulate independent occurrence of
12 a LOCA at the exact same time that you might be, that you'd
13 be having a security threat. That's just too incredible an
14 event to postulate in any reasonable inquiry.

15 And, finally, let me treat contention 6 and 7 to-
16 gether because I don't think it takes long to deal with them.
17 Contentions 6 and 7 are conclusory statements of what the
18 county wants to prove. They're not contentions. It's an
19 argument. They only recite the requirements in the exemption
20 regulations that we haven't shown that we wouldn't endanger
21 life and property. We haven't shown that it would be in the
22 public interest. So it's merely a recitation of the regula-
23 tions and a conclusory statement we haven't met the regula-
24 tions. 6 and 7 can be dismissed out of hand as not adding
25 anything more to the contentions.

1 So, just to summarize, Judge Miller and the Board,
 2 we don't think that the county has raised admissable security
 3 contentions. In light of the fact that there is an approved
 4 security plan and all the parties have agreed to it. In
 5 light of the fact that we already have a record about low
 6 power and we know when these power sources will be available,
 7 so we know the relevance of security for these low power
 8 sources. We don't think they're admissable because there is
 9 an approved security plan. We don't think they're admissable
 10 because independently there is this comprehensive security
 11 agreement that had a resolution mechanism that the county
 12 should have, could have and should have used to resolve its
 13 security concerns for the EMD's and the gas turbine. And,
 14 finally, the contentions themselves are inadequate because
 15 they don't have adequate bases and they're not particular.
 16 And, finally, I do want to emphasize again that none of this
 17 has anything to do with phases 1 and 2. NO power is required,
 18 so security for the EMD's and the gas turbine are just irrele-
 19 vant and the Board can go on to make their decision on 1 and
 20 2 regardless of what they decide to do with the security con-
 21 tentions.

22 MR. MILLER: Staff? Oh, I'm sorry. Questions?

23 JUDGE BRIGHT: Mr. Earley, do you have any idea of
 24 ...are there any controls on who has access for the county in
 25 accordance with your agreement?

1 MR. EARLEY: Yes, Judge, we do know who has access.
2 I think Mr. Irwin probably knows the details better than I
3 if you'd like to know.

4 JUDGE BRIGHT: Well, fine, anyone who knows, just
5 looking for information.

6 MR. IRWIN: I have, Judge Bright, a long standing
7 understanding with Mr. Miller, one of Counsel for Suffolk
8 County, who has been my point of contact on security matters.
9 I send all correspondence and all documents through him, all
10 amendments to the plan, all procedures, all instructions for
11 the plants, control copies. My assumption had always been,
12 until this afternoon, that he retained one and forwarded the
13 second to the Suffolk County Police Department. He may, in
14 fact, forward both copies to them. My experience with them
15 is that they have always observed the proper custodial re-
16 quirements with respect to them. I have, incidentally, never
17 found Mr. Miller unfamiliar with any question that has come
18 up during our discussions of security matters and there have
19 been various occasions over the year and a half or almost two
20 years since the agreement was concluded.

21 So, while I don't know exactly what Mr. Miller does
22 with the paper once he gets it, I know what I do with it and
23 I know I get written receipts for it and it's been a regular
24 procedure.

25 As I say, yes we do know the police have it as well.

1 JUDGE BRIGHT: But, I didn't hear you say th
2 an agreement, a formal agreement as to who would be al
3 have access or even be told what's there.

4 MR. IRWIN: I'm sorry. In the initial proceed
5 there were affidavits of non-disclosure executed by var
6 Suffolk County attorneys, various members of the Suffol
7 County police force and outside consultants and that de
8 ...there were two members of the police force, I believ
9 who were permitted access without the necessity of execu
10 ...two high ranking members of the police force who were
11 permitted access without having executed the affidavits
12 cause of the nature of their positions and so that define
13 the outer bound of access.

14 I know also what the regulations say and I know
15 that Mr. Miller knows what the regulations say and I presu
16 that he would not have allowed access to this information
17 anybody who had not executed the affidavit.

18 JUDGE BRIGHT: But you have no formal agreement
19 about that?

20 MR. IRWIN: We didn't consider a further agreement
21 necessary since we knew who had executed the affidavits.

22 JUDGE BRIGHT: Fine.

23 MR. IRWIN: And there is also a Board order entered
24 in that proceeding which recited the .. and, in fact, I be-
25 lieve it also mentioned the two Suffolk County police officer

1 who had not been required to execute these affidavits.

2 JUDGE BRIGHT: Thank you.

3 MR. MILLER: Staff?

4 MR. PERLIS: The staff agrees with much of what Mr.
5 Earley just said, but disagrees with much of it as well.
6 First of all, it's true that, for security purposes, we do
7 not assume a sabotage induced LOCA. The security plan is
8 presumed to prevent that from occurring. That security plan,
9 at least insofar as it relates to whether a sabotage induced
10 LOCA could occur has already been settled by the parties and
11 approved by the Licensing Board and the induction of a LOCA
12 has nothing whatsoever to do with the augmented power sources
13 proposed by LILCO at low power.

14 So, particularly as to contention 4 then there is
15 no basis whatsoever to assume a sabotage induced LOCA here.
16 The staff also agrees, primarily for the reasons discussed
17 this morning, that in the absence of a LOCA there is no
18 technical need for the augmented power sources. That leaves
19 the sole factual concern here with a LOCA that is not caused
20 by sabotage and what security needs are raised by that LOCA.

21 In our view, contention 2 which asserts that during
22 low power operation the augmented power sources must be con-
23 sidered as vital areas, is an admissable contention.

24 Contentions 5, 6 and 7 really raise no issues that
25 are not raised by contention 2 in that respect.

1 MR. MILLER: I'm sorry, I don't hear you, lower
2 your voice. 4, 5 and 6?

3 MR. PERLIS: No, contentions 5, 6 and 7 don't raise
4 any issue not raised in contention 2 in that regard. And
5 that is, given the sole factual concern of a LOCA that is
6 not caused by sabotage, what, if any, security measures need
7 to be taken for the augmented power systems proposed by LILCO
8 for low power operation?

9 The staff thinks that that is an admissible conten-
10 tion. So it's affirmatively an admissible contention. As to
11 contentions 1 and 3, we would agree with Mr. Earley that con-
12 tention 1 doesn't raise any specific, enough sufficient,
13 specific information to warrant admission as a contention
14 insofar as it differs from contention 2.

15 And contention 3 dealing with the design basis
16 threat, our position there is that the design basis threat
17 is also...the design basis threat doesn't change for low
18 power and that that would also have been settled as part of
19 the settlement agreement.

20 MR. MILLER: What was your position on 4?

21 MR. PERLIS: Four is predicated upon a sabotage
22 induced LOCA and, as I stated earlier, the security plan is
23 deemed to prevent a sabotage induced LOCA from occurring.
24 None of the augmented power systems proposed for use by
25 LILCO change that in the slightest. In other words, the

1 portions...the manner in which a saboteur could induce a LOCA
2 is completely independent of the new power sources. And,
3 therefore, that should be deemed to have been settled by the
4 earlier settlement agreement.

5 If I could summarize it, the sole issues which we
6 feel are admissable for litigation are whether any portions
7 of the augmented power systems and that would include either
8 the EMD's, the gas turbine or the associated power trains
9 need to be accorded...need to be treated as vital areas or
10 accorded any security protection? If so, what portions of
11 those systems must be accorded protection? And what level of
12 protection must be accorded to them?

13 MR. MILLER: Alright. Run through for me again the
14 staff position on that numbered paragraph. You explained it,
15 I just ...

16 MR. PERLIS: On the numbered contentions? As to
17 number 1, number 1 makes some general allegations that LILCO
18 has failed to demonstrate that something is adequate, but it
19 doesn't really provide any basis for the challenges made.
20 We think more is expected of a contention. We find contention
21 2 admissable. Contention 3 deals with the design basis
22 threat. In our view, the design basis threat doesn't change
23 for low power. It's the same as the design basis threat that
24 has already been settled in this proceeding. The same ration-
25 ale applies to contention 4, but for a different reason.

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There we are talking about a sabotage induced LOCA and the approved security plan is designed to prevent a sabotage induced LOCA from occurring and that portion of the plan has already been settled. So the new power sources don't change those assumptions at all.

Contentions 5, 6 and 7 in our view don't add anything to contention 2 insofar as we view contention 2 as admissable. Essentially they're alleging the same thing in contentions 5, 6 and 7 that various security provisions need to be taken for the augmented power systems. We think that's what contention 2 states.

MR. MILLER: Ok. Suffolk County?

(End of Tape)

1 MR. BROWN: Judge Miller I think I can describe
2 point to point what's gone before us, I was under the
3 impression that if this was not going to be the case I
4 better go with more specificity in my (inaudible). I
5 thought there was going to be written replies to both the
6 staff and the LILCO in accordance with the schedule,
7 (Inaudible) and we would consider their replies then this
8 would take place thereafter.

9 MR.MILLER: I think that we sort of foreshortened
10 that because we were informed that the Security contingent
11 being filed, was the (inaudible) of LILCO and the staff to
12 address orally at this hearing to see if we could come to
13 grips between the **controversy** between the parties as to
14 them. In other words we may be telescoping in part the
15 more leisurely kind of things set out in our original sche-
16 dule which was established by the Board at a time when it
17 was involved preparing for a trial or trying the other non-
18 security issues and we had to assume we'd be tied up the
19 whole two weeks, **etc.** this is therefore if you can do it,
20 I mean you filed the contingent, we don't want to put you
21 at any prejudicial position, but we did have the initial
22 preliminary belief, that having filed one, and being familiar
23 with this whole matter over a period of several years, that
24 you, the county would be able to address and support their
25 filed contentions.

1 We don't intend to rule now, but we would unless
2 there would be some objection, we would have the transcript
3 written up, read it and then probably make some kind of
4 ruling, yeah.

5 MR. BROWN: I'm prepared, to the best of my ability
6 now, the only point is not talking to co-council and I
7 certainly read the transcripts carefully and didn't have
8 the impression that this would be the counties official
9 reply, I wonder if we might have the opportunity if we chose
10 within a quick turn around period to get something in writ-
11 ing for the Board to supplement what I'm essentially doing
12 off the top of my head. The other side has had several
13 days to look at our contention to formulate a response and
14 I'm just saying...

15 MR. MILLER: Yeah, but you've had an opportunity
16 to know the plan, I say you generically, somebody in your
17 office has known the plan.

