

ORIGINAL

UNITED STATES NUCLEAR REGULATORY COMMISSION

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

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1 UNITED STATES NUCLEAR REGULATORY COMMISSION
 2 ATOMIC SAFETY AND LICENSING BOARD

3
 4 In the Matter of:)
 5 LONG ISLAND LIGHTING COMPANY) Docket Nos.
 6 (Shoreham Nuclear Power Station) 50-332-OL-3
 Unit 1) Remand/Emergency
 Planning

7 TELECONFERENCE

8
 9 Friday,
 10 June 17, 1988

11 Room 427
 12 4350 East West Highway
 Bethesda, Maryland

13 The above-entitled matter came on for hearing,
 14 pursuant to notice, at 11:02 a.m.

15 BEFORE: HONORABLE JAMES P. GLEASON, Chairman
 16 Atomic Safety and Licensing Board
 U.S. Nuclear Regulatory Commission
 Washington, D.C. 20555

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

19 JUDGE DR. JERRY KLINE, Member
 20 Atomic Safety and Licensing Board
 U.S. Nuclear Regulatory Commission
 21 Washington, D.C. 20555

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P R O C E E D I N G S

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11:02 a.m.

JUDGE GLEASON: All right, gentlemen. This is Judge Gleason, and I have Judge Kline and Judge Shon with me. The telephone conference is being recorded, and I'd like you to note your appearances. If you would do it in the usual order of the applicant, the staff, Suffolk County, New York, and FEMA, we will proceed at that point.

MR. IRWIN: Judge Gleason, this is Donald Irwin for Long Island Lighting Company. With me are James Christman and Dennis Sisk, also of our office. Ira Freilicher, who is Vice President of Law and Corporate Affairs of Long Island Lighting Company, is also on this connection.

JUDGE GLEASON: Mr. Irwin, this is Judge Gleason. You're not coming through very loud to us, sir. I don't know if anybody else is having that problem, but if you could speak a little bit heavier it would be helpful.

MR. IRWIN: Is that coming through better now?

JUDGE GLEASON: Much better. Please proceed, gentlemen.

MR. IRWIN: With me are Dennis Sisk and James Christman, of Long Island Lighting Company. Also on the connection is Ira Freilicher, Long Island Lighting Company's Vice President of Law and Corporate Affairs. Mr. Freilicher

1 does not expect to be an active participant in the call.

2 JUDGE GLEASON: All right.

3 MS. YOUNG: This is Mitzi Young for the NRC staff.
4 With me is Lisa Clark, with our office, and we've also just
5 been joined by Mr. Ed Resi.

6 JUDGE GLEASON: All right.

7 MR. LANPHER: Lawrence Lanpher, Karla J. Letsche,
8 and Herbert E. Brown for Suffolk County.

9 JUDGE GLEASON: All right.y

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

13 JUDGE GLEASON: All right.

14 MR. HIRSCH: And this is Mike Hirsch here, from
15 FEMA, filling in for Bill Cumming.

16 JUDGE GLEASON: All right. Thank you all.

17 This conference has been called by the board.
18 Last week, due to the priority consideration that had to be
19 given to the intervenors' notice that the board had
20 precluded consideration of CLI 8613 remand, we did not deal
21 with LILCO's request of June 9 to resolve discovery problems
22 that have been developed.

23 The parties briefs on the board's pending ruling
24 on the intervenors' notice have been received, and we then
25 turn our attention to LILCO's discovery request, which are

1 also included as part of its brief, and in a sense
2 repetitious of its June 9 request.

3 Also last week, due to the priority requirement of
4 the intervenors' notice, we did not deal with the
5 relationship of those discovery requests to the EBS issues,
6 and we would like that aired and resolved today as well.

7 If I can summarize the existing procedural
8 problem, it is in my view essentially this: LILCO has
9 notice and seeks discovery through depositions on certain
10 dates, and responses to interrogatories on certain dates,
11 through individuals listed in its June 9 request and
12 repeated on page 26 of its brief dated June 15, in an effort
13 to plumb the knowledge of the past and present state and
14 local officials concerning the recent production of the so-
15 called county of Suffolk emergency operations plan, as well
16 as issues involved in the emergency broadcasting system
17 arrangement, on which the board opened discovery on June 2.

