

ORIGINAL

UNITED STATES NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power
Station, Unit 1)

DOCKET NO: 50-322-OL-5
(EP Exercise)

LOCATION: HAUPPAUGE, NEW YORK

PAGES: 7049 - 7250

DATE: THURSDAY, MAY 21, 1987

TR-01

ACE-FEDERAL REPORTERS, INC.

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

8705280232 870521
PDR ADOCK 05000322
T PDR

NATIONWIDE COVERAGE

ewalsh 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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-5
(Shoreham Nuclear Power Station, : (EP Exercise)
Unit 1) :

-----X

Court of Claims
State of New York
State Office Building
Third Floor Courtroom
Veterans Memorial Highway
Hauppauge, New York 11788
Thursday, May 21, 1987

The hearing in the above-entitled matter reconvened, pursuant to notice, at 9:00 o'clock a.m.

ewalsh 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE:

JOHN H. FRYE, III, Chairman
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Bethesda, Maryland 20555
OSCAR H. PARIS, Member
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Bethesda, Maryland 20555
FREDERICK J. SHON, Member
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Bethesda, Maryland 20555

ewalsh 1

APPEARANCES:

2

On Behalf of Long Island Lighting Company:

3

DONALD P. IRWIN, ESQUIRE

4

KATHY E. B. McCLESKEY, ESQUIRE

5

LEE B. ZEUGIN, ESQUIRE

6

Hunton & Williams

7

707 East Main Street

8

P. O. Box 1535

9

Richmond, Virginia 23212

10

On Behalf of Suffolk County:

11

LAWRENCE COE LANPHER, ESQUIRE

12

SUSAN M. CASEY, ESQUIRE

13

Kirkpatrick & Lockhart

14

South Lobby, 9th Floor

15

1800 M Street, N. W.

16

Washington, D. C. 20036-5891

17

On Behalf of the State of New York:

18

RICHARD J. ZAHNLEUTER, ESQUIRE

19

Special Counsel to the Governor

20

Executive Chamber

21

Room 229

22

State Capitol

23

Albany, New York 12224

24

25

ewalsh 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

On Behalf of the NRC:

ORESTE RUSS PIRFO, ESQUIRE
U. S. Nuclear Regulatory Commission
7735 Old Georgetown Road
Bethesda, Maryland 20814

ewalsh 1

C O N T E N T S

2

Direct Cross Redirect Recross Voir Dire

3

7080 7055 7238 7059

4

7220 7231

5

JAMES C. BARANSKI

6

WILLIAM LEE COLWELL

7

LAWRENCE B. CZECH

8

GREGORY C. MINOR

9

JAMES D. PAPILE

10

FRANK R. PETRONE

11

* * * * *

12

EXHIBITS

13

Identified Admitted

14

New York Exercise Exhibit 1, 2, 3 7080

15

LILCO Exercise Exhibit 17 7082 7230

16

LILCO Exercise Exhibit 18 7085 7230

17

LILCO Exercise Exhibit 19 7100 7230

18

LILCO Exercise Exhibit 20 7189 7230

19

* * * * *

20

A. M. RECESS Page 7112

21

LUNCHEON RECESS Page 7160

22

P. M. RECESS Page 7198, 7230

23

24

25

ewalsh 1

P R O C E E D I N G S

2

(9:00 a.m.)

3

JUDGE FRYE: Good morning.

4

MR. IRWIN: Good morning, Judge.

5

MR. LANPHER: Good morning.

6

MR. PIRFO: Good morning.

7

JUDGE FRYE: Are we ready to begin?

8

MR. LANPHER: I would like to make just one

9

brief announcement, that due to some developments last

10

night, for personal reasons, Mr. Zook will no longer be a

11

member of the panel. And, I informed the parties before the

12

start of today's proceeding.

13

JUDGE FRYE: Right. And, the Board I would add

14

that we are aware of the situation.

15

We owe you a ruling with regard to the

16

qualifications then of Dr. Colwell. And, we conferred on

17

that last night and determined to grant LILCO's motion.

18

We think Dr. Colwell is eminently qualified but

19

not on this particular topic.

20

MR. LANPHER: Well, Judge, I would like to

21

pursue some redirect voir dire, then.

22

JUDGE FRYE: All right.

23

MR. LANPHER: I had no opportunity yesterday.

24

We had legal argument, and we have a right to put on the

25

record why we believe he is qualified.

ewalsh

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. IRWIN: With all respect, Judge Frye, Mr. Lanpher's time I think to request that was prior to the Board's ruling. I know that he mentioned yesterday that he might like to pursue it but he never perfected his request.

MR. LANPHER: I made very clear -- I will get the transcript out if you would like, Judge Frye, from yesterday --

JUDGE FRYE: Well, I'm inclined to agree with Mr. Irwin, but we will let you pursue it briefly so you can get it in the record.

Whereupon,

JAMES C. BARANSKI,
WILLIAM LEE COLWELL,
LAWRENCE B. CZECH,
GREGORY C. MINOR,
JAMES D. PAPILE
and
FRANK R. PETRONE

resumed the witness table and, having previously been duly sworn, were further examined and testified as follows:

REDIRECT EXAMINATION

BY MR. LANPHER:

Q Dr. Colwell, have you ever been involved in exercises of emergency response personnel?

A (Witness Colwell) Yes, I have.

ewalsh 1

Q And, was that involvement related to the
2 development of scenarios for emergency response exercises?

3 A It was.

4 Q Has it included the development of objectives?

5 A Yes.

6 Q Have you attended emergency response exercises?

7 A I have.

8 Q Have you evaluated such exercises?

9 A I have.

10 Q Has your evaluation of such exercise involved
11 consideration of the scope and adequacy of those exercises
12 in order to provide a meaningful test?

13 A It did.

14 Q Can you give some examples of your experience in
15 that regard?

16 A Well, I've been involved in emergency planning
17 exercises for the national government. Specifically, I've
18 been involved in -- those areas are classified, but those
19 that I can talk about involve the planning for the 1984
20 Olympics in Los Angeles which involved the integration of
21 approximately -- a little over 100 police departments and
22 communities, it involved communications, developing a
23 scenario in the anticipation of a -- the potential for a
24 terrorist incident at the Olympics based on the historical
25 events involving those games, and the atmosphere regarding

ewalsh

1 terrorism in the world at that time.

2 I have participated in numerous situations
3 involving exercises for aircraft highjackings that might
4 involve a terrorist incident. That involved, including the
5 airline industry, federal agencies, employees at airports,
6 evacuation routes, locations of the planes, setting
7 objectives, all of the things that are involved in a
8 scenario, in testing it and then going through the actual
9 exercise to determine whether or not a demonstration has
10 been made as to whether or not they can expect a reasonable
11 degree of -- a reasonable capability to carry out the plan.

12 Q Dr. Colwell, why do you believe those kinds of
13 exercises that you have just described and the experiences
14 you have had are pertinent to your ability to judge the
15 adequacy and the scope of the Shoreham exercise?

16 A Because they involve the elements that I saw
17 involving the goals and objectives of the Shoreham exercise
18 by providing an opportunity for individuals to demonstrate
19 performance, by working together in an integrated fashion,
20 have all the same elements of an exercise -- in my opinion,
21 of exercises that I've been involved in or have reviewed in
22 the past.

23 MR. LANPHER: Judge Frye, we submit that the
24 Board's ruling needs to be reconsidered. I won't reargue
25 what I said yesterday about the inapplicability of a host of

ewalsh

1 regulations that Mr. Irwin was questioning about.

2 This gentleman, Dr. Colwell, has extensive
3 experiences with exercises and judging performance in
4 emergency response exercises in terms of the scope and the
5 adequacy of the test. We think that he is eminently
6 qualified in those circumstances.

7 JUDGE FRYE: Do you have anything you want to
8 add, Mr. Irwin?

9 MR. IRWIN: Only this, that as the Commission's
10 regulations point out, security contingency planning and
11 emergency planning are two separate disciplines. They are
12 treated separately by the Commission. They are treated
13 separately by lots of other organizations.

14 The County's own witnesses exemplify this. They
15 had a long list of proffered witnesses in the security area,
16 and I believe there is not a single bit of overlap between
17 the proffered witnesses they would have had in that
18 proceeding and the witnesses they have had in this
19 proceeding.

20 They are simply separate disciplines. And, Dr.
21 Colwell may know something about organizations. I know he
22 knows a lot. I know he knows a lot about security and
23 terrorism, but that's not emergency planning as defined by
24 the Commission's and FEMA's regulations.

25 That's all.

ewalsh 1

JUDGE FRYE: I think we will want to confer.

2 Why don't you pick up with your voir dire? I think you have
3 done voir dire on everyone except Mr. Petrone.

4 MR. IRWIN: Let me take that up now.

5 VOIR DIRE EXAMINATION

6 BY MR. IRWIN: (Continuing)

7 Q Mr. Petrone, at the time of the Shoreham
8 exercise what was your position with the Federal Emergency
9 Management Agency?

10 A (Witness Petrone) I was the Regional Director.

11 Q And, what were your periods of occupation of
12 that position, sir?

13 A I'm sorry, sir. Can you repeat that?

14 Q When did you begin at that position and when did
15 you leave?

16 A I began that position in late January of 1981,
17 January '82. I'm sorry. And, I terminated that position in
18 April of '86.

19 Q And, that was a full time position, right?

20 A Yes, sir.

21 Q And, that was a senior executive service
22 position, as I recall, in its category in the federal --

23 A Yes, sir, I believe so.

24 Q As head of FEMA Region II, you were in overall
25 supervision of FEMA's entire radiological emergency

ewalsh 1

protection program for the region; is that correct?

2

A That's correct.

3

Q And, you had responsibility for all the plants

4

in the region, all the nuclear plants in the region?

5

A Yes, sir.

6

Q Including Shoreham?

7

A Yes, sir.

8

Q And, you had I take it -- what was the nature of

9

your involvement with the supervision of FEMA's

10

responsibilities as to the these plants?

11

A The nature of my involvement was the

12

supervisory. I supervised the NTH Division, the Natural

13

Technological Hazards Division, which under that the REP

14

program was assigned.

15

As part of that, I was responsible to make sure

16

that the Division as well as the program had adequate

17

resources to proceed and pursue their own professional work

18

in the area.

19

Q You made it your point though, didn't you, to

20

know something about the actual subject matter of the area?

21

A Yes, I did.

22

Q So, you would have considered it part of your

23

job to know the regulations governing the area promulgated

24

by your Agency?

25

A I considered part of my job to know basically

ewalsh

1 that there were regulations but I considered it part of my
2 job to keep abreast with my staff that knew the regulations.

3 Q But, you had a -- it was part of your job and,
4 therefore, you had a substantial responsibility for the
5 functioning of your staff and the outcome of their work, did
6 you not?

7 A The outcome of their work, correct. And their
8 functioning.

9 Q And, that was a direct personal involvement in
10 that work, wasn't it?

11 A I had a professional involvement in that work.

12 Q And, it was a substantial portion of your
13 professional responsibilities, wasn't it?

14 A It was at varying times.

15 Q But, I mean as a matter of definition that was a
16 substantial portion of your professional involvement, wasn't
17 it? I mean, it was not peripheral to your job.

18 A No. It was part of my position as was other
19 things part of my position.

20 Q Within the radiological emergency preparedness
21 program or the REP program, you or your staff were in charge
22 I take it of plan reviews, reviews of emergency plans?

23 A Yes, sir.

24 Q And of development of exercises?

25 A Development of exercises, correct.

ewalsh 1

Q And their conduct?

2

A Correct.

3

Q In coordination with the NRC, of course?

4

A Yes.

5

Q And, in charge also of the review of those

6

exercises?

7

A The review of them, correct.

8

Q And the plants over which -- I may have asked

9

this but forgive me if I did. The plants over which you

10

exercised this supervision with your staff included Shoreham

11

during that entire period, didn't it?

12

A Yeah. I answered that, sir. Yes, sir.

13

Q When your staff reviewed the LILCO transition

14

plan during the period 1983 through 1986, you forwarded the

15

letters of transmittal to FEMA, to FEMA Washington, did you

16

not?

17

A I believe so.

18

Q And, did you review the contents of those

19

documents which your letter was forwarding before you signed

20

the letters?

21

A I did. I read it.

22

Q And, when you read it I presume you did it with

23

the intent to learn and understand the contents of the

24

letters?

25

A To review it and understand the contents and

ewalsh 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

also to be sure that it was fully complete following the
briefing by my staff.

ewalsh 1 Q Now, do you recall being deposed in this
2 proceeding last Winter, Mr. Petrone --

3 A Yes.

4 Q -- on December 15th?

5 A Yes.

6 Q At that point, do you recall being asked what
7 the FEMA -- what FEMA regulations or guidance applied to the
8 regulation of emergency preparedness for nuclear power
9 plants?

10 MR. LANPHER: Excuse me. Could we have a page
11 reference if he's referring to the deposition?

12 BY MR. IRWIN: (Continuing)

13 Q Yes. Why don't we look at Pages 35 and 36 of
14 your deposition, Mr. Petrone, if you have a copy?

15 MR. LANPHER: Well, we only have one copy, Mr.
16 Irwin. He has got a copy in his briefcase.

17 (The witness is looking at a document.)

18 WITNESS PETRONE: 35, sir?

19 BY MR. IRWIN: (Continuing)

20 Q Yes, sir. Page 35, beginning on Line 16 on that
21 page, do you see a question and answer which begins with the
22 question: Are you familiar with the term "full
23 participation exercise?"

24 And, your answer was: Yes.

25 And, the next question was: What does that term

ewalsh 1 mean?

2 And, your answer was: To the best of my
3 knowledge and recollection, it means a full participation of
4 the state and local government.

5 Is that your answer?

6 A That's correct, sir.

7 Q Do you believe that's a correct definition of
8 the term as used in FEMA's regulations as you know it today,
9 as you know those regulations today?

10 A As I know it today, in the 350, I believe the
11 term is somewhat broadened beyond state and local
12 government. It also calls for other things.

13 Q In fact, that is not the regulatory definition,
14 is it, sir?

15 A I'm sorry?

16 Q The definition you provided during your
17 deposition is not, in fact, the regulatory definition, is
18 it?

19 A It's part I think of the regulatory definition.

20 Q In what respect?

21 A With the fact that the -- I believe 350 does
22 include the fact, exercises with state and local government,
23 a full participation exercise exercises state and local
24 government capabilities.

25 Q But, it doesn't refer to any of the other

ewalsh

1 specific aspects of a 350 exercise, a full participation
2 exercise, does it? The definition you --

3 A My definition.

4 Q -- have provided?

5 MR. LANPHER: I object to the question. The
6 question was, it doesn't reflect the other aspects of
7 something. I don't know what "it" is referring to.

8 MR. IRWIN: I will withdraw the question.

9 BY MR. IRWIN: (Continuing)

10 Q Mr. Petrone, if you will refer to Page 26 of
11 your deposition, you were asked -- and here again I'm
12 looking at the bottom of the page beginning at Line 20 --
13 whether you could recall the name of any documents which
14 would contain or which did contain during the period of your
15 responsibility at FEMA criteria for the review and
16 evaluation of off-site radiological emergency response
17 plans.

18 Do you see that question, sir?

19 A Yes, I do, sir.

20 Q And, the answer that you gave was, and I quote:
21 "The only document that would come to mind is that of the
22 document containing FEMA's 350 process and that of 0654."

23 And, the next question was: When you refer to
24 the 350 process, are you referring to the provisions of the
25 Code of Federal Regulations?

Lewalsh 1

And, the answer was: I cannot recall what provisions I am referring to, other than the 350 process in and of itself.

2

As of today, have you anymore concrete recollection of documents which embody the 350 process?

3

4

A Okay. Actually, the 350 process is a regulatory document of FEMA. I do recall that.

5

6

I may add that as part of my responsibility with FEMA I never had direct involvement with dealing with documents other than seeing documents when they would come in and then referring them onto staff. So, I am not a person that dealt with extensively documents.

7

8

9

10

Q Are you a person who was involved enough with documents that you could construe the provisions of the regulations set forth in them?

11

12

13

A Yes, I believe so, with my staff briefing me and with my staff's assistance.

14

15

Q Of your own personal knowledge though, you could not do it without the aid of your staff?

16

17

A If the documents were given to me, I'm sure that I could refer to them and I'm sure I could decipher them correctly. But, it was not my responsibility to do so.

18

19

20

I had people that did that. And, I had overview responsibility.

21

22

Q On Page 27, continuing down after a discussion

ewalsh 1 of the contents of the NUREG 0654, there was a question
2 beginning on Line 19: Other than that, namely 0654, and the
3 provisions of Section 350, are you aware of any other
4 documents which contain criteria for the evaluation of off-
5 site plans?

6 And, your answer was: Not to the best of my
7 knowledge and my recall at this point.

8 Has your knowledge and recall as of today, May
9 21st, 1987, enabled you to modify that answer at all? Are
10 there any other documents that come to mind?

11 A Well, obviously, you know what I mean, I've
12 looked over other documents as a result of these hearings.

13 Q And, what other FEMA documents governing the
14 regulation of off-site radiological preparedness come to
15 mind as a result of your review for these hearings
16 promulgated by FEMA?

17 A Okay. Promulgated by FEMA, you say?

18 Q Yes, sir.

19 A There was a PR-1, of course. EV-2 and
20 originally GM-17.

21 These are the things that I have looked at
22 following, of course, my deposition.

23 Q Of course, all of those were -- PR-1 was in
24 effect during the period when you were responsible for
25 Region II, was it not?

1 A I believe it was in effect -- yeah, near the
2 completion of my tenure.

3 Q And, there was one document you did not
4 mention. That's an August 5, 1983 memorandum from Dave
5 McLoughlin to --

6 A Oh, yeah.

7 Q And, that was an attachment, wasn't it, to PR-1?

8 A That was an attachment to PR-1, correct.

9 Q And it naturally preceded it but it was an
10 attachment?

11 A Yes, sir.

12 Q Okay.

13 A I believe so.

14 Q And, you have reviewed that now also?

15 A I've read it, yes.

16 Q If you continue down Page 28, beginning on Line
17 16 in your deposition, you were asked the following
18 question: Are you familiar with any regulations promulgated
19 by the NRC with respect to off-site planning?

20 And, your answer was: I could not recall any at
21 this point.

22 Have you had an opportunity to refresh your
23 recollection on that issue between December 15th, 1986 and
24 today?

25 A Yes, sir, I did.

ewalsh 1

Q And, if you had to tell us the results of that
2 refreshment, what would you think of today in terms of NRC
3 regulations that apply?

4 A I looked at the NRC regulations that I believed
5 applied and that would be the 10 CFR Part 50 and especially
6 Appendix E.

7 Q Any other parts of 10 CFR Part 50?

8 A I believe there were some other parts, but I
9 could not give you the actual notations at this point.

10 Q Do you know as of today whether the Shoreham off-
11 site emergency planning exercise included a recovery and re-
12 entry phase?

13 A To the best of my knowledge, it did not include
14 a recovery and re-entry phase.

15 Q As of the time of your deposition, it's true,
16 isn't it, that you could not recall whether it included such
17 a phase?

18 A That's correct.

19 Q And, I will refer you to Pages 119 and 120.

20 A I believe you are correct, counsel.

21 Q You did not, did you, participate in the
22 development of the objectives for the Shoreham exercise?

23 A I did not, sir.

24 Q Nor in the development of the scenario?

25 A That's correct.

ewalsh 1 Q Nor did you review any drafts of either of the --
2 excuse me. Nor, did you review any drafts of the scenario
3 or of the objectives, did you?

4 A I did not, no.

5 Q Did you play any role with respect to the
6 shaping or contours of the exercise, Mr. Petrone?

7 A Very limited. Extremely limited, if any.

8 Q Isn't it true that with respect to the Shoreham
9 exercise you believed, at the time of your deposition, that
10 within the limits, whatever they may be, imposed by the
11 absence of state and local governments, the goal was to
12 conduct a full-scale exercise as best as possible?

13 A Can you refer me to this, please?

14 Q Yes. Page 99, at the top of the page.
15 (The witness is looking at a document.)

16 A That's correct, sir.

17 Q And, by full-scale exercise you meant an
18 exercise that was the equivalent of a full participation
19 exercise?

20 A I believe those terms were used interchangeably.

21 Q Mr. Petrone, after you left FEMA you testified,
22 as I recall, at a Congressional hearing in May of 1986, May
23 or June of 1986?

