

V. 19A

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ORIGINAL

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of:

OFFICE OF SECRETARY
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LONG ISLAND LIGHTING COMPANY
SHOREHAM NUCLEAR POWER STATION

50-322-OL-4

~~IN CAMERA~~ emp 2/28/85

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Date: August 30, 1984

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY & LICENSING BOARD

3 LONG ISLAND LIGHTING COMPANY
4 SHOREHAM NUCLEAR POWER STATION

5 4350 East West Highway
Bethesda, Maryland

6 Thursday, August 30, 1984

7 Hearing in the above-entitled matter reconvened at
8 9:30 a.m., pursuant to adjournment.

9 BEFORE:

10 JUDGE MARSHALL E. MILLER

11 JUDGE ELIZABETH B. JOHNSON

12 JUDGE GLEN O. BRIGHT

13 APPEARANCES:

14 On behalf of LILCO

15 DONALD IRWIN
16 ROBERT REEN

17 On behalf of the NRC Office of Division of Licensing

18 RALPH CARUSO
19 JOAN CAMPAZNONE
EDWIN REIS

20 On behalf of the Suffolk County

21 KARLA J. LETSCHE
22 HERBERT H. BROWN
LAWRENCE LANPHER

23 Kirkpatrick, Lockhart, Hill, Christopher, Phillips
Law firm.

24 On behalf of the state of New York
25 FABIAN PALOMINO

On behalf of Division of Safeguards of the Office of
Nuclear Material Safety and Safeguards
DONALD KASUN

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PROCEEDINGS

1
2 JUDGE MILLER: The special pre-hearing conference
3 held in-camera in this Shoreham low power proceeding
4 will come to order.

5 First, since it's an in-camera session, we're going
6 to ask that everyone in the courtroom identify himself
7 or herself.

8 You may have noticed that we have a security guard
9 to see that no unauthorized persons are admitted or
10 remain very long.

11 That's Mr. Raymond D. Marshall, who will check
12 security in and out.

13 I am now going to ask all persons, starting with
14 counsel and their associates, to identify themselves.
15 We'll start with staff since it's more convenient to go
16 around the body of the courtroom.

17 MR. PERLIS: Thank you. My name is Robert Perlis.
18 I am an attorney with the Office of the Executive Legal
19 Director of the NRC, and I represent the NRC staff here
20 today.

21 Would you like the other individual?

22 JUDGE MILLER: I'd like everybody.

23 MR. KASUN: I'm Donald Kasun, and I'm technical
24 staff of the Division of Safeguards of the Office of
25 Nuclear Material Safety and Safeguards.

1
2 MR. IRWIN: My name is Donald Irwin, with the
3 law firm of Hunton and Williams, representing Long
4 Island Lighting Company.

5 MR. EARLEY: My name is Anthony Earley, with the
6 law firm of Hunton and Williams, representing Long
7 Island Lighting Company.

8 MR. PALAMINO: My name is Fabian Palomino,
9 representing the state of New York.

10 MS. LETSCHE: My name is Karla Letsche, with the
11 law firm of Kirkpatrick, Lockhart, Hill, Christopher,
12 and Phillips, representing Suffolk County.

13 MR. BROWN: My name is Herbert Brown, with the
14 Kirkpatrick law firm, also representing Suffolk County.

15 MR. LANPHER: Lawrence Lanpher, with the
16 Kirkpatrick law firm, representing Suffolk County.

17 MR. REEN: Robert Reen, Long Island Lighting
18 Company.

19 MR. CARUSO: I'm Ralph Caruso, I'm the senior
20 project manager of NRC Division of Licensing.

21 MS. CAMPAZNONE: I'm Joan Campaznone, I'm assistant
22 project manager.

23 MR. REIS: My name is Edwin Reis, I'm assistant
24 chief hearing counsel of the Nuclear Regulatory
25 Commission.

JUDGE MILLER: Due to the fact that we had serious

1
2 problems with the transcript of our conference last
3 time, I think it was not particularly the in-camera
4 portion, but the other.

5 It was so garbled as to be practically unusable.
6 And I have filed a complaint in that regard, and I know
7 that LILCO has sent in some corrections, and I think
8 perhaps other counsel also assisted or participated in
9 corrections.

10 At any rate, we'll appreciate any further
11 corrections or editing to make it semi-intelligible.
12 In order to avoid any problems, because I reported
13 here, it's not reported for this particular case nor
14 in-camera before, be sure and identify clearly any
15 terms that you use, spell the acronyms that are
16 familiar to all of you, but nonetheless, we don't want
17 LILCO coming out first LOCA and then later became LOCA
18 for the rest of the session. That kind of thing we
19 wish to avoid.

20 So spell anything, and assume they're not as
21 familiar either to our reporter or to persons with non-
22 technical or at least non-NRC backgrounds who may be
23 reading these.

24 I think that the purpose of the special pre-hearing
25 conference which was the subject of a notice of special
pre-hearing conference which the board issued on August

1 22, 1984, it was to consider the security contentions,
2 including proposed amendments or refinements thereto.
3 Will you identify yourself, young lady?
4

5 MS. FRUCCI: Eleanor Frucci.

6 JUDGE MILLER: Thank you. She is our law clerk and
7 is an authorized person. And we're requiring
8 identification of everyone for the record so that we
9 comply fully with whatever our security requirements
10 are.

11 The proposed amendments or refinements thereto,
12 which we anticipated might be filed, and indeed they
13 have been filed, by representatives of Suffolk County
14 and the state of New York, I think filing joint amended
15 contentions.

16 So we will consider those. A response and
17 information was furnished by LILCO following the
18 board's request in our August 14, 1984 meeting for
19 information concerning what had been done and so forth.

20 That bears the date August 24, 1984. I think it
21 was hand-delivered to counsel. It was to the board,
22 and I think this service list did show all counsel
23 received, hopefully by hand-delivery, on Friday,
24 whatever it was.

25 At any rate, we will consider that. We've had
nothing filed by the staff. I assume we'll hear from

1 the staff with regard to the amended contentions and
2 any matters related thereto.

3 Also, the Commission, as you know, in a memorandum
4 and order entered by it on August 20, 1984, indicated
5 that it was concerned about the schedule for litigation
6 of security issues, at least insofar as it might be
7 based on the Commission's scheduled guidance by its May
8 16 order, CLI-84-8.

9 And so as a result of the expression of concern,
10 yes, expression of concern by the Commission, we've
11 also set that down as a matter that the parties may,
12 after we get through with the contentions, arguments,
13 care to give us suggestions of any type.

14 Now is there anything else that we should go into
15 before we start with the revised contentions? Any
16 other matters anyone wishes to put on our agenda?

17 MR. LANPHER: The only other matter that Suffolk
18 County knows of, Judge Miller, is our August 24 letter
19 regarding persons who would be authorized to
20 participate on behalf of the County, and at some point
21 in the agenda, if it's appropriate, we'd like to take
22 that up as well.

23 JUDGE MILLER: Yes. We will consider that. We'll
24 ask for comments by the other parties. I assume they
25 all received copies of your August 24 letter, setting

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forth the information regarding all persons you wish to have authorized.

MR. LANPHER: That's the letter that I'm referring to.

JUDGE MILLER: Okay. We'll consider that. Let me say preliminarily, and I'm not pointing this out at any particular persons, in order to have appropriate service of any motions or any papers served upon the board, we have taken steps to ensure that no messengers or other persons will be permitted to deposit anything in our offices here in Bethesda after 4:30.

There are too many problems that have arisen or could arise with the handing of security or safeguards but not limited to that, so we request therefore be sure to have any messengers that you send given instructions that after 4:30, don't even stop, and we'll expect if it's a question of being the last day, there would be a motion for leave to file on time.

We ask all parties to respect that. There is, as you know, in our protective order requirements as to service of secured or protected materials, including by mail and so forth, and where it's by messenger, written receipts.

Be sure and get those written receipts dated and timed, and impress upon your own staffs the importance

1 of doing that.

2 All right. We're ready then, I think, to proceed
3 with the proposed revised contentions. Do the county
4 and state wish to go first, or does the utility wish to
5 go first, LILCO?

6 We don't really care, but since you've exchanged
7 them, whatever is most convenient, I would say, for
8 counsel.

9 MR. BROWN: I think it would be appropriate, Mr.
10 Miller, if there are any criticisms of the contentions
11 for either the staff or LILCO, to set them forth.

12 JUDGE MILLER: All right. We'll hear from LILCO
13 then.

14 MR. IRWIN: Thank you, Judge Miller, and members of
15 the board. LILCO received Suffolk County's proposed
16 revised contentions yesterday.

17 We have evaluated them preliminarily and are
18 prepared to go forwrd with discussion of them this
19 morning.

20 Mr. Earley will discuss some general criticisms we
21 have relating to them as compared to the initial
22 contentions.

23 I will pick up with any specific contention by
24 contention points that may not have been covered in his
25 general observations.

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2 I think it's fair to say, so as to avoid
3 repetition, that we believe that our August 24 papers
4 responded fairly directly and that our view
5 despositively to the merits of the initial contentions
6 as pleading matters.

7 Unless the board desires amplification of those
8 views, we don't intend to repeat them on the record.

9 The proposed revised contentions, while twice as
10 long as the initial contentions, do not, in our view,
11 cure any of the fundamental defects which primarily
12 relate to lack of specificity and real basis of those
13 contentions.

14 There is what might be thought of as spurious
15 specificity in some of them, but they simply do not
16 cure the fundamental problems.

17 For that reason, Mr. Earley's conclusion and mine
18 is that none of the revised contentions are any more
19 admissible than the original ones.

20 I will turn the discussion in general terms over to
21 Mr. Earley and follow up with specific observations of
22 it.

23 MR. EARLEY: Judge Miller and members of the board,
24 as Mr. Irwin indicated, LILCO continues to believe that
25 the county has failed to raise a litigible contention
within the NRC's July 18th order, which amplified the

1 NRC regulations for admitting contentions under Section
2 2.714.

3 The revised contentions really fall into three
4 general categories. Those categories in many instances
5 overlap.

6 Each of these categories are reasons why the
7 county's new contentions should not be admitted by the
8 board.

9 First, most of the contentions have few or no
10 changes at all. In many instances, the changes were
11 some changes in introductory language rather than
12 changes in the substance of the contention.

13 Therefore, to a very large extent, LILCO's response
14 to the original contentions is still very much
15 applicable to these contentions and for the reasons
16 stated in that filing, the contentions are not
17 admissible.

18 In fact, only contention 1 adds more detail of
19 substance. The other contentions do have some minor
20 changes, but the only real attempt to add to a
21 contention and add specificity is in contention 1.

22 And I might add there specificity was added, but
23 not additional and appropriate basis. As Mr. Irwin
24 will indicate in the discussion of individual
25 contentions, contention 1 fails for a separate reason,

1 and that is it is premised on a fundamentally erroneous
2 assumption.

3 And that moves us to the second category of
4 contentions. Those are the contentions that make the
5 assumption that the gas turbine and the EMDs must be
6 vital areas.

7 We touched on that briefly in our prior pleading,
8 and I do want to expand on that, and I'll come back to
9 it in a minute.

10 The third category of contentions are those
11 contentions that rehash claims, contentions, that were
12 in essence ruled out by the appeal board in the Diablo
13 Canyon case.

14 For example, the contention concerning the
15 characterization of design basis threat, as Mr. Irwin
16 will indicate, I believe that's contention 5, no matter
17 how it's packaged, that type of contention was ruled
18 out by the Diablo Canyon appeal board.

19 And other contentions suggest that the attackers
20 will be using mortars and other equipment. That type
21 of contention was specifically ruled out by Diablo
22 Canon, and Mr. Irwin will address the specifics.

