

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
ORIGINAL

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IN THE MATTER OF:

DOCKET NO:

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power Station,  
Unit 1)

TELEPHONE CONFERENCE

LOCATION: WASHINGTON, D. C.

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## UNITED STATES OF AMERICA

## NUCLEAR REGULATORY COMMISSION

## BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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: In the Matter of: :  
: LONG ISLAND LIGHTING COMPANY : Docket No. 50-322-OL-3  
: (Shoreham Nuclear Power Station, :  
: Unit 1) :  
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Ace Federal Reporters, Inc.  
Room 402  
444 North Capitol Street, N.W.  
Washington, D. C.

Friday, June 20, 1986

The telephone conference in the above-entitled matter  
convened at 10:00 a.m.

## BEFORE:

JUDGE MORTON B. MARGULIES, Chairman  
Atomic Safety & Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D. C.

JUDGE JERRY R. KLINE Member  
Atomic Safety & Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D. C.

JUDGE FREDERICK J. SHON, Member  
Atomic Safety & Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D. C.

-- continued --

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## 1 APPEARANCES:

2 On behalf of Long Island Lighting Company

3 DONALD P. IRWIN  
4 Hunton & Williams

5 JAMES N. CHRISTMAN

6 LEE B. ZEUGIN

7 KATHY E. B. McCLESKEY

8 On behalf of Suffolk County

9 LAWRENCE COE LANPHER  
10 Kirkpatrick & Lockhart

11 HERBERT H. BROWN

12 KARLA J. LETSCHE

13 On behalf of the State of New York

14 FABIAN PALOMINO

15 On behalf of NRC Staff

16 BERNARD BORDENICK

17 STEVE LATH

18 EDWIN J. REIS

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

JUDGE MARGULIES: Good morning.

This is Judge Margulies. With me this morning are Judges Kline and Shon.

As you know, we have scheduled to hear Suffolk County's -- just one minute, let me get my papers in order.

(Pause.)

We have scheduled for hearing this morning LILCO's motion to implement Board Order of June 11th, 1986. It was received by the Board in the early afternoon of June 18th. As you know, we contacted all the parties that day to set up this conference to hear the response.

This morning at approximately 9:10 a.m., we received a document entitled "Suffolk County Preliminary Reply to LILCO's Motion to Implement Board Order of June 11th, 1986."

We will take up both documents this morning.

Before we get started, I would like to take appearances for the record. We will start with the Applicant, then go to the Intervenor and then to Staff and FEMA.

Would you please start with the Applicant.

MR. IRWIN: Thank you, Judge Margulies. My name is Donald Irwin. I am with the firm of Hunton & Williams, representing Long Island Lighting Company.

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1 Present with me in my office are my partner James  
2 Christman and also two other lawyers from our firm, Lee  
3 Zeugin and Kathy McCleskey.

4 MR. LANPHER: This is Lawrence Coe Lanpher,  
5 representing Suffolk County.

6 With me are Herbert H. Brown and Karla  
7 J. Letsche.

8 MR. PALOMINO: This is Fabian Palomino. I am  
9 representing the State of New York.

10 MR. SCHER: This is Martin A. Scher, representing  
11 Suffolk County.

12 MR. BORDENICK: Good morning. This is Bernard  
13 Bordenick. Is Steve Latham on the call?

14 JUDGE MARGULIES: My office received a call  
15 yesterday at 3:45 p.m., in which Mr. Latham stated that he  
16 had provided his views to Mr. Lanpher.

17 Is that correct, Mr. Lanpher?

18 MR. LANPHER: Well, I spoke with Mr. Latham after  
19 he had talked with your office, Judge Margulies. Mr. Latham  
20 had indicated -- he did indicate to me his views on the  
21 procedural aspects, but that he also indicated that he had  
22 passed on, I guess to your Secretary, his objection to any  
23 attempt to convert this, in effect, to a prehearing  
24 conference, and that he would want to be heard in writing  
25 if that were the case.

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JUDGE MARGULIES: It is in the note from my secretary. She states:

One matter of grave concern, that the motion is an effort to have a prehearing conference by phone and a ruling on the elements stated in the motion which should have occurred at a prehearing conference and that he had also given his views to Mr. Lanpher.

Do we have any other appearances?

MR. BORDENICK: Yes, Judge Margulies. Bernard M. Bordenick, and also present with me is Edwin J. Reis. We represent the NRC Staff.

MR. GLASS: And Stewart M. Glass, from the Federal Emergency Management Agency.

JUDGE MARGULIES: We had hoped to set up a prehearing conference with as little difficulty as possible. We thought that if we left the matter to the parties and then they used their own resourcefulness, we would get an expeditious and satisfactory disposition.

We have attempted to do this in other proceedings and have obtained some very desirable results.

