

ORIGINAL

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

COMMISSION MEETING

Oral Argument on Shoreham

(Public Meeting)

Docket No. SD-322

Location: Washington, D. C.
Date: Tuesday, June 4, 1985

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ORAL ARGUMENT ON SHOREHAM

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PUBLIC MEETING

U.S. Nuclear Regulatory
Commission
1717 H Street, N.W.
Room 1130
Washington, D.C.
Tuesday, June 4, 1985

The Commission met, pursuant to notice, at 2:10 p.m.

COMMISSIONERS PRESENT:

- NUNZIO PALLADINO, Chairman of the Commission
- THOMAS M. ROBERTS, Commissioner
- JAMES K. ASSELSTINE, Commissioner
- FREDERICK M. BERNTHL, Commissioner
- LANDO W. ZECH, JR., Commissioner

STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

- SAMUEL J. CHILK, Secretary
- HERZEL PLAINE, General Counsel
- MICHAEL BLUME, Office of General Counsel

1 STAFF AND PRESENTERS SEATED AT COMMISSION TABLE (Continued):

2 FABIAN G. PALOMINO

3 MARTIN ASHARE

4 WAYNE PROSPECT

5 DONALD P. ERWIN

6 ROBERT ROLFE

7 TAYLOR REVELEY

8 ROBERT PERLIS

9 RALPH CARUSO

10 CHARLES GASKIN

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P R O C E E D I N G S

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2 CHAIRMAN PALLADINO: Good afternoon, ladies and
3 gentlemen. The purpose of this afternoon's meeting is to hear
4 oral presentation from the parties to the Shoreham licensing
5 proceeding. A notice of oral argument issued last week by the
6 Commission set out three issues to be addressed today, as well
7 as other matters in which the Commission is interested.

8 Yesterday, June 3rd, the Commission received a
9 letter from Mr. Martin Bradley Ashare, Suffolk County
10 attorney. The letter stated that Mr. Ashare would represent
11 the County in all Shoreham-related proceedings. The letter
12 stated that the County did not wish to have the oral
13 presentation scheduled for today adjourned.

14 Earlier yesterday, the Commission received a
15 pleading entitled Suffolk County Motion for Postponement for
16 Oral Argument filed by Mr. Herbert H. Brown. Attached to that
17 pleading was a letter signed by two Suffolk County legislators
18 stating in essence that Mr. Brown represented Suffolk County.

19 The Commission also had a request, which it agreed
20 to, to hear from a former member of a county legislature. He
21 may address the Commission for five minutes following the
22 presentation of the Suffolk County attorney.

23 I believe I speak for the Commission when I say that
24 we look forward to today's presentation to identify for the
25 Commission who is speaking for the County on this matter.

1 [Laughter.]

2 Our scheduling order provides 15 minutes for each of
3 the parties to the case, plus five minutes for Mr. Prospect.
4 I urge the designated speakers to adhere to their allotted
5 time.

6 If any party intends to address matters that
7 constitute protected, sensitive safeguards information, we
8 will need to close that portion of today's meeting.
9 Therefore, the speaker should indicate his intent to cover
10 safeguards information at the outset of his presentation. If
11 it is necessary to address such matters, then the Commission
12 will go into closed session, and that will be at the end of
13 the open meeting, to address the protected safeguards
14 information. If any party believes that our public
15 discussions involve safeguards information, its representative
16 should raise a prompt objection for Commission consideration.

17 General Counsel informs me that he has two
18 preliminary matters that he believes we ought to attend to,
19 and unless other Commissioners wish to make opening remarks, I
20 would propose to turn it over to General Counsel.

21 MR. PLAINE: Thank you, Mr. Chairman. I simply
22 wanted to have it noted for the record that the Commission has
23 denied the Motion for Postponement of the Oral Argument. In
24 addition, has recognized the right for a limited appearance by
25 Mr. Wayne Prospect, representing certain legislators of the

1 Suffolk County legislature.

2 It would be useful if the four parties would please
3 enter their appearances for the record. For New York State?

4 MR. PALOMINO: Fabian G. Palomino.

5 MR. PLAINE: For Suffolk County?

6 MR. ASHARE: Martin Bradley Ashare.

7 MR. PLAINE: For Applicant, LILCO?

8 MR. ERWIN: Donald P. Erwin.

9 MR. PLAINE: And for the NRC Staff?

10 MR. PERLIS: Robert Perlis.

11 MR. PLAINE: Thank you very much.

12 CHAIRMAN PALLADINO: Thank you.

13 MR. PLAINE: Mr. Prospect, did you identify
14 yourself?

15 MR. PROSPECT: Wayne Prospect, Suffolk County
16 legislator.

17 CHAIRMAN PALLADINO: Well then, I suggest we proceed
18 with the presentations, and the first individual would be
19 Mr. Palomino, representing New York State. 15 minutes.

20 MR. PALOMINO: I'd like to thank the Chairman and
21 the Commission for the opportunity to oral argue the issue
22 that you have raised. I would also like to reserve, if I
23 could, a few minutes for rebuttal, three or four, if
24 necessary.

25 CHAIRMAN PALLADINO: Any objection?

1 [No objections.]

2 CHAIRMAN PALLADINO: All right.

3 MR. PALOMINO: Is my mike on?

4 CHAIRMAN PALLADINO: Yes. You will have to speak
5 quite closely into the mike.

6 MR. PALOMINO: The questions the Commission has
7 asked us to address are three, and the first one was whether
8 to reconsider CLI 85-1. It is the opinion of New York State
9 that not only should the Commission reconsider it, but that
10 they should reverse their prior decision and remand the matter
11 for a new hearing. The reason for this is our firm conviction
12 that our rights to due process in that hearing below were
13 denied.

14 And it's not surprising. The Miller Board was
15 anxious to give this exemption and authorize the low power
16 license. They were so anxious last spring we had to go to
17 court to get a temporary restraining order to stop them from
18 a schedule that was unconstitutionally restricted.
19 Thereafter, apparently they proceeded to go ahead and trample
20 on our rights in this proceeding.

21 All the objections and everybody in the proceeding
22 was entitled to due process under the Constitution, under
23 Section 1989(a) of the Atomic Energy Act, and under the
24 Administrative Procedures Act. We feel we failed to get them
25 in that they allowed Long Island Lighting Company to introduce

1 evidence on issues; two issues in particular, public interest
2 and exigent circumstances, and they denied us the right to
3 introduce what we consider countervailing evidence. And as a
4 result of that, they denied us due process.

5 There's another aspect to the denial. Not only does
6 a party have a right to introduce evidence that's relevant to
7 an issue where another side has introduced evidence; also, the
8 decision should be based on the evidence in the record. And
9 we think the Commission failed in that respect.

10 It recognized that there was an improper denial of
11 our evidence, and it chose to correct it by admitting evidence
12 -- by ignoring the other evidence. As a result, there was
13 really not an adequate record upon which they could base these
14 decisions of public interest and exigent circumstances. And
15 we really feel it was a blatant and egregious violation of our
16 rights. The attempt to correct it compounded it. And the
17 only way to correct it is to reverse that decision and remand
18 it for a fair hearing.

19 There are other areas we feel that, by the
20 Commission and the licensing board in interpreting the thrust
21 of our arguments, the conclusions of them, and the record is
22 replete with them, with authorities, and I don't think it's
23 necessary to go into them here, and I won't take the
24 Commission's time to go into them.

25 As far as the issue of "as safe as" we really feel

1 that the evidence in the record established that the
2 configuration sought to be used by LILCO in this exemption
3 proceeding is not as safe as. The board below found it wasn't
4 as safe as. Well, characterized it as "as safe as" but found
5 that it was not marginally as safe.

6 And now, the fact is the people of Long Island are
7 entitled to as much protection as anybody else. As a
8 representative of the State of New York, I must insist on that
9 protection for them. The fact is you have a system which one
10 part of it could take 30 minutes to get started up and online
11 and carry the load. Another aspect of it might take a lesser
12 time. But in any event, if you start with one, it fails, you
13 start with another, you're coming marginally close to this 55
14 minutes where there could be deep trouble.

15 And we don't think that that is as safe as a
16 fully-qualified and approved system which could start up and
17 be on load and online to operate the emergency pumps within 15
18 seconds or so. We feel that it's not fair to impose this kind
19 of a risk on the people of Long Island. And so for those
20 reasons, we feel that there's sufficient reason to reconsider
21 your ALAB CLI-85-1.

22 There is another compelling reason why we feel that
23 the Commission should reverse it and remand it for a new
24 hearing, and that is the fact that in refusing to update its
25 Environmental Impact Statement, the Commission has violated

1 the National Environmental Policy Act. The National
2 Environmental Policy Act wasn't in existence when the first
3 Environmental Statement was made. And the first Environmental
4 Statement was based upon the assumption that this plant would
5 go online and generate full power.

6 Now, wherever there is a change in circumstances,
7 EPA requires, mandates, that where there is foreseeable
8 changes and circumstances which could affect the early
9 determination, that they update it. And they update it by
10 taking a hard look at the relative benefits.

11 And also, it requires that they consider
12 alternatives, if there are any. And the fact is, this
13 Commission didn't do any of those things. And there is a
14 reasonably foreseeable basis to see that this original
15 Environmental Impact Statement was undermined. It was
16 undermined by the fact that there is a foreseeable that this
17 plant will never go online.

18 Two courts have now indicated that, have now held
19 that. Your own licensing board has held it, that in fact,
20 this plant cannot be legally implemented. It's held that the
21 Emergency Off-Site Evacuation Plan invalid. It's invited
22 LILCO to submit a new plan. And as a result, this plant can't
23 go online.

24 And none of that is changed by the events of a few
25 days ago. First, because the court, the Supreme Court of the

1 State of New York has ruled that in order to implement the
2 Off-Site Emergency Evacuation Plan it would involve powers
3 solely vested in the state. And the state is not going along
4 with any plan to assist LILCO. So that legally, the plan is
5 still not implementable.

6 Secondly, there's a serious question as to whether
7 the County Executive can help LILCO in a way he plans to under
8 state law.

9 Thirdly, assuming even the ultimate case that he
10 could legally help LILCO to some extent, we would have to have
11 a re-examination of this new plan, a re-hearing. It's taken
12 over two years to hear the original plan, it will take another
13 two years. So there's no compelling reason to not send this
14 back for a new hearing, cover these issues, have a complete
15 record and go ahead and have everybody protected safely and
16 surely. At least to the extent required by law, in our
17 judgment.

18 Turning now to another aspect of it, there's no
19 benefit to be gained now, there's no benefit to be gained
20 whatsoever by going ahead with this procedure and issuing a
21 low power license. The question of the validity of the LILCO
22 Off-Site Emergency Plan can't be settled within less than a
23 year. The question of the County Executive powers won't be
24 settled in the state court system for less than a year.

25 And furthermore, to contaminate the plant when

1 you're not generating any power is not a valid reason. And I
2 know the Commission, in its decision in ALAB 85-1, said that
3 there would be benefits gained by early testing. Well, fact
4 is, as pointed out in the dissenting opinion, that the
5 benefits are nil; you're really testing the instruments.
6 You're not really getting any benefit out of the early
7 testing. The power is too low to really show up anything.

8 Furthermore, no benefits are to be gained if it's
9 never going to go to full power. And the whole basis of this
10 application by LILCO was the assumption that if they could get
11 this low power license now, it would speed up their getting a
12 full power license. The legal impediments now preclude that,
13 so that, you know, there's just no likelihood of that
14 happening.

15 So it's belief that on the basis of these errors,
16 the decision below should be reversed, or rather, your prior
17 decision should be reversed when you reconsider ALAB 85-1, and
18 it should be remanded for a new hearing, and to include this
19 question of NEPA.

20 All right. Turning to the next question you raised,
21 it was whether or not the Shoreham alternate AC system should
22 be treated as vital equipment during phases 3 and 4 of low
23 power testing. And we think that the ineluctible conclusion
24 is that it should be treated as vital equipment.

25 First of all, there is no plant in the United

1 States, nuclear plant, which has an emergency AC system which
2 doesn't treat it as vital equipment. The equipment that LILCO
3 is relying on in its new configuration in the exemption is
4 substituting for an on-site AC source, and it should logically
5 be treated in the same manner and given the same safeguards as
6 far as security is concerned.

7 Also, the board below found itself that on certain
8 postulations of accidents that it could affect -- that this
9 equipment was needed to protect the health and welfare of
10 the people. And it fully falls within the definition of the
11 regulations of vital equipment. There's no way it escapes
12 it. Directly or indirectly, its failure could affect the
13 people, the health and safety of the people.

14 We have included affidavits of experts who also say
15 that, in this request for reconsideration.

16 Now, it is one thing to have regulations, and where
17 something falls squarely within a regulation, you uphold
18 it. If you don't like it, you go through the process of
19 changing the regulation, but you don't seek to evade it on
20 some grounds that is not proper.

21 We think for you to say this was not vital
22 equipment, in view of the plain language of the regulations
23 and the function it performs, the safety purposes that it is
24 required for, that it should be deemed vital equipment.

25 The next question you asked is whether the Atomic

1 Safety and Licensing Board should have affirmed the -- or the
2 Appeals Board, rather, should affirm the Licensing Board
3 dismissal of physical security contentions for lack of
4 specificity and basis.

5 I would like to point out that I think that question
6 is improperly worded. It's what we call a loaded question in
7 law, a leading question, the kind that -- you know, when did
8 you stop beating your wife question. It really assumes that
9 these contentions were dismissed for lack of specificity or
10 basis.

11 Now, the decision in which these revised contentions
12 were dismissed by the Board was September 19, 1984. It was an
13 independent decision, carefully reasoned and worded decision.
14 If you read that decision, you will find that the contentions
15 were not dismissed on that basis; they were dismissed either
16 because the Board held that they dealt with vital equipment or
17 vital areas and he ruled against that, or because in one
18 instance he found that heavy weaponry was not required to be
19 considered, and he was wrong on that.

20 In another instance, he ruled with respect to 6 and
21 7 that they were irrelevant, but nowhere -- or possibly one,
22 possibly in Contention 4, there is an implied lack of basis,
23 but he really dismissed that one also because he said it was
24 not vital equipment.

25 Now, the contentions submitted were seven

1 contentions covering 15 pages. They are available to the
2 Commission. There is no question that they contain factual
3 bases. All you have to do is read them. If you read the
4 opinion that dismisses them, he discusses the factual basis
5 for them. In each one, he treats it separately. They
6 commence with Contention 1 on page 12 of his decision. They
7 say it was a carefully worded decision. It is a total of 20
8 pages.

9 CHAIRMAN PALLADINO: Mr. Palomino, your time is
10 up. Could you close in another sentence or two?

11 MR. PALOMINO: Yes. I will close in another
12 sentence or two.

13 I would just like to say that there really is no
14 compelling reason to issue a low power license at this time on
15 any reconsideration of this question; that there are enough
16 legal impediments to stop this plant and a serious question
17 as to whether it will ever generate power, and no benefits to
18 be gained by low power because it doesn't generate anything.
19 The benefits by way of training and so forth are negligible,
20 and they would occur in any event at a later date.

21 CHAIRMAN PALLADINO: Thank you. You answered a
22 number of my questions, but I still have one. You spoke about
23 the MD and the gas turbine of necessity having to be vital
24 equipment, and you said that if they were not treated as
25 vital, it would lead to public health and safety questions.

1 MR. PALOMINO: It could in an accident.

2 CHAIRMAN PALLADINO: Could you expand a little bit
3 on the basis for that statement?

4 MR. PALOMINO: Well, in event of a LOCA, they have
5 to be able to go on line within 55 minutes, and if they are
6 rendered inoperable, then they wouldn't be able to protect the
7 health and safety, possibly, because there are possible
8 accidents where you might have under that, if you don't meet
9 that time level, a breach of the containment chamber.

10 CHAIRMAN PALLADINO: As I understand the situation,
11 it would take a loss of off-site power. It would take an
12 independent LOCA and then it would take some sabotage of this
13 equipment in order to bring about possible health and safety
14 effects, and of course, it would have to be a set of
15 circumstances to breach containment.

16 Do you have any comments on the combination?

17 MR. PALOMINO: Well, what you are saying is it may
18 be remote, it may be remote but it is possible. It also -- I
19 don't want to go into the security aspects of it, but if these
20 are not secured, they could be used for diversionary purposes
21 by design basis attackers who could use them as a diversion to
22 go to other sources much more vital and which could lead to
23 the health and safety of the people.

24 You also might have cooperation from the inside at
25 the same time, but I don't think I should go into those

1 discussions, but the basis is there. It was so found by the
2 Board below. It was found by the Licensing Board, the Appeals
3 Board, and also substantiated in the affidavit of Greg Minor
4 which is attached to our application for reconsideration.