23 So LILCO believes that for those three reasons,
24 first, that the contentions, with the exception of
25 contention 1, are largely identical to the previous

1 contentions and our prior submittal is despositive of
2 that.

3 Second, many of the contentions make the assumption
4 that the EMDs and the gas turbines must be a vital
5 area, and go on from there, and that that is an
6 erroneous assumption, and therefore the contentions are
7 inadmissible.

8 And third, a number of the contentions are ruled
9 out by the appeal board's holdings in the Diablo Canyon
10 case.

11 Let me turn to a very important issue of
12 consideration of the EMDs and the 20-megawatt gas
13 turbine as a vital area.

14 This was discussed to some extent in our initial
15 response, and I'll try not to repeat those arguments,
16 but I think it is appropriate to deal with that issue
17 here, because it came into better focus, I think, with
18 Suffolk County's filing of revised contentions.

19 LILCO, back following the Commission's order in
20 May, applied for an exemption from the requirement that
21 it have a qualified on-site power source during low
22 power testing.

23 As we've discussed many times, principally that
24 requirement is embodied in GDC-17. LILCO asked for an
25 exemption from that regulation and any other regulation

1 that might require the fully qualified on-site power
2 source that LILCO conceded did not have if it could
3 not take credit for the TDI diesel generators and the
4 lack of the TDI diesel generators was a premise that
5 this whole proceeding is based upon. I don't want to
6 get into that.

7 As we discussed at great length during the low
8 power hearings, a GDC-17 on-site power source not only
9 must exist but there are certain attributes and
10 requirements associated with that power source.

11 As the county pointed out many times, such an on-
12 site power source must meet the requirements of GDC-1
13 and Appendix B, dealing with QA, GDC-2, dealing with
14 seismic qualifications, GDC-3, fire protection, GDC-4,
15 environmental qualification, and so on, so that an on-
16 site power source has with it associated a body of
17 requirements.

18 Assuming for a moment that there are security
19 regulations that impose requirements on an on-site
20 power source, that those requirements might--those
21 regulations might require the on-site power source also
22 to have some security attributes, in other words, that
23 they be considered to be a vital area.

24 The whole point of the exemption proceeding was
25 that for the purposes of consideration in low power,

1 LILCO didn't have an on-site power source and
2 everything that came with an on-site power source, all
3 the attendant QA seismic and security qualifications.
4

5 LILCO conceded that we did not meet those
6 regulations if we couldn't take credit for the TDI
7 diesel generators.

8 LILCO demonstrated in the low power proceeding that
9 given the circumstances of low power operations,
10 LILCO's proposal to operate with enhanced off-site
11 power sources, and remember, off-site power sources
12 don't have these other requirements imposed upon them,
13 that with these enhanced off-site power sources,
14 operation of the plant was as safe with LILCO's
15 proposal, in light of low power operations and all that
16 entails, that we're as safe as a plant with qualified
17 diesel generators.

18 Now as demonstrated in, I think, our response to
19 the first set of county contentions, no further
20 hearings need to be conducted to reach the conclusion
21 that the EMDs and the gas turbines are not to be
22 classified vital areas.

23 They are off-site power sources. They are not the
24 on-site power sources that might require them to be
25 vital areas.

In addition, we've demonstrated there is no

1 technical reason to qualify these machines or to
2 require these machines to be vital areas, for all
3 events except the loss of coolant accident, the record
4 reflects, and it's undisputed in this record, that more
5 than 30 days, maybe an indefinite period of time, is
6 available to restore power.

7 So it really doesn't matter what security these
8 pieces of equipment have on them, because certainly
9 power can be restored some way within the time period
10 that's available.

11 With respect to the loss of coolant accident event,
12 the record shows that that is an extremely unlikely
13 event.

14 For security to be any consideration at all with
15 respect to the EMDs and the gas turbines, not only do
16 you have to postulate the extremely unlikely loss of
17 coolant accident, you have to postulate the
18 simultaneous destruction of all sources of the normal
19 off-site AC power system.

20 And we've got substantial evidence on the
21 multiplicity and diversity of AC power sources. That's
22 all in the record.

23 You also must postulate an essentially
24 simultaneous sabotage attack on the plant, which would
25 then disable the 20-megawatt gas turbine and disable

1 all four of the EMD diesels. That is an inherently
2 unlikely event.

3 As we quoted in our response to the original
4 contentions, in establishing their security
5 regulations, the NRC conceded that there were no groups
6 in the United States capable of the type of
7 radiological sabotage that the regulations were
8 designed to protect against.

9 So we've got all the evidence and information
10 available to the board to demonstrate that the sequence
11 of events is a very unlikely and improbable sequence of
12 events that need not be considered.

13 The reason it's unlikely and improbable is that it
14 is not necessary to consider that this loss of coolant
15 accident and the sabotage event are causally linked.

16 Recall that there is an approved security plan for
17 the plant. That plan is designed to protect the plan.
18 It has been reviewed by all parties and a settlement
19 with respect to that security plan was endorsed by a
20 licensing board.

21 As the staff indicated in Safety Evaluation Report
22 number 5, there is no technical reason to protect the
23 temporary diesels in the gas turbine generators as
24 vital equipment.

25 The reasoning is very similar to the reasoning that

1 is used for determining that you need not consider the
2 concurrent occurrence of a seismic event and a loss of
3 coolant accident.
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5 One of those alone is a very unlikely event. As a
6 matter of policy, it's just not necessary to consider
7 sequences of very unlikely events.

8 That's the same reason that NRC doesn't require
9 people to consider multiple double failures in
10 designing plants, that you get to a point that as a
11 matter of policy when you're talking about unlikely
12 events, followed by highly improbable and unlikely
13 sequences of events, as a matter of law and policy,
14 these events have no significant impact on the public
15 health and safety.

16 If that weren't the case and no lines were drawn,
17 there would be endless litigation of "what ifs" in
18 areas.

19 What if one additional piece of equipment failed?
20 Because certainly everything is possible. Nothing is
21 impossible.

22 And as a matter of policy, when you start talking
23 about improbable events, you have to cut it off.

24 I think equally important, as we pointed out in our
25 response, there is no current regulatory requirement to
make even the on-site power system, and remember, we're

1 talking now about an off-site power system, the on-site
2 power system vital area for full power operation.

3 We cited in our response the fact that there is a
4 regulation, a proposed regulation that's pending, and
5 it is exactly that.

6 It's a proposal to require having the on-site full
7 power electric power source, that it would have to be
8 in a vital area.

9 Comments aren't even due on that proposal until
10 December 5th. So it would be inappropriate to assume
11 that even for full power operation, that an on-site
12 power source would necessarily have to be a vital area.

13 So for all of those reasons, the existing power
14 sources do not...the EMDs and the gas turbine do no
15 have to be classified as vital areas for security
16 purposes.

17 And there is nothing to be litigated with respect
18 to that. LILCO concedes, they are not classified as
19 vital areas.

20 There are no factual disputes about that. That is
21 a matter that can be decided by the board in ruling on
22 the contentions, either they are or they aren't based
23 upon the record that is already before the board in the
24 low power case, and that record demonstrates that they
25 don't have to be classified as vital sources of power

1 for security purposes. That conclusion that they don't
2 have to be vital areas, and there is no requirement
3 that they be vital areas, is despositive of many of the
4 contentions.

5 As Mr. Irwin will indicate, in going through the
6 contentions where the county has attempted to add
7 specificity, the specificity is based upon the
8 assumption that these machines have to be vital areas
9 and from that assumption flow certain of their
10 contentions.

11 And it's not necessary to consider the specifics of
12 the contentions if the premise is incorrect.

13 With that general discussion of contentions, let me
14 turn it over to Mr. Irwin to discuss in a little more
15 detail the specifics of each of the new revised
16 contentions and how they differ from the previous
17 contentions that were submitted.

18 MR. IRWIN: I hope I didn't just cause more
19 problems with this flyer than I solved. I suppose it's
20 appropriate to begin at the beginning.

21 Let's look at contention 1. The contention is, in
22 its first paragraph...

23 JUDGE MILLER: Pardon me. Identify yourself for
24 the record, spell your name.

25 AUDIENCE MEMBER: Charles Cassidy (phonetic).

1 JUDGE MILLER: Thank you.

2 MR. IRWIN: Thank you, Judge Miller. Contention 1
3 consists of an introductory paragraph, and four
4 lettered paragraphs.

5 The introductory paragraph and the first portions
6 of each of the four lettered paragraphs are either
7 identical or essentially identical to the contentions
8 as initially filed by Suffolk County on August 13.

9 Suffolk County has rewritten them to cure one
10 pleading defect, namely that of alleging that LILCO has
11 failed to demonstrate certain things, but in substance,
12 they're identical.

13 The new material in contention...well, because of
14 that, to the extent that there are deficiencies that
15 unless they are cured by the new material, we believe
16 that contention 1 is accounted for by our initial
17 pleading. I think that follows for the other
18 contentions as well.

19 The new material in contention 1-A begins really on
20 the third line from the bottom of page one, and extends
21 through the second line on page three.

22 It takes up two subject matter areas, one, the
23 number of armed responders, and second, the training
24 for the armed responders.

25 Each of these additions suffers from two

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fundamental defects. One, they presume that the EMDs
and the 20-megawatt turbine are areas that must be
protected.

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That assumes from the basic structure of the
security plan that they are vital areas. Unless it is
shown that they should be vital areas, these two
aspects of the new contention simply fail as a matter
of logic.

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Even if the EMDs and 20-megawatt turbine were found
to be vital areas, there is another difficulty with
these contentions, and that is their failure to deal
with the logic of the security plan and procedures.

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The security plan and procedures, as we indicated
in our filing of the 24th, are geared to methodology
and to function.

They are not geared specifically to individual
items of equipment or other individual features of the
plant.

And there are very good reasons for that. You
simply can't anticipate every mutation of every
contingency in specific geographic detail.

The plan as written, LILCO believes, adequately
would account for the addition of these two pieces of
equipment with respect to both number of armed
responders and with respect to training.

1 Now my guess is that Suffolk County was going to
2 argue, "Well, that's a matter of proof, and let's have
3 it out in the hearing and see whether you're right."

4 It's not a matter of proof if the contingent fails
5 to show why the actual methodology in the original
6 plan, which is conceded to have been adequate by all
7 parties for full power operation is suddenly inadequate
8 for this low power purpose.

9 The contention does not try to do that, and it
10 simply has no...it fails to state a basis why this
11 methodology which was good before is somehow no good
12 now.

13 For the board's convenience, there are a couple of
14 procedures which might be useful as references to
15 survey the methodology of the plan and procedures.

16 One of them is Station Procedure 99.013.02, Vital
17 Area Intrusion and Detection Apprehension.

18 The other is Station Procedure 99.007.02, which
19 deals with protected areas. The review of those
20 procedures will show that they are geared to
21 methodology rather than to specific items of equipment.

22 The same arguments apply with respect to the
23 training of armed responders, which is the material
24 taken up in the first new paragraph of page two,
25 carrying over to page three.

1
2 Training once again is on general principles of
3 response, and it is intended to focus the armed
4 responders on a variety of aspects of response with the
5 goal of protecting vital equipment.

6 It does not focus on specific items of equipment,
7 and the whole review of the basically the entire
8 training qualification program document, which was
9 filed with the board last week, will bear this out.

10 Again, the contention, in our view, does not try to
11 show why this methodology, which was concededly
12 adequate for full power operation, is inadequate
13 somehow suddenly for low power operation.

14 For these reasons, we believe the contention is
15 inadequate as a pleading matter. Again, it's not a
16 matter of proof.

17 You can't plead that the moon is made of Swiss
18 cheese if you have a piece of moon rock in your hand,
19 and I think that's really almost the analogy that we're
20 at right now.

