

ORIGINAL

# UNITED STATES NUCLEAR REGULATORY COMMISSION

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In the Matter of:

Long Island Lighting Co.

(Shoreham Nuclear Power Station, Unit 1)

Docket No: 50-322-OL-3  
(Remand/Emergency Planning)

Pages: 19295 through 19322

Place: Bethesda, Maryland

Date: April 11, 1988

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

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In the Matter of: :  
LONG ISLAND LIGHTING COMPANY : Docket No. 50-322-OL-3  
(Shoreham Nuclear Power Station, : (Remand/Emergency  
Planning)  
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Thursday,  
April 11, 1988  
  
Room 427  
4350 East-West Highway  
Bethesda, Maryland 20815

The telephone prehearing conference in the above-entitled matter convened at 2:00 p.m.

BEFORE:

JUDGE JAMES P. GLEASON, Chairman  
Atomic Safety and Licensing Board  
513 Gilmore Drive  
Silver Spring, Maryland 20901

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

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

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## P R O C E E D I N G S

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JUDGE GLEASON: This is Judge Gleason, sitting along with Judge Shon and Judge Kline, and we have a reporter here.

This is a conference call which has been requested by LILCO to resolve an impasse over discovery and their realism contentions, and to consider Intervernors' extension of time request and other parties' objections to it. It is also to consider LILCO's request for sanctions against the Intervernors and for other relief.

If the parties would identify themselves for the reporter, please, and let us go in the order of LILCO, Staff, FEMA, State, and County, that would be helpful.

MR. IRWIN: Judge Gleason, this is Donald Irwin for Long Island Lighting Company. With me are James Christman and Mary Jo Lugers.

JUDGE GLEASON: Okay.

MR. REIS: This is Mr. Reis for the Staff. Edwin Reis. With me are Richard Boffman, Lisu Clark, Wendy MacDonald, and Mitzy Young will be walking into my office shortly.

MR. CUMMING: William R. Cumming, Counsel for FEMA.

MR. ZAHNLEUTER: This is Richard J. Zahnleuter, representing the Governor and the State of New York.

MR. LANPHER: Lawrence C. Lanpher, representing Suffolk County. Karla J. Letsche and Herbert H. Brown are also

1 present.

2 JUDGE GLEASON : All right. I think we have about  
3 four or five issues here, so let me enumerate them.

4 We have, first of all, LILCO's motion to impose a  
5 witness designation cut off. Secondly, we have the  
6 Intervenor's extension of time request to extend discovery to,  
7 I believe, May 6th. We have LILCO's motion for an order to  
8 show cause why sanctions should not be imposed against LILCO.  
9 We have a request for an order to compel discovery to have  
10 answers to their interrogatory request. Finally, we have a  
11 request for an order to require that certain persons, notice  
12 last week, to be made available for deposition purposes.

13 I would suggest that we get to the major issue which  
14 is the extension of time request, and then we can pick up the  
15 others. I would ask you if you would please try not to repeat  
16 everything that you have said in your responses or in your  
17 motions, because we can read. It would be helpful to us and  
18 certainly save some time.

19 I will ask you to go in the order of the persons that  
20 have made the motions, then persons objecting. Let's have  
21 LILCO first, then the Staff, and then FEMA if they have  
22 anything to add.

23 Mr. Lanpher, if you would start off, please.

24 MR. LANPHER: Thank you, Judge Gleason. I will be  
25 brief. The major points are set forth in our motion of the 5th

1 of April. There are four main points.

2 First of all, we believe that our motion demonstrate.  
3 and nothing in the oppositions that have been filed contradict  
4 the fact that a reasonable discovery extension such as been  
5 requested is likely to have little, if any, impact on the  
6 ultimate schedule for resolution of these issues.

7 Second, there is a good reason to extend the  
8 schedule. Just briefly, to summarize some of those bases that  
9 were set forth in the motion, for instance, LILCO's prima facie  
10 case is an absolutely key item in this schedule and what is  
11 reasonable to be expected in the discovery schedule.