18 MR. BROWN: I'm not complaining about my level of
19 intellectual ability to deal with this, I've got it...

20 MR. MILLER: And then you've got the contentions...

21 MR. BROWN: (Inaudible) the plan and I can do a
22 good job, I'm saying that we haven't had any chance to read
23 this, as the other side did, so I wonder if we might now.

24 MR. MILLER: To read what I'm not following you.

25 MR. BROWN: Their objections, this is hitting us

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1 cold, they've had several days ...

2 MR. MILLER: Well, when you file a complaint for
3 example, when an answer is filed you know what's in your
4 own complaint, to use the analogy incourt.

5 MR. BROWN: But I'm not being asked Judge Miller
6 to reiterate what's in our contentions, I'm being asked to
7 reply to what the other ...

8 MR. MILLER: No you're being asked to sustain the
9 viability of your filed contentions.

10 MR. BROWN: And I'm prepared to go ahead.

11 MR. MILLER: Okay, I don't want you to be but at
12 any disadvantage though, I don't understand that you are,
13 but let's not deal in semantics. I mean you're sustaining
14 what you've filed, you've got the background to do it,
15 we're content to let it go at that if you are.

16 MR. BROWN: I'm delighted to go forward and I would
17 like to begin by saying that each of these contentions is
18 so fundamental, and so (inaudible) to go through something
19 so fundamental and supported at the local level, the state
20 level, police and orderly concerns of Government, that I
21 can't see how the staff would not support the admissability
22 I can understand why LILCO would not because it has motives
23 to move everything forward.

24 However the underlying fact which this Commission
25 has recognized, which I know the Board has recognized in

1 it's subsequent order is that the Shoreham plant's configura-
 2 tions different today from what it was before, and it's
 3 vulnerabilities therefore are different and that's the
 4 critical point. Vulnerabilities of the Shoreham plant are
 5 not what they were when we had a security proceeding, and
 6 security contentions and security discussions earlier in
 7 this proceeding, and before I go into trying my best to
 8 point by point discuss what the otherparty said, let me
 9 give you the most (inaudible) example that comes to mind.

10 We take the old Shoreham facility and stipulate
 11 for the moment the plan has agreed is adequate to deal
 12 with the design basis threat and the common defense and
 13 security requirements of the NRC. Now we stipulate that.

14 We hammered out a settlement to deal with what's
 15 then existed but LILCO changed that plant and put new
 16 features in. They have, for example a certain number of
 17 guards in that plant, they have to make patrols, according
 18 to a hammered out agreement, according to a lot of think-
 19 ing the LILCO did as a result of the work the county police
 20 department did with their consultants, and alot of discussion
 21 to date. Those patrols though, are all predicated upon the
 22 configuration of the plant, and the vulnerabilities of that
 23 plant as it was thenbuilt.

24 If one adds another area, let's say where the
 25 (inaudible) and literally take the present situation. The

1 very people who are going on patrols have to be trained to
2 understand what are the vulnerabilities of that new area,
3 because that new area provides an opportunity for a new
4 diversionary tactics of the design basis (inaudible) who I
5 remind in (inaudible) section 73.1 are essentially para-
6 military experts. They are dedicated people with military
7 training with automatic weapon, with all kind of fearsome
8 and fearfull equipment and training, and that is a given un-
9 der the regulations.

10 Now the patrols that go around that plant now,
11 have to some how understand what has been built, they have
12 to be trained, they have to be told what to be concerned
13 with, what not to be concerned with. That might require
14 having another armed guard, it might require having another
15 watchman. It might havean impact on the person in the
16 watchtower. It might require new lighting, it might require
17 new fencing, it might require new annunciators.

18 What it does require, I can say with profound cer-
19 tainty is thatLILCO ought to look at it, and the one thing
20 we know, because we know this plan well, because we spent
21 a long time on that plan making it acceptable under the
22 regulations, is that LILCO didn't even consider the security
23 implications of its new configuration, and that is our
24 contention now. Why is it on LILCO the burden to do that?

25 Judges it's because section 73.55A of the regula-

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tions says that LILCO must satisfy to the standard of high assurance protection, high assurance, the security of this plant, and I want to underline high assurance because that's something throughout the NRC's regulations that shows up only once to my knowledge. It always says reasonable assurance, and all of a sudden section 73.55A ~~its~~ high assurance protection, and this company has betrayed ~~its~~ obligation to evaluate the security implications and the vulnerabilities of the change in the plant that it has, and the Commission says it.

The Commission didn't give us a fishing license to go out and raise (inaudible) and to say that what had been litigated before wasn't done right and that we ought to start causing a lot of trouble.

The Commission said a new plant physically ~~exists~~ up there in terms of its layout and physical configuration, and LILCO has to satisfy the regulations.

Now everything that LILCO has said to us so far goes to the merits, it doesn't go to the admissibility of our contentions, we say that LILCO has, in fact, ignored the design basis threat, because properly how is it possible for the utility to decide where its patrols should go and how many guards it has, and which barriers it should have unless it takes a look at what those who are going to be, to stipulate the design and basic attackers may do to it.

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It's just as if one were to stipulate that we have a new area in which people in the military have to be concerned, may have to make patrols, they have to understand what the area is, the very people making the patrols, 'cause they're going to be vulnerable, and the new area is going to be vulnerable as well. So LILCO has not done that and that is all that our contentions go to, we seek to relitigate nothing, we seek not to re-open settlement agreements, we seek to give light to what the Commission, and this Board said, in limiting our efforts exclusively to low power operations and new configurations, and that's all we've done.

I want to stress LILCO's arguments on the merits because the admissability of the contention goes to whether we're challenging the regulations, and we are not, we're asking for the enforcement of a regulation, part 73 of the Commissions regulations, and secondly it has to be specific, and I beg to differ with our colleagues from LILCO and staff when they suggest that we have not, it's not sufficiently particularized, but to the extent it should be more particularized, we are prepared to put chapter and verse to do so, and I must say when the staff suggests there's no basis for our contention one, what more probative powerful basis can there be, than the fact LILCO didnot even consider security in it's new configuration, are we

1 supposed to list each and every thing LILCO didn't consider
2 they've ignored the fundamental responsibility they have
3 under section 7355A, to assure, high assurance protection
4 of this facility.

5 I think I can try to go through my notes, I didn't
6 get an opportunity to look through my notes, I will do my
7 best to...

8 MR. MILLER: Well if you feel you're being put at
9 some disadvantage here counsel, we'll give you a short time,
10 we had thought that you would be able to address, but if
11 that's not the case we don't want anyone to be ...

12 MR. BROWN: I guess I can use five minutes,
13 primarily simply to straighten out my ...

14 MR. MILLER: Oh, I thought you wanted another
15 day or two.

16 MR. BROWN: I'd be happy to have another day, I
17 agree but if the Board could provide only a few minutes
18 that would be a lot more helpfull to try and straighten out
19 this mess.

20 MR. MILLER: Hold it, just a minute. Let me
21 ask Counsel for Suffolk County, could we ask you to get
22 us by close of business Monday, whatever you want to put
23 in support of your contentions having heard now, the oral
24 arguements on them, give you a change to review your notes.
25 We'd like to move it along, but on the other hand we cer-

1 tainly want you to have a chance to reflect and if you were
2 expecting some different kind of procedure, we're willing
3 in other words to give you to the close of business Monday
4 if you want to file something.

5 MR. BROWN: Judge Miller, frankly I think I can
6 finish up now...

7 MR. MILLER: Oh alright.

8 MR. BROWN: If you want something in writing I
9 can do it.

10 MR. MILLER: No, no we're not asking you...

11 MR. BROWN: (Inaudible) Mr. Palomino and the state.

12 MR. MILLER: I understand we're not binding the
13 State they're separate. However, I want to do that which is
14 going to give the Board a chance to understand the varying
15 arguments and make some rulings that are meaningful and
16 get a schedule. We may be revising, expediting a little
17 bit the original schedule in the sense that we don't need
18 a special pre-hearing conference if we're going to be able to
19 get more quickly into the (inaudible) to facts, but we want
20 to be sure that we're being fair to you and everybody in
21 doing it this way.

22 MR. BROWN: I am very comfortable, for one reason
23 I feel that what's been said by the other parties here, has
24 nothing to it but hot air.

25 MR. MILLER: Well, we won't characterize, but we

1 will be gettin gthe transcript and we want all of you to
2 have a full fair shot at it, and give us a chance to make
3 whatever rulings we deem are indicated as to the conten-
4 tions which will then trigger almost immediately a dis-
5 covery. A commencement of discovery.

6 MR. BROWN: If I could have three minutes.

7 MR. MILLER: Oh, take ten.

8 MR. BROWN: All I need is three minutes.

9 MR. MILLER: Okay, alright you may proceed please.

10 MR. BROWN: Thank you Judge Miller for the ad-
11 ditional time, it was satisfactory and I am prepared to go
12 ahead, on a contention by contention basis.

13 First the staff claims that with respect to our
14 number one, there is no basis for our contention that LILCO
15 has failed even to consider the design basis threat, and I
16 simply reiterate that we are talking here about the new
17 configuration, we are talking here about low power opera-
18 tion, we are not talking about what existed before or what
19 was in the security agreement. We are speaking simply of
20 the fact that LILCO has an obligation to show the satisfac-
21 tion of the 7355A high assurance protection standard, at
22 it's own facility. It hasn't even considered that. I
23 cannot come up with a more specific basis then the fact that
24 it did nothing except in fact, we even went beyond that,
25 because we listed four specifics, as subparts to contention

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one, four things that LILCO failed to demonstrate. Four things which LILCO had to do, if it had even given the most remote consideration to the security implications and the security vulnerability of it's own plant when it put a new configuration, a new layout at the Shoreham Plant. Number two, LILCO says I believe that what we have said in contention one is not specific, I think that the language can't be more specific, we have said that they failed to do it.

It is up to LILCO on the merits to come back and show how they did it, and if they can't show that then they have not lived up to the regulations and we have prevailed.

Contention Two, the Staff says is admissable, but LILCO says there's no basis, what LILCO is saying with respect to contention two, is simply an arguement on the merits. What it is saying is what the staff refers to in contention four, as there not being an ability or a capability of there being a sabatoge induced loca. Because this is something that was dealt with in a security plan which was found to be acceptable, that's absolutely wrong for this reason.