21 Contention 1-B is really a significant departure in
22 LILCO's view from the original contention 1-B. The new
23 material takes off with the second paragraph of the
24 contention, beginning in about the middle of page
25 three, and carries through to the middle of page five.

1 The basic argument in this contention or this
2 subcontention now, is that the 20-megawatt turbine and
3 the EMDs should be classified as vital equipment and it
4 presents an argument as to why.

5 That's contained really on the bottom half of page
6 three. Pages four and five, I think, can easily be
7 seen to be conclusions which follow from the
8 classification of those two pieces of equipment as
9 vital equipment.

10 If one does not accept the classification of these
11 two pieces of equipment as vital equipment, each one of
12 the seven numbered subparagraphs on pages four and five
13 simply fall of their own weight.

14 LILCO has essentially three problems with this
15 subcontention. One of them is the problem that Mr.
16 Earley mentioned, which I won't repeat in its argument
17 for classification of pieces of equipment, or its
18 assumptions of these pieces of equipment as vital
19 areas, simple invades a major premise of the entire low
20 power safety proceeding to date.

21 And that's a matter which is already on the record
22 and not intended to be relitigated here.

23 I think it's a fairly fundamental point, and I
24 don't mean to cut it off in its significance by stating
25 it briefly. I just don't want to repeat Mr. Earley.

1 The second aspect of our problem with this
2 contention is simply one of notice and fairness. I
3 think frankly it's a new argument.
4

5 Perhaps Suffolk County is simply articulating
6 arguments that have been made before, but it defies
7 even my fairly fertile imagination, although it's been
8 bludgeoned by a couple of years in this case, to find
9 where the argument that begins with the middle of page
10 three springs from the first paragraph on page two.

11 I think that Suffolk County wanted to make this
12 argument. They have had all the information available
13 to them for years, as we indicated in our pleading in
14 August 24, and should have made it in intelligible
15 detail back then.

16 The third difficulty is again one which is related
17 to Mr. Earley's argument, and it goes to one aspect of
18 the argument for characterization of these pieces of
19 equipment as vital areas.

20 The accident as postulated is not simply a LOCA,
21 but it's a LOCA accompanied by a loss of off-site
22 power.

23 That loss of off-site power is an additional event
24 beyond the LOCA, and it pervades or it goes into
25 analytical assumptions which are part of the safety
record.

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There are some detailed matters of expression in the subparagraphs on pages four and five, which I simply will not go into because I think if the contention is admitted, we can refine those, and I would expect to, but they're not worth taking up at this point.

Subcontention C, which deals with alleged deficiencies in lighting in the 69 KV switchyard, and alleged deficiencies in ability to survey the switchyard, again the new material begins on the fifth line from the bottom of page five, carries over to the end of the first paragraph on page six, the first paragraph of the subcontention substantively identical to the original.

This new material is simply a recitation of matters which I believe LILCO would agree probably should be considered if the 69 KV switchyard were deemed to be a vital area.

But again, this new material is totally dependent on the conclusion that the 69 KV switchyard should be a vital area.

And unless the board accepts that proposition, the contention has not basis.

Subparagraph D deals with security procedures and alleges that various aspects of guard training and

1 control requirements and information and so forth
2 should be revised.

3 Once again, this whole addition to the contention
4 depends on the characterization of these two areas as
5 vital areas.

6 Secondly, while the contention does add more
7 specificity, it adds no more basis to the original
8 contention, as I discussed in connection with
9 Contention 1-A, namely, armed responder manning levels
10 and the training program generally.

11 Those procedures which...and post orders and set of
12 instructions to guards or armed responders which are
13 not tied to specific pieces of equipment and are
14 concedely adequate for full power operation are somehow
15 magically inadequate as a matter of methodology here.

16 Why? We don't know, and the contention doesn't
17 say. And I think that it's just a basic matter of
18 pleading.

19 The county had an obligation to set it out, and
20 they didn't on either of their two tries. I think the
21 contention should be rejected.

22 Contention 2 begins on page seven. The first
23 paragraph of that contention is down to its last
24 sentence, fundamentally identical to what was filed
25 before the last sentence is new.

1 LILCO has really basically two problems with this
2 contention, the first one, of course, is that it
3 depends on the assumption...I beg your pardon.
4

5 There are some other additional interstitial
6 material in contention 2. The third line, the
7 parenthetical expression whether such a LOCA was due to
8 a security incident or otherwise, and then three lines
9 further down, the parenthetical statement, "See
10 discussion in contention 1-B for details, why alternate
11 AC power equipment is vital equipment." Those are new.

12 LILCO has really two difficulties with this
13 contention. First, it's at this point essentially
14 redundant of contention 1-B.

15 They both express the same idea now, namely that
16 the EMDs and 20-megawatt turbine should be classified
17 as vital areas, and that we should take measures which
18 are specified in the regulations for such areas.

19 If the board were to admit one contention, it
20 should merge this into it. There's no reason to have
21 it stated twice.

22 The second difficulty conceptually with the
23 contention is that it, of course, assumes the vitality
24 of these areas, which we don't believe is correct.

25 There are two other or three other details with
respect to the last sentence that are maybe worth

1 pointing out. There is, I think, a typo reference in
2 the citation in the last sentence to Section 73.55 (1).

3 JUDGE MILLER: It's supposed to be (a).

4 MR. IRWIN: Okay.

5 JUDGE MILLER: 73.55 (a).

6 MR. IRWIN: It should be 73.55 (a). Okay. That
7 solves the typo. The other two references, though, to
8 73.55 (d) are again repetitive of matters taken up in
9 what is now contention 1.

10 75.33 (d) takes up matters which are now stated in
11 contention 1-B (v) and (vi) and the reference to 73.55
12 (h) takes up a matter which is contained in contention
13 1-D (as in delta) (i) through (iii).

14 Again, these simply go to the redundancy of this
15 contention with the first contention.

16 Contention 3 goes to the characterization of the
17 design basis threat. And I believe I inadvertently
18 steered Mr. Earley wrong when I told him, when he was
19 discussing the characterization of the design basis
20 threat as one of the areas which had been discussed by
21 the appeal board and bounded in the Diablo Canyon case
22 as contention 5, he would have said contention 3 had I
23 not so untimely thrust another word in his mouth. But
24 it's contention 3.

25 What Suffolk County is trying to do here is

1 something, is to suggest that...well, the contention
2 was originally written, suggesting that the design
3 basis threat might in fact vary, depending on
4 circumstances of operation. Or at least that's the way
5 it seemed to be written.

6 The contention has now been rewritten to concede in
7 new material the first paragraph that the design basis
8 threat is generic, and that it doesn't vary with
9 different power levels.

10 However, it goes on to say, the vulnerabilities of
11 a reactor facility will vary depending on the layout
12 and configuration of each facility, the means and
13 tactics through which design basis attackers choose to
14 exploit these vulnerabilities and the security defense
15 as established by the utility.

16 First, to the extent that unless the EMDs and 20-
17 megawatt diesel or turbine are accepted as vital areas,
18 the logic of the security plan simply defines out this
19 contention.

20 However, equally important, the Diablo Canyon case,
21 which we are all referring to by shorthand, but it's
22 ALAB 663, 16 NRC 55, pages that we're most concerned
23 with here are pages 74 and 75.

24 And at the bottom of page 74, continuing at the top
25 of page 75, there is a discussion, a couple of

1 sentences I think are worth reading.

2 The text reads, "Governor Brown has proposed a
3 number of 'factual' findings which are in reality legal
4 arguments about the nature and purpose of the external
5 component of the design basis threat of radiological
6 sabotage.

7 As we have seen, the design basis threat is
8 intended to be generic rather than site-specific.
9 Thus, there is no requirement that the applicant or
10 staff perform 'site-specific analyses or assessments of
11 potential threats to Diablo Canyon,' Governor Brown
12 asserts.

13 Similarly, there is no necessity to understand,
14 characterize, and analyze 'the attributes of the
15 attackers in light of the site-specific conditions at
16 Diablo Canyon,' because the characteristics and
17 attributes of the adversary are also generic and are
18 already set forth in the regulation.

19 Thus, the applicant need not postulate 'skills,
20 training, dedication, weapons, tools, communications,
21 equipment and strategy to the external force,' under
22 the site-specific conditions at its own Diablo Canyon
23 plant."

24 The point is that you have a design basis threat
25 that's generically determined and if you defend your

1 vital areas, you simply satisfy the regulations.

2 There is no need to go back and rethink the logic
3 of the regulations, and I think that is what inherently
4 contention 3 goes to.

5 The board can read...there's more to this
6 discussion. The board can read it as well as I can,
7 and so I won't go into it further.

8 The rest of contention 3 is the same as it was
9 originally with the insertion of basically three lines
10 in the middle of page eight, beginning with the words
11 "so that specific security plan modifications may be
12 implemented to defend," and continuing down to about
13 two lines further, through the words "subject to
14 attack."

15 LILCO believes that those words are basically
16 implementing language that make good reading, but they
17 don't change the contention substantively.

18 Contention 4. Mr. Earley advised me that there are
19 four specific subparagraphs in contention 3. Those are
20 still characterized as they were the first time.

21 LILCO dealt with them in its response, and I
22 believe that response is still substantively adequate.

23 Contention 4 goes to the notion of radiological
24 sabotage involving not only external attackers but an
25 insider.

1 The contention is as written, filed initially
2 through the first seven or eight lines, then it begins
3 new material toward the end of its first paragraph with
4 the last sentence, with the words "such a disabling
5 attack" and the new material continues through the next
6 full paragraph and portions of the following paragraph
7 at the top of page ten.

8 The argument there again is really twofold. At the
9 bottom of page nine, there's an argument as to what the
10 implications are of having a satisfactory security
11 program.

12 At the top of page ten, there is an assertion that
13 the probability of a sabotage induced LOCA is now
14 greater than when the plan was originally approved.

15 The argument at the bottom of page nine may be
16 Suffolk County's view about the final security
17 settlement agreement.

18 However, the logic...well, the final security
19 settlement agreement is merely an instrument which
20 complies, by which LILCO complied with the regulations.

21 And what each party may have had in its own mind as
22 to the intent or frame of mind with which they went
23 into an acceptance of LILCO's security configuration is
24 really, I don't think, despositive or germaine to
25 whether a contention is admissible.

1 The approval of a security program is intended as
2 the regulation stated in 73.1-A to afford a high degree
3 of reliability or assurance that a sabotage event will
4 not result in unacceptable consequences.

5 The program is unchanged in all vital elements.
6 The vital areas are unchanged. The material at the
7 bottom of page nine simply, it may go to Suffolk
8 County's frame of mind, but I don't think it changes
9 whether the program itself was accessible or
10 acceptable.

11 So at the top of page ten, there is an assertion
12 that the prior levels of protection, which I guess may
13 have been concedely adequate, since the program was
14 acceptable, are severely reduced.

15 And there is the statement, "The probability of the
16 sabotage induced LOCA is much greater now than it was
17 given the original plan configuration."

18 There is no basis for that assertion anywhere in
19 the contention, that I can see. The areas that are new
20 to the plant are not asserted to the areas, which by
21 themselves can induce a LOCA.

22 And without such an assertion, just simply as a
23 matter of pleading, they don't have a basis for the
24 argument.

25 Secondly, even if there were a basis, I think this

1 is a classic example of a lack of specificity. We just
2 simply...it's a nice statement, but I don't think it
3 meets the pleading test.

4 The contention concludes with new material at the
5 middle of page ten, which begins with the words
6 "accordingly, the LILCO plan fails to comply with the
7 high assurance criterion of section 73.55 (a)."

8 LILCO's belief is that that new language is merely
9 a legal conclusion; it adds nothing substantive. I'd
10 simply point out that the high assurance criterion has
11 been construed, again in the Diablo Canyon case, on
12 page 59 of the appeal board's decision, as being
13 substantively equivalent to the normal standard of
14 assurance which is demanded in safety reviews.