18 LILCO also seeks responses to its third set of
19 interrogatories and requests for production. It is alleged
20 that a bit of stonewalling has been engaged in by the
21 intervenors: not returning phone calls, nor cooperating in
22 producing the officials to be deposed, notice to be
23 disposed, nor producing answers to interrogatories.

24 Mr. Irwin, is that essentially an accurate summary
25 of your position?

1 MR. IRWIN: Yes, it is, Judge Gleason.

2 JUDGE GLEASON: All right. Then I suggest that
3 perhaps we could most expeditiously handle this by getting
4 the intervenors response at this particular time, and really
5 what you're addressing is why should the board not decide to
6 grant the discovery request at the time requested that have
7 been filed by the applicant?

8 So Mr. Lanpher, do you want to proceed?

9 MR. LANPHER: Yes, Judge. Let me take the EBS
10 issue first. Just to address that briefly, we're intending
11 to address that in writing -- and we are already in draft, I
12 believe -- in the status report to be filed with the board
13 on Monday pursuant to your prior orders, sir.

14 It would be my suggestion that it be addressed in
15 that matter, not on this conference call. You'll have the
16 parties various positions in detail. Otherwise I would like
17 to get Mr. Miller involved in the phone call, since he's now
18 back in the office after an absence, and he could address
19 that status.

20 But I think it's preferable, sir, to address that
21 in the context of the Monday submissions that I think
22 everyone is going to be submitting. So unless --

23 JUDGE GLEASON: Let me respond to that. The only
24 problem we have with that is that it puts that -- some of
25 these witnesses, as I gathered, are to be deposed, if the

1 board grants it, on both issues. Of course, one of the
2 reasons for this telephone call is that the request has been
3 made at least to have those depositions start next week.

4 If we just wait until Monday -- I think the issue
5 is fairly clear, so if you can get Mr. Miller here for the
6 conference, we might be able to dispose of this more
7 expeditiously. I think it would be handled better that
8 way.y

9 MR. LANPHER: Let me go on to the discovery
10 issues, which are mentioned on page 26 of LILCO's June 15
11 brief.

12 JUDGE GLEASON: All right.y

13 MR. LANPHER: Three reasons why I believe that
14 discovery should not take place, Judge. I don't want to
15 repeat what has been stated before, but I will summarize a
16 couple of things.

17 First, given the board's ruling last Friday, June
18 10, in the transcribed conference call, the board has
19 indicated that it is intending to issue sanctions, either
20 default or, full of the contentions, or ruling for LILCO on
21 the merits of the legal authority contention.

22 Given that for decision, unless the board has
23 changed its mind in the interim, discovery issues pertaining
24 to the best efforts, proceedings are moot and this board has
25 no longer jurisdiction over those.

1 Second, with respect to the statement by the
2 board regarding a reservation of jurisdiction, which was
3 made in the transcript last Friday, we have set forth as
4 clearly as possible what the facts are concerning that
5 matter. We do not deny, Judge Gleason, that the county
6 operations plan we responsive to earlier discovery requests
7 in 1983.

8 We do not deny that it was identified by country
9 personnel at that time. It was intended to be produced at
10 that time, and in fact, portions of that plan, albeit in a
11 different format, we in fact produced. As I have made clear
12 before, we cannot prove nor can it be disproved whether the
13 entire plan was in fact produced.

14 We thus believe that there is no reason to go
15 forward with discovery, and we respectfully request in the
16 event that you disagree with our second answer, sir, that
17 the board carefully define precisely what is to be pursued
18 in the discovery, or what the purpose would be given the
19 fact that we have made those foregoing representations.

20 And thus that any non-production, if it occurred -
21 - and we don't concede that it occurred, we can't prove one
22 way or the other -- would have been unintentional. So that
23 in essence is our position with respect to the discovery at
24 this point.

25 That doesn't address the EBS matter, I recognize.

1 JUDGE GLEASON: I understand that, but Mr.
2 Lanpher, I thought that I had pointed out or summarized what
3 I construed the position of LILCO to be, and that is the
4 additional discovery was related precisely to that emergent
5 plan or that plan that had originally been produced.y

6 MR. LANPHER: Judge Gleason, let me understand
7 exactly what you intended to say. Is it my understanding
8 that the discovery that you -- or the retention of
9 jurisdiction maybe is a better term, that you intended last
10 week was -- essentially why was that plan not produced
11 earlier in 1982-83? Is that correct, sir?