24 A I believe it was May.

25 Q All right. Were you in contact with anyone at

ewalsh 1

FEMA in connection with that testimony, sir?

2

A No. Just talking generally.

3

Q To whom?

4

A To different staff members.

5

Q To whom?

6

A I can't recall.

7

Q Okay. Speaking of staff members, you indicated

8

back in your review of the Shoreham plan that you were

9

dependent on various staff members.

10

Which staff members in particular were you

11

dependent on?

12

A I was basically dependent upon Roger Kowieski

13

and Phil McIntyre.

14

Q Since your departure from FEMA and prior to your

15

present position with Suffolk County, did you have any

16

contact with members, with any personnel, in the executive

17

branch of the federal government concerning the Shoreham

18

exercise other than in connection with the -- your May

19

appearance at a Congressional hearing?

20

A No, other than meeting people at different

21

functions and, you know, we just commiserated together more

22

than anything.

23

Q And, that was purely social contacts?

24

A Social contacts. Yeah, I believe social

25

contacts at this point.

ewalsh 1

Q No discussion of substance of Shoreham?

2

A No. I made it a point, sir, not to contact

3

these people specifically because of this, this proceeding.

4

Q When did you assume your current position?

5

A I assumed this position on I believe it was

6

January 15th.

7

Q And, the title of that position is?

8

A I'm the County Executive Assistant.

9

Q And, as I understand it, the function of the

10

County Executive Assistantship which you occupy is that of

11

coordinating and directing Suffolk County's policy with

12

respect to the Shoreham plant; is that correct?

13

A It's directing, coordinating policy for the

14

County Executive with regard to the Shoreham plant.

15

Q At the time of your deposition, I believe that

16

you had not considered taking this position; is that

17

correct?

18

A I had -- I mean, the County Executive was not

19

even an office at the time of my deposition. And, I had no

20

idea that this would be coming, that this position would

21

ever be available or offered.

22

Q When were you approached for it?

23

A Probably about -- I think it was five days prior

24

to the position being -- to me commencing in the position.

25

Q And, you had no previous discussions about

ewalsh 1 potentially working for the County prior to that approach
2 some time in the second week in January?

3 A The second week of January?

4 Q Well, I assumed -- I subtracted five days from
5 January 15th, I'm sorry.

6 A Oh, I see. No, just general discussions with
7 friends and, you know, people that there -- you know, about
8 coming back to government, period. And people would just
9 talk in general that I should come back to government.

10 And, other than that, those general
11 conversations, I mean I -- I received a telephone call from
12 Michael O'Grandy on a Friday afternoon.

13 Q Mr. Petrone, do you consider yourself a fact
14 witness in this proceeding in the sense that you have
15 knowledge of facts which occurred during your tenure as FEMA
16 Region II Director that relate to this exercise and are
17 material to the testimony sponsored by New York State and
18 Suffolk County?

19 A I would consider myself an overview witness with
20 respect to certain facts. I mean, I'm not going to know
21 every fact nor am I going to recall everything that took
22 place during my tenure at FEMA.

23 I would have an overview knowledge.

24 Q Do you consider yourself to have expert
25 knowledge also which qualifies you to render opinions on the

ewalsh 1 significance of factual matters which occurred in connection
2 with Shoreham during your tenure as Director of FEMA Region
3 II?

4 Do you see the distinction I'm making between
5 simply being a fact witness and being an expert witness
6 qualified to render opinions as to the significance of those
7 facts?

8 A Can you repeat that again, please?

9 Q Yes.

10 A And, then I will answer.

11 Q Let me break the question down. You understand,
12 do you not, that there is a distinction between being a fact
13 witness qualified to testify as to facts which may have
14 occurred and being an expert witness qualified to render
15 opinions as to the significance of those facts?

16 MR. LANPHER: I object to the question, because
17 Mr. Irwin is clearly trying to draw some distinction. He
18 ought to define what the distinction is and then ask the
19 question.

20 JUDGE FRYE: I think that's what he did the
21 first time. Why don't you rephrase it if you can?

22 MR. IRWIN: I thought I was trying to make
23 little ones, to break a big one down into little ones. But,
24 let's try it again.

25 BY MR. IRWIN: (Continuing)

ewalsh 1 Q Mr. Petrone, are you familiar with a distinction
2 between the concepts of fact witnesses and expert witnesses?

3 A No, I'm not, sir.

4 Q Well, if you will assume with me that a fact
5 witness is someone who knows about things which have
6 occurred from his own personal knowledge or study or by
7 whatever other means and is capable of testifying accurately
8 as to them, I take it that it is your view that you are a
9 fact witness although not necessarily limited to that, but
10 you have knowledge of facts as to which you can testify,
11 correct?

12 A I would agree, sir.

13 Q Okay. In addition, there is a concept known as
14 that of being an expert witness which presupposes -- and I
15 will -- if Mr. Lanpher wishes to contribute his own
16 definition I won't object to it necessarily, but presupposes
17 the existence of special knowledge which enables a witness
18 who otherwise would merely know and be able to narrate
19 facts, that special knowledge enables this witness to
20 ascribe significance to those facts, to put them into
21 context.

22 Do you understand the distinction I'm now
23 drawing between a mere fact witness and an expert witness?

24 A I don't. I'm sorry.

25 Q Okay. Let me try it another way. Mr. Petrone,

ewalsh 1 do you think you know the significance of the facts as to
2 which you are going to testify?

3 MR. LANPHER: I object to the question. It's
4 vague. He has given his opinions in the testimony.

5 Why doesn't Mr. Irwin direct his attention to
6 some of the statements he has made in the testimony?

7 JUDGE FRYE: Let me try this.

8 WITNESS PETRONE: Yes, sir.

9 JUDGE FRYE: Mr. Petrone, do you consider
10 yourself qualified to render opinions concerning facts?

11 WITNESS PETRONE: Yes, I do, sir.

12 JUDGE FRYE: Okay. I think that perhaps clears
13 it up.

14 MR. LANPHER: All right, fine.

15 BY MR. IRWIN: (Continuing)

16 Q Mr. Petrone, one last question. In your
17 reference to certain staff personnel on whom you were
18 dependent for your analyses, you included Mr. Kowieski in
19 particular.

20 Would Mr. Keller also be someone on whom you
21 relied?

22 A It varied, sir. I would say I relied
23 specifically on Kowieski and McIntyre and if I may add, too,
24 Stewart Glass. The contractors in the Agency, Mr. Baldwin
25 and Mr. Keller, at times would be consulted.

ewalsh 1

But, I made a point of being sure that the
contractors were in direct communication and worked directly
for my senior staff responsible for the program. So, I
would not have -- I would not have direct contact with them
other than at certain intervals.

I mean, there would always be something that we
talked about. But, I depended on Roger Kowieski. If I had
to rank them, it was Roger Kowieski, Glass and McIntyre.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

uewalsh 1

MR. IRWIN: That completes my voir dire.

2

JUDGE FRYE: All right. There are no further motions I take it?

3

4

MR. IRWIN: No, sir.

5

JUDGE FRYE: We have reconsidered our ruling with regard to Dr. Colwell. We are still very much concerned about his knowledge with regard to the specific regulations that are here involved; however, we are facing a question of first impression, and we think that his extensive knowledge in other areas in planning for emergencies could perhaps provide useful background or other information.

6

7

8

9

And, consequently, we have decided to reverse ourselves and leave him in. But, we do believe, I will say, that it is a close question.

10

11

12

MR. LANPHER: Thank you, Judge.

13

14

15

MR. ZAHNLEUTER: Judge Frye, I think we should clarify whether the State's Exhibits 1, 2 and 3 have been admitted into evidence.

16

17

I made that motion and it was held in abeyance pending voir dire.

18

19

JUDGE FRYE: The Staff has no objection and no voir dire, I take it?

20

MR. PIRFO: For Mr. Petrone.

21

JUDGE FRYE: Well, for any of them. Have you --

ewalsh

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PIRFO: I'm not sure of the distinction.

The Staff has already taken a position with regard to Messrs. Zook and Colwell.

We stated before, we would not oppose Mr. Minor. I have got a couple of questions for Mr. Petrone, but I think I can leave them to the subject of cross-examination. It's another close question on this voir dire.

JUDGE FRYE: All right. Well, the testimony then will be -- the exhibits, Exhibits 1, 2 and 3, are admitted.

MR. ZAHNLEUTER: Thank you.

(New York State Exercise Exhibits 1, 2 and 3, previously marked for identification, are admitted into evidence.)

JUDGE FRYE: Mr. Irwin, shall we pick up on cross?

MR. IRWIN: Thank you.

CROSS EXAMINATION

BY MR. IRWIN:

Q Mr. Petrone, the term "full participation exercise" is defined in Footnote 4 of 10 CFR Part 50, Appendix E, Part F, is it not, sir?

A (Witness Petrone) That's correct, sir.

Q Do you have a copy of the text of that provision

uewalsh 1 in front of you?

2 A I do.

3 Q Referring to that provision, do you know when
4 that provision was promulgated by the NRC?

5 A Let's see. It was either 1984 or 1986. I can't
6 -- I know that the addition here is in '86. I can't recall
7 a date specifically.

8 Q Let me make available to you a Federal Register
9 notice dated July 6th, 1984. It's Volume 49, Federal
10 Register, beginning on Page 27,733. And I think you will
11 find the definition on Page 27,736.

12 MR. LANPHER: Mr. Irwin, we are willing to
13 stipulate that the present language, absent the two week ago
14 addition, was promulgated in 1984.

15 MR. IRWIN: Let me see whether anybody who
16 wishes to have available to them and does not have this
17 available -- I think it would be useful probably to mark it
18 as an exhibit just because it will be useful to have the
19 text available.

20 And, I believe the next LILCO exhibit is Number
21 18, although I'm highly fallible on these kinds of things.

22 JUDGE PARIS: Mr. Zahnleuter can tell us maybe.
23 (Laughter.)

24 MR. ZAHNLEUTER: I have 16 as the last one.

25 MR. IRWIN: 16? Okay. Maybe 17.

uewalsh 1

JUDGE FRYE: Well, why don't you distribute it
2 and we will mark it when we have found out the appropriate
3 number.

4 (The document is distributed.)

5 JUDGE FRYE: Do you want to mark it as 18 or do
6 you want to verify?

7 MR. IRWIN: I am told by someone whose memory is
8 far better than mine that LILCO's last previous exhibit was
9 16; therefore, this ought to be 17.

10 JUDGE FRYE: Mark it as 17?

11 MR. IRWIN: Yes, sir.

12 (The document referred to is marked
13 as LILCO Exercise Exhibit Number
14 17 for identification.)

15 BY MR. IRWIN: (Continuing)

16 Q Mr. Petrone, directing your attention to
17 Footnote 4 --

18 MR. LANPHER: Which page, Mr. Irwin?

19 MR. IRWIN: It's on Page 27,737 I believe.

20 MR. LANPHER: I think 36.

21 MR. IRWIN: 36. Thank you.

22 BY MR. IRWIN: (Continuing)

23 Q Okay. Have you got that in front of you, Mr.
24 Petrone? It's in kind of the third column there.

25 A Footnote Number 4, sir?

ewalsh

- 1 Q Yes, sir.
- 2 A Yes, I do.
- 3 Q What I would like to do is parse this, and I'm
- 4 going to need your assistance with me. The first sentence
- 5 of this regulation reads as follows, does it not, the term,
- 6 "°Full participation' when used in conjunction with
- 7 emergency preparedness exercises for a particular site means
- 8 appropriate offsite local and State authorities and licensee
- 9 personnel physically and actively take part in testing their
- 10 integrated capability to adequately access and respond to an
- 11 accident at a commercial nuclear power plant."
- 12 Is that correct?
- 13 A Correct.
- 14 Q Would you agree with me that there are really
- 15 two aspects to this analogy, or whatever qualifications you
- 16 want? One is the definition of the participants, namely the
- 17 participants, state and local and licensee personnel; and,
- 18 secondly, the actions which they take, i.e., physically and
- 19 actively taking part in testing an integrated capability to
- 20 respond.
- 21 Correct?
- 22 A Yes, I agree.
- 23 Q Okay. Let's refer to that as the first concept
- 24 in the NRC's regulation.
- 25 The second concept begins with the following

uewalsh 1 sentence: "'Full participation' includes testing the major
2 observable portions of the onsite and offsite emergency
3 plans and mobilization of..." excuse me. Let's break this
4 sentence down.

5 It includes testing the major observable
6 portions of the on-site and off-site emergency plans. Are
7 you with me thus far?

8 A I have it.

9 Q Okay. And, there once again the concept is that
10 of testing major observable portions of the relevant plans.

11 Then, let us refer to a third portion which is
12 the balance of the phrase or of that sentence which is that
13 a full participation includes mobilization of state and
14 local and licensee personnel and other resources in
15 sufficient numbers to verify the capability to respond to
16 the accident scenario. Okay.

17 Are you with me thus far?

18 A Yes.

19 Q There is, is there not, a parallel or comparable
20 FEMA definition of full participation in its regulations?

21 A There is a definition of full participation.

22 Q Do you know where that is, sir?

23 A Yes, sir. It's 44 CFR 350.

24 Q Any particular section of 350?

25 A 350.1, Section -- Paragraph J. I'm sorry,

uewalsh

1 350.2.

2 Q Right. And, that regulation was promulgated by
3 FEMA on September 28, 1983, was it not, sir?

4 A I believe so.

5 Q Okay.

6 A That was when they finalized their regulation.

7 MR. IRWIN: Let me make available to the Board
8 and the parties who may not already have it a copy of the
9 Federal Register notice which promulgates the pertinent FEMA
10 regulation.

11 And, the last LILCO exhibit was 17. This ought
12 to be 18.

13 (The document is distributed.)

14 JUDGE FRYE: All right.

15 (The document referred to is marked
16 as LILCO Exercise Exhibit Number
17 18 for identification.)

18 BY MR. IRWIN: (Continuing)

19 Q Do you have that in front of you r v, Mr.
20 Petrone?

21 A I do, sir.

22 Q Okay. Now, referring to Page 44,336 of LILCO
23 Exhibit 18, Section 350.2.J is found, is it not, at the top
24 of the second column?

25 A Yes.

uewalsh 1

Q Okay. Now, let's parse this definition if we

2 can.

3 A Sure.

4 Q "Full participation refers to an exercise in
5 which: (1) State and local government emergency personnel
6 are engaged in sufficient numbers to verify the capability
7 to respond to the actions required by the accident
8 scenario."

9 Okay. That's Part 1 of the FEMA definition?

10 A Yes, sir.

11 Q And, there is a Part 2. "The integrated
12 capability to adequately assess and respond to an accident
13 at a commercial nuclear power plant is tested."

14 Correct?

15 A Correct.

16 Q And, Part 3: "The implementation of the
17 observable portions of the State and/or local plans is
18 tested."

19 Now, what I would like to do is look at the
20 NRC's and FEMA's regulations in each of their three parts.
21 The first part of the NRC's regulation which states that
22 with the appropriate state and local authorities and
23 licensee personnel physically and actively take part in
24 testing their integrated capacity to adequately assess and
25 respond to an accident at a commercial nuclear power plant.

ewalsh

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Do you see that? That's Part 1 of the NRC regulation.

A You are at the footnote?

Q I'm sorry. Part 1 of the NRC's -- yeah, Footnote 4, sorry.

A Footnote 4. Okay.

Q Okay. That corresponds, does it not, to Part Number 2 of Section 350.2.J where the regulation states that a full participation refers to an exercise in which integrated capacity to adequately assess and respond to an accident at a commercial nuclear power plant is tested?

ewalsh 1 A Yes. It's including the integrated
2 capabilities. I was just trying to recall whether or not
3 that access --

4 Q That's the important concept.

5 A Okay. Fine.

6 Q And, the difference between access and assess
7 and whether the NRC made the typo or FEMA, I don't know but
8 other than that it's basically the same concept, you would
9 agree?

10 A Yes.

11 Q Okay. Then, looking at the second part of the
12 NRC's definition which reads as follows: "Full
13 participation includes testing the major observable portions
14 of the onsite and offsite emergency plans." That
15 corresponds, does it not, to Item 3 of FEMA's definition in
16 Section 350.2.J where it's stated that full participation
17 refers to an exercise in which the implementation of the
18 observable portions of state and/or local plans is tested,
19 correct?

20 A Let me just read it, sir.

21 Q Sure.

22 (The witness is looking at the document.)

23 A Correct.

24 Q Okay. Now, there is a difference in that the
25 NRC's definition is restricted to merely major observable

ewalsh 1 portions; isn't that right? So, in a sense, the NRC's
2 definition may be a little narrower than FEMA's but
3 otherwise they are dealing with the same concept, correct?

4 A I'm not too sure, you know, whether I would
5 define it that way.

6 Q I'm sorry. Would you explain your answer?

7 A FEMA's regulations are saying observable
8 portions. The NRC's are major observable portions.

9 Q Right. All I'm saying is that the NRC's
10 regulations qualify those types of the observable portions
11 which must be demonstrated; they restrict it to major ones,
12 whereas FEMA's deal with perhaps all observable portions,
13 major or minor?

14 A I'm not sure in the interpretation on that. I'm
15 not sure if I follow your interpretation.

16 Q In other words, do you think FEMA might be
17 restricting -- FEMA might have in mind only major observable
18 portions also?

19 A No. They all may have that in mind. I think
20 it's all observable portions basically. I think that major
21 observable portions as referred to NRC, okay, it could be
22 the overview of the various different components.

23 Let me put it another way if I can. Looking at
24 public information notification or evacuation or
25 radiological monitoring, those could be considered overview,

Dewalsh

1 considered major. When FEMA designates them, observable
2 portions could be many of the portions that are observable
3 within those over -- within those major areas.

4 So, I'm not too sure whether or not NRC is
5 designating the portions as major and categorizing and FEMA
6 is just saying observable portions, considering those
7 categorizations as well as many of the sub-elements that
8 follow.

9 I'm not sure. I mean, it's not a point that I
10 think that I would argue.

11 Q Okay. That's fine. The third area in the NRC's
12 definition is that of demonstrating the mobilization of
13 state and local and licensee personnel and other resources
14 in sufficient numbers to verify the capability to respond to
15 an accident scenario.

16 And, that corresponds I believe to Item Number 1
17 in FEMA's definition at Section 350.2.J, does it not?

18 A Partially.

19 Q I'm sorry?

20 A Partially. I don't think it states here other
21 resources, does it, in FEMA's reg.

22 Q That's correct. The NRC may talk about
23 additional resources and additional personnel. But,
24 basically what you are talking about is mobilization of an
25 adequate quantity of whatever you want to demonstrate to

ewalsh 1 respond.

2 In other words, what I'm just trying to
3 understand is whether we have, in fact, basically parallel
4 regulations that take up the three same basic subject matter
5 areas.

6 A I think NRC goes a step further when it says
7 other resources.

8 Q Fine. Within that area, I agree. Resources may
9 include --

10 A Fine.

11 Q -- things other than people.

12 A Fine. I concur.

13 Q Okay. But, with those qualifications, the two
14 regulatory provisions appear to set forth parallel
15 definitions of full participation, do they not?

16 MR. LANPHER: Could I ask for just a
17 clarification? You are asking him just to compare the
18 Footnote 4 from the NRC and the 350.2.J of FEMA?

19 MR. IRWIN: That's correct.

20 MR. LANPHER: Okay. Thank you.

21 (Pause.)

22 MR. LANPHER: There is a question, Mr. Petrone.
23 I'm sorry.

24 WITNESS PETRONE: Parallel, yeah, with the
25 exception of other resources.

ewalsh 1

BY MR. IRWIN: (Continuing)

2 Q Correct. Okay.

3 A (Witness Baranski) Mr. Irwin, being a member of
4 this panel I would like to add one other difference in
5 reading the regulations is that Appendix E calls for the
6 licensee. FEMA's regulation does not have the licensee
7 incorporated in the definition.

8 So, that is another difference.

9 Q I was going to get to that. The reason for
10 that, Mr. Baranski, isn't it, is that the NRC is concerned
11 directly with the testing of on-site as well as off-site
12 programs; isn't that correct?