12 Prior to receipt of that prima facie case, we could  
13 not know the precise details of what LILCO was intending to  
14 rely upon. The arguments that contrary in the papers that were  
15 filed just are not accurate. Indeed, the Board's order of last  
16 Friday, LBP-88-9, reflects the need to review Revision 9 in the  
17 context of these realism issues. The prior motions that were  
18 filed, no one had the benefit of 9 at that time.

19 Further, we think there is a strong likelihood that  
20 LILCO's prima facie case on its face is defective. It is broad  
21 brush in the extreme. Instead of submitting an evidentiary  
22 format, such as indicated was to be required by the Board,  
23 LILCO has submitted a prima facie case which is broad brush in  
24 the extreme.

25 For instance, whole blocks of transcript testimony

1 are cited. At one point 186 consecutive pages of transcript  
2 are cited as part of the prima facie case. What this really  
3 means is that it obligates the parties, at this juncture, to  
4 spend enormous time reviewing the underlying documents and  
5 materials. Until that is done, governments cannot understand  
6 or determine precisely what needs to be presented in order to  
7 rebut this prima facie case or, indeed, to decide whether a  
8 prima facie case has been presented at all.

9           Next, as we discuss in our motion, I won't repeat it  
10 at length, there is, in fact, a great deal of work which is  
11 going on in this case simultaneously. For instance, the  
12 governments have to file on Monday a brief in opposition to  
13 LILCO's appeal of LBP-88-2. That was the second exercise Board  
14 decision. No other parties have that obligation.

15           There is testimony to be filed this Wednesday. That  
16 is nearing completion, but the final stages of testimony and  
17 coordination with the witnesses is an extremely time consuming  
18 task.

19           Next Thursday, I believe, on the 21st there is a  
20 further 25 percent power brief to be filed.

21           The governments' attorneys, or Suffolk County's  
22 attorney Mr. Zahnleuter will speak for himself, has been  
23 extremely busy devoting extraordinary hours to this case. The  
24 suggestion in some of the papers that additional resources can  
25 simply be added because Suffolk County has been tenacious in

1 its position in this proceeding are just untrue.

2 I think it is unprecedented the degree of resources  
3 that have been committed. Additional resources just are not  
4 feasible. The press of work, in and of itself, would justify  
5 the extension.

6 A third factor: the failure of the Board until last  
7 Friday to issue a more detailed rationale for its February 29  
8 order was a critical factor in making it impossible to  
9 determine precisely the contours in this proceeding.

10 We have received that order, obviously late on  
11 Friday. We are in the process of reviewing it. It is 54  
12 pages.

13 Finally, LILCO has suggested that we should be  
14 compelled to produce for deposition ten witnesses this week.  
15 We received that notice last week. The time required to  
16 contact those witnesses, prepare them all for deposition, and  
17 have them deposed, it simply cannot be done in one week.

18 You have to understand, also, that many of these  
19 witnesses are high-ranking officials whose schedules are  
20 extremely busy.

21 That, in summary, is our position up front, Judge. I  
22 will reserve the right to respond if matters are brought up.

23 JUDGE GLEASON: All right. Mr. Zahnleuter, do you  
24 have anything to add to that?

25 MR. ZAHNLEUTER: Much has been said already so I do

1 not have that much to add. However, I would point out again  
2 that the work is highly concentrated during the weeks of April  
3 11th and 18th. I, myself, am working diligently to meet those  
4 obligations.

5 The motion for extension of time would be greatly  
6 appreciated so that those obligations that Mr. Lanpher listed  
7 concerning due dates can be met, Your Honor.

8 JUDGE GLEASON: All right. Mr. Irwin.

9 MR. IRWIN: Thank you, Judge Gleason. I will also  
10 try to be brief.

11 We are talking about responses to discovery on issues  
12 of which the parties have been aware, in at least general  
13 contour, since the summer of 1986 when this Commission issued  
14 decision CLI-80-613 and which have been in concrete form to all  
15 the parties at the latest not later than March 10th of this  
16 year when the Board issued it, started setting this matter for  
17 hearing, and proposing a schedule.

18 The difficulty we have with the arguments that  
19 Intervernors have been making is, first, and I will take them  
20 in order, that experience suggests that any kind of delay in  
21 schedule simply leads to further delays.