To the contrary, we are being faced with the very opposite. It has given rise to a flurry of motions. It is time-consuming, and it isn't getting us anywhere. We will attempt to resolve the problem today by means of this conference call.

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1 We have had an opportunity to read the motion of  
2 the Applicants and the reply, and the Board concludes that  
3 hearing a motion would not undo the integrity of the July  
4 8th conference and that there are matters here that are not  
5 premature.

6 I think at the outset we should state that we  
7 have determined to set up the prehearing conference for  
8 Tuesday, July 8th, in the Court of Claims, the New York  
9 State Court of Claims Building at Hauppauge, New York, the  
10 conference to commence at 9:30 a.m.

11 Is that satisfactory to all the parties?

12 MR. IRWIN: It is to LILCO, Judge Margulies.

13 MR. PALOMINO: It is to the State of New York.

14 MR. LANPHER: Judge Margulies, this is  
15 Mr. Lanpher.

16 It is not satisfactory to us. We are not going  
17 to commit that it is satisfactory because we don't know what  
18 the subsidiary rulings are.

19 It is satisfactory to us to have a prehearing  
20 conference on July 8th, as set forth in our reply filed this  
21 morning, to address the matters which are set forth in your  
22 July 11 memorandum, and to quote from that, you stated that  
23 it would be to schedule a prehearing conference to consider  
24 the matters that will be at issue, the procedures to be  
25 employed, and the setting of schedule as well as any other

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1 topics customarily reviewed before commencing a hearing.

2 And if that is the purpose of the July 8th  
3 prehearing conference, we are in agreement.

4 JUDGE MARGULIES: Do any of the parties have any  
5 problems with attending the conference on that date at that  
6 location?

7 MR. BORDENICK: This is Bordenick.

8 The Staff has no problem.

9 MR. GLASS: This is Glass, from FEMA.

10 No problem.

11 JUDGE MARGULIES: And I assume, Mr. Lanpher, you  
12 have no problem with the time and place of that conference?

13 MR. LANPHER: That is correct.

14 JUDGE MARGULIES: It is not the purpose of the  
15 Board to attempt to beat a dead horse. We were not able to  
16 have the conference yesterday. We are not looking to  
17 ascribe responsibility as to why it was not held, and we are  
18 going to proceed from there.

19 We are holding this conference on the motion on  
20 the short notice. It is imperative that we do so. I am  
21 going off on hearings for the next two weeks, and it was the  
22 only way we could reasonably review the motion.

23 Turning to page 5 of the motion, we have  
24 resolved Request No. 1.

25 Moving on to Request No. 2, that is resolved in

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1 terms of the time and place for the prehearing conference.

2 We next come to the matter of Applicants' request  
3 to file the contentions by not later than June 27th and that  
4 the Board should put the parties on notice that any  
5 contentions failing to meet the requirements of the  
6 Commission's regulations as supplemented by its order of  
7 June 6th are subject to summary rejection.

8 Could you amplify that, Mr. Irwin, in terms of  
9 what you mean by summary rejection?

10 MR. IRWIN: Yes, Judge Margulies.

11 What we intended there was to, I suppose, simply  
12 ensure that there was reasonably careful pleading, which I  
13 know from experience counsel on the other side are  
14 thoroughly capable of.

15 What we want to do is avoid extraneous issues.  
16 The Commission set out very clearly in its order that it  
17 didn't intend for this Board to be bothered or the parties  
18 to be put through having to try issues that were not of  
19 fundamental importance, that didn't reveal -- to use the  
20 Commission's words -- fundamental flaws in LILCO's plan.

21 And it just seems to me that while we may be  
22 talking about something which can be -- a problem which can  
23 be resolved by artful pleading and to take care of later at  
24 a summary disposition stage, at least there is a --  
25 consistent with the good faith pleading rules, it would

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1 seem to me that this would help to narrow and focus and make  
2 parties concentrate on the issues which they really think  
3 are important.

4 The reason I mention this is that this is  
5 intended to be a fairly focused proceeding, right on the  
6 exercise, not intended to be a reprise of some six to seven  
7 or actually nine months of hearings already reclaiming the  
8 emergency plan itself, and we see possibilities of that, and  
9 we don't think the Commission intended it.

10 That is really the focus that I was hoping for,  
11 Judge Margulies. I was going to say I don't intend for  
12 pleading of contentions to be a substitute for summary  
13 disposition of well-pleaded contentions, but I think it  
14 should serve as a threshold barrier and make lawyers start  
15 exercising their thought processes at the earliest possible  
16 moment.