12 JUDGE GLEASON: Well, I think there are several
13 issues involved. The issue of why it was not produced, and
14 should it have been produced, and --

15 MR. LANPHER: Let me interrupt you --

16 JUDGE GLEASON: Excuse me a minute. Let me
17 finish. Why it was not produced, and it is certainly a
18 relevant matter that this board has got a continuing
19 concern.

20 Secondly, there's a matter as to what substantive
21 effect that had on the positions of the parties in NRC's
22 proceedings, which also the board has an interest in
23 pursuing. So those are the two areas.y

24 MR. LANPHER: Judge Gleason, addressing the second
25 area first -- this is Mr. Lanpher again -- that what

1 substantive effect -- it is our position that that is
2 clearly moot given your order or ruling last week that
3 you're going to issue sanctions.

4 Now unless -- has the board reconsidered that
5 ruling, sir?

6 JUDGE GLEASON: No, the board hasn't reconsidered
7 it. The board has decided that we will not proceed further
8 with the realism contentions --

9 MR. LANPHER: Okay. Well, I just wanted to --

10 JUDGE GLEASON: Excuse me --

11 MR. LANPHER: Thank you, Judge Gleason.

12 JUDGE GLEASON: Excuse me a minute. The only
13 matter still to be decided is the basis on which such
14 contentions will be disposed of. So that thing is clear.

15 It is also decided that it will retain
16 jurisdiction over the controversy which has been produced by
17 the late production of these Suffolk County emergency plans.

18 MR. IRWIN: Judge Gleason?

19 JUDGE GLEASON: Yes.

20 MR. IRWIN: Mr. Irwin. I'd like to briefly
21 respond to a couple of matters Mr. Lanpher stated or
22 addressed, and Mr. Sisk would also like to add a couple of
23 things. Then we could perhaps move on to the EBS matter.

24 JUDGE GLEASON: All right.

25 MR. IRWIN: LILCO's counsel have examined all of

1 our files from the period 1982 on. As Mr. Lanpher
2 indicated, and as I have said earlier on this record, we did
3 receive snippets of this plan in 1982-83. None of them,
4 however, were indicated to be part of a plan. Indeed, the
5 existence of these documents as separated pieces of paper
6 suggest to us that they were not part of any larger
7 document.

8 Secondly, I am morally certain that had a document
9 of this size and nature arrived here or on LILCO's premises
10 at that time, it would have taken us no longer to perceive
11 its importance at that period than it took us this time.

12 Addressing Mr. Lanpher's second point concerning
13 the effect of the absence of this document, and perhaps
14 other related documents during this previous four years, I
15 can't say more clearly than to state that it would have made
16 a difference between shooting in the dark and shooting fish
17 in a barrel to LILCO.

18 Every time we asked the county or state questions,
19 we were told there is no plan, there is nothing we can tell
20 you. Had we had this document, we could have taken them
21 right to name, rank, serial number, telephone number,
22 address, and job description.

23 We have a plan to tells how to respond; they had
24 just given us the document that tells us who to call.
25 That's what would have made a difference four years ago.

1 That's why we're interested in how it came not to be
2 produced, and other related issues.

3 Mr. Sisk may have something to add on that.

4 MR. SISK: Judge Gleason, the only thing I would
5 like to address is the subject matter or the scope of
6 discovery that we would like to proceed with at this point.
7 It encompasses certainly the reasons why the Suffolk County
8 emergency operations plan was not produced previously, but
9 it also involves some related matters.

10 Such as the degree and timing of the state
11 knowledge of the Suffolk County emergency operations plan,
12 state plans on which this Suffolk County plan may have been
13 based or derived, knowledge of state personnel in this
14 particular plan and other related state plans, and frankly,
15 some additional documents that we suspect have not been
16 produced by the state.

17 We sent one of those to the board in our recent
18 filing, which was a memorandum from Mr. Germano, who we've
19 noticed for deposition. That document is something we did
20 not obtain in discovery, and was clearly encompassed in our
21 discovery request.

22 So we really believe that the non-production that
23 has been material over the course of this proceeding
24 certainly is keyed on a Suffolk County emergency operations
25 plan, but it includes other documents, including state

1 documents.

2 There is one final area that relates to this, and
3 that is that we have reasons to believe that there have been
4 some misleading or inconsistent statements made on the
5 record, and in various filings with this board in the
6 proceeding, which we would like further discovery on.