5 CHAIRMAN PALLADINO: Okay. Let me turn to my
6 colleagues. Any questions?

7 COMMISSIONER ASSELSTINE: I have a couple of
8 questions. On emergency planning, what is the State's role in
9 emergency planning as differentiated from the County's role?
10 I guess what I am getting at is, assuming for a moment that
11 the actions of the County Executive --

12 MR. PALOMINO: Assuming he had full power to act for
13 the County and cooperate with LILCO?

14 COMMISSIONER ASSELSTINE: Yes. Does that resolve
15 the emergency question?

16 MR. PALOMINO: No, it doesn't resolve it because I
17 have to show a plan where they will take actions in the
18 ingestion pathway, which covers 50 miles, and that's outside
19 of the County Executive's prerogative. That is what the Judge
20 ruled. It is in his judgment that only the State of New York
21 has that power, and any attempt by LILCO or any County
22 Executive would be usurpation of that power.

23 COMMISSIONER ASSELSTINE: Okay. So the State
24 position remains that they have responsibilities and roles in
25 emergency planning and are not prepared to carry those out,

1 and that therefore there are defects or deficiencies.

2 MR. PALOMINO: Yes, that's right.

3 CHAIRMAN PALLADINO: Can I ask a question of
4 clarification? What does the State have to do out to 50
5 miles?

6 MR. PALOMINO: Well, there has to be the right to
7 condemn food. There has to be a right to protect food. There
8 has to be a right to protect the water supply and so forth.
9 You have to show the means to do it when you present a
10 plan in the food ingestion pathway, among other things. And
11 the County would not have the power, and only the State Health
12 Commissioner and the agricultural markets and the State
13 Department -- conservation.

14 COMMISSIONER BERNTHAL: You are saying in effect,
15 then, that it is not a question of the State having the
16 resources to do that, but they simply would refuse to do
17 that? Is that your argument?

18 MR. PALOMINO: Yes, that's my argument. That is the
19 Governor's position.

20 COMMISSIONER BERNTHAL: And the State would not
21 carry out its protective functions in the event of an
22 accident?

23 MR. PALOMINO: No. What we are saying is we won't
24 carry them out or agree to carry them out to put this plant on
25 line and present us with a hazard where we might have to.

1 COMMISSIONER BERNTHAL: Well, what specific
2 resources, though, are involved on the part of the State for
3 the evacuation plan itself?

4 MR. PALOMINO: The State is not playing any part in
5 cooperating with it. As a matter of fact, we have
6 disconnected the phones that we used to have connected to
7 LILCO.

8 [Laughter]

9 COMMISSIONER BERNTHAL: Aside from the telephones,
10 though, what resources would be involved on the part of the
11 State in the evacuation were you to cooperate?

12 MR. PALOMINO: Well, for example, were we to
13 cooperate, vital: cleaning snow on the Long Island Expressway
14 in the winter. If you have five or more inches of snowfall or
15 any snowfall, you have to have the highway cleaned. That is
16 your major evacuation route. It is a state highway and state
17 responsibility. They not only will not, but they took a
18 survey of the people who worked for the state, and they
19 wouldn't go into the zone because they are not paid to.

20 COMMISSIONER ASSELSTINE: Well, that applies to the
21 ten-mile zone as well as the 50?

22 MR. PALOMINO: Yes, sure. As a matter of fact,
23 when we have had five or more inches of snow, it takes five
24 days to clear the cars off the Long Island Expressway. You
25 have to back payloaders up the exits and take all the stalled

1 cars out with loads of snow. And we are not going to agree to
2 do that so we can put this plant on line. It's not a question
3 of not doing it if there is an emergency.

4 COMMISSIONER BERNTHAL: Is that greatly different
5 from the state power plant at Indian Point, for example?

6 MR. PALOMINO: Yes, it's greatly different. I don't
7 want to get into all these details, but at Indian Point, you
8 have roads away in almost every direction once you get shortly
9 away, so that in the event of a nuclear incident, you can give
10 people a free run not matter where the plume is drifting or
11 what, in almost any direction. And then Long Island, because
12 of the configuration of the Island, you have four limited
13 highways East-West. The only feasible evacuation is west. As
14 you go west, you go into a denser and denser population,
15 starting with a few million in the next county and 8 million
16 in New York City, and these highways are over-utilized under
17 ordinary circumstances.

18 COMMISSIONER BERNTHAL: But it doesn't take five
19 days at Indian Point or at Nine Mile Point or at any other
20 plants in the state. You are saying it would on Long Island?

21 MR. PALOMINO: You have roadway networks going in
22 every direction of the compass. You are not limited -- the
23 problem is you have limited highways on Long Island.
24 East-West, you have two major highways and that's it.

25 COMMISSIONER BERNTHAL: But you said it takes five

1 days, and I am asking why isn't that true for all other plants
2 in the state, if there are more roads, especially?

3 MR. PALOMINO: Because, first of all, all of them
4 are not state highways. You have county highways and you have
5 town roads. Then you have major state highways, and there
6 they can go from one road to another. Everybody is
7 cooperating. You have four counties plus the state
8 cooperating.

9 COMMISSIONER ASSELSTINE: Does the State have a
10 position on the validity of the Executive Order?

11 MR. PALOMINO: Yes. The State's position is the
12 Executive Order -- you mean the one issued by the Chairman?
13 We think it is invalid.

14 COMMISSIONER ASSELSTINE: Okay. So you don't think
15 even as far as the County is concerned that that --

16 MR. PALOMINO: No. Like I said, I think there is a
17 question about the feasibility to do what he claims he can do.

18 COMMISSIONER ASSELSTINE: On the security
19 contentions, as I understand it, you and the State and the
20 County had joint contentions on the security issues. If
21 Suffolk County drops out on the security issues, does the --

22 MR. PALOMINO: Well, the State still intends to
23 object.

24 COMMISSIONER ASSELSTINE: You don't intend to drop
25 out?

1 MR. PALOMINO: No. We have an independent right of
2 object on Federal law and other rules of the Board, and we
3 would intend to object, to keep objecting.

4 COMMISSIONER ASSELSTINE: The other question I had
5 -- maybe you can answer it from your perspective, and I also
6 want to hear LILCO's view on it as well -- is this agreement
7 that was entered into, the one between LILCO and the County,
8 the additional security agreement, the low power security
9 agreement.

10 MR. PALOMINO: I don't know anything about it. If
11 they have sent it to me, they probably sent it last night or
12 today, and I have been down here.

13 COMMISSIONER ASSELSTINE: Okay. I will ask LILCO
14 about that.

15 MR. PALOMINO: Well, we wouldn't be bound by that
16 anyway.

17 COMMISSIONER BERNTHAL: I am surprised, frankly,
18 because the crux of much of your argument seems to be resting,
19 apparently, still on safety judgments rather than on the
20 principle of procedural irregularity here, which is the way
21 you began your statement.

22 MR. PALOMINO: No.

23 COMMISSIONER BERNTHAL: But I am curious to know,
24 though, however that may be, whether or not it is the fact, is
25 the opposition of the State and the Governor now based upon

1 his unwillingness to impose an emergency plan on Suffolk
2 County or this remaining independent view on the part of the
3 Governor and the State that that plant simply can't be
4 operated safely?

5 MR. PALOMINO: He said he wouldn't impose one and he
6 wouldn't cooperate.

7 COMMISSIONER BERNTHAL: But I think that what their
8 contention was was flatly that the plant cannot be operated
9 safely, was it not?

10 MR. PALOMINO: No, it's two different things.

11 COMMISSIONER BERNTHAL: Is that still your position?

12 MR. PALOMINO: No, it is two things. One is that
13 after the Marburger hearings, the more he listened to the
14 scientists of Brookhaven trying to convince him for three
15 hours that the plant was safe, the more he became convinced
16 that it's not safe and that it won't generate the
17 electricity. We will have the problem we had with Indian Point
18 3. I don't know if it operates 3 to 30 days a year, and it
19 wasn't worth putting the people at risk where you can't have a
20 safe evacuation. So it is both of those things.

21 COMMISSIONER BERNTHAL: But it rests strictly on the
22 emergency evacuation question?

23 MR. PALOMINO: No, also the safety of the plant. He
24 doesn't feel it is safe and he doesn't feel you can have a
25 safe evacuation, and he feels that at Long Island you should

1 have the safest evacuation because of the density of the
2 population.

3 COMMISSIONER BERNTHAL: And what specifically does
4 he feel -- leaving aside the question, and the complicated
5 question, I will grant you, of the emergency power and whatnot
6 -- let's assume for the moment that those problems are
7 resolved one way or another adequately in the time ahead.
8 Obviously, then, you are still maintaining the position that
9 even if all of that were resolved by the book, so to speak,
10 then the position would still be that that plant can't be
11 safely operated? Is that correct?

12 MR. PALOMINO: It's a question of who resolves it, I
13 think.

14 COMMISSIONER BERNTHAL: Resolved in compliance with
15 our regulations. The same criteria that applies for all other
16 plants.

17 MR. PALOMINO: I don't want to speak for the
18 Governor, but I am inclined to feel that that would not
19 necessarily alter his judgment to suddenly be happy about it.

20 COMMISSIONER BERNTHAL: So from your standpoint the
21 fact remains, then, that the plant will never operate and
22 therefore the NEPA consideration remains a consideration. I
23 gather that is the thrust of NEPA.

24 MR. PALOMINO: No. Well, I think everything that I
25 have urged here is the denial of due process, the failure to

1 consider NEPA, the lack of any benefit to be gained, the
2 question of not having or needing the security are all
3 relevant. I think on the first group they want reversals and
4 a fair hearing and an opportunity to explore it, and this
5 Commission should explore NEPA.

6 I don't think the relative benefits you are talking
7 about outweigh this by any means. I mean the idea that it
8 should be a signal to Wall Street -- well, LILCO hasn't
9 signaled Wall Street; they gave them financing up to the end
10 of the year. They don't need it. They don't have a financial
11 problem now. That was mentioned in the Licensing Board's
12 decision.

13 CHAIRMAN PALLADINO: I thought you had made an
14 assertion that answered one of my questions, but now I believe
15 I had better ask it. In light of the County's intent to
16 review the Shoreham emergency plan of participating in an
17 exercise, does the State continue to assert that an adequate
18 emergency plan is not feasible; that there will never be full
19 power operation, and thus the Commission is required under
20 NEPA to prepare a supplemental Environment Impact Statement
21 for Shoreham which weighs the cost of low power operation
22 against new benefits?

23 MR. PALOMINO: Yes. We are saying that. We are not
24 going to cooperate. We are going to fight it.

25 CHAIRMAN PALLADINO: But you do assert that this is

1 the situation?

2 MR. PALOMINO: Yes, that NEPA should be considered
3 in light of the fact that they --

4 CHAIRMAN PALLADINO: Well, there are three parts.
5 You say an emergency plan is not feasible and that there never
6 will be full power operation and thus you need --

7 MR. PALOMINO: Yes. We say legally feasible, yes.

8 COMMISSIONER BERNTHAL: So the point is -- we will
9 hear from who speaks for Suffolk County soon, I guess, but
10 however that resolves itself, your view is still that that
11 plant will never operate and therefore --

12 MR. PALOMINO: Yes. There are legal impediments
13 which we control, and it won't operate as long as we can
14 control the legal impediments.

15 COMMISSIONER BERNTHAL: And there remains,
16 therefore, a legal obligation under NEPA consonant with your
17 presumption that it will never operate, regardless of what
18 Suffolk County does.

19 MR. PALOMINO: I think if NEPA makes that
20 foreseeable change because it was based on full power
21 operation, since you are not going to have it, you have to
22 look now at low power. What are the benefits? What are the
23 cost-benefits?

24 COMMISSIONER BERNTHAL: No matter what the County
25 does, though, in other words, based solely on the judgment of

1 the State --

2 MR. PALOMINO: It's not the judgment. It's the fact
3 that the Court has ruled that the State has this power and
4 that the County would be illegally usurping it if it tried to
5 fulfill it, and therefore you can't have an off-site emergency
6 evacuation plan that is legally implementable.

7 COMMISSIONER ASSELSTINE: I just want to make sure I
8 understand your position. If the Commission does decide that
9 the backup power systems are not vital equipment, is there
10 something left of your physical security contentions?

11 MR. PALOMINO: Well, I think we have a pending
12 Contention No. 2 before the Kelley Board which doesn't go to
13 vital equipment.

14 COMMISSIONER ASSELSTINE: Okay. You say that your
15 position is that there is something left there that is not
16 dependent upon the judgment of whether the backup systems are
17 vital equipment or not.

18 MR. PALOMINO: Well, it was before the Kelley Board,
19 yes, Contention No. 2.

20 COMMISSIONER ASSELSTINE: Okay, Contention No. 2.

21 MR. PALOMINO: I would like to point out something.
22 You know, it's not that we are afraid of nuclear power. We
23 have five other plants in the state, and we have a commitment
24 from the Governor to fulfill Nine Mile 2, but it doesn't
25 present the hazard to the substantial population that this one

1 does.

2 COMMISSIONER BERNTHAL: Isn't it a little difficult
3 to tell, though, whether the emergency plan is implementable
4 and is practical unless you try?

5 MR. PALOMINO: No, not if you have had the
6 experience of life on Long Island.

7 [Laughter]

8 You know, when Commissioner Harrington came there,
9 he came by plane, he didn't come by car -- or Secretary, I'm
10 sorry. He might have had a different view of it. And not
11 only that, but to schedule an exercise at 10:00 doesn't mean
12 anything. Suppose everybody is home when you have an incident,
13 at supertime, at night, or breakfast in the morning when
14 everybody is already on the highway heading for work, and now
15 you have everybody at home, the school kids, and they are
16 going to try and load that up. You know, it's just --
17 experience is worth more than logic and is worth more than a
18 paper exercise or a make-believe exercise or an exercise at a
19 selected hour that doesn't really test what could happen in
20 reality.

21 COMMISSIONER BERNTHAL: So you are unwilling to
22 accept the judgment, for example, of what would be a real
23 exercise?

24 MR. PALOMINO: It's not me. I think the Governor
25 said to the press last week that he would accept it if he were

1 the umpire and he felt it was really fair.

2 COMMISSIONER BERNTHAL: I will sympathize with the
3 problem on the Long Island Expressway. I have experienced
4 that myself.

5 That's all I have.

6 CHAIRMAN PALLADINO: Any other questions?

7 [No response]

8 CHAIRMAN PALLADINO: Thank you very much,
9 Mr. Palomino.

10 I wonder if we could have Mr. Martin Ashare join us
11 at the table.

12 MR. ASHARE: Mr. Chairman and members of the
13 Commission, I would like to introduce Arlene Lindsay, who is a
14 Deputy County Attorney, and I would appreciate it if she could
15 remain with me at the table during the presentation.

16 First let me address the question of the day, which
17 is roughly described as: Will the real legal representative of
18 Suffolk County stand up?

19 [Laughter]

20 I have sent a letter to the Commission, and we have
21 informed the Commission that, as of yesterday, the County
22 Executive has terminated the services of Kirkpatrick Lockhart,
23 formerly counsel to the County in the Shoreham licensing
24 proceedings.

25 Under the Suffolk County Charter, Section 1502, and

1 the County Law of the State of New York, Section 501, the
2 county attorney is in charge of all the legal business of the
3 county, and therefore, I have filed a notice of appearance
4 with the Commission and appear here today as the legal
5 representative of the County of Suffolk.

6 Let me also say that we have not abandoned nor will
7 we abandon any of the safety concerns previously addressed by
8 the County throughout the Shoreham licensing proceedings, and
9 I will be more detailed in our presentation.

10 . Our previous position was that a low power license
11 should not be issued since there was no possibility a full
12 power license could be obtained in view of Suffolk County's
13 prior determination not to participate in an off-site
14 radiological emergency response plan.

15 Our position has now been modified to the following
16 extent. The County Executive has issued an Executive Order
17 directing the Commissioner of Police and the Director of
18 Planning to conduct a test and exercise of the local
19 radiological emergency response plan with Suffolk County
20 assuming command and control functions.

21 To the extent that we previously argued that a low
22 power license should not be issued because of the ultimate
23 impossibility of implementing a local RERP, we have now
24 modified that position. However, to the extent that we have
25 objected to the Commission granting an exemption to LILCO

1 from NRC regulations, we have not withdrawn those objections
2 and continue to exert them, or to assert them, except to the
3 extent that our concerns relating to the security of the
4 backup power sources have been satisfied to the extent that an
5 agreement has been entered into between the County and LILCO,
6 a copy of which has been filed with the Commission.

7 Needless to say, our objections with respect to NEPA
8 have also been modified to the extent that a low power -- or a
9 full power license may now be possible in the event that the
10 testing of the radiological emergency response plan proves
11 favorable.

12 CHAIRMAN PALLADINO: So the full power license, in
13 your mind, is possible?

14 MR. ASHARE: Is possible, dependent upon the
15 favorable results of the radiological emergency response plan
16 as directed by the County Executive.

17 We continue to assert the questions with regard to
18 the backup power sources and the TDI diesels, primary source
19 diesels. Specifically, we take exception to the exigent
20 circumstances findings and the "as safe as" findings by the
21 Commission, and we continue to assert that exemption should
22 not have been granted.

23 CHAIRMAN PALLADINO: Well, I will let you continue
24 and come back.

25 MR. ASHARE: I am finished with my presentation at

1 this point.

