

LILCO, May 2, 1988

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'88 MAY -5 P4:23

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)	
)	
LONG ISLAND LIGHTING COMPANY)	Docket No. 50-322-OL-3
)	(Emergency Planning)
(Shoreham Nuclear Power Station, Unit 1))	(Realism/Best Efforts)
)	

SUPPLEMENT TO LILCO'S RESPONSE TO
GOVERNMENTS' APRIL 13 OBJECTION AND
MOTION IN THE ALTERNATIVE TO COMPEL DISCOVERY

Deposition Transcript of David Axelrod

Attachment 8

TRANSCRIPT OF PROCEEDINGS

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

----- -X
: In the Matter of: :
: LONG ISLAND LIGHTING COMPANY : Docket No. 50-322-OL-3
: (Shoreham Nuclear Power : (Emergency Planning)
: Station, Unit 1) :
: :
: :
----- -X

DEPOSITION OF DAVID AXELROD

Albany, New York

Friday, April 22, 1988

ACE-FEDERAL REPORTERS, INC.

Stenotype Reporters

444 North Capitol Street
Washington, D.C. 20001
(202) 347-3700

Nationwide Coverage

800-336-6646

1 GJW/sw 1

UNITED STATES OF AMERICA

2

NUCLEAR REGULATORY COMMISSION

3

-----X

4

In the Matter of: : Docket No. 50-322-OL-3

5

LONG ISLAND LIGHTING COMPANY : (Emergency Planning -

6

(Shoreham Nuclear Power Station, : Best Efforts Issue)

7

Unit 1) :

8

-----X

9

DEPOSITION OF DAVID AXELROD

10

Albany, New York

11

Friday, April 22, 1988

12

Deposition of DAVID AXELROD, called for examination

13

pursuant to notice, at the State of New York Capitol

14

Building, Room 214, at 3:00 p.m., before Garrett J. Walsh,

15

Jr., a Notary Public in and for the Commonwealth of Virginia

16

At Large, when were present on behalf of the respective

17

parties:

18

K. DENNIS SISK, Esquire, and DONALD P. IRWIN, Esquire,

19

Hunton & Williams, 707 East Main Street, P. O. Box 1535,

20

Richmond, Virginia 23212; on behalf of the Applicant, the

21

Long Island Lighting Company.

22

1 GJW/sw 1

HERBERT H. BROWN, Esquire, and RONALD R. ROSS, Esquire,
Kirkpatrick & Lockhart, 1800 M Street, N. W., South Lobby,
Washington, D. C. 20036; on behalf of the Intervenor, the
County of Suffolk, State of New York.

5

RICHARD J. ZAHNLEUTER, Esquire, Deputy Special Counsel
to the Governor, Capitol, Room 229, Albany, New York 12224;
on behalf of the Intervenor, the State of New York.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

1 GJW/sw 1

C O N T E N T S

2	Witness	Direct Cross Redirect Recross
3	David Axelrod	6 104

4 E X H I B I T S

5 FOR IDENTIFICATION

6	Axelrod Deposition Exhibit Number 1.....	7
7	Curriculum Vita of David Axelrod	
8	Axelrod Deposition Exhibit Number 2.....	10
9	Direct Testimony of David Axelrod	
10	on Behalf of the State of New York,	
11	dated April 13, 1988	
12	Axelrod Deposition Exhibit Number 3.....	37
13	Article 2-B - State and Local Natural	
14	and Man-Made Disaster Preparedness	
15	Axelrod Deposition Exhibit Number 4.....	51
16	Decision of the NRC, 21 NRC 1587(1985),	
17	dated June 20, 1985	
18	Axelrod Deposition Exhibit Number 5.....	73
19	Document with Cover Memo, dated	
20	September 1, 1987, from James D.	
21	Papile to All Recipients of the NYS	
22	Radiological Plan	

1 GJW/sw 1

E X H I B I T S (Continuing)

2

FOR IDENTIFICATION

3

Axelrod Deposition Exhibit Number 6.....

82

4

FEMA Post Exercise Assessment for

5

Indian Point Nuclear Power Station,

6

August 24 and 25, 1983, dated

7

September 26, 1983

8

* * * * *

9

10

11

12

13

14

15

16

17

18

19

20

21

22

1 GJW/sw 1

P R O C E E D I N G S

2 MR. SISK: Let the record show that this
3 deposition is convened on notice by Long Island Lighting
4 Company, pursuant to the Federal Rules of Civil Procedure
5 and the NRC Rules of Practice.

6 It is now 3 p.m. The deposition is beginning at
7 this time because this is the time the witness has been
8 proffered by the State without consent from LILCO.

9 Mr. Zahnleuter has informed me that the witness
10 will only be able to continue until 5 o'clock this
11 afternoon. I want to make it clear for the record, as we
12 have in previous correspondence, that LILCO will do its
13 utmost to pursue the questioning as quickly and efficiently
14 as possible but that we do intend to continue the
15 deposition. If we are unable to do so this evening, we are
16 prepared to do so tomorrow or next week at any time the
17 witness hopefully will be available.

18 MR. ZAHNLEUTER: Mr. Sisk, Dr. Axelrod will not
19 be available tomorrow or next week. So, if the time allowed
20 is not sufficient, then I recommend you pursue what remedies
21 you think are appropriate and we will respond appropriately
22 also.

1 GJW/sw

1 I am sure you will find that Dr. Axelrod will be
2 forthright and cooperative, and let's continue.

3 MR. SISK: I will see how far we can get, then.

4 Whereupon,

5 DAVID AXELROD

6 is called as a witness and, having first been duly sworn,
7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SISK:

10 Q Dr. Axelrod, would you state your name for the
11 record, please?

12 A I'm David Axelrod.

13 Q Are you a sponsor of testimony in this
14 proceeding?

15 A Yes, I am.

16 Q Dr. Axelrod, what is your position with the
17 State?

18 A I am Commissioner of Health for the State of New
19 York and also Chairman of the Disaster Preparedness
20 Commission.

21 Q How long have you held the position of Chairman
22 of the DPC?

2 GJW/sw 1 A I have held the position as Chairman since the
2 Fall of 1982. So, to the best of my recollection that was
3 the date on which I was appointed by Governor Carey.

4 Q Do you recall what month in the Fall of '82?

5 A No, I do not.

6 Q And, how long have you been the Commissioner of
7 Health?

8 A I have been the Commissioner of Health since
9 1979, since January of 1979.

10 Q And, who appointed you to that position?

11 A I was appointed by Governor Carey.

12 MR. SISK: Dr. Axelrod, I will now hand to the
13 Reporter and ask that he mark as Exhibit 1 to this
14 deposition a document entitled "David Axelrod, M.D.,
15 Commissioner, New York State Department of Health."

16 (A three-page Curriculum Vita of David
17 Axelrod is marked as Axelrod Deposition
18 Exhibit Number 1 for identification.)

19 BY MR. SISK: (Continuing)

20 Q Dr. Axelrod, do you recognize that document?

21 A Yes, I do.

22 Q Can you identify it for me?

2 GJW/sw 1

A It is a Curriculum Vita for myself.

2

Q And, is that document true and accurate to the

3

best of your knowledge, information and belief?

4

(The witness is looking at the document.)

5

A There is an omission, which is not of great

6

significance, and that is that I was awarded an Honorary

7

Degree, a Doctor of Science Degree from Union University,

8

from Union College I guess, in Albany.

9

I believe my membership as a member of the

10

National Drinking Water Advisory Council has expired, as has

11

my membership -- no, that's past membership so those are

12

correct, yes.

13

Q And, the document is otherwise correct?

14

A I believe so, y

15

Q Could you describe for me very briefly the

16

composition of the Disaster Preparedness Commission?

17

A The Disaster Preparedness Commission's

18

composition is dictated by Article 2-B of the Executive Law

19

and consists of the major departments of government, which

20

are elucidated under Article 2-B.

21

They include, among others, the Department of

22

Health, the Department of Agriculture and Markets, the

1 GJW/sw 1 Department of Labor which I think is identified as the
2 Industrial Commissioner, the Environmental Conservation, the
3 Superintendent of the State Police, the Director of Criminal
4 Justice, Energy, Social Services.

5 Q There is a complete list in the statute, is there
6 not?

7 A Yes. It is identified in the Executive Law 2-B.

8 Q And, what are your responsibilities generally as
9 Chairman of the DPC?

10 A The responsibilities are to coordinate the State
11 responses to disasters as they occur, to be responsible for
12 the actions of the State Emergency Management Office, and to
13 otherwise respond to the requirements such as two meetings
14 per year of the Disaster Preparedness Commission to consider
15 reports.

16 The additional responsibilities are to ensure
17 that the statutory requirements for the Disaster
18 Preparedness Commission are met, including the oversight for
19 the preparation of the various documents that are required.

20 Q Dr. Axelrod, you mentioned the State Emergency
21 Management Office. Is that office subject to your direction
22 in responding to an emergency?

1 GJW/sw

1 A Yes, it is.

2 Q And, is it also within your responsibility to
3 prepare for and respond to radiological emergencies within
4 the State of New York?

5 A Part of the Article 2-B places the responsibility
6 with the Disaster Preparedness Commission to respond to all
7 man-made and natural disasters.

8 MR. SISK: Dr. Axelrod, I will now hand to the
9 Reporter and ask that he mark as Exhibit 2 to this
10 deposition a document which bears the title, "Direct
11 Testimony of David Axelrod on Behalf of the State of New
12 York." It bears a date in the upper right-hand corner of
13 April 13, 1988.

14 (Direct Testimony of David Axelrod,
15 dated April 13, 1988, is marked as
16 Axelrod Deposition Exhibit Number 2
17 for identification.)

18 BY MR. SISK: (Continuing)

19 Q Dr. Axelrod, do you recognize that document?

20 A I do.

21 Q Is that the testimony you have filed on behalf of
22 the State of New York in this proceeding?

1 GJW/sw 1

A Yes, it is.

2

Q Is that testimony -- let me ask you this. Did

3

you write this testimony?

4

A No, I did not.

5

Q How was it prepared?

6

A It was prepared at my direction by counsel to the

7

Governor.

8

Q At this time, let me ask you this. Have you

9

reviewed this testimony recently prior to this deposition?

10

A Yes, I have.

11

Q At this time, do you wish to make any changes to

12

the testimony?

13

(The witness is looking at the document.)

14

A No, I do not.

15

Q Dr. Axelrod, on Page 2 of this testimony, if you

16

will return to that page, near the top there is a statement

17

which says, "I am authorized and directed by Governor Cuomo

18

to present testimony to address a hypothetical situation:

19

what action would New York State take if the NRC were to

20

license Shoreham to operate at levels above five percent

21

power and there were a serious accident at the plant that

22

required offsite emergency response."

1 GJW/sw 1

2 Dr. Axelrod, now that you have briefly reviewed
3 the testimony, is there anything which you, on behalf of the
4 State of New York, wish to add to this testimony to address
5 that hypothetical?

6 A No, I do not.

7 Q To your knowledge, do you, or does any other
8 representative of the State of New York, intend to add to
9 the content of this testimony in response to that
10 hypothetical?

11 A To the best of my knowledge, the only persons
12 would be identified by counsel and have been identified by
13 counsel.

14 Q And, to your knowledge, has anyone been
15 identified by you, Dr. Axelrod, as a witness in this
16 proceeding on this particular issue?

17 A You would have to be more specific with respect
18 to particular issues.

19 Q The particular issue of what New York State would
20 do if the NRC were to license Shoreham to operate at full
21 power and there were a serious accident requiring an
22 emergency response.

MR. ZAHNLEUTER: Is your question limited to New

1 GJW/sw 1 York State witnesses?

2 MR. SISK: Yes.

3 THE WITNESS: I'm not aware of any other witness
4 that has been directed to respond to a specific question.

5 BY MR. SISK: (Continuing)

6 Q Dr. Axelrod, let me return to Page 1 of the
7 testimony. It states, "In my capacity as Chairman of the
8 Disaster Preparedness Commission, I am responsible to
9 Governor Cuomo for the actions of the New York State
10 Radiological Emergency Preparedness Group and the New York
11 State Emergency Management Office."

12 Dr. Axelrod, does that include the actions of
13 those agencies in response to an actual radiological
14 emergency?

15 A Yes.

16 Q Are you then in command of the State's response
17 to a radiological emergency at the direction of the
18 Governor?

19 A At the direction of the Governor, I would respond
20 to any natural or man-made emergency, as is dictated under
21 the Disaster Preparedness Commission.

22 Q Dr. Axelrod, can you describe for me briefly the

1 GJW/sw 1 Radiological Emergency Preparedness Group? What are its
2 responsibilities?

3 A Its responsibilities are for the determination of
4 the efficacy of the plans for dealing with a radiological
5 emergency, the development of plans and assuring the
6 response capabilities, as well as developing capabilities
7 that relate to mitigation, as well as hazard prevention
8 associated with radiological emergencies.