It was found to be acceptable that you couldn't have a sabatoged induced LILCO and properly put that means you couldn't have radiological sabotage, as defined in the regulations, because under the old configuration of the plant there were the right number of guards, there was

1 going to be the right kind of training, people were taking
2 patrols, there were certain posts where people had to be to
3 check other people, there was attention that was going to
4 be given to diversionary tactics by the design basis attack-
5 ers.

6 Now, however there's a completely different set of,
7 vulnerabilities at this plant, and it is certainly
8 possible with the new set of generators out there, emergency
9 generators that the design basis attackers could use that as
10 a diversionary tactic, diversionary tactic, divert several
11 of the patrols of guards, open up pathways and opportunities
12 that they never could of done before when there was a dif-
13 ferent plant or facility there which their people were train-
14 ed to deal with. LILCO has to train its people, it has to
15 tell them, it has to at least inform its guard force and
16 show in its' plant by chapter and verse, document with
17 procedures the way it's always required by NRC regulations
18 that it has shown it's people what has been changed, how
19 they should deal with it and that it has not opened up risks
20 to the safety and the security of this facility.

21 With respect to contention three, they say the
22 design basis threat has not changed, what a mischaracter-
23 ization. The design basis threat dealt with a different
24 configuration, and how that treat woud be dealt with, by
25 the number of guards LILCO has, but the annunciating systems,

1 by the alarms, by the closed circuit systems and all of the
2 many things which we went through with LILCO carefully to
3 make that plan into one that would be acceptable with res-
4 spect to the old configuration.

5 Now let's take that identical design basis threat
6 and analyze it, vis a vis the new configuration. LILCO
7 hasn't done that. When they do it, they'll needlessly have
8 to, I mean they will certainly have to make changes in the
9 plan. It's inconceivable for anyone here to say a different
10 physical layout will not result in a different security
11 plant. At a minimum people who are the guards there have
12 to know the new lay out, at a minimum they have to know
13 where their patrols are going to be, at a minimum they have
14 to understand if there are any fences there, what to do
15 if someone is there. At a minimum they have to post some-
16 body there sometime to do something with respect to someone
17 at that facility knowing something about that thing that
18 they put there that wasn't there when we earlier agreed to
19 something on the old configuration. And that unquestion-
20 ably is the most complicated sentence which I ever have used
21 if not the lengthiest.

22 MR. MILLER: I'm sure our reporter will have it,
23 and he'll even see that you are quoted correctly.

24 MR. BROWN: I want to stress that what has happened
25 in the replies of the staff and LILCO, is that we have heard

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their arguments on the merits, and they're not going to prevail on the merits. What they haven't done though is dealt with the admissability of our contentions. Each of these contentions has to be, as we see it, and with defere- nce to the Boards judgement on this, with due respect to the Boards judgement we believe these have to be admitted because they do not challenge the regulations, they ask for the enforcement of the regulations, in part 7355A in particular, and secondly they are, indeed, specific, and those are the criteria which apply.

Insofar, and I'd like to farther stress, they are within the scope of the Commissions order, and this Boards order, but they are in literal pursuit of that, precisely what the Commission had articulated.

What should be done in our judgement with respect to these contentions, is that they should be admitted forth with and we ought to get on to debate on the merits because all LILCO is doing is saying that we're wrong in our con- tentions and we claim we're not, and we would submit and for- shadow that there will be substantial changes in the plan to deal with some of these matters.

I will quickly deal with 5,6, and 7. There is no conceivable basis that we can see, how contention five would not be admissable since it uses the identical words in the Commissions order, we're saying the plant would not,

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"Not be as safe at low power as otherwise" and that's because of the new configuration. We're saying precisely what the Commission in it's May 16 order and in it's subsequent order on security and the boards follow up order in pursuit of the Commissions order.

So the only way we could see how this contention would not be admissable, is if one were to deny the existence of the Commission's May 16 order and say it really never happened and it ~~truly~~ does not exist.

With respect to number 6, our contention goes explicitly to a provision of section 5012A of the Commissions regulations dealing with exemptions. It speaks there of the protection of life and property and the vulnerability of the plant because of the new configuration and that's it, we say life and property would be endangered and that's 5012A and that's why LILCO is here, and that's a contention and they can complain on the merits and argue with us, but they have no objection with respect to admissability.

Finally number 7, public interest similarly is a consideration ~~explicitly~~ stated in 5012A, we say that it certainly is not in the public interest and there should be no exemption granted here, and those are ~~explicitly~~ as I mentioned the language public interest language of 5012A and the only way again in which that would not be an admissible contention we would submit is if one were to deny the

1 existence of section 5012A. I apparently skipped number
 2 four but I believe number four is the loca induced, oh it's
 3 the one dealing with the NRC staff, we have a right to
 4 alledge that the NRC staff in it's SSER has not analyzed
 5 the new configuration because LILCO is relying upon the
 6 SSER. LILCO is resting it's case in what the staff has
 7 done and they are the ones who set forth the basis, we
 8 are cutting that out, saying that is no basis on which one
 9 can conclude that this plant complies with the security
 10 regulations.

11 Indeed to the extent to which they suggest there
 12 is no basis for our contention they are saying there's no
 13 baiss for what they have said in their SSER, and we indeed
 14 to say that there is no basis for what they have said in
 15 their SSER, so inconclusion, and quickly again, we have
 16 ~~admissable~~ contentions, argues let's get on with litigating
 17 them which is what the commission said, let's not reargue
 18 things that we've all been through, let's not get involved
 19 in anything with respect to old security agreements or
 20 anything else.

21 Let's deal with the new configuration, low power,
 22 let's deal with these contentions, what LILCO is talking
 23 about is ~~argument~~ on the merits, we're ready and we say,
 24 let's get going.

25 MR. MILLER: Do you need any discovery?

1 MR. BROWN: Yes we would like discovery Sir.

2 MR. MILLER: How much?

3 MR. BROWN: I must say this we would want to
4 find out what LILCO has in terms of the case it intends to
5 put on, in fact, it may well be with the admission of this
6 contentions that LILCO will simply make changes in it's
7 plan, and speculating here I can't conceive that they
8 wouldn't do that. It wouldn't make sense to stonewall here
9 and have us complaining and quibbling about the fact they
10 haven't looked at something at all, while they admit they
11 haven't looked at it and they continue to stonewall it.

12 So my own feeling is that the admission of these
13 contentions may go along way to unloosening some of, some
14 of the **stubbornness** that we've seen so far and I don't
15 know what will happen after that, to extent to which there
16 would be litigation thereafter, we'd want to know what
17 LILCO intends to put on..

18 MR. MILLER: The Board is interested in getting
19 to the merit just as you say, and we concur with all par-
20 ties who wish to get to the merits, that's why we want to
21 cut through procedures, so far as we can and in fairness to
22 the parties, giving them a reasonable shot at putting on
23 their case. So we're asking what your suggestions are in
24 how, along those lines, since we're now meeting with you
25 face to face.

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MR. BROWN: Well we, here's what we would want to cover, we would not want to go through a silly exchange of a lot of interrogatories, which end up being just a lot of words back and forth.

MR. MILLER: We would be thinking more interms of production of documents, which some specificity and not an en mass kind of thing, nor an en mass response. Depositions, cutting it off at a reasonable point and getting down to a trial.

MR. BROWN: We would like that with the simple addition perhaps of some admissions, but not making a big deal out of that, and I wouldn't insist on that if the board felt it were not a good idea.

MR. MILLER: It propably could be done if it were not overdone, because there are things that can be, not really going to be disputed, the more we can get established for the record and get on to the controversy (inaudible) as we found in our last hearing up in(inaudible) I think all counsels assisted in getting right down to the merits we were able to try, I think in seven trial dates, what might have taken 14 or 15, so we commend our practice of all counsel to you and we would like to get some kind of schedule that would allow us to get right down to trial, so give it some thought.

Mr. Palomino, I guess we haven't heard from you.

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Oh I'm sorry a question from Dr. Bright.

DR. BRIGHT: Something occurred to me perhaps you could enlighten, this agreement that is between LILCO and the county, well let me give you a hypothetical, say we had a big hearing and thrashed around for quite a while and finally satisfied the NRC, just say that happened, would then this procedure then go to collective bargaining, as between the county and LILCO, before it could be put into effect.

MR. BROWN: No I can't conceive of any way in which any decision of the NRC would go to collective bargaining.

DR. BRIGHT: So any decision we made, would take precedence over the county's agreement let's say with LILCO, on the overall security point, which you have in effect right now.

MR. BROWN: I don't, I think I can explain, the agreement deals with the situation that existed prior to the changing of the configuration of the facility and it is completely unrelated to this proceeding. I think that there are all kinds of procedural quagmires that exist if we start getting involved with things that happened before, and I believe that Judge Miller has said the same thing, but to the sense which he did or didn't I would submit that that agreement ought not to start becoming a part of this

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proceeding. It was dealt with before Judge Lawrenson and it's final, it says what it says, people will deal with it the way they want to, everyone has his or her own rights and interests under that agreement.

What we have here now is a new set of contentions and they're subject to the jurisdiction of this board and when this board rules on anything with respect to those, the recourse of the parties is to take it up to the appeal board, and if we're not satisfied or LILCO isn't satisfied or the staff isn't satisfied with the appeal board it's to go to the Commission, and the case of the other two parties LILCO or us, it would be to go to court. But it's purely within the jurisdiction of the NRC to deal with our contentions, insofar as these contentions are alleging a failure of LILCO to comply with the NRC's regulations.

DR. BRIGHT: So you're telling me, that this on-going agreement that you have, which is, as I heard it, expressed, anytime that LILCO makes a change in their security plan, that it has to go and be approved by the county, that that would not be operative insofar as this particular set of possible changes?

MR. BROWN: Well if you're saying, in addition to the fact that the NRC must approve the changes in the security plan, the county, you're asking does the county have to approve those changes also...

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DR. BRIGHT: Yes.

MR. BROWN: In the context of the agreement I really don't want, I haven't looked carefully at the agreement from that standpoint. I mean that's a legal interpretation that I'm not prepared to give an opinion, I'd be afraid to render now without the words before me and a little bit of study. But what I can say with conclusiveness is that the contentions made here are made under the Atomic Energy Act and the County has submitted itself to the jurisdiction of the Board with respect to the enforcement of these provision of the Atomic Energy Act, and we're asking the Commission to assure that LILCO live up to it's obligations, with respect for example to section 73.55A of the regulations.