13 A That's correct.

14 Q And --

15 A That is the difference in the two definitions.

16 Q Correct. Correct. Both of these sets of
17 regulations though presume the conventional situation where
18 one has active participation of state and local governments
19 in the exercise, correct?

20 A That's correct.

21 Q And, so if one does not have state and local
22 government participation one has to modify the actual
23 definition of the participants who will be fulfilling these
24 roles to include state, local, or state or local, or just
25 utility, depending on who is participating, correct?

ewalsh 1

A I believe that's correct.

2

Q Okay. Now, Mr. Petrone, the definition stated in Footnote 4 is the NRC's definition of a full participation exercise, isn't it?

3

A (Witness Petrone) For Footnote 4, yes.

4

Q Well, for its regulations, isn't it?

5

A Yes. It's stipulated there. But, as counsel has indicated, there is also other language within their regulation.

6

Q Well, counsel is not testifying. You are. What else are you thinking of?

7

A Paragraph 1 of F, training.

8

9

Q And, which portion of Paragraph 1 are you thinking of? Are you talking about the language that says: A full participation exercise which tests as much of the licensee, state and local emergency response plans as is reasonably achievable without mandatory public participation shall be conducted for each site at which a power reactor is located for which the first operating license for that site is issued after July 13, 1982?

10

11

12

13

14

15

16

17

A Yes, sir. And, the rest of the paragraph.

18

19

Q Okay. Now, that first sentence, does that -- does that -- does that first sentence mean to you that there is some special kind of full participation exercise that has to be held at any power plant whose operating license is

20

21

22

23

24

ewalsh 1 issued after July 13, 1982?

2 Is that -- what's the difference that that
3 sentence makes?

4 A This is for plants that are not operating yet.
5 They do not have a license.

6 Q Yeah. And, you are saying that for them the
7 full participation exercise must have the additional quality
8 of exercising as much of the licensee, state and local plans
9 as is reasonably achievable without mandatory public
10 participation?

11 A Can you repeat that?

12 Q In other words, you are saying that that -- the
13 language that relates to testing as much of the licensee,
14 state and local emergency plans as is reasonably achievable
15 without mandatory public participation, that phrase --

16 A Right.

17 Q -- that applies under current regulations only
18 to plants which did not receive their full power licenses
19 before July 13, 1982?

20 A Well, no, it doesn't. I think it applies to all
21 plants. But, following in the sentence it does state that
22 it shall be conducted within two -- now it's two years
23 before the issuance of a first operating license for a full
24 power and prior to operation above five percent of rated
25 power of the first reactor.

ewalsh 1 Q Right. Okay. But, that's a -- let's talk about
2 a -- let's distinguish between the substance of the exercise
3 and its timing, okay. Let's assume that we are within the
4 two year band. Are you saying that there is something
5 special about the full participation exercise that has to be
6 conducted prior to a plant's achieving or being granted its
7 full power license if that full power license is not granted
8 until after July 13, 1982?

9 (Mr. Petrone and Mr. Baranski are conferring.)

10 Mr. Baranski, I'm -- you can chime in later, but
11 I would rather have Mr. Petrone interpret his own -- his own
12 interpretation of this regulation if I could.

13 MR. LANPHER: Could you repeat the question,
14 please, Mr. Irwin?

15 MR. IRWIN: Sure.

16 MR. LANPHER: It has gone through a number of
17 renditions I think.

18 MR. IRWIN: I'm trying to find out whether Mr.
19 Petrone is saying that there is anything special about the
20 exercise that -- I'm trying to find out what he thinks the
21 meaning of that first sentence in Paragraph 1 of Subsection
22 F of Appendix E means. He pointed it out to me a minute
23 ago. I thought I understood it, but let me try it.

24 BY MR. IRWIN: (Continuing)

25 Q Mr. Petrone, are you saying that a full

ewalsh 1 participation exercise which is held for a plant whose
2 operating license to go above five percent power is
3 initially issued after July 13, 1982 must not only meet the
4 requirements of Footnote 4 but must also test as much of the
5 licensee, state and local emergency plans as is reasonably
6 achievable without mandatory public participation?

7 A (Witness Petrone) Yes.

8 Q And, you are saying that that applies only to
9 such new licensees; is that correct?

10 A Correct.

11 Q It does not apply to plants which already had
12 their licensees?

13 A You are talking about licenses above five
14 percent?

15 Q Yes.

16 A Yeah. No.

17 (The witnesses are conferring.)

18 Q Do you want to add to that, Mr. Petrone?

19 A No. I'm fine, thank you.

20 (The witnesses are conferring.)

21 (Mr. Irwin is conferring with Ms. McCleskey and
22 Mr. Zeugin.)

23 Q Mr. Petrone, I'm --

24 MR. LANPHER: Mr. Irwin, they are conferring.

25 MR. IRWIN: Okay. Well, I don't want to have to

ewalsh 1 have the record note that there is a huddle over in the
2 witness panel but, Mr. Petrone, let me make sure -- I had a
3 huddle here.

4 WITNESS PETRONE: Okay.

5 BY MR. IRWIN: (Continuing)

6 Q The lawyers on either side of me were not
7 totally sure of your last answer. One thought you said one
8 thing and the other thought you said diametrically opposite.

9 Can you tell me once again what you think that
10 first sentence adds to the implementation on full
11 participation exercises, as would otherwise be set out in
12 that, in Appendix E?

13 A (Witness Petrone) The sentence I believe refers
14 to that a full participation exercise has to test the
15 licensee, the state and local emergency plans. And, I think
16 it refers here especially to plants that do not have a full
17 power license.

18 I am not an attorney.

19 Q Okay. But, all it's saying is that that
20 definition, which is in Footnote 4, must be applied in such
21 a way that you test as much of the plans as is reasonably
22 achievable without mandatory public participation?

23 In other words, it doesn't change that
24 definition in Footnote 4; it merely applies it.

25 A No, it doesn't. I think both the footnote and

ewalsh

1 the actual definition are integrated together.

2 JUDGE SHON: Mr. Irwin, would you yield to an
3 observation by an outsider, myself, who as a student of
4 language in a sense, you've picked a sentence that is
5 extremely difficult to parse because in the English language
6 there are two kinds of subordinate clauses of this general
7 structure. They are known as restrictive and non-
8 restrictive clauses.

9 In effect, you have asked this gentleman to tell
10 whether this is a restrictive clause; that is, whether it
11 adds additional qualities or whether it's a non-restrictive
12 clause, it simply tells what a full participation exercise
13 does.

14 Unfortunately, whoever wrote this forgot that
15 the rule is that for a restrictive clause you introduce it
16 with "that" and you don't use commas. For a non-restrictive
17 clause, you introduce it with "which" and you set it off
18 with commas.

19 He has introduced it with "which" but failed to
20 set it off with commas, so you don't know which it is; and,
21 you are asking the witness to decide what was in the mind of
22 someone who didn't understand English or at least didn't
23 write it.

24 (Laughter.)

25 MR. IRWIN: As long as we are engaging in

Dewalsh

1 semantics, I share your -- some of your consternation, Judge
2 Shon. This is one of the reasons I wanted to get the views
3 of somebody who has had a professional responsibility for
4 interpreting it.

5 I personally grew up in a school that was a
6 little more flexible about the use of "that" and "which" but
7 was equally inflexible about the use of commas.

8 (Laughter.)

9 JUDGE SHON: At any rate, the thing is confused
10 by its nature.

11 MR. IRWIN: That's right. I agree. What I was
12 trying to do was understand a theme which permeates the
13 Intervenors' testimony, which is that somehow this clause
14 appears to apply in their view only to plants which had not
15 received their licenses prior to July 13, 1982. I couldn't
16 tell from their testimony, and I think this has helped
17 clarify that.

18 BY MR. IRWIN: (Continuing)

19 Q Now, Mr. Petrone, isn't it true that the NRC's
20 regulations contained a requirement that all off-site
21 exercises for all plants, whether just achieving their
22 licenses for the first time or already licensed but
23 retaining them, that all off-site exercises test as much of
24 the licensee, state and local emergency plans as is
25 reasonably achievable without mandatory public participation

ewalsh 1 until 1984, that before that time that phrase applied to all
2 off-site exercises?

3 A (Witness Petrone) I can't recall if whether it
4 was before '84 or not.

5 Q Well, let me -- in fact, I think it would have
6 been -- the actual issuance of these regulations we have
7 just been discussing was July 6th, 1984.

8 Let me make available to you a copy of Appendix
9 E from Part 50, which I will represent to you because I did
10 not xerox the cover page for it is the 1984 version. I
11 think you will be able to verify that it preceded the
12 current version of the regs, because it will not contain at
13 the end the 1984 modification notes.

14 But, this I will proffer to you is the version
15 in effect as of January 1, 1984.

16 (The document is distributed.)

17 JUDGE FRYE: Is this to be marked?

18 MR. IRWIN: Let's mark this as LILCO Exhibit 19,
19 Judge Frye. Thank you, sir.

20 (The document referred to is marked
21 as LILCO Exercise Exhibit Number
22 19 for identification.)

23 BY MR. IRWIN: (Continuing)

24 Q Mr. Petrone, you have I take it now been
25 provided with a document which says at the top, "Title 10 -

ewalsh 1 Energy, Chapter 1, Nuclear Regulatory Commission, Part 50,
2 Appendix E," beginning at Page 475.

3 Is that correct, sir?

4 A (Witness Petrone) Correct, sir.

5 Q And, it has a handwritten notation in the lower
6 right-hand corner with the year number 1984; is that
7 correct?

8 A Correct.

9 Q Would you turn to Page 479 of this document?

10 (The witness is complying.)

11 In the lower right-hand corner of the second
12 column on Page 479 --

13 MR. LANPHER: Mr. Irwin, I don't mean to
14 interrupt you, but before you get in, our versicn has a lot
15 of illegible xeroxing on the right-hand --

16 MR. IRWIN: There may be a need for educated
17 guessing. If there is -- I agree with you, but if there is
18 anything that we can't parse we will reserve it until I can
19 get a better copy. But, I think we can probably parse it.

20 And, I will provide the better copy later if we
21 need to.

22 BY MR. IRWIN: (Continuing)

23 Q The last full paragraph on that page, Mr.
24 Petrone, begins with, "The plan shall describe provisions
25 for the conduct of emergency preparedness exercises.

ewalsh 1 Exercises shall test the adequacy of the timing and content
2 of implementing procedures and methods, test emergency
3 equipment and communication networks, test the public
4 notification system, and ensure that emergency organization
5 personnel are familiar with their duties. Each licensee
6 shall exercise at least annually the emergency plan for each
7 site at which it has one or more power reactors licensed for
8 operation. Both full-scale and small-scale exercises shall
9 be conducted and shall include participation by appropriate
10 state and local government agencies as follows: 1. A full-
11 scale exercise which tests as much of the licensee, state
12 and local emergency plans as is reasonably achievable
13 without mandatory public participation shall be conducted."

14 Do you see that Item Number 1, Mr. Petrone?

15 A Yes.

16 Q Is there any limitation in that requirement to
17 plants which have not yet achieved their operating license,
18 their full power licenses?

19 A I don't see any, sir.

20 Q Does anybody else know of any such limitation
21 only to plants that have not yet received their operating
22 licenses?

23 A (Witness Baranski) Sir, based on which set of
24 regulations?

25 Q Based on these 198 -- on the regulations in

• Dewalsh 1

effect as of January 1, 1984 to which Mr. Petrone and I have
2 been referring.

3

(The witnesses are conferring.)

4

5

6

7

8

9

10

11

12

• 13

14

15

16

17

18

19

20

21

22

23

24

• 25

ewalsh

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Mr. Baranski, do you know or are you just --

A (Witness Baranski) No, sir. I would like -- I would like Page 480 -- okay, I do have Page 480, excuse me.

MR. LANPHER: Excuse me. These witnesses are trying to confer and review documents that they were not told in advance of today they would be asked about, which would violate their sort of guideline about what is going to be asked in terms of exhibits.

MR. IRWIN: I'm sorry. I --

MR. LANPHER: So, they are trying to review these and they ought to have whatever time it takes to go back and look at them.

MR. IRWIN: I agree. I thought these had been in the letter, but if I didn't include this I'm sorry.

WITNESS BARANSKI: Mr. Irwin, I believe your question is, does the '84 regulation make a special application to an NTOL as compared to an operating license. And, I believe if we look at the Section B on Page 480 it refers to an ingestion pathway exercise within one year for an NTOL, where applied to an operating license it sets upon a lengthier frequency of five years.

So, that is a difference in an exercise for an NTOL as compared to an operating unit.

MR. IRWIN: We can come back to that.

BY MR. IRWIN: (Continuing)

Dewalsh

1 Q But, with that potential qualification, is there
2 any -- there is any -- with that potential qualification,
3 there is no distinction in the applicability of the
4 requirement of testing as much of emergency plans as is
5 reasonably achievable without mandatory public participation
6 in the NRC regulations as they existed at the beginning of
7 1984, no distinction between new plants and already
8 operating plants, is there?

9 A (Witness Baranski) None that I'm aware of.

10 Q Okay. Now, as I recall, gentlemen, you
11 testified yesterday that in the year 1981 a full-scale
12 exercise was held for Nine Mile Point in September and that
13 another one was held in September of '83 for Nine Mile,
14 correct?

15 A Sir, before I answer that question I think I
16 would like to go through and restate yesterday's dates and
17 applicability to the various units because I think there was
18 some confusion on the data sheet that we were using. And,
19 today I would like to set the record straight on exercises,
20 units and dates of occurrence of those exercises. And, it's
21 a re-correction or a reclarification of yesterday's listing
22 of exercises.

23 JUDGE FRYE: Why don't you do that?

24 MR. IRWIN: Fine. That's okay.

25 WITNESS BARANSKI: The first exercise was the

uewalsh

1 Ginna -- excuse me. We have to go back to the Nine Mile
2 Point 9/81 exercise. The next exercise was the R. E. Ginna
3 site, January '82. The next exercise was Indian Point 3,
4 March '82. James A. Fitzpatrick site, August '82. Indian
5 Point, Unit 2, March '83. R. E. Ginna, June '83. Nine Mile
6 Point 1, September '83. Indian Point, Unit 3, November
7 '84. R. E. Ginna, September '85. Nine Mile Point, Unit 1,
8 November '85. Indian Point, Unit 2, June '86.

9 BY MR. IRWIN: (Continuing)

10 Q With the addition of the Ginna -- excuse me,
11 with the addition of the Nine Mile Point exercise in
12 September of '81, that list appears to be the same, Mr.
13 Baranski, as the list which New York State provided in
14 response to LILCO Interrogatory 1 to the State, isn't it?

15 A I would certainly hope so, sir.

16 Q Okay. Good. I was afraid we were going to
17 understand something different. Okay.

18 And, those exercises, as we indicated yesterday,
19 were all intended to be, whether you call them full-scale or
20 full participation or what, they were intended to satisfy
21 the full gamut of NRC regulations then in effect, correct?

22 A Those were exercises that were conducted,
23 observed, tested and evaluated by FEMA and the NRC on site
24 that allowed those units to continue in operation in
25 accordance with the regulations.

uewalsh

1 Q Okay. And, so whatever the regulations said,
2 including satisfaction of the requirement of testing as much
3 of licensee, state and local emergency plans as is
4 reasonably achievable without mandatory public
5 participation, whatever other -- including that clause and
6 whatever other clauses may have been in effect in the
7 regulations, those exercises were designed to meet them and
8 were accepted by the NRC as meeting them, right?

9 MR. LANPHER: I object to the question. He is
10 asking for a conclusion as to whether those exercises were
11 designed to meet those regulations. There is no testimony
12 that these gentlemen designed those exercises.

13 Those questions are appropriately directed to
14 FEMA. That calls for speculation.

15 MR. IRWIN: I recall testimony by these
16 gentlemen that they participated in the design and review of
17 these exercises.

18 MR. LANPHER: Yeah, but there is no testimony
19 that they participated in design or review of these
20 exercises under the NRC's regulations.

21 MR. IRWIN: Well --

22 JUDGE FRYE: Gentlemen, is it correct that you
23 didn't participate in the design of these exercises?

24 WITNESS BARANSKI: That's affirmative. We
25 participated in the --

uewalsh 1

JUDGE FRYE: Okay.

2

WITNESS BARANSKI: -- execution of the exercise,
3 the development of the objectives, the development of the
4 scenario, the review of the post-exercise reports. Yes,
5 that is affirmative.

6

JUDGE FRYE: Now, when you were doing that, did
7 you have a particular regulatory standard in mind that you
8 wanted to meet?

9

WITNESS PAPILE: During the first exercise,
10 Judge Frye, I participated in trying to set up that first
11 exercise, no. The -- we got together with FEMA and really
12 came up with an idea of what we were going to do.

13

And, no, I can't remember sitting there
14 following a regulation as stated by Mr. Irwin that we were
15 going to meet these requirements. No.

16

We kept probably along with 0654 more than we
17 did with anything else and --

18

JUDGE FRYE: So, you --

19

WITNESS PAPILE: -- going through the plan --

20

JUDGE FRYE: -- had that in mind?

21

WITNESS PAPILE: It was sort of an agreement,
22 like we do in the military. We sit down and write and an
23 exercise. And, that's what we did.

24

JUDGE FRYE: But, now you have qualified that as
25 to the first exercises.

uewalsh 1

WITNESS PAPILE: Yes, sir.

2

JUDGE FRYE: After the first exercises, what did

3

you do?

4

WITNESS PAPILE: That went on for the first few

5

exercises. We probably got down to the regulations about

6

1983 sometimes, sir, maybe late '82. The exercise that I

7

can remember specifically sitting down with someone -- what

8

we called the RAC, as you know, what we called the RAC and

9

sitting down was probably 1983, Indian Point, was the first

10

one where we really sat down and someone gave us some

11

requirements.

12

JUDGE FRYE: All right. And, that someone was?

13

WITNESS PAPILE: The RAC, sir.

14

JUDGE FRYE: The RAC.

15

WITNESS PAPILE: Yes.

16

JUDGE FRYE: So, they would have been FEMA

17

requirements?

18

WITNESS PAPILE: Yes, sir. FEMA, and NRC did

19

have a representative on the RAC at that time.

20

JUDGE FRYE: On the RAC.

21

WITNESS PAPILE: Yes, sir.

22

JUDGE FRYE: Now, did you at some point later

23

also take into account NRC requirements?

24

WITNESS PAPILE: We were never told NRC

25

requirements. We were always listening to FEMA more than --

1 the FEMA man is the RAC Chairman, and he's the one who gave
2 us our guidance.

3 JUDGE FRYE: Okay. Now, can you repeat your
4 question?

5 BY MR. IRWIN: (Continuing)

6 Q These exercises, during the period from the
7 first Nine Mile Point exercise on, were accepted by the NRC
8 as being sufficient under the regulations which were then in
9 effect, including all of the provisions we have just gone
10 over this morning, weren't they?

11 MR. LANPHER: I --

12 JUDGE FRYE: Do you have any basis for knowing
13 the answer to that question? Do you know the answer to the
14 question, which is did NRC accept them?

15 WITNESS BARANSKI: The conclusion that we are
16 drawing, sir, is that the post-exercise assessment reports
17 were of such a nature that we did not have to go do an
18 exercise over.

19 JUDGE FRYE: Okay.

20 WITNESS BARANSKI: Therefore, we felt
21 comfortable that the exercise that we performed was adequate
22 to meet the regulations that the people that reviewed the
23 exercise were applying.

24 JUDGE FRYE: All right. If I understand you,
25 what you are saying is that if it had come back again you

ewalsh 1 would have assumed that the NRC didn't like it for some
2 reason or other?

3 WITNESS BARANSKI: That's part of it.

4 JUDGE FRYE: But, you had no contact with NRC
5 directly?

6 WITNESS BARANSKI: No, sir, not on the final
7 reports.

8 JUDGE FRYE: Okay. I think that clears it up.

9 MR. IRWIN: Okay.

10 BY MR. IRWIN: (Continuing)

11 Q So, in a word, while it may be an inferred
12 process, the answer is yes, right?

13 MR. LANPHER: No. The answer is what he said
14 before.

15 JUDGE FRYE: I think the answer is in the
16 record.

17 MR. IRWIN: Let me try it again.

18 BY MR. IRWIN: (Continuing)

19 Q When FEMA -- as occurred at Indian Point, for
20 instance, when FEMA didn't like it or th NRC didn't like it,
21 they had you do it again, didn't they?