9 Q Does it also have responsibilities in responding
10 to a radiological emergency?

11 A Yes, it does.

12 Q And, what are those responsibilities?

13 A Those responsibilities vary depending upon the
14 site-specific requirements for each of the potential
15 disaster scenarios that have been identified within the
16 activities of the Radiological Emergency Preparedness Group.

17 Q Are they generally responsible, for example, for
18 dose assessment in the event of a radiological accident at a
19 power plant?

20 A They would play a role, but they may not be
21 directly responsible. They are involved in the process, but
22 there is a concurrent process in which, depending upon the

1 GJW/sw

1 site, they would be involved with local officials as well.

2 Q Can you tell me what you mean by the concurrent
3 process? What other organizations are you referring to?

4 A Local governmental organizations, County
5 government organizations, local County Health Departments.

6 The extent to which the Radiological Emergency
7 Preparedness Group assumes a primary role is dependent upon
8 the availability of other site-specific activities.

9 Q Do they also coordinate with the federal agencies
10 such as the Department of Energy?

11 A Yes, they do.

12 Q Would that include the Department of Energy's
13 so-called RAP team?

14 A In the event that such a response would be
15 required, yes, they would.

16 Q And, that DOD RAP team is headquartered at
17 Brookhaven National Lab, is it not?

18 A I can't respond to that. I don't know.

19 Q Brookhaven National Lab is within Suffolk County,
20 is it not?

21 A Yes.

22 Q Can you describe for me briefly the people at the

1 GJW/sw 1 Radiological Emergency Preparedness Group who perform
2 functions in connection with radiological emergencies?

3 A There is General Papile, who is the current
4 Director of the Radiological Emergency Preparedness Group.
5 He is the overall coordinator.

6 There is a Larry Czech, who is involved in the
7 evaluation of dose assessment. And, a man named Baranski
8 who is also directly involved in the assessment of
9 conditions of plant operations, as well as the delineation
10 of the nature of a radiological emergency.

11 Those would be the three key personnel. There is
12 a fourth person who is currently the PIO within the
13 Department of Health, the Public Information Officer who
14 coordinates with the Radiological Emergency Preparedness
15 Group. That is a Mr. Peter Slocum.

16 Q Do you know a Mr. Karim, K-a-r-i-m, Rimawr?

17 A Yes, I do.

18 Q R-i-m-a-w-r?

19 A Yes.

20 Q What is his position?

21 A His position is within the functional
22 organization of the Department of Health, and he is in

1 GJW/sw 1 charge of the Bureau of Radiological Health.

2 Q What are his responsibilities?

3 A His responsibilities relate to the overall safety
4 and protective responsibilities that fall to the Department
5 of Health as it relates to radiological devices, X-ray
6 equipment, any radiation emission equipment that is licensed
7 within the State of New York, as well as to provide general
8 information, to provide consultation to the Department in
9 areas relating to dosage of all forms of radiation.

10 Q Does Mr. Rimawr have any responsibility for
11 accident or dose assessment in the event of a radiological
12 emergency at a nuclear power plant?

13 A The full resources of all of the Department are
14 used as the situation may require it. And, Mr. Rimawr,
15 Dr. Rimawr, is used by the Department to assist the
16 Radiological Emergency Preparedness Group in dose assessment
17 as the situation may demand.

18 Q In terms of monitoring for dose assessment, what
19 type of equipment does Mr. Rimawr have at his disposal?

20 A I am not familiar with the specifics of the
21 equipment that Dr. Rimawr has.

22 Q Is he able also to coordinate with the Federal

1 GJW/sw 1 Department of Energy, DOE?

2 A He is not directly able to, since his
3 responsibility is primarily within the Department of
4 Health. That coordination would occur through the
5 Radiological Emergency Preparedness Group rather than
6 directly through him, although he certainly would play a
7 role.

8 Q Does he report to a Mr. Davidoff?

9 A His ultimate supervisor is a Dr. Staziek, who is
10 Director of the Environmental Health within the Department.
11 And, the Bureau of Radiological Health falls within the
12 overall jurisdiction of the Division of Environmental
13 Health.

14 Q What is Mr. Davidoff's position?

15 A Mr. Davidoff is responsible for the offices that
16 deal with local Health Departments in terms of their
17 response and obligations under the Public Health Law.

18 Q Does the State Department of Health itself have
19 local field offices throughout the State?

20 A Yes, it does.

21 Q Does it have such offices in Suffolk County?

22 A It has a very small office in Suffolk County that

1 GJW/sw 1 is a subsidiary of the major regional office that is
2 responsible for Long Island. And, that is in New Rochelle.

3 Q And, where is the office located on Long Island?

4 A In Hauppauge.

5 Q Can you describe for me briefly the
6 responsibilities of the New York State Emergency Management
7 Office in planning for radiological emergencies at nuclear
8 power plants?

9 A The State Emergency Management Office's
10 responsibilities are generic in nature. And, the
11 radiological response is a part of its generic response for
12 dealing with all man-made or natural disasters, so that it
13 is integrated into the overall activities of the State
14 Emergency Management Office.

15 It is responsible for the response, the
16 prevention and the mitigation of all disasters.

17 Q Who is in charge of the State Emergency
18 Management Office?

19 A Mr. Donald Diveto.

20 Q Is there a local office of the State Emergency
21 Management Office on Long Island?

22 A There is the remnants of one. We have had to

1 GJW/sw 1 curtail many of our activities in terms of our regional
2 offices. And, most of those activities are now carried out
3 through the main office in Albany.

4 In those instances where we have had regional
5 offices, they consist of one person who is very much under
6 the control of the office in Albany. I do not believe
7 currently there is someone assigned in the Long Island
8 region. There has been someone in the past.

9 Q Where is that office located?

10 A That was also in Hauppauge.

11 Q Has the curtailment that you've described been a
12 State-wide curtailment?

13 A Yes, it has.

14 Q It is not specific to Suffolk County?

15 A No.

16 Q Can you describe for me briefly your duties and
17 responsibilities as Commissioner of Health as it relates to
18 radiological emergencies?

19 A The responsibilities relate to the specific
20 health hazards associated with exposure to various forms of
21 radiation. My responsibilities relate to identification of
22 the source of the potential hazard, any preventive

1 GJW/sw 1 activities, mitigating activities, that might be taken by
2 the State, and to make recommendations to either the
3 Governor or to local constituencies as to what action would
4 be most appropriate to limit the hazards associated with any
5 form of radiation.

6 Q Does that include what is described in NRC
7 parlance as a protective action recommendation in the event
8 of an emergency?

9 A Yes. The Department has a specific
10 responsibility for protective action guidelines.

11 MR. BROWN: Just a point of clarification,
12 Mr. Sisk. In your question, are you referring to
13 radiological emergencies as some generic concept or on a
14 site-specific basis?

15 Are you -- obviously I'm addressing Shoreham.
16 Are you asking questions about the Shoreham plant? Because
17 I have not interpreted it to be anything related to Shoreham
18 at this point, just general questions that exclude Shoreham.

19 MR. SISK: I have asked general questions which
20 would include shoreham.

21 MR. BROWN: Well, that certainly wasn't
22 understood by me? I don't know if the witness understood it

1 GJW/sw 1 that way, because there is no plan for Shoreham, as you
2 know.

3 MR. SISK: Well, we will be getting to that. Let
4 me ask you this, Dr. Axelrod.

5 MR. BROWN: Well, if you don't mind, I think it
6 would be very useful. Otherwise, I will be asking for a
7 clarification repeatedly. If you could make clear whether
8 Shoreham is included or excluded from each of those kinds of
9 questions, I would appreciate that.

10 BY MR. SISK: (Continuing)

11 Q Let me ask you, Dr. Axelrod, as Commissioner of
12 Health, do you have general responsibility within the State
13 of New York for developing and implementing protective
14 action recommendations in response to a radiological
15 emergency at any and all power plants in the State of New
16 York?

17 MR. ZAHNLEUTER: And, that includes Shoreham?

18 THE WITNESS: The --

19 MR. ZAHNLEUTER: Excuse me. Is that correct,
20 that includes Shoreham?

21 MR. SISK: Yes.

22 THE WITNESS: The Department would provide for

1 GJW/sw 1 guidelines for those power plants that are currently
2 licensed and operating and for which there is an existing
3 site-specific plan. That does not include Shoreham.

4 BY MR. SISK: (Continuing)

5 Q Would it include Shoreham if Shoreham were
6 licensed and operating?

7 A No, it would not, because there is no
8 site-specific plan to which the guidelines could relate.

9 Q Will you tell me what you mean by "site-specific
10 plan?"

11 A Each of the operating power plants currently have
12 a site-specific plan which identifies the relationship of
13 all of the parties; that is, local parties, community
14 government, county government, and in some cases multiple
15 county governments, to the State of New York and its various
16 activities.

17 The protective guidelines would relate to
18 information that would be transmitted through those
19 individual entities of local government and how they would
20 be applied. The guidelines assume that form of
21 implementation which would require some form of
22 site-specific activity by each of the entities that would be

1 GJW/sw 1 involved in providing for the protective actions that would
2 be anticipated.

3 The guidelines clearly would have to relate to a
4 mechanism for implementation. That would be part of the
5 plan itself.

6 Q As a general matter, how are the guidelines
7 formulated?

8 A They are formulated by the Department by an
9 evaluation of the various land forms, the various crops, a
10 whole series of considerations that relate to not only
11 generic considerations but to site-specific considerations
12 with respect to potential deposition, potential ingestion
13 pathways, all of those characteristics which are dependent
14 upon information that is site-specific.

15 Q In formulating the guidelines generally, do you
16 make reference to federal regulatory requirements?

17 A We utilize the federal regulatory requirements
18 in coming up with site-specific actions or site-specific
19 recommendations that are developed where there is in
20 existence a plan for dealing with a radiological emergency.

21 Q Dr. Axelrod, in order for the various plants in
22 New York, other than Shoreham, to remain in operation, they

1 GJW/sw 1 have to have emergency plans approved by the federal
2 government, do they not?

3 A Well, they must first be approved by the State.
4 And, they are submitted by virtue of the actions that are
5 required by the Disaster Preparedness Commission after their
6 approval to the Governor, and then eventually to the federal
7 government.

8 So that there are a series of steps prior to the
9 submission to the federal government for its approval.

10 Q I understand that. So, my question is, in order
11 for those plants to operate don't they have to have
12 emergency plans that are approved by the federal government?

13 MR. ZAHNLEUTER: I object, because this calls for
14 a legal conclusion. But, you may answer, Dr. Axelrod, if
15 you know.

16 THE WITNESS: I'm sorry. Would you repeat the
17 question? I lost track.

18 BY MR. SISK: (Continuing)

19 Q In order for the various nuclear plants in the
20 State of New York, other than Shoreham, to operate they have
21 to have emergency plans which are approved by the federal
22 government, do they not?

1 GJW/sw 1

2 A That's not an exclusive requirement. The
3 position that has been taken by the State of New York is
4 that they not only must have approval by the federal
5 government but they must also have the approval of the
6 Governor of the State of New York as well as the Disaster
7 Preparedness Commission.

8 So, while that may be a requirement, it is not an
9 exclusive requirement for operation.

10 Q But, it is a requirement?

11 A It is a requirement.

12 Q And, in order to obtain federal approval, those
13 plans have to comply with federal requirements, do they not?

14 MR. ZAHNLEUTER: I would like to enter a
15 continuing objection on legal conclusion grounds to these
16 questions.

17 MR. SISK: Very well.

18 THE WITNESS: The question was?

19 BY MR. SISK: (Continuing)

20 Q In order for the emergency plans to be approved
21 by the federal government, they have to be in compliance
22 with the federal requirements, don't they?

A That's a judgment to be made by the federal

1 JW/sw 1 government as to the way in which those requirements are
2 interpreted. So, I can't -- I mean, I think you would have
3 to get someone from the federal government to respond to
4 whether or not what the requirements are.

5 There are a set of requirements that are generic
6 in nature. But, the conclusion that would have to be drawn
7 would be based upon the extent to which any site-specific
8 activity would provide for the implementation of those
9 generic requirements in those cases.

10 As I've indicated, there has been a previous
11 submission through the Governor where there has been a clear
12 determination that it is approved by the State of New York
13 as well as by the Disaster Preparedness Commission prior to
14 its submission.

15 Q What criteria does the State of New York use to
16 approve emergency plans for commercial nuclear power plants?

17 A There are a series of detailed identifiable
18 characteristics that are included in the State's generic
19 plan that provides for the basic outline which would have to
20 be followed. And, then each of the site-specific projects
21 is assessed against those regulatory requirements with the
22 assumption that a plan can be prepared, which is the first

1 GJW/sw 1 question that is addressed by the State in terms of any site
2 for which a plan is being evaluated.

3 Q What regulatory requirements are you referring
4 to, Dr. Axelrod?

5 A There is a -- I am referring to the federal
6 regulatory requirements which make up the structure upon
7 which the State requirements are identified in terms of the
8 specifics that would be required at each site for which
9 there is a required plan.