17 JUDGE MARGULIES: Do the other parties wish to be  
18 heard on that?

19 MR. BROWN: For the County, this is Herbert  
20 Brown speaking, Judge Margulies.

21 We don't understand why, with your ruling setting  
22 the prehearing conference on July 8th, there is any further  
23 discussion to go on with respect to this item Mr. Irwin  
24 mentioned other than the fact that he wanted to explain his  
25 point at your request, and we don't object to him

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1 explaining such a point.

2 But your order of June 11th, which is not only  
3 customary, to use the words of the Board itself, which used  
4 "customary" at the bottom of page 1, but specifically the  
5 law of the case is that the setting of schedules will be at  
6 the prehearing conference.

7 We have relied on that. We intend to rely on  
8 that.

9 Mr. Latham isn't here. We don't -- have not  
10 conferred with Mr. Palomino as to the substance of this, and  
11 no matter how much conferring we want to do now with respect  
12 to what schedule makes sense, we do not have the  
13 information. That has been withheld arbitrarily from us by  
14 both FEMA and by LILCO.

15 Since the date of that exercise, we have  
16 tenaciously sought documentation exclusively in their hands,  
17 documentation which is imperative for us to have which they  
18 have deliberately withheld, and I am sure if we could see  
19 them now their faces would be red.

20 They have used this as a tactic and a device to  
21 deny us information to which we are entitled as a matter of  
22 equity and propriety, and any issue as to the setting of  
23 schedule should be done at the prehearing conference, with  
24 that equity weighing most heavily against those parties.

25 They have denied us that within their hands they

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1 knew we needed, and they have done it for the purpose of  
2 putting us at a disadvantage.

3 And when we get to the prehearing conference, we  
4 will have an opportunity hopefully by then to have all the  
5 information that they should have given us long ago, and we  
6 will be in a position to do what your June 11 order stated,  
7 the law of the case; namely, we shall have a prehearing  
8 conference to consider, among other things, "the setting of  
9 schedule."

10 And with that, I would respectfully urge this  
11 Board on behalf of the County that we terminate the  
12 conference and that the parties go on and act constructively  
13 without doing end runs around each other and the Board to  
14 cause this Board to invoke its jurisdiction over matters of  
15 frivolity.

16 And I submit that what Mr. Irwin has put before  
17 the Board now is a matter of simple frivolity that should be  
18 cast aside so that we can all get on to substantive  
19 matters.

20 JUDGE MARGULIES: What you are doing, Mr. Brown,  
21 is actually addressing the first sentence of 3(a) and saying  
22 that we should not set a date for filing of contentions?

23 MR. BROWN: Well, that is, yes, one way of  
24 putting it, sir. Another way is to say I am also addressing  
25 your June 11 order in saying that that is a properly

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1 conceived and properly issued document that all the parties  
2 should rest upon, and we have to do that, obviously, not  
3 only in light of it being the law of the case but in light  
4 of the practical reality that we don't have documentation,  
5 which has been arbitrarily and abusively withheld from us.

6 MR. IRWIN: Judge Margulies, this is Mr. Irwin.

7 I guess I am going to have to respond to that  
8 briefly.

9 First, Mr. Brown may rely on what he thinks is  
10 law of the case, but I think part of the experience of this  
11 case and also the construction of the Commission's  
12 regulations don't decree any kind of elaborate, eighteenth  
13 century formula for what constitutes the kickoff for a  
14 proceeding.

15 You have a functional approach to getting the  
16 parties together. The parties know each other intimately by  
17 now after five years of litigation. We don't need to have a  
18 formal ribbon cutting to start this proceeding.

19 And the Board's order was, it seems to me,  
20 proper. I agree with Mr. Brown on that. Where I take off  
21 from Mr. Brown is his attempt to delay by a month any action  
22 on that order, and I think that is the reason we ended up  
23 where we are today.

24 Secondly, with respect to the information  
25 available to the Intervenor, as Mr. Brown knows, Suffolk

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1 County, New York State, and the Town of Southampton had  
2 physically present at the exercise over 20 observers. That  
3 is significantly more than have been present from  
4 intervenors in any other exercise ever held. I believe it  
5 was probably at least twice, perhaps three times as many.

6 And secondly, they have the FEMA exercise reports  
7 since late April.

8 Third, they have received from Long Island  
9 Lighting Company at least two sets of documents and they  
10 will receive more by the end of this week.

11 The FEMA report, however, embodies the results of  
12 man-months of expert analysis of a one-day exercise, which  
13 over 20 people from these organizations observed firsthand,  
14 and it just strikes me as incredible that they claim that  
15 they cannot formulate the contentions based on the  
16 information presently available to them.

17 The rules provide for amendment of contentions  
18 upon good cause shown and if discovery reveals bases for  
19 amendment of those contentions, they are well able to file  
20 papers on short notice.