22 A (Witness Baranski) When FEMA did not like our
23 performance of an exercise or some area was weak, we were
24 required to do it over.

25 Q And, when the NRC didn't like the status of

uewalsh 1 things, they sent you a 120-day letter, didn't they?

2 A That's affirmative.

3 Q And, they didn't send you a 120-day letter with
4 regard to any of these exercises, did they?

5 A That's not true, sir.

6 Q Which one?

7 A We were at a 120-day clock for --

8 (The witness is looking at a document.)

9 -- the March '83 exercise where we had to
10 conduct another exercise in 1983 with a particular county
11 associated with Indian Point.

12 Q That's right. That was the Indian Point
13 exercise that I was referring to. Are there any other
14 exercises where the NRC put you on the 120-day clock?

15 A No, sir.

16 Q Okay.

17 A Mr. Irwin, I think it's fair to say that they
18 placed the 120-day clock on the licensee, not the state.
19 They didn't give it to us.

20 (Laughter.)

21 JUDGE FRYE: We understand that. I think, Mr.
22 Irwin, we would like to take a 15 minute break at this time.

23 MR. IRWIN: That's fine. This is a good time.

24 (Whereupon, a recess is taken at 10:25 a.m., to
25 reconvene at 10:40 a.m., this same day.)

uewalsh 1

JUDGE FRYE: Mr. Irwin.

2

MR. IRWIN: Thank you, Judge Frye.

3

BY MR. IRWIN: (Continuing)

4

Q Mr. Petrone, is it fair to -- do you agree that
5 FEMA's current guidance on the development of off-site
6 emergency preparedness exercises as set forth in Guidance
7 Memorandum PR-1, issued by FEMA on -- dated October 1, 1985
8 and issued under a covering memo from Samuel W. Speck to
9 Regional Directors on October 4, 1985, that's the current
10 FEMA guidance on --

11

A (Witness Petrone) Yes.

12

Q Okay. I'm going to be asking you gentlemen some
13 questions about that document. It's Attachment E to LILCO's
14 direct testimony on Contentions 15 and 16. And I left a
15 couple of copies over there yesterday. I notice one is
16 behind General Papile and one is on the corner.

17

I will also be referring to a memorandum from
18 Dave McLoughlin on August 5, 1983. That's Attachment F to
19 the LILCO testimony in case you do not have that otherwise
20 available.

21

Mr. Petrone, you are familiar with Guidance
22 Memorandum PR-1?

23

A I've read it.

24

Q Mr. Baranski, are you familiar with Guidance
25 Memorandum PR-1 also, sir?

uewaish

- 1 A (Witness Baranski) Yes, sir, I am.
- 2 Q General Papile?
- 3 A (Witness Papile) Yes, I am.
- 4 Q And, Mr. Czech?
- 5 A (Witness Czech) Yes, sir, I am.
- 6 Q The guidance memorandum states as its purpose,
- 7 does it not, to provide -- and I'm looking here at Page 1,
- 8 Paragraph 1, to provide interpretation and clarification
- 9 contained -- excuse me, of requirements contained in the
- 10 Federal Emergency Management Agency Rule 44, CFR 350 and
- 11 NUREG 0654 and FEMA REP-1 relating to the periodic planning
- 12 and exercise activities and other requirements affected by
- 13 the biennial exercise frequency and other program emphases.
- 14 Do you see that?
- 15 A (Witness Baranski) Yes, sir, I do.
- 16 Q Okay. And, nobody has any reason to disagree
- 17 with FEMA's characterization of the basic guidance purpose
- 18 of this memo?
- 19 A No, sir.
- 20 Q Okay. Now, the guidance memorandum refers, does
- 21 it not, to a memorandum issued by Mr. McLoughlin of FEMA,
- 22 Dave McLoughlin, on August 5, 1983. And, here I would
- 23 direct your attention to Page 2, Paragraph 2 of the guidance
- 24 memo, where it says: Scenarios for periodic exercise should
- 25 be sufficiently varied that all of the major elements of the

ewalsh

1 plans and preparedness of off-site organizations are tested
2 within a six-year period. The major elements of plans and
3 preparedness are incorporated in the 35 exercise objectives
4 contained in the August 5, 1983 memorandum, Procedural
5 Policy on Radiological Emergency Preparedness Plan Reviews,
6 Exercise Observations and Evaluations and Interim Findings.

7 Do you see that, Mr. Petrone?

8 A (Witness Petrone) Yes, sir.

9 (Witness Czech) I'm sorry, Mr. Irwin. Could
10 you tell me where you are reading from?

11 Q Yes, sir. I'm reading from Page 2 of Guidance
12 Memorandum PR-1, Paragraph 2 down toward the bottom of the
13 page.

14 A Thank you.

15

16

17

18

19

20

21

22

23

24

25

0180 06 06
06ewalsh 1 Q So, basically one has to use Guidance Memorandum
2 PR-1 and Mr. McLoughlin's memo of August 5, 1983 in tandem
3 to shape the contours of an exercise relative to FEMA's
4 standard exercise objective; isn't that correct?

5 A (Witness Papile) I would like to clarify
6 something here. The states were not privy to these
7 regulations or these memorandum guidance until last
8 January. And, if you noted the addressees on these papers,
9 they are to the District Directors.

10 In a meeting with the Feds last year in
11 Washington, we made an agreement that we would now receive
12 these memorandums. Prior to that time, we had not received
13 them nor were we privy other than by accident to comment on
14 them where other agencies were -- such as AIF, were privy to
15 comment on them.

16 We did meet on this regulation with FEMA prior
17 to seeing it numbered PR-1. But, we had not seen the final
18 print until we asked for it. So, I wanted to make this
19 clear, that guidance memorandums are not necessarily
20 addressed to the states or to the counties.

21 Thank you.

22 Q Okay. Now, in implementing PR-1, one uses it in
23 tandem with Mr. McLoughlin's memorandum of August 5, 1983,
24 does one not?

25 A In addition, we have not received --

Cewalsh 1

Q Let me -- that's correct, isn't it?

2

A Ask me the question again.

3

4

MR. IRWIN: Mr. Reporter, would you read the question back?

5

(The question was read back as requested.)

6

7

8

WITNESS PETRONE: We have not seen Mr. McLoughlin's directive until the day before yesterday when it was presented to us by counsel.

9

10

We had no idea that it was even published or what it was doing. So, I can't answer that question.

11

BY MR. IRWIN: (Continuing)

12

13

14

15

16

Q Well, the text of PR-1 speaks for itself, and it does say that the major elements of plans and preparedness are incorporated in the 35 exercise objectives contained in the August 5, 1983 memorandum which happens to be authored by Mr. McLoughlin, does it not?

17

A That's true.

18

19

20

Q Okay. Now, if you -- Mr. Petrone, when you were at FEMA did you have occasion to see Mr. McLoughlin's memorandum of August 5, 1983?

21

22

23

24

A (Witness Petrone) When I was at FEMA, I don't recall. I really don't. I don't recall whether I -- I probably did see it there. It probably -- it came in obviously and I looked at it.

25

JUDGE FRYE: But, you don't have any present

1 ewalsh 1 recollection of it?

2 WITNESS PETRONE: Of seeing it then, no, sir.

3 BY MR. IRWIN: (Continuing)

4 Q Okay. Well, Mr. Petrone, Mr. McLoughlin's
5 memorandum, if you look at the front page, it is addressed,
6 is it not, to Regional Directors?

7 A Correct.

8 Q And, it appears to be initialed by him?

9 A Correct. I don't dispute it.

10 Q In other words, it has all the indicia of being
11 an official FEMA guidance document, does it not?

12 A Yes.

13 Q Okay. Now, if one looks at --

14 MR. LANPHER: Excuse me. This is a belated
15 objection, but an official FEMA guidance document -- we have
16 talked about guidance memoranda, and I don't know how Mr.
17 Irwin is using the term "official FEMA guidance document."
18 I'm not sure if that is going to be material on the record,
19 but this is different from things like Guidance Memorandum
20 17 which was labeled as such.

21 MR. IRWIN: Well, I will be happy to stipulate
22 that I was not using a term of art. I was just simply
23 trying to make sure that there was no question as to the
24 authenticity of this memorandum which is referred to in a
25 subsequent guidance memorandum.

Dewalsh

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE FRYE: And, Mr. Petrone does not question it, as I gather.

MR. IRWIN: That's right.

JUDGE FRYE: It appears to be official to you?

WITNESS PETRONE: Yes, sir.

JUDGE FRYE: Okay.

BY MR. IRWIN: (Continuing)

Q Now, Mr. McLoughlin's memorandum sets out as an attachment, does it not, a list of standard exercise objectives, does it not?

Mr. Baranski?

A (Witness Baranski) Yes, it does.

Q And, how many of them are there, sir?

(The witnesses are looking at the document.)

A There are listed 35 objectives.

Q Okay. And, there are three columns, are there not; one, a statement of the objective; a second, a corresponding part or parts of form which relates to a standard modular format which is contained -- is another attachment to his memorandum; and, a third column, a reference to a NUREG 0654 section, correct?

A That's correct.

Q Okay. Now, if one refers to the bottom of Page 2 of Mr. McLoughlin's memo, the last paragraph, there is a paragraph which begins, "Guidance Memorandum 17 requires

1 ewalsh 1 setting objectives before generating exercise scenarios."

2 2 Do you see that paragraph, gentlemen?

3 A 3 Yes, sir.

4 Q 4 Okay. Mr. Petrone, Guidance Memorandum 17 is a
5 FEMA document, is it not?

6 A 6 (Witness Petrone) Yes, sir, correct.

7 Q 7 And, that FEMA document -- that is a FEMA
8 document issued in 1980 or 1981 --

9 A 9 I know it was an early document.

10 Q 10 And, its purpose was what?

11 A 11 I believe at that point the purpose of GM-17 was
12 to set down objectives for exercises.

13 Q 13 Okay. Now, referring back again to this
14 paragraph on the bottom of Page 2 of Mr. McLoughlin's memo,
15 Guidance Memorandum 17 requires setting objectives before
16 generating exercise requirements. To assist --

17 17 MR. LANPHER: Scenarios.

18 18 MR. IRWIN: Scenarios -- thank you. To assist
19 in generating an objective based scenario and to using the
20 modular format for exercise observation in evaluation, a set
21 of 35 standard objectives has been developed. They are
22 included as the last section of Attachment 2. The
23 objectives have been developed so that each corresponds to a
24 discreet part of a module, one or two sections. The
25 objectives are limited generally to observable elements from

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NUREG 0654, FEMA REP-1 that pertain to either state and/or local governments.

BY MR. IRWIN: (Continuing)

Q Do you see that paragraph, gentlemen?

A (Witness Baranski) Yes, sir.

Q Do you agree that that paragraph accurately states FEMA's policy as to the nature of observable elements to be demonstrated in off-site exercises?

SUE/sw 1

MR. LANPHER: I object to the question. It calls
2 for these witnesses to speculate about FEMA policies. This
3 is again a question that ought to go to FEMA.

4 JUDGE FRYE: I agree. I think it does have to go
5 to FEMA. But, I think it would be appropriate to ask them
6 whether they think they have any basis to disagree with
7 that.

8 MR. IRWIN: Yes. That's how I was going to
9 phrase the question.

10 BY MR. IRWIN: (Continuing)

11 Q Do you gentlemen have any basis to disagree with
12 this statement which appears to be a statement of FEMA
13 policy as to the nature of observable elements?

14 (The witnesses are conferring.)

15 A (Witness Baranski) Mr. Irwin, what I would say
16 about this list of objectives is that it's not complete.

17 Q From whose standpoint?

18 A From our standpoint and our experience in the
19 last number of federally graded exercises and that this list
20 leaves out some rather important objectives that you need to
21 test for a comprehensive integrated emergency management
22 system.

23 Q In other words, what you are saying is that
24 FEMA's statement of its own objectives is incomplete from
25 New York State's standpoint?

SUE/sw 1

A That's correct.

2

Q But, you are not disagreeing that this is what FEMA thinks is its list of objectives, are you?

3

4

A Well, sir, I know from my experience of submitting objectives that I have had to resubmit more defined objectives to meet their standards for conduct of an exercise. I cannot speak for FEMA and say whether they have reviewed the exercise objectives that we submit for a federally graded exercise and compare them to this list.

5

6

7

8

9

10

Q Okay. So, in other words -- okay. In other words, you cannot say definitively that this list is an insufficient basis.

11

12

13

What you are saying is that in your experience you have submitted objectives which FEMA has sent back for amplification historically, correct?

14

15

16

A And modification, that's correct.

17

Q Okay. Okay.

18

A And, I would like to add that this is guidance, FEMA guidance.

19

20

Q Understood. That's what it --

21

A (Witness Papile) Judge Frye, I would like to explain something here. Jim is answering, because he is my Exercise Director and he did most of the work with FEMA on this, but on these items Jim knows more than anybody else.

22

23

24

25

(Witness Baranski) But, to back up my

SUE/sw

1 statements, Mr. Irwin, I would like to say that if you
2 compare these objectives against the draft objectives that
3 are listed in EX-3 you will find some significant
4 differences.

5 Q There is testimony on that, and I'm sure you have
6 read it.

7 Mr. Petrone, you have no basis -- you were
8 Regional Director at the time that Mr. McLoughlin's
9 memorandum and PR-1 were issued. You never heard anything
10 to indicate that these were not reasonable and accurate
11 statements of FEMA policy as to exercise objectives to be
12 followed in designing exercises, did you, sir?

13 A (Witness Petrone) Not specifically. Let me just
14 clarify, though. Whenever there was either a draft
15 memorandum coming out or a discussion of a guidance
16 memoranda that was going to be issued, or memoranda that
17 would be issued, I had staff that would sit with Washington
18 on this.

19 So, I don't recall any specific issues dealing
20 with this. If there had been issues with regard to the
21 objectives they probably would have been dealt with by my
22 staff, and if my staff were not satisfied I would have then
23 contacted and dealt with Washington directly.

24 JUDGE FRYE: So, not recalling the staff having
25 brought anything to your attention --

SUE/sw 1

WITNESS PETRONE: But, I want to clarify the fact
2 that, you know, I never responded myself to these.

3 JUDGE PARIS: I notice on Page 3 of this
4 memorandum from McLoughlin to the Regional Director, it's
5 the second paragraph, it says: We would appreciate your
6 comments on the two attachments as soon as possible.

7 Does that mean that this is essentially a draft
8 document subject to change or what?

9 WITNESS PETRONE: Usually, if comments were asked
10 for those comments were submitted. In many cases, there
11 would be a discussion with the professional staffs, both in
12 Washington and in the region, whether it be a conference
13 call or a meeting.

14 If indeed there were specific problems where they
15 could not concur, two things would happen. Either the
16 memoranda would be supplemented or it would be -- it would
17 be discontinued, or it would be ignored. That happened,
18 too.

19 (Laughter.)

20 JUDGE FRYE: That seems to run the gamut.

21 WITNESS PETRONE: It does run the gamut. What
22 I'm trying to say is that there was opportunity for
23 discussion and comment but not necessarily opportunity to
24 retrieve a document and say that the document in and of
25 itself would not be able to be utilized because Region II or

SUE/sw

1 Region I or IV were unhappy with it or didn't agree with it.

2 BY MR. IRWIN: (Continuing)

3 Q Let's see if we can carry Dr. Paris' question one
4 step further. Mr. Petrone, if you look at PR-1 on Page 2,
5 Paragraph 2, you will see it referred to, correct?

6 A (Witness Petrone) Page 2, Paragraph 2?

7 Q Yes, sir, down at the bottom of the page. You
8 will see Mr. McLoughlin's memo referred to, the August 5,
9 1983 memo referred to?

10 (The witness is looking at a document.)

11 A Yes.

12 Q Okay. And the fact that it is being referred to
13 in guidance issued two years subsequently suggests that it
14 was neither retracted, substantively modified or being
15 ignored, correct?

16 MR. LANPHER: I object to the question. He is
17 asking him to speculate about what it suggests.

18 JUDGE FRYE: Overruled. I think in his capacity
19 as Regional Director he should be able to answer that.

20 WITNESS PETRONE: Yeah. I would say it was not
21 pulled back. It was not pulled back. A terrible word.

22 JUDGE PARIS: Or ignored.

23 (Laughter.)

24 MR. IRWIN: Okay.

25 BY MR. IRWIN: (Continuing)

SUE/sw

1 Q Now, gentlemen, as I understand your testimony,
2 particularly on Page 35, you state the view that initial
3 exercises for nuclear plants which have not yet received
4 their operating licenses must include all major observable
5 elements of the plan which are reasonably achievable without
6 mandatory public participation; is that correct?

7 A (Witness Baranski) That's correct.

8 Q Okay. Now, is that intended to distinguish them
9 from exercises for plants which have already received their
10 operating licenses in terms of the scope of the -- the
11 required scope of the exercise?

12 A I believe, Mr. Irwin, our testimony reflects the
13 fact that we believe that the first exercise should be
14 tested as comprehensively as possible and subsequent
15 exercises may, based on a track record, shift the focus and
16 emphasis of that exercise.

17 But, the first exercise should be as
18 comprehensive and complete as possible. And, from a common
19 sense perspective it tells us that, as emergency planning
20 people, we would like to know where the weak areas are in
21 the plan. Therefore, we attempt to test as much as we can.

22 Q Does this require, in your view, testing all 35
23 of the objectives stated in Mr. McLoughlin's memo and
24 referred to in PR-1?

25 A Sir, if you would care to go through the list of

SUE/sw

1 PR-1, there are some objectives there that can't be
2 demonstrated.

3 Q But, assuming that as many as can be
4 demonstrated, is it your opinion that all of them must be
5 demonstrated prior to issuance of an operating license?

6 A The answer is yes.

7 Q Okay. If you -- now, gentlemen, isn't it true
8 that Guidance Memorandum PR-1 requires only -- and, here I
9 would refer you to Paragraph 2 on Page 2, and to Page 34 of
10 your testimony, doesn't PR-1 require only that these major
11 elements, the 35 objectives, of plans be tested within a six
12 year period?

13 MR. LANPHER: I object to the form of the
14 question. He says doesn't FR-1 require something. That's a
15 mischaracterization. PR-1 doesn't require anything. It's
16 not a regulation.

17 BY MR. IRWIN: (Continuing)

18 Q Doesn't it provide? I will substitute the word
19 "provide."

20 A (Witness Baranski) Please ask the question
21 again.

22 Q Isn't it true that Guidance Memorandum PR-1
23 provides only that the 35 exercise objectives which cover
24 the major elements of off-site plans be tested over a six
25 year span, not in any one specific exercise?

SUE/sw 1

(The witnesses are conferring.)

2

A (Witness Baranski) The Guidance Memorandum PR-1 does not distinguish between an NTOL and an operating licensed reactor.

3

4

Q That's correct. And, therefore, it does not place any special requirement on an NTOL, correct?

5

6

MR. LANPHER: I object again to the form of the question.

7

8

BY MR. IRWIN: (Continuing)

9

10

Q It doesn't place any special qualification on the exercise for what we are calling an NTOL, a plant which has not yet received its full power license?

11

12

A (Witness Baranski) PR-1 does not provide for any special emphasis on an NTOL as compared to an operating licensed reactor. However, Appendix E does.

13

14

Q Well, let's just continue with PR-1 one step further. If one looks up at Paragraph 1, the six year span which -- over which all 35 observable elements should be tested begins with that first exercise in FEMA's judgment, does it not?

15

16

In other words, that is just simply corroboration of the proposition you indicated a minute ago, Mr. Baranski, that the initial exercise prior to full power operation is merely part of the six year cycle for testing of plants, at least as far as PR-1 is concerned?

17

18

19

20

SUE/sw 1

A From a --

2

MR. LANPHER: Judge Frye, could I please have
3 that question read back?

4

JUDGE FRYE: I'm not sure I understood it either.

5

MR. IRWIN: Let me back off the question.

6

BY MR. IRWIN: (Continuing)

7

Q PR-1 sets out a six year cycle for testing all
8 observable elements, correct, Mr. Baranski?

9

A (Witness Baranski) That's correct.

10

Q And, those observable elements are defined as
11 being a 35 objective list contained in an attachment to
12 Mr. McLoughlin's memorandum, correct?

