

ORIGINAL

UNITED STATES NUCLEAR REGULATORY COMMISSION

In the Matter of:

LONG ISLAND LIGHTING COMPANY

Shoreham Nuclear Power
(Station Unit 1)

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

Prehearing Conference

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LONG ISLAND LIGHTING COMPANY) Docket Number 50-322-OL-3
(Shoreham Nuclear Power) Remand/Emergency Planning
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Prehearing Conference

Fifth Floor Hearing Room
East-West Towers
4350 East-West Highway
Bethesda, Maryland

Tuesday,
May 10, 1988

The above-entitled matter came on for pre-hearing
conference, pursuant to notice, at 9:34 a.m.

BEFORE: HONORABLE JAMES P. GLEASON
Chairman of the Board

APPEARANCES:

On behalf of the Board:

JUDGE FREDERICK SHON
JUDGE DR. JERRY KLINE

On behalf of the NRC Staff:

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MITZI YOUNG, ESQ.
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Washington, D.C. 20555

On behalf of Long Island Lighting Company:

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On behalf of New York State:

RICHARD Z. ZAHNLEUTER, ESQ.
Deputy Special Counsel to the Governor
Executive Chambers
Capital, Room 229

On behalf of Federal Emergency Management Agency:

WILLIAM CUMMING, ESQ.
Federal Emergency Management Agency
Washington, D.C. 20972

P R O C E E D I N G S

1
2 JUDGE GLEASON: This is a pre-hearing conference
3 counsel called by the Board in connection with the forthcoming
4 hearings on Emergency Planning Issues Involving the Application
5 of the Long Island Lighting Company for an operating license of
6 its Shoreham Nuclear Power Station Facility.

7 Only counsel representing the parties will be allowed
8 to participate in this conference.

9 I am Judge James P. Gleason, the Chairman of the
10 Board, and with me on my left is Judge Frederick Shon, and on
11 my right, Judge Dr. Jerry Kline.

12 If the counsel would make their appearance noted for
13 the record, please? If we could start with the Applicant
14 followed by the Intervenors, then the staff, and then FEMA,
15 that would be helpful.

16 MR. IRWIN: Judge Gleason, my name is Donald P.
17 Irwin, with the firm of Hunton and Williams, representing Long
18 Island Lighting Company.

19 With me in order to my right at this table are James
20 N. Christmas, also of our firm; K. Dennis Sisk, also of our
21 firm; and Mary Jo Leugers, also of our firm.

22 MR. MILLER: Judge Gleason, my name is Michael S.
23 Miller. I'm with the law firm of Kirkpatrick and Lockhart.

24 My law firm represents Suffolk County, New York, in
25 these proceedings.

1 With me to my left in order is Lawrence Coe Lanpher,
2 Christopher N. Murray and Herbert H. Brown, all of the firm of
3 Kirkpatrick and Lockhart.

4 MR. ZAHNLEUTER: My name is Richard N. Zahnleuter,
5 and I'm the Deputy Special Counsel to the Governor, and I
6 represent the State of New York and Governor Cuomo.

7 MR. BACHMANN: Judge Gleason, my name is Richard G.
8 Bachmann, counsel for the NRC staff.

9 To my left is Edwin J. Reis and Mitzi A. Young, also
10 counsel for the NRC staff.

11 MR. CUMMING: Judge Gleason, I'm William Cumming
12 representing the Federal Emergency Management Agency.

13 JUDGE GLEASON: Thank you.

14 The agenda that I had prepared really breaks down
15 into two areas that we refer to in the order. The first deals
16 with the procedural matters covering the first three issues,
17 the school bus driver issue, the hospital evacuation time
18 issue, and the emergency broadcasting system issue, and the
19 second major area, of course, is the status of realism of the
20 best efforts issue.

21 In the order of procedure, I had hoped to discuss at
22 the outset the electronic reporting matter, and I don't see Mr.
23 Whitstein here. As soon as he does come, he is the individual
24 that covers those matters for the panel. When he comes, we'll
25 take care of that matter because there are a couple of things

1 that I want to discuss with you concerning that.

2 The rest of the order is the recording of -- excuse
3 me -- is in the order of procedure, procedural matters, and as
4 the first category, I think we probably ought to discuss first
5 the current issue on the emergency broadcasting system that has
6 come to light, that is, that came to light to the Board as of
7 last night, yesterday afternoon, and in that connection, we
8 ought to discuss Revision 10 Status and its impact, if any,
9 other than what has been indicated to us on the school board
10 issue testimonies.

11 Following that, we want to get into recommendations
12 for proceeding on the issues, which should come first, and
13 which second and which third, if there is a third, and then,
14 finally, the order of presentation of testimony.

15 On the status of realism of the best efforts
16 contentions, we'll talk about it very briefly. I'll refer to
17 at least the pending motions and responses that are sitting
18 before the Board, and the issues that result out of that.
19 There are really basically two.

20 The proffers of testimony on the part of the
21 Intervenor, and the second issue is the motion to discuss or
22 to dismiss the realism, the best efforts contentions, or,
23 alternatively, to order discovery, and I'll have something to
24 say about discovery in that connection.

25 So, why don't we proceed? Is there anything else

1 that I've overlooked that somebody would like to add to that
2 agenda?

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

4 Could you attempt to keep your voice up just a bit?
5 I don't think we can hear you.

6 JUDGE GLEASON: You're not hearing?

7 MR. LANPHER: We can barely hear you, sir.

8 JUDGE GLEASON: I see.

9 MR. LANPHER: Thank you.

10 JUDGE GLEASON: All right. I'll do the best. I
11 didn't think that it was going to be necessary. So, maybe
12 we'll have to turn on these mikes after awhile.

13 (Pause)

14 MR. REIS: Mr. Chairman, if I may suggest, the
15 microphones are only for the reporter. They are not connected
16 to the --

17 JUDGE GLEASON: I understand that. I understand
18 that.

19 MR. LANPHER: Judge, we can hear you. It's just once
20 in awhile, it's hard. So, thank you.

21 JUDGE GLEASON: All right. In connection then with
22 the matter that has just come to light concerning the -- what I
23 gather is the departure from the emergency broadcasting system
24 of Station WPLR, is it, we ought to at first hear from the
25 representatives from them.

1 So, if you would go ahead, please.

2 MR. IRWIN: Judge Gleason, the status of WPLR is not
3 that it has departed from our system, and that's an important
4 fact to bear in mind, it is just that WPLR has said that from
5 the time we receive full power authorization on, it will expect
6 New York-based stations to become the so-called CPCS I primary
7 initial triggering station.

8 PLR will continue to participate and we would expect
9 that PLR would monitor the stations, the primary stations. The
10 significance of that is that PLR remains a part of our system
11 and that PLR is capable of activating the tone alerts within
12 the ten-mile EBZ.

13 For that reason, we believe that the coverage of PLR,
14 which is the only issue relating to EBS, remains an issue which
15 is worthy of being heard and should be cleared up now.

16 The exact configuration of the EBS system as we
17 currently project it will be dealt with in Revision 10, which I
18 know is another matter of interest to the Board. We expect
19 that to be finalized and filed with the Board and parties by
20 about the end of next week.

21 The configuration in Rev. 10 will be basically the
22 same as we have proposed in the realism testimony which has
23 just been filed, namely that unless we develop another parallel
24 system, we will presume that the CBS, which is the so-called
25 CPCS station, with the FCC's structure for eastern New York,

1 will on receipt of a proper request perform the function that
2 it normally performs in the federal EBS system.

3 That, I think, is it in a nutshell.

4 JUDGE GLEASON: Let me see if I understand what you
5 just said, Mr. Irwin.

6 You've indicated that WPLR is not going to be leaving
7 your system, they'll still be a part of it.

8 MR. IRWIN: That's correct.

9 JUDGE GLEASON: But what station is to be the trigger
10 station under your system?

11 MR. IRWIN: At this point, we would believe that
12 WCBS, which is located in New York City, and is a 50,000 watt
13 clear channel station, and which is the federal CPCS station
14 for eastern New York, under the FCC's emergency broadcast
15 system, would perform that function.

16 This was the same issue, by the way, that was
17 addressed in our second renewed motion for summary disposition
18 of the realism issue some time ago. This was not a new
19 configuration, Judge Gleason.

20 But, you're right. PLR would stay in the system.
21 PLR is capable of monitoring CBS. In fact, virtually every
22 station on Long Island monitors CBS as part of the federal
23 system.

24 JUDGE GLEASON: Well, what impact does this have on
25 your testimony at issue?

1 MR. IRWIN: On the issue that is presently before the
2 Board, we believe this has no impact. PLR is currently the
3 station on which we rely to activate tone alerts. That is its
4 sole unique function, and PLR has indicated to us that they
5 will continue to play that function.

6 We rely on the tone alerts to provide additional
7 coverage for schools and special facilities, but not for
8 notification, of course, of the general public. That would be
9 done by conventional stations.

10 JUDGE GLEASON: And do you have an agreement with
11 WCBS to take the place of the other station?

12 MR. IRWIN: We do not have a specific agreement with
13 WCBS, Judge Gleason.

14 JUDGE GLEASON: Is it contemplated having one?

15 MR. IRWIN: If they are willing to get into the
16 political thick of it, we would like to get one, but we are not
17 presuming that we will. We will rely as we did in our earlier
18 motion on the proper functioning of the federal EBS system, and
19 they are responding as to they would to any other properly
20 authenticated request for assistance under that system.

21 JUDGE GLEASON: Mr. Miller.

22 MR. MILLER: Judge Gleason, if I might add, WPLR
23 would also be capable of broadcasting to the general public as
24 a member station within our EBS, and for that reason, the issue
25 of WPLR's coverage of the EBZ, we think, remains a viable issue

1 that should be concluded.

2 MR. SISK: Judge Gleason, if I may respond now, the
3 Board has to step back here, Judge Gleason, and look at the
4 history of the EBS issues. It is, frankly, absurd in the
5 extreme for counsel to be arguing that this EBS proposal that
6 they now announce on the eve of trial is no different from the
7 previous EBS proposal.