10 Q So, is it correct to say that the State
11 regulatory requirements for approving emergency plans for
12 commercial nuclear power plants are structured upon the
13 federal regulatory requirements?

14 A They include --

15 MR. ZAHNLEUTER: Excuse me. Are you including
16 Shoreham in your question?

17 MR. SISK: I'm asking about the general State
18 requirements for approval of emergency plans. That's all.

19 MR. ZAHNLEUTER: You said "for commercial nuclear
20 power plants." Does that include Shoreham?

21 I think we should arrange some kind of system to
22 distinguish the questions as to whether you mean to include

1 GJW/sw 1 Shoreham or not.

2 MR. SISK: I'm simply talking about the general
3 requirements that Dr. Axelrod referred to which the DPC uses
4 in evaluating emergency plans for nuclear power plants.

5 MR. BROWN: I would like to raise a point, too.
6 I don't see how you can expect a non-lawyer, as counsel for
7 the State stated in his objection, to respond to these kind
8 of detailed legal questions.

9 BY MR. SISK: (Continuing)

10 Q Let me ask you this, Dr. Axelrod. Do you know
11 what regulatory requirements the DPC applies in approving or
12 disapproving emergency plans for commercial nuclear power
13 plants in the State of New York?

14 A The specifics or the general --

15 Q The general structure.

16 A The general structure?

17 Q Yes.

18 A The Disaster Preparedness Commission uses the
19 generic requirements for an operating nuclear plant that are
20 included within the evaluation that takes place. They are
21 part of, but do not represent, the entire requirement for
22 evaluation by the Disaster Preparedness Commission.

1 GJW/sw 1

2 In the instance of Shoreham, the determination
3 has been made that no plan is possible; and, therefore, the
4 plan would not be considered or evaluated against those
5 criteria.

6 Q Who determined that no plan is possible?

7 A Who determined that no plan is possible?

8 Q Yes.

9 A The Disaster Preparedness Commission made that
10 determination after an evaluation of the information that it
11 obtained through the -- offered through the member agencies
12 of the Disaster Preparedness Commission as well as from
13 materials submitted by the counties which would be
14 responsible for the implementation of any plan.

15 Q When was that determination made?

16 A That has been a continuous evaluation of those
17 determinations. I think the Governor, in his statement, has
18 indicated that he relied upon member agencies of the
19 Disaster Preparedness Commission in reaching that
20 conclusion.

21 It has been made over a period of some five
22 years.

Q Is there any specific DPC Order or Decision

1 GJW/sw 1 reflecting that result?

2 A I don't recall any specific Order reflecting
3 that. But, I believe there is a statement to the Governor
4 at some point in time that indicates that the plan is a
5 non-plan; and, therefore, it would not be submitted for
6 either his approval or submission to the federal government.

7 Q Was there an administrative proceeding of record
8 which produced that determination?

9 MR. ZAHNLEUTER: Could you clarify what that
10 means, "an administrative proceeding of record?"

11 BY MR. SISK: (Continuing)

12 Q Let me see if you understand what I am referring
13 to, Dr. Axelrod. Was there any DPC administrative
14 proceeding in which LILCO participated and in which other
15 parties participated which led to that determination?

16 A I think I need some help on "administrative
17 proceeding." I guess I -- could you tell me what that would
18 include or exclude? I need a little bit of help.

19 Q Well, you tell me, was there any proceeding?

20 A There was a proceeding in which the Disaster
21 Preparedness Commission did evaluate a plan in which the DPC
22 made a determination, based on recommendations from staff,

1 GJW/sw 1 as to whether or not a plan existed for the Shoreham plant.

2 Q Can you describe that proceeding for me?

3 A My best recollection is that it was a meeting of
4 the Disaster Preparedness Commission.

5 Q Do you recall when that occurred?

6 A No, I do not.

7 Q Is there any record of that meeting?

8 A There are records of all Disaster Preparedness
9 Commission meetings. There are Minutes that are kept.

10 Q Do you have any recollection generally of when
11 that meeting occurred, 1982 or 1983?

12 A I don't have a recollection.

13 MR. SISK: I will request counsel for the State
14 of New York to see if he can ascertain whether any meeting
15 Minutes exist and, if so, to produce those.

16 And, we will make a follow-up request in writing.

17 MR. ZAHNLEUTER: I will await your request in
18 writing.

19 BY MR. SISK: (Continuing)

20 Q Dr. Axelrod, when you referred to the New York
21 State regulatory requirements earlier for approval of
22 radiological emergency response plans at a nuclear power

1 GJW/sw 1 plant, can you tell me specifically what regulatory
2 requirements you are referring to? What document I can find
3 those in?

4 A There is a general response plan that I believe
5 has been also submitted to the federal government that
6 identifies the procedures utilized by the Disaster
7 Preparedness Commission for approval of radiological
8 emergency response plans.

9 Q Is this the New York State Radiological Emergency
10 Response Plan itself?

11 A Yes, it is.

12 Q Was that document based upon federal regulatory
13 requirements for approval of emergency plans for nuclear
14 power plants?

15 A It includes federal requirements.

16 Q Are there requirements in that document in
17 addition to federal requirements?

18 A I believe that there are.

19 Q Are there requirements that are different from
20 federal requirements?

21 A There are requirements that extend beyond the
22 specifics of the federal requirements that are contained

1 GJW/sw 1 within the emergency response plan that are related to the
2 specific nature of New York's problems and the demographics,
3 et cetera, within New York State.

4 Q Are there any provisions in that plan that are
5 inconsistent with the federal regulatory requirements?

6 A To the best of my recollection, there are no
7 inconsistencies, since it would have had to have been
8 approved by the federal government. And, those
9 inconsistencies would have been identified presumably by the
10 federal government at the time of its submission.

11 Q Was the New York plan approved by the federal
12 government?

13 A Yes, it was.

14 Q By what agency of the federal government?

15 A My recollection is that it was approved by FEMA.

16 Q Do you recall when that approval occurred?

17 A No, I do not.

18 Q To the best of your recollection, can you
19 describe for me the differences in those regulatory
20 requirements which are specific to the State of New York?

21 A I cannot identify the specific elements other
22 than to recall that there are requirements that extend

1 GJW/sw 1 beyond those of the statutory or the federally mandated
2 requirements.

3 Q Now, when we refer to the federally mandated
4 requirements, are we referring to NRC regulations?

5 A Yes.

6 Q Does that also include NRC guidance documents?

7 A Yes.

8 Q And, guidance documents issued by FEMA?

9 A To the best of my recollection, it does include
10 those documents.

11 Q Dr. Axelrod, on Page 2 of your testimony which
12 has been marked as Exhibit 2, there is a statement, "I also
13 stress that the views and statements contained herein
14 represent the views of the State of New York."

15 Dr. Axelrod, who, within the State of New York --

16 A Where is that?

17 Q Page 2, the middle of the page. I apologize.
18 That is the last sentence at the end of the first answer.

19 A Okay.

20 Q Dr. Axelrod, who, within the State of New York,
21 authorized you to speak on behalf of the State of New York
22 in this testimony?

1 GJW/sw 1 A The Special Counsel to the Governor.

2 Q And, who is that?

3 A Mr. Palomino.

4 Q Did anyone else, within the State of New York,
5 authorize you to speak on the State's behalf in this
6 testimony?

7 A No.

8 Q Are your statements today in this deposition also
9 on behalf of the State of New York?

10 A Yes.

11 Q And, do they also represent the position of the
12 Governor of New York?

13 A Yes.

14 Q Dr. Axelrod, a bit earlier you referred to
15 Article 2-B of the New York State Executive Law. That's the
16 law which, in fact, creates the Disaster Preparedness
17 Commission, is it not?

18 A Yes, it is.

19 MR. SISK: I will now hand to the Reporter and
20 ask that he mark as Exhibit 3 to this deposition a document
21 entitled "Article 2-E, State and Local Natural and Man-Made
22 Disaster Preparedness."

1 GJW/sw 1

I will vouch for the record that this is a copy
of Article 2-B of the New York State Executive Law.

(Article 2-B, State and Local Natural
and Man-Made Disaster Preparedness, is
marked as Axelrod Deposition Exhibit
Number 3 for identification.)

7 BY MR. SISK: (Continuing)

8 Q Dr. Axelrod, as an official of the State of New
9 York, are you bound by this State law?

10 MR. ZAHNLEUTER: I object to this question,
11 because that calls for a legal conclusion. As you know,
12 Dr. Axelrod is not a lawyer or a legal witness in this case.

13 MR. SISK: I'm asking for his answer as the
14 Chairman of the DPC and the Commissioner of the Department
15 of Health.

16 MR. ZAHNLEUTER: In any event, I still object.
17 But, Dr. Axelrod may answer.

18 THE WITNESS: Article 2-B defines the
19 responsibilities of the Chairman of the Disaster
20 Preparedness Commission. It also includes reference to the
21 requirement that the Commissioner of Health be a member of
22 the Disaster Preparedness Commission.

1 GJW/sw 1

BY MR. SISK: (Continuing)

2 Q Does it also set forth requirements with which
3 you must comply as Chairman of the DPC and Commissioner of
4 the Department of Health?

5 MR. ZAHNLEUTER: To expedite matters, I will
6 enter a continuing objection to all questions relating to
7 this exhibit on the grounds that the questions call for
8 legal conclusions by Dr. Axelrod.

9 MR. SISK: And, let me just simply state for the
10 record that Dr. Axelrod's testimony incorporates various
11 statements about the Governor of the State of New York, some
12 of which refer to and rely upon Article 2-B of the Executive
13 Law. And, the witness has also previously referred to it.

14 MR. BROWN: Perhaps, counsel, you would want to
15 just clarify you are asking for his understanding rather
16 than a categorical question.

17 MR. SISK: It is. It is his understanding in his
18 official capacity as Chairman of the DPC and Commissioner of
19 the Department of Health.

20 Lawyers can always argue legal questions later.

21 MR. ZAHNLEUTER: My objection stands. But, you
22 may answer, Dr. Axelrod.

1 GJ'V/sw 1

THE WITNESS: The question is?

2

BY MR. SISK: (Continuing)

3

Q Does this law set forth requirements with which

4

you must comply as the Chairman of the DPC and Commissioner

5

of the Department of Health?

6

A It sets forth requirements for the Commission.

7

As I look at the statute, it sets forth a series of

8

requirements and an enumeration of duties, as well as

9

responsibilities for the Commission and the Chairman.

10

Q And, also various authorities of power; is that

11

correct?

12

A Yes.

13

Q Dr. Axelrod, if you will refer to Section 21 of

14

that document, that, in fact, is the section of the statute

15

which creates the Disaster Preparedness Commission; is it

16

not?

17

A Yes.

18

Q Dr. Axelrod, this statute specifically applies to

19

planning for a response to radiological emergencies to

20

nuclear power plants also, doesn't it?

21

A I'm sorry. Your question was?

22

Q The document also -- the statute, I'm sorry, sets

1 GJW/sw 1 forth -- let me withdraw that and try again.

2 The document also sets forth the -- also applies
3 to planning for and responding to radiological accidents at
4 commercial nuclear power plants; is that correct?

5 MR. BROWN: A clarification. What section are
6 you referring to in saying that?

7 MR. SISK: Let me refer specifically to the
8 second page of this document, the definition of "disaster,"
9 under Section 20, 2.a.

10 BY MR. SISK: (Continuing)

11 Q That includes radiological accident I believe; is
12 that correct?

13 A Yes.

14 Q And, Dr. Axelrod, there are various sections
15 which relate to planning for and responding to radiological
16 emergencies specifically, aren't there? And, particularly
17 in Section 29.

18 MR. BROWN: Clarification. Is your question
19 limited to what does Section 29 say? Or, are you asking if
20 there are other ones in addition to Section 29?

21 BY MR. SISK: (Continuing)

22 Q Can you answer the question, Dr. Axelrod?

1 GJW/sw 1 A I'm looking at Section 29 --

2 MR. BROWN: I'm sorry. I asked a question. I
3 would like to know what the question is so I can understand
4 it.

5 Is your question limited to -- are you asking
6 what Section 29 says? Or, are you asking him to define what
7 sections in this statute deal with radiological emergencies?

8 BY MR. SISK: (Continuing)

9 Q Does Section 29-c particularly apply to responses
10 to and planning for radiological emergencies at nuclear
11 power plants?

12 MR. ZAHNLEUTER: 29-c?

13 MR. SISK: 29-c.

14 THE WITNESS: 29-c is entitled "Radiological
15 Preparedness," and it identifies the actions of the
16 Commission with respect to radiological preparedness.

17 BY MR. SISK: (Continuing)

18 Q Dr. Axelrod, if you will look specifically at
19 Subsection 1(c) of that section, which appears on a page
20 which has Page Number 45 at the bottom of the document, the
21 last paragraph states, "Upon the occurrence of a
22 radiological accident, the commission shall promptly provide

2 GJW/sw 1 appropriate and available radioactivity monitoring data to
2 any chief executive who requests it."

3 Have I read that correctly?

4 A Yes. You said to "any chief executive who
5 requests it," right?

6 Q Correct.

7 A Yes.

8 Q Now, is that function of providing radioactivity
9 monitoring data part of the function that we referred to
10 earlier that is performed by the REPG?