21 MR. BROWN: Judge Margulies, I would beg leave of  
22 the Board to reply just to the additional points raised.

23 This, needless to say, is the most serious  
24 hearing that has come along in this proceeding. As far as  
25 we are concerned, it is going to be the termination of the

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1 controversy and the Shoreham plant will indeed be confirmed  
2 not to operate, as was the denial of this Board earlier  
3 providing for the parties to learn the lessons.

4 What Mr. Irwin has put forward is just a series  
5 of cliches which don't address the fact that we have been  
6 denied the opportunity to have information which is critical  
7 and which must be so critical that he himself stated in his  
8 pleading he would give us within a week.

9 FEMA hasn't even put forth an excuse why it  
10 hasn't given us those.

11 Everything that has happened to this date, as the  
12 exchange of correspondence shows attached to our memorandum,  
13 is that we complied with the Board's order of June 11th, and  
14 the order of June 11th provided there be a prehearing  
15 conference this week -- or the week of July 7th.

16 The agreement upon the parties was there would be  
17 such a meeting only possible July 7th. There was no attempt  
18 to delay. The action of the parties was in conformance with  
19 what the Board stated, the week of July 7th.

20 We are prepared to go forward. We are prepared  
21 to implement the order. It is LILCO that seeks to undo the  
22 order.

23 JUDGE MARGULIES: Mr. Brown, do you have  
24 information available that would permit you to start the  
25 formulation of contentions?

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MS. LETSCHE: Judge Margulies, this is

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Ms. Letsche. I am here with Mr. Brown, and I can answer that question for you.

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And the answer is no. We have been requesting

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since a few days after the exercise the materials, which

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consists primarily of logs prepared by the FEMA evaluators,

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the FEMA simulators, and also by those members and the

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controllers and evaluators and also by people who were the

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"players" in the exercise; that is, the LILCO players,

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documenting what happened during the exercise.

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Those are the documents which we have yet to

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receive, and what they did -- we have the exercise scenario,

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which is a very sterile document, sort of in outline form of

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what was supposed to have happened, and we do have the

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exercise report. But we do not have the information which

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tells us what actually happened during the exercise.

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That is when pre-play messages were given to

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exercise players, what simulators told the players, when

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they told the players those things, and what the players did

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in response, and the players' response is obviously the most

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crucial aspect if we are supposed to be evaluating the

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results of the exercise and whether they passed all the

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tests.

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It is correct that we received from FEMA certain

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LILCO-generated documents during the exercise. Those were

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1 some of the documents that LILCO generated that were given  
2 to FEMA.

3 Clearly, LILCO has substantially more documents,  
4 since they have indicated they will give them to us next  
5 week. If we had had them sometime earlier than next week,  
6 we could have been reviewing them and putting them to use to  
7 help us figure out what happened in the exercise.

8 And Mr. Glass, on behalf of FEMA, has been saying  
9 for several months that all the FEMA-generated documents, of  
10 which we have none, are in his possession or in the  
11 possession of a FEMA contractor and that he would send them  
12 to us, but we have yet to receive anything.

13 So the short answer to your question is, no, we  
14 do not have adequate information to be able to draft  
15 specific and detailed contentions at this point.

16 MR. LANPHER: Judge Margulies, this is  
17 Mr. Lanpher.

18 MR. GLASS: Your Honor, this is Stewart --

19 MR. LANPHER: The mention that having 20  
20 observers, or whatever the number was, puts us in some sort  
21 of unique position to file contentions simply cannot go  
22 un rebutted.

23 I was one of those observers. Ms. Letsche was.  
24 Mr. Brown was.

25 At my location I was told to stay in a hallway.

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1 I could not overhear things that were going on.

2 Mr. Christman was there with me much of the  
3 time. I had to stay in the hallway. I was allowed to put  
4 my head around the door a couple of times.

5 I was not allowed to go in and hear the  
6 conversations that were going on. I would have very much  
7 liked to, but they had rules that were set up, and one of  
8 our agreements in being there as observers was that we were  
9 going to follow the rules. We didn't like the rules, but we  
10 had no choice.

11 But we just -- notwithstanding being there, there  
12 was immense quantities of critical data that we don't know  
13 anything about, and that is why we can't file contentions.

14 JUDGE MARGULIES: Let's hear from Mr. Glass.

15 MR. GLASS: Okay.

16 MR. BORDENICK: Stewart?

17 MR. GLASS: Yes.

18 MR. BORDENICK: Could I speak first? This is  
19 Bordenick for the Staff.

20 MR. GLASS: Certainly, go ahead.

21 MR. BORDENICK: First of all, I would like to  
22 object to the fact that we seem to have three spokespersons  
23 for the County. I think there should just be one. That is  
24 number one.