8 The issue began, Judge Gleason, some time two years
9 or so ago when WALK --

10 JUDGE GLEASON: Could I interrupt just a minute?

11 MR. MILLER: Yes, sir.

12 JUDGE GLEASON: I don't want members of the counsel
13 to be under the impression that we haven't read the history of
14 this case. We're very familiar with it, and if you just stick
15 to the facts and let's not get into the long history, it would
16 be helpful to me because we have a lot of room to cover and I
17 just really want your comments on the substitution and what the
18 impact is of that.

19 Please.

20 MR. MILLER: Judge Gleason, the EBS trial that was
21 ordered by the Commission to be heard on remand has focused in
22 its entirety on WPLR as the lead or trigger station of LILCO's
23 proposed EBS network.

24 LILCO's network comprised of WPLR in the past as the
25 lead station and nine other secondary stations is gone. It's

1 been wiped out. WPLR, for whatever reason, has withdrawn.

2 LILCO is now telling this Board that WPLR will become
3 one of the other nine secondary stations in its system. That
4 is a very different focus than all the parties have received up
5 until this time.

6 Throughout discovery, Judge Gleason, once you ordered
7 this hearing to be held, it limited the scope of the proposed
8 contention put in by the Government. Discovery focused on WPLR.
9 LILCO conducted few tests of WPLR. The county went into the
10 field and conducted its tests. The tests submitted by the
11 parties have focused on WPLR. The secondary stations have been
12 a small part of this issue.

13 FEMA's testimony, in particular, focused on nothing
14 but WPLR as the lead station of LILCO's proposed system.
15 They've now lost WPLR as a lead station. They are proposing,
16 although they neglect to say so this morning, to take one of
17 their small secondary stations, a station called WGLI, and make
18 that station their new primary station in their local EBS
19 system.

20 WGLI --

21 JUDGE GLEASON: Excuse me. Is that correct, Mr.
22 Irwin?

23 MR. IRWIN: I don't believe that's correct, Judge
24 Gleason.

25 MR. MILLER: Well, it's your realism testimony. It's

1 what LILCO's realism testimony says. So, I rely on the
2 absolute of their testimony.

3 MR. CHRISTMAN: I recollect that the realism
4 testimony simply said that WGLI has agreed and that in the case
5 of some unforeseeable and unforeseen problem with the WCBS
6 system, we would ask permission to use the secondary system.

7 JUDGE GLEASON: All right. Well, the testimony will
8 say whatever it says.

9 MR. MILLER: I refer the Board to pay 53 of LILCO's
10 realism testimony, where it states very specifically that WGLI
11 will take over as the new lead primary station of the EBS
12 system.

13 JUDGE GLEASON: All right. Why don't you conclude
14 your remarks?

15 MR. MILLER: I'll continue on.

16 Judge Gleason, the Board has to keep in mind the
17 history. The Board has to keep in mind that all the parties,
18 including LILCO, have proceeded under the assumption that WPLR
19 in Connecticut was going to be the lead station. All the
20 discovery focused on WPLR. All the testimony focused on WPLR.

21 LILCO obscures the issues before this Board by
22 suggesting that WCBS would be the station relied upon by LILCO.
23 That goes to the realism testimony. The realism testimony does
24 suggest that WCBS would be the lead station because LILCO
25 assumes without any basis that the state EBS system would be

1 activated on LILCO's behalf in the event of a Shoreham
2 emergency.

3 That goes to the realism issues. We are here to
4 discuss right now the remanded EBS issue. The adequacy of WPLR
5 as their lead broadcast station. That station has disappeared.
6 There is no way that we can go forward with the trial in these
7 circumstances, and I suggest, Judge Gleason, that if you look
8 at the testimony that has been filed by the parties, or any of
9 the many depositions taken by the parties, including, when I
10 say the testimony, the engineering reports that LILCO
11 conducted, that the county went out and hired consultants to
12 conduct, those reports focus on WPLR and the adequacy of
13 LILCO's system spearheaded by WPLR.

14 That system is gone, and there is nothing to do at
15 this point, Judge Gleason, but to step back and go and look at
16 the issue of the adequacy of LILCO's new configured system
17 which they themselves in their letter to the Board of last
18 evening say they've acknowledged the system is still not even
19 in place, they say once LILCO determines how any restructuring
20 of its EBS would be implemented, we will promptly so inform
21 this Board and all the parties.

22 We're on the eve of trial, Judge Gleason. We need to
23 prepare for trial. We cannot do so under these circumstances.

24 JUDGE GLEASON: I don't believe that letter we've
25 received yet that you're referring to.

1 MR. MILLER: It's a letter dated May 9th. It shows a
2 telecopy to the Board. It came in from LILCO.

3 VOICE: It was telecopied yesterday evening, Judge
4 Gleason.

5 JUDGE GLEASON: Well, we haven't read it yet.

6 Well, excuse me a minute. Judge Shon has a query.

7 JUDGE SHON: Mr. Miller, as I recall the testimony
8 that's been filed, it focused primarily on whether you could
9 hear WPLR.

10 Has that changed in any way since WPLR is no longer
11 the lead station? Is it less audible?

12 MR. MILLER: But, Judge Shon, you have to focus on
13 the configuration, at least the configuration LILCO always had
14 in the past with their EBS system.

15 In the past, assuming an emergency at the plant, the
16 word would go out from LILCO to WPLR, the lead station. WPLR
17 would then start to broadcast the emergency messages to the
18 public and at the same time WPLR would aptly tone up its
19 receivers throughout the EBS system, and at that same time,
20 WPLR would trigger mechanisms at the other radio stations
21 within the network, so that those stations could take, record
22 and then rebroadcast to other segments of the population.

23 Those were the secondary stations. That whole
24 configuration was turned upside down. WPLR is no longer that
25 lead primary station. WPLR would not have a responsibility for

1 broadcasting to the public. WPLR would not have initial
2 responsibility for activating the mechanisms at the secondary
3 stations to get them to retransmit the emergency messages.

4 In fact, I don't understand how WPLR would have
5 responsibility for activating the tone alert radios under this
6 new system, which we still know very little about.

7 JUDGE GLEASON: All right. Mr. Zahnleuter, do you
8 have anything to add, and I use that word advisedly, to the
9 comments just made?

10 MR. ZAHNLEUTER: I think that the only thing that I
11 would like to add is that as an example of what Mr. Miller is
12 speaking about and as you pointed out, there is no letter of
13 agreement with WCBS and LILCO to perform this new system.

14 So, if we were to address the issue of the
15 replacement for WPLR, we would have to look at other things
16 besides can you hear WPLR.

17 JUDGE GLEASON: I want to get some comments from the
18 staff and FEMA in a minute, but, Mr. Irwin, did you want to
19 respond at this point or any of your representatives there?

20 MR. IRWIN: I have a couple of brief matters to state
21 and then I'd like to let Mr. Sisk, who has prepared our
22 testimony and will be handling the issue at trial, add further.

23 First, Judge Shon put his finger on the question.
24 The question before this Board is that of the coverage of WPLR,
25 which has agreed to remain a participating station.

1 Secondly, accordingly, there's no guidance I know of
2 at this point which requires letters of agreement between a
3 licensee and radio stations. In fact, the guidance which used
4 to require it no longer does.

5 Mr. Sisk has a couple of other further specific
6 points he wants to add.

7 JUDGE GLEASON: Mr. Sisk.

8 MR. SISK: Yes, if I may.

9 I think that the key issue is, and the issue that is
10 involved in the remanded proceeding, is precisely the coverage
11 of LILCO's EBS system, which includes WPLR. It includes WPLR's
12 ability to notify the general public by way of having
13 sufficient coverage capability and to activate tone alert
14 radios.

15 Those issues have not changed because WPLR will
16 continue to be part of the system up through and after
17 licensing. That is a limited issue, and I do believe Judge
18 Shon is correct.

19 The reports that Mr. Miller referred to that the
20 experts have prepared on both sides, which are largely in
21 agreement, have focused on coverage of not only WPLR but
22 several of the other member or secondary stations.

23 Those issues haven't changed, and we believe that
24 that can be an issue that can be concluded at this point.

25 The letter, which I recognize the Board has not seen

1 yet, states that as a member station, WPLR will continue to act
2 as a station triggering the tone alert radios in the EBS.

3 Further, as a member station, WPLR will be able to
4 notify the general public. If there any further issues which
5 need to be litigated involving WCBS and activation of WCBS,
6 that really is part of the realism proceeding, and those two
7 can be interfaced.

8 We can certainly litigate coverage of WPLR as part of
9 our system and litigate the WCBS issue in connection with
10 realism.

11 If LILCO determines at a later date to add a new
12 specific trigger station and to put that in its plan and that
13 is not what is contemplated for Rev. 10, but if that is
14 determined to be the case at a later date, it will then be
15 right to determine whether we have further issues to litigate.

16 JUDGE GLEASON: All right. Mr. Bachmann.

17 MR. REIS: Mr. Chairman, this is Mr. Reis on behalf
18 of the staff.

19 We feel that the proceeding should go forward. We
20 feel the record should be developed on the capabilities of the
21 stations and what area they cover. We reviewed the testimony.
22 That's what the testimony covered.

23 Further, in looking at it, we think that the Board
24 has to consider the Commission's determinations on realism and
25 particularly 8613 and look at what the Commission has said as

1 to what the Board's functions and roles are. That's to
2 consider as well, although it may not come into this specific
3 hearing, it's to give the background for a determination of
4 what will take place at the time.

5 There is a national EBS system. It can be gotten on
6 by either private parties, such as utilities in various
7 instances, government officials, the major news networks, AP
8 and UPI, I'm informed.

9 With this background, which will develop later, put
10 on top of what the reaches of these stations and whether they
11 can trigger the tone alert radios and so forth, we feel that
12 there would be a valuable adding to the record in the testimony
13 already filed and what is shown, what the parties have before
14 shown, previously shown, they intend to produce and testify to
15 at this hearing.