22 I can go through in a mechanical fashion and  
23 illustrate why a three week delay in developing discovery  
24 answers compresses the time available to LILCO to think about  
25 its testimony, develop further information, and so forth, with

1 the almost inevitable consequence of delaying the commencement  
2 of hearings on realism, no matter what the schedule is for the  
3 trial of the three issues that are coming up beginning in late  
4 April.

5           Secondly, the discussion of what Mr. Lanpher referred  
6 to as good reasons for requesting the delay, I do not think  
7 passes. Revision 9 of the emergency plan has been available to  
8 the parties for a couple of months at least, and there are very  
9 few surprises in that.

10           The LILCO prima facie case, while it may not be in  
11 question and answer form as most testimony is filed, I think  
12 the Board's reference to a testimony format was contained  
13 really only in the order that was issued after the filing. I  
14 think, in any event, the prima facie case has been laid out in  
15 quite detailed, quite substantial form. All of the record  
16 references in it are to proceedings of which Suffolk County is  
17 as familiar as LILCO. There is no new information of any  
18 material nature in that case.

19           The third aspect of this that there is a great deal  
20 of work going on is true, but that is as true for LILCO as for  
21 anybody else and the schedules have been well-known for some  
22 time.

23           LILCO filed, and filed now three or four sets,  
24 discovery requests with Suffolk County. We filed a first set  
25 of requests asking for witnesses and documents very shortly

1 after the March 10 order.

2 The responses we received from Suffolk County were of  
3 the nature that essentially said simply they did not, at this  
4 point, have any witnesses or documents of which to apprise us.  
5 That was as far as Suffolk County went. We have heard nothing  
6 further, except on the issues relating to immateriality which  
7 the County has addressed just recently.

8 On the second set of interrogatories, the responses  
9 were due last Thursday, April 7th. We did not hear anything  
10 from the County until the evening of April 6th.

11 No matter how busy lawyers are, lawyers for the  
12 Calvert and Suffolk Counties knew before the evening of April  
13 6th that they were going to be in a jam, if indeed they were.  
14 I just have a difficult time with the busyness argument on that  
15 score.

16 Suffolk County has sent LILCO one set of  
17 interrogatories, by the way, dealing with the witness  
18 designations. We have responded to that.

19 We received a second set of interrogatories this past  
20 Saturday evening by telecopier. LILCO is endeavoring to answer  
21 them right now. We became aware of them only this morning  
22 because they arrived after we left on Saturday, but even they  
23 relate to immateriality only. They do not go to the question  
24 of realism.

25 On the deposition, LILCO has requested the

1 depositions of numerous Suffolk County witnesses. We have been  
2 informed by the Counties pleading that they do not intend to  
3 designate any of the witnesses whom we would have supposed they  
4 would have put up the issues on realism.

5           On the issues of immateriality, they have simply said  
6 they are too busy until beginning the week of April 18th to  
7 attend to any of them.

8           Again, these are matters which I think rational  
9 management of traffic by lawyers experienced in case management  
10 could have headed off.

11           Next, on the issue of the Board's issuance of its  
12 rationale for a prima facie case. My belief is that while the  
13 order issued by the Board last Friday contains more detail than  
14 that which had been issued heretofore the primary thrust of  
15 that order, which is that the burden lies with Intervenor  
16 finally to begin to disgorge the substance of that which they  
17 would propose either as an alternative or an improvement to the  
18 local plan, has been clear ever since the Board has begun  
19 issuing substantive rulings on these issues, beginning with the  
20 telephone conference in February and reflected also in its  
21 subsequent initial memorandum.

22           That rationale is not necessary to answer the LILCO  
23 interrogatory. The LILCO interrogatories are themselves taken  
24 almost entirely from the responses made by Suffolk County to  
25 LILCO's own motion for summary disposition, which was filed

1 several months ago.

2 Presumably if the Intervernors knew the factual  
3 matter of the bases for objecting to our motion for summary  
4 disposition, they had it within their power and information at  
5 that point to answer those questions. The Board's order giving  
6 its rationale for the realism case does not affect that.