13

A Restate that question, please.

14

Q Those 35 -- those observable elements are stated
15 as being listed in a 35 objective list attached to
16 Mr. McLoughlin's memorandum, correct?

17

(Mr. Papile is conferring with Mr. Baranski.)

18

MR. IRWIN: Mr. Papile, I would be happy to have
19 you chime in, but if you want to consult I would --

20

MR. LANPHER: Judge Frye, this is completely
21 proper, this consultation.

22

JUDGE FRYE: I think it is, yes.

23

WITNESS BARANSKI: Mr. Irwin, my reading of PR-1
24 is essentially what you have said.

25

BY MR. IRWIN: (Continuing)

SUE/sw 1

Q So you have 35 elements which need to be tested
2 over a six year period, correct?

3 A For an operating licensed unit that's correct.

4 Q But, the cycle for that six years begins, does it
5 not, with that first exercise for what we have been -- for
6 what you have been referring to as an NTOL plant, doesn't
7 it?

8 MR. LANPHER: I object to the question. It has
9 been asked and answered. They have already indicated their
10 disagreement with that proposition. They have referred
11 Mr. Irwin back to the Appendix E requirements.

12 MR. IRWIN: I'm talking about PR-1, Judge Frye.
13 And, I am trying --

14 JUDGE FRYE: It may have been asked and answered,
15 but frankly I would like to get the witnesses to clarify
16 it. I'm getting confused now, too. Mr. Baranski?

17 WITNESS BARANSKI: Okay. For the record, start
18 with the question over, please.

19 (Laughter.)

20 BY MR. IRWIN: (Continuing)

21 Q The six year period over which the 35 elements
22 which correspond to the major observable portions of plans
23 are to be tested, according to PR-1 and its attachment, the
24 McLoughlin memorandum, that six year cycle begins, does it
25 not, with the exercise preceding issuance of a full power

SUE/sw

1 license? And, here I would refer you, Mr. Baranski, to
2 Paragraph 1 of Page 2 of PR-1, where it states: For those
3 requirements related to the six year compliance period for
4 selected exercise activities delineated in 1.B above --
5 that's the evaluation criteria -- the six year period
6 commences with the date of the first joining utility and state
7 and local government exercise.

8 A (Witness Baranski) That's correct.

9 Q And, the example that follows: If the date of
10 the first joint exercise is March 23, 1981 then the end of
11 the six year period is March 23, 1987.

12 In other words, the first exercise, the pre-full
13 power exercise is included within that six year cycle,
14 correct?

15 MR. LANPHER: Could I have that question read
16 back, please?

17 JUDGE FRYE: Yeah. I didn't -- I'm sorry.

18 MR. IRWIN: Yeah, I just --

19 MR. LANPHER: I would like to have the question
20 read back, Judge.

21 (The Reporter read the question as requested.)

22 (The witnesses are conferring.)

23 WITNESS BARANSKI: According to PR-1, it does not
24 distinguish between an NTOL and an operating licensed unit.
25 However, I would like to add that if you look at the

SUE/sw

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

frequency differences, we have frequency disparities for performance of objectives based on NRC regulations which cite a five year frequency, and we have FEMA regulations that cite a six year frequency.

SUE/sw

1 WITNESS MINOR: May I add something to that same
2 question that is being answered here, because you asked us
3 to distinguish or to establish whether this distinguished
4 between NTOLs and continuing licenses? And, it is clear to
5 me that it refers in here to different language than you are
6 quoting.

7 I think when you quoted this to us or stated it
8 to us, you stated major observable elements. And, the
9 language in Paragraph 2 just says major elements of the plan
10 are incorporated within the 35 objectives. It refers, in
11 Paragraph 1, on Page 2 now, of the PR-1 document to 10 CFR
12 50, Appendix E.

13 In Appendix E, it defines major observable
14 elements or major observable portions of the plan. It
15 doesn't refer to objectives from FEMA. It refers to
16 observable portions of the plan. And, that is the
17 regulation that we are interpreting as being governing in
18 this situation.

19 And, it does distinguish from NTOL and -- excuse
20 me, between NTOLs and continuing licenses.

21 BY MR. IRWIN: (Continuing)

22 Q That's your view. What I was trying simply to
23 get was whether PR-1, in its own terms and in its definition
24 of a six year cycle, distinguish. And, Mr. Baranski said it
25 did not.

SUE/sw

1 Now, in terms of -- we will just leave it right
2 there.

3 Okay. Each of you, Mr. Baranski and Mr. Minor,
4 have suggested that notwithstanding what PR-1 may or may not
5 say, the requirements of Appendix E places special
6 additional -- Appendix E places special additional
7 requirements on the exercise for an NTOL.

8 A (Witness Baranski) That is correct.

9 Q Mr. Baranski, what are those additional
10 requirements?

11 (The witness is looking at a document.)

12 A Okay. I am referring to a Federal Register
13 notice, Page 27,736. The paragraph, the middle column, and
14 I come down and it starts: This exercise shall be conducted
15 within one year -- of course, we realize that's now changed
16 -- before the issuance of the first operating license for
17 full power and prior to operation above five percent of
18 rated power and shall include participation by each state
19 and local government within the plume exposure pathway EPZ
20 and each state within the ingestion exposure pathway EPZ.

21 Q And, that's the addition you believe applies from
22 Appendix E beyond that which normally applies to a plant
23 which already has a full power license; is that correct?

24 In other words, that's the additional hurdle that
25 Appendix E places on an NTOL?

SUE/sw

1 (The witnesses are conferring.)

2 A (Witness Baranski) Mr. Irwin, this to me is
3 quite clear that this is an additional requirement for an
4 NTOL, and I believe that this whole litigate process that we
5 are going through is to try and determine what the major
6 observable elements, portions, parts, however you want to
7 define it, for an exercise should be.

8 Q The question I was asking you though was what
9 additional requirements for an NTOL exist beyond those for a
10 plant that is already operating at full power, and you
11 referred me to that last sentence. And, that is your view
12 as to the additional requirement from Appendix E, correct?

13 (The witness is looking at a document.)

14 A I think another distinction that can be made --
15 it is a word game here, which says, "which tests as much of
16 the licensee, state and local as reasonable achievable" and
17 then we go over to the other one which talks about full
18 participation which says "includes testing of major
19 observable."

20 I am reading from Appendix E, and it's Page 512.
21 It's the 1/1/86 edition.

22 Q Okay. So, in other words, you are telling me
23 that there may be two respects in which an NTOL exercise has
24 additional requirements beyond those for a plant which
25 already is operating? One, that it requires participation

SUE/sw

1 by each state and local government within the plume exposure
2 pathway EPZ and each state within the ingestion exposure
3 pathway EPZ; and, two, that the full participation exercise
4 must be one which tests as much of the licensee, state and
5 local emergency plans as is reasonably achievable without
6 mandatory public participation.

7 (The witnesses are conferring.)

8 A Our reading of this regulation is that, number
9 one, it does require an ingestion pathway exercise. And I
10 think we have agreed on that.

11 And, number two, it tests as much as -- as much
12 as is reasonably achievable for the first exercise.

13 Q Without mandatory public --

14 A Without mandatory public participation.

15 Q Okay.

16 A Now, full participation for subsequent operating
17 license exercises refers to testing the major observable
18 portions.

19 And, our distinction is quantity.

20 Q Quantity meaning the number of people or pieces
21 of equipment within each area of endeavor which must be --
22 each objective which must be deployed?

23 (The witnesses are conferring.)

24 A Mr. Irwin, that is part of it. But, what we read
25 into this is that you try to test as much as you can

SUE/sw

1 without public participation to try and see how
2 comprehensive and integrated and coordinated your emergency
3 response plan is. And, equipment and people are part of
4 it.

5 JUDGE FRYE: That's what you meant by quantity?

6 WITNESS BARANSKI: That's affirmative, sir.

7 MR. IRWIN: Okay.

8 BY MR. IRWIN: (Continuing)

9 Q Mr. Minor, you indicated that you had some --
10 appeared to have some thoughts on that subject a couple of
11 minutes ago as well. Do you agree with Mr. Baranski, or do
12 you have additional thoughts?

13 A (Witness Minor) The main point I was trying to
14 make is that the memoranda we have been discussing, PR-1,
15 for instance, and the McLoughlin letter, are dealing with an
16 effort to organize FEMA -- if you will allow me to use that
17 phrase -- because in the McLoughlin memoranda it talks about
18 you want to perform a more unified, workable approach and we
19 want to -- on Page 2 it refers to improving the uniformity
20 of exercise evaluations. And, that's the approach they are
21 working for here. And, I think that's important and it
22 should be done.

23 However, as I pointed out, PR-1 references 10 CFR
24 50, Appendix E, which was in existence and in place at that
25 time. And, that referenced document does make a distinction

SUE/sw

1 between NTOLs and continuing licenses. And, it's that
2 distinction that we feel should be applied here and should
3 be the measure of the fullness of participation in this
4 exercise.

5 Q And, the distinction which Mr. Baranski made a
6 minute ago is the one which you would make? In other words,
7 you don't disagree with Mr. Baranski's interpretation of
8 Appendix E, do you?

9 A Well, I perhaps would have to have it reread to
10 be sure that I wouldn't say it slightly differently but I
11 don't think I greatly disagree with it.

12 Q Okay. I just wanted to make sure you didn't have
13 anything to add on Appendix E.

14 Gentlemen, would you turn to Page 42 of your
15 testimony?

16 (The witnesses are complying.)

17 At the -- in the first full paragraph, there is a
18 statement that reads as follows: "There can be no question
19 but that the siren system and the relevant radio activation,
20 coordination among relevant entities, and the actual
21 broadcast of test messages by the radio station constitute
22 major observable portions of any offsite plan."

23 Do you see that statement, gentlemen?

24 A (Witness Baranski) Yes, sir.

25 Q Is there -- what is the regulatory basis for

SUE/sw

1 your identification of the siren system as a major
2 observable portion of an off-site plan?

3 (The witnesses are conferring.)

4 MR. LANPHER: Could I seek a clarification, Judge
5 Frye, whether he is asking for a citation to a regulation or
6 is Mr. Irwin asking for them to explain why they think this
7 is a major observable portion?

8 JUDGE FRYE: I presume it's the latter. Is it
9 the latter?

10 MR. LANPHER: Well, he said the regulatory basis.

11 MR. IRWIN: I'm interested in as specific a
12 regulatory basis as I can find.

13 JUDGE FRYE: All right.

14 MR. LANPHER: So, you want the citation; is that
15 correct?

16 MR. IRWIN: If one exists for the siren system
17 in isolation.

18 WITNESS PAPILE: We are looking at FEMA 10 and
19 also Appendix 3 of 0654.

20 MR. LANPHER: While they are looking, could I
21 have that read back, Judge Frye?

22 JUDGE FRYE: His statement?

23 MR. LANPHER: No, the question.

24 JUDGE FRYE: Would you?

25 MR. LANPHER: Thank you, Judge.

SUE/sw

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(The Reporter read the question as requested.)

(The witnesses are conferring.)

MR. IRWIN: I would like the record to note that there has been a fairly extensive conference on this.

MR. LANPHER: Well, I would like the record to note that it's perfectly proper.

JUDGE FRYE: I don't think there was any indication that it wasn't.

MR. LANPHER: Well, I don't know why we had to make the notation on the record.

WITNESS MINOR: Perhaps I could start this answer

--

MR. IRWIN: No, I wasn't asking -- you are not on that Question and Answer, Mr. Minor.

MR. LANPHER: Well, consistent with the other statements, when the other gentlemen have answered, he has the right to supplement; isn't that correct, Judge Frye?

JUDGE FRYE: I don't see -- you know, he is not on that Answer.

MR. LANPHER: Well, I understand the past practice before this Board --

JUDGE FRYE: I am not aware that there was a past practice.

MR. LANPHER: Well, in viewing the transcripts, once an answer has been provided that was my understanding.

SUE/sw

1 Are you saying that he cannot supplement after the others
2 answer?

3 JUDGE FRYE: I don't believe that has been our
4 past practice. He was not one of the witnesses who answered
5 that particular question.

6 MR. LANPHER: Well, can we talk about present
7 practice then, Judge Fyre? I don't want to get into
8 semantics.

9 JUDGE FRYE: Let's get the answer if he knows.

10 WITNESS BARANSKI: Yes. If I read Part 50,
11 Appendix E -- and I'm under Section D that says notification
12 procedures in Paragraph 1: Administrative and physical
13 means for notifying local, state and federal officials and
14 agencies -- and I'm going to -- for the prompt notification
15 of the public and for public evacuation or other protective
16 measures it should be described. The description shall
17 include the identification of the official, title, agency
18 and so forth.

19 Then, we can go into NUREG 0654 and if you look
20 in the columns of NUREG 0654 there are licensee check marks
21 for the alert notification system in 0654.

22 JUDGE FRYE: Okay.

23 WITNESS PETRONE: May I make a point?

24 BY MR. IRWIN: (Continuing)

25 Q Go ahead, Mr. Petrone.

SUE/sw

1 A (Witness Petrone) I think there is relative
2 confusion with this. When we talk about major observable
3 portions, I know there has been much discussion with FEMA in
4 years past in terms of what's observable and what's not.

5 And, I think what's relative here is the fact
6 that if FEMA does prepare 35 objectives as they are
7 prepared, they are observable or they would not be there.

8 And, I think what's relative to Appendix E here
9 is the fact that major observable portions are those things
10 that can be observed at an exercise other than public
11 participation. For example, you would never -- or you could
12 really not ever mobilize a community in terms of
13 evacuation. And, that's a public participation.

14 I think if we can make that distinction, that
15 public participation is one portion of an exercise and
16 observable portions or major observable portions are the
17 other things that are delineated through -- I would even go
18 as far as saying the 35 objectives that would have to be
19 reviewed, and then reviewed in the contents of integration
20 or an integrated response.

21 And, I think that may be able to help clarify.

22 (Witness Papile) I would like to clarify
23 something here.

24 JUDGE FRYE: Yes.

25 WITNESS PAPILE: In our experience, it has been

SUE/sw

1 the licensee's responsibility to put in, to take care of,
2 and to insure that the siren system works. And, I believe
3 that is a regulatory requirement.

4 BY MR. IRWIN: (Continuing)

5 Q And, that regulatory requirement, to follow up on
6 that, General Papile, is fulfilled in -- it must be
7 fulfilled in a FEMA REP-10 test, must it not?

8 A (Witness Baranski) That's correct.

9 Q And that FEMA REP-10 test need not be held at the
10 same time as an off-site exercise, need it?

11 (The witnesses are conferring.)

12 Isn't that what FEMA REP-10 says?

13 A Can you please steer me towards that paragraph?

14 Q Do you know the answer, Mr. Baranski? What has
15 your experience with FEMA --

16 MR. LANPHER: Now --

17 JUDGE FRYE: I think that it's clear they don't.

18 MR. LANPHER: Plus they have requested a page
19 reference, which I think is reasonable.

20 MR. IRWIN: Okay.

21 BY MR. IRWIN: (Continuing)

22 Q Mr. Baranski, if you will look at the top of Page
23 3, N-3, I'm sorry, Page N-3 of FEMA REP-10, the top two
24 sentences -- and I will read them: For the purposes of a
25 public survey, an alert and notification system

SUE/sw

1 demonstration may or may not occur during an annual
2 exercise. Actual activation can occur at any mutually
3 agreed upon time between appropriate state and local
4 officials. State and local officials are responsible for
5 determining the time of day an alert and notification system
6 is activated.

7 Now, I read that as saying that a FEMA REP-10
8 test need not occur at the same time as an exercise. Isn't
9 that correct? Isn't that what it says?

10 A (Witness Baranski) What you read to me, sir, is
11 correct. However, I think we have to focus on what a FEMA
12 REP-10 document is, and that is a system acceptance criteria
13 document. It has nothing to do with the exercises.

14 We install siren systems. We want to insure
15 their design performance. We use FEMA REP-10 to evaluate
16 that design performance.

17 (Witness Papile) I also may add, prior to us
18 receiving a 350 approval of a plant, Judge Frye, FEMA
19 imposed on us a requirement to receive approval of the siren
20 system, the mechanics, the engineering portion of it, from
21 FEMA REP-10 which used to be FEMA 43 and they revised it.

22 Prior to FEMA 43, all they told us was there was
23 no need to test sirens because we have no requirement for
24 them. But, up until FEMA REP-10 this is engineering and it
25 goes into how you test sample people who hear, who don't

SUE/sw

1 hear, and it's a lot more than sirens. You can have a
2 system for vehicles, for airplane notification and many
3 other things.

4 We take it as an engineering requirement.

5 JUDGE FRYE: And if I recall your testimony
6 correctly, you also believe it's a requirement to test the
7 siren system during the exercise?

8 WITNESS PAPILE: We do.

9 JUDGE FRYE: I see.

10 WITNESS BARANSKI: Our experience in New York
11 State dictates that, yes.

12 JUDGE FRYE: Okay. Is that the same as the FEMA
13 REP-10 test or is that different from the FEMA REP-10 test?

14 WITNESS BARANSKI: Different from the FEMA REP-10
15 test.

16 JUDGE FRYE: Okay. In the exercise, what are you
17 checking on, audibility or what are you testing?

18 WITNESS BARANSKI: That particular criteria is
19 tested in FEMA REP-10 scientifically. They will go out with
20 DB meters, measure the sirens, do the sound contours, dead
21 spaces, things of that nature.

22 Now, when we blow the sirens during an exercise,
23 the primary purpose of blowing the sirens during an exercise
24 is to make up that critical link between an on-site plan and
25 an off-site plan. And, this is the key vehicle that we

SUE/sw

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

have for notifying the public. And, we feel that it's very important that the public understand what the sirens mean, how they are to respond, what stations they are supposed to turn to for their EBS messages, and things of that nature.

SUE/sw

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE FRYE: So, would your exercise then include some sort of a survey of the public to find out whether they have heard and understood?

WITNESS BARANSKI: This is a, I would say, limited review by FEMA of people on the street to ask them, number one, did you hear the sirens; number two, do you know what the sirens mean?

Or, if we go to a particular facility: Did your tone alert radio go off? Do you know what that tone alert radio means? Do you know what stations you are to turn to for your EBS message, whether it be radio or television?

JUDGE FRYE: FEMA does that?

WITNESS BARANSKI: FEMA does that in a spot check during an exercise.

JUDGE FRYE: During an exercise.

GW/gw

1 A (Witness Petrone) I think I would like to
2 clarify the FEMA Region II procedure. While I had been
3 Regional Director at Region II, it became practice, standard
4 practice, to make sure sirens were sounded, and it became
5 standard practice in that one wanted to test, or at least
6 sample, also the public information input, or public
7 education piece, and that basically was sampling whether
8 they were brochures or whatever type of vehicle was used.

9 An alert notification test also was put into
10 existence, and again it was a Region II initiative, based on
11 the fact that you -- it is very difficult to test sirens
12 specifically the day of the exercise.

13 You have limited observers, and these observers
14 are at any given time dealing with problems of sirens or
15 notification, and they are trying to observe that.

16 To get into sampling the public, it was another
17 modified event that we used during an exercise, but to
18 really test the mechanicability or the operability of the
19 sirens, the test was pretty much utilized.

20 We did this, I believe, at one of the Indian
21 Point exercises. I can't recall the exact one, but it was
22 done there because there seemed to be some problems with a
23 few of the sirens sounding, and as a result a problem with
24 notification of a specific area.

25 JUDGE FRYE: If I understand what you are

GW/gw

1 saying, you found it impractical to test the mechanical
2 aspects of it at the same time you were conducting an
3 exercise, so you did that separately.

4 WITNESS PETRONE: Right. Also, the mechanical
5 aspects of the siren were specific, and it needed specific
6 types of people, too, and I believe FEMA went into a
7 contractor to do much of this, because it needed expertise,
8 and to bring these people into an exercise specifically to
9 any given one day, was, I think, somewhat inconvenient
10 also.

11 WITNESS PAPILE: Specifically at Nine Mile, it
12 took us almost four hours just to run this FEMA 10 test.
13 They brought consultants in, they brought a bunch of
14 telephone people in and so forth, and it would have been
15 impractical to do it during an exercise.