16 Therefore, we think these matters should go forward.

17 JUDGE GLEASON: You want to make a comment with
18 respect to --

19 MR. MILLER: Yes, sir. I'll keep my comments brief,
20 but there are a few comments I'd like to make.

21 I wasn't sure if Mr. Cumming wanted to say anything
22 on behalf of FEMA.

23 JUDGE GLEASON: Well, if you want to respond to those
24 comments, why don't you respond right now?

25 MR. MILLER: Yes, sir. I'll respond at this time

1 briefly to both Mr. Reis' comments and Mr. Sisk's comments on
2 behalf of LILCO.

3 Judge Gleason, I say again the coverage of WPLR
4 within the EBZ is no longer the issue before this Board because
5 WPLR has become a secondary broadcast station.

6 If the issue was WPLR's coverage, we would go to this
7 trial and we would be litigating the coverage of all ten
8 stations within LILCO's system. That's not been the focus of
9 any of this proceeding beginning from the filing of the
10 contentions through discovery to the filing of testimony.

11 The Board has to recognize that under LILCO's
12 proposed EBS network, information would initially be conveyed
13 to the primary station, no longer WPLR, and that primary
14 station would immediately, LILCO assumes, begin broadcasting
15 emergency information to the public within the EBZ, i.e.
16 coverage of EBZ is an issue for the primary station. But WPLR
17 is no longer the primary station.

18 The primary station now, Judge Gleason, at least
19 according to the realism testimony, is WGLI. It says so in
20 their own testimony. If WGLI is their primary station, the
21 issue becomes the adequacy of the coverage of WGLI in Babylon,
22 New York, to get to the EBZ.

23 Our information is that WGLI is a small AM station,
24 doesn't broadcast twenty-four hours a day, doesn't even reach
25 the EBZ. Therefore, there's no coverage whatsoever of the EBZ.

1 With respect to WCBS in New York City, Judge Gleason,
2 that is part of the realism issue. With that, I agree with what
3 Mr. Sisk says. It has to be looked at in the context of the
4 realism proceeding.

5 LILCO assumes under the best efforts approach and the
6 new rule that WCBS would agree to be activated by LILCO to
7 service the EBS network stations. We believe that's a figment
8 of LILCO's imagination. There's clearly no letter of agreement
9 between WCBS and LILCO and there's no reason to believe there
10 ever will be such a letter of agreement.

11 But we're here to focus on the remand issue. They
12 lost WPLR. They've got a new network. They haven't yet told us
13 what that new network will do. We do understand that WPLR is
14 out as the primary station. That shows us the focus of the
15 entire proceeding, and I point out, Judge Gleason, one last
16 matter.

17 In their letter of last evening, which the Board has
18 not seen, and this is quoting a part, he neglected to quote the
19 following sentence. The following sentence which he did read
20 to the Board is that, "However, WPLR will not act as the
21 trigger station for the other radio stations in the EBS."

22 That's one of the critical roles the primary station
23 plays. Trigger the other secondary EBS station. LILCO
24 concedes that WPLR will no longer be doing that. Presumably
25 some other station will be doing that. WGLI perhaps in

1 Babylon. We don't know. They haven't told us. We're in the
2 dark on the eve of trial.

3 We cannot go forward under these circumstances.

4 JUDGE GLEASON: Let me ask a question at this time
5 which I would have asked at some time.

6 I presume that you can speak in behalf, Mr
7 Zahnleuter, for the state that the parties you represent,
8 neither of the parties you represent had anything to do with
9 withdrawal of that station from the network.

10 MR. MILLER: Judge Gleason, I do not speak on behalf
11 of New York State in any matter.

12 JUDGE GLEASON: I didn't ask you.

13 MR. MILLER: I'm sorry.

14 JUDGE GLEASON: I said Mr. Zahnleuter could speak in
15 behalf of New York State.

16 MR. MILLER: Oh, I'm sorry. I misunderstood.

17 The answer to your question is that is true. That
18 Suffolk County had nothing to do with WPLR.

19 JUDGE GLEASON: Mr. Zahnleuter.

20 MR. ZAHNLEUTER: And for the state of New York, the
21 answer is identical.

22 JUDGE GLEASON: All right. Thank you.

23 Mr. Bachmann, I wonder if I could leave that -- look
24 at the copy of the letter Mr. Sisk -- no. If he's reading it,
25 go ahead and finish your reading of it.

1 MR. SISK: Judge Gleason, if I might very briefly
2 while it's being handed to you, I just want to respond to one
3 thing that Mr. Miller said about the scope of the filed
4 testimony.

5 Mr. Miller indicated that the focus of the testimony
6 on both sides has been the coverage of WPLR. I will submit
7 that the focus of LILCO's testimony has been the coverage of
8 WPLR, that the extent of Suffolk County's testimony on that is
9 that they conducted some preliminary readings of WPLR, and then
10 gave up and made no conclusive findings.

11 We believe the record will show that WPLR provides
12 adequate coverage and that Suffolk County has done nothing to
13 refute that case.

14 On the contrary, the bulk of Suffolk County's case
15 has depended on litigation of the coverage of other stations,
16 other stations other than WPLR, in the EBS system. They have
17 contested AM coverage at night and a number of other issues
18 relating to the secondary stations.

19 So, I don't think it's fair to say that the county
20 has focused its case on something that's changed.

21 JUDGE GLEASON: All right. Mr. Cumming, do you have
22 anything that you'd care to add to this thing at this point?

23 MR. CUMMING: Judge Gleason, FEMA understood the
24 remanded reopened issue to be the signal strength of WPLR. We
25 understand, I have just read the LILCO letter of May 9th for

1 the first time, it represents WPLR still has a function.

2 So, I would assume that the FEMA filed testimony is
3 still relevant.

4 The history, however, of the EBS system perhaps would
5 be of use to the Board, and that is that at the time that
6 Revision 7 and 8 of the LILCO plan were being reviewed, notice
7 of withdrawal of WALK radio occurred, and the most recent
8 complete FEMA review indicated that, in fact, there was not a
9 replacement for WALK radio, there would, in fact, be an
10 inadequacy or further inadequacy.

11 Rev. 9 did use, in the LILCO EBS system, WPLR. It's
12 been reviewed on that basis. If Rev. 10 makes a change, then
13 we would have to further review it, but I would assume based on
14 the Board's order that WPLR is still of significance, and
15 that's our understanding.

16 JUDGE GLEASON: All right. Let me take a minute to
17 read this letter and then I'll get back to you.

18 (Pause)

19 JUDGE GLEASON: While we're finishing this letter, I
20 think we could take up the Revision 10 for a minute. Really,
21 the question that I would like to get answered is as to whether
22 outside of the supplemental testimony you've requested
23 concerning the school bus driver issue, whether the changes in
24 Revision 10 have any impact on any of the other existing
25 contentions.

1 MR. IRWIN: We do not believe they do, Judge Gleason,
2 and to the extent that Revision 10 has impacted on any open
3 issues, we have tried to perceive what Revision 10 would say in
4 the testimony we have filed to date.

5 So, I don't think Revision 10 will open any new
6 issues.

7 MR. MILLER: Judge Gleason, I obviously have not seen
8 Revision 10, but I might just point out to the Board that
9 obviously it's difficult for me to guess, I will not guess what
10 will be Revision 10, but the Board has to at least recognize
11 that with respect to the realism issues, the entire issue is
12 the LILCO plan. and if we're getting another Revision of
13 LILCO's plan, in the past practices, and I'm sure it will be,
14 we will see surprises, we will see a new revision, and it just
15 does not make sense to go forward with the trial before we even
16 have before us the actual paper upon which LILCO's plan is
17 written.

18 JUDGE GLEASON: Well, the only response that I would
19 make to that is that the issue before us is the eight
20 contentions existing concerning the plan. So, that's why I
21 asked him the question as to whether the revision impacted any
22 of those contentions.
23 issue.

24 I understand, Judge Gleason, but those
25 eight issues really cover the entire LILCO plan, and, of

1 course, there is a presumption to be dealt with as to whether
2 or not the governments will follow LILCO's plan and, therefore,
3 it seems to me the Board has to have before it that version of
4 LILCO's plan which is yet to appear on the scene.

5 JUDGE GLEASON: I understand. Just hold it a
6 minute, please.

7 (Pause)

8 JUDGE GLEASON: All right. The Board has decided in
9 connection with this development that we will not currently,
10 and I emphasize the word "currently", disturb the hearing
11 schedule with respect to the existing EES issue.

12 However, we will, we will require a paper from LILCO
13 and we have required a response from the other parties within a
14 very short time thereafter, let's say no more than five days
15 after that, and the paper, that briefing paper should treat
16 with specifically what the views are in connection with this
17 substituted station and whether that station has to be
18 contacted.

19 In other words. we want to know exactly what you have
20 in mind with respect to not having WPLR in the former role that
21 they played, the trigger station, in your EBS network, and at
22 that point, when we receive your briefing paper and any
23 responses from the parties, we will make a final decision as to
24 whether that issue still stays in this hearing schedule at this
25 point.

1 Until then, we'll consider it in.

2 Is that clear, Mr. Miller?

3 MR. MILLER: Yes, Judge Gleason, very clear.

4 Does the Board anticipate a date for when LILCO's
5 initial paper will be submitted?

6 JUDGE GLEASON: I think that's a good question.

7 Could you give us a date when you might have that
8 available to us?

9 MR. IRWIN: Mr. Sisk says he thinks we can have it
10 done by the end of the week, but if I could ask for until next
11 Monday, I think --

12 JUDGE GLEASON: I think that would be satisfactory.

13 So, by the end of next Monday, close of business next
14 Monday, we'll have in hand your paper. At least the
15 transmittal of it. We'll be in session and we would like to
16 get a copy of that in New York as well as sent to the offices
17 here.

18 MR. IRWIN: Judge Gleason, I take it that if we can
19 actually produce that paper earlier than next Monday, say by
20 the end of this week, as Mr. Sisk hopes, we could -- and have
21 it served in hand on the other parties, we could get their
22 response within five working days thereafter.