7 Our further discovery may lead us to believe that
8 in fact the statements were true, but they may lead us to
9 believe that in fact some of them were not. I make
10 reference in particular to some statements in the affidavit
11 filed by a panel of the state radiological emergency
12 preparedness group, on which the board previously relied in
13 denying LILCO summary disposition.

14 We believe that we have found some things already
15 that are at best less than completely accurate in that
16 affidavit, and we want to continue to probe those matters as
17 well.

18 All of these really go to the way the proceeding
19 has been conducted, and how it has impaired LILCO in
20 proceeding in the case. That's all I really wanted to say.

21 JUDGE GLEASON: Let me say, Mr. Sisk, as I've
22 tried get clear in my responses to Mr. Lanpher, the issue
23 that we're involved in here is whether the discovery
24 requirements have been complied with in this proceeding.

25 This does not only involve in my view the

1 integrity of NRC's procedural rules of practice, but it does
2 involve substantive matters concerning the rights and
3 responsibilities of parties in these proceedings.

4 We have a responsibility -- this board has a
5 responsibility to resolve that matter, to the extent that an
6 administrative board can resolve it. If we are unable to
7 resolve it, we may have to refer the matter to other levels
8 of the NRC. But that is the principal reason we are
9 retaining jurisdictions.

10 We are not attempting to draw a line around the
11 kind of questions of the documents we asked. We are drawing
12 a line around the purpose for which this inquiry is being
13 authorized, if it is to be authorized.

14 All right. Could we hear from the staff, please?

15 Hello?

16 MS. YOUNG: This is Mitzi Young.

17 JUDGE GLEASON: Yes, Ms. Young.

18 MS. YOUNG: The staff has a position in this
19 filing response to the board's order during the telephone
20 conference, that these contentions are right for a dismissal
21 on procedural grounds at this time.

22 Consistent with that, the staff views LILCO's
23 request for further deposition and realism issues as being
24 far beyond the scope of what is necessary to complete this
25 proceedings at this time.

1 Basically this proceeding involves the remand
2 issue of EBS, school bus drivers, hospital evacuation time
3 estimates, and there the realism contention. If the board
4 imposes sanctions which would dismiss the realism
5 contention, the staff believes that it is only necessary to
6 retain jurisdiction over discovery of the non-realism
7 issues, ie, EBS, the evacuation time estimates, or school
8 bus drivers.

9 At this point, the only issue that discovery is
10 open on is the EBS issue. To that extent it would appear it
11 is only appropriate to retain jurisdiction over discovery of
12 the EBS issue.

13 MR. IRWIN: Judge Gleason, this is Mr. Irwin.
14 Maybe we need to address that. As I think the board
15 understands, LILCO agrees with the staff that the realism,
16 best efforts issue is resolved, and LILCO is not interested
17 in pursuing further discovery on that issue.

18 What LILCO is interested in discovering is the
19 reasons and specifics of how the county's emergency
20 operations plan was not produced before now and related
21 matters. It does not go to realism. We concur with the
22 staff that that issue is closed.

23 (Continued on next page.)

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1 JUDGE GLEASON: Ms. Young?

2 MS. YOUNG: Yes, Judge Gleason.

3 JUDGE GLEASON: Do you not consider it important
4 in the Staff's view to see whether the discovery processes
5 in this proceeding have been accurately complied with?

6 MS. YOUNG: Can you give me a moment, Judge
7 Gleason?

8 JUDGE GLEASON: Yes.

9 (Pause)

10 MS. YOUNG: Judge Gleason?

11 JUDGE GLEASON: Yes, Ms. Young.

12 MS. YOUNG: Basically it's the Staff's position
13 that there is enough of record at this point to justify the
14 sanction of dismissal of the contention.

15 JUDGE GLEASON: That's not the question I asked
16 you.

17 MS. YOUNG: Certainly Staff has no objection to
18 the Board where necessary arming itself with additional
19 information or evidence which would justify the imposition
20 of other sanctions.

21 JUDGE GLEASON: All right. I think we've had
22 enough discussion on this. Can we get into the realism
23 issue? I'm sorry. Mr. Zahnleuter?

24 MR. ZAHNLEUTER: Yes, Judge Gleason. I'm here.

25 JUDGE GLEASON: I don't want to ignore you.

1 MR. ZAHNLEUTER: I was hoping that you would give
2 me an opportunity to say something.

3 JUDGE GLEASON: All right. Please proceed.

4 MR. ZAHNLEUTER: Earlier in this conference call I
5 believe you told Mr. Lanpher that the issues in this
6 proceeding now were why the county emergency operations plan
7 was not produced earlier and what the substantive effect
8 that might have had on the parties might have been.