7 The long and short of it is LILCO is anxious to get  
8 on with a hearing on these issues if, indeed, they are to be  
9 tried. There has been an experience several years ago, several  
10 Boards before this Board entered this case, involving onsite  
11 emergency planning and a situation where Intervernors failed  
12 repeatedly to make discovery or to produce a plan of their own.  
13 The Board which was then chaired by Judge Brenner was forced to  
14 hold it in default on the general issue. Whether we are at  
15 that point yet in this issue, I am not certain, but I am saying  
16 certain unfortunate, familiar patterns are not suggesting  
17 anything other than that there is a delay which is prejudicial,  
18 and highly prejudicial, to LILCO but also to the order of this  
19 proceeding.

20 That is all I have at this point, Judge.

21 JUDGE GLEASON: All right. Thank you, Mr. Irwin. If  
22 you will just hold with me a minute, I am going on a mute  
23 button here just for a second. I will be right back with you.

24 (Discussion off the record.)

25 JUDGE GLEASON: All right, gentlemen. We are back.

1 Mr. Reis, do you have anything that you wish to add to your  
2 response?

3 MR. REIS: I just wish to add that one who seeks an  
4 extension of time generally must show that they have acted with  
5 alacrity. There are certain matters which we indicate in our  
6 pleading which show that the Interveners are not proceeding  
7 with alacrity in this proceeding, and that would seem to  
8 foreclose the motion for extension of time.

9 Further, again, as we say in our motion, the  
10 Commission statement of policy on the conduct of proceedings  
11 has to here be considered. Thank you.

12 JUDGE GLEASON: Okay. Mr. Cumming, do you have  
13 anything you want to add?

14 MR. CUMMING: Yes, I do, Judge Gleason.

15 With respect to one narrow issue, FEMA would support  
16 the Interveners on an extension on the EBS for the following  
17 reasons. We have interpreted at FEMA the reopen EBS issue as  
18 basically being an issue of the appropriate signal strength  
19 throughout the EPZ. FEMA did not have within its ranks an  
20 expert on signal strength issues.

21 We have endeavored over the last six weeks to  
22 determine who in fact in the federal government have that  
23 expertise. We determined it was the Federal Communications  
24 Commission, a brother independent regulatory institution like  
25 the Nuclear Regulatory Commission. They have agreed to provide

1 us a witness by the name of John Bursey. That information was  
2 provided to us just this morning.

3 He apparently does work in Washington, and his review  
4 would be conducted basically on the discovery record and the  
5 filed motions of the OL-3 proceeding on the EBS. He would be  
6 prepared to be deposed and also to have his testimony filed by  
7 the end of next week. That would require some extension.

8 To the other extent, FEMA has not yet received a copy  
9 of LPB-88-9, so we would defer to staff as to whether it has  
10 implications for this extension request.

11 JUDGE GLEASON: Yes. Mr. Cumming, this is Judge  
12 Gleason.

13 I have not interpreted the request for extension to  
14 be a request for any extension in connection with the EBS  
15 issue.

16 MR. CUMMING: That is correct, but in your original  
17 order, Judge Gleason, you indicated that upon designation that  
18 the Intervenor's would have an opportunity to conduct discovery  
19 against the witness identified by the Federal Emergency  
20 Management Agency --

21 JUDGE GLEASON: Oh, I see.

22 MR. CUMMING: -- on any issue, basically  
23 conforming --

24 JUDGE GLEASON: Yes. We would allow that to take  
25 place if you have a witness.

1 MR. CUMMING: I would consider this conference call  
2 to be, in fact, the designation of that witness.

3 JUDGE GLEASON: All right. Let me ask Mr. Lanpher a  
4 couple of questions. This is Judge Gleason again.

5 Is there anything that you can provide us with  
6 respect to the theory of the case motion that you intend to  
7 file this week? Can you give us the substance of that at the  
8 present time?

9 MR. LANPHER: Judge Gleason, beyond what we said in  
10 our letter, I believe, of last Friday I cannot. We are in  
11 active discussions with our client. We would have hoped to  
12 have had that filed by now. Your order coming out late on  
13 Friday has delayed that somewhat.

14 We are attempting to file it tomorrow or the next  
15 day, but until we have our clearance from our client I really  
16 cannot talk in more detail about that. I foresee no  
17 circumstances right now when that would not be filed by  
18 Wednesday at the very latest.