25 Number two, I think this whole argument about

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1 what documents they have gotten or haven't gotten is totally  
2 irrelevant. You have discovery after you have contentions.  
3 We don't have contentions yet. Therefore, they were never  
4 entitled to discovery.

5 The only documents that they need to prepare  
6 contentions is a document which they have had in their hands  
7 for quite some time, and that is the FEMA report.

8 I fully support Mr. Irwin's motion. I think we  
9 should go ahead and set a date today within which the County  
10 and the other Intervenor, if they still see fit, to file  
11 contentions. The Court can then rule on the contentions and  
12 a discovery schedule can be set, and then we can argue about  
13 what it is that they have gotten and what it is that they  
14 should get.

15 MR. IRWIN: Judge Margulies, this is Mr. Irwin.  
16 Let me supplement Mr. Bordenick's remarks in two brief  
17 respects.

18 They really go more to the utilization of  
19 information than to its entitlement at this stage.

20 I believe if Ms. Letsche will look more closely  
21 at the documents which she has been provided by FEMA, she  
22 will find that, first of all, the scenario that she has  
23 available to her and other ancillary documents provides  
24 detailed time lines of all the events which were to occur in  
25 the exercise.

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1           Only information which might be revealed by  
2 additional documentation would be departures from the time  
3 lines from that detailed scenario, and if those are  
4 significant, I am sure that significance can be adduced.

5           But the fact of the matter is that analysis of  
6 the documents they now have were put together minute by  
7 minute, and it is the plan of the scenario at all the  
8 locations where things were supposed to be taking place.

9           Secondly, Ms. Letsche says she does not have the  
10 LILCO player documents. That is simply inaccurate. The  
11 documents which FEMA produced -- and we know this because we  
12 redacted the names of the LILCO players from those  
13 documents -- are all of the LILCO player documents within  
14 FEMA's possession.

15           The only additional LILCO documents which they  
16 will receive from us will be duplicates of those player  
17 documents so that they can check FEMA's inventories against  
18 ours, and my preliminary review tells me that the  
19 correspondence is very, very close.

20           They have had these documents since mid-May, and  
21 there is just no excuse for Ms. Letsche to make those  
22 representations today.

23           JUDGE MARGULIES: Mr. Glass.

24           MR. GLASS: Yes, we produced and, within  
25 cooperation with LILCO, we arranged for the distribution of

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1 the scenarios. We sent the exercise objectives, the  
2 scenario. We provided the documents that were originally  
3 provided to us by LILCO. That alone took five days of my  
4 time and involvement. I even reviewed them this week to  
5 make sure that everything was sent out, and when we reviewed  
6 them, I found, I think, one set of documents -- when I say  
7 one set, about six pages -- that did not match up, and  
8 therefore there is another six pages that have to go out due  
9 to problems in xeroxing. That has taken, you know, another  
10 half day to do that.

11 We have limited resources. I have been going  
12 through the material. I have another workload. And we are  
13 not intentionally trying to provide any -- to cause any  
14 problem at that point.

15 We have produced documents. We are going to go  
16 through the other documents.

17 The documents that were utilized by the people  
18 that were putting together the exercise report were not  
19 available until such time that that report was finished and  
20 that that material was indexed and inventoried and then  
21 provided to my office. We are trying to get to it. We  
22 have, unfortunately, limited resources in this agency,  
23 including the fact that I stayed late last night to start  
24 xeroxing it personally. That is how we get some of these  
25 things done. And the xerox machine broke down.

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1 So we are not intentionally trying to delay  
2 anybody. As to the documents that have been produced and  
3 that will be produced, I agree with what Mr. Irwin has said  
4 that the documents clearly show the original proposed time  
5 line and any deviations therefrom.

6 The documents that are in our possession deal  
7 with those logs. We will be producing those.

8 The documents that we will not produce -- and I  
9 am sure will be subject to a discovery dispute, as they have  
10 been in other hearings, and then we have been upheld -- is  
11 we are not going to produce the individual exercise reports  
12 by the individual observers, and we have told Ms. Letsche  
13 this from the very beginning that we would object to their  
14 production.

15 And we are trying to move forward.

16 Since the Board is dealing with scheduling  
17 issues, I think there is a couple of points that FEMA should  
18 make clear at this point. FEMA has recently gone through a  
19 reduction in force. The present RAC chairman has been  
20 reassigned to other duties, and I do not know if he will  
21 even be available for testimony during this upcoming  
22 hearing.

23 The other gentlemen have commitments during  
24 August that would make it difficult for them to appear  
25 during August, and one of the gentlemen may be involved in

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1 the Seabrook proceeding. So we are going to have to see how  
2 that tracks as to his availability.

3 As to my own availability, I have been informed  
4 that due to cutbacks it is expected that all the regional  
5 counsel offices will be closed by October 1st. We have  
6 closed every regional counsel office except two already, and  
7 those people have been released.