16 BY MR. IRWIN: (Continuing)

17 Q Gentlemen, what is the regulatory basis on which
18 you conclude that activating tone alert radios in isolation
19 constitutes a major observable portion of an emergency plan?

20 WITNESS BARANSKI: I think you threw in a key
21 word on us. Would you repeat that, please.

22 MR. IRWIN: Would you read the question back,
23 Mr. Reporter. I am not sure what the key word was.

24 (Reporter reads back question.)

25 WITNESS BARANSKI: Judge Frye, Mr. Irwin used

GW/gw

1 "in isolation." It has been our experience and practice
2 that the tone alert radios are a part of an integrated alert
3 notification system, and they go off in conjunction with the
4 sirens, not in isolation.

5 JUDGE FRYE: Okay. So, if you eliminate the
6 term, "isolation," --

7 WITNESS BARANSKI: In isolation.

8 JUDGE FRYE: -- in isolation, can you answer the
9 question?

10 WITNESS BARANSKI: The answer is, yes, because
11 that is part of the alert notification system.

12 JUDGE FRYE: Yes, but he was asking for the
13 regulatory basis for your --

14 WITNESS BARANSKI: The regulatory basis would go
15 back to the same regulatory basis as for the sirens.

16 JUDGE PARIS: How are the tone alert radios
17 activated in most of your plants?

18 WITNESS BARANSKI: There are different
19 mechanisms. Some of them are coupled up with the NOAA radio
20 system, and others are activated in conjunction with the
21 siren activation signals.

22 JUDGE PARIS: Does this mean that the utility
23 itself broadcasted the signal to the tone alert radios?

24 WITNESS BARANSKI: No, sir, not the utility. The
25 utility is not in control of the tone alert radios.

GW/gw

1 JUDGE PARIS: Well, where does the tone alert
2 radio -- from whence comes the signal that goes to the tone
3 alert radio?

4 WITNESS PAPILE: We have different systems, and
5 NOAA radios are done in conjunction with the NOAA radio
6 people. We coordinate with them when we have to call a
7 certain number or so forth and so on.

8 JUDGE PARIS: How are the others activated?

9 WITNESS PAPILE: Others from what we call WABC,
10 because that is the EBS station for the four counties in the
11 Indian Point area. When they come on and hit the EBS, they
12 automatically set off the radio, sir. One is just the tone,
13 the other is voice and everything else, as you know.

14 JUDGE PARIS: Okay. Thank you very much.

15 BY MR. IRWIN: (Continuing)

16 Q Mr. Baranski, let me ask the same question about
17 the next phrase in this paragraph on Page 42. Coordination
18 among relevant entities. How is that, in isolation, a major
19 observable portion of an offsite plan?

20 MR. LANPHER: I object to the question. I don't
21 understand what Mr. Irwin --

22 JUDGE FRYE: It is a different question. Are you
23 trying to ask the same question?

24 BY MR. IRWIN: (Continuing)

25 Q I am sorry. What is the regulatory basis for

GW/gw

1 concluding that coordination among relevant entities, and
2 here I presume this is in the public notification area, is
3 in itself in isolation a major observable portion of an
4 offsite plan?

5 (Witnesses conferring)

6 JUDGE FRYE: In isolation.

7 MR. IRWIN: In isolation.

8 WITNESS BARANSKI: That item, sir, is an integral
9 part of the whole alert and notification system.

10 BY MR. IRWIN: (Continuing)

11 Q If I were to ask you -- well, let me ask you now
12 about actual broadcast of a test message in isolation. How
13 is that in isolation a major observable portion of an
14 offsite plan? What is the regulatory basis for that?

15 A (Witness Baranski) I am going to refer back to
16 my previous answer, that it is an integral part of the
17 system.

18 Q As I understood this paragraph, I thought I heard
19 you indicating four separate, distinct major observable
20 portions of an offsite plan. I thought that is what the
21 text said. Are you now saying they basically are all one
22 integral item which could be, I supposed, characterized as
23 public notification?

24 A That is correct. These are all an integral part
25 of the objective of being able to alert and notify the

GW/gw

1 general public in a timely manner.

2 Q And, in fact, those all four together would
3 correspond, would they not, to Standard FEMA Exercise
4 Objective No. 13, attached to the McLoughlin memorandum,
5 which reads as follows: Demonstrate the ability to alert
6 the public within the 10 mile EPZ, and disseminate an
7 initial instructional message within 15 minutes.

8 Is that correct?

9 A Yes.

10 (Mr. Minor and Mr. Baranski conferring.)

11 Q There is no question pending, Mr. Minor, and you
12 are not on this answer, so if you want to confer --

13 MR. LANPHER: Judge, do I need to respond?

14 JUDGE FRYE: I don't think you do. We will let
15 them confer briefly, and if there is a problem, I want the
16 Reporter to note whenever there is a pause, and the reason
17 for the pause, whether it is witnesses conferring, Board
18 conferring, or what have you.

19 REPORTER: I have been doing that, sir.

20 JUDGE FRYE: Thank you. I thought you probably
21 have.

22 BY MR. IRWIN: (Continuing)

23 Q As I understand it now, you were referring to the
24 four elements in this paragraph on Page 42 collectively as a
25 major observable portion of the plan. Did I understand you

GW/gw

1 correctly?

2 A (Witness Baranski) Yes.

3 Q What is your definition of the term, "major
4 observable portion?"

5 (Witnesses conferring)

6 A What I would like to share with you, Mr. Irwin,
7 is the procedure we use in our exercises to accomplish that
8 objective.

9 Now --

10 Q Mr. Baranski, before you do that can you give me
11 a definition of the term, "major observable portion,"
12 because you use this term many times in your testimony.

13 A I will illustrate a major observable portion.

14 Q Well, I think you just did on Page 42. I am
15 wondering if you have a working definition of it?16 MR. ZAHNLEUTER: Judge Frye, I think it is fair
17 to allow the witness to define a term by showing an
18 illustration.19 JUDGE FRYE: Let's see if he has a working
20 definition, and then we will permit the illustration.

21 (Witnesses conferring.)

22 WITNESS BARANSKI: My working definition of a
23 "major observable element," or ours, would be that a major
24 observable portion of the plan would encompass many elements
25 of the planning standards. And I was going to illustrate

GW/gw

1 that with use of the sirens, the EBS, the radio stations,
2 the decision making that goes into the activation of the EBS
3 network, the preparation for the message, and the -- using
4 the objective that is outlined in PR-1 to do all this within
5 a fifteen minute time frame, to satisfactorily accomplish
6 that objective.

7 It is very important, and FEMA has evaluated us,
8 that that is a very important fact, because we have had to
9 do it over.

10 BY MR. IRWIN: (Continuing)

11 Q I take it from your answer that there is no
12 objective or constant working definition you used to define
13 a major observable element of an offsite plan?

14 A (Witness Baranski) There is a common sense
15 approach to trying to accomplish a particular objective to
16 the fullest capability possible to ensure that you have
17 reasonable confidence with your plan.

18 Q In your last answer you referred to elements.
19 What elements are you referring to?

20 A The elements that are outlined in the 16 planning
21 standards in NUREG 0654.

22 Q In your previous answer, you also used the word,
23 "elements" as well as portions. Did you mean, if you can
24 recall that answer, again, the same use of the word
25 "elements" as in your last answer, namely the 16 planning

GW/gw

1 standards in NUREG 0654?

2 A I know we are using this in a light that many
3 elements constitute a portion of the plan or the exercise,
4 and these elements come from 0654, or objectives that we
5 have written into the exercise are also an element of the
6 observable portion of that particular activity.

7 I am not limiting myself to the elements that are
8 listed in 0654. There may be additional elements that we
9 would incorporate into that test.

10 Q Just so I understand. As you use the word,
11 "element," that term doesn't have any fixed definition, but
12 it tends to be smaller than a portion?

13 I don't know. I am just trying to understand
14 you.

15 A Yes. It takes many elements to make a portion.

16 Q Okay. Thank you.

17 JUDGE FRYE: Portions are made up of elements.

18 (Laughter.)

19 JUDGE FRYE: When do you think would be a good
20 time for a lunch break.

21 MR. IRWIN: I think I am sufficiently confused by
22 now.

23 (Laughter.)

24 JUDGE FRYE: How are we doing on schedule.

25 MR. IRWIN: I think that I should be through

GW/gw

1 certainly by 3:00, perhaps by 2:30. I know Mr. Pirfo has
2 some questions, and I know we have pending motion, and there
3 may be some redirect.

4 JUDGE FRYE: On the pending motion, schedules are
5 freed up, so we would be available Friday afternoon for a
6 conference call if necessary.

7 MR. IRWIN: Okay. I appreciate that.

8 MR. LANPHER: I am available Friday afternoon, if
9 we can complete it before 4:00 on Friday afternoon.

10 JUDGE FRYE: Fine. That shouldn't present a
11 problem. That should be fine.

12 MR. PIRFO: Then you will be hearing the Motion
13 Friday afternoon, then?

14 JUDGE FRYE: It sort of looks that way, unless we
15 can get to it -- we will see how the cross goes. How much
16 do you anticipate.

17 MR. PIRFO: Well, if you would have asked me
18 fifteen minutes ago, I would have said about half an hour.
19 Now, I say maybe 10 minutes at this point.

20 JUDGE FRYE: Much redirect?

21 MR. LANPHER: We are going to work on that over
22 lunch. I don't think it is extensive at this point. To use
23 Mr. Irwin's term, I think we have been dealing mostly with
24 theology. I don't know where he is going this afternoon.
25 Probably 15 o 20 minutes at this point.

GW/gw

1 JUDGE FRYE: That sounds pretty good. Well, is
2 it safe to take an hour and a half, or should we cut --

3 MR. LANPHER: Let's take an hour and a half. It
4 will give an opportunity to focus for redirect. Hopefully
5 we will have just a minimal break at the end of cross
6 examination. Hopefully use the lunch break to talk about
7 some of that stuff as well.

8 JUDGE FRYE: All right, let's take our hour and a
9 half. I am sorry. Mr. Pirfo?

10 MR. PIRFO: I thought we were going to go back to
11 the Motion on 21, but I guess that has been decided that you
12 will argue it by conference call Friday afternoon.

13 JUDGE FRYE: Unless there -- unless we get
14 through early and we can do it this afternoon, then we may
15 as well do it this afternoon.

16 MR. PIRFO: The only problem for me is that
17 Mr. Barth is the one handling that testimony. The problem
18 is that Mr. Barth is a little more intimately familiar with
19 it, and he is going to be doing the cross examination on it,
20 so what I am suggesting is by doing it by conference call
21 Friday is preferable to the Staff.

22 JUDGE FRYE: Okay. You don't feel that you want
23 to respond this afternoon.

24 MR. PIRFO: I am prepared to respond, and I am
25 more than happy to. But there is a problem with the

GW/gw

1 availability of Mr. Barth.

2 What I am suggesting is that I would like to --
3 how should I put it -- can it be left up to me and let you
4 know at the end of the lunch hour whether we do it today, or
5 do it by conference call tomorrow?

6 JUDGE FRYE: Oh, you are going to talk to
7 Mr. Barth?

8 MR. PIRFO: I would like to reach him. I am not
9 sure I can reach him.

10 JUDGE FRYE: We will talk about it later. Let's
11 take our hour and a half.

12 (Luncheon recess taken at 12:00 noon, to
13 reconvene at 1:30 p.m., this same day.)

14

15

16

17

18

19

20

21

22

23

24

25

SUE/sw

A F T E R N O O N S E S S I O N

(1:30 p.m.)

JUDGE FRYE: Shall we go back on the record?

MR. LANPHER: This may as well be on the record. With respect to Contention 21, the strike motion -- I don't know if you have reviewed the LILCO motion, but one of the bases was the fact that a portion of the testimony that was submitted by Suffolk County rebutted deposition testimony of Mr. Mileti. We put that testimony in, because we expected Mr. Mileti to be testifying. He, in fact, was not proffered as a witness.

We are going to withdraw the cited portions, due to the fact that there is nothing to rebut -- there is nothing to respond to.

JUDGE FRYE: That clears up --

MR. LANPHER: That motion is eliminated. So, for your planning purposes there is one motion to strike that needs to be argued and that's the Suffolk County/State of New York motion to strike portions of LILCO's testimony.

If there is time later today, it would be good if we could do that.

MR. ZEUGIN: Judge Frye, LILCO also has decided that it would withdraw part of its testimony on Contention 21, particularly -- well, specifically the parts that deal with comparisons of 38 other exercises and the amount of

SUE/sw

1 resources that were demonstrated in those particular
2 exercises. While LILCO continues to believe that
3 information is relevant, knowing the problems that have gone
4 on previously with regard to training in this particular
5 contention, and to save time in this litigation, LILCO is
6 just withdrawing that.

7 It is not exactly equal to the references that
8 appear on Page 8 of the Suffolk County motion. I think I
9 can probably --

10 MR. LANPHER: Why don't we finish the
11 cross-examination? We have to get these people finished. I
12 didn't know we were going to get into --

13 MR. ZEUGIN: Okay.

14 MR. LANPHER: -- the whole of this.

15 MR. ZEUGIN: Okay. That's fine. I just wanted
16 to put everyone on notice of LILCO's withdrawal also.

17 JUDGE FRYE: Okay. I think it's good to get back
18 to the cross-examination at this point.

19 MR. LANPHER: Yeah. I thought I only had a
20 short one. I didn't realize there was a parallel of sorts.

21 JUDGE FRYE: Mr. Irwin, are you ready?

22 MR. IRWIN: Yes, Judge Frye.

23

24

25

SUE/sw 1

Whereupon,

2

JAMES C. BARANSKI,

3

WILLIAM LEE COLWELL,

4

LAWRENCE B. CZECH,

5

GREGORY C. MINOR,

6

JAMES D. PAPILE,

7

and

8

FRANK R. PETRONE

9 resumed the witness table and, having previously been duly
10 sworn, were further examined and testified as follows:

11

CROSS-EXAMINATION

12

BY MR. IRWIN: (Continuing)

13

Q Gentlemen, would you turn to Page 44 of your

14

testimony?

15

(The witnesses are complying.)

16

At the bottom of that page, Mr. Petrone and the

17

New York State witnesses sponsor an answer which discusses

18

siren failures or the need to sound sirens, and it begins

19

with the sentence, "Again, in our experience at New York

20

State exercises, there have been failures involving just

21

these kinds of human elements. Thus, it is our view that

22

the failure of the Shoreham exercise to test these major

23

observable elements -- and the related failure of the

24

exercise to test the integrated capacity of the diverse

25

response elements -- of LILCO's plan is significant."

SUE/sw 1

Do you see that sentence?

2

A (Witness Baranski) Yes, sir.

3

Q What do you mean by the word "test" as you used

4

it in that sentence?

5

(The witnesses are conferring.)

6

A (Witness Papile) To us, it's the same thing as

7

taking a test in school when someone gives you either a

8

written, oral, objective, subjective, whatever you want to

9

call it. This is a demonstrative test whether people are

10

capable of putting the system into gear, into going.

11

And, our use of the word "test" there is exactly

12

that, that it is something that we did that could be

13

evaluated by FEMA observers.

14

Q In other words, the test is what was prescribed

15

by FEMA to be done as distinguished from what was done?

16

A Ask that question again?

17

Q The test consisted of that which was prescribed

18

by FEMA to be done as distinguished from that which was, in

19

fact, done?

20

A Oh, no. That's the same thing. It's what FEMA

21

asked to be done, and we did it accordingly and then we

22

waited for an evaluation to see if we had accomplished it.

23

Q Okay. If you would look with me at the following

24

paragraph on Page 45, gentlemen, do you see the sentence

25

that reads, "The exercise was, at most, a partial

SUE/sw

1 demonstration of steps necessary to demonstrate the ability
2 to actually get protective action recommendations broadcast
3 to the public and the sirens sounded."

4 Do you see that sentence?

5 (The witnesses are conferring.)

6 Do you see that sentence, gentlemen?

7 (The witnesses are conferring.)

8 A (Witness Papile) Yes.

9 Q How do you use the term "demonstrate" in that
10 sentence?

11 A (Witness Papile) As I've stated before, a
12 requirement -- the requirement set up by FEMA required us --
13 that's a double use of the word, but it required us to
14 demonstrate. That was the type of a test. The test was a
15 demonstration.

16 Q In other words, are you using the terms "test"
17 and "demonstrate" interchangeably in these two sentences that
18 I've just referred you to?

19 A I am not. I am saying the demonstration is
20 required by the test. I can demonstrate without being
21 tested on it.

22 But, in this case specifically we were to be --
23 in our estimation, FEMA should have evaluated the
24 demonstration. That made it a test.

25

SUE/sw

1 (Witness Petrone) I think the point here is the
2 test is an evaluation or a review. The demonstration is
3 basically a -- to demonstrate some sort of integrated
4 capability with these various functions within public
5 notification.

6 I think that's probably what was -- that's what
7 was cited here in the testimony.

8 JUDGE FRYE: Do I understand correctly that the
9 demonstration was what was done in response to the test? In
10 other words, if you give the test in school as a question
11 and you write an answer --

12 WITNESS PAPILE: Yes, sir.

13 JUDGE FRYE: -- and so the demonstration would
14 have been the answer, in effect?

15 WITNESS PAPILE: Yes, sir.

16 JUDGE FRYE: Okay.

17 WITNESS PAPILE: We would consider a hands-on
18 type of testing, so a demonstration.

19 JUDGE FRYE: I see.

20 BY MR. IRWIN: (Continuing)

21 Q Does the action of FEMA in evaluating that which
22 has been done come into either of these two concepts of
23 testing or demonstration?

24 MR. LANPHER: I object to the question.

25 MR. IRWIN: Well, as you've used it in these

SUE/sw

1 sentences?

2 MR. LANPHER: I object to the question as vague.

3 I don't understand it.

4 JUDGE FRYE: Can you rephrase it? I didn't --

5 MR. IRWIN: Yes. Yes.

6 BY MR. IRWIN: (Continuing)

7 Q Gentlemen, let me try the form of the question
8 again. Does either the concept of testing, as you've just
9 used it, or the concept of demonstrating, as you've just
10 used it, include the concept of evaluation by FEMA?

11 A (Witness Baranski) Yes, sir.

12 Q How? Which term does it apply to if it applies
13 to only one?

14 (The witnesses are conferring.)

15 A When we look at an item to be demonstrated and
16 when we look at the FEMA review of that item, there are
17 certain actions that are required to be performed within
18 that demonstration. And, when we write our objectives for
19 FEMA and get approval of those objectives, we outline what
20 items are to be performed to fulfill that demonstration of
21 that particular objective.

22 For example, when it says demonstrate the ability
23 to alert and notify the public within 15 minutes, FEMA would
24 evaluate us on -- and take the Indian Point area where there
25 are four counties and the state involved -- how long it

SUE/sw

1 took to come to a collective decision on when we are to
2 activate the sirens and the message content that was to go
3 out with the EBS test message, how quickly we got that from
4 the joint news center to the radio station and monitor that
5 test message in conjunction with the siren and tone alert
6 activation.

7 That would be an evaluated demonstration for that
8 particular objective.

9 Q Mr. Baranski, just let me make sure I'm -- I'm
10 really just trying to make sure I understand what you have
11 just said. I take it that you regard then testing,
12 demonstration and evaluation as related but distinct
13 concepts, no one of them is synonymous with the other?

14 A (Witness Baranski) That's generally true.

15 Q Okay. And, if I can try and characterize it and
16 make sure that I -- let's just try this. Testing is that
17 which is to be performed; demonstration consists of that
18 which is performed; and, evaluation consists of judgment
19 after the fact on whether or not the performance met the
20 test?

21 A That's true.

22 Q Okay. Is that -- those terms are used frequently
23 throughout your testimony. Is that how you have intended to
24 use them throughout the testimony, to the best of your
25 knowledge?

SUE/sw

1 A To the best of my knowledge, that's correct.

2 Q Does anybody else have any differing definitions
3 of those terms as they have been used throughout this
4 testimony?

5 A (Witness Petrone) Could you just repeat that
6 again? I'm sorry.

7 Q Did I do the Sistine Chapel twice? I'm not
8 sure.

9 (Laughter.)

10 MR. IRWIN: Could you read that last question
11 line back, Mr. Reporter?

12 (The Reporter read back the questions as
13 requested.)