2 CHAIRMAN PALLADINO: What I am not clear on is the
3 question I asked. It was my impression based on the submittal
4 that the County had found that the emergency plan is favorable
5 -- or I'm sorry, is feasible, and that it is possible to
6 consider that this plant could go to full power.

7 MR. ASHARE: Chairman Palladino, our position is
8 that we are willing to test, our minds are open, and we will
9 marshal the resources of the County to attempt to test an
10 emergency response plan and determine whether or not it is
11 feasible to implement such a plan. Assuming that that test or
12 the results of that test are favorable, then certainly I could
13 say that a full power license would be possible.

14 COMMISSIONER BERNTHAL: What is the view, then, of
15 the County with respect to the comments that we just heard on
16 behalf of the State and the Governor's Office? My
17 understanding is that their position is that it is simply not
18 possible to carry out an exercise of that type successfully, I
19 guess in principle, and certainly not without the cooperation
20 of the State.

21 MR. ASHARE: Well, we feel that we can carry it out
22 without the cooperation of the State. The position of the
23 Governor heretofore has been that he would not force a plan on
24 Suffolk County, and now I am hearing the position that the
25 State would not cooperate regardless of the County's desire to

1 develop and implement a local emergency response plan.

2 CHAIRMAN PALLADINO: But do I understand, though,
3 that the County would participate, would review the plan and
4 participate --

5 MR. ASHARE: That's correct. We have directed the
6 Commissioner of Police and the Director of Planning to
7 participate in such an exercise.

8 CHAIRMAN PALLADINO: How should the Commission
9 determine who speaks for the County at this time?

10 MR. ASHARE: Well, I can only point to the sources
11 which I cited to you in my opening, Chairman Palladino, the
12 sections of the Suffolk County Charter and the section of the
13 county law.

14 CHAIRMAN PALLADINO: Well, the reason I raise the
15 question is that somewhere back a ways, we got an indication
16 that the County Legislature had voted overwhelmingly to oppose
17 this plan -- I'm not sure I'm paraphrasing it right -- and now
18 the County Executive says, well, but we are going to
19 participate. I was wondering who has the authority to speak.

20 MR. ASHARE: Based on the advice from the County
21 Attorney's office, the County Executive has taken the position
22 that under Article 2(b) of the Executive Law of the State of
23 New York, those functions, the functions of emergency
24 preparedness, the police power functions and so forth, are
25 peculiarly within the ambit of the executive powers under the

1 Suffolk County Charter, and that therefore, he has the power
2 to direct the appropriate personnel of the county to
3 participate in such an exercise.

4 COMMISSIONER BERNTHAL: Could you provide the
5 Commission with copies of your charter so that we can evaluate
6 that?

7 MR. ASHARE: Sure. I think we have them right here.

8 COMMISSIONER BERNTHAL: It doesn't have to be right
9 now, but after the meeting, perhaps.

10 CHAIRMAN PALLADINO: Could you clarify what it is
11 that you stipulated with LILCO?

12 MR. ASHARE: We furnished a copy of the agreement to
13 you, and I believe the agreement with LILCO has to do with the
14 security for the low power alternate generating source
15 enhancements, and we are satisfied now that there is adequate
16 security for the so-called backup enhancement power.

17 CHAIRMAN PALLADINO: So is that the essential
18 feature of the agreement that you reached?

19 MR. ASHARE: Yes, that is the agreement. And they
20 have agreed on their part to treat the backup diesels or
21 the backup enhancements as vital equipment.

22 CHAIRMAN PALLADINO: Okay.

23 Mr. Roberts? Commissioner Asselstine?

24 COMMISSIONER ASSELSTINE: I had a couple of
25 questions. I'm still having a little difficulty understanding

1 what is left of your contentions, what is settled, what
2 positions you no longer take, and what items you still
3 contend. Maybe we could go through each of the items
4 individually.

5 Physical security. You are saying that under the
6 agreement, LILCO has agreed to treat the backup equipment as
7 vital equipment.

8 MR. ASHARE: Correct.

9 COMMISSIONER ASSELSTINE: So in your view, that
10 moots out that issue and you are no longer --

11 MR. ASHARE: Also, they have agreed -- they have
12 gone into arrangements for that security, which I am not at
13 liberty to discuss, but they have satisfied the County that
14 they are adequate, as I am informed by our Police Department.

15 COMMISSIONER ASSELSTINE: Okay. And the factual
16 information is available to demonstrate that, in fact, that
17 equipment will be treated as vital equipment.

18 MR. ASHARE: Correct.

19 COMMISSIONER ASSELSTINE: Okay. So there is nothing
20 left of the physical security issues as far as the County is
21 concerned.

22 MR. ASHARE: Correct.

23 COMMISSIONER ASSELSTINE: How about the NEPA issue?
24 Is that gone entirely now?

25 MR. ASHARE: I believe that is gone entirely now,

1 yes, sir.

2 COMMISSIONER ASSELSTINE: As far as the County is
3 concerned, that's gone. Okay.

4 MR. ASHARE: In view of the fact that there is now a
5 possibility that there will be a full power license.

6 COMMISSIONER ASSELSTINE: All right.

7 The emergency planning issues. I take it that is
8 one that is more in doubt.

9 MR. ASHARE: Well, when I say in doubt, our mind is
10 open on that issue and we are willing to enter into a test to
11 determine whether or not a plan is implementable.

12 COMMISSIONER ASSELSTINE: All right. So right now
13 you don't take the position that there is in existence a plan
14 that can and will be implemented, but you are prepared to see
15 how an exercise goes?

16 MR. ASHARE: We want to take a good, hard look at
17 the results of that drill.

18 COMMISSIONER ASSELSTINE: Okay. Are the only
19 things, then, that are left apart from that open question on
20 emergency planning, then, your continuing objections to the
21 Commission's prior decision with respect to the exigent
22 circumstances finding and the "as safe as" finding? Is that
23 all that is left?

24 MR. ASHARE: As far as the proceeding before this
25 Board today, correct.

1 COMMISSIONER ASSELSTINE: So those are the only
2 things as far as the County is concerned that we still have to
3 address?

4 MR. ASHARE: That's correct, Mr. Asselstine.

5 COMMISSIONER ASSELSTINE: Okay. I think that's what
6 I needed to know. Thank you.

7 COMMISSIONER BERNTHAL: I have just a couple of
8 questions yet.

9 On the NEPA question, which finally comes down to
10 one, for our consideration, at least, of whether at least a
11 substantial possibility exists that the plant will operate.
12 In your judgment, is it feasible or possible with the
13 continued opposition of the State and the Governor that this
14 plant can operate anyway?

15 MR. ASHARE: I believe so. We have every reason to
16 believe, Mr. Bernthal, that we will obtain the cooperation of
17 the County of Nassau in any emergency planning that needs to
18 be done, which leaves us with the state roads, basically
19 Northern and Southern State Parkway, and the Long Island
20 Expressway.

21 COMMISSIONER BERNTHAL: And in your judgment --

22 MR. ASHARE: We patrol it, but they plow it,
23 although we understand the State Police want to take it over.

24 COMMISSIONER BERNTHAL: Is this a recent desire or
25 longstanding?

1 MR. ASHARE: That has been a longstanding desire,
2 and I dare say our police department and the State Police will
3 slug it out one day.

4 [Laughter]

5 CHAIRMAN PALLADINO: This is on patrolling?

6 MR. ASHARE: We patrol the Long Island Expressway.
7 They plow it.

8 CHAIRMAN PALLADINO: But the State Police don't want
9 to plow it, though, do they?

10 MR. ASHARE: No, they just want to patrol it. They
11 would like us to plow it.

12 COMMISSIONER BERNTHAL: One last question, and
13 again, it touches on this broad NEPA question. Don't
14 misunderstand me. I'm just trying to get a picture here of
15 how your county government works, and therefore, in the long
16 run --

17 MR. ASHARE: When you find out, I would like to know
18 also.

19 [Laughter]

20 COMMISSIONER ROBERTS: Well, you will have to share
21 that information with us.

22 COMMISSIONER BERNTHAL: Is the Legislature of the
23 County empowered as a legal matter to overturn the County
24 Executive in the judgment that he has recently made and the
25 actions he has taken? If so, how could they do that?

1 MR. ASHARE: In my judgment, no.

2 COMMISSIONER BERNTHAL: I see.

3 COMMISSIONER ROBERTS: If you wait a couple minutes,
4 you will hear the other end.

5 MR. ASHARE: I think Mr. Prospect will no doubt
6 address himself to that issue.

7 COMMISSIONER ASSELSTINE: If I could follow up on
8 that, Fred, who controls --

9 MR. ASHARE: Well, in order for the Legislature to
10 act or do anything, they have to meet as a body at either our
11 regular or a special meeting, adopt a resolution by at least a
12 majority of ten. Some resolutions may be subject to a veto by
13 the County Executive, in which case there would be a
14 requirement of an override by 12 or more legislators.

15 COMMISSIONER BERNTHAL: I see. So it is two-thirds
16 for an override?

17 MR. ASHARE: If there is a necessity for County
18 Executive Action. There are some resolutions that do not
19 require County Executive action.

20 COMMISSIONER BERNTHAL: I see.

21 COMMISSIONER ASSELSTINE: If I could follow up on
22 that, to what extent does the Legislature control resources
23 that would be involved in emergency planning, or can they
24 control them?

25 MR. ASHARE: Well, to the extent that from year to

1 year they adopt a budget, they have the same power as the
2 Congress of the United States has, which is the ultimate power
3 of the purse, but they have no directory function during the
4 course of the fiscal year. Once the budget is adopted, then
5 it is uniquely the function of the County Executive to carry
6 out and implement that budget, to spend the money, to enter
7 into contracts, to direct the various departments of county
8 government.

9 COMMISSIONER ASSELSTINE: Would their authority
10 extend to prohibiting the use of resources to carry out
11 certain functions?

12 MR. ASHARE: Well, then you get into the legislative
13 veto, and that has been the subject of a tremendous amount of
14 litigation and decisions by the United States Supreme Court.
15 So you have the question both ways: executive impoundment of
16 monies and legislative impoundment, so-called legislative
17 veto.

18 COMMISSIONER BERNTHAL: Are you suggesting that
19 while the County Executive has the police powers and authority
20 for this fiscal year, and granted, at least as things appear
21 to stand now, at least some exercise of the emergency plan can
22 in principle take place, that even having completed that,
23 whatever the outcome in the judgment of FEMA might be with
24 respect to the emergency plan, that then next year the County
25 in its budget cycle could refuse to appropriate any funding

1 for --

2 MR. ASHARE: I wish I had a crystal ball to tell you
3 what the Legislature might or might not do.

4 COMMISSIONER BERNTHAL: But that is not ruled out?

5 MR. ASHARE: They certainly do have the power of the
6 purse, as I indicated to you, and they have the power to amend
7 the budget, although, interestingly enough, the County
8 Executive has the power that the President of the United
9 States does not have, and that is he has line item veto over
10 items in the budget.

11 So he could single something out and veto that item,
12 in which case it would be the necessity of a 12-vote override.

13 COMMISSIONER BERNTHAL: I have to say that I don't
14 want to be comforted by the troubles of others, but it is
15 interesting to see that someone else seems to have more
16 complex problems than we do sometimes. That's all I have.

17 COMMISSIONER ZECH: Just one question. I understand
18 your position on the emergency evacuation plan. Looking at
19 the 5 percent power possibility, could you elaborate just a
20 little bit on the issues you see left for the 5 percent
21 power? You touched on them lightly, but could you elaborate
22 just a little bit more?

23 MR. ASHARE: Well, our basic problem is on the
24 diesels, and we have severe concerns about the alternate
25 energy source in the event of a LOOP/LOCA. Our judgment or

1 our position still is as articulated in the paper submitted by
2 counsel for the County with respect to the arguments on "as
3 safe as" and exigent circumstances.

4 COMMISSIONER ASSELSTINE: So again, you don't view
5 those as an adequate substitute?

6 MR. ASHARE: No.

7 CHAIRMAN PALLADINO: Well, thank you very much.

8 I wonder if we could now have Mr. Wayne Prospect
9 join us at the table.

10 MR. PROSPECT: May I be joined by one of my
11 colleagues?

12 CHAIRMAN PALLADINO: Yes. Would you introduce him?

13 MR. PROSPECT: This is Legislator Robert LaBua.

14 Before we begin, Legislator LaBua and I are here
15 today with a bipartisan contingent of members of the Suffolk
16 County Legislature. For the record I would like them to stand
17 and they could state their names. Would that be okay with
18 you?

19 CHAIRMAN PALLADINO: Well, let them stand, and then
20 you can give us their names for the record.

21 MR. PROSPECT: From your right to left, in the front
22 is Legislator Sondra Bachety, Legislator John Foley, in the
23 next row, Legislator Steven Engelbright, Legislator Gregory
24 Blass, Legislator Philip Nolan, and in the next row,
25 Legislator James Morego.

1 CHAIRMAN PALLADINO: And are they supporting your
2 statement? Is that the implication of introducing them?

3 MR. PROSPECT: Yes. Members of the Legislature came
4 down today to discuss this issue with you. You are in receipt
5 of a letter that a majority of the Suffolk County Legislature
6 sent to our counsel, Mr. Herbert Brown of Kirkpatrick and
7 Lockhart, indicating that it was the conviction of the
8 legislators, at least the majority of them -- and it was
9 difficult reaching everyone over the weekend -- at least the
10 majority of them at this point, that we believe the whimsical
11 Executive Order by the County Executive is illegal and
12 unlawful and should be considered null and void.

13 We are here today specifically to ask you to
14 postpone any decision on the low power license, for the simple
15 reason that legally the County is in disarray. Suffolk County
16 right now is in legal disarray. It is in legal disarray
17 because of the County Executive's -- as I indicated --
18 whimsical and precipitous Executive Order on the issue of the
19 evacuation, on the issue of a radiological emergency response
20 plan.

21 We believe that Executive Order is illegal and is
22 unlawful and should be considered, as I said, null and void.

23 What is the position of Suffolk County?

24 Mr. Chairman, you asked who speaks for Suffolk County. I dare
25 say the law speaks for Suffolk County. Being a nation of law

1 and not a nation of men, that's the way it should be. The law
2 speaks for Suffolk County.

3 Let me quote the comments of Suffolk County
4 Executive Peter Cohalan on February 23, 1983, the statement of
5 Suffolk County Executive Cohalan upon signing County
6 Resolutions No. 111 of 1983 and 113 of 1983. Notice how in
7 his comments, the word "legislature" will be used.

8 "Last week the County Legislature and I announced
9 our views on radiological emergency preparedness in Suffolk
10 County. We reached the identical conclusion: that it would be
11 impossible to protect the public health and welfare and safety
12 if there were a serious nuclear accident at the Shoreham
13 plant.

14 "Today I will sign Resolution 111-1983" -- a
15 resolution he introduced, a resolution formerly adopted by
16 the Suffolk County Legislature. "I will sign County
17 Resolution 111, which sets forth that conclusion and,
18 accordingly, resolves that this County Government will not
19 adopt or implement a radiological emergency response plan for
20 Shoreham."

21 Later in that statement, one more quick
22 paragraph: "I am convinced," the County Executive says, "that
23 the County Legislature and Executive have acted for the
24 public good and that our action is right for the safety of
25 Suffolk County residents. It is thus with great satisfaction

1 that I have the privilege to sign into law Resolutions 111 and
2 113, 1983."

3 The position of the Suffolk County Government has
4 not changed. President Reagan is President of the United
5 States; he is not the United States. Peter Cohalan is a
6 county executive, he is not the county.

7 Resolutions introduced and adopted by the Suffolk
8 County Government, approved by the Suffolk County Legislature
9 and signed into law -- specifically, for the record,
10 Resolutions 262 of 1982, 456 of 1982, 111 of 1983, 113 of 1983
11 -- those resolutions, those local bills are still on the
12 books. They have not been rescinded.

13 The County Attorney, Mr. Ashare, does not represent
14 the legislated position of Suffolk County. He only represents
15 the personal opinion of the County Executive, and there is a
16 difference. We are a nation of law, not of men. Mr. Cohalan
17 is entitled to his new personal view and he is entitled to
18 have someone speak for him, but he does not now speak for the
19 County until he introduces a resolution that voids previously
20 adopted County legislation.

21 The Executive Order of May 30th --

22 COMMISSIONER BERNTHAL: Excuse me. Are you
23 suggesting that he does not have the police powers which we
24 were just led to believe are provided him under your charter?

25 MR. PROSPECT: That is correct, and I will continue

1 with what we are prepared to do about that.

2 The Executive Order of May 30th is an attempt by
3 Mr. Cohalan to usurp the legislative functions of government
4 and reverse county policy on a whim. The Executive Order is
5 in direct violation of county resolutions, and I will repeat
6 them because they are worth repeating: 262 of 1982, 456 of
7 1982, 111 of 1983 and 113 of 1983.

8 Members of the County Legislature plan to institute
9 a law suit within 48 hours, and we will seek a prompt legal
10 solution to the present legal conflict. By prompt, we are
11 hopeful within the next two weeks.