15 The board stated toward the bottom of 59 as
16 follows: "Although nowhere defined, the 'high
17 assurance' objective deems to be comparable to the
18 degree of assurance contemplated by the Commission in
19 its safety review for protection against severe
20 postulated accidents having potential consequences
21 similar to the potential consequences from reactor
22 sabotage."

23 I mention that more just as a general observation
24 because much has been made of the fact that high
25 assurance language is different from reasonable

1 assurance, which is different from no undue risk.
2 The fact is, they're substantively equivalent and one
3 should bear that in mind.

4 That's, I think, all that I have to add on the
5 specifics of contention 4.

6 On contention 5, we really have two observations.
7 One is that the ... let me also start out by indicating
8 what is new text and what's similar.

9 The parenthetical phrase on the fifth through the
10 seventh lines beginning with the words "(by use of such
11 weapons as mortars and other accurate, highly
12 destructive weapons)" continuing down to the closed
13 parenthesis two lines later, "(design basis threat)"
14 that's new language.

15 There is also a deletion four lines further down
16 after the words "two vital areas" and before the words
17 "because the new AC power configuration."

18 And that deletion relates to language which refers
19 to conditions where backup AC power would be needed,
20 i.e., conditions involving loss of coolant accident.

21 This is important because LILCO construes this
22 deletion to...because of this deletion, as we
23 understand this contention, it no longer applies to
24 LOCA situations; it applies to general situations and
25 in that event, you simply do not need as a matter of

1 record undisputed fact in the record at the low power
2 hearing the availability of off-site AC power.

3 And I think that's an important structural aspect
4 of the contention now, and we think that's despositive
5 of it, quite frankly.

6 There's another aspect of the contention that is
7 worth noting, and that is the parenthetical
8 characterizing, the armament which the design basis
9 threat might carry that I referred to a couple of
10 minutes ago.

11 Once again, this is an area which the appeal board,
12 in the Diablo Canyon case, defined. And in fact,
13 mortars were one of the specific types of weaponry
14 which Governor Brown tried to require PG&E to assess
15 the vulnerability of the Diablo...I'm sorry.

16 Once again, mortars were one of the types of
17 weaponry which Governor Brown tried to require PG&E to
18 assess the vulnerability of the Diablo Canyon plant and
19 which the appeal board rejected specifically in the
20 middle of page 75.

21 The appeal board said as follows: "In a similar
22 vein, the Governor argues that in arming its guards,
23 the applicant has not taken in account a long list of
24 weapons such as fixed-wing aircraft, helicopters,
25 mortars, rocket launchers, grenade launchers, and anti-

1 tank weapons that various witnesses indicated would be
2 available to terrorists.

3 But once again, the weapons used by the design
4 basis attackers are established in the regulations, and
5 those weapons include up to hand-held automatic
6 weapons equipped with silencers," and I'm looking for
7 the exact cite.

8 It's, I believe, it's in Section 73.1-A1, toward
9 the bottom of that long paragraph. It's a little
10 subitem C of that paragraph.

11 The long and shore of it is Suffolk County and New
12 York State are attempting to have this proceeding
13 considered in this contention, weaponry which has
14 specifically delimited, outside of what's been
15 delimited by the regulations as construed by Diablo
16 Canyon.

17 The contentions 5 also has one new further piece of
18 text; that's at the top of page 11, and it's the clause
19 "and because LILCO has taken no actions to reduce this
20 vulnerability."

21 Once again I believe that's implementing language.
22 We don't consider that to change the substance of the
23 contention.

24 Contentions 6 and 7 are, in our view, substantively
25 identical. In fact, contention 7 is, I believe,

1
2 verbatim from the earlier version.

3 There is no need to repeat arguments which were
4 made earlier.

5 I'm sorry for not having submitted it in writing.
6 We didn't get these papers until somewhat after midday
7 yesterday, but that's our specific review of these
8 changes.

9 JUDGE MILLER: County?

10 MR. BROWN: Shall we wait for the staff first so
11 we can respond?

12 JUDGE MILLER: Staff? Argue for the admissibility
13 of one or more contentions? Just yes or no.

14 MR. PERLIS: The staff would not oppose the
15 admissibility of the contentions.

16 JUDGE MILLER: That's enough. Staff is not
17 completely taking the same position, unlike our
18 procedure in taking of evidence.

19 It's not required now to put its case on before
20 yours in argument.

21 MR. BROWN: Judge, would it be acceptable if we
22 took one or two minutes just to put these...

23 JUDGE MILLER: Take ten.

24 MR. BROWN: Thank you.

25 (Whereupon, a ten-minute break took place.)

 JUDGE MILLER: Okay. Are you ready to proceed?

1 some vulnerability. The fact is that LILCO overlooked
2 security when it put together its new configuration,
3 and the simple basis for every one of our contentions
4 just blares out at everyone's ears.

5 The problem had this new configuration in LILCO's
6 original system for emergency power. Would anyone in
7 this room conceivably say that LILCO would not have
8 assessed the security implications of that, or that
9 LILCO would not have made those vital areas?

10 LILCO made its TDIs vital areas. What did the TDIs
11 do? They provided the emergency AC power in the event
12 that was needed.

13 Now that's precisely what this new configuration is
14 supposed to do, and LILCO's telling us all kinds of
15 legalistic arguments and putting together words to say
16 they don't have to do it.

17 They do have to do it, and we're going to prove
18 they have to do it, and our own suspicion is that they
19 will do it of their own volition if we just get on with
20 this trial, because they haven't even looked at that,
21 and now they're rationalizing it after the fact.

22 We stress that the arguments on the merits are
23 exactly what the purpose of the trial is for, and we
24 want to get on with it for that reason.

25 Secondly, the Commission itself said as recently as

1 the 18th of July that the final security agreement was
2 not a bar to the contentions in this proceeding, and
3 that litigation could go forward...I'm sorry, it was
4 the 20th of August, it was the board's order of July 18
5 that I had referenced inadvertently.

6 And we think all and any LILCO argument predicated
7 on that is just beating the deadest horse at this
8 point.

9 The statement by LILCO is that there are fatal
10 flaws in our contentions because we're assuming that
11 the vital areas, that these diesels ought to be vital
12 areas.

13 We're not assuming anything; we're contending they
14 should be. That's what a contention is. And we're
15 prepared to demonstrate it on the facts.

16 And as I said, these diesels are substituting for
17 what has been a vital area. It certainly has a basis
18 in reasonableness to suggest that the substitute for
19 something that was a vital area ought to be one also.

20 There is next to nothing in the low power record
21 which should suggest that these should not be vital
22 areas.

23 In fact, as I said, the new configuration is a
24 substitute for a vital area in the first place. The
25 county and the state, as the state would say for itself

1 and will, are ready to go forward with litigation of
2 this.

3 We have an expedited proposal, we think, that for
4 some reason LILCO is in the posture of wanting to delay
5 this, we can't explain why they would want to do that,
6 but we are on the opposite side of that point, and we
7 want to get this whole matter behind us.

8 I think that we stand on our specific responses
9 that we've made earlier on the record to what LILCO has
10 said.

11 And we just can't...I mean, we've dealt with them
12 conclusively as far as we're concerned. Every
13 contention ought to come in and we can't deal with this
14 moving notion that LILCO will throw out constantly that
15 whatever words we write aren't specific enough.

16 That's like saying no matter how fast you run,
17 you're not running fast enough. And the only point is,
18 of course, we would be prepared if this board were to
19 suggest that there were redundancies in any of these
20 contentions, and that we ought to merge several
21 together, we would certainly be prepared to do that.

22 But we don't back down in any way on the
23 admissibility of these contentions.

24 Finally, I should say, this characterization of
25 Diablo Canyon case by LILCO is not...is attempting to

1 take our contentions and to mold them into something
2 that would fall under the preclusion of Diablo Canyon.

3 We're not saying here that the staff and LILCO has
4 to ascribe a certain height to each one of these design
5 basis and attackers, arm each one of them with three
6 grenades and one with a big recoilous rifle and have
7 one flying in on a space ship or anything silly like
8 that.

9 We're starting, as it says right in the beginning
10 of our contention, I think it's three or four, I've
11 forgotten, that the design basis threat is generic.

12 And given that generic design basis threat, which
13 we're not trying to ascribe anything specific to, it is
14 upon LILCO's shoulders, the responsibility to analyze
15 how it will deal with what LILCO stipulates is generic
16 and we do.

17 And it's clear what that is. There are several
18 attackers and there's a number for what that is, and
19 LILCO knows what that is.

20 And it's designed, it's planned before on a
21 configuration with those numbers to deal with certain
22 kinds of threats, including deception and diversion,
23 both of which are listed clearly in that regulation.

24 And there are other things listed that the LILCO
25 plan did do, and the county agreed it did do it. The

1 plan was satisfactory.

2 All of a sudden, there's a different layout there.
3 Somebody has to look at that and make appropriate
4 changes.

5 LILCO didn't do that. We have proof-positive
6 information on that, from what they filed, and that's
7 what they ought to be doing.

8 They've got to take into consideration the
9 application of the generic stipulated design basis
10 threat to the configuration that they have.

11 It's different. It's as if somehow someone were to
12 put a canal next to the plant on the other side.
13 Somebody at the plant has to take a look and say, "Does
14 the presence of a canal that didn't exist there before
15 have implications for a plan?"

16 And it certainly does to the extent to which their
17 people have to be trained, and there has to be lighting
18 and so on.

19 And to the extent to which they stonewall and are
20 unwilling to do it, we just want to go forward with the
21 contention.

22 We'll get the testimony in. Our own belief is
23 they're going to back down. We've been through this
24 before with LILCO and we're going to see a resolution
25 of this.

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1 and if they don't, then we'll have the board make a
2 decision.

3 So whenever the board would like to hear from us
4 with respect to a schedule, we'll be prepared and we're
5 ready to pitch some fast balls.

6 JUDGE MILLER: Well, New York?

7 MR. PALOMINO: Judge Miller, as far as vital areas
8 are concerned, I think LILCO takes two overview
9 arguments.

10 One is that these are not on-site equipment. Maybe
11 on-site equipment doesn't have to be secured, but since
12 these are substituting for on-site equipment, they
13 should be considered as required to be vital areas.

14 The regulations don't spell out vital areas and
15 they're going to propose to do it in December, there's
16 no question about that.

17 But the fact is that the TDIs that were laid out
18 were put in vital areas. The coats that they have
19 replacing them are also in vital areas.

20 And if the Commission is going to adopt
21 regulations saying what vital areas are, then these
22 should be in vital areas in December.

23 I just don't understand why LILCO is not interested
24 in meeting that objective now rather than having us
25 come back, or as soon as possible, rather than having

1 us come back in December and challenging it.

2 It seems to me that now's the time and place, and
3 based on the fact that because of their functions, the
4 TDIs and the coat are considered to be needed to be in
5 vital areas, that these substituting for them, should
6 be.

7 The hypothetical arguments that they're not on-site
8 are a substitute, because they are on-site, and they
9 are a substitute for on-site equipment.

10 As far as the Diablo Canyon case, I think Mr. Brown
11 covered that fairly clearly, but we haven't set any
12 standards.

13 It's up to them to meet the standars. As far as
14 specificity, I don't think anything could make them
15 happy as far as contentions are specific unless we gave
16 them a new plan in contentions, and we can't do that.

17 Contentions are supposed to raise issues, you
18 should try and meet them, and we should get together
19 and make the plant as safe as possible for the people.

20 It might have its use. I don't think there's
21 anything that needs to be said except that they argue
22 the case rather than dealing with the contentions, not
23 really giving valid, legal reasons for dismissing them.