23 In other words, if we filed our paper this week, we
24 could hope to get their response by the end of next week.

25 JUDGE GLEASON: Well, these papers are to be filed --

1 any party's responsibility is to file it within five days
2 thereafter and that means delivered to the parties, too.

3 All right. Do you understand that, gentlemen?

4 MR. MILLER: I understand, Judge Gleason. The -- I'm
5 sure the Board appreciates that if the hearings are to go
6 forward, that there are things to do in addition to responding
7 to LILCO's paper, and I recognize the Board's desires at
8 hearing the views of the parties further on this subject, and
9 perhaps this will all be resolved because perhaps a result of
10 this discussion today will be that hearings will not go forward
11 next week.

12 But in the event they are going forward and we're
13 served with papers in New York on Monday and we're in trial on
14 Monday, it's going to make it very difficult, but we'll do our
15 best to respond.

16 JUDGE GLEASON: Well, I don't know how to respond to
17 that response, but we want your response and within five
18 working days.

19 All right. If we could get your views with respect
20 to proceeding on the issues. We've already decided as a result
21 of this that if the EBS issue stays in the hearing schedule, it
22 will be the third issue heard, simply because we have to allow
23 time to handle the other aspects of it.

24 So, really, that allows -- that permits discussion
25 with respect to the school bus driver issue and the hospital

1 evacuation time issue, and I think that currently resolves
2 itself in some order, too.

3 We have a request in from LILCO to add some
4 testimony, supplement its testimony, on the school board driver
5 issue, and that references changes in Revision 10, and we have
6 a letter from -- dated May 9th, from Kirkpatrick and Lockhart,
7 in which they indicate that, in their view, that testimony is
8 out of time, proper time sequence.

9 This appears to be rebuttal testimony.

10 MR. IRWIN: We have not received that letter. I'm
11 informed.

12 JUDGE GLEASON: All right. You have a copy of it, if
13 you would make that available, please, and --

14 MR. IRWIN: I'm sorry. Mr. Christman did receive a
15 copy.

16 MR. LANPHER: That's the letter with the newspaper
17 article attached?

18 JUDGE GLEASON: That's right. That's right, yes.
19 Do the other parties have a copy of that?

20 MR. IRWIN: We have to correct the record. We have
21 not seen this letter. Could we have one minute to look at it?

22 JUDGE GLEASON: If you want to take our copy.

23 MR. IRWIN: We have Mr. Lanpher's copy.

24 (Pause)

25 MR. CHRISTMAN: We've read the letter of May 9th now.

1 JUDGE GLEASON: All right. Do you want to add
2 anything to the letter as far as the record is concerned?

3 MR. MILLER: Judge Gleason, --

4 JUDGE GLEASON: No, I'm sorry. I asked LILCO's
5 representative.

6 MR. CHRISTMAN: We'd rather try to subtract something
7 from it than add it.

8 JUDGE GLEASON: I'm sorry. You want to add anything
9 to your request to supplement your testimony other than what
10 you wrote in your letter to us?

11 MR. CHRISTMAN: You know, it's sort of like whether
12 the glass is half full or half empty. We believe that we were
13 providing the Board and the parties with an advance look at a
14 couple of relevant procedures from Rev. 10, and, so, rather
15 than waiting for Rev. 10 to come out and Rev. 10 is coming out
16 as soon as it can be produced, we provided an early look at
17 those changes that we thought affected the school bus driver
18 issue, and the reason the Board ought to allow that testimony
19 in, the reasons are two, one is no one is prejudiced thereby,
20 and the second is the latest, most up-to-date information, it
21 is the current, by which I mean Rev. 10, copy of the plan.

22 That's really all I have to say. Oh, and the changes
23 you can see by reading the three pages of testimony are minor.

24 JUDGE GLEASON: All right. Mr. Miller?

25 MR. MILLER: Yes, sir.

1 JUDGE GLEASON: Do you have comments?

2 MR. MILLER: Yes, sir. I believe, Judge Gleason,
3 this --

4 JUDGE GLEASON: In addition to what you've had in
5 your letter.

6 MR. MILLER: I understand. I believe this ties in to
7 the Revision 10 discussion we've already had. I will not
8 repeat those points.

9 I will say, Judge Gleason, that Mr. Christman rather
10 cavalierly says no one is prejudiced by this filing. Again,
11 we're at the eve of trial. All these other things are going
12 on, and we get hit with supplemental testimony.

13 The changes I suggest are a little bit more
14 substantial than Mr. Christman suggests to this Board. In
15 fact, the changes, to give one example on the numbers of bus
16 drivers and school buses at issue here, it's a continuing
17 moving target that we've been facing since last October when
18 LILCO first moved for summary disposition.

19 Last October, LILCO had one set of numbers. They came
20 out with Revision 9, there was another set of numbers. We had
21 discovery of their witnesses. We had a third set of numbers.
22 We got their testimony. We had a fourth set of numbers. We
23 now get their supplemental testimony, we have a fifth set of
24 numbers.

25 The targets move continually. We get this

1 supplemental testimony on the eve of trial. I think that is
2 prejudicial to the governments.

3 I would also point out, Judge Gleason, because I
4 don't believe this fact would be known to the Board, that
5 immediately after receipt of LILCO's pre-filed testimony in the
6 schools issues, the governments were rather surprised by the
7 changes, the substantial changes, made in that testimony for
8 Revision 9 in numbers of buses and bus drivers and so forth and
9 so on, in Revision 9.

10 We immediately wrote counsel for LILCO in a letter,
11 dated April 22nd, I'll be glad to provide the Board a copy if
12 the Board would like, we requested LILCO to explain these
13 changes. We asked why it had not updated discovery responses.
14 We got back a letter, dated April 26th, which basically told us
15 to buzz off. They provided no further information. They told us
16 nothing. They told us they would tell us nothing.

17 They thought they had no obligation to tell us
18 anything. Then, we get Friday evening, telecopied to us, this
19 supplemental testimony with a new set of new numbers and new
20 information. It is prejudicial and it's another reason why
21 this trial is not at this time ready to go forward.

22 MR. CHRISTMAN: Judge Gleason, the county is going to
23 be prejudiced by the start of the new school term in September
24 also because the numbers will change again, and that's the
25 nature of the world at large. We're litigating an emergency

1 plan and those numbers don't change that plan, and we're
2 talking about litigating details here that aren't even within
3 the scope of what the Board is supposed to be doing.

4 MR. MILLER: That's LILCO's assessment. We have a
5 different assessment, obviously.

6 JUDGE GLEASON: Well, Mr. Miller, you know, this
7 testimony is really three or four questions added to their
8 testimony. I really -- you know, we just can't see that impact
9 that you're talking about.

10 MR. MILLER: Judge Gleason, I don't believe it's fair
11 for the Board to review just these three pages of supplemental
12 testimony. This is what LILCO has suggested the Board do. I
13 think the Board needs to at a minimum review the attachments
14 that are referenced in that testimony which are attached as
15 Revision 10, which look like we conveniently did not provide
16 the Board copies with.

17 The testimony, the supplemental testimony, references
18 new wordage in Revision 10, both in the Appendix A of Revision
19 10 and in the OPIPS, in the procedures to Revision 10.

20 Those are changes that I think are a bit more
21 substantial than the Board would be led to believe by reading
22 this proposed supplemental testimony.

23 MR. CHRISTMAN: I believe we did provide the Board a
24 copy of whatever it is Mr. Miller said we didn't provide you a
25 copy of, and if we didn't, we would be glad to do it.

1 JUDGE GLEASON: We have it.

2 (Pause)

3 MR. MILLER: Judge Gleason, if I might just --

4 JUDGE GLEASON: Just a minute.

5 (Pause)

6 JUDGE GLEASON: Yes.

7 MR. MILLER: There's one other point that the Board
8 may want to take into consideration in this entire discussion
9 of Revision 10 and its upcoming release in the supplemental
10 testimony of the schools issue.

11 The Board may have noticed in submitting Revision 10
12 that there is a comment by LILCO that is basically the question
13 posed to the witnesses, what is the purpose of Revision 10 and
14 the answer comes back, it incorporates the FEMA RAC's comments
15 to Revision 9.

16 Now, Judge Gleason, I must tell you that from the
17 governments' standpoint, that was quite a surprise to hear
18 given the fact that Revision 9 and the RAC's comments of
19 Revision 9 is not yet publicly available.

20 LILCO now has put forth testimony, proposed
21 testimony, that supposedly incorporates the RAC's comments, and
22 I suggest, Judge Gleason, that this is something the
23 governments is going to want to look into. I think the
24 governments may want to conduct discovery on this issue.
25 Discovery not just of LILCO but discovery perhaps of FEMA to

1 find out how it is that LILCO has been made privileged to
2 information not otherwise available.

3 JUDGE GLEASON: Well, that is a different issue than
4 the one we're currently facing. You know, Revision -- FEMA's
5 comments on Revision 9, which will be in Revision 10, you'll
6 have a chance to look at, and it doesn't have anything to do
7 with this testimony.

8 MR. MILLER: All I'm suggesting is that Revision --
9 their proposed testimony, including their supplemental
10 testimony that we're discussing, takes into account by LILCO's
11 own admission the RAC's comments, the FEMA RAC comments, for
12 Revision 9. Comments which have not been made available at all
13 to the governments, though not public yet, and --

14 JUDGE GLEASON: Testimony doesn't add that. The
15 testimony doesn't add that to -- it doesn't attempt to add that
16 to the testimony.

17 MR. MILLER: Well, that comment also goes to the
18 upcoming release of Revision 10 which we haven't seen at this
19 time.

20 JUDGE GLEASON: None of us have seen it and it's
21 going to be provided to you, but you have to, you know, keep in
22 mind that these revisions are going to keep occurring.