11 MR. BROWN: Pardon me. I want clarification.
12 Again, we are going back to questions which are sensitive to
13 Shoreham versus non-Shoreham.

14 Is this a Shoreham-specific question in which you
15 are asking the witness, if there were an accident at the
16 Shoreham plant would the Commission provide appropriate,
17 available and so on equipment?

18 MR. SISK: I have not asked that question.

19 MR. BROWN: So, you are excluding Shoreham from
20 this? You are just asking questions about what the language
21 of this statute says generally?

22 MR. SISK: I am asking whether the requirement

2 GJW/sw 1 that the Commission provide monitoring data to any chief
2 executive who requests it is a function that is performed by
3 the REFG.

4 MR. ZAHNLEUTER: I object to the
5 characterization of this as a requirement.

6 BY MR. SISK: (Continuing)

7 Q Can you answer the question, Dr. Axelrod?

8 A I can answer the question only with respect to
9 site-specific activities, since the radiological accident
10 response is based upon an existing plan in which information
11 would be made available on the basis of that plan and would
12 provide for the specific information that would relate to
13 the implementation of that plan.

14 So that each of the terms, as it relates to the
15 response, would relate to the specific requirements of the
16 existing plan for an operating nuclear power plant.

17 Q Is it your testimony, Dr. Axelrod, that this
18 requirement applies only if there is a plan for a specific
19 plant?

20 A There is no way in which we could respond to
21 provide monitoring data unless the nature of that data were
22 related to the specific responses and the specific

1 GJW/sw 1 relationships of that plant to the population at risk.

2 So, therefore, our ability to provide information
3 would relate to a specific plan which we define in the
4 nature of the information to be provided to the chief
5 executive at the time of a radiological accident.

6 Q So, is it your testimony that this requirement
7 does not apply unless there is a specific plan for the
8 particular plant?

9 MR. ZAHNLEUTER: I object. This has been asked
10 and answered once, and perhaps twice.

11 BY MR. SISK: (Continuing)

12 Q Could I get an answer to that?

13 MR. BROWN: I also object on grounds that this is
14 calling not for his understanding of the law but the
15 statutory construction of the nature that lawyers and legal
16 scholars are engaged in.

17 MR. SISK: I will stipulate that I'm asking for
18 the witness' understanding.

19 THE WITNESS: My understanding is that the
20 requirement would be to respond to the best of its
21 capabilities in a radiological accident, and those
22 capabilities would be dependent upon the existence of a plan

1 GJW/sw 1 in order to give the data any meaning to the chief executive
2 who requests it.

3 BY MR. SISK: (Continuing)

4 Q Dr. Axelrod, does the requirement apply to a
5 nuclear power plant if there is no site-specific plan, to
6 the best of your understanding as the Chairman of the
7 DPC?

8 MR. ZAHNLEUTER: I object to this question. It's
9 a mischaracterization of the statute as a requirement.

10 But, I would also seek a clarification to
11 determine if you are including the Shoreham Nuclear Power
12 Plant in your question?

13 MR. SISK: I think my question speaks for itself.

14 MR. ZAHNLEUTER: Then, I object, because it is
15 vague and on the other grounds that I've asserted.

16 MR. BROWN: Well, I would like to know, does it
17 or does it not include Shoreham? That seems like a
18 straightforward question that we should know.

19 BY MR. SISK: (Continuing)

20 Q Let me ask you this, Dr. Axelrod. To your
21 understanding, does this statute exclude Shoreham?

22 A There is nothing in the statute that makes

1 GJW/sw 1 reference to Shoreham.

2 Q Is there anything in the statute that excludes
3 Shoreham from the ambit of the statute?

4 MR. BROWN: Again, you are asking for his
5 understanding?

6 MR. SISK: As Chairman of the DPC.

7 MR. BROWN: However, I would like to stress that
8 this really is beyond the scope of anyone's understanding
9 except the legal scholar. You are asking for statutory
10 construction at this time as opposed to an administrator's
11 impression of what his responsibilities are.

12 MR. SISK: I'm asking --

13 MR. BROWN: You have asked him to interpret a
14 provision of the statute and not: As you look at this
15 statute in your understanding of it, sir, is it your
16 understanding that you have the responsibility.

17 MR. SISK: For clarification, and because we do
18 have limited time, let me stipulate that every question I
19 ask related to Article 2-B or any other provision of law of
20 this witness is asked to the witness in his capacity as the
21 Chairman of the Disaster Preparedness Commission and the
22 Commissioner of the Department of Health, and it

1 GJW/sw 1 specifically relates to his understanding in that official
2 capacity.

3 BY MR. SISK: (Continuing)

4 Q I'm not asking you legal questions. That can be
5 debated by lawyers.

6 Do you understand that, Dr. Axelrod?

7 A I understand it, but I don't know that it
8 necessarily makes it any easier for me to respond to your
9 questions.

10 Q Well, let me just ask you specifically, to your
11 knowledge, is there anything in this statute which excludes
12 Shoreham from the applicability of this statute?

13 MR. ZAHNLEUTER: Are you asking for a specific
14 citation to a section?

15 MR. SISK: I'm asking for anything to the
16 witness' knowledge.

17 MR. ZAHNLEUTER: So, you are asking him to review
18 this document to point out specific words? Is that
19 understanding of mine correct?

20 BY MR. SISK: (Continuing)

21 Q Can the witness answer the question?

22 MR. ZAHNLEUTER: Can you answer my question

1 GJW/sw 1 first, Mr. Sisk?

2 MR. SISK: Let me state for the record that it's
3 now 3:55. We have a very limited time for conducting the
4 questioning.

5 It is my firm impression that both counsel for
6 the State and counsel for Suffolk County are obstructing my
7 questioning and not permitting the witness to answer a
8 straightforward question. I have attempted, as best I can,
9 to clarify the question several times.

10 I would like to have an answer.

11 MR. BROWN: Well, I want to --

12 MR. ZAHNLEUTER: I disagree with your
13 characterizations of obstruction. I won't delay this
14 proceeding any further.

15 I am simply asking for the type of answer that
16 you are looking for so that Dr. Axelrod may give an
17 appropriate answer. If you are asking him to review this
18 document to cite a specific question, then please just say
19 yes or no to my inquiry.

20 MR. SISK: I'm not asking that Dr. Axelrod review
21 every word, colon, comma and phrase in the document. I'm
22 asking Dr. Axelrod, as Chairman of the Disaster Preparedness

2 GJW/sw

1 Commission, which is created by the statute and which is
2 responsible for implementing this statute, whether there is
3 anything, to his knowledge, that excludes Shoreham from the
4 operation or applicability of this statute.

5 MR. BROWN: Well, before that, I am going to
6 respond to your accusation of my obstructionism. I think
7 you got carried away here.

8 But, the failure here for the last several
9 minutes has been your inability to phrase an intelligent
10 question and your insistence that the witness engage in
11 legal statutory construction.

12 BY MR. SISK: (Continuing)

13 Q Can you answer the question, Dr. Axelrod?

14 A My difficulty is that Section (a), (b), and (c)
15 of 29-c.1 contain a number of conditions which relate to the
16 ability of the Commission to make determinations. None of
17 those conditions, in effect, exist for the Shoreham Power
18 Plant.

19 My presumption would be that those conditions
20 would have to be met in order for the Commission to provide
21 appropriate radioactivity monitoring data to any chief
22 executive. So, my concern with respect to any response is

2 GJW/sw 1 the assumption, the hypothetical, in effect, that all of
2 these information exist and they have been provided to the
3 Commission to allow it to provide appropriate and available
4 radioactivity monitoring data.

5 So that when you ask me if Shoreham is excluded,
6 by virtue of the fact that these information do not exist
7 within the Commission, I would believe that, in effect,
8 Shoreham would be excluded by the fact that these critical
9 pieces of information, which would allow an appropriate
10 response to a chief executive, don't exist.

11 MR. SISK: Okay. Let's take a recess.

12 (Whereupon, a recess is taken at 3:56 p.m., to
13 reconvene at 4:05 p.m., this same date.)

14 BY MR. SISK: (Continuing)

15 Q Dr. Axelrod, if you will, turn to Section 22 of
16 Exhibit 3.

17 (The witness is complying.)

18 Section 22 states that, "The commission shall
19 prepare a state disaster preparedness plan and submit such
20 plan to the governor for approval no later than one year
21 following the effective date of this act."

22 Dr. Axelrod, does the State have a State-wide

1 GJW/sw 1 disaster preparedness plan?

2 A Yes.

3 Q And, is there also a State-wide radiological
4 emergency response plan?

5 A The State-wide plan consists of the site-specific
6 plans for each of the operating nuclear power plants. So
7 that while there is a State-wide plan, it focuses on the
8 individual activities and the State's responses required at
9 each of the specific sites.

10 Each of those is appended to the major plan as
11 being part of the State-wide response.

12 MR. SISK: Okay. Dr. Axelrod, I'm going to hand
13 to the Reporter a document which is covered by a memorandum,
14 dated September 1, 1987. It is from James D. Papile,
15 Director, REPG, to All Recipients of the NYS Radiological
16 Plan. Its subject, according to the title of the document,
17 is the Revised New York State Plan.

18 (A document with a cover memorandum, dated
19 September 1, 1987, from James D. Papile
20 to All Recipients of the NYS Radiological
21 Plan, is marked as Axelrod Deposition
22 Exhibit Number 4 for identification.)

1 GJW/sw 1

BY MR. SISK: (Continuing)

2 Q I'm going to ask you to -- this document is very
3 thick, by the way. I only have two copies available, one
4 for the Reporter and one for the State.

5 I will ask you to look briefly at that document
6 and tell me whether you can identify it for me?

7 (The witness is looking at the document.)

8 Dr. Axelrod, for the purposes of time, it is not
9 necessary for you to identify every page of the exhibit.

10 A What I am attempting to see is whether or not it
11 represents the complete plan or it represents a portion
12 thereof.

13 Q Excellent. Thank you.

14 (The witness continues to look at the document.)

15 A This does not represent the complete plan but
16 represents that portion of the plan which identifies the
17 response and it refers to the site-specific plans which are
18 a part of the overall State plan that have been attached in
19 the past. It is an appendices, so I'm not sure how this
20 relates to the existing State plan except as a part of it.

21 Q Dr. Axelrod, let me ask you to turn to Page 1 of
22 that document. It bears the title of "Executive Summary" at

1 GJW/sw 1 the top.

2 (The witness is complying.)

3 MR. BROWN: May I ask for clarification? Is this
4 Executive Summary that of the entire plan, Mr. Sisk? Or, is
5 this the Executive Summary of a portion of the plan?

6 MR. SISK: Let's ask the witness.

7 BY MR. SISK: (Continuing)

8 Q Can you answer that question posed by Mr. Brown,
9 Dr. Axelrod?

10 A The Executive Summary refers to the State
11 Disaster Preparedness Plan, although the document which I
12 have before me does not contain that portion of the plan
13 which is identified as containing the seven-county plans,
14 county and state implementation materials, et cetera, that
15 relate to the site-specifics.

16 So that while the Executive Summary is in the
17 front of the document and refers to the site-specific plans,
18 it does not contain the site-specific plans.

19 Q Dr. Axelrod, Page 1 of the Executive Summary,
20 under Introduction, states, "This New York State
21 Radiological Emergency Preparedness Plan has been written to
22 assist in protecting the health and safety of the

1 GJW/sw 1 inhabitants of New York State in the event of an emergency
2 at a commercial nuclear power plant.

3 "The New York State Disaster Preparedness Plan
4 addresses radiological emergencies in general terms whereas
5 this NYS Radiological Emergency Preparedness Plan fills in
6 the specific details."

7 Now, let me continue with that quote: "This Plan
8 also contains seven county plans, county and State
9 implementation material and procedures necessary to carry
10 out adequate protective action responses should a
11 radiological emergency at a nuclear power plant occur. All
12 components of this Plan are designed to provide preplanned
13 coordinated efforts by emergency managers."

14 Now, Dr. Axelrod, having reviewed briefly this
15 document, is this a complete copy -- or, does it appear to
16 be a complete copy of the New York State Radiological
17 Emergency Preparedness Plan with the exception of those
18 site-specific county plans?

19 A There --

20 MR. BROWN: A point of clarification first. Am I
21 correct to assume this excludes Shoreham? It says, "a
22 commercial nuclear power plant."

2 GJW/sw 1

Is your question excluding Shoreham?

2

MR. SISK: The document will speak for itself.

3

MR. BROWN: But, so I understand what the

4

question is, I would like a clarification.

5

MR. SISK: I must express befuddlement at this

6

continuing objection. I have read the contents of the

7

document.

