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Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: Docket No. 50-322-OL-5

DOCKET NUMBER

PROD. & UTIL. FAC.

50-322-OL-4

Dear Administrative Judges:

In accordance with the requests made during the conference call on February 25, 1985, Suffolk County sets forth in the attachment hereto topics/agenda items which merit discussion at the Conference of Counsel scheduled for 10:30 a.m. on February 28 in Bethesda, Maryland.

Sincerely yours,

*Lawrence Coe Lanpher*

Lawrence Coe Lanpher

LCL/dk  
Enclosure

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## TOPICS TO BE DISCUSSED

1. Law of the Case. ALAB-800 is law of the case. Under ALAB-800, the 20 MW gas turbine and the EMDs must be vital equipment in order to comply with Part 73 or LILCO must demonstrate via an exemption under 10 C.F.R. § 73.5 that operation can be justified with other than full compliance with Part 73.

2. Threshold Factual Issues. Are gas turbine and EMDs protected as vital equipment?

(a) Gas Turbine. No.

(b) EMDs. No. Some evidence (from Security Plan Revision 9) of "enhancements" to protection of EMDs but County's preliminary review indicates that standards for vital equipment (10 C.F.R. § 73.55) are not met.

3. LILCO Options. Since it is clear that at least the gas turbine and probably EMDs as well are not protected as vital equipment, LILCO must either: upgrade protection to vital level; or apply for a Part 73 exemption (10 C.F.R. § 73.5) and specify why the Part 73 exemption requirements are satisfied. If exemption route is chosen by LILCO, other parties then respond to exemption application and proceeding to continue in rough parallel to procedures mandated by CLI-84-8. County understands that LILCO does not intend to protect both the gas turbine and EMDs as vital equipment and thus exemption route appears to be the option chosen by LILCO. Therefore, next step in proceeding is for LILCO to file for a Part 73 exemption if it so chooses.

4. Other Topics.

(a) Existing Contentions. Premature to address contentions at this time, since LILCO has not upgraded protection to vital equipment levels and no LILCO exemption request has yet been filed. Further, in exemption context, contentions are not required; burden of proof is on LILCO to satisfy exemption standards. Finally, if something akin to contentions is deemed useful to focus issues, the existing contentions must be revised to reflect ALAB-800 and changes to security for EMDs which have been instituted since original contentions were prepared. Thus, the existing contentions are not a proper focus absent revision.

(b) Discovery. If LILCO files for an exemption, County experts must visit site to examine current protection for EMDs and gas turbine and associated systems. Other discovery may also be required. Only once such discovery is completed can critical issues be focused.

- (c) Safeguards Issues. Will Miller Board protective order of August 17, 1984 remain in effect? What is effect of NRC's February 8 Order Directing Release of Materials Previously Categorized as Safeguards Information? What is procedure for qualifying attorneys and experts for each party?