23 MR. MILLER: Judge Gleason, --

24 JUDGE GLEASON: We don't have to go back to Stage 1
25 every time a revision comes along.

1 MR. MILLER: -- we understand revisions keep
2 occurring, but we understand that the emergency plans keep
3 evolving. We have been hearing that for six years.

4 JUDGE GLEASON: Well, that is true. Every other
5 case, it's been true. I don't see why it wouldn't be true in
6 this case.

7 MR. MILLER: All I'm bringing to the Board's
8 attention, it's not a question of the plan evolving and the
9 moving target, that's something we've dealt with forever, it is
10 the question of FEMA making available to LILCO or someone on
11 the RAC making available to LILCO information not otherwise
12 publicly available which is prejudicial to the governments.

13 That's the only point I'm making to the Board here,
14 and there may be discovery necessary in that regard.

15 MR. REIS: Mr. Chairman, that would certainly be a
16 side issue and a collateral issue and an attempt to get this
17 proceeding off track.

18 Let me point out that the Appeal Board in Zimmer 727
19 clearly recognized that plans are constantly evolving and there
20 was no need to wait the final FEMA reports, and let's get this
21 proceeding moving.

22 JUDGE GLEASON: I think the Board is going to let the
23 testimony in because it does not appear to it to be that
24 substantial and it doesn't appear to be presenting an unfair
25 advantage over the Intervenorors.

1 We will permit, if you desire, and, therefore, we
2 have to schedule that in a second place, we will permit you to
3 have discovery with respect to these additional questions, you
4 know, provided that it can be done, of course, in time prior to
5 the hearing.

6 But we are going to permit the testimony to be added.
7 It doesn't seem that it's substantial.

8 All right.

9 MR. REIS: Mr. Chairman, counsel for FEMA wants to
10 make a comment to you.

11 MR. CUMMING: Judge Gleason, just so that a
12 misimpression is not left on the record, FEMA has, in fact,
13 treated LILCO for the purposes of technical assistance just as
14 it would any state or local government. That's not a policy of
15 longstanding nature, but it is since the date of the final
16 adoption of the NRC rule, and we clearly feel that just basic
17 due process is owed to anyone submitting emergency plans to
18 receive FEMA technical assistance.

19 I don't believe that any information has been
20 furnished substantially in the form of RAC comments to LILCO
21 that has not also been made available to the Intervenor.

22 JUDGE GLEASON: All right. We're back now to the
23 question of, which I think has been resolved for us, that it
24 does run -- it does run contrary to this hearing schedule which
25 has been proposed.

1 I see in this letter of May 9th, which we have just
2 read, of LILCO regarding the scheduling of these issues.

3 MR. IRWIN: Judge Gleason, could I address that for
4 one second?

5 If the Intervenor's have questions which go to the
6 substance of the changes, as distinguished from the process of
7 interaction between FEMA and LILCO on Revision 10, LILCO will
8 endeavor to respond to them.

9 I don't think that there are many questions that can
10 be legitimately be asked, but we'll try to deal with them
11 promptly.

12 The nature of the hearings schedule and the witnesses
13 constraints, as Mr. Christman can point out when we get to
14 discussing specific issues, suggests strongly that the school
15 bus driver issue be the first one heard purely because of
16 everybody's schedules.

17 So, we would be anxious to resolve any legitimate
18 open questions which the Intervenor's feel they have between now
19 and next Monday, and, so, we will obviously cooperate in that
20 process.

21 But we do not -- we are anxious not to throw off --

22 JUDGE GLEASON: You can provide Mr. Crocker for
23 deposition this week?

24 MR. IRWIN: If the Intervenor's can show cause why
25 they need another deposition of Mr. Crocker, I presume we can.

1 JUDGE GLEASON: I've already indicated to them that
2 they're entitled to depose that witness in connection with the
3 supplemental testimony.

4 MR. CHRISTMAN: I think we can make him available
5 Friday for a deposition limited to those three pages of
6 testimony.

7 JUDGE GLEASON: Well, it is to be limited to the
8 additional testimony.

9 MR. IRWIN: We can do that. We are -- the only
10 reason there was any question at all was that we were in the
11 middle of intense preparations for the exercise and Mr.
12 Crocker's schedule to some extent is constrained by that, but I
13 think we can make him available Friday.

14 MR. MILLER: Judge Gleason, we're in the middle of
15 attempting to prepare for trial, and maybe this is an issue we
16 should come back and discuss later, but everything going on
17 here today suggests to me that we just cannot go forward with
18 trial next week, and I would submit, so far, Judge Gleason, and
19 I think we have a ways to go in this conference, I heard about
20 leaking paper regarding the EBS issues and the response by the
21 governments to that paper.

22 I've heard about the need which the Board has
23 recognized about future discovery on the schools issues, and
24 the Board has not yet heard about witness scheduling problems,
25 which we're going to have to deal with. Mr. Irwin just stated

1 that it's going to be in everyone's best interests and
2 everyone's best schedules to start with the schools issues.

3 That's completely contrary to what we have informed
4 counsel for LILCO is the case. We have serious witness
5 problems starting with the schools issue.

6 Putting all these things together, witness problems,
7 briefing papers on EBS issues which we're not yet informed
8 about, the need for further discovery, I think at a minimum the
9 Board has got to start thinking about and entertaining a
10 request at this time by the governments for pushing this trial
11 back at least a week and perhaps two weeks.

12 MR. IRWIN: Judge Gleason, let me respond to that.

13 If the Intervenors had served their letter on the
14 Board and to us in time yesterday for us to receive it, and I
15 was in my office till eleven o'clock last night and I didn't
16 get it, so there may be a problem in our telecopy room, but if
17 we had known that there was going to be a general suggestion
18 that this trial ought to be postponed, we might have dealt with
19 these issues holistically rather than individually.

20 I do think they are resolvable individually. We can
21 check with Mr. Crocker's schedule, if it would make a
22 difference to Mr. Miller whether Mr. Crocker were deposed this
23 Friday or this Thursday or perhaps even tomorrow. I frankly
24 don't know his schedule for the next three days. It's a small
25 piece of testimony. We can make him available.

1 But I do not agree that the filing of a letter on the
2 eve of the pre-hearing conference when basically all the pieces
3 have been set for a fair amount of time is something which we
4 ought to be considering at this point.

5 The testimony has been filed. The issues are discreet
6 and we ought to go forward.

7 MR. MILLER: Judge Gleason, my letter was not filed
8 on the eve of the hearing, this hearing. My letter, I was
9 referring to, was correspondence between myself and Mr.
10 Christman. It goes back to last week, May 3rd, at which time
11 we began communications in an attempt to resolve a workable
12 hearing schedule that the parties could agree to and bring to
13 the Board on a joint basis, so that we could avoid this kind of
14 discussion.

15 We have, unfortunately, been unable to reach that
16 sort of understanding between ourselves as to the order of the
17 issues. I think it's because we all have witness problems.

18 I just want to put on the record because LILCO has
19 indicated otherwise and it's not the case that with respect to
20 the counties' witnesses and, in particular, the counties'
21 schools' witnesses, of which there are eleven, there are
22 serious witness problems for next week, and, in fact, if my
23 memory serves me correctly, six of our eleven witnesses are not
24 available next week to testify.

25 JUDGE GLEASON: Well, let me just state in connection

1 with that comment and comments made by Mr. Irwin, the hearing
2 has been noticed on these issues for some time. It is the
3 responsibilities of the parties to produce their witnesses, and
4 it's not the responsibility of the Board to have anything to do
5 with that particular matter.

6 We tried to accommodate you people whenever we can,
7 but it has been apparent for some time now, at least to this
8 member of the Board, that it's impossible for you individuals
9 to agree about practically anything in connection with this
10 case.

11 So, the witnesses are to be made available when these
12 issues are scheduled, and that is not our responsibility, that
13 is yours.

14 Excuse me just one minute.

15 (Pause)

16 JUDGE GLEASON: Gentlemen, we're going to take a ten-
17 minute recess currently, and we're going to ask the parties to
18 work out between themselves which goes first, and the hearing
19 will start on Monday as scheduled, and it's a question of
20 whether the school bus issue goes first or the evacuation time,
21 the hospital time, goes first, and you work that out among
22 yourselves.

23 If you have a disagreement, when we come back, we'll
24 make the decision with respect to that.

25 MR. IRWIN: Judge Gleason, could I ask one question?

1 Does the Board have any defined preference given that
2 there are only three issues and they're relatively discreet, as
3 to whether we can proceed issue by issue or perhaps whether one
4 party might present its witnesses on all three issues and then
5 we proceed to the next party? Does the Board have any
6 preference on that?

7 JUDGE GLEASON: We prefer to, simply because it makes
8 the record that much easier to deal with, for us to conclude a
9 specific issue, and then go to the second issue and then to the
10 third.

11 MR. MILLER: Judge Gleason, before the Board leaves,
12 because this may be helpful to the upcoming discussions, there
13 are two matters.

14 The first matter is that unless there be a
15 misimpression on the record, I want to make sure the Board
16 understands that the county, and I believe also the state, of
17 course, have worked very diligently to schedule their witnesses
18 and to have those witnesses available for the course of this
19 upcoming hearing.

20 We proceeded because we weren't aware of WPLR's pull-
21 out with the -- under the assumption that the hearing should
22 start with EBS issues and then go to the hospital time estimate
23 issues, and then end up with the school issues.

24 Frankly, that became necessary in our opinion because
25 of the problems with our witnesses that we're encountering.

1 LILCO must have, for whatever reason, assumed the contrary and
2 they wanted to start with the school issues and then do the
3 hospital issues and then the EBS issues.

4 I'm assuming that LILCO has got its own witness
5 problems it's got to deal with. We all have those kinds of
6 problems, but we've all worked with our witnesses to try to
7 make those problems come together.

8 But the point of the matter is that at the present
9 time, we have -- we could assure the availability of our EBS
10 witnesses for next week and then our hospital witnesses and
11 then our school witnesses, but under the circumstances of
12 WPLR's pull-out, going for it next week with EBS issues is a
13 problem, obviously.