Now the additional question you're asking does the county have an independent legal right, as a matter of contract, to approve LILCO's changes and what are the implications of that, I don't have an answer for you I'm sorry, I would have to think about that, I'd have to study it frankly.

DR. BRIGHT: Thank you.

MR. EARLY: Judge Miller if the interveners are finished.

MR. MILLER: Well we haven't heard from the state of New York.

1 MR. PALOMINO: I have nothing farther to add.

2 MR. PALOMINO: May I respond to some points?

3 MR. MILLER: By the way I think we'd better add-
4 ress this matter, it didn't occur to me before but we don't
5 want to be performing a useless act, if there's going to be
6 any dispostion to say there's an agreement it's binding and
7 so forth, I don't want to mess with it, if that's it I dont
8 want to ~~exert~~ jurisdiction we don't have, I'm not looking
9 for trial work.

10 MR. BROWN: Our view certainly is that this is
11 no useless act. This is the excercise of the NRC's func-
12 tion...

13 MR. MILLER: Yes, but there are contractual rights
14 that the county has, which are equal to what we're being
15 asked to do here, in a procedural way, we don't want to
16 get into a collision with **contractual** rights, which might
17 render our act **nugatory**. That's what I'm beginning to wonder.

18 MR. BROWN: In this context of this proceeding
19 I can't imagine a private agreement being madewith. Let's
20 take the (inaudible)

21 MR. MILLER: No so private.

22 MR. BROWN: I can't picture LILCO and the county for
23 example, making an agreement that would state that LILCO
24 does not have to comply with section 7355A, to frustrate
25 this Boards jurisdiction, you would have jurisdiction to

1 or the NRC, whether it's the Board or not, the NRC main-
 2 tains that power and authority, notwithstanding a private
 3 agreement there, so with respect to security section 7355A,
 4 no matter what we did on the outside, with respect to this
 5 new configuration, the NRC has to satisfy itself that the
 6 security of the Shoreham Plant with the addition of the
 7 new configuration ~~satisfied~~ section 7355A of the regula-
 8 tions, and section 5012A of the regulations as well

9 MR. MILLER: Well suppose this new configuration
 10 was simply that something else, that the company thought
 11 was an improvement and it's been approved by the staff and
 12 so forth and so on, they're going to stick on a couple more
 13 hunkey-dunkey's out there because they think it looks pretty
 14 or whatever it is, and they get the approval of the county
 15 I don't know, if that would be our business of this board.
 16 Might be somebody else in the NRC complex, but I'm not at
 17 all sure that that would be the responsibility of this Board.

18 MR. BROWN: Well I assure you that they, in this
 19 case haven't put on any hunkey-dunkey's as you call them,
 20 because they haven't done anything and that's what our
 21 allegation is, we're here to inform the NRC that they have
 22 done nothing, and that the NRC ought to make sure that they
 23 do something to comply with the regulation. I don't see
 24 any problem at all.

25 MR. MILLER: We'll hear from LILCO.

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MR. EARLY: Judge Miller the contentions that are proposed by the county would not be admissable if this Board were considering them fresh from a new intervener. They are just not specific enough they don't tell us what we're going to litigate, but we've got more than a situation of an intervener coming in who doesn't know anything about the security plan, or knows a minimum amount about the security plan. Back on April 4th in this room, Mr. Brown in very solemn tones told this board that the county had some real security concerns, and they've hung on.

They haven't said anything about them. They have not told us what they were. They were invited to a meeting to discuss low power security in fullfillment of the obligation in that security agreement. They didn't come. It was rescheduled once because their attorney's couldn't make it.

If this board permits the county litigate security now, it's going to gut that security agreement. It was, the agreement was for the life of the plant. Everybody knows that there are changes to plants that are going to be made over the life of the plant.

MR. MILLER: What' about these arguments that there are changed inconfiguration which changes everything. At any rate require examination and reaction by the LILCO.

MR. EARLY: I don't want to get into factual

1 matters, but I think the Board can recognize, they've seen,
 2 you've seen the EMD Deisels and you've seen th gas turbine,
 3 and Mr. Browns example that the guard has to be trained
 4 because he's got to know to protect these EMD deisels it
 5 just doesn't make sense. The guard is trained to protect
 6 the plant, that's part of the security program. Sothe
 7 suggestion that adding these things just means you have to
 8 revamp your whole security plan is ludicrous..

9 But beyond that, if it did require, we, if it did
 10 require revamping or changes to security or telling the guy
 11 by the way those are EMD deisels out there and you might
 12 want to look after them, that was the type of thing LILCO
 13 was prepared to discuss with the county. Why the exsisting
 14 plan, and by the way the security plan doesn't tell the
 15 guard that he's got to go look at x, y, and z, we're talk-
 16 ing about much broader, higher level documnt, we're not
 17 talking about the nitty-gritty details, but in any event,
 18 LILCO contrary to the county's representations, LILCO has
 19 thought about security and has thought about all the ele-
 20 ments of their plans, we've got guards, and all we're talk-
 21 ing about is these two pieces of equipment.

22 MR. MILLER: Well let's get right down to brass
 23 tacks, what about the change of configuration, we're all
 24 talking about it, it's like mother, apple pie and everything,
 25 but what are these changes what bearing do they, or could

1 they reasonably have upon any security plan and it's execu-
2 tion, what are we talking about?

3 MR. EARLY: We don't think they have any and the
4 county's general allegations haven't brought anything to
5 light to suggest that.

6 MR. MILLER: Well the staff think's number two does
7 which talks about vital equipment and vital areas, what
8 about vital areas, do you have existing vital areas which
9 are changed or might be changed in any way?

10 MR. EARLY: If I'm, no...

11 MR. MILLER: If so what about them, let's get
12 down, let cut off the rhetoric now all the way around,
13 and let's get down to what we're really talking about.

14 MR. EARLY: The answer is no, they do not have
15 to be vital areas.

16 MR. MILLER: Well is there any question, whether
17 they should be or not, asking for final solutions now, but
18 I'm asking can reasonably be subject to interrogation by
19 the county or analysis by the staff?

20 MR. EARLY: There is no question about whether
21 they should be because we have the low power proceeding re-
22 cord in front of us that tells us what function these pieces
23 of equipment perform.

24 MR. MILLER: Now, is function alone enough of an
25 answer?

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MR. EARLY: Yes it is, that tells us ...

MR. MILLER: What about the question of diversionary attacks of some kind of considerations on these non-vital new areas that you say don't amount to much and they say amount to everything. I'm having a little trouble getting right down, we've seen the areas down there, suppose you didn't have these deisels in place, what would it look like in terms of security configuration, vital areas, search lights all the rest of the things, what does it look like now, what will it look like because you're putting out these temporary diesels.

MR. EARLY: The security in place is the same. There are things that cover this security for the whole Shoreham area, the plan...

MR. MILLER: Does covering something now it didn't cover or wasn't contemplated to cover a year ago.

MR. EARLY: That's true...

MR. MILLER: Alright, let's talk about those things.

MR. EARLY: The security agreement anticipates that there might be changes in security that are needed...

MR. MILLER: But that's a general way that you can modify any contract, even any statute under certain circumstances, we're not talking about that are we, are we talking about the commission directing us to permit the

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statement without being bound by the regulations which go into untimely filings or re-opening records, but to permit the filing of security contentions and I think the term configuration or change, configuration is used in the guidance that we were furnished in the (inaudible) so that's what we've got to look at.

MR. EARLY: I think this board has to look at several things, one of the things is the security agreement and whether the existence of that agreement that was ratified by a licensing board, and one licensing board ...

MR. MILLER: And they didn't know you were going to be doing this and we were going to be here today. For goodness sakes, they didn't have a crystal ball and things change so much I'm sure in the last year or two, it's a different picture in terms of the situation. Really the reason that we're here today is your exemption request which is based upon the non-technical compliance with GDC17, and we've got overlays, financial and other matters that we keep hearing about and trying not to make decisive in the case, 'cause we're trying to get down to the true legal issues.

But you can't tell me that a security plan, two years ago, a year and a half ago, was the same in terms of what the commission has told us to do, as the situation that this board is confronted with today, therefore I think we'd better find out, I'd like to hear from the staff on this now,

1 the staff is supposed to give some guidance to this board,
2 and it's your commissioners are giving all of us guidance,
3 so we'd sure like to know, what the OELD's position is on
4 what we really should be doing, we'll get to you in a
5 minute, let me....

6 MR. EARLY: My only point was that the security
7 agreement was meant to deal with these things outside of
8 litigation, LILCO wouldn't have agreed to something if in
9 every time that they made a slight change to the plant in
10 the future we though we'd be in litigation.

11 MR. MILLER: I know but you're not really talking
12 to me, alright, take you're bargaining agreement my friend,
13 let's talk about that, you can have questions, or arbitra-
14 tion agreements, but you can have something that's so sig-
15 nificant that a court will throw out or the parties will
16 throw out, or have a strike, but they're not going to go
17 into arbitration, they by God, are going to go before a
18 Jury and they're going to go up as high as they can go.
19 Now that's what we're confronted with, that's what I'd like
20 to look at, rather than saying if everything was peaceful,
21 and this was small things we'd all have to go to arbitration.

22 It's looks to me as though the Commission has told
23 us, forget about that, just like they said forget about
24 the timeliness of filing contentions, and you can't deny
25 they told us that, so that means we're in a different ball

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game.

MR. EARLY: Well I think what the Commission said was not to treat this as a late filed contention.

MR. MILLER: Not to consider the five factors applicable normally under our regulations, the late file contentions or re-opening a record in a situation where there were no pending security issues, and when they tell us that, that's not a small thing.

MR. EARLY: That's right, and those factors don't have to be considered.

MR. MILLER: And for a very good reason, it's a different ball game, it isn't going to be covered by your original agreement, where you didn't have this overleaning factor that we got in the form of guidance from on high, now I can't ignore that, and you can't either.

MR. EARLY: Well in addition to that argument, the other point is the contentions still must meet the normal requirements for contentions. The commission in their order said they've got to be reasonably specific, otherwise capable of on the record litigation, what we are saying....

MR. MILLER: Alright, now just take that, guidance that's what it said, this is where they said we don't have to look at the five factors and so forth, we do not look at those matter which may or may not be identical where a

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you can look at late filing you can look at five factors where you closed the record. Now what is reasonably specific

MR. EARLY: I think you have to take into account the background of this, the county...