24 They're just arguing. We could approve a schedule
25 whereby we could try the issues and get a financial

1 security. I have nothing further to say.

2 JUDGE MILLER: Okay. Staff?

3 MR. PERLIS: Thank you. The staff position on the
4 revised contentions is the same as it was for the
5 original contentions.

6 Basically we see two contentions here. One is what
7 I would consider rather bald assertion that the
8 adequacy of the security for existing vital areas must
9 be reassessed because of the new power configuration.

10 As to that contention, the county and state still
11 have demonstrated no specificity or basis as to why the
12 protection of the currently denominated vital areas
13 needs to be changed.

14 As a contention that's insufficient, the staff has
15 been in a process of preparing an affidavit responding
16 to LILCO's filing, which we did not receive until
17 Monday.

18 Hopefully we will have that affidavit here before
19 the board within the hour.

20 That will explain technically why the staff
21 believes there's just no reason to consider the
22 protection of the currently listed vital areas because
23 of the presence of a new configuration on-site and
24 another new configuration outside of the protected
25 area.

1 As to the other contention, that one can be stated
2 very shortly, although I believe it's in either four or
3 five of the contentions the county has supplied us
4 with.

5 And that is that the new power configuration needs
6 to be vitalized. As I indicated last time, the staff
7 does not object to a contention alleging that they need
8 to be vitalized.

9 I don't think we need five separate contentions for
10 that purpose, though. I think anything stemming in the
11 four or five contentions that deal with that issue all
12 depend first on whether the turbine or the EMDs or both
13 need to be vitalized.

14 If they're not, our security rules seem to state
15 they don't require any protection. If they do need to
16 be vitalized, then certain protection would be
17 required.

18 But I think as a starting point, one needs to
19 answer that question and then depending upon how it's
20 answered, either the proceeding ends, or one then has
21 to look at what protection needs to be afforded.

22 That's basically our position. We strongly oppose
23 the admission of any contention dealing with the
24 protection of items currently listed as vital items.

25 We see no need for it, and the contention doesn't

1 provide any indication in basis or specificity as to why
2 the security plan for the plant as a whole needs to be
3 changed.

4 As to whether items need to be vitalized, this
5 staff does not oppose that contention.

6 MR. BROWN: Would it be permissible, Judge Miller,
7 if Mr. Perlis were to tell us what contention he's
8 referring to?

9 JUDGE MILLER: Yes.

10 MR. BROWN: In his first, not the second. What are
11 you...

12 MR. PERLIS: The first?

13 MR. BROWN: Yes, you said the one that you objected
14 to, and we're not sure which contention.

15 MR. PERLIS: Originally contention 1, in our view,
16 dealt solely with the protection of the plan as a whole
17 and not with protection of the new configuration.

18 Now that contention deals with both. It deals
19 partially with the protection of currently listed vital
20 areas and partially with the protection of the new
21 power configuration.

22 Contention 2 solely deals with what I would list as
23 our contention 2, and that is the protection of the new
24 configuration.

25 JUDGE MILLER: I y to keep your voice up. What is

1 it, precisely, the staff is not objecting to? Which
2 contentions?

3 MR. PERLIS: The contentions themselves, some of
4 them seem to include parts of those of our contentions,
5 both of ...

6 JUDGE MILLER: Both of your contentions?

7 MR. PERLIS: No. The contentions that we see that
8 they're raising.

9 JUDGE MILLER: All I want to know for the record,
10 what contentions or portions of contentions is the
11 staff not objecting to?

12 MR. PERLIS: Contention 2.

13 JUDGE MILLER: Two?

14 MR. PERLIS: There are portions now of contention 1
15 which were not in contention 1 before, which now seem
16 to be arguing that the diesels and gas turbine need to
17 be vitalized.

18 I want to make clear that I think all of these
19 contentions basically are the same as they relate to
20 the contentions we don't object to, which is do these
21 new items require any protection, or don't they?

22 Talking about the gas turbine and the EMDs, the
23 gist of that contention is found now partially in
24 contention 1 and particularly in the editing portions
25 or the newer portions of contention 1.

1 I think it's in contention 2. I don't think it's
2 in either contention 3 or 4. I think it is in
3 contention 5, 6, and 7.

4 Those contentions are all saying the same thing,
5 though, in our view.

6 It would be in 2, in portions of 1, in 5, 6, and 7.
7 It would not be in 3. It would not be in 4, it would
8 not be in portions of 1.

9 But again, I want to stress it's the same idea,
10 that it all depends on whether this new equipment needs
11 to be protected or not.

12 JUDGE MILLER: And you feel that contentions 5,
13 6, and 7 then are in the same vein as that portion of
14 contention 1 to which you have no objection and as to
15 contention 2 in its entirety? That's the staff's final
16 position?

17 MR. PERLIS: Excuse me for a second. Let me look.
18 I want to make our position clear. It is not that
19 contentions 5, 6, 7, portions of 1 and 2 are admissible
20 as separate contentions.

21 All those contentions have as the basic idea behind
22 all of those contentions, at least 2, 5, 6, 7 and
23 portions of contention 1, are that the new power
24 configuration needs to be vitalized.

25 That's the contention we don't object to. I don't

1 see anything in 5, 6, 7, and 2 that doesn't stem from
2 whether or not they need to be vitalized.

3 If they don't need to be vitalized, the rest of
4 those contentions goes away.

5 And the same would be true with the portions of
6 contention 1, which relate to that same issue.

7 JUDGE MILLER: Anything further that hasn't been
8 covered in the way of rebuttal and reputation?

9 MR. BROWN: I would like to just reply, thank you
10 very much.

11 JUDGE MILLER: Let's see if LILCO has anything.

12 MR. IRWIN: I am hoping that this will...

13 JUDGE MILLER: You have to keep your voice up, too.

14 MR. IRWIN: I understand Mr. Brown desires to
15 follow me. I hope I don't have to follow him. Let me
16 just make a couple of points.

17 The first is that we agree with Mr. Perlis'
18 characterization that one concept, that of whether the
19 20-megawatt turbine and the EMDs permeates the new
20 material in contention 1 and is the gist of contention
21 2 and is intrinsic to contentions 5, 6, and 7.

22 I frankly think it may sneak into some of the other
23 contentions, but it's essentially one idea. I also
24 agree that if the board considers that that notion is
25 suitable for litigation, it should consider narrowing

1 the material admitted for litigation to frame that
2 issue rather than admit what is now probably eight
3 cumulative pages of contentions. No cumulative, but
4 eight total pages of contentions which cover many other
5 potentially peripheral areas.

6 LILCO believes, as we've indicated, that these
7 areas do not in these two pieces of equipment, do not
8 need to be vital areas, and that the gist of this
9 argument is intrinsic to the whole proceeding to date
10 and that saying that substitute equipment must be vital
11 areas, must be classified as vital areas, is like
12 saying that these pieces of equipment must be GDC-17.

13 It's intrinsic to the exemption proceeding that if
14 we can show equivalency and we believe we have, that
15 you don't have to meet literal requirements of the
16 regulations. That's what exemptions are all about.

17 Point two, Mr. Brown, as I had expected, has said
18 that we're quibbling with evidence, and not with basic
19 threshold issues.

20 We just simply don't agree. The county has had the
21 plan in the procedures for two years and they have had,
22 in our view, not just simply not gone in and shown why
23 the existing plan, the existing procures, the existing
24 post orders don't meet the requirements that are laid
25 on the plant by the addition of these two pieces of

1 equipment. I won't go back into detail, but again, I
2 think there's a difference between pleading evidence
3 and failure to show a basis given what material is
4 available and the stage of the proceeding and the
5 availability of expertise.

6 In that connection, I'll just simply go back to the
7 fact that we referred to the existence of the agreement
8 not to plead in the stop argument because Mr. Brown is
9 right, the Commission said...he's partially right, the
10 Commission said that the existence of the agreement did
11 not stop litigation, based on punitive issues.

12 The existence of the agreement is evidence of
13 detailed knowledge and familiarity by the county on a
14 long-term basis with what's at Shoreham. We don't
15 believe they've made use of that.

16 Third, there's a question of delay. The accusation
17 that LILCO is interested in delay simply astonishes me.
18 The only delay LILCO is interested in avoiding is that
19 of unnecessary litigation.

20 We believe that litigation is unnecessary for the
21 reasons we've outlined. We have one suggestion for the
22 board, and that is that if the board does admit one
23 contention, and we don't believe it should, we request
24 that the board certify the issue of whether or not the
25 20-megawatt turbine and the EMDs or either of them

1 should be vitalized to the Commission.

2 We believe that the submissions presently before
3 the board are adequate for the board's determination on
4 this at this point, although we'd be happy to supply
5 anything further the board wished.

6 But I think that if no contentions are admitted, the
7 proceeding is over and the country will no doubt have a
8 legal right to take its appeal and the Commission has
9 already said they'd review any kind of determination by
10 this board before issuing a license.

11 So that issue would automatically go before the
12 Commission if this proceeding were terminated on the
13 basis of no contentions being admitted.

14 However, if the contention is admitted, we'd
15 request certification of the issue at the same time as
16 we go forward in preparation for hearing because we do
17 feel it's an important question that is not answered
18 against LILCO 's view coded by the regulations or
19 practice, and we believe the regulations and practice
20 clearly sustain this.

21 And I'll be happy to deal with Mr. Brown's
22 suggestion of the schedule on a hypothetical basis.

23 JUDGE MILLER: We'll get into scheduling when we've
24 completed hearing the arguments on the contentions.
25 Now Mr. Brown?

1 MR. BROWN: Yes, thank you, Judge Miller. Just to
2 respond to Mr. Irwin's last point. I think that this
3 is turning into a minuet with the Commission every time
4 something happens, we hear words about certifying.

5 The security case has been there two times and it's
6 just time to get it over with already, otherwise we'll
7 put papers back and forth and quibble for another six
8 months.

9 Where the staff has gone wrong is the staff is
10 unwilling to look at its own regulations. 73.1 says
11 the following:

12 It says that the stipulate design basis threat
13 issue, (which no one has the right here to quibble), it
14 says that it involves among other things the determined
15 violent external assault, attack by stealth, or
16 deceptive actions of several persons.

17 And another place, I believe, it uses the words
18 diversion or diversionary, somewhere I believe those
19 words are used.

20 But deception and diversion are certainly part of
21 this. That the staff is unwilling to do is to admit
22 that the new configuration can be used for that purpose
23 as well as an end in itself.

24 That is, our contentions specifically recognize the
25 real world. The new configuration of AC emergency

1 power could be used as an end in itself to be knocked
2 out for the purpose of eliminating that source of power
3 or it could be used as a diversion.

4 God knows what it would do specifically. That's
5 for LILCO to make sure that its plan has high assurance
6 against it.

7 One can conjure up simply blowing the place up is a
8 diversion, thus, making vulnerable other portions of
9 the plant.

10 Now, we have no problem with LILCO's existing plan
11 with respect to what the configuration was that was
12 looked at.

13 We're not seeking to relitigate any of that, and
14 that's behind us and closed. What we're saying is that
15 new configuration exists there.

16 And it has to be dealt with the two ways this
17 regulation requires.

18 One is by direct assault on that for the purpose of
19 taking it out, the other is for the purpose of taking
20 it out as a means of something else, a diversion. And
21 the staff fails to accept that.

22 And that is the shortcoming in the staff's
23 objection. We don't quite understand this notion of
24 filing affidavits here, because affidavits go to sworn
25 statements, as to matters of fact, and that again is a

1 matter related to the merits.

2 To the extent to which the facts now are something
3 the staff wants to get involved in, with it just
4 further substantiates the need for us to get on with
5 this and get it over with.