14 BY MR. IRWIN: (Continuing)

15 Q Mr. Petrone, do you have any differing view of
16 the meaning of those three terms?

17 A (Witness Petrone) No, I don't think so.

18 Q Do any of the other witnesses feel that those
19 definitions are inconsistent with their use in answers they
20 have sponsored in this testimony?

21 A I think we should say that without going through
22 the testimony and making sure how we have applied each one
23 of them, we would want to reserve the decision, because I
24 tend to think of the overall enveloping test as being a sum
25 of several steps, including mobilization, demonstration,

SUE/sw

1 observation and evaluation. And, I may look at it slightly
2 differently than you were expressing it a minute ago.

3 Q If any specific examples of that occur to you,
4 would you please let us know? Those terms do occur
5 frequently and we are trying to make sure we understand
6 them.

7 A (Witness Minor) Certainly.

8 Q And the same with you, Dr. Colwell. I take it
9 you've got no differences that come to you readily with
10 those definition?

11 A (Witness Colwell) That's correct.

12 Q Gentlemen, on Page 42 of your testimony, there is
13 in the last paragraph a discussion of notification of the
14 public by sirens and EBS messages. And, beginning on the
15 fourth line from the bottom, the sentence, "Indeed, this is
16 a function which in a real emergency is a prerequisite to
17 the performance of many other portions of the proposed
18 emergency response."

19 Do you see that sentence?

20 A (Witness Minor) Yes.

21 Q It's true, is it not, that this sentence actually
22 relates to the sounding of sirens, per se, the audible
23 sounding, does it not, and EBS messages?

24 A The combined activities of the sirens and the EBS
25 messages and the activities that those stimulate.

SUE/sw

1 (Witness Baranski) I would like to add something
2 to that, that this includes the whole spectrum, all of the
3 human interactions that are needed to be performed starting
4 right from the decision through the actual broadcasting of
5 the message. So, it encompasses a large number of
6 particular items.

7 Q So, in other words, if you -- we should assume
8 that you didn't mean simply the sounding of sirens and
9 broadcast of the EBS messages; you intended to include
10 within that concept all of the internal actions of the
11 emergency planning organization that led up to those
12 specific physical events, correct?

13 A That's correct.

14 Q The omissions, if you look at the first sentence
15 of that paragraph, the omission you are talking about in the
16 exercise are literally those of the physical manifestations,
17 namely the actual sounding of the sirens and the actual
18 broadcast of the EBS messages, are they not?

19 A And the interactions that were necessary to get
20 to that stage. You needed the command and control element
21 to come up with a coordinated decision. You needed that
22 decision relayed to the point where the message was going to
23 be prepared. You needed the coordination between the EBS
24 station and the injection of the message. And, you needed
25 the message content.

SUE/sw

1 Q Which of those specific elements you just
2 described do you contend were omitted in the exercise?

3 (The witnesses are conferring.)

4 A The first item would be the actual performance of
5 the command and control decision-making process, the
6 interaction between the personnel necessary to come up with
7 this decision.

8 Q Wasn't there a decision made to prepare a
9 message? Do you know, sir?

10 A I do not.

11 Q Do you know whether a message was prepared?

12 A (Witness Minor) Perhaps I could answer that.

13 Q No, sir. I would like Mr. Baranski to.

14 MR. LANPHER: Judge Frye, this is an answer that
15 is jointly sponsored by --

16 JUDGE FRYE: We will let Mr. Minor come in after
17 Mr. Baranski answers it.

18 BY MR. IRWIN: (Continuing)

19 Q Mr. Baranski, do you know whether a message was
20 prepared?

21 A (Witness Papile) Are you asking me?

22 Q No, sir. I'm asking Mr. Baranski.

23 A (Witness Baranski) I am not aware of the actual
24 physical performance of the writing of a message.

25 Q Do you know whether the message --

SUE/

1

MR. LANPHER: Judge Frye --

2

JUDGE FRYE: Let Mr. Minor answer.

3

MR. LANPHER: Thank you.

4

5

6

7

8

WITNESS MINOR: If I may add to that. In the actual exercise, there was the preparation of an EBS message at the EOC. It was not, however, formally transmitted to the WALK radio station. In fact, there was no actual contact with the WALK radio station.

9

10

11

12

13

There was only the simulated call to WALK which did not have the human interaction that would come with an actual contact to the station transmitting the message to them and verifying that they did indeed receive the message correctly and were at least prepared to send it out.

14

15

JUDGE PARIS: Mr. Minor, where or who activates the sirens? Where is that effected? Do you know?

16

17

WITNESS MINOR: Actually who, I'm not sure I could tell you right now. It's --

18

19

20

JUDGE PARIS: Does the message have to go from the EOC to somebody that flips the switch to sound the sirens?

21

22

23

24

25

WITNESS MINOR: That's my understanding. I don't believe that happens at the EOC itself, but the message -- the decision has to originate there. And, then the EBS message that goes out has the additional effect of notifying all the people who are on tone alert systems by

SUE/sw

1 the activation of the WALK FM station.

2 JUDGE PARIS: Well, I noted on Page 43 of your
3 testimony you say at the bottom of the page there, "In our
4 past experience, there have been a number of failures during
5 exercises relating to just such matters -- such as failures
6 of sirens to be sounded even after the emergency response
7 organization attempts to sound them."

8 And, you talked about earlier the necessity of
9 the timing, not having an EBS message go out before the
10 sirens are sounded. Is it up to the EOC to initiate the
11 timing of those different messages or not?

12 WITNESS PAPILE: Judge Paris, since I've been in
13 the Command Room of the State quite a bit, the answer to you
14 is yes. What we do in order to meet the 15 minutes, when
15 the Governor or his representative makes a decision, at that
16 time we state the time of the decision to the news center
17 and then FEMA grades us on 15 minutes from that time for the
18 message to get to the public.

19 At the same time, the County's are coordinating
20 the blowing of the sirens by actually coding a machine for
21 the sirens to be activated. When this is done, we hope and
22 we try to put the siren, say, in 12 minutes and then the
23 message itself to go out at 15 minutes, because the sirens,
24 the undulation, takes about 3 minutes. That's the procedure
25 we use.

SUE/sw

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

In the meantime, the decision is very important to us where we have more than one county or even one county, if the decision is between the County Execs, the number one man in the county, and the Governor or the Governor's representative exactly when to blow those sirens and what to say in the message. That's what we are getting at.

We have had difficulty in doing that in the past, sir.

JUDGE PARIS: Thank you.

BY MR. IRWIN: (Continuing)

Q Now, you gentlemen --

JUDGE FRYE: Mr. Minor -- excuse me. Go ahead.

GW/gw

1 Q You gentlemen are not contending, are you, that
2 there was not a decision made in the EOC with respect to a
3 simulated sounding of sirens?

4 A (Witness Minor) No, there was a decision made.
5 And the --

6 Q Thank you.

7 MR. LANPHER: Judge Frye, he has not finished his
8 answer. Excuse me, Mr. Irwin --

9 JUDGE FRYE: The question was a very simple
10 question. Was he contending that there was no decision made
11 to sound the sirens, and he said he wasn't contending that.

12 Now, let's go to the next question.

13 MR. LANPHER: Judge Frye, he was in the middle of
14 an answer.

15 JUDGE FRYE: I realize that.

16 MR. LANPHER: And you are cutting him off, sir?

17 JUDGE FRYE: That is right.

18 MR. LANPHER: Could I ask for a reason?

19 JUDGE FRYE: No. Next question.

20 BY MR. IRWIN: (Continuing)

21 Q Mr. Minor, you are not contending, are you, that
22 there was no EBS message prepared in the EOC for simulated
23 broadcast, are you?

24 A (Witness Minor) There is a double negative in
25 there. Let me tell you what I am contending.

GW/gw

1 Q No, sir.

2 A I am contending that there was a message prepared
3 for simulation, and that it was not officially sent by
4 contacting WALK radio.

5 Q All you are contending then is that the actual
6 transmission by WALK radio itself is what did not occur, is
7 that correct?

8 A No.

9 Q What more are you contending did not occur?

10 A That the EOC did not actually contact WALK radio,
11 by phone, to transmit that message to them -- even though
12 they weren't going to broadcast it, at least to verify that
13 that link, by phone, between those individuals, did not
14 occur.

15 Q Mr. Minor, it is true, isn't it, that a surrogate
16 number for WALK was called by the EOC to relay the message
17 to that surrogate as though it were WALK, isn't that true?

18 A There was a simulated phone call, that is
19 correct.

20 Q Simulated phone call, or an actual phone call to
21 a simulated WALK?

22 A My understanding is that LERO called themselves.

23 Q So, it was an actual phone call.

24 A As if it were WALK.

25 Q Okay. So, what you are contending is that, one,

GW/gw

1 the message was not physically broadcast over the air,
2 correct?

3 A That is part of it.

4 Q And secondly, the recipient of the phone call was
5 not actually WALK, but rather a simulated WALK, correct?

6 A That is part of it, yes, sir.

7 Q General Papile and Mr. Baranski, do you contend
8 that there were any further omissions than those two with
9 respect to the broadcast of the EBS message?

10 A (Witness Papile) Well, the actual activation of
11 the sirens or the blowing of the sirens was also missing.

12 Q We were on the EBS message at this point.

13 A Well, we take it as one big picture.

14 Q Let's focus on the corner of the picture that
15 relates to the EBS message. With respect to the EBS
16 message, do you contend that there were any omissions other
17 than the actual physical broadcast of the message by WALK,
18 and the actual completion of a phone call to WALK itself as
19 distinguished from a substitute or a surrogate to relay the
20 message?

21 A We really don't know. We weren't at the
22 exercise, so we really don't know.

23 Q Okay. Now, as to the sirens, you contend that
24 the sirens were not physically sounded, correct?

25 A We take that from reading and from listening to

GW/gw

1 testimony, yes.

2 Q You are not contending that there was not a
3 command and control decision made with respect to their
4 sounding, are you?

5 A We weren't there. We don't know.

6 Q So you are saying now you don't know what was
7 done with respect to the sirens, except you understand they
8 were not physically sounded, is that correct?

9 A We do know that there was no blowing of the
10 sirens and also that there was no actual transmission,
11 because we read the post activity report.

12 Q Mr. Minor, with respect to the sounding of the
13 sirens, you contend that there was no physical sounding,
14 correct?

15 A (Witness Minor) That is correct.

16 Q Are you contending that there were any further
17 omissions than that with respect to the sirens?

18 A There was no observation of that step by FEMA.

19 Q No observation of which step, sir?

20 A The step of sounding the sirens and completing
21 that action.

22 Q Definitionally because the sirens were not
23 themselves sounded, correct?

24 A That is correct.

25 Q Are you contending that short of actually

GW/gw

1 flipping the switch, or pressing the button necessary to
2 actuate the sirens, up to that point, there were any
3 omissions in the process which would lead ultimately to
4 sounding of the sirens?

5 A The only other possible omission would be the
6 human interaction of people who would be involved in that
7 chain of activity, and that should be a relatively limited
8 chain, but it still was not done, was not observed.

9 Q Mr. Minor, where are the sirens actually
10 activated?

11 A As we said earlier, I am not sure I could tell
12 you right now. I don't recall.

13 Q So, if they were activated at the EOC, the only
14 persons whose interaction would have to be considered were
15 those who were in the EOC, correct?

16 A Yes, that would be true, and it may involve more
17 than one person in actually making the decision and carrying
18 out the action. That is the interaction I was talking
19 about.

20 Q But you are not contending that the decision --
21 the command and control decision to sound the sirens was not
22 made?

23 A The decision was made; I acknowledge that.

24 Q Now, let's come back to my question, which I
25 tried a few minutes ago. As I understand it, if you look

GW/gw

1 at the bottom of Page 42, which is that notification of the
2 public is a function which in a real emergency is a
3 prerequisite to the performance of many other portions of the
4 proposed emergency response, the omissions you are referring
5 to with respect to this discussion are those of the physical
6 manifestation of sounding the sirens and broadcasting the
7 EBS message, isn't that correct?

8 A (Witness Papile) In addition, if you look at the
9 paragraph above that, we are relating to those items which
10 we listed above that. Those are four items there that we
11 listed as only partial elements of the complete package.

12 Q Of notification of the public.

13 A We are speaking more than just the two you are
14 speaking of. We are speaking of the coordination among
15 relevant entities, as well as the actual broadcast.

16 So, we are trying to keep our testimony in line.
17 Down below, we were talking about what we said above, and
18 that is the purpose of it.

19 Q As I understood it, the past several minutes we
20 have identified two omissions; one, physical manifestation
21 of sounding the sirens; two, physical broadcast of an EBS
22 message, and possibly some decisional interaction, although
23 nobody can specify exactly what that was, correct

24 MR. LANPHER: I object to the question. I think
25 it is a complete mischaracterization. They have already

GW, 'gw

1 testified several times that the actual communication
2 between the EOC and WALK radio is an essential link, and
3 Mr. Irwin left that out.

4 JUDGE FRYE: Why don't you rephrase the question?

5 BY MR. IRWIN: (Continuing)

6 Q But for the omission of the actual sounding of
7 the sirens, the physical sounding, the actual physical
8 broadcast of a test message, and the substitution of a
9 surrogate WALK for the commercial radio station WALK, we are
10 not talking about any other omissions in this bottom
11 paragraph, are we?

12 A (Witness Baranski) I think, sir, we left out
13 another important fact, and that is the tone alert radios
14 being coordinated in this whole operation as well.

15 It seems to us that what is happening here is
16 that we are trying to define a couple of specific, physical
17 acts as being omitted, when they fall into a larger picture
18 to be demonstrated.

19 And they require, as we said before, a command
20 and control decision. A coordination between the people
21 that are going to press the button and the timing. A
22 coordination between the joint media center, and when the
23 sirens are going to go, and when the radio station is going
24 to broadcast its EBS message. All this stuff has to be
25 practiced.

GW/gw

1 JUDGE FRYE: Okay. Gentlemen, with that addition
2 by Mr. Baranski, is there anything else that you think may
3 have been left out?

4 WITNESS MINOR: Well, as I mentioned earlier,
5 there is the observation of these activities.

6 JUDGE FRYE: Well, that is implicit in all of
7 this. Obviously, you can't observe it if it doesn't
8 happen. Unless you have something else in mind.

9 WITNESS MINOR: With all due respect, I think
10 there is a difference, though.

11 If you observe someone making a call to a person
12 across the room at a fictitious number, and that person is
13 expecting the call, you are observing an activity which may
14 not be nearly as complicated or potentially error prone as
15 looking up the number to the actual WALK radio, dealing with
16 somebody at WALK radio that might not be expecting that
17 call, transmitting a message to him, and getting it verified
18 that it is correct.

19 Those steps may be more involved and may take
20 more evaluation.

21 JUDGE FRYE: Anything else?

22 WITNESS PAPILE: There is one other point, Judge,
23 that I would like to bring out.

24 Even if you had a direct line between the EOC or
25 the joint news center in the radio station, there is an

GW/gw

1 authentication code we must have, because the radio station
2 wants to know, hey, is this the real thing?

3 JUDGE FRYE: Certainly.

4 WITNESS PAPILE: So, we have an authentication
5 code, and I know of no testimony any place where the
6 authentication code was even mentioned.

7 JUDGE FRYE: All right. Is there anything else,
8 or does that complete the list?

9 (No response.)

10 JUDGE FRYE: That seems to complete the list.

11 BY MR. IRWIN: (Continuing)

12 Q Given the omissions which you have -- let me
13 backup.

14 Mr. Minor, you mentioned the tone alert radios.
15 How are the tone alert radios activated -- I am sorry,
16 Mr. Baranski.

17 A (Witness Minor) I will be glad to answer that,
18 though.

19 Q How are the tone alert radios activated?

20 JUDGE PARIS: I ask that question this morning,
21 and they answered. It is in the record.

22 MR. IRWIN: It is in the record, Judge Paris. I
23 just want to make sure --

24 WITNESS BARANSKI: I can certainly tell Mr. Irwin
25 how the various systems are activated for the operating

GW/gw

1 plants. I am not familiar with how the LERO system
2 physically activates its tone alert radios.

3 JUDGE FRYE: Is this related to the exercise
4 specifically?

5 MR. IRWIN: Only in that the tone alert radios
6 are activated by the signal to WALK has been triggered.

7 JUDGE FRYE: That is in the record.

8 BY MR. IRWIN: (Continuing)

9 Q Gentlemen, those omissions which you have
10 referred to go primarily to the actual notification of the
11 public itself, don't they?

12 A (Witness Minor) No, not strictly, sir. It goes
13 to the notification of the public largely through the sirens
14 and through the WALK broadcast.

15 But the tone alert radios are communicating to
16 hospitals and schools and nursing homes, and other
17 institutions that need to know that information directly,
18 and it flags them through both the tone alert and the
19 message that is communicated when the tone alert is
20 activated.

21 Q In other words, special populations, but
22 populations that are outside of LERO, correct?

23 A Yes, yes.

24 Q So, the performance of the many other portions of
25 the proposed emergency response which you are referring to,

GW/gw

1 which these omissions you contend impact on, those are
2 actions which would be performed by the general public or by
3 the special populations outside of LERO, correct?

4 A Actions, sir? Excuse me.

5 Q Well, portions of the proposed emergency
6 response. In other words, let me try it another way,
7 Mr. Minor. I am not trying to over-complicate it.

8 These omissions go to the response of persons and
9 organizations outside LERO, rather than to the continued
10 functioning of LERO in its implementation of its emergency
11 response, don't they?

12 A I believe the answer is yes, because they do
13 trigger actions by other people, and functions in other
14 organizations. I believe that is what you are asking.

15 Q On Page 79, gentlemen, there is a long answer
16 dealing with school activities conducted during the
17 exercise.

18 Do I understand -- in the middle of the page
19 there is a statement: No sheltering of school children was
20 demonstrated or simulated.

21 Do you see that statement, gentlemen?

22 A Yes.

23 Q Do I understand you to be saying that the absence
24 of a demonstration of sheltering was, in your view, an
25 unacceptable omission from the exercise?

GW/gw

1 A I believe you are treating this as an isolated
2 event, saying: Is it by itself unacceptable?

3 The general treatment of schools is what we were
4 saying was unacceptable. The fact that very few of them
5 were even contacted, and only one school district was
6 contacted, and a very minimal demonstration of what it would
7 take to get children home if you were to have an actual
8 early dismissal, there are various things that were left out
9 of the school scenario.

10 And this is another example. You also didn't
11 demonstrate that the schools knew how to handle the
12 sheltering environment, if that had been called for.

13 Q So, if I understand your answer, Mr. Minor, if
14 there had been a reasonably complete sample of schools
15 within the EPZ participating, I take it that the omission of
16 sheltering, -- a sheltering demonstration would not, in
17 itself, have been an unacceptable omission?

18 A If you had had a full demonstration of the option
19 of early dismissal, where you actually did contact the
20 schools, where you actually did show mobilization of the
21 buses related to more of the schools, then that would have
22 been more of an acceptable demonstration of that objective.

23 But the fact that you did almost nothing with
24 regard to that, contacted only one school, mobilized only a
25 few buses for one school, and made no backup calls to the

GW/gw

1 other schools, didn't exercise the tone alerts, you really
2 did very little with regard to early dismissal. You also
3 didn't do anything with regard to sheltering, so the
4 combination of the two is clearly an objectionable
5 omission.

6 Q Where is the guidance with respect to the --
7 where is there any guidance with respect to the criteria or
8 requirements for participation of schools in exercises set
9 forth, if anywhere?

10 A Well, there is guidance in the -- are you
11 speaking of in the Plan, or are you talking about regulatory
12 guidance?

13 Q Regulatory guidance, I am sorry.

14 A Clearly, the responsibility for what happens in
15 the schools is largely laid on the shoulders of the schools,
16 and that is according to the Plan.

17 But EV-2 discusses some of the testing philosophy
18 of schools.

19 Q General Papile --

20 A (Witness Baranski) I would like to add something
21 to that. If you look in the objectives of PR-1, there is an
22 objective that says: Demonstrate the organizational ability
23 and resources necessary to effect an orderly evacuation of
24 schools with the plume EPZ.

25 That is a regulatory requirement.

GW/gw

1 Q Now, General Papile, the State of New York has
2 found that school districts are separate political entities
3 from the State, which the State cannot coerce with respect
4 to participation in emergency planning exercises, hasn't it?