MR. MILLER: And the foreground too, I want to get that change configuration, now you all dance around it what does it mean, and what have you got?

MR. EARLY: What they've got to do, they should of come in with specific contentions saying you got the EMD Diesel sitting there and you're lighting system used to cover the whole plant and now it doesn't cover those EMD Diesels if they had a basis for that which

MR. MILLER: Now isn't that pleading of evidence, now we know that our contention practice takes the place of pleading, we know we do not have noticepleading as you do in the Federal system and some state systems, but on the other hand, there are certain requirements of pleadings to put in issue matters which are then flushed out by discovery and the end result in the taking of evidence. Testimony and the like. Now as a pleading matter why would you expect them to have to plead evidence.

MR. EARLY: I don't think they...

MR. MILLER: You're giving me examples of what they should of said where the lights are, that's not only evidence that's ...

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MR. EARLY: The difference is Judge Miller they have had discovery, they know what security we've got, so we ...

MR. MILLER: They say that your security doesn't even address, you don't have any changes to the plan, according to what you've told us, it's the same plan whatever it was, no changes, and no changes necessary in the plant itself, from your own description, and they say, my goodness you've got a changed configuration here, and you haven't even told us what impact that has had in your plan.

MR. EARLY: They haven't provided any basis for why that lower the degree of protection.

MR. MILLER: Why don't you think about it?

MR. EARLY: We have thought about it...

MR. MILLER: You're the one in charge you've got the security matters, you're putting out there the diesels and so forth, you're making some changes in the physical area whatever they amount to, to however slight they might be, they're there, you know about them.

MR. EARLY: Judge Miller, LILCO has considered the security implications of the locations of those things.

MR. MILLER: Then what have you said about it, what do you have to tell us in writing, what do you have show them so that they can get more specific if you want more specificity and ...

1 MR. EARLY: We reviewed the plan, we thought
2 about it, we discussed it with the staff, we were prepared
3 to meet with the county back in June..

4 MR. MILLER: Alright, I'm sorry they wouldn't
5 meet with you and I will request that they do meet with you
6 on matter such as this, because we think it's important,
7 but I don't want to get into that, but the thing is we're
8 not going to, who struck John's, you know it costs a lot
9 of money and time for all of you to come here and we would
10 like to get right down to where we don't seem to be able to
11 get.

12 MR. EARLY: Judge Miller, LILCO has considered
13 after reviewing the plan ...

14 MR. MILLER: Do you have anything in writing,
15 anything in writing, showing your review and the product of
16 your reivew especially with some of these aspects which are
17 contained in the regulations afterall, and say in light of
18 whatever changes there are, describe it any way you want,
19 draw a map, I don't care, but show you've looked at it and
20 here's what you conclude and then we'll ask the staff what
21 why don't they read it. Then at least I've got something
22 in a litigable form to all parties, but right now I have a
23 great feeling of trying to tread water frankly.

24 MR. EARLY: Right here Judge Miller, I'm not sure
25 whether there is specific documentation of ...

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MR. MILLER: Well if you don't know, who in the name of heaven does? You're the responsible counsel of the responsible utility who's got the duty to protect everybody out there, now and in the future, if you don't know, you're not prepared.

MR. EARLY: Judge, may I let Mr. Irwin address it since he was involved in the day to day review of this?

MR. MILLER: Very well.

MR. IRWIN: Judge Miller as Mr. Early indicated LILCO has reviewed the effect of the installation of these alternative low power back up systems on the effectiveness of the security plan.

MR. MILLER: Both functionally and geographically?

MR. IRWIN: Yes Sir. Nothing is required under the regulations or under the security agreement or anything else known to me, that required LILCO voluntarily to file a piece of paper describing it's thought process and it's conclusions, we have ...

MR. MILLER: Wait a minute, why not, you're the one who's coming in here, by you I don't mean you personally but your company's coming in here and saying we want an exemption request, a matter where we are told it's something that requires something unusual, if not exigent, and you, tell me you don't have any responsibility for your coming with some changes out there both physically and functionally

1 and you've got obligation to put anything in writing.

2 MR, IRWIN: No Judge I didn't say that.

3 MR. MILLER: Then I misunderstood you.

4 MR. IRWIN: What I said was we conducted an in-
5 ternal technical evaluation, it review that technical evalu-
6 ation with the staff, the staff accepted that technical
7 evaluation and reported it on itself in the SSER ..

8 MR. MILLER: Tell me what was in writing, I want
9 documents.

10 MR. IRWIN: The SSER ...

11 MR. MILLER: That's the staff's is that.

12 MR. IRWIN: That's correct.

13 MR. MILLER: what did you do?

14 MR. IRWIN: We had no obligation to provide it
15 because there were no issues inevidence Judge Miller.

16 MR. MILLER: Well you're convincing me to charge
17 you to do something, so that we have something to look at.
18 In writing and with a considered examination of the impact
19 if any of the changes sought by your sompany, when it comes
20 in here and says we want something that's a little bit out
21 of the ordinary, it's exigent and we're going to call it,
22 and exemption to the requirement GDC 17. Now when you do
23 that I think you're company or somebody in there is going
24 to have some obligation to putsomething in writing.

25 MR. IRWIN: We're able of doing that bear in

1 mind there were no contentions in issue, security at the
2 time...

3 MR. MILLER: Pardon me, why does it take a
4 contention to square you to do what I should think that
5 a utility with an obligation to look to security which is
6 a very important thing to all of us, why are you going to
7 be so technical to say it was nothing and I've got to go
8 do it.

9 MR. IRWIN: Because Judge Miller, unless there's
10 a requirement that requires us to file something with some-
11 body there's no sense in spinning our wheels and ginning out
12 paper for it's own sake.

13 MR. MILLER: There's no sense in spinnin gyour
14 wheels here either. There's no sense in spinning your
15 wheels and coming for an exemption request on a serious
16 matter and then taking an attitude like that very frankly.

17 MR. IRWIN: Judge Miller, excuse me I don't mean
18 to convey the impression that LILCO has been at all flip
19 about this the board ...

20 MR. MILLER: I don't mean flip, but you're not
21 coming in with much and you're giving a lot of arguments
22 saying what are the contentions, it's not the obligations
23 of the interveners as the contendors, except maybe the
24 State in it's soverèignrole, it's not their obligation to
25 say you want to do something and you've already done some-

1 thing, don't you think you ought to give us an analysis
2 in writing so we can see what impact if any it has, and
3 let the staff take a look at the product in writing and
4 when you come in here with an exemption request have a little
5 bit more then a lot of oral statement.

6 MR. IRWIN: Judge Miller there's a lot in writing.
7 There is a security plan, there is an elaborate security
8 agreement, that contains illustrations, diagrams plot
9 plans...

10 MR. MILLER: Well that's two years old isn't it.

11 MR. IRWIN: Judge Miller the Buildings are still
12 the same.

13 MR. MILLER: Are you talking about the original
14 one?

15 MR. IRWIN: Yes Sir, and the buildings are ..

16 MR. MILLER: That's almost two years old, my
17 question is what have you done lately.

18 MR. IRWIN: We have reviewed it in detail.

19 MR. MILLER: In writing?

20 MR. IRWIN: We have not recorded the review com-
21 prehensively in writing no Sir.

22 MR. MILLER: Well then you've written it in sand
23 haven't you, as far as this board is concerned we don't
24 know what you've done, we have no idea what you've done,
25 we're now confronted with contentions that say you haven't

1 done anything, and we're supposed to judge preliminarily
2 on what you tell us you thought about but haven't reduced
3 to writing, now that's being pretty doggone everiscant..

4 MR. IRWIN: Well Judge Miller my difficulty
5 I guess with the contentions is this, the county has had
6 access to our plan , in great detail for twoyears, they
7 know where the diesels are..

8 MR. MILLER: They know where what is?

9 MR. IRWIN: I beg your pardon Sir?

10 MR. MILLER: They know where something are,?

11 MR. IRWIN: They know where the diesels are.

12 MR. MILLER: Oh the diesels are that you put
13 there.

14 MR. IRWIN: Yes Sir.

15 MR. MILLER: Well don't put them first they're
16 in the background, you're in the front, carry the ball,
17 when you do something tell me you did it, you at least gave
18 some thought to security implications and here is the writ-
19 ten product, can you tell me anything?

20 MR. IRWIN: Well nobody has asked us for a
21 written product, indeed was asked...

22 MR. MILLER: Well you're being asked right now.
23 I really want something where I can look at it.

24 MR. IRWIN: Okay, if the Board wants something
25 then the Board will get something fron us.

1 MR. MILLER: Now it may be that your company has
2 done some of these things, and it may be that the staff is
3 aware of it, but they should be reduced into the written
4 concrete form that we can look at and hopefully expedi-
5 ditiously. But don't do it with words now.

6 MR. IRWIN: Our difficulty with the contentions
7 is based on the fact that these documents that I was just
8 describing do exist and the country has had access to
9 them, we would expect that they with their level of exper-
10 ience with this plan would have been able to give us more
11 specific complaints and a basis for them. That was all Mr.
12 Early was referring to when he was talking about a
13 lack of basis, and when the Board sees the documents that
14 have been put into evidence, or which exist and which the
15 country has access to we believe the Board will understand
16 why we do have difficulty with a broad gauge nature of the
17 contentions.

18 MR. MILLER: Do those documents have any drawing,
19 maps, in them reflect the proposed changes resulting from
20 the different method of meeting the requiremnts of GDC17?

21 MR. IRWIN: In the most fundamental way, yes
22 Judge Miller, because those changes do not affect the val-
23 idity of the analysis that underlay the initial security
24 configuration.

25 MR. MILLER: Well we'll know that when we see them
in place, along tab and super-imposed on the existing,

1 ones, since you like that plan so well, but we won't know
2 that as a conclusion until we've done that rather than
3 doing it in the reversal.

4 MR. IRWIN: That's right, but as a practical
5 matter for instance, Mr. Brown did mention the question of
6 patrols, and that's an interesting example because we have
7 patrols of security, because exact patrol routes are not at
8 a level of details that would be taken up specifically in
9 the plan, but they would be taken up in implementing pro-
10 cedures, and in fact those implementing procedures have
11 been changed as we've gone along, and the county has access
12 to them.

13 MR. MILLER: Wait a minute, have been changed as
14 a result of these diesels and this construction of the gas
15 turbine.