19 JUDGE GLEASON: Well, let me ask this question  
20 because of the responses that I recall from the  
21 interrogatories. Do you intend to put on witnesses in  
22 connection with the realism issue?

23 MR. LANPHER: That is one of the issues that is  
24 actively being discussed with our client right now. Until the  
25 client has decided that, we cannot say. But you will know by

1 Wednesday.

2 JUDGE GLEASON: I see. All right. Well, let me go  
3 off the record here for a moment, and I will be back with you.

4 MR. LANPHER: Judge Gleason?

5 JUDGE GLEASON: Yes.

6 MR. LANPHER: Could I just --

7 JUDGE GLEASON: Yes. Go ahead. Who is this?

8 MR. LANPHER: This is Mr. Lanpher, Judge Gleason.

9 JUDGE GLEASON: All right. Go ahead.

10 MR. LANPHER: If I may respond just briefly to a  
11 couple of matters that were raised before.

12 First, to the last of what Mr. Cumming had said, your  
13 understanding of our motion was correct. We had not sought an  
14 extension of time on EBS matters.

15 JUDGE GLEASON: All right.

16 MR. LANPHER: With respect to the testimony filing,  
17 obviously, we will have to see what happens if there is a new  
18 witness designated by FEMA.

19 JUDGE GLEASON: All right.

20 MR. LANPHER: With respect to the other matters that  
21 were raised, just briefly, obviously, the legal authority  
22 contentions have been present for a long time. It was only  
23 recently, however, that the Board in effect rewrote those  
24 contentions. It was only last Friday that we got your  
25 detailed, or more detailed, rationale for having done that.

1           Second, with respect to the prima facie case, the  
2 most important point to understand is that given the format in  
3 which LILCO chose to file that prima facie case, there is an  
4 extraordinary volume of material that has to be reviewed. That  
5 takes time, and that review is ongoing but until it has been  
6 completed it is difficult to parcel out precisely what has to  
7 be included in anyone's case.

8           Thank you very much, Judge.

9           JUDGE GLEASON: All right. We will be back with you  
10 in a minute.

11           (Discussion of the record.)

12           JUDGE GLEASON: All right, gentlemen. We are back.

13           The Board, obviously prior to the conference call,  
14 has read over all of the motions and responses to the motions  
15 and believe that we can perhaps bring at least a temporary  
16 resolution to the impasse by an extension of time for discovery  
17 on the realism issues to April 22nd, an extension from April  
18 15th to April 22nd.

19           Then we would have the testimony filed in connection  
20 with those issues on May the 6th, the motions to strike due on  
21 May 13th, and responses to those motions on May the 20th.

22           With the hearings to commence on the three other  
23 issues on May 15th, we do not see why that extension should  
24 impact the hearing on the realism issues. We would rule  
25 accordingly that those extensions are in effect.

1           Now, with respect to the motion to make persons  
2 available for deposition, we grant that motion and require the  
3 Intervernors to make those parties available.

4           Obviously, I think two of them were to occur today,  
5 and in the light of the extension of time here, we can ease up  
6 on those time requirements. We would leave it to the parties  
7 to work out the acceptable dates, but they certainly have to be  
8 done within the discovery period, and they should be done  
9 earlier than that if possible.

10           With respect to any potential witnesses, it is a  
11 little difficult now to pose any kind of time cut offs. The  
12 only thing that we can order, which we do, is that any  
13 witnesses designated shall be designated in time for the other  
14 parties to depose such witnesses prior to the discovery cut  
15 off.

16           On the motion for compelling discovery, that would  
17 be, obviously, moot as far as our current orders are concerned.  
18 We will just have to hope that this extension of time is worked  
19 out, the willingness to reply to those interrogatory requests  
20 which were the subject of that motion.

21           That only leaves, I believe, one issue and that is  
22 the motion for an order to show cause. It is the Board's view  
23 that we will neither deny or grant that motion at the present  
24 time. We will hold that motion in abeyance to see how the  
25 discovery process works with respect to the realism issue.

1 I will, of course, send out a confirmatory order of  
2 the decisions I have just announced. I think that I have  
3 covered everything that is currently before us with respect to  
4 this impasse.