9 And after Mr. Sisk's discussion, I think you said
10 that the issue would be whether the discovery requirements
11 have been complied with in this proceeding.

12 May I ask, am I correct in understanding that the
13 issue that is now the subject of this controversy, or the
14 issue that is before the Board, is that issue that matters
15 that do not encompass substantive discovery items such as
16 the nature and scope of the Governmental response are not
17 encompassed within these issues?

18 JUDGE GLEASON: That's right. That's correct.

19 MR. ZAHNLEUTER: I'd like to mention a few things
20 about several people that LILCO has included in LILCO's list
21 for deposition.

22 For example, Karim Rimawi is a state employee who
23 LILCO has listed as a deponent. And in the Notice of
24 Deposition dated June 1, LILCO has stated that the subject
25 matter of the deposition will be matters concerning the New

1 York State radiological emergency preparedness plan,
2 included but not limited to dose assessment resources and
3 capabilities of the Department of Health and plans for the
4 ingestion pathway EPZ for nuclear power plants located in
5 and within 50 miles beyond the boundaries of New York State.

6 Another, Marvin Silverman. His deposition subject
7 is to be matters concerning --

8 JUDGE GLEASON: Excuse me, Mr. Zahnleuter. What
9 are you reading from?

10 MR. ZAHNLEUTER: LILCO's notices of deposition.

11 JUDGE GLEASON: All right. Okay.

12 MR. ZAHNLEUTER: They're dated June 1.

13 JUDGE GLEASON: Right.

14 MR. ZAHNLEUTER: And they were the ones that were
15 served on Mr. Germano, Dr. Rimawi, Mr. Davidoff and Mr.
16 Silverman.

17 JUDGE GLEASON: I understand. Go ahead.

18 MR. ZAHNLEUTER: And my basic point is that the
19 subject matters of these depositions as noticed by LILCO is
20 not the county emergency operations plan or issues involving
21 substantive effect of not having that plan available to the
22 parties or when it was not produced.

23 The issues, as LILCO has defined them in notices
24 of depositions relate to substantive matters concerning the
25 scope and nature of the state's response.

1 And as I understand it, the issue that the Board
2 is now interested in, and the only live issue, is not what
3 LILCO intends to depose these people on.

4 So I would submit that the depositions of Mr.
5 Germano, Dr. Ramawi, Mr. Davidoff and Mr. Silverman are not
6 appropriate in this proceeding for matters involving the
7 county emergency operations plan. LILCO has not even sought
8 them for that purpose.

9 JUDGE GLEASON: Well, Mr. Zahnleuter, the
10 Applicant can speak for himself. But I think his notice of
11 depositions, which covered a much broader area than the area
12 we are involved in right now, went out before the Board
13 indicated what its intent was going to be.

14 But I'd rather let Mr. Irwin speak for himself.
15 Mr. Irwin?

16 MR. IRWIN: Thank you, Judge Gleason.

17 With the resolution of the realism and best
18 efforts issues, the scope of the depositions of these state
19 employees would be truncated. It will relate to their
20 knowledge of the existence of county plans, state plans,
21 related items.

22 We have reason to believe, for instance, that Mr.
23 Ramawi is very knowledgeable about state plans, including
24 the Rockland County compensating plan which was used in
25 connection with Indian Point Plant in 1983.

1 We also have reason to believe that Mr. Ramawi was
2 the recipient of the Brookhaven National Laboratory
3 emergency plan, which was revised in 1987, and which would
4 have been included within the scope of LILCO discovery
5 requests but which was not produced to LILCO.

6 Dr. Axelrod is encyclopedically knowledgeable
7 about state policies and plans for emergency plans.

8 Dr. Davidoff is similarly knowledgeable. Dr.
9 Davidoff indeed executed an affidavit in the Fall of 1982.

10 JUDGE GLEASON: All right. I think you made your
11 point. Mr. Zahnleuter?

12 MR. ZAHNLEUTER: Judge Gleason, if I may, I think
13 that this furthers my point, because the issue, as I
14 understand it, is not knowledge about state policies and
15 state plans and Mr. Davidoff's affidavit in 1982 for the
16 Rockland emergency operations plan. It's the Suffolk County
17 emergency operations plan, why it was not produced, and the
18 substantive effect on the parties.