16 MR. IRWIN: Of the construction of the Colt
17 building,

18 MR. MILLER: No that's not what I asked.

19 MR. IRWIN: Well but the construction of the colt
20 building and the diesels are the substantial modifications
21 to the site which is taking place.

22 MR. MILLER: Where are the diesels and where is
23 the colt building, right on top of each other?

24 MR. IRWIN: No Sir, but they're adjacent to one
25 another.

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MR. MILLER: How adjacent?

MR. IRWIN: Within 50 yards I'd say.

MR. MILLER: Well 50 yards it ...

MR. MILLER: Maybe 25 I can throw a ball that far.

MR. MILLER: Well what I mean is they're not along side each other, certainly someone would say well maybe it makes a difference or maybe it doesn't but I'd like to see it shown on some kind of a drawing and I'd like to have some reasoned study of it, that's what I supposed you had done very frankly, that's in the very beginning where I said they had a chance to see the changes wrought by your proposals, and you're in place, more then proposals you're in place, diesels and so forth, Now hours later I'm finding out there isn't any system.

MR. IRWIN: Well Judge Miller, as to be real frank about it, we tried to give them the opportunity, I've written Mr. Miller letters which he didn't answer, I've requested Mr. Brown...

MR. MILLER: Well he's not in charge of your security, he's not in charge of NRC staff, (inaudible) his status don't mean that you discharge your responsibility, if you have a responsibility, by talking to him. Now let me hear from the staff, because it appeared to me that the LILCO hasn't done it, staff what's happening here.

MR. IRWIN: We respectfully disagree Judge Miller.

1 MR. MILLER: Alright you're entitled to disagree
2 everybody disagrees with me anyway, go ahead.

3 MR. PERLIS: First of all I want to make clear
4 that we're dealing with two ~~separate questions~~ here and one
5 is how the new configurations affects the security plan for
6 the plant as a whole.

7 MR. MILLER: Now stop right there, new configura-
8 tion, I've heard it for hours, what do you mean by that?

9 MR. PERLIS: By that I mean, the EMD's I mean
10 the gas turbine, and I mean whatever associated power
11 trains, there are for those two pieces of equipment.

12 MR. MILLER: Right where they are now today.

13 MR. PERLIS: Correct.

14 MR. MILLER: With or without fences and all the
15 rest of it, right where they are.

16 MR. PERLIS: Right that is the new configuration.
17 One of the issues being raised is how does that effect the
18 security plan for the plant as a whole, the second issues
19 being raised is what elements of that new configuration
20 agains the EMDs the gas turbine and the associated power
21 trains, what elements of that new configuration themselves
22 need ~~again~~ to be considered as vital areas, or need some
23 degree of protection.

24 MR. MILLER: Whatever.

25 MR. PERLIS: Okay, but those are two very ~~separate~~

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questions.

MR. MILLER: Well you picked out vital areas there could be other elements. Alright go ahead.

MR. PERLIS: I understand that, but one relates to protection of the new configuration, the other one relates to the effect the new configuration has on the protection of the plant as a whole, those are two very separate questions.

As to the second one, and that the elements of the new configuration themselves that require protection, it is that area that the staff agreed would be an area for an admissable contention.

MR. MILLER: Now let me stop you just a moment. What if anything do you have in the way of documentation on the merits of that, that can be looked at by intervenors and others seeking to be more specific. What would you look at?

MR. PERLIS: I think you're asking two separate questions there.

MR. MILLER: I know and now we've got four, I'll keep the count and you give me the answer.

MR. PERLIS: As to what we have in writing for intervenors to look at, the answer there is nothing.

MR. MILLER: Okay, Ive got one nothing and three (inaudible) ...

MR. PERLIS: Okay, as to what the intervenors need

1 in writing from us to determine whether those, that new
2 power configuration needs some sort of protection, to frame
3 a contention they don't need anything from us, and in fact
4 they've done it, they've framed a contention, alleging that
5 the whole thing needs to be considered vital because it
6 provides electric power to the plant in the event of a
7 loss of power.

8 MR. MILLER: Now that's four, we've got one and
9 one, now hold it, why is it so clear to you and not so
10 clear to LILCO, you're telling me something wholly dif-
11 ferent and I respect the right of counsel to have different
12 views but reconcile them for me now. You tell me how concrete
13 it is and then I looked at what they don't have and they're
14 not going to do, and I tell you it gets awful dark again,
15 what's the staff tell them to do if anything.

16 MR. PERLIS: Right now, the staff is not telling
17 them to do anything.

18 MR. MILLER: Okay, and they haven't done anything.

19 MR. PERLIS: In terms of protection of the new
20 configuration, I don't believe they have considered them.

21 MR. MILLER: In writing at any rate I'm sure they
22 thought about it.

23 MR. PERLIS: Well excuse me, I don't believe they
24 have considered them as vital areas.

25 MR. MILLER: I see, okay.

1 MR. PERLIS: And frankly at this stage I don't
2 know what protection they're affording them. All I'm saying
3 is that it is in our view an acceptable contention at this
4 stage to allege that certain measures should be taken for
5 them.

6 MR. MILLER: Got you now get back to that original
7 two we split off.

8 MR. PERLIS: Okay, the second one and this is
9 where the county and the staff disagree, is whether the
10 new configuration affects the security plan for the plant
11 as a whole.

12 Now, I'm starting at a disadvantage here because
13 I have not looked at the Security plan but I'm told that a
14 security plan is a general document, it doesn't deal with
15 specifics routes the guards will take and the like.

16 MR. MILLER: I suspect you're right.

17 MR. PERLIS: Frankly.

18 MR. MILLER: But what can you look at though, we've
19 conceded that it doesn't get into the nuts and bolts, and
20 it's broader in scope than that, but still isn't there
21 something that one would look at to see if nothing more,
22 implementation when confronted with "a New Configuration"
23 don't forget our configuration now.

24 MR. PERLIS: Yes, one would look at procedures
25 here.

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MR. MILLER: Procedures?

MR. PERLIS: The procedures to be followed by elements of the security plan, I am told, although I don't know this for a fact that the county has those procedures, and I also have not seen the procedures so I'm not going to represent what they reflect LILCO's counsel could perhaps do that.

MR. MILLER: I'm not pressing you beyond your own knowledge.

MR. PERLIS: But there are procedures, and if changes are necessitated they would be reflected in the procedures. As to whether the plan as a whole, the plan without a T, as a whole would have to be changed to reflect a new configuration frankly we're at loggerheads here because the county has made the rather bold assertion that yes, it must, and in our view the answer is no, it doesn't have to.

MR. MILLER: Can we get at what you're basing yours on, and the documentation for it, and maybe get a judgement preliminarily.

MR. PERLIS: The problem is right now, there is no documentation because the question hasn't come up before but I do think that we are dealing here with contentions. And a proponent of a contention has some obligation to provide the basis for an assertion. Now Mr. Brown stated that

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the new configuration affects the security plan for the plant as a whole.

MR. MILLER: Well he said it might.

MR. PERLIS: No he went a good deal farther than that.

MR. MILLER: Well how far do you and your technical people go, do you say it might or at least we're going to look at it, if so have you looked at it, and if so how.

MR. PERLIS: If you can give me five seconds I'll talk to my. I understand the question correctly the procedures might reflect a change if the change were needed the procedures would reflect them.

As to the plant itself the drawings in the plans would reflect permanent installations.

MR. MILLER: Permanent, I see would not, the present drawings then in the plan, which is not updated I guess would not reflect on it drawing for example the things that are out there now, such as the diesels and the gas turbines.

MR. PERLIS: I don't know what's in the turbines.

MR. MILLER: Oh, I thought you were talking to your expert.

MR. PERLIS: I did and he informed me that permanent installations would be reflected in the drawings.

MR. MILLER: But are those permanent installations

1 in that sense?

2 MR. PERLIS: He doesn't know,

3 MR. MILLER: Okay, I tell you what, let's bring
4 this proceeding to a close. I'm not trying to give you a
5 hard time, but as far as this board is concerned we need a
6 lot more information, and, in order to make judgements and
7 we want to do it in a rational, ~~expeditious~~ manner, so
8 we're willing to entertain some suggestions, but don't give
9 us rhetoric or a two year old plan now, that's, let's get
10 right down to bedrock. We want to have information, we
11 want to have it in some form of writing, and we want to have
12 it available to all parties of the board so hopefully next
13 week, the Board will be informed and it can then, on the
14 basis of some ~~factual~~ representations, if nothing more,
15 and some, whatever you dredge up, have the background to
16 approach these contentions, because we've got to address
17 the contentions and we don't feel we can do it intelligently
18 now, in the state of the non record.

19 MR. IRWIN: Judge Miller may I take up what I hope
20 is an offer from the Board.

21 MR. MILLER: Okay, go ahead.

22 MR. IRWIN: LILCO would be pleased to try to
23 supplement the record of this case which at this point
24 consists solely of a set of contentions, by submitting to
25

1 the board, within I would say certainly by the end of next
2 week, not only copies of the plan, but a description of the
3 physical changes that are entailed in the alternative back
4 up power configuration.

5 Their security ramifications and LILCO's rationale
6 for having taken what steps it has taken to date and the
7 reason it has not take...

8 MR. MILLER: I think something like that would be
9 helpful, you'll be touching the basis and the Board at
10 least needs, we know nothing about the issues we haven't
11 even seen the plan, although we're going to see it as
12 soon as you send it to us, but I think that would help to
13 focus on something concrete and then. Now we're willing to
14 proceed with reasonable expeditousness we're not going to
15 short circuit the rights of anybody, but how does this tie
16 in to our projected schedule.

17 MR. IRWIN: That would be of use to the board in
18 ruling on the boards contentions and we'll get it to the
19 board promptly.

20 MR. MILLER: Okay, anybody have some suggestions
21 now, we're not trying to bind you but we'd now like to try
22 to get this show on the road in a meaningful way and it
23 would help the board at least to have a little more concrete-
24 ness.

25 MR. BROWN: In the event Judge Miller that there

1 was something that the county or state wanted to submit,
2 would that be acceptable.

3 MR. MILLER: Yes it would we'd like for you to do
4 it promptly in the sense, I would there fore ask LILCO, let
5 them know in advance what you're doing, give them drafts
6 if necessary so that we don't have to take two weeks every
7 time to respond to each other, we'd like to get this mov-
8 ing because we feel that it's important and it should but
9 we think also counsel are going to have to sort of co- oper-
10 ate with each other now in order to get all this material
11 in within a reasonable time, are you able to do that, is
12 your relationship such that you can be professional about it.