8 So I think that some of these factors, when  
9 people are talking about scheduling, FEMA is willing to be  
10 available as possible for the Board's convenience, but the  
11 Board should be aware of some of the problems that FEMA is  
12 going through.

13 JUDGE MARGULIES: The Board will take a short  
14 time for discussion among themselves. Would you just please  
15 hold on?

16 (Discussion off the record.)

17 JUDGE MARGULIES: The Board is back now.

18 The Board has discussed Item 3(a), and the Board  
19 is going to rule upon it at this time.

20 The Board is not going to set a date for the  
21 filing of contentions at this time.

22 But the Board has reviewed the matter and  
23 believes and finds that the Intervenor's have sufficient  
24 information that they can start preparing contentions.  
25 There are enough public documents available and other

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1 documents that should allow the Intervenor to start the  
2 process of preparing contentions, and we will expect  
3 Intervenor to start preparing contentions as of today.

4 In terms of setting a date when the contentions  
5 are due, that will be done at the prehearing conference on  
6 July 8th.

7 MR. LANPHER: Okay, thank you, Judge.

8 MR. BROWN: Thank you, Judge.

9 JUDGE MARGULIES: Moving on to Item 3(b), in  
10 terms of filing responses to contentions, would the parties  
11 want to discuss that period?

12 Evidently, Applicants are willing to respond  
13 within a period of something like one week after the  
14 contentions are in.

15 MR. IRWIN: Judge, that is right as a general  
16 proposition. That presumes that there will be reasonable  
17 diligence exercised by the Intervenor in tailoring their  
18 contentions.

19 If we receive a 500-page document containing 1700  
20 subparts of 326 contentions, it may take a little longer to  
21 organize and dissect them, but I think with reasonably  
22 careful pleading by the Intervenor, which I think is  
23 contemplated by the Commission, a week should be about  
24 adequate for us.

25 JUDGE MARGULIES: As with the Intervenor, we

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1 won't set a scheduling date as of today for the period of  
2 time to respond to the contentions, but we will expect the  
3 Applicants also to work due diligently with the subject  
4 matter and be prepared to respond within a reasonable time.

5 Moving on to Item 3(c), all parties wishing to  
6 make a scheduling or procedural suggestion to do so no later  
7 than June 7th -- June 27th, this is a matter that  
8 Intervenors also believe that a response is warranted, that  
9 a date be set. Intervenors use a different date, and  
10 Intervenors do not provide for any response to the proposed  
11 scheduling or procedural suggestions to be made part of the  
12 agenda.

13 Do the parties want to address that, the  
14 difference between the proposals?

15 MR. IRWIN: Judge Margulies, this is Mr. Irwin.

16 We didn't receive Intervenors' motion until about  
17 9:30 or so, and the page in which a date has been proposed  
18 by them is unclear. I don't have a specific legible date.

19 MR. LANPHER: Don, this is Larry Lanpher.

20 We suggested Tuesday, July 1.

21 MR. IRWIN: I guess I don't have any specific --  
22 I don't have any difficulty with that. I think that it  
23 would be very useful for the parties to submit their  
24 proposals in advance of the prehearing conference in writing  
25 so the Board can focus on them.

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1 I also believe the responses before the  
2 prehearing conference would be useful so that both sides of  
3 any given proposal can be fleshed out.

4 I would make a couple of preliminary observations  
5 about what I understand to be the two threshold issues that  
6 intervenors have flagged: one, the Nassau Coliseum; and,  
7 second, the burden of going forward.

8 The Nassau Coliseum is a totally distinct issue  
9 from the exercise, on which no papers have been filed by  
10 anybody.

11 And, secondly, the proposal of somehow reversing  
12 or altering the normal burden of going forward was an  
13 argument presented by intervenors to the Commission in the  
14 pleadings that were decided in CL86-11, and the Commission  
15 did not accept intervenors' argument there. I take it that  
16 that argument has therefore been rejected by this body and  
17 the Commission.

18 JUDGE MARGULIES: Well, let's take up one thing  
19 at a time, and let's get back to the filing of  
20 recommendations as to what should be on the agenda, and  
21 let's resolve that first.

22 MR. LANPHER: Judge Margulies, this is  
23 Mr. Lanpher.

24 You started out this conference call with a  
25 concern that we are getting a lot of pieces of paper, and

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1 we heard what you said about trying to start drafting  
2 contentions, which we will do.

3 We left out the provision for reply because we  
4 assumed that if people put their positions reasonably  
5 clearly in their initial submissions on July 1 then we will  
6 have an opportunity for brief, pointed replies at the  
7 prehearing conference on July 8th, when we get together at  
8 the Court of Claims Building on Long Island, and we just  
9 felt that an additional round of papers was just too much.