8

My question is, is this the New York State

9

Radiological Emergency Preparedness Plan with the exception

10

of the seven county plans that are referred to in that

11

paragraph? That's my question.

12

MR. BROWN: Your question is not asking whether

13

this would apply to Shoreham, then; am I correct?

14

MR. SISK: I have not asked that question.

15

MR. BROWN: And, therefore, your question is?

16

Could you repeat your question?

17

BY MR. SISK: (Continuing)

18

Q Do you understand the question, Dr. Axelrod?

19

A Well, first of all, I am having difficulty in

20

affirming that this represents the plan, having just been

21

handed the document. Without a more careful examination, I

22

am reluctant to suggest that this is, in fact, the

2 GJW/sw 1 Disaster Preparedness Plan prepared by the New York State
2 Radiological Emergency Group for the purposes of dealing
3 with the specific details.

4 It is -- it would appear to contain all of the
5 elements which have formed the basis of the site-specific
6 plans, but I have no way of being certain of that since, as
7 you have pointed out, to go through it in detail would take
8 an extraordinary amount of time.

9 Q Dr. Axelrod, if you will, look at the cover
10 memorandum. Is that the official letterhead of the Disaster
11 Preparedness Commission?

12 (The witness is complying.)

13 A Yes, it is.

14 Q Do you recognize the initial next to Mr. James
15 D. Papile's name on that document?

16 A Yes.

17 Q And, is that Dr. Papile's -- is he a Doctor? I
18 apologize.

19 (Pause.)

20 I don't know. I will be safe.

21 A General. We will both be safe with General.

22 (Laughter.)

1 GJW/sw 1

2 Q Very well. Is that General Papile's -- or, does
3 that appear to be General Papile's signature?

4 A Yes.

5 Q Is there anything in this document -- I recognize
6 you've only reviewed it briefly, but is there anything in
7 this document to suggest that it is not a correct copy of
8 what it is stated to be in that cover memorandum?

9 A From the cursory review, I don't see anything
10 that would suggest that it is not.

11 MR. SISK: Let me request on the record that
12 prior to hearings on this subject, the witness either review
13 this document and verify that it is the current version of
14 the New York State Radiological Emergency Preparedness Plan
15 for commercial plants; or, if it is not, I would request
16 that the State provide a current copy.

17 BY MR. SISK: (Continuing)

18 Q Now, Dr. Axelrod, let's assume for a moment that
19 this is a correct copy. Is this the New York State
20 Radiological Emergency Preparedness Plan with the exception
21 of the seven county plans referred to in that paragraph that
22 I read of the Executive Summary?

A The concern that I have is that the Suffolk

1 GJW/sw

1 County plans are not the only parts of the plan. There are
2 site-specific plans for each of the nuclear -- operating
3 nuclear commercial plants that extend beyond the specific
4 information associated with the counties.

5 Q Are these the so-called Nuclear Facility Operator
6 Plans, NFO plans?

7 A Yes. And, they are appended as part of the
8 State Radiological Emergency Plan. So, they are part and
9 parcel.

10 But, this represents only a portion of it. That
11 is my concern, that this not be construed as being the plan.

12 Q Okay. Can you describe for me the components of
13 the New York State Radiological Emergency Preparedness Plan
14 which go beyond this document?

15 A The components relate to site-specific elements.
16 They relate to plume characteristics. They relate to ground
17 characteristics. They relate to demographic
18 characteristics. They relate to --

19 Q Let me ask it this way. What specific documents
20 included within the New York State Radiological Emergency
21 Plan are not contained in the materials before you?

22 Are they -- can we safely summarize those as

1 GJW/sw 1 the seven county plans and the Nuclear Facility Operator
2 plans, and all appendices and information that go with those
3 site-specific plans?

4 A That -- I would have to check to be certain that
5 there are not other elements that are contained within the
6 complete plan. But, those are the major elements that are
7 contained within the State plan.

8 Q Can you think of anything else?

9 A I can't. But, on the other hand, I haven't
10 reviewed this in some time. So, I am reluctant to say that
11 this represents the complete document or that those
12 documents themselves represent the only addenda that would
13 constitute a complete State plan.

14 Q Now, Dr. Axelrod, earlier we talked about State
15 requirements for emergency plans for nuclear power plants.
16 Does this document -- and I'm referring specifically to the
17 portion you have before you, and I will again ask you to
18 assume that it is a correct copy of the generic part of the
19 New York State Plan, is this the document you were referring
20 to which sets forth the State's requirements for emergency
21 plans for nuclear plants generally?

22 MR. ZAHNLEUTER: I object to the characterization

1 GJW/sw

1 of this document as the generic State plan. I don't believe
2 Dr. Axelrod has ever used those words today.

3 MR. SISK: The generic part of the State plan.

4 BY MR. SISK: (Continuing)

5 Q Can you answer the question, Dr. Axelrod?

6 A It carries within it a requirement for the
7 general operations of the emergency response and identifies
8 those critical elements associated with direction and
9 response activities, assessment and evaluation.

10 Without looking specifically to ensure that all
11 elements that were contained within the original plan that
12 identified State-specific requirements, I really would not
13 want to comment on it further.

14 Q Dr. Axelrod, is there any other document, to your
15 knowledge, which sets forth State DPC requirements for
16 radiological emergency plans or preparedness plans for
17 commercial nuclear power plants?

18 A I'm not aware of any additional plan. On the
19 other hand, I am reluctant to conclude that this contains
20 within it all of the State-specific requirements without
21 having reviewed it.

22 But, I know of no other document.

1 GJW/sw 1 Q You know of no other document that contains such
2 State DPC requirements; is that correct?

3 A My concern is the following: I have not reviewed
4 this most recent revised New York State Plan which is based
5 upon a previous plan which did contain a number of concerns,
6 State-specific elements. And, whether or not they have all
7 been transcribed faithfully in this plan, I'm not in a
8 position to respond to unless I've had the opportunity to
9 compare this with the previous plans that have been the
10 basis for the State-wide planning requirements.

11 Q Now, ignoring whether the document contains all
12 of the State requirements, is there any other document which
13 contains State requirements, State DPC requirements, for
14 radiological emergency plans for commercial nuclear power
15 plants?

16 A As I've indicated, I don't believe that there is.

17 Q Thank you. If this plan is a correct copy of the
18 State Radiological Emergency Plan, as set forth in the cover
19 memorandum, has this document been approved by you?

20 A I have no recollection of specific approval
21 having been granted for the distribution of this plan.

22 Q Do you have any specific recollection of the

1 GJW/sw 1 revision, dated September 1, 1987?

2 A I am aware of the fact that there was a revision
3 in progress. I am not aware that there has been a full
4 approval of the revised plan as it has been presented to me
5 here today.

6 Q Has it been approved?

7 A I have no recollection of a specific approval
8 having been granted for the revised plan.

9 Q Would you have to approve it prior to its
10 official issuance?

11 A The Disaster Preparedness Commission would
12 consider the revised plan prior to its becoming the official
13 designated plan and replacing a previously approved plan.

14 Q And, that would have to be approved by the entire
15 Commission; is that correct?

16 A It would be presented to the Commission for its
17 approval.

18 Q Do you know whether it has been presented for
19 approval?

20 A The Commission meets twice annually. The most
21 recent Commission meeting was only several weeks ago, and it
22 was not presented at the time of that meeting for official

1 GJW/sw 1 approval.

2 There has been discussion of the revised plan,
3 but I cannot give you an affirmative answer as to whether or
4 not this has been approved by the full Disaster Preparedness
5 Commission.

6 Q So, the answer is that you don't know whether it
7 has been approved by the full DPC?

8 A The best of my recollection is that it has not.

9 Q Dr. Axelrod, the cover memorandum says that it is
10 to all recipients of the New York State Radiological Plan.
11 Can you tell me who the recipients are?

12 A The recipients would be the State, the federal
13 and local agencies that would be required to respond under
14 the site-specific activities that would be identified in the
15 appendices which represent the complete radiological plan.

16 Q Does the DPC have a list of recipients?

17 A I believe that it does, yes.

18 Q Is that maintained by General Papile?

19 A Yes.

20 Q Are there any recipients within the government of
21 Suffolk County?

22 A The recipients of Suffolk County would relate to

1 GJW/sw 1 any site-specific relationships to any of the operating
2 nuclear power plants. I believe that since there is a
3 relationship of one of the operating nuclear power plants
4 that it would have been provided to the entities, all
5 entities responsible for responding.

6 Q Do you know whether that would include anyone
7 within the government of Suffolk County?

8 A I have no specific knowledge as to whether or not
9 anyone within Suffolk County received a copy. I can only
10 rely upon the distribution list that General Papile would
11 have as to who would have received it, including anyone
12 within Suffolk County.

13 MR. SISK: Let me simply note for the record that
14 I have numerous questions concerning this document. And, in
15 the interest of time -- I will not have sufficient time
16 between now and five o'clock to cover those.

17 So, let me ask you just a few questions about
18 this document.

19 MR. ZAHNLEUTER: It's only 25 after four,
20 Mr. Sisk. Why don't you try?

21 MR. SISK: I have other questions to cover as
22 well.

1 GJW/sw 1

BY MR. SISK: (Continuing)

2 Q Dr. Axelrod, does this document identify the
3 resources generally available to the State for responding to
4 radiological emergencies at nuclear power plants?

5 MR. BROWN: A clarification. Are you including
6 the Shoreham Nuclear Power Plant?

7 MR. SISK: I am including any plant within the
8 State of New York, which includes Shoreham.

9 MR. BROWN: Even though Shoreham is not an
10 operating plant, you are including Shoreham, I take it?

11 MR. SISK: Yes.

12 THE WITNESS: The plan operates on generic
13 capabilities of each of the departments that would be
14 involved in a response, as they are identified in the seven
15 counties -- as are identified in relationship to the seven
16 counties in which there would be an expected response in the
17 event of an accident at an operating commercial power plant.

18 It does not include Shoreham.

19 BY MR. SISK: (Continuing)

20 Q Dr. Axelrod, is it your testimony that the State
21 resources identified in this document would not be available
22 for response to an emergency at the Shoreham Nuclear Power

1 GJW/sw 1 Plant?

2 A It would be impossible for me to speculate as to
3 what resources might or might not be available, since there
4 is the assumption that those resources would be in response
5 to a plan. Since there is no plan with respect to Shoreham,
6 it is impossible for me to identify which resources would or
7 would not be available in addressing an incident at the
8 Shoreham plant.

9 Q Dr. Axelrod, when you say there is no plan, do
10 you mean there is no Suffolk County plan?

11 A No. There is no site-specific plan with respect
12 to the Shoreham Nuclear Facility.

13 Q Dr. Axelrod, have you -- let me ask you this,
14 Dr. Axelrod. Referring back to your testimony, on Page 2 of
15 your testimony there is a question at the bottom of the
16 page which states, "Are you aware that LILCO has prepared an
17 offsite emergency plan for Shoreham and that LILCO asserts
18 that State personnel would follow that plan in responding
19 cooperatively with LILCO personnel to an accident at
20 Shoreham?"

21 Answer: "Yes."

22 Now, Dr. Axelrod, you are aware that LILCO has

1 GJW/sw 1 prepared an offsite emergency plan for Shoreham, are you
2 not?

3 A Yes. The fact that LILCO has prepared a plan
4 doesn't mean that a plan exists. I would not suggest that a
5 plan prepared by LILCO represents an offsite emergency
6 preparedness plan as far as we are concerned in terms of its
7 ability to respond to the specifics that we believe should
8 be responded to in terms of the development of an offsite
9 plan.

10 Q What would be necessary, in your opinion,
11 Dr. Axelrod, as Chairman of the DPC, for a site-specific
12 plan to exist?

13 A The first would be an assertion that a plan
14 could, indeed, be developed. And, in the case of the
15 Shoreham facility, the conclusion has been reached that it
16 would not be possible to provide for such a plan.

17 Q Dr. Axelrod, do you mean that a plan physically
18 cannot be written up for Shoreham?

19 A Well, there is no limit to the amount of paper
20 that can be produced that relates to operating parameters
21 that relate to a plan.

22 Q What do you mean then by "a plan is not possible

1 GJW/sw 1 for Shoreham?"

2 A A site-specific plan relates to the ability of
3 that plan to provide public protection and to assure the
4 welfare of those individuals and to effectively carry out
5 the assurance responsibility that government has.

6 The conclusion has been reached by the Governor
7 that no such possibility of a governmental assurance is
8 potentially possible. And, the Suffolk County Executive has
9 also made statements to the effect that such an assurance
10 would not be possible and, therefore, that a plan could not
11 be written that would provide for the kinds of assurances
12 that government have the responsibility to provide to its
13 residents.

14 Q So, Dr. Axelrod, is -- and correct my
15 characterization if it's incorrect -- your testimony then
16 that it is possible to prepare a plan, but in the State's
17 view it is not possible to prepare a plan for Shoreham which
18 will meet applicable State and federal regulatory
19 requirements for protecting the public health and safety in
20 the event of an emergency?