13 MR. IRWIN: We would welcome the opportunity to
14 begin discussion with the county again on some area.

15 MR. MILLER: This is more than discussions now
16 this is giving them copies as soon as you can of whatever
17 it is you're going to supply the board, even in draft form
18 so they have a chance to think about it and react to it,
19 'cause I don't want to take another week or two then for
20 them to respond to what you give us.

21 MR. IRWIN: There is no difficulty with making
22 them aware of what we're doing as soon as we ...

23 MR. MILLER: Now how is the staff going to key
24 in on this.

25 MR. PERLIS: The staff would respond to whatever

1 LILCO presents, if they could get it to us earlier, we
2 could respond earlier as well.

3 MR. MILLER: Okay, what kind of timing now LILCO
4 you're the ones that has asked us for expeditious treatment
5 in a trial sense, we're not talking about anything else.

6 MR. IRWIN: I feel confident that we could get
7 something to the Board by the end of next week and I would
8 hope we could do it sooner than that. Without talking to
9 the technical people and knowing where they are and what
10 their other commitments are, because as the board knows
11 there are two other proceedings going on simultaneously, I
12 hesitate to be more specific than that.

13 MR. BROWN: Judge Miller we will be as quick in
14 turning around after that, but we have as you know, our
15 consultants in New York and California and there might be
16 a built in days delay or some very short but reasonable
17 amount of time that's required just to get everyone together.

18 MR. MILLER: Well could you respond say in two
19 days, three days if you had to do something out of town,
20 but see we do want to get on to our schedule we had to give
21 everyone a fair shot at it, this isn't the final but it's
22 an opener.

23 MR. BROWN: I'm not sure in fact there'd be a
24 need to respond, if all Mr. Irwin is going to be submitting
25 is what LILCO has done to date, I don't see any necessary

1 reason to respond if, we'd inform the board if there there
2 was nothing to respond. Our bottom line is that these com-
3 tentions satisfy everyone of the requirements for specifi-
4 city and anything the LILCO submits is not germane to the
5 fact that these are admissable contentions.

6 MR. MILLER: Well we don't want to get into that
7 now let's see what they submit so we all start off with
8 the same factuals.

9 MR. PERLIS: The staff would intend to respond
10 and could do so in the matter of a few days.

11 MR. MILLER: You mentioned consultants in Califor-
12 nia, are they, they haven't been authorized, can you do it
13 with your authorized people for examining closer to home
14 temporarily.

15 MR. BROWN: One was authorized in California or
16 both were authorized in, I'm sorry, and we used one so far
17 and he signed an affidavit.

18 MR. MILLER: But we haven't authorized it. We
19 haven't ruled on it, assigning them an affidavit doesn't, in
20 and of itself authorize.

21 MR. BROWN: You authorized for purposes of the
22 contentions, at the last day of the hearing at (inaudible)
23 you authorized the use of two.

24 MR. MILLER: Oh two experts.

25 MR. BROWN: Yes.

1 MR. MILLER: You and two other and I said hold
2 because we want to know. You're talking about two experts.
3 But then on them, you should supply us with their names
4 right away. So you see, under our protective order you're
5 to give us a list of those you want to so let us have those
6 right away, and it may well be...

7 MR. BROWN: Well I can give them right now to
8 the board if you like, because they've signed affidavits in
9 the past now they would do additional ones if you like.

10 But their names are Mr. Bryon Jenkins, of the Rand
11 Corporation in Santa Monica California, and Mr. Richard
12 White of Sacramento, California.

13 MR. MILLER: Were they authorized persons and
14 experts in the previous proceedings?

15 MR. BROWN: They have been throughout the pro-
16 ceedings our experts, Mr. White is the former.

17 MR. MILLER: The board, we think we would accept
18 that, we don't want to bind ourselves 'cause we want to see
19 who in the qualifications on a need to know, but those two
20 instances it sounds as though they would be.

21 MR. BROWN: Now I don't know when the board wants to
22 take this up, but we do have the county sees it a very
23 strong requirements to have the authority as counsel,
24 knowledgeable of these secured matters to speak with certain
25 other individuals, two of whom are our clients and we're

1 put in a position of not being of course the party in in-
2 terest. We can't speak on decisions that only the part in
3 interest our client can speak, and we therefore would like
4 to have the Commissioner of Police, Commission Troutter
5 authorized.

6 MR. MILLER: The Commissioner of Police of what Suffolk
7 Suffolk county. Has he been authorized before?

8 MR. BROWN: His predecessor was, Commissioner
9 Delworth retired now...

10 MR. MILLER: Let me ask you, does any of our staff
11 have any objection to the qualification of the need to know
12 of the commissioner that is mentioned?

13 MR. IRWIN: LILCO would like to hear the complete
14 list of Suffolk County Police Department Officer whom the
15 county would like to use.

16 MR. MILLER: Well they've indicated they wouldn't
17 be more than I think two.

18 MR. IRWIN: We certainly have no objection if
19 he's one of the two.

20 MR. MILLER: Staff?

21 MR. PERLIS: Staff has no objection to that indi-
22 vidual.

23 MR. MILLER: Is that, is he one of the two?

24 MR. BROWN: Commissioner Troutter is in addition to
25 the other...

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MR. MILLER: Why don't you make him one of your two police?

MR. BROWN: Well because we only need to speak with, Commissioner Troutter doesn't have to see the plan, we don't have to tell him details of the plan I don't think propably ever, but what we need from Commission Troutter and an individual on the County Executives office is the ability to speak to them as our clients.

MR. MILLER: Well that's not really what we use as as basis for determining the authorized person frankly.

MR. BROWN: Well I don't see how I could, for example if LILCO proposed to settle a contention by instal-ling something, I could not make the judgement for my client if that was satisfactorially in the clients interest.

MR. MILLER: We're talking about litigation.

MR. BROWN: Well we did that previously to some other issues.

MR. MILLER Alright, but you're not doing it today.

MR. BORWN: No we're not sir.

MR. MILLER: We'd be happy if you did but we just don't really think it's realistic, we think we're going to a trial and we want to get to a trial in pretty good shape. Now anything you people can do negotiations of settlement, that's find, you know we'll commend you, but that's not going to be a reason to cross over in the authorized person.

1 We've got to keep this thing reasonably restricted.

2 MR. BROWN: Judge Miller what should be do with
3 respect to the people whom we like to cover should be file
4 something, I don't want to take the Boards time,

5 MR. MILLER A list, and same under qualifications.
6 Now if they've been authorized before, you know that gives
7 us a pretty good handle on it, I don't say we'll do it au-
8 tomatically but it certainly shows it's been through the
9 process. We're not trying to give you a hard time but
10 we do want to cut back on the numbers that have been involved
11 we are frankly concerned at the number of the people up
12 there in Long Island that seem to have access to a lot of
13 information about some of these things. Submit it in writing.
14 Anything else? It's LILCO's move then to supply that infor-
15 mation. Mr. Reporter can you tell us when you're likely to
16 have, you can go off the record if you want.

17 The Board Adjourned at 6:00.

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CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings before
the NRC.

In the matter of: LONG ISLAND LIGHTING COMPANY

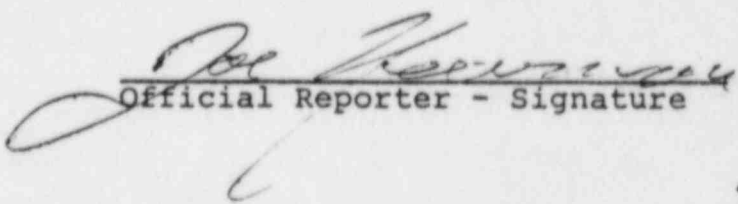
(Shoreham Nuclear Generating Plant,
Unit 1)

Date of Proceeding: 16 August 1984

Place of Proceeding: Bethesda, Maryland

were held as herein appears, and that this is the original
transcript for the file of the Commission.

Joe Newman
Official Reporter - Typed


Official Reporter - Signature

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges
Marshall E. Miller, Chairman
Glenn O. Bright
Elizabeth B. Johnson

page 5
page 6
Authorized persons for today's hearing

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Generating Plant,
Unit 1)

Docket No. 50-322-OL-4
(Low Power)

August 16, 1984

PROTECTIVE ORDER

1. As used in this Protective Order:

(a) "Protected information" is (1) any form of the physical security plan for the licensee's Shoreham nuclear facility; or (2) any information obtained by virtue of these proceedings which is not otherwise a matter of public record and which deals with or describes features of licensee's physical security system or details of licensee's physical security plan.

(b) An "authorized person" is a person designated by this Board from lists furnished by the parties, who has executed an Affidavit of Non-Disclosure. Nothing in this definition shall be deemed to deny access by an officer, employee, or contractor of a party to information maintained in the normal course of business by that party, or to deny

access to protected information by members of this Board, the cognizant Atomic Safety and Licensing Appeal Board, the Commission, their respective staffs, and appropriate law enforcement agencies.

(c) A "lead attorney or representative" is an individual designated by a party and approved by this Board to accept service of protected information, insure that it is distributed only to those persons authorized to receive it on behalf of that party, and to assume overall responsibility for the control and protection of sensitive information in the hands of that party.

(d) A "designated facility" is

(i) a facility approved by the Executive Director for Operations, the Executive Legal Director, the Atomic Safety and Licensing Board, the Atomic Safety and Licensing Appeal Board, or the Nuclear Regulatory Commission for the storage and use of protected information; or

(ii) a facility approved by LILCO for storage and use of protected information.

(e) A "designated office" is one office approved by each party for the preparation of written pleadings and testimony containing protected information and for the storage of protected information in the hands of that party.

2. Authorized persons shall not disclose protected information to anyone except another authorized person, unless that information has previously been disclosed in the public record of this proceeding.

Authorized persons shall safeguard protected information in written form (including any portions of transcripts of in camera hearings, filed testimony or any other documents that contain such information), so that it remains at all times under the control of an authorized person and is not disclosed to anyone else.

3. Authorized persons shall not reproduce any protected information by any means without the Board's express approval or direction except to the extent necessary to make required service on another party. So long as an authorized person possesses protected information, he or she shall continue to take these precautions until further order of the Board.