10 Perhaps if, once the initial submissions come in  
11 and the Board reviews them, they want to call for replies,  
12 that is of course within your discretion, but I don't think  
13 we should build that into the schedule up front.

14 That was our reasoning on this.

15 MR. IRWIN: This is Mr. Irwin.

16 I don't object if Suffolk County doesn't wish to  
17 reply to our proposals. I sometimes find it a useful  
18 exercise to try to put my thoughts in writing, and I presume  
19 that the Board would not summarily reject any written  
20 proposals.

21 I don't see any need to get any more specific  
22 about replies than we have thus far unless the Board wants  
23 to.

24 JUDGE MARGULIES: The Board will consult on this  
25 and get back to you.

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(Discussion off the record.)

JUDGE MARGULIES: The Board is back.

The Board has determined that we will not need a submission and a reply. A single submission will be adequate.

We will set the date as July 1st, and the documents are to be in hand that date by the Board and by the other parties, whether by telecopy or delivered in hand.

MR. IRWIN: Thank you, Judge.

JUDGE MARGULIES: As I understand, that completes LILCO's motion.

Is that correct? Does LILCO have anything further on their motion?

MR. IRWIN: Judge, this is Mr. Irwin. We have gone down all the specific items in it, and we thank the Board and the parties for their time this morning.

We are concerned that this hearing be conducted in the fashion of the Commission order; namely, in an expedited way, and we appreciate the Board's help in furthering that.

JUDGE MARGULIES: I believe in terms of those other matters as to the Nassau Coliseum and such, if the parties want to propose that as an item to be discussed at the prehearing conference, they may do so.

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1 MR. IRWIN: Judge, let's take that up right now  
2 because I have a feeling it should not be taken up at the  
3 prehearing conference.

4 This Board's jurisdiction, under the Commission's  
5 order, extends to a hearing on the results of the exercise.  
6 I have enough experience with this proceeding to know that  
7 if the issues relating to the Coliseum are part of an agenda  
8 for July 8th, there will be demonstrations, there will be  
9 endless speeches, and the Board will become in an almost  
10 impossible situation in trying to explain how that is a  
11 different issue from the exercise, and I frankly think we  
12 ought to cauterize that right now.

13 MR. LANPHER: Judge, this is Mr. Lanpher.

14 Mr. Irwin is now doing exactly what Mr. Latham  
15 objected to and what we have objected to. He is trying to  
16 transfer this into the prehearing conference, and that is  
17 just not appropriate.

18 By the way, Judge Margulies, I just got a note  
19 that Mr. Ascher had a telephone failure and is no longer on  
20 the call. Just if that wants to be noted on the  
21 transcript. I don't know what the nature was.

22 But getting back to the point, the purpose of  
23 your July 1 submissions are to address, as your original  
24 order said, the various -- I quote again -- "the matters  
25 that will be at issue, the procedures to be employed, and

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1 the setting of schedule and any other topics customarily  
2 reviewed before the commencing of a hearing."

3 Now, Mr. Irwin wants to cauterize things, to use  
4 his words.

5 It is time to get this proceeding in the open.  
6 Let's put our views out there and have them addressed.

7 Mr. Irwin is raising specters of demonstrations  
8 and the like. The record ought to note that the  
9 proceedings that have been conducted in this case on Long  
10 Island have been models of decorum, and to raise such scare  
11 tactics I think is totally out of keeping and is  
12 reprehensible.

13 MR. IRWIN: Well, Mr. Lanpher, you may not have  
14 had a fish thrown at you. I have sat through a lot of  
15 evenings and afternoons of limited appearances. Your  
16 request for limited appearances in the motion Suffolk County  
17 filed.

18 I guess I don't want to rehash ancient history,  
19 but I do think that we should remember what the jurisdiction  
20 of this Board is and the scope of this proceeding is, and  
21 the Coliseum is not within it, and I think that can be dealt  
22 with summarily and ought to be.

23 JUDGE MARGULIES: Well, the reason that I raised  
24 it is that it was part of Suffolk County's reply, and if  
25 they don't want to discuss it, then there is no need to

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1 discuss it at this point.

2 MR. IRWIN: I agree, Judge Margulies. I think,  
3 though, that what Mr. Lanpher stated is he wants to postpone  
4 discussion for his July 1 paper in the first instance and  
5 then reclamation it orally at the July 8th prehearing  
6 conference, and the Board is going to find itself with a  
7 decision to be made then rather than now as to what seems to  
8 me to be a pretty clear matter.

9 And I think it ought to be better dealt with now,  
10 and if they wish to raise issues regarding the Coliseum,  
11 they can do so by a motion to admit a new contention.