21 Is that your position?

22 A My position is that no plan could be prepared for

1 GJW/sw 1 Shoreham since the requirements with respect to public
2 safety cannot be met at Shoreham.

3 Q Is the answer yes?

4 A The answer to my question is yes. I am not sure
5 I understood your question. It was a little bit convoluted,
6 so I prefer to respond yes to a question which I understand.

7 If you want to rephrase it --

8 Q Is it your position that a plan could be drafted
9 but that such a plan could never meet federal and State
10 regulatory requirements for protecting public health and
11 safety?

12 MR. ZAHNLEUTER: I would like a clarification.
13 Drafted by whom and under what circumstances?

14 MR. SISK: I am trying to understand what the
15 witness' testimony was.

16 MR. ZAHNLEUTER: Your question is vague.

17 BY MR. SISK: (Continuing)

18 Q Can you answer the question?

19 A What I think I have previously testified to is
20 that it is possible to develop a great deal of paper with
21 respect to identifying issues that relate to some of the
22 parameters that would be required in the State -- under the

1 GJW/sw

1 State directive.

2 My testimony is that I do not believe that a plan
3 can be prepared that is a plan that would provide for an
4 adequate level of safety, that would provide for public
5 assurance, governmental assurance, to protect the public
6 welfare under the circumstances at Shoreham.

7 Q And, is that specifically what you mean by "a
8 plan cannot be prepared?"

9 A That is what I mean by "a plan cannot be
10 prepared."

11 Q And, when you refer to a plan that is adequate to
12 protect public health and safety, what standards are you
13 referring to in making the judgment that the plan cannot
14 adequately protect public health and safety?

15 A I am referring to judgments that have been made
16 by experts to whom information -- by whom information has
17 been provided to both the Suffolk County Executive and to
18 the Governor of the State of New York.

19 Q What experts are you referring to?

20 A I think that the Governor has identified the
21 origins of the information that he has based his
22 determination on. And, I believe that the County Executive

1 GJW/sw 1 has also identified the specific nature of the information
2 which he has relied upon to reach his conclusion with
3 respect to the inability to prepare a plan.

4 Q Where has the Governor identified that
5 information?

6 A The Governor has submitted an affidavit. And, I
7 would defer to counsel.

8 Q Is that the affidavit attached to this testimony,
9 Dr. Axelrod, to your testimony, Exhibit 2?

10 (The witness is looking at the document.)

11 A "It is important to bear in mind that experts of
12 New York State have analyzed LILCO's Plan and the
13 capabilities of LILCO's emergency workers as part of the
14 State's participation..."

15 "These State officials, including those who
16 presented sworn testimony, have found LILCO's emergency plan
17 to be unworkable and its emergency workers incapable of
18 performing effectively in a radiological emergency."

19 MR. SISK: Let the record reflect that the
20 witness is reading from a portion of an affidavit by the
21 Governor, which is attached to the witness' testimony.

22 BY MR. SISK: (Continuing)

1 GJW/sw

1

Q Dr. Axelrod, the statement you have just referred

2

to, did that make specific reference to the LILCO plan which

3

is currently in litigation before the NRC?

4

A The reference is to LILCO's plan. And, this is

5

on Page 2 of the Governor's affidavit and the Governor's

6

testimony.

7

And, I don't know whether or not that is the

8

LILCO plan that is currently the subject of litigation.

9

Q Dr. Axelrod, are you aware that the Nuclear

10

Regulatory Commission Licensing Board has determined that an

11

adequate emergency plan for the Shoreham Plant is possible?

12

MR. BROWN: I object to that --

13

MR. ZAHNLEUTER: I object.

14

MR. BROWN: -- as a gross mischaracterization of

15

what the Board said.

16

MR. ZAHNLEUTER: I have the same objection.

17

BY MR. SISK: (Continuing)

18

Q Can you answer the question?

19

MR. ZAHNLEUTER: If you know.

20

THE WITNESS: No, I do not know.

21

MR. SISK: Dr. Axelrod, I'm going to hand to the

22

Court Reporter a document entitled "United States Nuclear

1 GJW/sw 1 Regulatory Commission, Cite as 21 NRC 1587 (1985)." It is a
2 decision, dated June 20, 1985.

3 And, I will vouch for the record that it is a
4 decision of the Nuclear Regulatory Commission granting LILCO
5 a license to the Shoreham plant.

6 (A Decision of the NRC, 21 NRC 1587(1985),
7 dated June 20, 1985, is marked as
8 Axelrod Deposition Exhibit Number 5 for
9 identification.)

10 BY MR. SISK: (Continuing)

11 Q I will ask you, Dr. Axelrod, to turn to Page
12 1589.

13 (The witness is complying.)

14 That states, "We note that our Licensing Board in
15 its..."

16 MR. BROWN: Where is this, Mr. Sisk?

17 MR. SISK: This is in the middle of the page.
18 "We note that our Licensing Board in its decision of April
19 17, 1985..." and there is a citation, "has found that an
20 adequate emergency plan is in fact achievable if the State
21 and County participate in emergency planning, as all other
22 local and State jurisdictions have done when so called

1 GJW/sw 1 upon."

2 BY MR. SISK: (Continuing)

3 Q Have I read that correctly?

4 A Yes, you have.

5 Q Dr. Axelrod, until today, were you aware that the
6 Nuclear Regulatory Commission had made that determination I
7 just quoted?

8 A I have no specific recollection --

9 MR. BROWN: I object. The Nuclear Regulatory
10 Commission made no determination whatsoever. They made a
11 notation.

12 MR. SISK: I will stand corrected.

13 MR. BROWN: Insofar as the legal effect of that
14 notation, we categorically disagree that there ever was any
15 finding. If you would like to, Mr. Sisk, go back to those
16 words that the Licensing Board used and read those into the
17 record. And we, among counsel, won't quibble away some of
18 your precious time, because they do not represent what you
19 are trying to suggest.

20 MR. SISK: I would prefer to let the record stand
21 on its own.

22 THE WITNESS: If I might, with respect to that

1 GJW/sw 1 statement?

2 BY MR. SISK: (Continuing)

3 Q Yes.

4 A There is a hypothetical, which is attached to the
5 Licensing Board's note, which relates if the State and
6 county participate in emergency planning.

7 In spite of the Licensing Board's decision, the
8 County has clearly identified the fact that it will not
9 participate in emergency planning because of its conclusion
10 that no plan can be constructed.

11 So that if one construes the notation as it is
12 identified on Page 1589, one would reach the conclusion that
13 no plan is available because State and County have clearly
14 determined that they will not participate in emergency
15 planning based upon their own evaluations.

16 So, I would construe that as, in fact, concluding
17 that no adequate emergency plan could be identified for
18 Suffolk County.

19 Q Dr. Axelrod, does that mean that it's your
20 understanding that the State and County have declined to
21 plan because they disagree with the NRC characterization
22 that a plan is, in fact, achievable?

1 GJW/sw 1

MR. BROWN: I object --

2

MR. ZAHNLEUTER: I object.

3

MR. BROWN: -- categorically. On behalf of the
4 County, the reasons for the County are well known to you.
5 They have nothing to do with what you suggested.

6

And, I would like to say that we will not look
7 favorably or charitably upon your complaints later that you
8 had no time, Mr. Sisk, when you simply dribble it away over
9 frivolities.

10

MR. SISK: I am asking the witness to explain his
11 answer.

12

BY MR. SISK: (Continuing)

13

Q And, I will pass on if you cannot answer the
14 question. Can you?

15

A What was the question?

16

Q Let me withdraw it. Dr. Axelrod, does the State
17 DPC have any plans for responding to radiological
18 emergencies for plants outside the State of New York?

19

A The State cooperates with other entities that are
20 responsible for operating commercial nuclear power plants
21 and has documents that relate to site-specific responses for
22 those other commercial power plants that are located outside

1 GJW/sw 1 the State of New York in which the emergency planning zone
2 extends to within certain specific areas within the State of
3 New York.

4 Q Does that include the Yankee Rowe Plant?

5 A Yes, it does.

6 Q There is an exercise for that plant, in fact,
7 next week; is there not?

8 A I know there is an exercise. I don't know the
9 specific scheduling of that exercise.

10 Q The State of New York DPC has site-specific plans
11 for responding in the event of an emergency at Yankee Rowe;
12 is that correct?

13 MR. ZAHNLEUTER: Excuse me. I would like to
14 object.

15 MR. SISK: The witness just said he had
16 site-specific plans. I'm asking if that is correct for
17 Yankee Rowe.

18 MR. ZAHNLEUTER: What I would like to do is
19 register an objection based on relevancy grounds, because
20 the issue here is Shoreham, LILCO and the realism issue.

21 Other nuclear power plants are irrelevant to the
22 subject of this proceeding.

2 GJW/sw 1

BY MR. SISK: (Continuing)

2 Q Dr. Axelrod, your testimony states, does it not,
3 that there is no site-specific plan for Shoreham; is that
4 correct?

5 A That is correct.

6 Q Is it your testimony that there is a
7 site-specific plan for the Yankee Rowe plant that is
8 established by the DPC?

9 A The DPC does not have a site-specific plan for
10 the Yankee plant. The site-specific plan has been forwarded
11 to the Disaster Preparedness Commission by the responsible
12 agency within the State of Connecticut as to the expected
13 role of geographic areas within the State of New York.

14 Q Is that site-specific plan incorporated within
15 your State plan that was handed to you earlier?

16 MR. ZAHNLEUTER: I will make a continuing
17 objection on all questions related to the Yankee Rowe plant,
18 especially in light of the diminishing amount of time that
19 is available.

20 And, my objection is grounded on relevancy.

21 BY MR. SISK: (Continuing)

22 Q Can you answer the question?

1 GJW/sw 1

2 A Without a careful review of the information that
3 is contained in there, I am not in a position to comment as
4 to whether or not the site-specific activities required with
5 respect to plants operating outside of the State of New York
6 are contained within the New York State Radiological
7 Emergency Plan.

8 I would have to determine whether or not that is
9 included.

10 Q The answer is you don't know?

11 A I don't know without going through it.

12 Q Dr. Axelrod, let me ask you to refer back to the
13 State Radiological Emergency Plan, at least assuming again
14 that this is an accurate copy of the generic portion of that
15 plan. Please turn to Page III-18, Section 3 of the plan.
16 The number appears to have been copied off of the bottom,
17 but it's between III-17 and III-19.

18 (The witness is complying.)

19 The section --

20 MR. BROWN: Wait. Pardon me, I don't have a copy
21 and I don't have access to it. Would you wait a minute,
22 please?

MR. SISK: There is one right here.

1 GJW/sw 1

MR. BROWN: What page is it, Dennis? I'm sorry.

2

MR. SISK: III-18. I believe the witness --

3

MR. BROWN: Is this under Part 3 or --

4

MR. SISK: Section 3. I believe the witness has

5

found it.

6

MR. BROWN: Part 2 or Part 1 of Section 3?

7

MR. SISK: It is approximately one-quarter of the

8

way through the bulk of the document.

9

MR. BROWN: Okay. III, and then what is it?

10

MR. SISK: III-18. The bottom of the page has

11

not been copied. It is between III-17 and III-19.

12

The witness found it a couple of minutes ago.

13

MR. BROWN: Okay.

14

BY MR. SISK: (Continuing)

15

Q The caption to that section is "State

16

Implementation of A County's Plan In Those Instances Where A

17

County Does Not Implement the Plan Itself."

18

Are you familiar with this portion of the New

19

York plan?

20

A Generally, yes.

21

Q How long has that been in the New York plan?

22

A I would only be speculating. I don't know how

1 GJW/sw 1 long it has been there. It has been there prior to this
2 edition. I recall seeing it previously. But, I do not know
3 the precise point in time in which it became part of the
4 plan.

5 Q Does this portion of the master plan apply where
6 a county fails to provide or implement its own plan?

7 MR. BROWN: I object to that. It is calling for
8 a legal conclusion.

9 MR. SISK: This is the Chairman of the DPC.

10 MR. BROWN: I don't think there is any precedent
11 for this, though. I'm positive there is no precedent, plus
12 it's asking for a legal interpretation.

13 BY MR. SISK: (Continuing)

14 Q Can you answer the question?

15 A I will defer to counsel.

16 Q Do you know what this section is designed to deal
17 with, what it does?

18 MR. BROWN: Mr. Sisk, I think he just answered
19 your question. He said he didn't know.

20 MR. SISK: He deferred to counsel.

21 BY MR. SISK: (Continuing)

22 Q Could you answer the question, Dr. Axelrod?

1 GJW/sw 1

MR. ZAHNLEUTER: If you know.

2 THE WITNESS: This plan --this requirement refers
3 to a site-specific response for the DPC and is related to
4 county participation in a site-specific instance.

5 MR. SISK: Dr. Axelrod, I will hand to the
6 Reporter and ask him to mark as Exhibit 6 to this deposition
7 a document of which I unfortunately only have one copy.