12 I implore the Commission not to take advantage of
13 Suffolk County and the people of Suffolk County while this
14 present legal disagreement between two branches of government
15 is in existence. We are especially vulnerable now because of
16 the precipitous and whimsical action of the County Executive,
17 so I implore the Commission to wait, to wait several weeks, to
18 wait two weeks until a court of law has an opportunity to
19 review the Executive Order, the lawfulness of that Executive
20 Order.

21 When the legal conflict is resolved, the question of
22 legal representation will also be resolved. I repeat,
23 gentlemen, Mr. Ashare is not authorized to represent Suffolk
24 County on Shoreham. When Mr. Cohalan's Executive Order is
25 declared null and void by a court of law, the Kirkpatrick and

1 Lockhart law firm will resume its representation of Suffolk
2 County on all Shoreham matters.

3 CHAIRMAN PALLADINO: May I ask you a question
4 there? One of my questions was going to be: Is the firm of
5 Kirkpatrick and Lockhart authorized to act on behalf of the
6 County, at least in your opinion, at the present time?

7 MR. PROSPECT: Well, it is hard for me to venture an
8 opinion on that. I have seen the contract, and the County
9 Executive signed that contract on behalf of Suffolk County. He
10 didn't sign it on behalf of himself. So I am not an
11 attorney. In my opinion, he was wrong and it was illegal for
12 him to do what he did.

13 The law firm -- and I am sure you can appreciate the
14 reasons -- feels itself in a predicament as of the present
15 moment. However, when the Executive Order is reversed -- and
16 members of the Legislature feel quite confident that the
17 Executive Order will be declared null and void by the courts
18 of the State of New York -- then Kirkpatrick and Lockhart can
19 in all conscience and with all due respect to ethical
20 considerations resume their professional responsibility to the
21 County of Suffolk.

22 CHAIRMAN PALLADINO: So your position at the present
23 time is that, at best, it's a confused situation.

24 MR. PROSPECT: It's a terribly confused situation,
25 and it's a confused situation brought about by one

1 individual. That one individual was entitled to change his
2 mind, but the legal question will be: is he now entitled to
3 represent the entire Suffolk County position? We certainly
4 call that into question, to say the least.

5 We will take that into court and we will just ask
6 the Commission -- and we don't anticipate that this will be a
7 protracted legal battle. We don't anticipate protracted legal
8 conflict on this. We see this as, if you will, a black or
9 white situation, and we are confident that the courts of the
10 State of New York will treat it as such, and hopefully within
11 two weeks we can get a resolution of this.

12 COMMISSIONER BERNTHAL: Is the County Executive
13 popularly elected? That is, is it an elected office?

14 MR. PROSPECT: Yes, he is, that's correct.

15 COMMISSIONER BERNTHAL: I have one other question
16 referencing one of your earlier comments. Exactly to whom
17 does the County Attorney answer, to the Executive or to the
18 Legislature?

19 MR. PROSPECT: The County Attorney --

20 COMMISSIONER BERNTHAL: Who is his boss?

21 MR. PROSPECT: He is appointed by the County
22 Executive -- and Mr. Ashare, correct me if I'm wrong. Is
23 there a legislative approval for that?

24 MR. ASHARE: That's correct.

25 MR. PROSPECT: So in all matters he represents -- if

1 the County is sued, it is the County Attorney's office that
2 handles the litigation. The question here is, is Peter
3 Cohalan -- because that is who we are talking about. We are
4 talking about the Suffolk County Executive. Is he entitled to
5 unilaterally change County policy on radiological emergency
6 response planning questions by himself? Is he allowed to do
7 that? Legislation that he himself introduced. Legislation
8 that was passed into law by the County Legislature. That
9 legislation that defined the policy of Suffolk County
10 Government on the Shoreham question.

11 Gentlemen, that legislation is still on the books.

12 CHAIRMAN PALLADINO: Mr. Prospect, for several
13 minutes we have been over your five minutes, but we have
14 interrupted you. Did you have any other point before we extend
15 the questioning?

16 MR. PROSPECT: You should also take note that even
17 under the County Executive's present Executive Order, his
18 authority, if you will, as claimed by Mr. Ashare, does not
19 extend to the five East End towns. In Suffolk County we have
20 ten towns that comprise the county, the five West End towns
21 comprise the Suffolk County Police District and are served by
22 the Suffolk County Police Department. The five East End towns
23 have their own town police departments.

24 So, given the position of Mr. Ashare, the Executive
25 Order would not even extend to those towns because they have

1 their own indigenous police force and they fall within the
2 emergency planning zone.

3 COMMISSIONER BERNTHAL: Are you saying that they
4 will or will not cooperate, then, in exercising an emergency
5 plan?

6 MR. PROSPECT: I am not authorized to speak for
7 them. I will venture an opinion based on what I have been
8 able to perceive over the past two days. It is my opinion
9 that they are very unhappy with the change of events and they
10 also intend -- when I say "they," some of them, the East End
11 town governments, intend to pursue legal recourse.

12 CHAIRMAN PALLADINO: Okay. I had one question,
13 Mr. Prospect. The copy of the letter that you referred to, or
14 the copy that I have is not signed. Have you sent this signed
15 copy?

16 MR. PROSPECT: Mr. Chairman, I will apologize for
17 that. Everything has happened very quickly in the County of
18 Suffolk.

19 CHAIRMAN PALLADINO: Yes, I appreciate that.

20 MR. PROSPECT: We were aware --

21 CHAIRMAN PALLADINO: Have you submitted a signed
22 copy?

23 MR. PROSPECT: Well, let me just explain. I was
24 aware of the representations that the County Executive made to
25 this Commission, and even, I understand, he made a

1 representation to the President of the United States, and we
2 were in a rush over the weekend to communicate to our counsel
3 regarding the conviction of the Suffolk County Legislature.
4 So with the combination of getting signatures and the
5 combination of speaking to other legislators and getting the
6 legislators who we could not visit personally, getting their
7 authorization to use their name, we sent Mr. Brown a letter
8 that was authorized by now approximately eleven Suffolk County
9 legislators. Some county legislators we have still not been
10 able to reach. Don't forget, it has only been several days
11 since these changed circumstances. So you will forgive the
12 informality of the correspondence.

13 CHAIRMAN PALLADINO: Do you plan to give us a signed
14 copy?

15 MR. PROSPECT: Yes. We plan to communicate in some
16 future way in a more formal manner. Let me emphasize that we
17 plan to be in court, members of the Suffolk County Legislature
18 plan to be in court within 48 hours on this question.

19 CHAIRMAN PALLADINO: Are there other questions?

20 MR. PROSPECT: I guess we should say for the record
21 that we can state unequivocally that the Suffolk County
22 Legislators here today are definitely in support of everything
23 I just stated. Also, I know legislators who could not make it
24 today also support what is being done.

25 CHAIRMAN PALLADINO: It is still nice to get a

1 signed copy.

2 [Laughter]

3 MR. PROSPECT: I can appreciate that, but I'm sure
4 you can appreciate the unique circumstances.

5 CHAIRMAN PALLADINO: I understand.

6 Jim, do you have questions?

7 COMMISSIONER ASSELSTINE: Can you give me a sense of
8 how realistic your estimate is of getting a judgment on the
9 legality of the Executive Order within two weeks?

10 MR. PROSPECT: Well, I am not an attorney. I am
11 told that cases like this are not usually delayed. I am sure
12 the County Executive would seek a prompt resolution to this
13 question. So when you have two parties that are not going to
14 resort to various machinations that seek delays, and if two
15 parties want a prompt resolution, I don't see anything that
16 will impinge upon that.

17 So I am told that in a case like this, perhaps we
18 can get a quick resolution.

19 COMMISSIONER ASSELSTINE: And I take it in the
20 interim you stand on the position that the County held prior
21 to last week on all issues?

22 MR. PROSPECT: That's correct. I am not speaking
23 for myself, necessarily. I am not speaking for Legislator
24 LaBua. I am speaking for the laws of Suffolk County, the laws
25 that are on the books, laws that have not been rescinded. You

1 know, the presiding officer of the Suffolk County Legislature
2 does not agree with the position that a majority of his
3 colleagues have taken. A few months ago what did he do? He
4 introduced a resolution that would rescind every piece of
5 legislation that has been adopted over the past few years.
6 That is the legal and appropriate way to go because what is
7 County policy has to be rescinded. His legislation has not
8 been adopted, but that is the appropriate mechanism.

9 What we have here, in our judgment, is a usurpation
10 of the legislative function. It is a violation of the
11 separation of powers. We are going to seek a redress of
12 grievance in court.

13 COMMISSIONER ASSELSTINE: How about the low power
14 security agreement that has been entered into? Do you have a
15 view on that, its legality and --

16 MR. PROSPECT: Well, I have a personal opinion on
17 that. I cannot comment to the specific details, sir, but I am
18 very disturbed that if you look at County Resolution 111,
19 Peter Cohalan, the County Executive, was pledged and obligated
20 to carry out in all forums, county, federal, state forums, to
21 carry out the intent of that resolution, of resolutions he
22 himself signed.

23 We are now learning that during the past few weeks,
24 the County Executive was violating, in our judgment,
25 resolutions he himself signed. Before Mr. Brown was formally

1 dismissed, he had no knowledge that the Deputy County
2 Executive, the Chief Deputy County Executive, John Gallagher,
3 was meeting privately with LILCO on that subject.

4 So it is hard for me to comment on that, and if
5 Mr. Brown was sitting before you here today, I'm not sure how
6 much he could comment on it because that was a surprise to
7 him, also. If I am wrong in that, I'm sure I will be
8 corrected, but that's my understanding.

9 COMMISSIONER ASSELSTINE: So at least from your
10 standpoint at the present time, you cannot say whether this
11 resolves anything?

12 MR. PROSPECT: No, I cannot.

13 COMMISSIONER ASSELSTINE: I think that's all I had.

14 MR. PROSPECT: Because again, that was done without
15 our knowledge and without our counsel's knowledge.

16 COMMISSIONER BERNTHAL: I am still slightly
17 confused. I certainly can appreciate legal disarray. I hope
18 we are not very often in legal disarray around here. There is
19 usually a legal array before us, though. I have to say that
20 the opening part of your argument to me to be rather
21 political, shall we say, and whether what Mr. Cohalan did is
22 impolitic or not is not really a question for the Commission.

23 MR. PROSPECT: You are implying what I did not
24 intend. If you implied that, I did not intend it.

25 COMMISSIONER BERNTHAL: Well, there is a sense, at

1 least, that he had entered into agreements and has now not
2 kept those agreements. The question for us, however, is
3 whether what he has done is either illegal or the charter
4 equivalent of unconstitutional, I guess; and it is not clear
5 to me what a resolution means.

6 MR. PROSPECT: It is legislation. In Congress they
7 call it a bill.

8 COMMISSIONER BERNTHAL: Okay. That has the force of
9 law.

10 MR. PROSPECT: Correct. In our county government,
11 we call it legislation.

12 COMMISSIONER BERNTHAL: So you would argue, then,
13 whether or not he has acted impolitically, that he has acted
14 outside the charter and has also acted illegally. Is that the
15 essence of what you are saying?

16 MR. PROSPECT: We are claiming that his actions are
17 illegal and that they are unlawful; and this body, of course,
18 cannot decide that, just like it cannot decide the legality of
19 the LILCO evacuation plan. You instructed that the courts of
20 the State of New York decide that.

21 What we are asking you today is that you take the
22 same position. You can get involved in that, in whether the
23 County Executive acted appropriately or inappropriately, but
24 give the courts of the State of New York time to resolve this
25 conflict. That is all we are asking you to do.

1 If I can respond to your previous comment, I was
2 only responding to a question regarding that security
3 agreement, and it was brought to our attention today that that
4 security agreement was a complete surprise to our own special
5 counsel, Mr. Brown, who up until yesterday represented, or was
6 the agreed representative of the County Executive and the
7 County Legislature, and that he had no knowledge of that
8 agreement.

9 So my characterization was based on a factual
10 occurrence.

11 COMMISSIONER BERNTHAL: One last question. Aside
12 from the question of 5 percent power and NEPA and whether the
13 plant can be presumed never to run or not, which is clearly an
14 important question for the Commission, there is also the
15 question of exercising the emergency plan.

16 Now, are you suggesting that the Commission and, of
17 course, FEMA should not at this time, then, involve itself in
18 what -- I'm not sure, but what I gather is, at least for
19 the moment, a lawful exercise of police power on the part of
20 Mr. Cohalan?

21 MR. PROSPECT: No, it is not a lawful exercise.
22 Mr. Cohalan is not only involving the Suffolk County Police,
23 his Executive Order is also directing the Suffolk County
24 Planning Department to involve itself in such exercises. We
25 believe the whole Executive Order, for that reason, is

1 unlawful and illegal. His Executive Order would require the
2 expenditure of new funds to carry out such tasks, and the
3 County Legislature, pursuant to the Charter -- and you are
4 going to get a copy of the Charter -- only the County
5 Legislature can authorize new appropriations for new
6 endeavors, and certainly we have not authorized any
7 appropriation for emergency preparedness.

8 CHAIRMAN PALLADINO: I have a clarifying
9 question. Aside from the question of an emergency plan
10 exercise, we have the question of whether this equipment is
11 vital or not and whether we should confirm our "as safe as"
12 conclusion. Are you saying that even on those we should wait
13 two weeks?

14 MR. PROSPECT: I would say to you that because right
15 now we are -- let me say that we feel thoroughly unrepresented
16 before this body. We feel disarmed. There has been a sudden
17 blow to the County's position on Shoreham. We feel legally
18 disarmed. Many of the County legislators -- and, we believe,
19 a majority of them, more than a majority -- feel that we don't
20 have effective legal counsel any more, but we are taking that
21 view to a court of law. And once the issue of the Executive
22 Order is resolved, the issue of effective legal representation
23 will also be resolved at the same time.

24 CHAIRMAN PALLADINO: Then are you saying that, aside
25 from just waiting two weeks, we then have to receive whatever

1 position that the County concludes it has at that time, so we
2 are talking more like a month, perhaps.

3 MR. PROSPECT: I'm sorry. I don't understand the
4 question.

5 CHAIRMAN PALLADINO: You may resolve the question of
6 who represents the County in two weeks. That is assuming you
7 could do it. Then if you are going to make any presentation
8 to us, presumably time will be --

9 MR. PROSPECT: No, that's not it. We are not
10 deciding who represents the County. We are going to decide in
11 court the lawfulness, if you will, of the Executive Order.
12 The court action is to determine -- we are pursuing initiating
13 a legal action challenging the lawfulness of Executive Order
14 No. 1. That is going to be the thrust of our law suit.

15 CHAIRMAN PALLADINO: But that won't bear, I don't
16 believe, on the questions we are trying to address here.

17 MR. PROSPECT: Yes, it will because the Suffolk
18 County Government -- the County Executive acting in
19 conjunction with the County Legislature retained the services
20 of a law firm. That law firm, pursuant to an Executive Order,
21 is no longer servicing Suffolk County. We feel thoroughly
22 disarmed. So in the name of equity and justice, we would like
23 the issue of the Executive Order resolved.

24 But let me make it clear we are not going into court
25 regarding legal representation. We are going into court on

1 the sole matter of the lawfulness of the County Executive's
2 Executive Order and whether he was justified in issuing such
3 an order or was it an illegal and unlawful act. If it was an
4 illegal and unlawful act, I am sure the courts of the State
5 will render it null and void. That is the issue we are going
6 to litigate.

7 CHAIRMAN PALLADINO: Will that also include the
8 question of the attorney -- what is it -- Kirkpatrick and
9 Lockhart?

10 MR. PROSPECT: Well, let me say this to you. Once
11 the Executive Order is declared null and void, it is certainly
12 the prerogative of the County Legislature if the County
13 Executive refuses, it is certainly the power of the County
14 Legislature to hire any law firm it chooses to be special
15 counsel, independent of the County Executive. According to
16 our Charter, it is the County Legislature that is the
17 policy-making branch of government, not the Executive Branch.
18 It is the classic executive/legislative branch of government.
19 It is the Legislature that is the policy-making branch of
20 government.

21 CHAIRMAN PALLADINO: Jim, did you want to follow up?

22 COMMISSIONER ASSELSTINE: Yes.

23 If I could just understand, you asked us to hold up
24 for a couple of weeks.

25 MR. PROSPECT: Yes.

1 COMMISSIONER ASSELSTINE: Assume that you get a
2 judgment from the court and the judgment is that you are
3 correct, that the Executive Order is invalid. You, the
4 Legislature, then put your special counsel back in place. At
5 that point, what do we have to do, from your standpoint?

6 MR. PROSPECT: I believe that we would not even
7 have to do any overt act to put our special counsel back in
8 place. Our special counsel will automatically resume his
9 professional responsibilities to represent Suffolk County.

10 COMMISSIONER ASSELSTINE: Okay.

11 MR. PROSPECT: Mr. Herb Brown has never represented
12 the County Executive functioning in an independent capacity.
13 He has represented Suffolk County. Because of the quagmire
14 created by the Executive Order, Mr. Brown has had to remove
15 himself from representation. Once the Executive Order
16 is declared null and void, the law firm will resume its
17 professional responsibility to Suffolk County.