19 Mr. Irwin, as he represents now, intends to probe
20 into subjects that don't shed any light on the county
21 emergency operations plan. As I represented in the hearing
22 last week on June 3rd, this is the county emergency
23 operations plan, that the state has not prepared, and it's a
24 dispute between the county and LILCO.

25 JUDGE GLEASON: No, it's really a dispute that

1 involves the State of New York, as well.

2 MR. ZAHNLEUTER: I have not seen any evidence yet
3 of any reason why it should involve the State of New York.
4 LILCO has done nothing to show that except to issue notices
5 of depositions which relate to subjects other than that.

6 JUDGE GLEASON: I think you will find in
7 depositions a lot of statements, or some statements at
8 least, from witnesses from the State of New York declaring a
9 lack of knowledge of any kind of plan involving these areas.
10 And they are talking about state plans. So in any event, I
11 would like to resolve this issue by saying that the
12 depositions, if they are ordered by the Board, will be
13 complying to -- it should be complying. You can make your
14 objections at that time that the Board orders the
15 depositions -- to exploring the knowledge and lack of
16 knowledge concerning this additional plan that's been
17 produced.

18 So I think that ought to take care of that. All
19 right. Is there any other comments before the Board? Well,
20 let's get into the --

21 MR. IRWIN: Judge Gleason?

22 JUDGE GLEASON: Yes.

23 MR. IRWIN: This is Mr. Irwin. Let me make sure I
24 understand your last comment.

25 JUDGE GLEASON: Right.

1 MR. IRWIN: You said that the depositions, if they
2 are ordered, would be confined to the plan which has just
3 been produced. I take it that you were indicating that they
4 would be confined to matters relating to the production of
5 information about this plan and other related planning
6 documents on the county and state level but would not
7 include matters relating to the realism/best effort
8 substantive argument. Is that correct?

9 In other words, it would not be limited
10 specifically and solely to the Suffolk emergency operations
11 plan as the sole document?

12 JUDGE GLEASON: Well, you know, it's very hard to
13 make the decisions based on these questions without seeing
14 them in advance. But what we have indicated here is that the
15 issue that is being pursued is the question of the late
16 emergence of this state-county emergency plan.

17 Now, any questions that have been raised in the
18 deposition ought to relate in one way or another to that
19 plan.

20 MR. LANPHER: Judge Gleason, this is Mr. Lanpher.
21 I want to just put one other thought on the record.

22 It is our understanding that the allegations are
23 made that that plan should have been produced in the 1982-83
24 discovery period, and there have been a lot of statements to
25 the effect that it was not produced.

1 My silence does not concede that that is in fact
2 the case. We've been over that before. The questions, as
3 we understand it, have to relate to the production or
4 nonproduction or efforts to produce that plan during that
5 earlier discovery period, 1982-83, and the people who would
6 be relevant to that.

7 And I would add, by the way, Judge Gleason, that
8 it is absolutely absurd for Mr. Halpin, for instance, to be
9 added to this list of depositions.

10 Mr. Halpin, as you know, is the present Suffolk
11 County Executive. He assumed that position on January 1 of
12 this year. He was not a County -- in no position with the
13 County. I think he was in the County Legislature earlier,
14 or the State Legislature, excuse me, early in the 1980s.

15 He has no relevance whatsoever to the scope that
16 you have defined in this proceeding. But these are matters
17 that as you indicated before can be worked out.

18 JUDGE GLEASON: Let me go back once more to the
19 area that this additional discovery is to pursue if it is
20 authorized.

21 There has been a plan that has been produced
22 through discovery. It has surfaced within the last two or
23 three weeks.

24 This does raise an issue as to whether there are
25 other plans that should have been produced and have not been

1 produced. There are modifications of those plans.

2 Certainly those kinds of questions are relevant to
3 this proceeding that we are involved in here, because it
4 raises once again the issue as to whether the discovery
5 processes have been complied with.

6 So I don't want to just narrow this thing in such
7 a circumscribed manner that it just allows people to say
8 yes or no in a certain issue which doesn't help the overall
9 elevation of the issue and illumination of the issue so we
10 can decide things if we're called upon to decide them.