8 I will read the title, and then I will ask the
9 Reporter to hand it to you. The document bears the
10 letterhead of the Federal Emergency Management Agency. It
11 is captioned "Post Exercise Assessment, August 24-25, 1983,
12 Exercise of the State of New York Radiological Emergency
13 Response Interim Plan for Implementing Compensating Measures
14 for Rockland County for the Indian Point Nuclear Power
15 Station." It is dated September 26, 1983.

16 (A FEMA document, dated September 26,
17 1983, Post Exercise Assessment, August
18 24 and 25, 1983, for Indian Point Nuclear
19 Power Station, is marked as Axelrod
20 Deposition Exhibit Number 6 for
21 identification.)

22

1 GJW/sw 1

BY MR. SISK: (Continuing)

2 Q Dr. Axelrod, have you ever seen that document
3 before?

4 MR. ZAHNLEUTER: Excuse me, Mr. Sisk. I would
5 like a chance to look at this document. It's unfortunate
6 that you only brought one copy with you. It will take a
7 moment.

8 MR. SISK: The questioning will be very brief.
9 It is 4:45.

10 MR. ZAHNLEUTER: It will take a quick moment to
11 quickly review this.

12 MR. BROWN: Yes, I would like to look with
13 counsel.

14 (Mr. Zahnleuter, Mr. Brown and the witness are
15 looking at the document.)

16 MR. BROWN: Mr. Sisk, to cut through all the
17 preliminary questions, is this the first or the second
18 Indian Point exercise?

19 MR. SISK: I do not know.

20 MR. ZAHNLEUTER: Is there a pending question?

21 MR. SISK: No, there is not. I've asked the
22 witness -- actually there is.

1 GJW/sw

1 BY MR. SISK: (Continuing)

2 Q I've asked the witness has he ever seen this
3 document before?

4 A Yes, I have.

5 Q Dr. Axelrod, was there an interim compensating
6 plan for the State of New York that was specific to Rockland
7 County?

8 A The specific implementing plan was in response to
9 the site-specific plan which had been adopted by the
10 Disaster Preparedness Commission for the Indian Point
11 facility.

12 Q And, that Rockland County plan was adopted, was
13 it not, when Rockland County itself failed to approve a
14 plan?

15 A The specific circumstances of Rockland County's
16 activities at the time were very confused, and I would not
17 want to characterize the specific actions of Rockland County
18 at the time in which this exercise took place.

19 Q At the time that the exercise took place, was
20 there a State interim compensating plan for Rockland County?

21 A Yes.

22 Q Now, didn't the State REPG draft that

1 GJW/sw 1 compensating plan?

2 A The DPC utilized planning activities that had
3 been carried out within Rockland County as the basis for
4 providing the site-specific activities and defining the role
5 for the compensating plan for the DPC at that time.

6 Q The State REPG, however, actually prepared that
7 interim compensating plan, didn't it?

8 A The actual compensating plan as it related to the
9 required State activities was prepared as a modification of
10 an existing Rockland County -- my best recollection is that
11 it was of an existing Rockland County plan and was based
12 upon the recommendations and actions that were associated
13 with the requirements for a Rockland County response.

14 So that it was part of an existing site-specific
15 plan that was designed to address the response at Indian
16 Point.

17 Q That plan may have been based upon a Rockland
18 County plan, but it was prepared by Mr. Ned Smith within
19 REPG, was it not?

20 MR. ZAHNLEUTER: I object to these questions on
21 the grounds of relevancy. And, I will take a continuing
22 objection to these questions about Indian Point and Rockland

1 GJW/sw 1 County, especially in this detail.

2 BY MR. SISK: (Continuing)

3 Q Do you know the answer to the question,
4 Dr. Axelrod?

5 A I do not recollect who was responsible for -- who
6 within the REPG was responsible for the interim plan.

7 I would acknowledge certainly that it was done
8 within REPG, but I cannot identify the persons or person
9 responsible for it other than I would --

10 Q Do you know Ned Smith?

11 A Yes. I would be hard pressed to suggest that any
12 compensating plan would have been prepared by a single
13 individual; in addition to which my recollection was that
14 there were, even at that point, engagements with Rockland
15 County with respect to the development of the compensating
16 plan.

17 Q Did Mr. Ned Smith work on preparing that plan to
18 your knowledge?

19 A My best recollection is that he did work on it.

20 Q Now, Dr. Axelrod, returning to the State plan and
21 the provision I referred to earlier, the one captioned
22 "State Implementation of A County's Plan In Those Instances

1 GJW/sw 1 Where A County Does Not Implement the Plan Itself."

2 Does the Rockland plan I just referred to and
3 that is reflected in that Post Exercise Assessment, does
4 that reflect an implementation of this portion of the State
5 plan?

6 And, by that I mean the portion on III-18 and
7 subsequent pages.

8 A My recollection is that the reference to the
9 State plan which refers to State implementation was related
10 to the implementation of the Rockland County participation
11 in a site-specific plan in which there had been a
12 determination that a plan could be prepared.

13 The participation by the State DPC was based upon
14 the threshold assumption that a plan could be prepared that
15 was adequate to protect the public safety from a
16 radiological accident at Indian Point.

17 Q Dr. Axelrod, could this portion of the State plan
18 be used for a compensating measure for any county which
19 failed to adopt its own plan, including Suffolk County?

20 Could this section be used for Suffolk County?

21 MR. BROWN: Objection. That is the most profound
22 legal and constitutional question that could be raised --

1 GJW/sw

1

MR. SISK: I have asked for his understanding --

2

MR. BROWN: -- in emergency planning in the State

3

of New York.

4

MR. SISK: Based on --

5

MR. BROWN: Obviously, it's addressing Suffolk

6

County and Shoreham, matters litigated, that have gone all

7

the way to the Court of Appeals, have been to the Second

8

Circuit Court of Appeals, and appropriately should not even

9

be addressed by anyone except counsel.

10

MR. ZAHNLEUTER: I endorse that objection, and

11

also add that it calls for gross speculation.

12

MR. SISK: Let the record reflect that it is now

13

4:50, and we are encountering more obstructionism which

14

again I don't understand.

15

MR. BROWN: Mr. Sisk, let the record --

16

MR. SISK: Can the witness answer the question?

17

MR. BROWN: The word "obstructionism" is the

18

product of your imagination, Mr. Sisk. And, it's not

19

necessary for you to raise your voice.

20

MR. SISK: I did not raise my voice.

21

BY MR. SISK: (Continuing)

22

Q Dr. Axelrod, could this section of the State

1 GJW/sw 1 plan issued by the DPC of which you are Chairman be used in
2 order to compensate for a lack of participation by Suffolk
3 County with respect to a plan for the Shoreham plant?

4 A No.

5 Q Why not?

6 A Because the presumption is that there is a County
7 plan. There is no assertion that there exists a County
8 plan.

9 The portion of the plan that you referred to
10 identifies implementation of a county plan. And, the
11 determination has been made that there does not exist, and
12 cannot exist, a County plan.

13 Q Dr. Axelrod, I will ask you to turn to Page K-9
14 of this document, which is a map.

15 MR. BROWN: Is this closer to the front or
16 toward the back?

17 MR. SISK: Toward the back. It's in Subdivision
18 K, K-9, which is one of the last attachments to the
19 document.

20 BY MR. SISK: (Continuing)

21 Q Dr. Axelrod, that map depicts --

22 MR. BROWN: I'm sorry. One moment. I don't know

1 GJW/sw 1 where this --

2 BY MR. SISK: (Continuing)

3 Q The map depicts 10-mile EPZs and 50-mile EPZs for
4 various nuclear plants inside and outside the State of New
5 York. I will ask you to focus your attention particularly
6 on the large circle with dots around Millstone.

7 Dr. Axelrod, does that large circle which
8 encompasses the 50-mile EPZ for Millstone encompass a
9 portion of Suffolk County in the State of New York?

10 A It appears to, yes.

11 Q Dr. Axelrod, isn't there, in fact, in place in
12 the State of New York a plan for ingestion pathway responses
13 within Suffolk County related to the Millstone plant?

14 MR. ZAHNLEUTER: I object to questions about
15 Millstone on relevancy.

16 THE WITNESS: There is no plan in Suffolk County
17 that relates to -- or for Suffolk County that relates to
18 specific, site-specific activities that would be required
19 in the event of an accident at Shoreham.

20 Those site-specific plans which have been
21 identified for Millstone relate only to peripheral
22 activities that would be required under the Millstone

1 GJW/sw 1 site-specific plan and are not relevant to the Shoreham
2 site-specific plan.

3 Q Disregarding relevancy, Dr. Axelrod, does the
4 State of New York have plans for responding within the
5 ingestion exposure pathway of the Millstone plant, which
6 encompasses a portion of Suffolk County?

7 MR. ZAHNLEUTER: I object to the question. It is
8 based on the premise of disregarding relevancy. Relevancy
9 is something that can't be disregarded.

10 MR. SISK: Relevancy can be raised later.

11 MR. BROWN: It's not the legal question of
12 relevancy, Mr. Sisk. The witness used the word "relevance"
13 as a central part of his answer.

14 You've asked him to eliminate his answer in
15 responding to your next question.

16 BY MR. SISK: (Continuing)

17 Q Dr. Axelrod, does such a State plan exist?

18 A A State plan for Millstone does not exist. A
19 site-specific plan that involves portions of New York State
20 have been submitted by the State of Connecticut to the State
21 of New York identifying the needs for satisfying the
22 site-specific requirements associated with Millstone.

1 GJW/sw 1

2 Q Does the State of New York have a plan for
3 emergency responses for the 50-mile ingestion pathway EPZ
4 for Millstone which includes all or a portion of Suffolk
5 County?

6 A The State has received from the State of
7 Connecticut a plan which includes a portion of Suffolk
8 County.

9 Q Is that document maintained by the DPC?

10 A That document would be maintained by the DPC
11 based on submission of site-specific activities submitted by
12 the State of Connecticut.

13 Q Dr. Axelrod, does Suffolk County have a Disaster
14 Preparedness Plan that is not Shoreham-specific, to your
15 knowledge?

16 MR. BROWN: I object. That's a matter for
17 Suffolk County to address, not a State witness.

18 BY MR. SISK: (Continuing)

19 Q Can you answer the question?

20 A I do not know of the specific nature of a
21 disaster plan. My knowledge of such a plan is predicated
22 upon the Suffolk County's response in the instant emergency
in Hurricane Gloria.

1 GJW/sw 1

2 Q Very well. Dr. Axelrod, let me return quickly to
3 your testimony. Dr. Axelrod, your testimony states at
4 various points on Pages 2 through 4 --

5 A Just a minute. I lost my testimony here.

6 Q That's Exhibit 2.

7 A I don't have Exhibit 2 here. I have 3, 4 and 6
8 here.

9 (The witness is provided with Exhibit 2.)

10 THE WITNESS: Okay, thank you. The Reporter had
11 Exhibit 2.

12 BY MR. SISK: (Continuing)

13 Q Page 2 states, "I am authorized and directed by
14 Governor Cuomo to present testimony to address a
15 hypothetical situation: what action would New York State
16 take if the NRC were to license Shoreham to operate at
17 levels above five percent power and there were a serious
18 accident at the plant that required offsite emergency
19 response."

20 Now, Dr. Axelrod, specifically let me ask you to
21 respond to this hypothetical question. Assume the following
22 facts: The NRC has granted an operating license for
23 operation at full power for the Shoreham plant. All

1. GJW/sw

1 judicial appeals have been exhausted and the license has
2 been sustained. An accident has occurred at the plant. The
3 State is notified by LILCO that an accident has occurred and
4 LILCO recommends evacuation of the 10-mile EPZ.

5 Let me ask you to assume further that upon
6 receipt of that notification the Governor ordered you to
7 respond to protect public health and safety to the best of
8 your ability using all the resources, agencies and
9 assistance at the State's disposal.

10 Dr. Axelrod, what would you do?

11 MR. ZAHNLEUTER: I object to this question. It
12 assumes many, many facts that are in dispute and have been
13 vigorously disputed in this proceeding. It also calls for
14 speculation.

15 And, I will allow Dr. Axelrod to answer, but I
16 will also point out that it is 5 o'clock. So I suggest
17 that you accelerate your questioning and we will allow this
18 to continue for a few minutes because of the break. But, I
19 hope that you can wrap up this hypothetical to which I
20 object strenuously in the few minutes that we have extended
21 this deposition for.

22 MR. BROWN: I object more strenuously than that,

1 GJW/sw 1 because it does not assume only issues in dispute but it
2 assumes to be facts something categorically contrary to the
3 sworn affidavit of the Governor of the State of New York,
4 which is appended to the testimony of this witness.

5 And, I don't think that a question can be
6 predicated intelligently upon four or five hypothetical
7 matters which are in dispute, none of which have any
8 foundation, including the suspicion that somehow
9 notification could occur and then state that the Governor
10 would make a direction categorically contrary to what he has
11 said under oath.