5 MR. LANPHER: Judge Gleason, this is Mr. Lanpher.

6 JUDGE GLEASON: Yes, Mr. Lanpher.

7 MR. LANPHER: Mr. Cumming made the previous comments  
8 about the EBS matter.

9 JUDGE GLEASON: Right. Yes, I should have covered  
10 that. Thank you, Mr. Lanpher. Go ahead.

11 MR. LANPHER: If I could just say one thing and then  
12 if you want to go first, obviously.

13 JUDGE GLEASON: No. Go ahead.

14 MR. LANPHER: I asked Mr. Miller, Michael F. Miller  
15 of our office who is handling EBS matters, to please join our  
16 group here. I advised him of what Mr. Cumming had said, and he  
17 would like to address the Board briefly, either before or after  
18 you make your comment, sir.

19 JUDGE GLEASON: All right. Why don't we have that  
20 done right now, then.

21 MR. MILLER: Judge Gleason, this is Mr. Miller. The  
22 only matter I would point out for the Board's consideration is  
23 that the proposal made by Mr. Cumming that we now will have a  
24 new witness on EBS issues and testimony, presumably, to be  
25 submitted by FEMA, indicates that the other parties in the EBS

1 proceedings should have the same consideration.

2 I gather from what Mr. Cumming said that his witness  
3 from the Federal Communications Commission and their, I suppose  
4 the FEMA testimony, of course, will not be filed by the due  
5 date of this Wednesday, April 13th. It would have to be some  
6 time the end of next week or thereafter.

7 I would suggest that the other parties have the same  
8 opportunity, not only to postpone the filing of their pre-filed  
9 testimony but, of course, the opportunity to take the  
10 deposition of this witness from the FCC, whom we know nothing  
11 about, and to then determine whether his testimony will have an  
12 impact on the pre-filed testimony that the parties have been  
13 working on so that assessment and determination can be made and  
14 taken into account in the pre-filed testimony, whenever it is  
15 filed.

16 JUDGE GLEASON: Mr. Cumming?

17 MR. CUMMING: Yes, Judge Gleason.

18 JUDGE GLEASON: This does present a bit of problem.  
19 When will this witness be available for deposition purposes?

20 MR. CUMMING: By the FCC this morning, I am assuming  
21 that he can be available to be deposed prior to the end of this  
22 week or the beginning of next. Since you have moved the  
23 testimony date to May 6th, that would be no problem.

24 We would have no objection to filing ahead of that.  
25 In fact, we probably will because the week of the 2nd of May

1 through the 6th I am designated to be Concord, New Hampshire.

2 JUDGE GLEASON: Mr. Cumming, I think you are  
3 confusing parts of testimony here. Oh, I see what you mean.

4 MR. CUMMING: CBS.

5 JUDGE GLEASON: Yes. CBS, right.

6 MR. IRWIN: Judge Gleason, this is Mr. Irwin. May I  
7 be heard for just a moment?

8 JUDGE GLEASON: Yes, please.

9 MR. IRWIN: I hope not to add to the confusion.

10 JUDGE GLEASON: I hope not.

11 MR. IRWIN: You, Judge Gleason, were correct in  
12 believing that Mr. Cumming is confused as to testimony filing  
13 dates.

14 The testimony on EBS issues, like that for school bus  
15 drivers and hospital evacuation time estimates, is indeed due  
16 to be filed this Wednesday, April 13.

17 My suggestion for Mr. Miller is, just on this one  
18 issue, that the FEMA sponsored testimony from this one FCC  
19 witness come in as soon as possible, not later than April 22nd,  
20 which is the end of next week, that this witness be made  
21 available reasonably before that for deposition so the parties  
22 will have an extra shot at him -- or indeed after, I don't  
23 care --and the parties can show good cause to supplement their  
24 testimony within the scope of matters presented by this witness  
25 and not otherwise presented within the scope of issues, they

1 may be allowed to supplement their testimony to address those  
2 issues and those alone.

3 I do not see any reason to delay this entire  
4 proceeding for what I expect is going to be confirmatory  
5 testimony on a pretty mechanical issue from an FCC witness.