18 COMMISSIONER ASSELSTINE: I guess what I'm trying to
19 get at is I believe the County asked for this oral
20 argument. Are we free to go ahead, in your view, once that
21 issue is laid to rest? Do we have to have another oral
22 argument at that point, or are you prepared -- yes, I thought
23 that was the question you were after -- or are you prepared to
24 stand on the papers that have been submitted, the positions
25 that have been taken by the County up until this latest change

1 of events within the past few days. Or are you asking for
2 more than just waiting for that decision to be made and seeing
3 how the Court rules on the question of the legality of the
4 Executive's actions?

5 MR. PROSPECT: We are asking you to temporarily
6 postpone any decision regarding any aspect of the low power
7 licensing questions, all aspects of it, until the question of
8 the legality of the Executive Order is rendered in Court,
9 until there is an official judicial determination, something
10 that we feel would be very prompt.

11 COMMISSIONER ASSELSTINE: But assuming that decision
12 comes out favorable to you, are we then free to go forward?

13 MR. PROSPECT: Then our legal representatives will
14 --

15 COMMISSIONER ASSELSTINE: Then you will tell us what
16 your view is.

17 MR. PROSPECT: Then our legal representatives will
18 come back and resume their professional responsibility of
19 representing the position and the resolutions of Suffolk
20 County Government.

21 COMMISSIONER ASSELSTINE: If everything comes out
22 your way, presumably that position would be the same position
23 that the County had taken up until the latter part of --

24 MR. PROSPECT: When you refer to the County, let
25 me go back to a comment I made earlier. Peter Cohalan and the

1 County Attorney constantly refer to themselves as the County.
2 He is a county executive. He is not the County. I never
3 heard of Ronald Reagan referring to himself as the United
4 States. He is President of the United States. The County
5 Executive is not the County. He is a county executive.

6 So it is our view that the position of Suffolk
7 County has not changed, that the resolutions promulgated in
8 1982, 1983 are still in effect. There has been no policy
9 change in the County of Suffolk. The view of one person may
10 have changed, but that's all.

11 CHAIRMAN PALLADINO: But I think what Commissioner
12 Asselstine is trying to get at is suppose we wait the two
13 weeks, we hear the decision and it is favorable to you. Then
14 are we the next day free to go ahead and make our decision, in
15 your mind, or is there going to be time needed for your legal
16 counsel to make presentations or make some --

17 COMMISSIONER ASSELSTINE: We have already received
18 the papers from --

19 MR. PROSPECT: Well, I'm sure you would show due
20 concern for any time problem, any preparation problem
21 regarding the -- well, let me say this. Our law firm cannot
22 effectively represent any party at this point, but they --

23 COMMISSIONER ASSELSTINE: That is how you are
24 getting shortchanged. If you are getting shortchanged at all,
25 it is because you can't have counsel representing your

1 position today and continuing to advocate before the
2 Commission the positions of the County --

3 MR. PROSPECT: But our law firm is not representing
4 any party at this point, but they have not walked away from
5 the case. It is my feeling that as soon as the legal question
6 is involved regarding the Executive Order, our law firm will
7 be able to step right in and resume the case without any time
8 loss at all.

9 I have been joined by Legislator Foley, and he is
10 requesting to make some comments.

11 MR. FOLEY: May I speak just to that point briefly?

12 CHAIRMAN ASSELSTINE: Let me go to Commissioner Zech
13 and let him ask some questions, and then I will come back to
14 you.

15 MR. FOLEY: I want to leave and let him continue.

16 COMMISSIONER ZECH: All right. Go ahead,
17 Mr. Chairman.

18 MR. FOLEY: My only comment on that, sir, would be
19 as follows. It is my understanding the papers have been
20 submitted. The purpose of this convocation, let's call it,
21 here today is for the purpose of hearing oral arguments. We
22 are in a position where we have no one to truly represent the
23 County in the oral argument phase.

24 After the legal question has been resolved by the
25 courts -- and I would say the question of whether it is two

1 weeks or possibly longer is rather a moot question because
2 sometimes litigation may take a bit longer than one expects,
3 depending on the stratagems of the parties, and we have been
4 subject to that in the County of Suffolk. But the point then
5 is it would seem to me that the orderly process of oral
6 argument then would be resumed, and I would certainly hope,
7 gentlemen, that your decision would not be made before there
8 was true and legal representation by the County to make oral
9 argument.

10 CHAIRMAN PALLADINO: That is what I was getting
11 at. It is really a request for considerably longer than two
12 weeks, in its practicality.

13 MR. PROSPECT: Well, if you are asking me, if the
14 Executive Order is declared null and void, when our law firm
15 resumes its professional responsibility to the County, should
16 they be given an opportunity to make oral argument --

17 CHAIRMAN PALLADINO: I wasn't asking that question.
18 I just wanted to have you realize and us realize that you are
19 requesting a period longer than two weeks because I think due
20 process would require that some consideration be given to --

21 MR. PROSPECT: Okay. But I'm sure we cannot put a
22 time on due process. I did say it was my belief that the
23 County Executive and the County Legislature, our main interest
24 is a prompt resolution. Two weeks, two and a half weeks,
25 three weeks. I don't think due process is measured by the

1 calendar. What we are asking for is this Commission to
2 recognize due process and give the Court an opportunity to
3 work its will.

4 CHAIRMAN PALLADINO: Thank you.
5 Commissioner Zech?

6 COMMISSIONER ZECH: Thank you very much.

7 MR. PLAINE: Mr. Chairman, may I ask a question?

8 CHAIRMAN PALLADINO: This is our General Counsel.

9 MR. PLAINE: Mr. Prospect, Mr. Ashare, the County
10 lawyer, has maintained that he is statutorily entitled to
11 express the position of the County. May not the NRC rely on
12 Mr. Ashare as representing the County position,
13 notwithstanding the problems that you may have internally on
14 these matters?

15 MR. PROSPECT: We don't have necessarily internally
16 problems. Mr. Ashare is an appointed official. He is paid
17 not to make policy; he is paid to carry out policy. The
18 Suffolk County Legislature is the policy arm of County
19 government. It is the Suffolk County Legislature, pursuant to
20 adopted legislation, it is the County Legislature that has
21 made policy on the issue of radiological emergency response
22 planning for Shoreham.

23 The County Attorney is not reflecting that policy.
24 The County Attorney now is reflecting the personal opinion of
25 one individual. He is no longer reflecting the policy, the

1 adopted legislative policy of the County Government. He is
2 reflecting a changed view of one man. He is reflecting the
3 personal view of one man. He cannot in good conscience speak
4 for the County Government, and that is going to be the essence
5 of the litigation brought my members of the Legislature.

6 MR. PLAINE: Okay. And that --

7 MR. PROSPECT: The County Executive, in all due
8 respect, his whim is not County policy. There is a
9 legislative process that must unfold. It is not government by
10 whim; it is government by law; it is government by standards.
11 Law and standards have been violated here.

12 MR. PLAINE: In connection with the law suit, are
13 you proposing that the County will seek to void the security
14 settlement agreement that has been made?

15 MR. PROSPECT: I can't speak to that issue at
16 this time.

17 MR. PLAINE: I would hope, Mr. Chairman, that we
18 would have an opportunity to ask Mr. Ashare what his views are
19 on some of this. He may have something --

20 COMMISSIONER BERNTHAL: Do you mean on the question
21 of whether the County would seek to void the settlements that
22 were made?

23 CHAIRMAN PALLADINO: I think we are getting into
24 debate and perhaps speculation. I don't want to deny
25 ourselves any information.

1 MR. PLAINE: I understand. If you don't think it's
2 necessary, that's okay.

3 COMMISSIONER BERNTHAL: Unfortunately, the question
4 of whether the plant ultimately operates is a speculative
5 business at best, and many of these speculations have some
6 significance. I would be inclined, if the General Counsel's
7 Office feels it is important for their considerations in
8 giving us legal advice, Mr. Chairman, that perhaps we should
9 hear that. It's up to you gentlemen.

10 CHAIRMAN PALLADINO: Any objection?

11 MR. PLAINE: I was talking and I didn't hear.

12 COMMISSIONER ASSELSTINE: Fred says if you think the
13 question is important, you can ask it.

14 CHAIRMAN PALLADINO: Yes. Let's go ahead, then.

15 MR. PLAINE: If I could get Mr. Ashare.

16 CHAIRMAN PALLADINO: I'm talking to the Commission
17 and ask if anybody has objection to your asking the question
18 of Mr. Ashare, and the answer is I heard no objection.

19 MR. PLAINE: I will wait until he is here.

20 CHAIRMAN PALLADINO: Are we through with these
21 gentlemen?

22 Well, thank you very much.

23 MR. PROSPECT: Mr. Chairman, I would like to thank
24 you for your courtesy, and members of the Commission. We
25 appreciate it very much. Thank you.

1 CHAIRMAN PALLADINO: Thank you.

2 Could we have Mr. Ashare rejoin us at the table
3 briefly?

4 Our general counsel has a question for you.

5 MR. ASHARE: Yes.

6 CHAIRMAN PALLADINO: Could you repeat it, Herzel?

7 MR. PLAINE: What I had in mind was I take it I
8 understood you to say that you are statutorily entitled to
9 express the position of the County.

10 MR. ASHARE: Correct.

11 MR. PLAINE: And that what you have told us here
12 today is what you regard as the position of the County.

13 MR. ASHARE: Correct. I think the issue of the
14 validity of the Executive Order and the question of whether or
15 not I represent the County in this has become confused.
16 Notwithstanding the issue of the legality of the Executive
17 Order, the County Executive rightfully has terminated, within
18 his powers, has terminated the contract of Kirkpatrick and
19 Lockhart and has so notified them. That is separate and apart
20 from the validity of the Executive Order.

21 As the County Attorney of the County of Suffolk, I
22 take over the legal representation pursuant to the County
23 Charter and the County Law of the State of New York,
24 regardless of the validity of the Executive Order. Is the
25 Order valid? I believe it is. Is the agreement valid, the

1 low power security settlement agreement? I believe it is.

2 While I'm up here, I might as well address myself to
3 one other issue raised by Mr. Prospect, and that was the five
4 eastern towns. My understanding is that only Riverhead and a
5 very small portion of the town of South Hampton are within the
6 ten mile zone. Those towns are not part of the Police District
7 of the County of Suffolk. The Police Department of the County
8 of Suffolk operates within the five western towns.

9 However, we have a Sheriff's Office in the County of
10 Suffolk, and within the Sheriff's Office we have 150 deputy
11 sheriffs who are police officers, whose jurisdiction does run
12 throughout the county and who would be utilized as a police
13 force to implement an emergency response plan in the event
14 that the towns of South Hampton and the towns of Riverhead did
15 not cooperate in emergency planning.

16 COMMISSIONER ASSELSTINE: One other question as
17 well. Given your position on the exigent circumstances
18 finding and the "as safe as" finding, would you have any
19 objection to the Commission waiting a couple of weeks to see
20 how this other question sorts out?

21 MR. ASHARE: I'm really not prepared to address
22 that. As I said to you in my opening, we are content to rest
23 on the papers submitted by Mr. Brown with regard to exigent
24 circumstances and the "as safe as" contention. The only thing
25 that could be added would be oral argument. I have read the

1 papers and I don't believe there is anything to be added to
2 our argument on those issues.

3 We have said it in our papers, and if you gentlemen
4 would like to sit here on a nice afternoon and listen to it,
5 that's all well and good, but I don't think there is anything
6 to be added to it.

7 COMMISSIONER ASSELSTINE: But your argument is that
8 a low power license should not issue because of your objection
9 to those two portions of the Commission's previous decision.

10 MR. ASHARE: Correct.

11 COMMISSIONER ASSELSTINE: Okay.

12 CHAIRMAN PALLADINO: Herzel, did you have more?

13 MR. PLAINE: No, sir. Thank you very much.

14 CHAIRMAN PALLADINO: Thank you very much.

15 MR. PROSPECT: Mr. Chairman, will you indulge me for
16 one minute, please? I just have a quick observation.

17 CHAIRMAN PALLADINO: All right.

18 MR. PROSPECT: You have your gavel ready.

19 [Laughter]

20 CHAIRMAN PALLADINO: I'm about to call a break.

21 [Laughter]

22 MR. PROSPECT: Thank you.

23 In the letter of dismissal from the County Executive
24 to Mr. Brown of Kirkpatrick and Lockhart, the law firm was
25 dismissed because Mr. Brown and the law firm refused to

1 represent the County Executive as an independent agent, and
2 that is what the County Executive had made the request: will
3 you represent the new position of Suffolk County? The law
4 firm says there isn't any new position of Suffolk County,
5 nothing has changed, no legislation has been changed.

6 So Mr. Brown refused to represent the single County
7 Executive as an independent agent, and that is why he was
8 dismissed.

9 Just lastly, it should be noted the resolutions I
10 referred to in my presentation strictly prohibited the use of
11 any monies in the participation in any evacuation plan.

12 Thank you again.

13 COMMISSIONER ASSELSTINE: Could we have those for
14 the record, by the way?

15 MR. PROSPECT: I will see that you get them. I will
16 definitely see that you get them. Thanks again.

17 CHAIRMAN PALLADINO: Thank you.

18 Now I am going to suggest we take a ten-minute
19 break. We will probably be here a little longer than I had
20 thought.

21 [Recess]

22 CHAIRMAN PALLADINO: Commissioner Asselstine will
23 be joining us shortly.

24 This is the continuation of the meeting that we just
25 recessed, and our next speakers will be the representatives of

1 the LILCO organization.

2 MR. ERWIN: Thank you, Chairman Palladino, members
3 of the Commission. My name is Donald Erwin, representing Long
4 Island Lighting Company. With me to my right is my partner,
5 Taylor Reveley, who has been working on the Shoreham case
6 virtually since its inception in about 1970. Immediately to
7 my left is John Leonard, who is LILCO's Vice President for
8 Nuclear, in case the Commission has any technical questions.

9 It is a pleasure to be here once again ten years
10 into this operating license proceeding on the second round of
11 inquiry into a Phase 3 and 4 low power license.

12 Let me go quickly into the first question the
13 Commission raised, namely, that of reconsideration of CLI
14 85-1.

15 It is LILCO's position, as we have indicated in our
16 written comments filed with the Commission, that the
17 Commission should not reconsider CLI 85-1. Petitions for
18 reconsideration are intended to highlight and focus matters
19 which were either unavailable for review earlier or just were
20 somehow not treated at all properly. They are not intended as
21 a device simply to recant, reincant, repeat what has been
22 heard, reheard and decided before.

23 This is at least the third time papers and issues
24 have been briefed to this Commission concerning Phases 3 of
25 low power. If one counts the Appeal Board's briefing and

1 argument, it's the fourth time. This is the third oral
2 argument if one includes the Appeal Board, the second time if
3 one includes only the Commission.

4 What comes out of it is basically the same stuff
5 over and over again.

6 Now, in the Commission's earlier review -- it was an
7 immediate effectiveness review, but it was not your typical
8 immediate effectiveness review. As you know better than I,
9 immediate effectiveness reviews aren't even normally granted
10 in low power situations. There was one here.

11 Before the Commission acted previously, as we
12 indicated, there were two rounds of written filings and a
13 round of oral argument. The Commission had before it a
14 massive record and considered it carefully.

15 Those factors are well to bear in mind. In fact,
16 the Appeal Board bore them in mind in ALAB-800 when it did pay
17 very close attention to what the Commission had said. In
18 ALAB-800, which led to the need to be back here again in a
19 circumstantial sense, the Appeal Board affirmed on the merits
20 everything that had been brought up before it on factual
21 issues. It also paid attention to the Commission's
22 interpretation of two crucial clauses on Section 50.12(a),
23 namely, the exigent circumstances language and the "as safe
24 as" language, and it quite properly said the Commission
25 probably knows what it is saying, seeing as how this is

1 Commission-made law within this very case.

2 As to only one matter, namely, that of the treatment
3 of the backup AC power sources, did the Appeal Board have any
4 different view than that of the Licensing Board or the
5 Commission.

6 As to the various other issues, the due process
7 issues, the other substantive issues raised by the
8 intervenors, the Appeal Board simply held that they were
9 either insubstantial or not meritorious. That is very
10 important as we go around in this third round.

11 The long and short of it is that there is nothing
12 new on the face of these papers and the Commission need not
13 reconsider its earlier decision.

14 The second question which is presented by the
15 Commission's order of oral argument is that of the treatment
16 of alternate AC power systems as vital equipment. As the
17 Commission knows, LILCO believes, and believes the record and
18 circumstances of this case will sustain that these sources do
19 not need to be treated as vital equipment for purposes of low
20 power.

21 There are really some background circumstances to be
22 borne in mind, and then there are two basic arguments as to
23 why they need not be treated. The first is that the
24 circumstances of the low power are significantly different
25 from full power, both in duration and in the inherent nature

1 of the risks incurred. You have minutes, if not hours or days
2 or weeks, in the case of all events except the LOCA, where we
3 have at least 55 minutes under the most conservative analysis,
4 and at least 30 days under anything else, versus seconds or
5 minutes at full power.

6 Secondly, the duration of Phases 3 and 4 is expected
7 to be on the order of 60 days versus 30 years. We are talking
8 about a temporary situation.