12 MR. BROWN: Judge Margulies, this is Herbert  
13 Brown on a matter collateral, but related to the nature of  
14 the Coliseum issue. It is generic, but it pervades this  
15 proceeding, and I think it would be very useful if all the  
16 parties would share with us this concern and address it  
17 prior to setting their views down for a proposed agenda and  
18 indeed preparing for the meeting on July 8th.

19 What happened at the Coliseum is a material fact  
20 that affects the safety of the public as a result of LILCO's  
21 plan no longer having within it a central element, and there  
22 are other things that have happened and apparently are  
23 happening that in the most dispositive way affect the  
24 structure of LILCO's plan and the exercise that was held.

25 All of those are safety issues, and everybody,

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1 certainly on this telephone call, knows the fundamental  
2 principles that matters of safety relevant to an issue are  
3 those which the parties must take cognizance of and  
4 certainly the Board must be cognizant of because it would  
5 not be in anybody's interest to engage in fantasy and  
6 fiction as we go forward.

7           So what we would just like to leave the parties  
8 with, and indeed, respectfully, the Board with, is that the  
9 exercise that was held in several material, very important  
10 ways will not be relevant to the present situation, and how  
11 the parties go forward with that fact is something that we  
12 will have to look at.

13           One of the alternatives clearly, I think everyone  
14 recognizes, is to request or to seek or indeed for the Board  
15 sua sponte to issue a ruling which deems the exercise to  
16 have been irrelevant and overtaken by events.

17           There may be some other ways to treat this, too,  
18 but it is just something of such great importance we felt it  
19 should be mentioned in our pleading generally, and I thought  
20 it might be useful here to express it in even more generic  
21 terms.

22           JUDGE MARGULIES: The Board is going to confer at  
23 this point.

24           (Discussion off the record.)

25           JUDGE MARGULIES: The Board is back.

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1 We will not discuss the matter any further at  
2 this time, and the parties may take it up in their  
3 submission of the proposed agenda.

4 MR. IRWIN: Judge Margulies, this is Mr. Irwin.  
5 I appreciate that.

6 I was just wondering, if I could, Mr. Brown was  
7 being even more Delphic than usual in his last statement,  
8 and I am wondering if he could enlighten LILCO as to what  
9 further developments he has in mind for Long Island that he  
10 believes will be of relevance to just proceeding on the  
11 exercise.

12 JUDGE MARGULIES: Well, would this be appropriate  
13 to discuss with Mr. Brown apart from this conference call?

14 MR. IRWIN: Judge Margulies, I don't suspect that  
15 without the Board's presence I am going to get anything out  
16 of Mr. Brown except circumlocution.

17 MR. BROWN: Well, I object to that. I don't want  
18 the record to say I am a circumlocutionist. I am not going  
19 to reply on the merits of that, but I think we are  
20 degenerating here with that comment, your Honor, and I think  
21 the best thing would be to do if we click the phones off  
22 right now.

23 MR. IRWIN: Well, the problem, Judge Margulies,  
24 is that Mr. Brown made an observation which, if accurate,  
25 might have some bearing of potential future events for this

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1 hearing, and if he is intending to make it a part of his  
2 client's case, I think we are entitled to know what he is  
3 talking about.

4 JUDGE MARGULIES: I do think things are  
5 deteriorating, and there is no point to it. If Mr. Brown  
6 wants to raise something further, he will do so by his  
7 filing of July 1st, and Applicant will see it at that time.

8 Is there anything further?

9 MR. PALOMINO: No, your Honor.

10 MR. IRWIN: Nothing else from LILCO.

11 MR. LANPHER: No, sir.

12 MR. BORDENICK: Nothing from Staff.

13 MR. GLASS: Nothing from FEMA.

14 JUDGE MARGULIES: I believe the rulings are  
15 clear, and I will put out an order memorializing the nature  
16 of the rulings, but the parties should have no problem  
17 following the ruling.

18 Is there anything further?

19 VOICES: No.

20 JUDGE MARGULIES: There being nothing further,  
21 the conference call is concluded.

22 Thank you very much.

23 MR. PALOMINO: Thank you, your Honor.

24 (Whereupon, at 10:55 a.m., the telephone  
25 conference was concluded.)

CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the UNITED STATES NUCLEAR REGULATORY COMMISSION in the matter of:

NAME OF PROCEEDING: LONG ISLAND LIGHTING COMPANY  
(Shoreham Nuclear Power Station,  
Unit 1)

DOCKET NO.: 50-322-OL-3

PLACE: Washington, D. C.

DATE: FRIDYA, JUNE 20, 1986

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

(sig) Joseph R. Maggio  
(TYPED)

JOSEPH R. MAGGIO  
Official Reporter  
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