6 MR. MILLER: Judge Gleason, this is Mr. Miller.

7 I would like to briefly just point out to the Board  
8 that I think it is evident from everything Mr. Lanpher has  
9 indicated to me he has already mentioned to the Board, in the  
10 context of the motion to extend discovery, that there is so  
11 much work confronting the governments at this point in time  
12 that the suggestion made by Mr. Irwin just now makes no sense  
13 whatsoever.

14 It will be much more efficient for the parties to  
15 depose the FEMA witness and in the due course of things to take  
16 into account whatever that witness may say regarding LILCO's  
17 proposed EBS and to put that into the pre-filed testimony when  
18 it is filed with the Board.

19 To put in the testimony and then to have to take  
20 depositions and then to have file motions to supplement  
21 testimony and then to have file supplementary testimony, simply  
22 adds work. It is inefficient. It makes more sense by far to  
23 push off the filing dates for the EBS testimony.

24 MR. IRWIN: Judge Gleason, with all respect, sir, we  
25 have seen this problem before. It has come from all parties at

1 all sides of this case, from time to time. The mechanism of  
2 filing supplemental testimony has worked before.

3 We had it, in fact, in the traffic issues at the  
4 beginning of the CBS proceeding where Suffolk County presented  
5 new information. At the end, the Board allowed supplemental  
6 testimony and that was folded into the hearing.

7 Mr. Miller has not filed a request for an extension  
8 of his testimony which is due Wednesday on the EBS issues. I  
9 presume, therefore, that he is capable of filing it.

10 Again, we have no basis to believe that the FCC  
11 witness' testimony will broaden the scope of issues or that it  
12 will be anything other than a technical review of the physical  
13 facts in this issue.

14 LILCO would strongly object to a general deferral of  
15 testimony filing on this issue because of this one additional  
16 witness.

17 MR. MILLER: Judge Gleason, Mr. Miller, again.

18 The hearing on the EBS issue is not scheduled to  
19 begin until May 16th. Therefore, my suggestion of awaiting the  
20 deposition of this FEMA witness will not impact that hearing  
21 schedule.

22 Furthermore, I fail to see how Mr. Irwin could have  
23 any idea what this FEMA witness will testify about. It seems  
24 to me Mr. Irwin is engaging in rank speculation here. We  
25 should not have to do that.

1 JUDGE GLEASON: All right. Hang on just a minute,  
2 gentlemen. I will be back with you.

3 (Discussion off the record.)

4 JUDGE GLEASON: All right, gentlemen. We are back.

5 The Board believes that the witness by FEMA should be  
6 here because we cannot really determine at this time the  
7 importance of that witness to the record, and we are all  
8 obligated to make that record as complete as possible.

9 The witness will be made available for deposition by  
10 next week, at least by next week, and the testimony be filed by  
11 the end of next week.

12 Any party will have the authority and the ability to  
13 file responsive testimony to that testimony and to the confines  
14 to the issues raised by that testimony thereafter, within a  
15 period of a week thereafter. That will still allow us enough  
16 time to get the thing concluded before hearing starts.

17 So, that is how we resolve we that issue.

18 MR. IRWIN: Judge Gleason, this is Mr. Irwin. I want  
19 to make sure I understand.

20 There are three issues on which testimony is due to  
21 be filed in two days. EBS is just one of those three issues.  
22 The other two issues are not affected at all by this, I assume.

23 JUDGE GLEASON: No, they are not.

24 MR. IRWIN: Okay. Is the testimony in chief on the  
25 EBS issue still due to be filed in two days with leave to

1 supplement after this deposition, sir?

2 JUDGE GLEASON: Only in connection with the testimony  
3 of the witness.

4 MR. IRWIN: Okay. So, in other words, the testimony  
5 in chief on the EBC issue is still due to be filed on April  
6 13th?

7 JUDGE GLEASON: That is right.

8 MR. IRWIN: Okay. I have one other clarifying  
9 question, sir. That is with respect to the April 22 cut off of  
10 discovery.