9 Secondly, security at Shoreham for the full plant
10 has been approved by the Staff and by all of the parties in a
11 settlement agreement which has been honored throughout this
12 proceeding. The existence of that settlement agreement
13 implies that there is the high degree of assurance for the
14 plant proper, the protected area and all the equipment in it,
15 and the vital areas within that protected area, which is
16 required by Part 73 of the Commission's regulations.

17 That becomes important when one considers, for
18 instance, questions about potential diversionary actions
19 against EMDs or 20-megawatt equipment if those are not
20 considered to be vital. I will come back to that in a minute.

21 A third background factor is that there has been a
22 long and productive history of cooperation between LILCO and
23 the Suffolk County Police Department in security matters,
24 manifested in everything from nuclear security to crowd
25 control over the years. The only breakdown in that, quite

1 frankly, has been within the past year or year-and-a-half
2 when, after apparently developing some reservations about the
3 low power security arrangements, the Suffolk County
4 representatives simply did not choose to use their basically
5 plenary access to information from LILCO to obtain information
6 about the low power security arrangements, advise us of their
7 concerns, and seek our help in resolving them in a timely
8 fashion.

9 In terms of equities, I believe this makes some
10 difference.

11 Fourth, it is useful to bear in mind that New York
12 State is not a participant in the full power security
13 proceeding and is not a party to the full power security
14 agreement and has merely tagged along on the contentions which
15 were filed last summer by Suffolk County.

16 A final background consideration is that the backup
17 power sources, the 20-megawatt turbine and EMDs are not
18 simply naked and unprotected. The EMDs are in the protected
19 area. In November 1984, LILCO implemented certain additional
20 security enhancements for the EMDs, and in submission recently
21 made, so-called Attachment 3 of Revision 9 of the security
22 agreement, LILCO committed to make further security
23 enhancements to both the EMDs and the 20-megawatt, which we
24 have committed as a matter of contract with Suffolk County to
25 implement even in the event the Commission declares the EMDs

1 and the 20-megawatts not to be vital equipment so long as we
2 rely on them as our emergency backup power source.

3 This is important for the Commission to understand
4 in the framework of its decision because, as we understand it,
5 Suffolk County agrees with us that protection for this
6 equipment is adequate under the terms of this agreement, and
7 we intend to abide by the agreement regardless of the
8 Commission's decision as to vitality.

9 But New York State is not a party to the agreement.
10 We intend to invite New York State to ratify it and join with
11 us. I'm not confident that it will happen, and if New York
12 State does not participate in it, then the question of the
13 need for an exemption -- or excuse me, the question of the
14 vitality of the equipment becomes important because if the
15 Commission holds the equipment is not vital, then there is
16 nothing standing in the way of issuance of a low power
17 license. If the Commission holds that the equipment is vital
18 and has not adequately been compensated for, we will need by
19 some means to establish that we have adequately protected it.

20 Now, in terms of the need to protect alternate AC
21 power sources as vital equipment at low power, as the
22 Commission noted in questioning earlier, one needs a
23 combination of two extremely remote events, namely, a LOCA and
24 a total loss of off-site power, occurring within 55 minutes of
25 one another, plus the loss of the EMD diesels and the loss of

1 the 20-megawatt turbine, all to occur.

2 The safeguards threat against the alternate AC power
3 sources by themselves does not cause a LOCA, and for the
4 purposes here, the LOCA itself has to be sabotage induced.
5 Even the intervenors themselves in the proceeding now remanded
6 before the Kelley Board have conceded that the concurrent
7 independent occurrence of a LOCA and a security contingency is
8 so remote that they don't intend that to be covered by their
9 contentions.

10 Commission guidance in the form of Review Guideline
11 17 also suggests that security need not be analyzed
12 concurrently with either violent natural phenomena or random
13 -- namely, accidental -- failures of equipment.

14 So you have got to have a sabotage-induced LOCA, and
15 that means you have either got to get penetration of the
16 reactor building from a fully-approved security plan or you
17 have got to have an insider-caused LOCA. It is just simply a
18 sufficiently remote concatenation of possibilities within a
19 short time that we believe the Commission would be justified
20 in taking these factual background matters into account in
21 deciding that there just simply, given the background
22 circumstances, was no necessity to treat these equipment as
23 vital.

24 Secondly, there is no existing generic regulatory
25 requirement for treatment of backup AC power sources as vital

1 under the Commission's regulations now. Nothing specific in
2 the regulations requires it. Staff initially took the
3 position in the low power proceeding in their SSER, Supplement
4 5, that there was no technical reason to require this
5 equipment to be treated as vital.

6 During the course of the summer of 1984, the Staff
7 filed a proposed rulemaking which, among other things, would
8 have required treatment of the backup AC power sources as
9 vital equipment. Subsequently, the Staff changed its
10 position. In response to questioning by the Licensing Board,
11 the Staff conceded that the basic reason it changed its
12 position was to avoid jeopardizing consistency with its
13 proposed rulemaking.

14 Well, that's fine. There may be a proposal for a
15 rulemaking, but until the rulemaking is completed, it is not a
16 rule. And if there is not a rule requiring it, just simply in
17 the absence of other compelling circumstances there should be
18 no requirement for it. Particularly given the fact that these
19 pieces of equipment are not naked and unprotected, LILCO
20 believes the Commission would be justified in not holding them
21 to be vital.

22 The third question the Commission raised concerning
23 security is whether the Appeal Board should have affirmed the
24 Licensing Board's dismissal of the contentions on grounds of
25 basis and specificity. Let me suggest that basis and

1 specificity is a term which has got to be understood in a
2 common sense way. It should include contentions that are
3 essentially irrelevant, such as those involving beyond the
4 scope of a design basis threat. It should include other kinds
5 of contentions with inherent pleading defects.

6 In short, as I understand the Commission's question,
7 it is was there an independent, valid basis for the dismissal
8 of each of the contentions other than the question of whether
9 the equipment involved was vital or not? We believe that
10 there was such a basis. The basis is laid out in our
11 pleadings. When one parses contentions in oral argument, it
12 gets everybody lost. I'm not going to try and do it, but I
13 suggest to you that there is a basis, and the Appeal Board,
14 had it performed that test, would have come to the conclusion
15 that we did, namely, that there was such a basis.

16 As to what would be left of admitted contentions if
17 the Commission were to decide that there is no need to treat
18 equipment as vital, I must disagree with Mr. Palomino in his
19 feeling that there would be something left. There would be
20 nothing left, simply because if you don't have to protect
21 equipment within this as vital -- the Commission's July 18,
22 1984 Order limited the scope of potential litigation
23 specifically to contentions caused by modification to the
24 plant for the low power configuration; if the EMDs and 20
25 megawatt are not vital, then an attack on them, a diversionary

1 attack, simply would not be dealt with by the security
2 plan. It would be like an attack on a tool shed or an attack
3 on anything else. What would be defended is the vital area
4 and the protected area. And to the extent the EMDs were in
5 the protected area, only coincidentally.

6 The long and short of this is there would be nothing
7 left of the contention.

8) In my brief time remaining, let me take up quickly
9 the questions concerning whether the Commission should proceed
10 or how the Commission should proceed from here. LILCO
11 believes that it has satisfied the safety end of the
12 requirements for issuance of a low power license and that the
13 equities of the situation commend issuance of such a license.
14 There are no serious safety questions outstanding.

15 Secondly, the security problem such as it has
16 existed has been remedied with Suffolk County, not with New
17 York State, but we believe that an independent remedy exists
18 in connection with the definition of vital equipment.

19 Third, Suffolk County has indicated through its
20 Executive that it intends to participate in emergency
21 planning. Whether that ultimately holds true or not is
22 obviously a matter of some conjecture. We believe that it
23 will, but the fact is that the very existence of this
24 controversy highlights the argument that LILCO has been making
25 for years now, that it simply does not pay to get into

1 speculation about the likelihood of participation of one layer
2 of government or another in emergency planning.

3 The Commission has recognized this both in its
4 interpretation of Section 50.47(d) as to the issuance of the
5 lower power license where it has refused to speculate, and
6 also in terms of its decisions as to whether or not to require
7 supplemental NEPA analysis. We firmly believe that in fact,
8 the Atomic Safety and Licensing Board's decision holding that
9 LILCO, in the absence of anybody else's cooperation, doesn't
10 have the legal authority to do what the Commission requires it
11 to do, that decision will be overturned in the fullness of
12 time. However, the very existence of the controversy suggests
13 the wisdom of the Commission's course to date.

14 Now, a couple of quick aspects of emergency
15 planning. Mr. Palomino mentioned New York State's continued
16 unwillingness to cooperate in it. Well, the Licensing Board
17 held, in generally sustaining LILCO's emergency plan in all
18 respects except those having to do with its status, that our
19 50-mile planning apparatus was a pretty good one and that it
20 was satisfactory. We also, by the way, have the cooperation
21 of the State of Connecticut in addition to the County of
22 Nassau.

23 So it is not as though -- you don't have to have
24 impoundments. What we did is we have set up arrangements to
25 keep food off the market by offering farmers to be made

1 whole. We would broadcast information on supplies. We would
2 have cooperation from the Department of Energy and so forth.
3 It is all in our plan. It's in the decision, and the
4 Licensing Board held it is adequate.

5 So the mere fact that the State is not going to
6 participate is not a bar on the facts.

7 Secondly, I don't want to get into the details of
8 the comparison of Indian Point against Shoreham. Indian Point
9 may have roads running in all directions, but it also has
10 people running in all directions, too, and they are twice as
11 dense as they are at Shoreham. It also has got snow like you
12 have never seen on Long Island. There are a number of other
13 features. The long and short of it is emergency planning is
14 probably easier on Long Island than it is at Indian Point.

15 I think that should just about do it. If the
16 Commission has any questions, I would be happy to answer them.

17 CHAIRMAN PALLADINO: Thank you, Mr. Erwin. I have a
18 couple of questions here.

19 Let me first make sure I understand the effect of
20 the recent settlement agreement with the County. Is it to the
21 effect that LILCO agrees that the alternate system is vital
22 equipment, and if so, how can the Commission give
23 consideration to your papers which maintain that the alternate
24 system is not vital equipment?

25 MR. ERWIN: LILCO has agreed for purposes of that

1 agreement to treat the EMDs and the 20-megawatt turbine as
2 though it were vital equipment, to protect it as though it
3 were vital equipment in accordance with the provisions of
4 Section 73.55. That doesn't mean we agree that it is, in
5 fact, vital equipment or that it serves the functions of a
6 piece of vital equipment.

7 Having agreed to treat it as though it were vital
8 equipment in terms of physical protection, the specifics of
9 which are outlined in Attachment 3, we will do it as a matter
10 of contract with Suffolk County because we keep our
11 agreements.

12 CHAIRMAN PALLADINO: Now, if we turn around and say
13 it is vital equipment, does that introduce new hearing?

14 MR. ERWIN: If you say that it is vital equipment,
15 then that introduces -- yes. Then the Kelley Remand Board
16 would have to determine whether or not the measures which we
17 in Suffolk County have agreed are adequate are, in fact,
18 adequate.

19 My understanding, coincidentally, and Mr. Perlis can
20 speak better to this than I, is that the Staff did not review
21 this attachment before it was formally submitted, but my
22 understanding from their preliminary review is that while they
23 have some comments, they have no serious substantive
24 problems. I have every expectation that the Staff agrees that
25 are measures are basically adequate, too.

1 CHAIRMAN PALLADINO: Let me turn to another
2 question. What is LILCO's stance with regard to the Suffolk
3 County request for delay, or at least Mr. Prospect's request?

4 MR. ERWIN: LILCO would not favor such a delay for a
5 number of reasons. One is, as I mentioned, we are in the
6 tenth year of this proceeding. We are within several months
7 of literally being on the cusp of operation. There are no
8 serious safety problems with the plant. Indeed, just the
9 opposite. We need to operate. We are being prejudiced by
10 delay, both monetarily and in terms of the readiness and
11 ability of plant staff to continue its operation.

12 I would have, frankly, a little more -- I would be a
13 little more sanguine about Mr. Prospect's request if I had any
14 basis in the history of this proceeding to think anything
15 other than that once something turns into a law suit in
16 Suffolk County, it stays there for years, and despite the
17 best efforts and best intentions of everybody to resolve an
18 issue as they best see it, my guess is that once one has gone
19 to the New York Supreme Court and then to the Appellate
20 Division and then to the Court of Appeals and someone has
21 sought to appeal it to the United States Supreme Court, you
22 see a process that is at least two to three years long, and
23 probably longer.

24 CHAIRMAN PALLADINO: Could you help me clear up a
25 couple other points? I still am not clear what the next steps

1 regarding emergency planning at Shoreham involve.

2 MR. ERWIN: The next steps, in our view, involve the
3 following. First of all, examining closely the Licensing
4 Board's decision as to those matters within LILCO's power to
5 remedy which need to be remedied, and then are probably half a
6 dozen of them. Our judgment is that all of them, except those
7 which deal with status -- namely, LILCO's existence as a
8 private entity rather than a government, dealing with legal
9 authority, conflict of interest and the absence of a state
10 plan -- can be easily remedied by LILCO and will be. In fact,
11 we have people working on them.

12 Operationally, our next step is to meet with Suffolk
13 County, FEMA and members of the NRC and start planning an
14 exercise. We have received informal communications from FEMA
15 within the last several days which indicate that they are
16 anxious and ready to cooperate in the planning for an
17 exercise.

18 Once we have met with Suffolk County and coordinated
19 logistically how they would fit into the plan, we will submit
20 -- I don't want to call it a revision or amendment because I
21 don't think it will even involve that. It will be simply like
22 laying a template over an existing plot.

23 Bear in mind that 90 percent of emergency planning
24 deals with underlying facts and circumstances, namely, roadway
25 capacities, population, meteorology and so forth, that are

1 unaffected by organization. The organization is basically
2 fungible, we believe, in 90 percent of its aspects, and we
3 feel we can get going on that pretty quickly.

4 CHAIRMAN PALLADINO: You maintain you wouldn't have
5 to resubmit or you wouldn't have to submit a revised emergency
6 plan?

7 MR. ERWIN: We will submit some kinds of revisions.
8 I guess all I am saying, Chairman Palladino, is I don't want
9 to call them a revision or an amendment or something else that
10 somebody might think of as a term of art because, frankly, we
11 haven't had the subsequent meetings and interplay with the
12 Suffolk County experts yet. I'm quite confident that it is
13 manageable and that it will not involve changing the vast bulk
14 of the -- well, let me say it the other way. The vast bulk of
15 it will be unchanged.

16 CHAIRMAN PALLADINO: But until that is done,
17 whatever form it takes, you wouldn't be really in a position
18 to exercise a plan, or would you? What I am getting at is
19 there are the police power questions, and until those are
20 settled in some form, it is not clear to me what the value of
21 the exercise would be. But once that is done, I can see great
22 value in it.

23 MR. ERWIN: My practical view is that as long as a
24 validly elected constitutional officer of Suffolk County is
25 acting within the apparent scope of his mandate and is willing

1 to cooperate with us, we are going to cooperate with him and
2 plan as best we can and show the world that we have as good a
3 plan as we know we have.

4 We cannot actually hold the plan until the
5 arrangements -- or hold the exercise until the arrangements
6 are in place. FEMA has, as I recall, either a 90 or 120-day
7 planning sort of prototype schedule. I see no reason why we
8 shouldn't be able to meet that kind of schedule as a path to
9 an exercise.

10 CHAIRMAN PALLADINO: Let me ask one other question.
11 When will the on-site AC power system questions be resolved?
12 I am thinking of the TDI qualification and of the eventual
13 replacement with, I think it is, diesels.

14 MR. ERWIN: As to the TDIs, I can't peer inside
15 Judge Brenner's head, but my understanding is that a decision
16 is expected either this month or next.

17 COMMISSIONER ASSELSTINE: The hearings are over,
18 right?

19 MR. ERWIN: Yes, sir. The hearings are over. All
20 the filings have been submitted to the Board. Apparently a
21 result is expected in July. As to the colts, Mr. Leonard can
22 speak in more detail than I, but basically they are on site,
23 have been largely installed. However, hooking them up is not
24 like turning on a light switch or unplugging a bulb. One has
25 to rip out a lot of connections and reroute a lot of power and

1 instrumentation, and it is how many months?

2 The long and short of it is we are planning on
3 waiting until after the first refueling of the TDIs or
4 20-megawatt and EMDs -- if the TDIs are qualified, simply
5 because it is a several week or several month changeover.

6 MR. ROLFE: Mr. Chairman, when I first came to
7 LILCO, LILCO had considered throwing away the TDIs and putting
8 in the colts immediately. After my review of the Owners
9 Group, there are 16 other or 13 other utilities involved with
10 TDIs, four of them exactly similar to us. It seems to me if
11 you really believe in reactor safety, a six emergency diesel
12 power plant is considerably safer than a three emergency
13 diesel power plant.