6 Otherwise, we keep quibbling here on the merits
7 which ought to be dealt with in the form of a trial.

8 The very interesting fact was revealed, this is my
9 last point, by the staff, which referred, or LILCO, I
10 think, to the fact that all these detailed contentions
11 we have, I believe, it was the staff, ought not be
12 admitted and only the ones stating or contending that
13 there be a vital area be admitted.

14 Just think what would have happened if the only
15 contention we submitted is that the new configuration
16 should be a vital area.

17 We would have been assaulted by the allegation,
18 "That's not specific enough. You've got to tell us
19 why.

20 You've got to have eight or nine or ten pages."
21 Well, we gave eight or nine or ten pages. We did
22 exactly what we would have heard otherwise.

23 And what do we hear now? "That's not specific
24 enough. You've got to have 11, 12, or 40 pages, or
25 just one page."

1 It's a moving target. We have complied with the
2 requirements. We've been as specific as we can.
3 Everyone understands this, and we just want to get it
4 over with right now.

5 So we're ready to move forward.

6 JUDGE MILLER: Palomino?

7 MR. PALOMINO: Nothing further, your honor.

8 JUDGE MILLER: Anything further from anyone?

9 Staff?

10 MR. PERLIS: Yes, thank you. First of all, one
11 will never know how we would have responded had he
12 submitted one contention.

13 I disagree with his assessment of what we would
14 have done. I didn't hear from him, however, that he
15 disagreed that basically they do all boil down to that
16 one idea.

17 And it is still our position that they do, that
18 every single one of the contentions that I enumerated
19 earlier, the portion of 1, 2, 5, 6, and 7 all basically
20 boils down to whether these areas need to be considered
21 as vital or not and treated as vital or not. I want to
22 stress that.

23 Secondly, insofar as Mr. Brown was talking about
24 diversionary tactics, it is one of the principles of
25 our regulatory program that if a diversionary attack

1 takes place outside of the protected area, this would
2 apply to the gas turbine.

3 The security force is not supposed to leave the
4 vital areas. Their first job is to protect the vital
5 areas and therefore, the diversionary tactic, it would
6 indicate to the security force that there were
7 intruders in the near vicinity but that's all it would
8 serve as a diversionary tactic, they are not supposed
9 to respond.

10 Finally, I would also like to explain the purpose
11 of the affidavit. That came because in the first set
12 of contentions, Suffolk County made a bald assertion
13 that whenever you change any portion of the site, in
14 this case, the two new power sources, that the whole
15 security plant had to be reassessed.

16 We took the opposite position that there was no
17 generic need that the security plan had to be
18 reassessed and changed.

19 And they provided no reason to believe the security
20 plan had to be changed. All they said was, "You have
21 to look at things again."

22 Well, LILCO looked at things and they had
23 information in their filing that was dated August 24th,
24 which we received on Monday, which indicated that
25 in fact, they had considered the effect on the plant as

1 a whole, and they don't believe it changes the
2 acceptability of the plan for the plant as a whole.

3 We will submit an affidavit which has arrived. It
4 is now being Xeroxed, I believe, which indicates
5 the factual reasons why we believe that's not true.

6 But I want to make clear as a pleading matter that
7 it was incumbent upon them to indicate why the plan
8 did have to change, and that was never done.

9 JUDGE MILLER: Does that conclude the arguments on
10 contentions?

11 MR. BROWN: The only point I would make on behalf
12 of the county, I can't conceive of how someone can
13 suggest that we didn't provide a reason why the plan
14 ought to be looked at, in light of the fact that we
15 just mentioned Section 73.55 (a) a dozen times in these
16 contentions, and we must have mentioned it 20 other
17 times.

18 It specifically says that the standard is high
19 assurance of protection. And if that isn't enough for
20 the staff, I can't think what would be.

21 73.55 (a) even goes on to say the Commission may
22 authorize or establish an applicant or licensee to
23 provide measures for protection against radiological
24 sabotage other than those required by this section if
25 the applicant or licensee demonstrates that the

1 measures have the same high assurance objective as
2 specified in the paragraph in the overall level of
3 system performance and so on.

4 I won't go through that, but that's the standard
5 here. There are changes made, and that's what has to
6 be looked at. That's the whole point of this
7 proceeding.

8 JUDGE MILLER: Anything else?

9 MR. IRWIN: Just two quick observations, Judge
10 Miller. First, Mr. Perlis' discussion in response to
11 Mr. Brown's mentioning of direct assault, the contrast
12 between direct assault and stealth versus diversion...

13 JUDGE MILLER: Wait a minute. I'm not hearing you.

14 MR. IRWIN: I'm sorry. Let me deal with this
15 logistic problem. Mr. Perlis just mentioned something
16 which is, I think, important in describing how the
17 NRC's regulations deal with stealth and diversion on
18 equipment or anything outside of a protected area.

19 And he pointed out that the regulations by their
20 structure simply tell applicants or licensees not to
21 get diverted by those diversions.

22 Well, that is, in Mr. Brown's view, a fact to be
23 litigated. In our view, that's a threshold fact.
24 That's the kind of fact that I've referred to as a
25 difference between a moon rock and Swiss cheese.

1 If the regulations just simply preclude something,
2 trying to place it in issue with contentions, just
3 shouldn't be allowed.

4 And I think that permeates, as I mentioned earlier
5 this morning. Finally, Mr. Brown again has come up
6 with his complaint about the lack of a formal evaluation
7 by LILCO in a binder of the effects or lack thereof on
8 its basic security structure.

9 He hasn't shown any place where there is a
10 requirement for such a submission of a document. We
11 performed that process, we described in on August 24,
12 and if Suffolk County had answered our letters earlier,
13 they might well have understood before now the thought
14 process we engaged in.

15 And the fact that they didn't is not a basis for
16 admission of contentions.

17 MR. BROWN: I do not believe this county has ever
18 said anything about responding to letters or not as a
19 basis for our contentions, and it's that kind of
20 statement which really opfiscates what we're dealing
21 with here.

22 It's important that we deal with what's written
23 down and what the arguments are on a merits and not
24 these kind of hyperbolic commentaries.

25 JUDGE MILLER: All right. I think that we're

1 clear, then, on hearing from counsel on the proposed
2 revised contentions.

3 We'll take the matter under advisement. I think
4 this would be a good time now to ask the parties for
5 their suggestions as to revised scheduling, taking note
6 of the fact that the Commission has expressed some
7 concern about the schedule at least to the extent that
8 it considered that the board might have been influenced
9 by their guidance on expedited scheduling in COI-84-8.

10 Also in view of the fact that the schedule was
11 adopted when the Commission indicated for the first
12 time that the regulations pertaining to reopening the
13 record or untimely filed contentions were not to be
14 applied in this matter with regard to security, and
15 therefore, while we were preparing, all the parties
16 were preparing for the trial of all of the issues and
17 contentions other than security.

18 We immediately, in seeking to follow the varying
19 guidance of the Commission, established a schedule,
20 using what materials were at hand, realizing, of
21 course, that we didn't even know when the evidentiary
22 hearings up in Hoppague would terminate.

23 So a summary vision certainly would be
24 unreasonable, but we're not trying to cast anything in
25 concrete.

1 So we'll hear from all counsel concerning their
2 suggestions as to proposed rescheduling of the security
3 matters which we've been having in a separate or
4 discrete issue.

5 Who wants to go first?

6 MR. BROWN: We've got a proposal we've prepared.

7 JUDGE MILLER: All right.

8 MR. BROWN: Thank you. Our view is that we can
9 move this very quickly to a trial and then put the
10 board in a position of making a decision at the board's
11 earliest convenience thereafter by schedule which would
12 eliminate discovery.

13 We have what LILCO provided to the board as what
14 it's done. We would like only one element of what's
15 normal discovery, and that would be a site visit.

16 In fact, we would respectfully suggest that perhaps
17 the board itself would consider a site visit for this
18 matter, but we would like to have that site visit
19 during the very period that we'd like to do the
20 testimony.

21 We would propose three weeks for the preparation
22 and the filing of testimony. We would then propose the
23 hearings start ten days to 14 days thereafter.

24 That would turn out to the following: if
25 hypothetically this board were to make a ruling on

1 contentions today, it would mean we would have the
2 filing of testimony.

3 We'd have a site visit some time in the next few
4 weeks that prove to be convenient to all the parties,
5 and we'd have the testimony filed on the 20th, and we'd
6 have the trial on October 2nd.

7 Our view is that the trial we're talking here is
8 something that certainly ought to be over in two days
9 or conceivably a third day.

10 We don't anticipate a lot of time there, and that's
11 our proposal.

12 If the board wished to have something further in
13 writing from the parties, a simultaneous filing of
14 rebuttal testimony, for example, we would not object.

15 Our basic proposal would be that, and using, as I
16 said, today as an admission date for contentions, it'd
17 be September 20 and October 2 for commencement of
18 trial.

19 JUDGE MILLER: State of New York? Mr.
20 Palomino?

21 MR. PALOMINO: I had previously discussed with the
22 county that I concur with that schedule.

23 JUDGE MILLER: Okay. Thank you. LILCO?

24 MR. IRWIN: Could you give me about 30 seconds to
25 confer with Mr. Earley?

1 JUDGE MILLER: Yes.

2 MR. IRWIN: Judge Miller and members of the board,
3 I'm sorry...LILCO is in favor also of bringing issues
4 to trial if there is going to be a trial quickly.

5 The only aspect of Mr. Brown's proposal which is
6 troublesome is that the county has already had full
7 discovery of LILCO consisting of the security plan, the
8 procedures, many other documents plus two years of
9 correspondence, unlimited access to the site for a
10 period of several months, and at least two recent site
11 visits.

12 We've had no discovery whatsoever of the county.
13 We don't even know the names of their witnesses are
14 going to be, necessarily. We have a list of experts.

15 LILCO has a counter-proposal. I think that Mr.
16 Brown's suggestion of granting the county and its
17 experts one more site visit is, assuming satisfactory
18 arrangements can be made as to access, the numbers of
19 people and so forth, not unacceptable to LILCO.

20 LILCO, on the other hand, does need some discovery
21 of the county's experts and we would be willing to take
22 it in either or two fashions.

23 One is a discovery period during the testimony
24 preparation period. The other would be staggered
25 testimony filings.

1 And permission for LILCO to file its testimony,
2 it's allowed, a week after the county filed its
3 testimony with permission to take a total of, say, two
4 days' depositions during that week in order to explore
5 the bases of assertions made in the county's testimony.

6 We would frankly, with that modification, I would
7 accept Mr. Brown's schedule.

8 JUDGE MILLER: Staff?

9 MR. PERLIS: The only problem the staff has with
10 the schedule is the same as LILCO's. We would like
11 either the opportunity to depose Suffolk County's
12 witnesses or possibly as an alternative, the provision
13 for filing a rebuttal testimony.

14 JUDGE MILLER: Do you have any time periods that
15 you suggest?

16 MR. PERLIS: I would think if one went the rebuttal
17 testimony route, the schedule could stay the way it is
18 now except a week after September 20th the parties
19 could file rebuttal testimony.

20 You could still go to trial on October 2nd with
21 that.

22 JUDGE MILLER: Wait a minute. I didn't get your
23 last remark.

24 MR. PERLIS: I think you could still go to trail on
25 October 2nd with that.

1 JUDGE MILLER: All right. Any comments upon these
2 various proposals?

3 MR. BROWN: Yes. If there is going to be a
4 discovery, first of all, if there's going to be a
5 discovery and deposition of our witness, certainly it
6 ought to be the normal time it's done, not after the
7 testimony's filed, so that it becomes, in effect,
8 cross-examination.

9 And secondly, if the ground rules are going to be
10 that there is a deposition period, we're going to do
11 that, too, to gain whatever benefits there are.