11 MR. BROWN: Judge Gleason, this is Herbert Brown.
12 I take issue, and I raise a more fundamental question. Your
13 blanket statement that this is a discovery matter of
14 relevance to this I am not sure follows logically or in fact
15 is legally sound.

16 JUDGE GLEASON: Well, that's not the first time
17 you've made that kind of an allegation, Mr. Brown. So why
18 don't you support it?

19 MR. BROWN: Well, it was a question I raised, and
20 not an allegation. I think the words are important, too.

21 JUDGE GLEASON: Well, maybe. Go ahead.

22 MR. BROWN: Thank you. The two questions you've
23 said that you felt should be addressed is why not produce?
24 There is no probable cause to suggest it wasn't produced.
25 If someone wants to make an allegation, they ought to stop

1 dancing around here.

2 This Board has not been constituted to become an
3 inquisitor or to take LILCO's witch hunt and permit LILCO to
4 run after this matter.

5 The simple point before the Board does not include
6 why something wasn't produced when there have been
7 representations on the record by this county, as Mr. Lanpher
8 has made repeatedly and have been made in writing. So there
9 is no probable cause to go forward.

0 Point two, when you stated that the following
11 question would be, what substantive effect it had on the
12 positions of the parties, what substantive position might
13 have been as a result of the production or nonproduction of
14 something five years ago is a matter even those of us with
15 crystal balls would be somewhat reluctant to engage in.

16 And I can say with some confidence that no one has
17 a crystal ball on this matter. I truly don't think there is
18 a basis for any jurisdiction for this Board to be looking
19 into these matters. If there is an allegation made by
20 somebody with respect to the conduct, or the nonproduction,
21 then they ought to come forward with evidence. This is a
22 legal proceeding. It's a board or regulatory commission of
23 the United States Government under the Constitution.
24 Innuendo and wild statements by LILCO are not the basis to
25 go forward.

1 If this Board wants to buy those things and can
2 show a nexus to its legal authority, then it ought to put it
3 forth. I know of none and I would expect this Board to give
4 the parties in clear writing a reason why it is going to
5 continue what is obviously in our mind LILCO's witch hunt.

6 JUDGE GLEASON: Are you finished, Mr. Brown?

7 MR. BROWN: Yes.

8 JUDGE GLEASON: All right. Let's get onto the EBS
9 issue.

10 Is Mr. Miller there?

11 MR. LANPHER: Yes, he is. He's across the room.
12 Just a moment.

13 (Pause)

14 MR. MILLER: Okay, Judge Gleason. I'm here.

15 JUDGE GLEASON: All right.

16 MR. MILLER: What's the question?

17 JUDGE GLEASON: If you'll wait a minute, I'll
18 present it to you.

19 In the filing on June the 9th of a letter
20 addressed by the Applicant on June the 9th, in which there
21 is a request for the Board to participate in resolving a
22 discovery impasse, an allegation was made by LILCO that it
23 was unable to meet its discovery deadline for the EBS issues
24 because of a non-cooperation on the part of the county in
25 producing witnesses to be deposed.

1 That is the issue as I see it. Do you want to
2 frame the issue a little bit more, Mr. Sisk? Or do you want
3 him to respond in that vein?

4 MR. SISK: Judge Gleason, I perhaps should,
5 because there has been one additional communication with the
6 county and state since that conference call on June 10.

7 On June 13, I believe, I sent a letter to Mr.
8 Mitchell for the county and Mr. Zahnleuter, indicating that
9 basically the deponents requested by LILCO and EBS had not
10 been produced, that the state and county had belatedly
11 raised a new argument that they did not believe discovery by
12 LILCO was authorized by the Board's previous order.

13 In that letter I stated that I did not believe it
14 was incumbent on LILCO to obtain an order from the Board in
15 order to obtain discovery and that we would simply address
16 this in our filing on Monday, June 20, rather than trouble
17 the Board again.

18 Basically, Judge Gleason, the position we will be
19 taking in our filing coming up this Monday is that the only
20 admitted contention on EBS at this stage of the proceeding
21 relates strictly and solely to whether the EBS system based
22 on WPLR adequately covers the EPZ, so that the public can
23 hear it and radios can be activated.

24 We will be filing on Monday not simply a brief but
25 a motion for leave to file a motion for summary disposition,

1 and accompanying motion, in which we will ask the Board to
2 resolve the issue of coverage, since we have now shifted to
3 the state-based EBS, including WCBS and including WALK
4 Radio, which was previously litigated, and that therefore,
5 system coverage is no longer an issue.