14 They have already spent a lot of money refurbishing
15 these TDIs. I convinced the Chairman of the Board that if
16 these things litigate properly, and they should, they are
17 sitting there now and standby tested. If we lost power, the
18 first thing to come on would be the non-legally recognized TDI
19 diesels, and they carry the plant load. We would only go to
20 the emergency power supplies, the EMD diesels, 20-megawatt gas
21 turbine if that didn't happen.

22 Based on that, I completed the engineering for tying
23 in the colts as if we were going to lose the TDIs, but then I
24 also restarted engineering at considerable expense to LILCO to
25 make a parallel tie-in of the colt diesel engines at the first

1 refueling outage.

2 It is my great hope that we will end up with six
3 good diesel engines as emergency power supplies for that
4 plant. In view of the blackout rulemaking that's in question
5 now, I think that's very important.

6 CHAIRMAN PALLADINO: Okay.

7 Commissioner Roberts, do you have a question?

8 COMMISSIONER ROBERTS: Yes, I have got a question.
9 Suppose you work out everything with Suffolk County, and let's
10 forget the squabble between the legislators and the Chief
11 Executive. I don't want to misquote Mr. Palomino, but I
12 thought he said earlier that Governor Cuomo's position had
13 always been that he would never force a plan on a county.

14 Do you see any possibility that the Governor, when
15 he recognizes the fact that Suffolk County is going to
16 participate, would allow New York State to participate, or is
17 that just too speculative?

18 MR. ERWIN: That is too speculative for me. Let us
19 say that LILCO hopes very much that Governor Cuomo will
20 continue to adhere to his initial view that he will neither
21 force planning nor try to thwart planning on a local entity
22 that wants to engage in it.

23 CHAIRMAN PALLADINO: Well, it appears that he has
24 departed from that at the present time.

25 MR. ERWIN: Well, a lot of things appear in

1 politics. There is always tomorrow.

2 [Laughter]

3 COMMISSIONER ASSELSTINE: I just have one question.
4 When we were discussing whether there is anything left of the
5 physical security contentions if the Commission decides that
6 the backup AC power systems are not vital equipment, it seemed
7 to be saying that there was nothing left of the physical
8 security contentions, and the reason was that these wouldn't
9 be vital equipment and therefore they wouldn't affect the
10 overall security planning of the site, that no one would go
11 run to those.

12 How does that square or is it consistent with your
13 commitment to the County that you will treat them as vital
14 equipment? When you add that into the pot, isn't there
15 something left of the physical security contentions?

16 MR. ERWIN: I don't believe so. I don't want to get
17 into too much detail, but the basic concept of the treatment
18 of the backup AC power systems has been to arrange modular
19 additions to the physical security plan. There is a
20 stand-alone physical security organization and a physical set
21 of protective measures for the EMDs and another one for the
22 20-megawatt exactly to anticipate that problem.

23 COMMISSIONER ASSELSTINE: Is that outlined in the
24 filings you have submitted to us?

25 MR. ERWIN: It is not in the unclassified filings;

1 it is in Attachment 3.

2 MR. ROLFE: I would like to amplify. In non-legal
3 terminology, what occurred in the actual contentions of the
4 physical security, that security and police personnel from
5 Suffolk County at a high level met with myself -- and I was
6 personally involved in this -- and my staff. We went over
7 item by item what concerns were and what we would do about
8 them, and without getting into safeguards information, even to
9 the point where we are going to review with the Suffolk Police
10 Department our post orders to the guards themselves. I mean
11 that far is the detail. All those concerns -- and that's why
12 my personal signature is on that agreement -- have been
13 resolved.

14 COMMISSIONER ZECH: As I understand it, you are
15 telling us that as far as 5 percent power is concerned, you
16 feel that you are ready now, is that right?

17 MR. ERWIN: Yes, sir. The only thing we need to do
18 is to fulfill our commitment to Suffolk County to install the
19 additional low power security measures. Correct me if I'm
20 wrong, John. I believe you are ready to go?

21 MR. ROLFE: I'm ready to go. Much of the
22 engineering has already been issued and we will put people
23 around the clock onto it.

24 COMMISSIONER ZECH: But the County has several other
25 questions, as I understand their presentation here today, that

1 they are still looking into, and the State, of course, is
2 opposing across the board 5 percent. When we go to full
3 power, we are looking at the emergency planning, of course,
4 and we are seeing the various viewpoints on that. Of course,
5 you would have to run an exercise and be satisfied as well as
6 the County. But the State, again, opposes that, so as far as
7 full power is concerned, the emergency planning question is to
8 be resolved. But if you set that aside and just look at 5
9 percent power, I think at least it clarifies the issues, and
10 you see the difference.

11 Of course, the County has got a separate problem
12 with their County Executive and with their County Legislature,
13 which is another thing to be considered, but you are telling
14 us that as far as you are concerned, for 5 percent you are
15 ready now. The County, speaking on behalf -- not the
16 Legislature, but the County Executive, says that he has got
17 several problems with 5 percent.

18 Other than that, of course -- and the State is
19 opposing on the premise that emergency evacuation for full
20 power, which is not necessary for 5 percent power, would still
21 be an impediment to 5 percent.

22 That's pretty much how I have summarized it. Would
23 you agree with that?

24 MR. ERWIN: Yes, I would, but when you say the
25 County has several problems remaining, as I understand it, it

1 is the constellation of problems defined by the interpretation
2 of "as safe as" and exigent circumstances. In other words,
3 those surrounding the garden variety safety issues that have
4 been before the Commission.

5 COMMISSIONER ZECH: Yes, but you heard the County
6 say those are problems for them, but you are telling me as far
7 as you are concerned, they are not problems for you.

8 MR. ERWIN: That's correct. We believe we are
9 correct on them.

10 COMMISSIONER BERNTHAL: I do have one question which
11 occurs to me, and general counsel has a shepherd's crook. He
12 may have to use it here to stop me if I am asking a question
13 that I shouldn't. We are in a situation, apparently, where
14 the State of New York will not cooperate, and the County now
15 has asked the Commission for a two-week delay, which I think
16 by common assent could well go longer than two weeks.

17 What position would LILCO take, legal or otherwise,
18 should the Commission defer to such a request for a delay of
19 two weeks that could well extend to three and four weeks in
20 this matter because of the inability of the County
21 Legislature, at least, to be properly represented at this
22 point? If I am permitted to ask that question, I will ask it.

23 MR. ERWIN: Well, first of all, our position on our
24 entitlement to a low power license, phase 3 and 4, is not
25 dependent on the position of Suffolk County as expressed by

1 the County Attorney at this point. We believe that we are
2 entitled to it notwithstanding the previous blanket opposition
3 that existed. That is important to bear in mind.

4 Secondly, the difficulty with deferring action is,
5 as I said a little while ago, that it is very difficult to
6 know in a principled fashion where to draw the line. What you
7 have here is eight members of the 18-member Suffolk County
8 Legislature appearing as individuals without ever having met
9 formally to take any kind of action. I don't know how many of
10 them in fact agree with Mr. Prospect. He represents that a
11 majority do. But the fact is they haven't acted officially
12 yet.

13 On the other hand, the County Executive has acted
14 officially. My guess is that before the political problems in
15 Suffolk County sort themselves out, you are going to see not
16 only a two to three-week period but several more changes in
17 composition. I don't know anything specific, but I have read
18 the newspapers in Suffolk County for several years now. The
19 difficulty you are going to find is that you are going to find
20 it impossible to draw the line, and the only reasonable
21 principle to observe is that which you have been observing all
22 along, that of refusing to speculate.

23 COMMISSIONER BERNTHAL: But you haven't answered my
24 question, though. Maybe you chose not to answer it.

25 MR. REVELEY: Let me try, Commissioner. I am the

1 dinosaur at the table, having been involved in Shoreham
2 throughout most of my life.

3 COMMISSIONER BERNTHAL: You don't look that old.

4 MR. REVELEY: I'm getting there.

5 [Laughter]

6 There have been four governors on Shoreham. Through
7 the first three, there was support. Indeed, Governor Carey
8 was in court litigating against Suffolk County on emergency
9 planning, the State's view then being during the waning months
10 of Governor Carey's administration that emergency planning for
11 Shoreham was feasible, that a plan was in place that was good,
12 and that it should be approved by the State.

13 The moral of that tale is that even governors change
14 their minds, even governors have different views, as Mr. Erwin
15 pointed out. Politics are politics, and one doesn't know from
16 day to day exactly what the result will be. But if you just
17 took a body count of New York governors, it is at the moment 3
18 to 1 in favor of Shoreham.

19 [Laughter]

20 Now let's talk about county executives for a
21 moment. I remember during my very first month involved with
22 Shoreham sitting in an equatorially hot and typically hot Long
23 Island gymnasium listening to the then County Executive making
24 a statement strongly in favor of Shoreham. The present County
25 Executive, when he initially was in office, signed an

1 emergency planning agreement with LILCO under which LILCO paid
2 the County a good bit of money to assist its emergency
3 planning, and which agreement remained in effect for a couple
4 of years.

5 That county executive has now once again decided
6 that emergency planning for Shoreham may be feasible,
7 depending upon the result of an exercise, an eminently common
8 sense result, one would think. If you are concerned about
9 emergency planning at Shoreham, whether it is or isn't
10 feasible, why not test it and see?

11 That is what the County Executive wishes to do. Our
12 concern is, as we do go into the tenth year of this operating
13 license proceeding, after 260 days of hearings, after 50,000
14 pages of transcript, after tens and tens of millions of
15 dollars of licensing cost, far more than enough to endow a
16 small college splendidly forever, we are concerned that if you
17 wait for two weeks or three weeks or four weeks, you may
18 not still reach a better moment in time to make your decision,
19 which we think you should have made some time ago in any
20 event, as we tell you from time to time.

21 There is no certainty that waiting will improve the
22 situation. We are confident that the people who oppose
23 Shoreham oppose it to the very core of their beings, will
24 always want more time, will always ask for more time. We
25 think we were entitled to this low power license some time ago

1 under the law, and entitled as a matter of public policy. We
2 want it now. We need it now. We are asking for it now. We
3 do not believe you will materially improve your own political
4 problems with difficult decisions by waiting to give it to us.

5 Thus, Commissioner, we do not and would not agree to
6 acquiesce in a delay because we don't think anything in our
7 experience suggests it would improve the situation.

8 COMMISSIONER BERNTHAL: I think that the last
9 sentence was as close as I'm going to get to an answer, but I
10 appreciate the comment.

11 COMMISSIONER ASSELSTINE: It seemed pretty clear to
12 me.

13 [Laughter]

14 CHAIRMAN PALLADINO: Let me ask one other question
15 I gather the emergency plan that you have now would have to be
16 revised somewhat to accommodate the arrangements with the
17 Suffolk County Executive. Is that something that has to be
18 litigated once it is revised? I really don't know. I am
19 asking any knowledgeable lawyer here.

20 MR. ERWIN: My top of the head reaction is that,
21 like many things, it is beauty in the eye of the beholder. To
22 be serious about it, it's a question of the materiality of the
23 changes. We do not believe that the changes will be
24 substantively material. It is possible that there are
25 participants in the proceeding who will believe that they

1 are. That question will go to the Licensing Board, and we
2 have been there before.

3 I am hoping that they won't be and I am hoping that
4 demonstrably they will not be.

5 CHAIRMAN PALLADINO: Any other questions?

6 [No response]

7 CHAIRMAN PALLADINO: Thank you very much, gentlemen.

8 Now we will ask the Staff to join us at the table,
9 the Staff representatives.

10 MR. PERLIS: Good afternoon, Chairman Palladino and
11 Commissioners. My name is Robert Perlis. To my left is Rob
12 Caruso. He is the Shoreham project manager of the NRC. And to
13 my right is Charles Gaskin. He is the safeguards reviewer
14 from NMSS.

15 First I would like to address the first question
16 posed by the Commission, which deals with reconsideration of
17 CLI 85-1. As the Commission set out in CLI 84-8, the granted
18 exemption from GDC-17 for Shoreham is to be governed by the
19 following criteria. Low power operation under the terms of
20 the proposed exemption must be shown to be as safe as
21 operation would have been with a qualified on-site AC power
22 source, and there must be exigent circumstances supporting
23 grant of the exemption.

24 Both of those criteria were the focus of hearings
25 before the Miller Board. We think both were correctly decided

1 by the Miller Board.

2 First I would like to discuss the "as safe as"
3 criterion. GDC-17 contains various core cooling requirements
4 to satisfy GDC-17. The on-site AC power system must possess
5 sufficient capacity and capability to satisfy these core
6 cooling requirements in the event of a loss of off-site power,
7 and further, must have sufficient independence, redundancy and
8 testability to satisfy the single-failure criterion.

9 The Board applied the Chapter 15 design basis
10 events to Shoreham's alternate power system and determined
11 that during low power operation, power would be needed for
12 core cooling only in one event, and that was a concurrent loss
13 of off-site power and loss of coolant accident, and in that
14 case would not be needed for, conservatively, at least 55
15 minutes. For all other events, restoration of AC power is not
16 a safety concern for at least 30 days.

17 The Board further found reasonable assurance that
18 the alternate system could restore power well within 55
19 minutes, and therefore found that the "as safe as" criterion
20 was satisfied.

21 I don't think it can be expressed enough that
22 none of these safety findings have ever been factually
23 controverted by either the County or the State in this
24 proceeding.

25 I think it is also worth noting that the same

1 methodology that was applied to the alternate system is that
2 which is applied to systems to determine compliance with
3 GDC-17. Thus, I think the record fairly supports a finding
4 that low power operation would be as safe under the alternate
5 system proposed for use at Shoreham as it would be with the
6 system in compliance with GDC-17.

7 As for the exigent circumstances criterion, the
8 Commission in CLI 84-8 set out various equities that have to
9 be considered in determining whether this criterion was
10 satisfied. In considering those equities, a number of them
11 favor grant of the exemption, and in particular, the Staff has
12 relied on the following.

13 The exemption is for a limited time duration. LILCO
14 made a good faith effort over a number of years to comply with
15 GDC-17, and that effort is in fact continuing. The facility
16 is now ready for full power operation, and again -- we have to
17 stress this -- the utter lack of any safety significance
18 associated with the exemption.

19 On the other side, the Staff does not believe any of
20 the equities work against grant of the requested exemption.
21 The Staff therefore believes the exigent circumstances
22 criterion as set forth by the Commission in CLI 84-8 has been
23 satisfied.

24 Next I would like to address the issue of
25 vitalization. The record shows that the alternate power

1 sources will not be needed to protect public health and safety
2 during low power operation except in the event of a
3 LOOP/LOCA. However, the record also shows that those
4 alternate sources may be necessary if a LOOP/LOCA were to
5 occur at low power.

6 Our interpretation of Section 73.2(i), which defines
7 vital equipment, is that under the circumstances presented
8 here, at least a portion of the alternate system should be
9 treated as vital equipment, and that --

10 CHAIRMAN PALLADINO: Now, that is the major question
11 I had for the Staff.

12 MR. PERLIS: As we read 73.2(i), equipment that is
13 needed for mitigation of various events is to be treated as
14 vital equipment in the event of a LOOP/LOCA occurring at low
15 power, and again, it is only for that event --

16 CHAIRMAN PALLADINO: Is your position that that is
17 so for any combination of circumstances?

18 MR. PERLIS: I can't say for any combination of
19 circumstances, but for that one event, for a LOOP/LOCA at
20 Shoreham at low power, you will need to have AC power
21 restored, conservatively, within 55 minutes.

22 Now, under that circumstance, the Staff believes a
23 portion of the alternate power system should be treated as
24 vital equipment.

25 COMMISSIONER ASSELSTINE: Why just a portion? Why

1 not both parts?

2 MR. PERLIS: Well, in our view, protection of more
3 than one portion would add nothing to protection of the public
4 health and safety, and that is because when you talk about
5 protecting both sources, you are now talking about a
6 concurrent sabotage event with a single failure. We don't
7 assume that a sabotage event will be able to take place in
8 three separate areas, which would involve the LOCA,
9 destruction of one power source and destruction of the second
10 power source.

11 The Staff reviewed guidelines. They just don't
12 require that you consider a failure of equipment as well as a
13 sabotage event. I want to make clear we are not taking credit
14 for anything that's not protected in the sense of from a
15 security attack, but we don't believe that a security attack
16 could damage two protected sources or two protected pieces of
17 equipment, one necessary for protection against a LOCA and the
18 other being a backup power source.

19 CHAIRMAN PALLADINO: Let me pursue my question just
20 a little bit more. You say this alternate equipment is needed
21 in the event of a LOCA, but it is available in the event of a
22 LOCA unless you are postulating also that somebody at
23 precisely that time performs sabotage at the same time that
24 there is loss of off-site power. But for the LOCA, you will
25 have that equipment and you also have off-site power, but you

1 may lose the off-site power but you still have this equipment
2 unless you want to postulate also sabotage at the same time.
3 That is what I was having difficulty understanding.

4 MR. PERLIS: The Staff position on security matters
5 is that if a piece of equipment is not protected, if it is not
6 treated as vital, then we cannot take credit for it in the
7 event of a possible security event. If a security event were
8 to cause a LOCA, then the Staff cannot take credit for
9 off-site power being brought to the site, nor could we take
10 credit without any vitalization for either of the on-site
11 power systems working.