12 LILCO suggests that we've got unlimited access. We
13 frankly don't stroll into that facility the one time
14 that our people visited it, it wasn't with all the
15 security consultants for the purposes of focusing in on
16 the contentions, which presumably would be admitted.

17 Secondly, the correspondence and other things that
18 LILCO has suggested somehow give us some inside
19 information and an advantage with respect to this new
20 configuration, just is a mischaracterization of what
21 that correspondence has been.

22 And if LILCO would like to take depositions of our
23 people, we wouldn't object to it, but we would then
24 want...we don't even know who their witnesses would be.

25 We want to know who their witnesses are, outside

1 consultants, people in the company, and we might well
2 want to take their depositions, too.

3 And that would just mean an extension of this time
4 period. We're prepared to go forth with what's on the
5 public record now, which is exactly what LILCO knows,
6 namely the five or six, I guess it was seven
7 attachments they included.

8 We believe that's perfectly adequate for purposes
9 of these contentions, and we'll go forward on that
10 basis as long as the other parties will.

11 JUDGE MILLER: Anything further?

12 MR. BROWN: Otherwise, there's got to be more time.

13 JUDGE MILLER: Okay. Has everybody had his say on
14 this? All right. I take your suggestions for
15 rescheduling, then, under advisement, also.

16 I think also we were asked to take up the August 24
17 letter or communication from Suffolk County, and I
18 assume this on behalf of the state as far as there is
19 any commonality in the matters.

20 We understand the state...Mr. Palomino already has
21 taken care of his own participation.

22 We did at the conclusion of the evidentiary hearing
23 all issues except the security or safeguards indicate
24 that we would permit Suffolk County to lose three
25 attorneys, two secretaries, two Suffolk County police

1 officials and two expert security consultants. And the
2 first portion, therefore, of the letter of
3 communication to the board is consistent with those
4 indications and gives the appropriate information as to
5 the identities, status, previous authorization and the
6 like of each of those persons, now designated by name,
7 seven in number.

8 Let me question, first of all, of the other
9 parties. Do you have any objections to the granting of
10 authorized persons status to the seven persons listed
11 under the first section of the August 24 communication?

12 MR. LANPHER: It's nine people.

13 JUDGE MILLER: Oh, pardon me.

14 MR. LANPHER: Including the two secretaries.

15 JUDGE MILLER: Oh. They're not numbered?

16 MR. LANPHER: One through nine.

17 JUDGE MILLER: Six, seven. Oh, I see. Nine are
18 the experts that were requested. Yes. Nine.

19 MR. IRWIN: LILCO has no objection to the nine
20 people listed in category one of the county's letter.
21 We believe that's a reasonable number.

22 JUDGE MILLER: Okay.

23 MR. PERLIS: Staff has no objection.

24 JUDGE MILLER: Staff. Very well. Those persons,
25 then, will be permitted to participate as authorized

1 persons. If they haven't already done so, they may
2 execute the affidavit. All right.

3 Now the next category, two, resumes and request
4 pertaining to Chief Roberts and Inspector McGuire,
5 Inspector Jenkins, and Mr. White.

6 MR. LANPHER: No, Judge. The next category which
7 starts at the bottom of page five of that letter
8 spelled out in more detail on the top of page six,
9 pertains to additional Suffolk County police officials,
10 Commissioner DeWitt Treader (phonetic), and then three
11 officers, Competello (phonetic), Monteeff (phonetic),
12 and Toronto (phonetic).

13 JUDGE MILLER: Yes. Very well. Any objections,
14 then, to the four officials, police officials, on page
15 six of the communications?

16 MR. IRWIN: Yes, Judge Miller. LILCO does object
17 to the addition of these four persons, and the reason
18 is very simple.

19 The Suffolk County has not given any reason other
20 than the fact that these four officers either occupy a
21 position in a hierarchy which relates to Commissioner
22 Treader or were involved at one time or another in
23 various aspects of the security settlement proceeding
24 two years ago in support of their admission.

25 I acknowledge that Commissioner Treader may need to

1 know what's going on, but one has to look at what
2 safeguards information and safeguards information under
3 the regulations is detailed information which respects
4 either the potential for releases from special nuclear
5 material or from the destruction of physical
6 facilities.

7 The Suffolk County has given no explanation of why
8 Chief Treader has to get into details. Commissioner
9 Roberts...excuse me, Inspector Roberts and Inspector
10 McGuire were the two Suffolk County policemen who dealt
11 in detail with LILCO and the NRC staff two years ago.

12 They are fine men, good police officers, will make
13 excellent witnesses if they appear, they're fully
14 knowledgeable about the plan, Suffolk County has given
15 no justification of why their expertise needs to be
16 supplemented.

17 And I see no need to treble the number of police
18 working on what Suffolk County believes is a case they
19 can prepare in three weeks and try in two days.

20 JUDGE MILLER: Staff?

21 MR. PERLIS: The staff has no objection to these
22 four people.

23 MR. LANPHER: Judge Miller, if I can respond just
24 very briefly, I don't think it takes a lot of response.
25 First of all, Commissioner Treader, the reasons, I

1 think should be obvious why he needs to be able to
2 communicate with the officers working under him.

3 We would be willing to stipulate that he will not
4 look at the security plan or documents themselves; he
5 just needs...these are officers that work for him, and
6 they need to be able to communicate with their boss.

7 And this was before Commissioner Dilworth
8 (phonetic) the prior police commissioner was in this
9 position of being able to communicate.

10 As noted in our letter, he is retired. Obviously
11 he's not...he is a deleted authorized person. We don't
12 intend to communicate any safeguards information with
13 him, but in the course of conversations, Officers
14 Roberts or McGuire might need to communicate some
15 information that is either safeguards or arguably is
16 safeguards.

17 And let me say one thing, Judge Miller. We take a
18 very strict view on what is safeguards, and there's a
19 fine line there or fuzzy line, if you want to call it
20 that, and we want to make sure that we don't transgress
21 any orders to this board.

22 And that's why we're asking that these officers be
23 able to communicate with their boss. Second, the
24 other officers, Competello, Monteeff, and Toronto, are
25 persons that deal very closely with Officers Roberts

1 and McGuire. For LILCO to say that we don't need these
2 people to prepare our cases is...I just can't
3 understand how LILCO feels they're in a position to say
4 that.

5 These were the people that were really part of,
6 frankly, the police officer team, if you want to call
7 it, in the prior security proceedings.

8 They're all authorized people from the board,
9 Judge. They've had access to the safeguards
10 information previously.

11 The additional access that we're talking about here
12 is very limited in the sense that it goes to the
13 enhanced AC power system that we've been talking about.

14 I don't want to debate the point, but Officers
15 Roberts and McGuire have made clear that these other
16 officers are important to their ability to help prepare
17 the case for the county and to make the assessment on a
18 timely basis that are necessary.

19 We just don't see that there is any difficulty in
20 allowing these gentlemen, who I'm sure LILCO will agree
21 they know who these gentlemen are.

22 It's not as if they're not trustworthy. These are
23 officers of the Suffolk County Police Department that
24 take the responsibility very carefully.

25 And they are necessary for the preparation of the

1 case. Further, the protective order relating to law
2 enforcement agencies seems that at least arguably
3 allows access of these persons, even without signing
4 affidavits, we'd certainly want them to sign the
5 affidavit and non-disclosure.

6 And you've indicated, you want everyone to. But we
7 think that you've already recognized the propriety of
8 allowing law enforcement officials to participate.

9 MR. IRWIN: If Mr. Lanpher's citation of the
10 regulation is correct, it's incomplete. The definition
11 of authorized person includes people in various
12 categories who have an actual need to know.

13 It's not the convenience of a person or a party
14 which governs access to safeguards information; it's
15 need to know in fact.

16 And the county, in our view, has failed to show
17 that need to know on the part of these three officers.

18 MR. LANPHER: Judge Miller, I was not citing to the
19 regulation; I was citing to your protective order dated
20 August 17, paragraph 1-P, which includes appropriate
21 law enforcement agencies on authorized persons.

22 JUDGE MILLER: Very well. What do you have to say
23 to category three, which is Mr. John Gallagher, I
24 believe, deputy county executive.

25 Is there any objection to that person?

1 MR. IRWIN: Judge Miller, in our view, Mr.
2 Gallagher, who is also a fine public servant, an
3 outstanding man, and important to the policy-making
4 functions of the county, has a perfect right to know
5 the general outlines of matters pertaining to the
6 Shoreham plant.

7 But I don't see any reason why he has to know the
8 details of safeguards information, and I don't believe
9 Suffolk County has alleged any specific technical
10 expertise or decision-making function in his part that
11 require knowledge of such details.

12 For that reason, while we don't oppose the county's
13 discussing matters generally with him that don't
14 involve safeguards information, then you've got to look
15 at the definition of safeguards information.

16 We don't think he's demonstrated a need for access
17 to it.

18 JUDGE MILLER: staff?

19 MR. PERLIS: The staff wouldn't object to this
20 gentleman, your honor.

21 JUDGE MILLER: Anything further?

22 MR. LANPHER: Judge Miller, I think we've laid it
23 out in our letter. We want the same access that was
24 provided before to Deputy Executive Jones, who will no
25 longer will be consulted about any such matter.

1 We will do our very best not to divulge any
2 safeguards information, but it's a fuzzy line again.
3 And under the Code of Professional Responsibility, we
4 have to be able to deal with the client.

5 So we're asking for a very limited ability to
6 consult, and we really think that if we aren't able to
7 do that, it puts us in a terrible quandry how we're
8 supposed to deal with our client.

9 JUDGE MILLER: State the next category now.
10 Mr. Gregory C. Minor, a consultant with M.H.B.
11 Technical Associates.

12 Pages seven and eight has the fourth category. Any
13 objections to Mr. Gregory Minor?

14 MR. IRWIN: Yes, Judge Miller. I'll note just
15 parenthetically that by now we are up to seven
16 additional persons, six, I'm sorry, beyond those
17 permitted by the board's order.

18 Lest we salami this letter and make fragmented
19 decisions, Mr. Minor is put forth as a technical
20 expert, not as a security expert.

21 Mr. Minor can answer questions as to the effect of
22 certain disablements of plant features. He doesn't
23 have to know about the security-related aspects of how
24 those disablements occur.

25 The Diablo...and as Mr. Earley reminds me, those

1 kinds of disablements have in fact already been
2 litigated, but I can understand how Mr. Minor might
3 want to be consulted as to exactly how radiological
4 consequences occur.

5 Nevertheless, he's not put forth as a security
6 expert, and I think you have to have lines of
7 demarcation, although I don't have the Diablo Canyon
8 site handy, there is, and I'll be pleased to provide
9 later, the case excluding technical experts who do not
10 have security expertise from access to security
11 information on the same basis that I've just argued
12 today.

13 JUDGE MILLER: Staff?

14 MR. PERLIS: Staff also doesn't see a need for Mr.
15 Minor to have access to the plant, to the security
16 information.

17 We can well understand that the security experts
18 wish to consult with him on technical matters relating
19 to the operation of the diesels, but Mr. Minor would
20 not need any access to safeguards material to be able
21 to answer questions they would have about the
22 operability of equipment.

23 And that's the only role that I can conceive that
24 he would have.

25 MR. LANPHER: Judge Miller, as we made clear in a

1 letter, we are not asking that he have access to the
2 security plan or any documents, you know, of LILCO that
3 are stamped as safeguard information.

4 We are trying to keep his access as limited as
5 possible. I think the characterization by LILCO is
6 generally right that what we need is for him to be able
7 to consult on the technical matters with security
8 experts to answer their questions, explain
9 ramifications, if particular types of events were to
10 occur.

11 The very practical problem that we have, Judge
12 Miller, however, is the demarcation concerning exactly
13 what is safeguards information.