11 LILCO has offered in letters dated March 30 and March  
12 31 to make its witnesses available to Intervernors for  
13 deposition. By letter of April 6th, and I believe we referred  
14 to this in our motion, one of counsel for Intervernors wrote  
15 back and said that the Intervernors were simply too busy to  
16 take the depositions of our witnesses during the discovery  
17 period and they would be back to us some time around the week  
18 of April 18th.

19 They have, in LILCO's view, simply defaulted on that  
20 opportunity to take the depositions of LILCO's witnesses.  
21 Since that issue itself has not been directly addressed in the  
22 other matters before this Board, I am wondering whether the one  
23 week extension of discovery was intended by the Board to cover  
24 this matter as well, which Intervernors have just simply  
25 defaulted on or whether April 15th is a cut off for the

1 depositions of the LILCO witnesses who were offered it back in  
2 March.

3 JUDGE GLEASON: The Board believes that the extension  
4 discovery issue should cover both party's abilities to depose  
5 witnesses. It would allow the opportunity for the Intervernors  
6 to depose LILCO's witnesses as well until that date.

7 MR. IRWIN: Okay. Thank you, Judge. One other  
8 question for clarification, and I am sorry to come back on  
9 this.

10 The Board has ordered that all discovery be completed  
11 by April 22nd, and I would presume that would mean answers to  
12 interrogatories.

13 JUDGE GLEASON: That is right.

14 MR. IRWIN: One expectation LILCO has is that a  
15 number of its interrogatories will be objected to.

16 In our motion submitted late last week, we requested  
17 a bifurcated response time such that those questions which  
18 Intervernors intended to object to, the objections, would at  
19 least be noted in summary form at an earlier date so that if  
20 LILCO felt a compelling need to seek to compel discovery on  
21 those issues it could do so without unduly delaying progress in  
22 the proceeding.

23 My own experience in answering interrogatories, as  
24 one goes through and decides what questions ought to be  
25 answered and what questions are legally objectionable and makes

1 that first cut before preparing the substantive answers, it  
2 would be of great use to LILCO if we could have that cut,  
3 namely the objection cut, taken earlier than April 22nd so that  
4 we could at least know the areas in which to expect answers on  
5 the 22nd.

6 JUDGE GLEASON: Could we hear from you, Mr. Lanpher,  
7 on that.

8 MR. IRWIN: Either this Friday the 15th or Monday the  
9 18th would be what I would propose.

10 JUDGE GLEASON: All right. Why don't we put that as  
11 part of our order then.

12 MR. LANPHER: Judge Gleason, I thought you were going  
13 to hear from me. This is Mr. Lanpher.

14 JUDGE GLEASON: Oh, I thought I heard from you. I am  
15 sorry.

16 MR. LANPHER: No. That was Mr. Irwin trying to get  
17 the last word.

18 JUDGE GLEASON: I have not identified your voices  
19 yet, so you have to start saying who you are.

20 All right, Mr. Lanpher. Sorry about that.

21 MR. LANPHER: Mr. Irwin's suggestion of the 15th or  
22 the 18th is unreasonable.

23 We have a major brief due on next Monday, the brief I  
24 mentioned earlier, LBP-88-2. Many of us in this office are  
25 working all too many hours on that brief.

1           We would be willing to notify LILCO of the objections  
2 next Wednesday, but we simply cannot guarantee doing it prior  
3 to that -- a week from this Wednesday. Instead of the 22nd, I  
4 guess, that is the 20th if I look at my calendar. Yes,  
5 Wednesday the 20th, Judge Gleason.

6           JUDGE GLEASON: That would be the 20th. All right.  
7 Well, let's make the 20th then and make that a part of our  
8 order.

9           MR. LANPHER: Thank you.

10          JUDGE GLEASON: All right, gentlemen. We appreciate  
11 the conference. As I indicated I will get out a confirmatory  
12 memorandum and order for you on these decisions.

13          Thank you.

14          (Whereupon at 2:45, the conference call was completed.)  
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1 CERTIFICATE

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This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name: LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1)

Docket Number: 50-322-OL-3 (Remand/Emergency Planning)

Place: Bethesda, Maryland

Date: April 11, 1988

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken stenographically by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

/s/ Brenda C. Cooley

(Signature typed): Brenda C. Cooley  
Official Reporter

Heritage Reporting Corporation