14 So, we're faced now with thinking about hospital time
15 estimates or school issues and, frankly, as I said, we have six
16 of eleven witnesses that just aren't available next week for
17 trial, and I think that's something that the parties and the
18 Board will have to deal with.

19 JUDGE GLEASON: Make that argument with LILCO.

20 MR. MILLER: Yes, sir. I will, and the last point,
21 Judge Gleason, because it goes into the discussions that are
22 coming up, I believe the Board, and I would request at this
23 time that the Board give serious consideration to the nature of
24 the hearing week.

25 I think that plays into any scheduled discussions. I

1 would request that the Board have a four-day hearing week that
2 would run Tuesday through Friday. I make that request based on
3 past practice, based on the fact that I know what it's like to
4 make witnesses travel on weekends.

5 I know what it's like to make attorneys travel on the
6 weekends. Starting the hearings on Monday and going Monday
7 through Thursday, to me, it's preferable to be traveling on the
8 Friday afternoon to get back to your hometown.

9 I'm assuming the Board will go forward with a four-
10 day hearing week. That's been the past practice in the case.
11 That's the only way you have any time to work with your
12 witnesses, other than forcing them to fly in on Saturdays and
13 Sundays and work with you, and I think that's unfair to the
14 witnesses and to counsel.

15 JUDGE GLEASON: All right. I'll take that under
16 consideration.

17 MR. IRWIN: Judge Gleason, I need to respond to that,
18 Judge Gleason, because we're going to be having discussions for
19 the next ten minutes.

20 We have had four-day hearing weeks at times in this
21 proceeding on issues which have lasted months to try. It has
22 generally been over LILCO's objection and the Board would not
23 enforce a longer hearing. These are a small number of issues.
24 They are discreet. We believe that they should be capable of
25 being tried in toto in two weeks.

1 We will have an exercise during the first week of
2 June and the pressures on LILCO personnel will become
3 excruciating. In fact, it will be literally impossible to have
4 hearings the 6th through 8th of June.

5 We need to do what is necessary to finish this
6 proceeding before that time.

7 JUDGE GLEASON: Is that when the exercise is
8 scheduled, June 6th through the 8th?

9 MR. IRWIN: That's what we understand, although
10 there's nothing definitive yet.

11 MR. CUMMING: Judge Gleason, the Nuclear Regulatory
12 Commission initially identified a tentative date of June 13th
13 to the Federal Emergency Management Agency for an exercise.

14 We since, on April 22nd, received a request to modify
15 that date and as of this morning, there still is no decision on
16 the issue of whether the exercise can be held or not. It's my
17 understanding the planning proceeding is proceeding towards an
18 exercise tentatively for the week of June 6th.

19 I'll be glad to -- when we respond to the letter of
20 April 22nd, I'll be glad to serve all parties with our
21 response.

22 JUDGE GLEASON: All right. Let's -- people, please
23 try to agree on a schedule.

24 We'll be back in ten minutes.

25 (Whereupon, a recess was taken.)

t/ 1 JUDGE GLEASON: Begin please.

2 MR. CHRISTMAN: Judge Gleason.

3 JUDGE GLEASON: Yes.

4 MR. CHRISTMAN: We -- LILCO doesn't think this is an
5 acceptable schedule. But it is closest we have been able to
6 work out. We don't think it should take three weeks to try
7 these issues.

8 Also, I already have an amendment. It looks to us as
9 though this Friday the 20th with Dr. Lindell, well, Dr. Lindell
10 if he's going to have to cancel his class on Thursday he says
11 he might as well stay through on Friday. So I think you can
12 s ike, without Lindell.

13 MR. MILLER: Judge Gleason, the schedule as
14 constructed is also not acceptable to the government from the
15 standpoint that the government, as I noted before the recess,
16 believe that we should structure the hearings to have a four
17 day hearing week. And with that caveat which is a strong
18 caveat in our opinion, there is that disagreement between us
19 and LILCO.

20 MR. CHRISTMAN: Well, let me add to that, we feel
21 that we should go Saturdays or into the evening hours in order
22 to get these issues handled in two weeks rather than the three
23 or more that appears to be on this paper, but we invite the
24 Board to look at the paper and see what it thinks.

25 JUDGE GLEASON: We had always contemplated, because

1 we do recognize there is some validity to the point that you do
2 have to have time to handle related matters. Doing a five day
3 week really doesn't allow you to do that.

4 To have the first week of the hearing only be a five
5 day week; and thereafter the subsequent week or two weeks, as
6 the case may be, will be a four day week starting on Tuesday.

7 I think we would like to maintain that schedule. And
8 the only thing that would do then is to, you know, at least
9 slip the 23rd testimony to the 24th and just push everything
10 back a day.

11 MR. CHRISTMAN: Well, let's be careful there. Now,
12 you know, some of --

13 JUDGE GLEASON: How careful do we have to be?

14 MR. CHRISTMAN: Let me put it this way, this is
15 constructed like a fine Chinese puzzle with every interlocking
16 piece carefully put into place. We're going to have to think
17 about it for just a second.

18 JUDGE GLEASON: We're not accelerating anything, so
19 we are allowing everybody another day to make the arrangements.
20 So to that extent, it should be helpful to you.

21 MR. MILLER: Judge Gleason, the government -- your
22 suggestion would be acceptable to the government assuming that
23 we start at the hearings next week. To slide everything back
24 one day starting the second week, the government's witnesses at
25 least, would be available in that modified schedule.

1 JUDGE SHON: Do I see June the 1st as a blank year?
2 Would it be better if --

3 MR. MILLER: They're not meant to be blanks, Judge
4 Shon. I think what is meant to be indicated is that, during
5 the week of May 31st the local EBS panel would be cross-
6 examined; it's indefinite right now for how long, followed by
7 the Intervenor's EBS panel, roughly a half day estimate has
8 been given by LILCO on that score. And most likely the
9 hearings would end the afternoon of June the 2nd when Turner
10 would appear, that is the first day he is available. He is a
11 school witness sociologist that we have serious witness
12 problems with that, that would be the very first time he could
13 be made available.

14 JUDGE GLEASON: On the 2nd?

15 MR. MILLER: June the 2nd. And that would likely --
16 in all likelihood given expectations of this time be the end of
17 the proceedings. But that time would be filled by --

18 JUDGE GLEASON: I gather what 's just said is that we
19 would probably shove up that date anyway.

20 MR. MILLER: Well, under the present schedule Judge
21 Shon has constructed, again, based on our estimates of this
22 time, there may not be any hearings on the 3rd, we may be able
23 to conclude by the 2nd. But, of course, that may vary or the
24 Board may want to have hearings on the 3rd to discuss other
25 matters. I mean, we really don't know. But we'll allow that

1 one day kind of luxury in the schedule.

2 MR. IRWIN: We frankly hope to be finished by the
3 31st until we learned that Dr. Turner would not be available
4 until the 2nd. I think the only real sticking points in the
5 second weeks schedule are apparently those of the federal
6 government's witnesses; the FEMA EBS witness; and the NRC's
7 evacuation time witnesses. Those two witness lots as to each
8 of whom Intervenor's have estimated they have a half day or so
9 of questioning; need to remain, not only the days they are, but
10 on the parts of the day they are apparently.

11 I believe that LILCO's witnesses could slide and we
12 might want to slide our -- the LILCO EBS testimony down
13 entirely until the week beginning May 31st, but that's a detail
14 I think we can deal with.

15 JUDGE GLEASON: All right. Why don't we just approve
16 this schedule as it is and with the caveat that we slide it a
17 day, we start on the 24th rather than on the 23rd, and then
18 Tuesday weeks thereafter.

19 I would also like to state, unless something very
20 unusual happens or unless FEMA -- well, even then we're not
21 liable to know the time. I really would like to set for a day
22 certain the hearing regarding the realism issues, if there is a
23 hearing. That's something we'll discuss when we get into the
24 status.

25 So what I would like to do is to : those to start

1 the week of June 13th. Once again, we'll start those on a
2 Monday and if we go on with the issues it will be Tuesdays
3 thereafter.

4 MR. IRWIN: Judge Gleason.

5 JUDGE GLEASON: Yes.

6 MR. IRWIN: The last thing counsel for an Applicant
7 ever wishes to be heard to say is that they wish a hearing to
8 start on a day later than a Licensing Board suggests, and I
9 don't want to say it, but I'm being told by my witnesses who
10 will be appearing on realism issues, if there are any such
11 hearings, that during the two weeks following the exercise they
12 understand from FEMA that there will be an intense period of
13 debriefing, review of records and such, and that the earliest
14 practical date they could finish that process and clear their
15 heads for hearing would be the week beginning June 27th.

16 That is a fortuitous surrounding the exercise, and
17 there's nothing we can do about that, unfortunately. If we had
18 different people participating in the plan, then are testifying
19 as witnesses we would not have the problem, but it is
20 unfortunately a fact.

21 And we discussed this matter with our witnesses long
22 and hard because --

23 JUDGE GLEASON: Well, you know, as a practical matter
24 that takes the whole month of June, it takes three weeks out of
25 the month of June.

1 MR. IRWIN: That was exactly the point we made to our
2 witnesses, Judge Gleason.

3 It is conceivable that we may be able to compress
4 that by a week, but I'm not at all sanguine about that, sir.

5 Now, it is conceivable that we could go forward, if
6 there are such hearings on immateriality related issues.

7 JUDGE GLEASON: That won't take that much time.

8 MR. IRWIN: I would not think it would. But we -- it
9 seems to me it is a matter which we do need to examine further.
10 We have discussed it with our realism issue witnesses, and I
11 believe Mr. Cumming will corroborate the nature of the FEMA
12 review process.

13 MR. CUMMING: Thorough, I'm offering a very thorough
14 process. It might be, too, we never recover from our review.

15 MR. IRWIN: Another -- an additional possibility
16 would be that if --

17 JUDGE GLEASON: You mean it might take five weeks
18 instead of three?

19 MR. IRWIN: I hope not.

20 MR. CUMMING: As of today, there is no decision to
21 hold exercise the week of June 6th, but that has been requested
22 of us from NRC. The schedule tentative date is the week of
23 June 13th.