14 I'll tell you quite frankly, talking with Greg
15 Minor, he's got great reluctance to be in this
16 proceeding because of the safeguards nature in that.

17 But he also is very concerned about consulting and
18 answering questions when inadvertently, perhaps,
19 safeguards information might be divulged by security
20 experts that perhaps just can't read the fine lines
21 that should be there.

22 There should be some fine lines, and we're looking
23 for a happy medium, really. We're not going to try to
24 divulge safeguards information to him, except on an
25 absolute need-to-know basis.

1 But there may be situations where he has to, and
2 we're willing to make the representation that we're
3 going to keep that to the absolute minimum and
4 certainly never see the security plan.

5 But we have to look at the practical realities on
6 how you proceed in these cases.

7 I will just note that in the prior...what do we
8 call it...Lawrenson (phonetic) proceeding on security,
9 Mr. Mark Goldsmith, another consulting firm acted
10 as...he had some security experts, but primarily he was
11 acting as a technical consultant to do just this kind
12 of role, to explain things to the security...the
13 primary security experts.

14 So he's not participating in this proceeding;
15 that's why we're seeking such a technical individual.
16 Thank you.

17 MR. IRWIN: Judge Miller, just let me add one
18 thing. Mr. Lanpher is correct that LILCO did permit
19 Mr. Goldsmith access to safeguards information in the
20 earlier proceeding.

21 It was on the strength of a representation by
22 Suffolk County that Mr. Goldsmith possessed security
23 expertise as well as technical expertise.

24 No such representation has been made about Mr.
25 Minor.

1 JUDGE MILLER: What about the last request? Mr.
2 Michael S. Miller, Attorney, with the firm
3 representing...

4 MR. LANPHER: That wasn't intended as a request,
5 Judge Miller. We wanted to have a complete record here
6 to apprise you that Mr. Miller was involved in the
7 prior proceeding.

8 He continues, I know twice this week, I believe
9 twice this week, he's received correspondence relating
10 to this security plan from Mr. Irwin.

11 He gets that information, so we just wanted you to
12 be aware of that.

13 MR. IRWIN: Mr. Miller is a conduit of information
14 on the security agreement, and LILCO has no objection
15 to his continuing that role.

16 JUDGE MILLER: I think that's all that's asked,
17 really, in this. Okay. All right. Let's take a short
18 recess.

19 Is there anything further now that anyone wishes to
20 bring before the board or any new or different matters?

21 MR. PERLIS: Yes, sir. The staff has a number of
22 copies of an affidavit from Charles Gaskan. I don't
23 know if the board wants it still, but it deals with the
24 adequacy of protection for the security plan as a
25 whole, for the vital areas currently protected, and how

1 that is actually not affected by the presence of the
2 gas turbine and the EMDs.

3 JUDGE MILLER: Well, how would that not be
4 evidentiary in nature?

5 MR. PERLIS: I believe at the last pre-hearing, the
6 board asked Suffolk County...I'm sorry, asked LILCO to
7 demonstrate this very thing in paper, and that was one
8 of the primary reasons that they came up with their
9 August 24th document.

10 Due to the short time span, we were unable to
11 prepare this affidavit earlier.

12 But it's primarily also in response to what we
13 thought the board was asking.

14 JUDGE MILLER: Well, the staff intended to file
15 something pursuant to our request of LILCO to indicate
16 what analysis it had made, what the plan provided in
17 possession of a copy of and to give us in writing the
18 state of the record of LILCO's position, activities,
19 and the like.

20 Now the staff certainly was present at that session
21 and had the staff wanted to do anything similar, either
22 pro or con, certainly it should have done so
23 seasonably.

24 MR. PERLIS: It was my understanding that you had
25 asked the parties to respond to what LILCO submitted.

1 If that's incorrect...

2 JUDGE MILLER: I don't recall that. I certainly
3 would have given the opportunity, but what I meant by
4 response was something a little sooner than the case of
5 the arguments of counsel scheduled as part of this
6 special pre-hearing conference.

7 That's running a little late.

8 MR. PERLIS: I just want to clear this. This
9 affidavit was put forth to respond to issues covered by
10 LILCO in their filing.

11 JUDGE MILLER: Issues covered what?

12 MR. PERLIS: By LILCO in their August 24th filing,
13 which we didn't get until this Monday.

14 JUDGE MILLER: Is there anything in...you didn't
15 get the August 24th filing of LILCO until this morning?

16 MR. PERLIS: This Monday.

17 JUDGE MILLER: Oh, I'm sorry, this is Thursday.
18 Well, was there anything in there that was new, novel,
19 or took you by surprise?

20 MR. PERLIS: I can't say there was anything in
21 there that took us by surprise, no.

22 JUDGE MILLER: Or new or novel?

23 MR. PERLIS: It was written on paper. In that
24 sense...

25 JUDGE MILLER: Before, it was just people talking

1 to people and now you put it on paper. But other than
2 that, then, you don't attribute any particular novelty
3 to you and to the technical staff, then?

4 MR. PERLIS: No, again, it was my understanding
5 that the board wanted us to respond to LILCO's filing.
6 If that was incorrect...

7 JUDGE MILLER: No, we didn't care if you responded
8 or not. We certainly gave you the opportunity, but we
9 were asking LILCO as a party, which had made the
10 request for exemption to indicate the nature of the
11 plan, to furnish a copy of it, and indicate what
12 analysis had been made and to do it in writing.

13 The other parties were free to respond or not. You
14 notice that we indicated to Suffolk County that they
15 were free to amend or refine the contention in light of
16 that filing if they wished.

17 We wouldn't have required them to do it, but it was
18 helpful that they did. The staff was helpful, but a
19 little dilatory.

20 I think we don't want to encumber the record now
21 with these suppositious affidavits at this late date,
22 we don't know what it goes into.

23 We don't want to go up that ball bat again, so
24 we'll deny the request of staff to file whatever
25 affidavit it is at this time.

1 MR. PERLIS: Thank you.

2 JUDGE MILLER: Anything further? Okay, we'll take
3 a short recess.

4 (Whereupon, a ten-minute recess was held.)

5 JUDGE MILLER: We go back on the record now. Let
6 me inquire. I've given the reported a copy of the
7 transcript with the corrections or changes noted by
8 LILCO.

9 I think your cover letter indicated you may have
10 conferred with some counsel, staff, and I'm not sure
11 about the country.

12 At any rate, let me request anybody who has any
13 corrections and additions to turn them in to the
14 reporter, because we have considered that that
15 transcript is wholly unacceptable to our purposes.

16 We therefore ask that it be completely redone, so
17 any notes, some of it was substantial mistakes, not of
18 spellings or even of names, but of intent and purpose
19 of argument, things of that kind.

20 We deem it wholly unacceptable. We ask that it be
21 completely redone, keeping the same pagination or at
22 least we're not going to change pagination as a result.

23 So anybody that has anything in addition that would
24 be helpful in recompiling that particular transcript, I
25 request that you submit them to the reporting service.

1 Now as to today's proceeding, this is, as I told
2 the reporter, in-camera, handled separately, this
3 starts, I believe, with page S-95.

4 These are all "S" numbers, S-1, S-2, and so forth.
5 I think it commences with S-95, because my copy seems
6 to end on S-94.

7 Is this compatible with counsel's understanding?
8 Let's be sure that we have continuous, consecutively-
9 numbered pages and this in-camera proceeding would be
10 an "S" number.

11 MR. PERLIS: Mr. Chairman, our copy ended with S-
12 94 as well.

13 JUDGE MILLER: Okay. Then commence with S-95, if
14 you will, please, Miss Reporter. I've also asked now
15 if there are any uncertainties that the reporter has as
16 to the names, spellings, use of terminology, anything
17 of the kind, that she asks as soon as we conclude,
18 which will be very shortly.

19 So she will have the benefit of whatever assistance
20 she may need to get us a reasonably accurate
21 transcript.

22 The board has determined to take under advisement
23 the various matters that were discussed by counsel and
24 heard by the parties.

25 We expect to issue an order with reasonable

1 promptness, probably, I should think, probably Tuesday,
2 Labor Day being Monday of next week.

3 Let me ask, Miss Reporter, when can we get the
4 transcript of today's argument here in Bethesda before
5 this board in hand?

6 MS. BECKER: It goes to NRC tomorrow morning.

7 JUDGE MILLER: We'd like to. It doesn't do much
8 good down there on H Street, except it satisfies
9 whatever the regulations are, but we're going to have
10 to work with it, so we'd like to have it here in our
11 Bethesda offices tomorrow morning.

12 MS. BECKER: Okay.

13 JUDGE MILLER: By noon, if possible. So see what
14 can be done. If you have any problems, let our people
15 here know, so they can try to go through a tape, if
16 that's what it takes.

17 Did the staff indicate you had some interest in
18 that, or were you just shaking your head to be
19 pleasant? All right, strike that.

20 I think then, as I say, we will get the appropriate
21 orders out and we thank counsel and parties. You've
22 covered the thing very well and very professionally,
23 the issues before us.

24 If there is nothing in addition, we will stand,
25 then, in recess at this time. Thank you, Mr. Marshall.

(Whereupon, the meeting recessed at 12:00 p.m.)

1 MR. BROWN: Yes, we are, Judge Miller. I'm going
2 to be very brief. We also have a proposal for later,
3 which will just get this whole matter moving on.

4 I think you once referred to it as a great deal of
5 winding up and no one ever pitches the ball. We're
6 ready to pitch right now.

7 What we heard from LILCO is exactly the same thing
8 for the third time. We heard it orally at great length
9 at our last conference.

10 We saw it in writing, and now we've heard it for
11 the third time. And what it is that LILCO is doing is
12 that they're arguing the merits.

13 They're arguing evidence and saying on the merits
14 that they can demonstrate why. And that's the whole
15 point of the litigation.

16 The Commission said we ought to go forward as long
17 as the several requirements were met, and each of those
18 requirements is met.

19 We don't have any contentions that are challenging
20 the regulations, and we have contentions which are
21 specific.

22 What LILCO is doing, for some reason we can't
23 understand, is just generally finding problems with our
24 contentions, and they're like moving targets.

25 Whatever words we have, LILCO says it's not

1 specific enough. They haven't come in with anything
2 specific and said, "Well, change this in one way or
3 another. If you can do that, that would be
4 satisfactory."

5 Instead, they just want to quibble over the general
6 word, whether it's specific or not.

7 JUDGE MILLER: Pardon me. Did someone just come
8 in? Yes.

9 MR. GASANDO: Judge Miller, my name is Gary
10 Gasando. I work for the Long Island Lighting Company.

11 JUDGE MILLER: Thank you. Proceed.

12 MR. BROWN: So it's just a rut hearing as far as
13 we're concerned. The second thing is that we're
14 getting into a situation here where we're simply
15 confronted with delay.

16 It's time for a decision, and I think that what we
17 can reply with here make it possible for the board to
18 stand at the threshold of a very prompt ruling on these
19 contentions.

20 The fact is, and it was demonstrated by LILCO's
21 filing of the 24th of August, is that LILCO did
22 nothing.

23 The earliest document which came in, I think, was
24 dated the 14th of May, and that May 14th filing is the
25 first notion of LILCO considering that there might be

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, Deborah Dianne Reid, 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.

Deborah Dianne Reid

Subscribed and sworn to before me this
30th day of August, 1984.

William J. Back

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative judges
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Elizabeth B. Johnson

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(Shoreham Nuclear Generating Plant,
Unit 1)

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(Low Power)

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Barbara J. Beck

Subscribed and sworn to before me this

30th day of August, 1984.

Kim M. Schroeder

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, DAVID L BECKER, being duly sworn,
state:

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

David J. Becker

Subscribed and sworn to before me this

30 day of AUGUST, 1984.

Salman J. Seck