6 We will further suggest that had the deponents
7 from Suffolk County and the state that we had requested been
8 produced, as they were not, that any evidence we could have
9 obtained from them would have simply confirmed our knowledge
10 that there is adequate system coverage and technical
11 capability and adequacy of the state system.

12 The only other issues that we can conceive of
13 being raised at this juncture in the proceeding given the
14 prior decision on WALK and the lack of any issue on coverage
15 would be issues that relate to realism.

16 The Board now intends to dispose of that issue
17 definitively, and we think there is no further issue
18 requiring hearing.

19 That will be our position Monday, Judge Gleason.

20 JUDGE GLEASON: Well, are you in effect saying
21 that no further discovery is required under the EBS issues,
22 and that is one of the positions you will be taking on
23 Monday?

24 MR. SISK: Unless the Board rules to the contrary
25 that further evidence is needed as to coverage and technical

1 adequacy of the EBS system, that is the position we'll be
2 taking.

3 JUDGE GLEASON: All right.

4 MR. SISK: We will also be saying that had the
5 deponents been produced by the state and county, it should
6 be presumed that the evidence would be consistent with
7 LILCO's position, because they declined to produce them.

8 JUDGE GLEASON: All right. Well, then, we'll just
9 wait until your filing on Monday to see where that stands.

10 MR. SISK: I should note that the deponents, Mr.
11 Randolph, Mr. Silverman and maybe one or two other
12 individuals that were identified specifically for EBS, are
13 not on the list of deponents that we gave the Board on
14 Wednesday.

15 JUDGE GLEASON: All right. I'm sorry to bother
16 you, Mr. Miller. Now, the Board is going to convene here,
17 go on the mute button, and we'll be back to you with our
18 decision.

19 (Whereupon, the Judges went off the record to
20 confer, from 11:45 a.m. to 11:57 a.m.)

21 JUDGE GLEASON: All right, gentlemen. This is
22 Judge Gleason, and we're back. Is everybody in attendance?

23 MR. IRWIN: This is Mr. Irwin from LILCO.

24 MR. LANPHER: Mr. Lanpher.

25 MR. HIRSCH: Mike Hirsch for FEMA is here.

1 MR. ZAHNLEUTER: This is Richard Zahnleuter.

2 MS. YOUNG: Young, for the Staff.

3 JUDGE GLEASON: You know, I guess I omitted Mr.
4 Hirsch. Did you want to say anything concerning this
5 matter?

6 MR. HIRSCH: No, I don't.

7 JUDGE GLEASON: All right. Fine. I thought so.
8 Gentlemen, the Board has considered your various
9 arguments. The discovery, as you know, is a process which
10 is essential to the conduct of prompt and fair judicial
11 proceedings.

12 As we indicated, when information of the State-
13 Suffolk County emergency plan surfaced several weeks ago, we
14 viewed that development very seriously. And we still do.

15 In the light of that development, and
16 notwithstanding the responses or explanations made by the
17 Intervenors, we decided then and still decide to retain
18 jurisdiction over the issue as to whether that emergency
19 plan or other plans should have been produced during the
20 discovery process.

21 And in that connection, we want to point out that
22 our interest does not only cover the 1982-83 period, but
23 discovery requirements up to and including the present time.

24 Therefore, the Board grants LILCO's motion to have
25 the Intervenors produce deponents listed on Page 26 of its

1 June 15th brief, also compels answers to its third set of
2 interrogatories, by June 21st.

3 If the individuals are not produced voluntarily,
4 the Board will sign subpoenas for their attendance.

5 That is our decision, gentlemen. Thank you very
6 much.

7 (Whereupon, at 12:00 Noon, the telephone
8 conference was concluded.)

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1 REPORTERS' CERTIFICATE

2
3 DOCKET NUMBER: 50-322-OL-3

4 CASE TITLE: Long Island Lighting Company (Shoreham Nuclear
Power Station Unit 1)

5 HEARING DATE: June 10, 1988 Teleconference

6 LOCATION: Bethesda, Maryland

7
8 I hereby certify that the proceedings and evidence
9 are contained fully and accurately on the tapes and notes
10 reported by me at the hearing in the above case before the
11 UNITED STATES NUCLEAR REGULATORY COMMISSION.

12
13 Date: June 17, 1988

14
15
16 *Margaret Vally*
17 _____
Official Reporter

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