12 So therefore, unless you could give an absolute
13 guarantee that a security event could not cause a LOCA, the
14 public health and safety would be adversely affected by not
15 protecting at least one of these sources during low power
16 operation.

17 CHAIRMAN PALLADINO: Well, I don't find that
18 consistent with some of the other things the Staff has
19 recommended in the past where we have gone with low
20 probability events being exempted, and this doesn't seem
21 consistent with many of those others.

22 MR. PERLIS: All I can say about consistency is that
23 -- I know it has been suggested a number of times that our
24 treatment of LILCO here is inconsistent with the Staff
25 treatment of other utilities, and I want to make clear that

1 the Staff position on vitalizing alternate power sources has
2 been consistently applied to near-term operating licenses for
3 at least four years now. It is our position that alternate
4 power sources should be protected.

5 COMMISSIONER BERNTHAL: Well, the underlying
6 presumption, is it not, Joe, is that they don't assume what
7 amounts to a common mode sabotage event. In other words, you
8 presume that you can't sabotage both the reactor systems
9 themselves and also the protected emergency power --

10 MR. PERLIS: That is correct, but that assumption --

11 CHAIRMAN PALLADINO: Do you have a protected system
12 for guarding against the LOCA based on sabotage?

13 MR. PERLIS: That's correct. But you do not have a
14 system guarding against the protection of anything else if the
15 power sources are not treated as vital. So you are not, then,
16 talking about a double-pronged sabotage success; you are only
17 talking about one success.

18 CHAIRMAN PALLADINO: No, you have to have loss of
19 off-site power. You must have LOCA, and it can come from
20 sabotage or it can come from anywhere else, and then you have
21 got to have saboteurs who are very knowledgeable about what is
22 going on immediately coming in there and wiping out your
23 off-site -- I'm sorry, your alternate AC power.

24 MR. PERLIS: The Staff position, though, is that if
25 you don't have vital protection for a power source in the

1 event of a sabotage attack, we assume that that power source
2 will not be available if called upon because it's not being
3 protected.

4 COMMISSIONER ASSELSTINE: If it is protected, you
5 assume that they will knock out both.

6 MR. PERLIS: That's right.

7 COMMISSIONER ASSELSTINE: But if it's not protected,
8 then you don't take credit for it.

9 MR. PERLIS: In the same sense, because off-site
10 power is not being protected, we assume in a sabotage event
11 that off-site power will be unavailable.

12 COMMISSIONER ASSELSTINE: That's right.

13 CHAIRMAN PALLADINO: Now wait a minute. I lost you
14 when you were talking about both events.

15 COMMISSIONER ASSELSTINE: Okay. You have got three
16 things. You have got your off-site power, you have got your
17 LOCA, you have got your backup power supply. You assume
18 off-site power is not going to be available because it's not
19 protected.

20 CHAIRMAN PALLADINO: Under what circumstances?

21 COMMISSIONER ASSELSTINE: In a sabotage event.

22 MR. PERLIS: It is a given that off-site power will
23 not be available, for whatever reason.

24 COMMISSIONER ASSELSTINE: So then if you have a
25 sabotage event that causes the LOCA, the question then is can

1 the sabotage event also knock out the backup power supply,
2 right?

3 MR. PERLIS: That's correct.

4 CHAIRMAN PALLADINO: But you are postulating this
5 sabotaged LOCA.

6 COMMISSIONER ASSELSTINE: That's right.

7 CHAIRMAN PALLADINO: We haven't had a plan for it.

8 MR. PERLIS: We don't have a plan that does provide
9 a high assurance that it won't take place, but in our view, we
10 can't absolutely guarantee that it won't take place.

11 COMMISSIONER ZECH: That's why you say if it's a
12 power supply it has got to be vital.

13 COMMISSIONER BERNTHAL: They don't take credit for
14 unprotected systems. It's as simple as that. If they have a
15 protected power supply and a protected possible LOCA, then
16 they assume it's a non-common mode sabotage event that is
17 required and therefore you are multiplying low probabilities.

18 MR. PERLIS: Right. If I could sum it up --

19 CHAIRMAN PALLADINO: It's not that these are common
20 mode, because I don't think you have the same kind of sabotage
21 effort going after alternate power source as you would going
22 after causing a LOCA, so I think they are independent.

23 COMMISSIONER BERNTHAL: Well, they assume that it's
24 easy if it's not protected, though. That's the point.

25 COMMISSIONER ASSELSTINE: And we get into things we

1 cannot talk about here.

2 MR. PERLIS: Just as a conservatism, we do believe
3 that two separate areas should be protected, both of which
4 would have to be damaged by sabotage to adversely the public
5 health and safety. That's the position we have taken in this
6 case.

7 CHAIRMAN PALLADINO: Let me ask you two more
8 questions that are related. Do the Commission's current
9 security regulations require that on-site AC power system be
10 treated as vital equipment?

11 MR. PERLIS: The Staff's interpretation of those
12 regulations is, yes, they do require that on-site power
13 systems be treated as vital equipment. However, in fairness,
14 the regulation do not explicitly identify pieces of equipment
15 that need to be protected. So you won't find a regulation
16 that specifically states "protect on-site AC power sources."

17 COMMISSIONER ASSELSTINE: But that has been your
18 consistent interpretation for what?

19 MR. PERLIS: For at least the last four years.

20 CHAIRMAN PALLADINO: What about low power? You also
21 apply it at low power?

22 MR. PERLIS: It has been applied at low power, yes.

23 CHAIRMAN PALLADINO: Do the regulations specifically
24 say that?

25 MR. PERLIS: The regulations do not differentiate

1 between low power and full power in this event because there
2 is a Chapter 15 event that requires on-site AC power, in this
3 case the LOOP/LOCA event. We feel it would be prudent to
4 require vitalization of one of the sources.

5 CHAIRMAN PALLADINO: Let me ask one other question.
6 Do the Commission's proposed rules on the subject --
7 are they clear that they apply to low power, the proposed
8 rules? I had difficulty trying to draw that out, but some of
9 the information we got seems to imply that other people
10 clearly find such a conclusion.

11 MR. PERLIS: I don't know. I don't believe -- I
12 haven't looked at it in a long time, but I don't believe that
13 the regulations specifically singled out certain power levels,
14 but I'm just not certain.

15 COMMISSIONER ROBERTS: Is the simultaneous
16 occurrence of loss of off-site power and a LOCA design basis
17 event?

18 MR. PERLIS: Yes, sir. It is one of the Chapter 15
19 events that is routinely examined for all plants, yes.

20 COMMISSIONER ROBERTS: Thank you.

21 CHAIRMAN PALLADINO: Do you have more? I know I
22 interrupted you.

23 MR. PERLIS: Yes. The only thing more I would say
24 on vitalization is that we believe as a factual matter that
25 you do not need to protect both, and in that sense, we

1 disagree with the Appeal Board, but we agree with them that
2 you do need to protect something.

3 COMMISSIONER ASSELSTINE: I'm still not quite sure I
4 understand that point. I'm not sure I quite grasp why, if you
5 have to protect the one, why you don't have to protect both of
6 them.

7 MR. PERLIS: You start running into how many
8 security events do you think a saboteur can successfully
9 accomplish. We are willing to assume that he can successfully
10 accomplish one successful sabotage in a protected area, but
11 not more than one. If you assume that he could successfully
12 get away with two, then you would need to protect both
13 sources.

14 COMMISSIONER ASSELSTINE: Okay.

15 MR. PERLIS: As to whether the original contentions
16 could be dismissed for lack of specificity or basis, if the
17 Appeal Board is correct in its vitalization decision, the
18 Staff believes that you could not dismiss all the contentions
19 --

20 CHAIRMAN PALLADINO: You could not what?

21 MR. PERLIS: You could not dismiss all the
22 contentions for lack of basis and specificity. Although the
23 State and County filed separate contentions, the Staff sees
24 essentially two contentions raised by them in their original
25 contentions. One was whether the alternate sources needed to

1 be protected themselves, and the second contention is whether
2 the security for the rest of the plant was adversely affected
3 by structures associated with the alternate sources.

4 As to the second contention, whether the security
5 for the rest of the plant was adversely affected, we agree
6 that the County and the State provided no sufficient basis to
7 inquire as to why security for the rest of the plant might be
8 affected.

9 However, for the first contention, which is whether
10 you need to protect the alternate power sources themselves, if
11 in fact they need to be treated as vital equipment, the pieces
12 of equipment are clearly identified. We don't believe that
13 that contention could be dismissed for lack of basis and
14 specificity. The piece of equipment is clearly identified and
15 the rationale, the legal basis for it, if you agree with the
16 Appeal Board's vitalization decision, is also clear.

17 Finally, as to what would be left of the currently
18 admitted contentions, it is the Staff's view that all the
19 admitted contentions currently in front of the Kelley Board
20 are contingent upon the vitalization decision. And if the
21 Commission were to overrule the Appeal Board -- and the Staff
22 is not suggesting that the Commission so rule -- but if the
23 Commission did overrule the Appeal Board, we believe that the
24 Licensing Board could and should dismiss all those contentions
25 because in our view they are dependent upon vitalization.

1 That's all that I had on the three questions raised
2 by the Commission.

3 CHAIRMAN PALLADINO: Let me ask you one more
4 question. I gather LILCO was prepared to make -- I think it
5 was the EMDs, to protect the EMDs as vital equipment.

6 MR. PERLIS: Well, they originally worked out an
7 agreement with the Staff last year where they would protect
8 the EMDs. They have subsequently worked out an agreement with
9 Suffolk County where they will protect both the EMDs and the
10 gas turbine.

11 CHAIRMAN PALLADINO: I guess I should have asked
12 part of this question of LILCO, but I didn't. The question
13 is: What does it involve? And secondly, if they did it, is it
14 a long-term operation? You see, I don't know whether they
15 involve more guards or if it would involve more fences or some
16 combination thereof.

17 MR. PERLIS: In terms of what it involves, I can't
18 get into that now because it would be classified information.
19 As to how long it would take them to implement it before they
20 would be ready to go to low power, you would have to talk to
21 Mr. Erwin about that.

22 COMMISSIONER ASSELSTINE: Is that covered in the
23 submittals, by the way? It is not? Okay.

24 All right. Maybe we could ask them.

25 Then the other is: Would that have to be litigated?

1 MR. PERLIS: There are two things that have to be
2 done first. The Staff has taken a preliminary look at the
3 settlement agreement. We have some comments. Mr. Erwin
4 characterized them correctly. We don't believe that they are
5 very substantive in nature, but they do have to be resolved.
6 So the first point is that we would have to be satisfied. We
7 don't view that as a major concern because we think we are
8 pretty close. That is our preliminary view.

9 Secondly, you have a problem with the State of New
10 York. If the State of New York does not participate in the
11 security settlement -- and as of today, they have not -- then
12 you still have contentions before the Kelley Board which need
13 to be resolved.

14 Now, the security agreement could possibly be a
15 basis for summary disposition, but you still need a Licensing
16 Board ruling on the contentions which were filed jointly by
17 the County and State and now certainly would be prosecuted by
18 the State, for everything I have heard.

19 CHAIRMAN PALLADINO: That's all the questions I
20 had. I might ask LILCO later -- I mean not much later -- how
21 long they think it would take. But let me go to the
22 Commissioners.

23 COMMISSIONER ASSELSTINE: Maybe just one question.
24 Would you explain to me why you don't think you need to look
25 at the relative reliability of the qualified system and of the

1 unqualified substitute?

2 MR. PERLIS: If you are talking about reliability,
3 we did look at the reliability of the gas turbine and the
4 EMDs. There was testimony about their startup reliability and
5 about the reliability to continually supply power. The Staff
6 found that they were sufficiently reliable to qualify under
7 GDC-17.

8 If you are talking about the PRA testimony, our view
9 there is that the PRA testimony, first of all, is based on an
10 erroneous comparison because it is not comparing the EMDs and
11 the gas turbine with a system in compliance with GDC-17, it is
12 comparing them with the system that was in use at Shoreham.
13 That is not the proper comparison, we don't think.

14 So the question isn't are these as good as the TDIs
15 would have been. The question that the Staff looked at and
16 the Miller Board looked at is are these systems good enough so
17 that they would meet the safety requirements of GDC-17. The
18 PRA testimony never addresses that. It never gets to that.
19 And in our view, there was testimony which indicated that in
20 fact, this equipment was sufficiently reliable to meet GDC-17,
21 but that is in the record.

22 COMMISSIONER ASSELSTINE: That's all.

23 COMMISSIONER ZECH: From the Staff position
24 concerning 5 percent power, could you tell me what remains as
25 far as the Staff is concerned in order to reauthorize 5

1 percent power?

2 MR. PERLIS: As far as the Staff is concerned, you
3 have security contentions before the Kelley Board. In our
4 view, those contentions are properly before the Board because
5 we do agree with the Appeal Board on vitalization. Unless the
6 State of New York and the Staff also -- because we haven't yet
7 agreed with the settlement decision -- but unless the State of
8 New York were to agree with the settlement decision or
9 settlement agreement, you would then need some decision from
10 the Kelley Board on the merits of the contention.

11 Probably one could file summary disposition motions
12 based on the settlement agreement, but you would need some
13 ruling from that Board if those contentions are valid.

14 COMMISSIONER ZECH: Thank you.

15 CHAIRMAN PALLADINO: Without having you leave the
16 table, could I get feeling from LILCO as to roughly how long
17 it would take to implement the vitalization agreement that you
18 have developed with Suffolk County Executives?

19 MR. ROLFE: Mr. Chairman, I feel that if we got the
20 go-ahead, which I certainly hope we do, that by going on
21 several shifts and putting an all-out effort on the order of
22 three weeks, we could do all the modifications.

23 COMMISSIONER ASSELSTINE: Those are the ones you
24 have committed to do, so you have to do those in any event.

25 MR. ROLFE: Agreed to do with Suffolk County, that's

1 correct.

2 CHAIRMAN PALLADINO: You mean you would have to do
3 that even if the Commission found this was --

4 MR. ROLFE: Oh, yes. We have promised to do that,
5 and I will not renege on that commitment.

6 CHAIRMAN PALLADINO: So you will do it anyhow.

7 MR. ROLFE: We will go ahead and do that.

8 CHAIRMAN PALLADINO: I didn't quite get that answer.

9 COMMISSIONER ASSELSTINE: No, Mr. Erwin said that
10 earlier, that they had made the promise and they would stand
11 by it.

12 MR. ROLFE: Yes, sir. It is on the order of three
13 weeks.

14 MR. ERWIN: Well, that is contingent on getting a
15 license, obviously.

16 [Laughter]

17 MR. ROLFE: Well, Mr. Asselstine said -- I could
18 also probably do, you know, if the Staff came up with
19 something -- well, not build a Maginot line or something -- I
20 could probably do that in three weeks, too.

21 CHAIRMAN PALLADINO: Okay, thank you.

22 Any other matters the Commission wants to take up at
23 this time?

24 [No response]

25 CHAIRMAN PALLADINO: We thank you, gentlemen.

1 Let me point out that the Commission has scheduled a
2 meeting on June 11th on a possible vote on this matter, and it
3 is scheduled at the present time, if I read this right, at
4 4:00 p.m. on June 11th: Discussion and Possible Vote on Review
5 of ALAB-800 and Related Matters (Shoreham). It will be a
6 public meeting.

7 Well, we thank you all for participating with us
8 today. I think it has been a fruitful exchange, and we will
9 stand adjourned.

10 [Whereupon, at 5:05 p.m., the meeting was
11 adjourned.]

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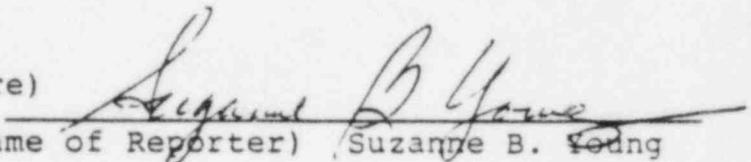
Name of Proceeding: Oral Argument on Shoreham

Docket No.:

Place: Washington, D. C.

Date: Tuesday, June 4, 1985

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

(Signature) 
(Typed Name of Reporter) Suzanne B. Young

Ann Riley & Associates, Ltd.

6/4/85

SCHEDULING NOTES

TITLE: ORAL ARGUMENT ON SHOREHAM

SCHEDULED: 2:00 P.M., TUESDAY, JUNE 4, 1985 (OPEN)

DURATION: 1-1/2 HRS

SPEAKERS: FABIAN G. PALOMINO (15 MIN)
(NEW YORK STATE)

MARTIN ASHARE (15 MIN)
(SUFFOLK COUNTY)

WAYNE PROSPECT (5 MIN)
(SUFFOLK COUNTY LEGISLATOR)

DONALD P. ERWIN (15 MIN TOTAL)
ROBERT ROLFE
(ATTORNEYS FOR LILCO)

ROBERT PERLIS (15 MIN TOTAL)
RALPH CARUSO
CHARLES GASKIN
(NRC STAFF)

12/82

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Meeting Title: Oral Argument on Shoreham

Meeting Date: 6/4/85 Open Closed

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