12 I've never heard such a question before, and I
13 think it ought to be withdrawn.

14 BY MR. SISK: (Continuing)

15 Q Can you answer the question, Dr. Axelrod?

16 A There are so many hypotheticals with respect to
17 the scenario which you have described that I would not be
18 able to respond.

19 I don't know what I would do under the
20 circumstances.

21 Q Dr. Axelrod, would you be able to employ various
22 State resources under that circumstance?

GJW/sw 1

MR. ZAHNLEUTER: I object.

2

MR. BROWN: He just answered the question. He said he didn't know what he would do.

4

And, now you are going to complain later that you have no time to ask your questions when you insist on asking a question that the gentleman has already answered.

6

7

BY MR. SISK: (Continuing)

8

Q Can you answer what your abilities would be, whether or not you know what you would do?

10

MR. ZAHNLEUTER: I would like a clarification of that question. "You" and "your" are personalized terms, and the question needs to be refined. Please refine that question.

11

12

13

14

BY MR. SISK: (Continuing)

15

Q Dr. Axelrod, what resources would be available to you in the event that you were notified of an emergency at the Shoreham Nuclear Power Plant and the Governor ordered you to respond to protect public health and safety?

16

17

18

19

MR. ZAHNLEUTER: I have the same objection as before.

20

21

MR. BROWN: And, I do, too. This is getting absurd

22

1 GJW/sw 1

MR. ZAHNLEUTER: And, it's also repetitive.

2

BY MR. SISK: (Continuing)

3

Q Can you answer the question?

4

A Without a site-specific plan and the identification of the specific resources that would be allocated with respect to time, place, event that involve the coordination of all governments, I would not be in a position to respond as to the nature or kind of resources that could or would be made available in a hypothetical situation.

11

Q And, I assume that that means also you would be unable to identify the time factors that would be needed to employ those resources?

12

13

14

A Without any additional information to the extent of the hypothetical, I certainly would not be able to identify the time frame in which any response might take place without knowing what the nature of that response would be or what resources could be mobilized to respond.

15

16

17

18

19

Q Dr. Axelrod, I will ask simply two more questions that have been prompted by the remarks of Suffolk County's counsel. Let me ask you to turn to the appended statement of Governor Cuomo, to the very last document appended to

20

21

22

1 GJW/sw 1 your testimony, Page 3.

2 (The witness is complying.)

3 A Okay.

4 Q In the middle of that page, Dr. Axelrod, it --
5 and I'm just going to quote one sentence. "Whatever I would
6 do at the moment of an emergency would be for the public
7 good."

8 And, I will vouch for the record that that is in
9 context of the Governor's statement as to his response in
10 the event of an emergency at Shoreham.

11 Dr. Axelrod, further down the page there is a
12 quoted statement. And, I'm just going to quote the first
13 sentence of that statement. "Of course, if the plant were
14 to be operated and a misadventure were to occur, both the
15 State and the County would help to the extent possible; no
16 one suggests otherwise."

17 Have I read that correctly?

18 A Yes.

19 Q Is that statement true today?

20 MR. ZAHNLEUTER: Mr. Sisk, I object to this
21 question because, as the Governor's statment clearly says,
22 this portion of the statement that he made on a previous

1 GJW/sw

1 occasion has been withdrawn and may not be cited, quoted or
2 otherwise relied upon, which is exactly what you are doing.

3 MR. BROWN: I want to underscore that I think
4 there is obviously an inappropriate and ulterior purpose in
5 these questions.

6 Mr. Sisk, your first question quoting the
7 "Whatever I would do at the moment of an emergency would be
8 for the public good," conveniently left off the next
9 sentence which is the central point here. And, that
10 sentence stated, "LILCO's plan does not serve the public
11 good, and I would not facilitate the implementation of it."

12 Secondly, it's inconceivable that anyone would
13 quote a sentence which immediately thereafter states, "This
14 paragraph is being misused by LILCO to create false
15 impressions..." And, then you just precisely do the same
16 thing in the face of the Governor's conclusion that, "I
17 hereby take the extraordinary measure of withdrawing these
18 words so that they not be cited, quoted, or otherwise relied
19 upon."

20 You just quoted them and predicated a question
21 upon them.

22 BY MR. SISK: (Continuing)

1 GJW/sw 1

Q Dr. Axelrod, my question stands. The provisions that I've just quoted to you in Governor Cuomo's statement, given all of the objections of counsel, is that statement true today?

5 MR. ZAHNLEUTER: Same objection.

6 THE WITNESS: The statement contained in
7 Paragraph 3?

8 BY MR. SISK: (Continuing)

9 Q The statement contained in Paragraph 3, let's ask
10 that first.

11 A There is no question but that the State of New
12 York would respond in a way which would be for the public
13 good. That is the function of government.

14 Q Is it also true that in the event of an accident
15 at the nuclear power plant at Shoreham, if it were operating
16 at full power, the State would respond to protect the public
17 good?

18 A That assumes a hypothetical which I think we have
19 clearly indicated is not one that we believe can happen.
20 The State has made it very clear that it would respond at
21 all times to the extent that it can to promote the public
22 welfare. And, I think that that statement stands as it has

1 GJW/sw 1 been stated by the Governor.

2 And, I would -- since the statement with respect
3 to the misadventure has been withdrawn, I think it would be
4 inappropriate for me to comment on it.

5 Q Dr. Axelrod, you stated earlier that you are
6 testifying on behalf of the State and at the direction of
7 the Governor today. Does the withdrawal of this statement
8 by the Governor indicate that that sentence in Paragraph 4
9 which I've quoted is not true?

10 A I don't think that there is anything in the
11 Governor's statement that suggests that it is not true.
12 What it does is simply enlarge upon what I have already said
13 with respect to any response of government that would be
14 taken would be taken for the public good in the event of an
15 emergency of any kind.

16 Q Can you tell me what that response would be if
17 there were an accident at the Shoreham Nuclear Power Plant?

18 A Without the existence of a plan, without the
19 existence of a clear situation, the question is totally
20 hypothetical. And, I do not know what we would do under any
21 given set of circumstances nor how we would respond, since
22 any response would be predicated upon governmental

1 GJW/sw

1 activities and the coordination of governmental activities
2 for which there is no basis at the present time.

3 Q Dr. Axelrod, that question was not how would the
4 State respond, but would the State respond in the event of
5 an accident at the Shoreham Nuclear Power Plant?

6 A I think you would have to be more specific with
7 respect to respond. I mean, clearly there would be -- there
8 are a whole different layer of kinds of responses that could
9 occur. And, I think that those also relate to the
10 hypothetical questions as to what the State might do in any
11 series of events or in an event.

12 There would be a response. I think the Governor
13 has made it very clear in the event of any disaster, since
14 the primary responsibility is to provide for the public
15 welfare.

16 Q How would that response be implemented?

17 A That would be a judgment that would depend upon a
18 series of events, actions, and a determination by the
19 governmental entities that would be responsible for
20 implementing any kind of response.

21 Q Can you identify for me any plans, procedures or
22 other means by which such a response could be implemented?

1 GJW/sw 1

2 A There is no site-specific response with respect
3 to LILCO. All of the radiological emergency responses are
4 predicated on the existence of a site-specific plan which
5 relates to a variety of governmental entities that must be
6 coordinated in order for the public to be properly
7 protected.

8 That does not exist because, as I've indicated to
9 you, it is our belief that no such plan can be developed for
10 Shoreham.

11 MR. ZAHNLEUTER: With that, Mr. Sisk, I regret to
12 inform you that the time for this deposition has expired.
13 And, as I indicated before, even though it is now 10 after
14 five, the deposition must be concluded.

15 MR. BROWN: I would like just to ask two or three
16 questions. One minute, two minutes is what it will take.

17 MR. SISK: Let me simply note for the record that
18 I will have a few things to put upon the record when
19 Mr. Brown concludes, because I obviously have not completed
20 LILCO's questioning.
21
22

CROSS EXAMINATION

1 GJW/sw 1

2

BY MR. BROWN:

3

Q Dr. Axelrod, am I correct in hearing your

4

testimony that you do not know what actions would be taken

5

by the State of New York in the event of an emergency --

6

A That is correct.

7

Q -- at Shoreham under the assumption that it would

8

be operating under the hypothetical posed by Mr. Sisk?

9

A Yes, that is correct.

10

Q Number two, is it correct -- have you spoken to

11

the Governor about the two-sentence quotation that is at the

12

bottom of Page 3 that Mr. Sisk quoted?

13

A No, I have not.

14

Q And, do you have any idea what the Governor

15

intends by any of these words at the present time,

16

therefore?

17

A No, I do not.

18

Q Also, do you have any idea what form and what

19

actions would constitute a so-called response that would be

20

for the public good at the time of an accident if such were

21

to occur?

22

A Without a great deal more information with

1 GJW/sw

1 respect to the hypothetical and a site-specific plan that
2 incorporates all of the elements of the requirements that we
3 have identified, the answer is no.

4 MR. BROWN: Thank you. That's all I have.

5 MR. SISK: Let me ask simply for the record,
6 Mr. Zahnleuter, is it correct that Dr. Axelrod will not be
7 made available for the continuation of this deposition?

8 MR. ZAHNLEUTER: That's right. The time for the
9 deposition today has expired.

10 MR. SISK: And, he will not be made available on
11 any subsequent date by the State of New York?

12 MR. ZAHNLEUTER: Are you requesting that he be
13 made available?

14 MR. SISK: I am.

15 MR. ZAHNLEUTER: I don't see any reason why. I
16 think that you have had an ample opportunity to depose
17 Dr. Axelrod today for two hours. It should have been
18 sufficient.

19 And, with that I recommend that you pursue
20 whatever remedies you think are appropriate.

21 MR. SISK: Then, let me make this proffer. But,
22 let me ask one other question to counsel for the State. Mr.

1 GJW/sw

1 Zahnleuter, will the Governor be made available for a
2 deposition or at hearing or cross-examination on his
3 affidavit which is submitted with this testimony?

4 MR. ZAHNLEUTER: At this time, no plans have been
5 made. I can't answer your question any further.

6 MR. SISK: I'm simply noting that the witness was
7 unable, in response to the questions from the Suffolk
8 County's counsel and in response to my questions, to explain
9 certain portions of the Governor's statement. And, I had a
10 number of other questions which I was unable to get in that
11 respect.

12 MR. ZAHNLEUTER: I disagree with that
13 characterization.

14 MR. BROWN: I didn't ask any questions that go to
15 interpreting what the Governor said. Today, Mr. Sisk, for
16 some reason you have persisted in mischaracterizing.

17 MR. SISK: Very well. Let the record reflect
18 that LILCO has a number of additional questions. I have
19 noted some subject matter areas as we went through the
20 questioning that I would have pursued in more detail,
21 including more detailed questioning on the State
22 Radiological Emergency Plan, the content of the Governor's

1 GJW/sw 1 affidavit and various appended statements which are
2 incorporated within the State's testimony.

3 There are other lines of questioning which I wish
4 to pursue with respect to this witness' knowledge of a
5 review of a prior Radiological Emergency Plan for Shoreham
6 which was conducted by the DPC, which I was unable to get
7 to, and other lines of questioning.

8 I will state for the record that, in LILCO's
9 view, for the State to produce the State's sole witness on
10 the realism/best efforts issue and make that witness
11 available for only two hours and decline at this time to
12 continue the deposition we believe is unreasonable and
13 insufficient time for LILCO to complete discovery prior to
14 hearing.

15 MR. ZAHNLEUTER: Regardless, Mr. Sisk, the
16 deposition is concluded.

17 MR. SISK: Let the -- a final notation. LILCO
18 does not agree that the deposition is concluded. LILCO can
19 only agree that it wishes to continue the deposition, and we
20 will adjourn and request a continuation and go to the Board
21 if necessary.

22 Thank you.

1 GJW/sw 1

MR. ZAHNLEUTER: The deposition is concluded.

2

(Whereupon, the deposition is concluded at 5:12

3

p.m., this same date.)

4

5

DAVID AXELROD

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

1 GJW/sw 1

CERTIFICATE OF COURT REPORTER AND NOTARY PUBLIC

2 I, Garrett J. Walsh, Jr., the officer before whom
 3 the foregoing deposition was taken, do hereby certify that
 4 the witness whose testimony appears in the foregoing
 5 deposition was duly sworn by me; that the testimony of said
 6 witness was taken by me and thereafter reduced to
 7 typewriting by me or under my direction; that said
 8 deposition is a true record of the testimony given by the
 9 witness; that I am neither counsel for, related to nor
 10 employed by any of the parties to the action in which this
 11 deposition was taken; and further, that I am not a relative
 12 or employee of any attorney or counsel employed by the
 13 parties hereto, nor financially or otherwise interested in
 14 the outcome of the action.

15 Garrett J. Walsh, Jr.

16 GARRETT J. WALSH, JR.

17 Notary Public in and for the
 18 Commonwealth of Virginia at Large

19 My Commission Expires:

20 January 9, 1989

21

22