24 I assume that Mr. Irwin's representation to you is
25 Based on the fact that two weeks following the week of June

1 6th.

2 MR. IRWIN: That's correct.

3 One other possibility, Judge Gleason, is that if the
4 testimony of Mr. Halpin and Dr. Axelrod is admitted, LILCO will
5 be prepared to proceed with examination of them prior to its
6 own witnesses appearing, if there were hearings beginning
7 during the week of June 13th. And it's not LILCO that
8 unprepared, it's simply that our witnesses are tied up
9 inexorably with this review process. And that's something we
10 can't -- we have no control over that.

11 JUDGE GLEASON: They are tied up, Mr. Cumming, for
12 two weeks following the exercise?

13 MR. CUMMING: I can't make a representation as to the
14 exact requirements, but I can tell you that certainly the
15 period following an exercise it is usually labor intensive on
16 the organization which conducted the exercise. We evaluated
17 the exercise, we're in the process of gathering materials as
18 late as 10 days following the exercise for the purposes of
19 incorporation to fact that into our post-exercise assessment.

20 MR. IRWIN: We had -- I must be candid about this,
21 Judge Gleason, built into our schedule a portion of a working
22 week to enable our witnesses to prepare for the hearing after
23 they had gotten through with the FEMA review.

24 The exercise, as we understand it, if it is conducted
25 beginning June 6th will take place June 6th through June 3rdh;

1 it will be a three day exercise and that will generate a
2 tremendous amount of paper. And that basically means that the
3 balance of that week, June 9th and 10th, and all of the
4 following week, the week of the 13th through 17th, is
5 envisioned by them as involving active review with FEMA,
6 possibly spilling over to the week beginning the 20th. And
7 that the remainder of that week would be time they would be
8 preparing for this hearing.

9 However, if Messrs. Halpin and Dr. Axelrod's
10 testimony is admitted, LILCO will be prepared to proceed with
11 examination of them during that period, sir.

12 JUDGE GLEASON: Well, the only thing clear at the
13 present moment is that the situation is unclear, and therefore
14 we cannot set the date with respect to the realism hearings,
15 with any degree of precision.

16 I would hope, this is until -- of course, we won't
17 know until the date of the exercise is definite that even if it
18 was held on the 6th, the 6th through the 8th, as you say, that
19 by the 15th of the following week that some of these witnesses
20 might be available. I don't see where that exercise, giving a
21 followup, has to detail all of your witnesses. But that
22 remains to be seen.

23 So, we'll just have to wait and see whether the
24 Intervenor would agree to have Mr. Halpin and Dr. Axelrod go
25 out of order, in effect, if a hearing were held, I just don't

1 know. But we don't have to cross that bridge right now. They
2 are busy people and they have to have notice, you know, special
3 time to clear their decks and so on.

4 MR. IRWIN: Would it make sense at this point to at
5 least pencil in the date of June 27th as a planning date which
6 might be capable of being advanced if circumstances cleared,
7 sir?

8 JUDGE GLEASON: Well, I don't want to do that. I
9 want to pencil in June 29th as the tentative date and hopefully
10 accelerate that.

11 MR. IRWIN: Let me see if we can check with our
12 witnesses further on that.

13 JUDGE GLEASON: All right.

14 We now have -- all right, the schedule then is
15 submitted as approved with those understandings.

16 (Discussion off the record.)

17 JUDGE GLEASON: Back on the record.

18 There is one other aspect of this, if I could have
19 your attention please, the suggestion has been made, there is,
20 of course, a lot of the prior testimony that is not
21 electronically recorded, and unfortunately, the NRC has no
22 money to do this or at least this panel doesn't. And we were
23 wondering if there was any desire on the part of the Applicant
24 to have the prior testimony scanned, if you will, and picked
25 up. What we have to make available to you is the balance of

1 bluefish, is that right, Jack?

2 MR. WHETSTINE: Yes, the search portion of bluefish.
3 We could get a scanned ASCII record and index it usually in the
4 bluefish searchware and then provide you with the entire
5 package of that.

6 MR. LANPHER: Judge Gleason, could I ask a question.
7 You referred to prior testimony --

8 JUDGE GLEASON: I had understood that there, you
9 know, some 30,000 pages of testimony that were not
10 electronically recorded. And the question is, is it necessary,
11 and if it is, is there a desire to get this done. If so, we
12 could provide the other aspect issue, be inclined to do that.
13 Maybe you've already done it, I don't know.

14 MR. IRWIN: We have aspects of it on our own system
15 which is not an ASCII based system. We can, however, prepare
16 ASCII files from any transcript or any piece of filed
17 testimony. We do not, of course, have live on our computer
18 system the testimony of any of the parties.

19 Let me -- as to whether it is necessary to do, no,
20 sir, I do not believe it is. Whether it would be helpful, it
21 might well. It is a substantial volume of work, for the
22 transcripts are in excess of 30,000 pages, the prefiled
23 testimony is probably up to 5,000 plus. Let me -- and that is
24 a substantial amount of paper to scan.

25 Let me check and get an idea of what volume of actual

1 work that entails and see whether we can do it.

2 JUDGE GLEASON: All right. And then would you
3 contact Mr. Whetstine, please.

4 MR. IRWIN: Yes, sir.

5 JUDGE GLEASON: Thank you. All right, is that it,
6 Jack. He's available, gentlemen, so make use of him, he's a
7 good man. Thanks, Jack.

8 Now, I don't think we have to spend any, you know,
9 much time on the order of presentation -- we're back on the
10 procedures now, the order of presentation, you know, it will go
11 with FEMA -- it will go with the Applicant witnesses first,
12 then the Intervenor, and then FEMA, if they have a witness on
13 the issue, and finally the staff in that order.

14 MR. MILLER: Judge Gleason.

15 JUDGE GLEASON: Yes.

16 MR. MILLER: Recognizing all the caveats in this
17 schedule because the order will not quite be like that because
18 of particular witness problems on the schedule.

19 JUDGE GLEASON: I understand that. That may have to
20 be adjusted because of some witnesses availability. You're
21 talking -- well, I'm not sure -- I know what you're talking
22 about.

23 MR. MILLER: Well, I think your description is a fair
24 general description of the order but there will probably be --
25 in fact, there will be exceptions because of witness problems.

1 The FEMA witness, for example, on EBS issues may well have to
2 go before the County's witnesses on EBS.

3 JUDGE GLEASON: That's right. Thank you, I
4 appreciate your pointing that out.

5 MR. CHRISTMAN: Judge Gleason.

6 JUDGE GLEASON: Yes.

7 MR. CHRISTMAN: I wonder if we might, at some point,
8 have, I don't know, perhaps five minutes to digest what we
9 think is the final schedule approved by the Board. We've
10 rediagramed it, but we're not 100 percent certain that we're
11 all in agreement. I think whatever is convenient for you, you
12 ought to let us show the Board -- show the other parties what
13 we have scoped out here and then let us show it to the Board
14 and make sure we're all in clear agreement.

15 The problem is caused by, the original schedule was
16 based on a five day week, we have now changed that to four day
17 weeks after the first one and that makes some changes; and I
18 just think it would be wise for all of us to look at a drawing
19 before we go home today.

20 MR. MILLER: Judge Gleason, we're more than happy to
21 look at a drawing, if LILCO wants to make one. I think we
22 understand the schedule. And I think given the flexibility,
23 especially with June the 3rd being a kind of an open day, what
24 we suspect to be the case is that the hearings can be completed
25 by the end of the week of -- following Memorial Day. And we

1 just understand what the Board wants is to spike everything
2 back a day. And I think we can work it out with LILCO, I don't
3 think that's a problem.

4 JUDGE GLEASON: All right. Why don't you just work
5 it out with them and then send us a copy of these things. I
6 think we all understand. I understand your concern, we don't
7 want any misunderstandings, but we aren't to take the time now.
8 If you'll just rediagram it and send us a copy of it that will
9 be sufficient. Is that all right?

10 MR. MILLER: That's fine.

11 JUDGE GLEASON: Is that all right with the staff?

12 MR. BACHMANN: Yes, sir.

13 JUDGE GLEASON: All right. That takes care of
14 anything I wanted to discuss with respect to the procedural
15 matters in the first three issues.

16 I wanted to talk a few minutes on the status of the
17 realism, the best efforts contention. Currently we have in
18 front of us, meaning the Board, we have the Intervenor's
19 objections to parts of the Board's February 29th and April 8th
20 memoranda and orders. We have the LILCO response of April 22nd
21 to that -- to Intervenor's objection; and LILCO's supplement of
22 May 2nd. And we have the Intervenor's response to the April
23 22nd response by LILCO; and we have the staff's response to the
24 Intervenor's objections, the staff's response dated April 28th.

25 And we have an indication that the Intervenor's intend

1 to respond to the May 2nd supplement. And when you have that,
2 there are really two issues. And those issues are, in a sense,
3 the Intervenor's proffer of testimony. And then the
4 Applicants' motion to dismiss the contentions or alternatively
5 toward a discovery.

6 I'd like to speak for just a minute on discovery.
7 After reading the supplemental response I have to say that, at
8 least in my opinion and I think this is shared by the Board,
9 the performance of Attorneys Brown, Zannleuter and Lanpher
10 during the Halpin and Axelrod depositions, based on their
11 degree of persistency that was noted, amounted to what appeared
12 to be almost a deliberate obstruction effort of the discovery
13 process, which frustrates its purpose, of course, which is the
14 determination of necessary and relevant information.

15 The Board just cannot condone that kind of conduct,
16 and it can't accept it. And to do so it would just allow the
17 thwarting of the whole discovery process.

18 Accordingly, we're going to make two rulings now.
19 The first is that we're directing Intervenor's to make Dr.
20 Axelrod and Mr. Halpin available for a continuation of the
21 depositions by the Intervenor's.