4. Authorized persons shall similarly safeguard and hold in confidence any data, notes, or copies of protected information and all other papers which contain any protected information by means of the following:

(a) review and use of any protected information only at designated facilities;

(b) prepare written pleadings and testimony containing protected information only at designated facilities or designated offices;

(c) keep and safeguard all such materials in a safe or locked filing cabinet to be located at all times in a designated facility or designated office; and

(d) perform necessary typing or reproduction services or other secretarial work connected with the preparation of papers containing protected information at designated facilities or designated offices.

5. Authorized persons shall use protected information only for the purpose of preparation for this proceeding or any further proceedings in this case dealing with security plan issues, and for no other purpose.

6. Lead attorneys or representatives shall keep a record of all protected information in the possession of their respective parties, including any copies of that information made by or for them. At the conclusion of this proceeding, they shall account to the Board or to a Commission employee designated by the Board for all the papers or other materials containing protected information in their possession. When they have finished using the protected information, but in no event later than the conclusion of this proceeding, they shall deliver those papers and materials to the Board (or to a Commission employee designated by the Board), together with all notes and data which contain protected information for safekeeping during the lifetime of the plant.

7. Authorized persons shall not corroborate to any unauthorized person the accuracy or inaccuracy of information obtained outside this proceeding by using protected information gained through the hearing process.

1/20/84

8. In order to keep the service list as limited as possible and thus to reduce the possibility of materials becoming lost or misplaced, copies of documents will be formally served on each Board member and only on the following, who shall be considered "lead counsel" for service purposes:

Suffolk County:

LILCO:

State of New York:

NRC Staff:

In addition, copies of documents shall be served upon Mrs. Inez Bailey, Chief, Records Services Branch, Division of Technical Information and Document Control, Nuclear Regulatory Commission, Washington, D. C. 20555. Service shall be accomplished by the means described in paragraph 13 of this Order.

9. There shall be a limit of two transcripts per party for any proceeding conducted on the record in which safeguards information is disclosed or discussed. Parties shall not photocopy these transcripts without the express prior approval of the Board.

10. At the conclusion of this proceeding (including any necessary appeals), the person designated to maintain the official NRC file of documents shall ensure that extra copies of documents to be kept during the lifetime of the plant are destroyed.

11. The County's counsel and experts/consultants may review safeguards information at a location made available by the NRC Staff in

Silver Spring, Maryland, or at a facility on Long Island to be provided by LILCO. In addition, (a) any notes which designated Suffolk County representatives have made from their review of the safeguards information, and (b) copies of pleadings containing safeguards information, may be maintained by the following authorized persons at the following locations:

12. Suffolk County and the State of New York and their above-named authorized representatives, in keeping safeguards information at the above-designated locations, shall take such protective measures and procedures necessary to satisfy fully the specific requirements of 10 CFR §73.21. Such protective measures and procedures are as follows:

a. The buildings in which the safeguards information (i.e., notes and pleadings) will be maintained will qualify as controlled access buildings in that they are either attended around the clock or locked at night;

b. The safeguards information, when unattended, will be stored in a locked security storage container, such as a steel filing cabinet or map cabinet equipped with a locked bar and GSA-approved

combination padlock. Access to the security storage container will be positively controlled by use of keys or other comparable means; and

c. While in use, the safeguards information will be under the sole control of an authorized individual.

13. With respect to transportation of the safeguards information in question, procedures will be utilized which ensure compliance with regulatory requirements. Specifically, documents containing safeguards information, when transmitted outside an authorized place of use or storage, will be enclosed in two sealed envelopes or wrappers, with the inner envelope or wrapper containing the name and address of the intended recipient and marked on both sides, top and bottom, with the words "SAFEGUARDS INFORMATION." The outer envelope or wrapper will contain the intended recipient's name and address, with no indication that the document inside contains safeguards information. Safeguards information will be transported by registered or certified mail or by other courier methods or hand delivery which ensure that a receipt is obtained to verify delivery or by an individual authorized access pursuant to 10 CFR §73.21(c). Any authorized individual transporting the safeguards information in question will be instructed to retain the documents in his personal possession at all times.

14. Anyone who has reason to suspect that documents containing protected information may have been lost or misplaced (for example, because an expected paper has not been received) or that protected

information has otherwise become available to unauthorized persons shall notify this Board promptly of those suspicions and the reasons for them.

It is so ORDERED.

ATOMIC SAFETY AND LICENSING BOARD

Elizabeth B. Johnson, Member
Administrative Judge

Glenn O. Bright, Member
Administrative Judge

Marshall E. Miller, Chairman
Administrative Judge

Dated at Bethesda, Maryland
this 16th day of August, 1984.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative judges
Marshall E. Miller, Chairman
Glenn O. Bright
Elizabeth B. Johnson

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Generating Plant,
Unit 1)

Docket No. 50-322-OL-4
(Low Power)

AFFIDAVIT OF NON-DISCLOSURE

I, Georgianna K. Thebber, being duly sworn,
state:

1. As used in this Affidavit of Non-Disclosure, (a) "protected information" is (1) any form of the physical security plan for the Applicant's Shoreham Nuclear Power Station; or (2) any information obtained by virtue of these proceedings which is not otherwise a matter of public record and which deals with or describes details of the security plan; (b) an "authorized person" is (1) an employee of the Nuclear Regulatory Commission entitled to access to protected information; (2) a person who, at the invitation of the Atomic Safety and Licensing Board ("Licensing Board"), has executed a copy of this Affidavit; (3) a person employed by Long Island Lighting Company, the

Applicant, and authorized by it in accordance with Commission regulations to have access to protected information, or (4) counsel for Long Island Lighting Company.

2. I shall not disclose protected information to anyone except an authorized person, unless that information has previously been disclosed in the public record of this proceeding. I will safeguard protected information in written form (including any portions of transcripts of in camera hearings, filed testimony or any other documents that contain such information), so that it remains at all times under the control of an authorized person and is not disclosed to anyone else. It is understood that any secretaries having access to protected information shall execute Affidavits of Non-Disclosure and shall have such access solely for the purpose of necessary typing and other support services.

3. I will not reproduce any protected information by any means without the Licensing Board's express approval or direction. It is understood, however, that pleadings which are necessary to be prepared in this proceeding can be reproduced, provided that each copy thereof is maintained in confidence as required by the Board's protective order described hereafter. So long as I possess protected information, I shall continue to take these precautions until further order of the Licensing Board.

4. I shall similarly safeguard and hold in confidence any data, notes, or copies of protected information by means of the following:

(a) Except as otherwise permitted in the Board's Protective Order entered August 16, 1984, my use of the protected information will be made at a facility on Long Island to be made available by Long Island Lighting Company or at a facility in Silver Spring, Maryland, made available by the NRC Staff.

(b) Except as otherwise permitted in the Board's Protective Order entered August 16, 1984, I will keep and safeguard all such material in a safe to be provided by Long Island Lighting Company or the NRC Staff, after consultation with Long Island Lighting Company or the Staff, and to be located at all times at the above-designated locations.

(c) Except as otherwise permitted in the Board's Protective Order entered August 16, 1984, any secretarial work performed at my request or under my supervision will be performed at the above locations either (1) by a secretary provided by the Long Island Lighting Company or the NRC Staff authorized in accordance with paragraph 1(b) above, or (2) by a secretary of my designation who has been authorized by the Board to perform such work.

(d) Necessary typing and reproduction equipment will be furnished by Long Island Lighting Company and the NRC Staff when secretarial work is performed at the LILCO or Staff offices.

5. I shall use protected information only for the purposes of participation in matters directly pertaining to Suffolk County's security contentions and any hearings that may be held or any further

proceedings in this case dealing with security plan issues, and for no other purpose.

6. At the conclusion of this proceeding, I shall account to the Licensing Board or to a Commission employee designated by that Board for all papers or other materials (including notes and papers prepared by me) containing protected information in my possession. I may either destroy the papers which do not need to be saved (such as unimportant notes) and certify that action in writing, or for papers which need to be saved (such as transcripts) may deliver them as provided herein. When I have finished using the protected information they contain, but in no event later than the conclusion of this proceeding (including any necessary appeals), I shall deliver those papers and materials that were not destroyed to the Licensing Board (or to a Commission employee designated by the Board), for safekeeping during the lifetime of the plant.

7. I make this agreement with the understanding that I will not corroborate the accuracy or inaccuracy of information obtained outside this proceeding by using protected information gained through participation in matters directly pertaining to Suffolk County's

security contentions and any hearing that may be held or any further proceedings in this case dealing with security plan issues.

Georgiana K. Hebbler

Subscribed and sworn to before me this

16th day of August, 1984.

Kim Marie Schroe

My Commission Expires:
July 1, 1986

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative judges
Marshall E. Miller, Chairman
Glenn O. Bright
Elizabeth B. Johnson

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Generating Plant,
Unit 1)

Docket No. 50-322-OL-4
(Low Power)

AFFIDAVIT OF NON-DISCLOSURE

I, Carol Lynn DiFatta, being duly sworn,
state:

1. As used in this Affidavit of Non-Disclosure, (a) "protected information" is (1) any form of the physical security plan for the Applicant's Shoreham Nuclear Power Station; or (2) any information obtained by virtue of these proceedings which is not otherwise a matter of public record and which deals with or describes details of the security plan; (b) an "authorized person" is (1) an employee of the Nuclear Regulatory Commission entitled to access to protected information; (2) a person who, at the invitation of the Atomic Safety and Licensing Board ("Licensing Board"), has executed a copy of this Affidavit; (3) a person employed by Long Island Lighting Company, the

Applicant, and authorized by it in accordance with Commission regulations to have access to protected information, or (4) counsel for Long Island Lighting Company.

2. I shall not disclose protected information to anyone except an authorized person, unless that information has previously been disclosed in the public record of this proceeding. I will safeguard protected information in written form (including any portions of transcripts of in camera hearings, filed testimony or any other documents that contain such information), so that it remains at all times under the control of an authorized person and is not disclosed to anyone else. It is understood that any secretaries having access to protected information shall execute Affidavits of Non-Disclosure and shall have such access solely for the purpose of necessary typing and other support services.

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7. I make this agreement with the understanding that I will not corroborate the accuracy or inaccuracy of information obtained outside this proceeding by using protected information gained through participation in matters directly pertaining to Suffolk County's

security contentions and any hearing that may be held or any further proceedings in this case dealing with security plan issues.

Carol L. Ditto

Subscribed and sworn to before me this
16th day of July August, 1984.

Kim Marie Schroeder

my Commission Expires:
July 1, 1986