22 MR. IRWIN: By LILCO, sir?

23 JUDGE GLEASON: By LILCO, I'm sorry, by LILCO.

24 And the second -- I will say more about this in the
25 order that we'll send out, incidentally, so that you'll have it

1 clear in your mind as to what our concern has been.

2 And the second ruling is that the Board directs --
3 let's see, the response is due, I believe, to the Applicants'
4 response on May the 12th. And we would like to have -- we're
5 directing the Intervenor's to have that in the hands of the
6 Board by noon of that day. In other words, we're eliminating
7 the mailing time because we have to have it.

8 Now, in that connection I want to make one other
9 statement on relevancy. It is our judgment that the emergency
10 plans of other nuclear facilities, other than Shoreham in and
11 near New York State are relevant to this proceeding. So that
12 interrogatories that have been asked in connection with it and
13 questions that have been asked in depositions are required to
14 be responded to. And documents that have been requested are
15 required to be furnished by the Intervenor's.

16 We further wish to state that other emergency plans
17 of both the State of New York are also relevant to this
18 proceeding. And here I have particular reference to a Civil
19 Defense plan that has been referred to in the depositions and
20 in the interrogatories; and those should be made available to
21 the Applicant.

22 Now, as you gentlemen will certainly realize the
23 Board has some several very important rulings to make in
24 connection with the realism, the best efforts contentions. And
25 we want to -- we had thought we would have by the time this

1 conference was held, had all of those concluded but obviously
2 we still have one piece of information still to come in, so
3 we're not in a position to put our heads together and decide
4 what we want to do with that, and we realize that you would
5 like to know as quickly as possible.

6 It appears that we -- depending on when the hearings
7 are finished on the other three issues, we would not be able to
8 make that ruling prior to May 26th of June 2nd, depending on
9 when the hearings conclude. But we'll do it on one or the
10 other of those two dates.

11 I guess really that's all that I have to say with
12 respect to discovery and with respect to the status of the
13 realism issues. I'll be glad to open it up for any comments
14 that any of the parties may have or any questions they may
15 have.

16 MR. IRWIN: Judge Gleason, just two questions of
17 clarification. When you mentioned earlier that emergency plans
18 of the State of New York should be produced, I take it you that
19 you intended to include within that subsidiary governments
20 within the State such as Suffolk County or other relevant local
21 jurisdictions surrounding nuclear powerplants?

22 JUDGE GLEASON: Yes, I did. If they're in New York
23 State.

24 MR. IRWIN: The second question is, I understand the
25 ruling concerning the depositions of Mr. Halpin and Dr.

1 Axelrod. I take it that the Board is simply withholding ruling
2 at this time as to any other depositions which might need to be
3 reopened.

4 JUDGE GLEASON: Well, I want to see the response that
5 has come in or the response that will be coming in from
6 Intervenor before making any decision or the Board make any
7 decision on that, yes. I had understood that you intended to
8 request subpoenas with respect to them, if the hearing
9 continues, but we have to receive their response first.

10 MR. LANPHER: Judge Gleason, if I may be heard.

11 JUDGE GLEASON: Yes.

12 MR. LANPHER: On behalf of Suffolk County,
13 particularly the Halpin deposition, this is Mr. Lanpher, I was
14 the attorney defending that deposition, I must say that I have
15 to object to the Board issuing a ruling without first hearing
16 argument from Suffolk County or allowing a written response. I
17 most strongly disagree with your characterization of the
18 defense of that deposition, sir.

19 And in the response that we are in the process of
20 preparing we would have pointed out, for instance, LILCO makes
21 the point in its papers the number of objections made. Well,
22 in the LILCO panel deposition which occurred the day following
23 Mr. Halpin's deposition, at 94 pages out of the 214 pages,
24 LILCO's counsel interrupted countless times. LILCO's witnesses
25 were unable to answer hypothetical questions. They said they

1 could not speculate.

2 Frankly, we think that many of the questions pursued
3 by LILCO's counsel were just obviously irrelevant and not in
4 serious pursuit of discovery. For instance, at page 64 of the
5 Halpin transcript there's a question: "Mr. Halpin, is it
6 possible to adequately to protect the public health and safety
7 from a nuclear war?" Now, that's not a serious question in
8 this proceeding, in our opinion, sir.

9 Similarly, at page 67 in that transcript: "Mr.
10 Halpin, do you believe that it is a disservice to the public to
11 adopt a civil defense plan designed to reduce harm from a
12 nuclear war?"

13 These are some of the matters, sir, that I would like
14 to address in our papers due, you have asked that they be filed
15 by noon, I guess, this Friday or Thursday. Those papers are
16 not suppose to be filed, according to the rules, until the
17 16th. LILCO's brief, sir, was filed on -- was served on the
18 22nd by Federal Express, April -- no, not the 22nd, excuse me,
19 May 2nd by Federal Express, you add 12 days.

20 JUDGE GLEASON: I'm not adding 12 days, I'm adding 10
21 days, that's what the rule says.

22 MR. LANPHER: 10 days plus two for service, sir.

23 JUDGE GLEASON: I'm knocking out the service. I told
24 you it should be in hand on that day, noon of that day.

25 MR. LANPHER: We will do our best, sir, to get that

1 in your hands by noon on the 12th. There's obviously a great
2 deal that has to be responded to, LILCO's motion is, counting
3 attachments is approximately three pages. And I would ask the
4 Board's indulgence to allow us also to seek reconsideration of
5 the Halpin and Axelrod ruling since we have not had a chance to
6 respond on that. I understand the Board's preliminary ruling,
7 but we will address that with your indulgence in the papers to
8 be filed this week, because we think the Board's ruling is
9 incorrect.

10 JUDGE GLEASON: Mr. Lanpher, let me just conclude
11 this part of the discussion with these comments. Ordinarily
12 the Board would not make a ruling until it receives the
13 responses of the parties. In this case we had the complete
14 deposition before us. What occurred during that deposition was
15 apparent. There is no way that anyone can rationalize or
16 explain away those remarks.

17 Second point I make, and that's why we made that
18 ruling now.

19 MR. LANPHER: Could I ask a clarification on that,
20 sir?

21 JUDGE GLEASON: Yes.

22 MR. LANPHER: Are you intending to detail in an order
23 what objections were improper?

24 JUDGE GLEASON: I gave you -- I don't intend to
25 detail, but I will give you in the order several of the

1 references that form the basis of this ruling.

2 Secondly, we have had time and again references, and
3 sometimes we have paid some attention to it, but references to
4 what other parties do. And proceeding is justification for, I
5 presume is justification for what occurred on the part of
6 another party; that in our mind is not a justification.

7 If you have objections to the procedures that are
8 followed, the conduct that is followed by counsel for other
9 parties, it's your obligation, if they affect the proceeding
10 for you to bring those in a proper format to the Board.

11 MR. LANPHER: I didn't have -- you misunderstood me,
12 Judge, I didn't have objections. I think those are
13 standard --

14 JUDGE GLEASON: Well, then why do you recite them
15 here?

16 MR. LANPHER: Because -- I recite them because it's
17 the exact same conduct as we pursued, and I don't believe that
18 our conduct was wrong, and I doubt that LILCO's are.

19 JUDGE GLEASON: Make that case irrespect of some
20 other conduct, that's my point.

21 MR. LANPHER: Well, then I would like to have the
22 opportunity to make the case and go through and have you point
23 out to us where you think the objections were improper.

24 JUDGE GLEASON: Mr. Lanpher, we are now concluding
25 this part of the discussion.

1 MS. YOUNG: Excuse me, Judge Gleason.

2 JUDGE GLEASON: Yes.

3 MS. YOUNG: I'd like to just have one short
4 clarification. You indicated that you wanted the intervening
5 government's response by noon on May 12th, did you also want a
6 response from the staff on that date?

7 JUDGE GLEASON: I want all the responses in by May
8 12th to that particular response.

9 MS. YOUNG: And one additional thing, is it the
10 Board's impression that staff also will be able to conduct
11 cross-examination of any deposition -- during any deposition
12 held of Mr. Halpin and Mr. Axelrod?

13 JUDGE GLEASON: Certainly.

14 MS. YOUNG: Thank you.

15 JUDGE GLEASON: Anything else?

16 Let me say as a concluding remark here, at least as
17 far as anything that I have. Anything any of the other parties
18 have?

19 MR. MILLER: Judge Gleason, are you getting ready to
20 conclude the conference of counsel?

21 JUDGE GLEASON: I am.

22 MR. MILLER: I would like just two minutes to consult
23 with Mr. Lanpher before you conclude.

24 JUDGE GLEASON: Sure, go ahead.

25 MR. BACHMANN: Judge Gleason.

1 JUDGE GLEASON: Yes.

2 MR. BACHMANN: I believe at one point you indicated
3 that we would be discussing the motions to strike?

4 JUDGE GLEASON: I'll get to that.

5 MR. BACHMANN: I thought we were concluding at this
6 point.

7 JUDGE GLEASON: Well, we are, but I'm going to tell
8 you something before we go.

9 (Pause)

10 JUDGE GLEASON: Anything else, Mr. Miller?

11 MR. MILLER: No, Judge Gleason, thank you. We have
12 nothing to add.

13 JUDGE GLEASON: All right. I wanted to say as a
14 concluding comment that the Board has finally signed off on the
15 Reception Center decision as of yesterday and copies are
16 available from Mrs. Kerr, if you want to get them on the fourth
17 floor before you leave.

18 And we also have ruled and have a paper of the ruling
19 on the motions, to the various motions to strike and that paper
20 is also available with Mrs. Kerr.

21 Anything else, gentlemen?

22 (No response)

23 JUDGE GLEASON: Thank you very much.

24 (Whereupon, at 11:50 m. the conference was
25 concluded.)

CERTIFICATE

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

Name: LONG ISLAND LIGHTING COMPANY

Docket Number: 50-322-OL-3

Place: Bethesda, Maryland

Date: May 10, 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.

ISI K.C. Sekander

(Signature typed): K.C. Sekander

Official Reporter

Heritage Reporting Corporation