5 A (Witness Papile) That is a true statement.

6 Q In fact, you documented that position in a letter
7 of February 12, 1986 to Roger Kowieski of FEMA, did you not,
8 sir?

9 A In the context of reviewing EV-2 only.
10 That was the draft copy of EV-2.

11 Q Just so everybody is sure of the correspondence,
12 I am going to make available to you a letter dated February
13 12, 1986, which was I believe marked as an exhibit in your
14 deposition last winter.

15 JUDGE FRYE: Are you going to mark this as an
16 exhibit?

17 MR. IRWIN: Yes, sir. I guess it is 21 now.
18 20.

19 (The above referenced document is
20 marked LILCO Exercise Exhibit
21 No. 20, for identification.)

22 MR. IRWIN: The third paragraph of that letter
23 states as follows: In reviewing Guidance Memorandum EV-2,
24 it is evident that FEMA is not aware that school districts
25 in New York are separate political entities, and the

GW/gw

1 planning for the school districts is not necessarily the
2 responsibility of the local governments. Although the
3 guidance addresses the local government responsibility for
4 coordinating with school officials, there is no assurance
5 that school officials will adopt recommended emergency
6 procedures.

7 That was true the time you wrote that letter,
8 wasn't it, sir?

9 A (Witness Papile) Yes, when I wrote the letter.

10 Q And it is true now too, isn't it, sir?

11 A No, not in our case. We had difficulty -- I
12 would like to bring up a case here. We had difficulty with
13 a couple of counties, schools in the counties, and we have
14 just cleared up a big matter with NRC and FEMA based on
15 school children in the Indian Point area, where we have gone
16 to the schools, and now received letters of agreement from
17 them, by working with them, and exactly as this letter
18 states, by working with them and talking to them and
19 educating and training and so forth.

20 By having meetings with school officials, we did
21 get that cleared up, especially in one county. So, exactly
22 as the letter says, by working with people we did solve our
23 problems in other areas.

24 Q But you can't coerce them legalls, can you?

25 A I don't think so. You are the lawyer.

GW/gw

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q If you look at the top of Page 2, the sentence:
We have and will continue to include local school officials
in our planning process, but as previously stated, there is
no guarantee that the school officials have to abide by a
FEMA guidance memorandum.

That is still true also, isn't it, sir?

A That is true.

SUE/sw

1 Q Just so there is no question about this letter,
2 General Papile, you did sign this letter last Winter, did
3 you not, on February 12, '86, did you not?

4 A (Witness Papile) Yes.

5 Q Okay. Gentlemen, if you will turn to Page 87 of
6 your testimony, please.

7 (The witnesses are complying.)

8 Let me come back to that. Let's take a look at
9 Page 108 and 109, if we could.

10 MR. LANPHER: Excuse me. What page, sir?

11 MR. IRWIN: 108 to 109, Mr. Lanpher.

12 MR. LANPHER: Thank you.

13 BY MR. IRWIN: (Continuing)

14 Q Do you all have that in front of you? There is a
15 discussion there about LERO's --- or the LILCO plan's
16 reliance on the availability of 192 emergency vehicles and
17 the sentence that, "Even as to the 159 vehicles which LILCO
18 claimed were available during the exercise, FEMA did nothing
19 to verify their actual availability beyond noting that the
20 ambulance companies did provide 6 ambulances and 6
21 ambulettes."

22 What is it that you contend FEMA should have
23 done, Mr. Petrone?

24 A (Witness Petrone) FEMA had no evaluation there.
25 Basically, what FEMA should have done at that point was

SUE/sw

1 discuss and interview some of the officials at these
2 facilities with regard to whether or not they were following
3 the adequate procedures that were set forth for them to
4 follow in the plan.

5 Q Well, actual procedures or actual availability?
6 I believe what appears --

7 A Well, the --

8 Q -- in the testimony is actual availability, sir?

9 A Availability.

10 Q In other words, you are suggesting that FEMA
11 observers should have gone out to each of the individual
12 ambulance companies and asked them how many ambulances they
13 had under contract to LILCO?

14 A Not each. I would say a sampling of some, and to
15 go out and interview those ambulance companies with regard
16 to their availability. And, in fact, I would even go as far
17 as saying at this point, their familiarity with the
18 procedures that they were to follow in the event that they
19 were called upon to respond.

20 Q Well, restricting your remarks to what is
21 actually in your direct testimony, isn't it true that the
22 ambulances which LILCO has available to it are provided to
23 it pursuant to written contract between LILCO and the
24 individual companies?

25 A That is a contract between LILCO and individual

SUE/sw 1

companies, correct.

2

Q And, isn't it true that copies of those contracts have been provided to FEMA in the course of the review of the plan?

3

A As best I can recall, yes.

4

Q And, isn't it true that in the normal course of FEMA's review of the plan it would have opportunity to review those contracts, including the numbers of ambulances stipulated to be available?

5

A They would review those contracts, correct.

6

Q And, so what you are suggesting is that on the day of the exercise FEMA observers should go to the ambulance companies and look behind those contracts between LILCO, those commercial contracts, between LILCO and the ambulance companies?

7

A They are to go and verify whether or not the people at the ambulance companies have knowledge of the procedures that they are to be implementing.

8

Q That's not what your testimony says, is it, sir?

9

A And part of the procedures that they would be implementing, number one, is to be available and --

10

Q Show me --

11

A -- now they would be available.

12

Q Show me, if you would, where on that page you talk about the procedures to be implemented.

13

SUE/sw

1 (The witness is looking at a document.)

2 A I think the last sentence we can begin to speak
3 about, "Nor did FEMA determine whether there were sufficient
4 numbers of trained drivers or other emergency medical
5 personnel to man the vehicles required for an evacuation."

6 And, I would view that in terms of them having to
7 make that determination as to whether or not there would be
8 that direct number or the number needed. And that would be
9 up to the ambulance company to determine and let FEMA know
10 what the procedures were for them to follow through on this
11 part of their contract. What are the ambulance company
12 procedures in order to be sure that these people were going
13 to be available?

14 Q This is in addition to FEMA's reviewing the
15 qualifications of those drivers of the ambulances which were
16 actually mobilized during the exercise?

17 A I would say it would be part of what they -- it
18 would be part of what FEMA would do in interviewing, in this
19 case let's say the ambulance company. They would interview
20 in a little bit more depth.

21 Q You are saying that in addition to observing the
22 ambulance drivers who were actually mobilized during the
23 exercise that FEMA should have, in addition, sent people to
24 the ambulance companies which are under contract with LILCO
25 to provide ambulances and drivers and actually done a

SUE/sw

1 review of drivers' qualifications?

2 A Okay. I didn't say send to the ambulance
3 companies. FEMA should have interviewed at that point the
4 ambulance companies to determine the availability of the
5 drivers and determine -- and, in order to determine the
6 availability of the drivers they would have to speak to the
7 ambulance companies in terms of their procedures, the
8 ambulance company procedures, with regard to how they would
9 call up the drivers and, indeed, how they would get the
10 drivers to their individual sites.

11 Q You are not aware that Long Island Lighting
12 Company tried to discourage FEMA from doing that type of
13 additional check in preparation for the exercise, are you?

14 A I'm not familiar with that, no.

15 Q Okay. And, you were in charge of the Region at
16 that point, weren't you, sir?

17 A That's right.

18 Q And, if you had regarded it as sufficiently
19 important to test you certainly could have seen to it that
20 your staff implemented your views on that subject, couldn't
21 you?

22 A I also stated before that I did not develop
23 objectives or scenarios for the exercise.

24 Q That's right. But, had you thought this was a
25 sufficiently important matter to be tested in a plan such

SUE/sw

1 as LILCO's you could have seen to it that your staff
2 included such a process in the exercise, couldn't you?

3 I mean, you were after all their boss, weren't
4 you?

5 A Yes, I was.

6 Q So, you could have seen to it that they inserted
7 it, couldn't you?

8 A I think I mentioned earlier, too, that I did not
9 interfere with objectives and scenarios. And, if this were
10 something that was not done by FEMA that should have been
11 done by FEMA, of course, this would have come up later on.

12 Q So, you --

13 A And, that --

14 Q Wait a minute. Let me be sure I understand that
15 answer. You are saying that you would have just -- even
16 though you knew that this was sufficiently important that it
17 deserved to be tested, you would have just let your staff
18 rock along and construct a defective exercise and then come
19 back and gig everybody later for it?

20 A No, not at all.

21 Q That wouldn't have been responsible, would it?

22 A Not at all. I think you -- I think what takes
23 place after an exercise is tremendous numbers of briefings.
24 And, if this would have come up at that point it would have
25 been discussed. And, obviously it didn't come up.

SUE/sw

1 Q That's right. Not in your remarks nor those of
2 the staff, right?

3 A Not that I can recall, sir.

4 Q Okay. And, had you thought it was sufficiently
5 important at the time you could have brought it up or seen
6 to it that it was included, couldn't you?

7 A What I thought was sufficiently important at the
8 time, I could not have included.

9 Q You mean, state and local participation?

10 A Excuse me?

11 Q You mean, state and local participation?

12 A Yes.

13 Q Well, life would be simpler, wouldn't it?

14 A State participation.

15 WITNESS BARANSKI: Judge Frye, could we take
16 about a five minute break, please?

17 MR. IRWIN: I'm amenable as long as it's five
18 minutes. I have not more than half an hour more, Judge
19 Frye.

20 JUDGE FRYE: So, you will finish by about 3?

21 MR. IRWIN: Yes, sir.

22 JUDGE FRYE: Okay. Why don't we take a short
23 break, then.

24 (Whereupon, a recess is taken at 2:27 p.m., to
25 reconvene at 2:29 p.m., this same date.)

SUE/sw

1

JUDGE FRYE: Okay. Let's go back on the record,

2

please.

3

BY MR. IRWIN: (Continuing)

4

Q Gentlemen, would you look at Page 87 of your

5

direct testimony, please?

6

(The witnesses are complying.)

7

At the top of the page, it states, "During the

8

exercise there was no communication between LERO and any

9

officials of any of the special facilities either inside or

10

outside of the Shoreham EPZ."

11

Do you see that statement?

12

A (Witness Minor) Yes.

13

Q Is that an accurate statement, gentlemen?

14

A By special facilities here, we are talking about

15

hospitals, nursing homes and facilities of that nature?

16

Q Yes, sir.

17

A It's my recollection they did not call the

18

hospitals, they did not call the nursing homes. They

19

simulated those calls.

20

Q Do you believe that's correct with respect to Oak

21

Hollow Nursing Center and Crest Hall health related

22

facility?

23

A There were two special facilities where they sent

24

ambulances or ambulettes to -- it's my recollection they

25

sent them there to simulate transfer of a patient.

SUE/sw

1 Q And, is it -- could Oak Hollow Nursing Center and
2 the Crest Hall Health Facility have been one of them?

3 A That could well be. I don't recall the names of
4 them but that sounds familiar.

5 Q Okay. And, you are distinguishing there between
6 the sending of ambulances or ambulettes and communication?

7 A Yes, I am. We discussed the participation of
8 those two nursing homes on Page 102 of our testimony.

9 Q Mr. Minor, I realize that I unfortunately --
10 well, Mr. Minor, did you review player documents in
11 connection with your conclusion that there were no
12 communications between LILCO and special health facilities,
13 special facilities?

14 A I did look at the player documents related to
15 this subject. And, frankly they are kind of hard to read
16 always. But, I did also look at FEMA and LILCO admissions
17 in this area.

18 Q Including -- the documents you looked at were
19 LILCO observer forms, included LILCO observer forms?

20 A No. I believe it was the actual logs that I was
21 looking at.

22 MR. IRWIN: Well, I'm not going to take
23 additional time. What I will do, when I have concluded my
24 questioning -- because I do not have a dozen copies of some
25 player logs -- I will provide Mr. Minor with a copy of a

SUE/sw

1 log and see whether he wishes to revise that last answer
2 later this afternoon.

3 WITNESS MINOR: All right.

4 BY MR. IRWIN: (Continuing)

5 Q Gentlemen, on Page 120 of your testimony -- and
6 this is directed to Messrs. Baranski, Czech and Papile,
7 there is an answer which discusses a demonstration and
8 evaluation of the Coast Guard's capability to implement
9 protective actions on the water portion of the EPZ. And, in
10 the first sentence of that answer you state that, "...a
11 demonstration and evaluation of the Coast Guard's capability
12 to implement protective actions on the water portion of the
13 EPZ is important."

14 Do you see that, sir?

15 A (Witness Baranski) Yes, sir.

16 Q What protective actions are you referring to
17 there?

18 (The witnesses are conferring.)

19 A Sir, in our plans these fall under the category
20 of initial precautionary options where the waterborne
21 portions of the EPZs are notified early on of a potential
22 incident at one of the power plant sites. This is whether
23 it's at the Ginna site, the Nine Mile or at the Indian Point
24 site. And, it's initial precautionary option and it falls
25 under the transient notification to clear those areas of

SUE/sw 1

transient personnel.

2 Q And, that's the protective action in which the
3 Coast Guard is assisting that you are referring to in this
4 paragraph?

5 A Also, the Coast Guard is assisting in protective
6 actions of doing their Marine notifications for shipping as
7 well.

8 Q All right. And -- now, in the next sentence of
9 that answer, you refer to the -- you assert that, "In a
10 number of exercises in New York State, the Coast Guard was
11 required to make such demonstrations and through such
12 demonstrations it was discovered that Coast Guard personnel
13 needed further training, particularly in dosimetry and
14 radiological exposure control."

15 Those are different functions, aren't they, than
16 the public notification functions in which the Coast Guard
17 is engaging in its basic function in that answer, aren't
18 they?

19 A (Witness Papile) No.

20 Q Wait a second.

21 A This is for their own protection. This is
22 personal dosimetry. This is personal dosimetry that's
23 required of all emergency workers or any worker who might
24 enter the EPZ. This is not to notify us or to assist us in
25 assessment.

SUE/sw

1 Q But, those are -- there is a difference between
2 public notification and taking part in that process on the
3 one hand and personal protection against radiation hazards
4 on another, isn't there?

5 A No. It's the same thing as teaching firemen
6 personal dosimetry. I don't separate his two functions of
7 firefighting and dosimetry.

8 Q Even if they -- they are covered by different
9 objectives in PR-1 and other --

10 A Let me go through this just a minute for you,
11 since I was in on the first dealings with the Coast Guard.
12 We found out that the federal government did not train the
13 Coast Guard in any dosimetry whatsoever. We also found out
14 that they didn't give them equipment.

15 So, we went out and trained them, at their
16 request, for their own personal protection. They took care
17 of notification. They know how to notify the public. But,
18 we gave them classes not only in Rochester but also in -- at
19 the Governor's Island to the Region I and we also did it,
20 sir, at Oswego and to the Buffalo office of the Coast Guard.

21 But, we are not trying to relate one with the
22 other. We are saying as an emergency worker they need that
23 training.

24

25

GW/gw

1 Q On Page 138 gentlemen, you discuss FEMA's bus
2 evaluation at the exercise, and you state that at other
3 exercises FEMA has not necessarily evacuated a larger
4 number, or larger proportion of bus routes. However, FEMA
5 has required that all bus companies affected by the scenario
6 actually be contacted. FEMA has also interviewed bus
7 company personnel to ensure that the number of buses
8 required would, in fact, be available and ready to respond
9 in the event of an emergency, and that the bus companies
10 understood their responsibilities.

11 Gentlemen, other than verifying the actual number
12 of buses, what would you propose that FEMA should do in this
13 contacting of bus companies?

14 A (Witness Baranski) In our experience, based on
15 our previous exercises, FEMA would, number one, start from
16 the EOC and check the communications to the affected bus
17 companies.

18 Also, FEMA would evaluate the receipt of that
19 information at the bus company to the responsible
20 individual. FEMA also would go in and evaluate the
21 transfer, if you will, of the information from the person
22 that received it to the bus dispatcher responsible for
23 mustering the drivers for the particular response.

24 Also, FEMA would go in to check the bus
25 dispatcher to see how that bus dispatcher issued the

GW/gw

1 personal dosimetry, the maps, the directions for the routes
2 to be run, the bus check list, and also the dispatcher would
3 inform the EOC of the status of these buses.

4 The dispatcher would check with the driver, their
5 own internal communications, buses in the radios, and --
6 excuse me -- radios in the buses so they could communicate
7 back to the bus dispatcher.

8 Also, FEMA rides the buses, and checks the
9 drivers on number one, their personal dosimetry, the routes
10 that they are running, the times that it takes to run those
11 routes. What would happen in the event of a bus breakdown,
12 fuel shortage or whatever, and where you are going.

13 And in some cases, depending upon the plan, what
14 happens when you get there.

15 Q Now, Mr. Baranski, do you know how much of that
16 was, or was not done, in the Shoreham exercise?

17 A No, sir.

18 Q Mr. Baranski, in how many other plans than that
19 of Long Island Lighting Company, are the bus drivers
20 furnished and trained by the utility itself as distinguished
21 from the bus companies?

22 A We have embarked on extensive training program in
23 the Indian Point area, for an example, for training bus
24 drivers. This includes the licensees, the state, the

25

GW/gw

1 counties, and the bus companies.

2 This is a coordinated effort to ensure that the
3 bus companies are trained to respond. And the same thing is
4 applicable for the upstate ones as well.

5 Q What I was trying to find out, Mr. Baranski, is
6 isn't it true that Shoreham is the only plant whose
7 emergency plan contemplates that the utility itself provides
8 and trains the bus drivers for general population buses,
9 rather than the bus drivers being either employees of the
10 bus companies or mobilized by the bus companies rather than
11 the utility?

12 A Sir, I disagree with you. In the Rockland
13 compensating plan in the Indian Point area, we trained
14 utility drivers to drive commercial buses to run general
15 evacuation bus runs.

16 Q Some or all? Was that some of the buses in
17 Rockland County, or all of them?

18 A All of them at that time.

19 Q How about now?

20 A Sir, right now the compensating plan is not in
21 effect for Rockland County, since Rockland County is
22 participating.

23 However, it is my understanding that the licensee
24 is still maintaining the qualifications of those bus drivers
25 assigned to those bus companies.

GW/gw

1 Q But the fact is, is it not, that the Shoreham
2 Plan is the only one which combines the utility's employing
3 and training and dispatching the bus drivers under its own
4 control rather than them being dispatched and trained --
5 dispatched by the bus companies in response to an accident,
6 correct?

7 A I do not know how the LERO plan sets up its bus
8 functions. I know how we do it in the rest of the sites.

9 Q Okay. But the rest of the sites, the bus drivers
10 are not employed, trained, and dispatched centrally by the
11 utility, are they?

12 MR. LANPHER: Judge Frye, I object. I don't see
13 the relevance to this line of questioning.

14 JUDGE FRYE: I have some trouble with the
15 relevance of it, too. In any event, I get the impression
16 that it is the only one at this present time.

17 WITNESS BARANSKI: It appears to be that way.

18 WITNESS PAPILE: Judge Frye, to the best of our
19 knowledge it is the only one.

20 BY MR. IRWIN: (Continuing)

21 Q General Papile, do I understand your testimony
22 concerning the ingestion pathway, particularly at Pages 140
23 and 141, to require that there be a full ingestion pathway
24 demonstration at an offsite exercise for a plant which has
25 not yet received its full power operating license?

GW/gw

1 A (Witness Papile) Yes. According to Appendix E.

2 Q Have you ever had a full ingestion pathway
3 exercise in the State of New York?

4 A I really don't know what you mean by a full
5 ingestion pathway exercise.

6 JUDGE FRYE: You just said it was required,
7 though.

8 WITNESS PAPILE: Pardon, sir?

9 JUDGE FRYE: Didn't you just say it was required?

10 WITNESS PAPILE: Only for a near term, Appendix
11 E. Near term does require an ingestion pathway. We are
12 required once every six years, sir; for operating plants
13 once every six years.

14 JUDGE FRYE: And it is done on that basis?

15 WITNESS PAPILE: We are doing it this year for
16 the six year requirement. This is our sixth year, sir.

17 JUDGE FRYE: So, it hasn't been done prior to
18 this year.

19 WITNESS PAPILE: It has not been done prior to
20 this.

21 JUDGE FRYE: I see.

22 WITNESS PAPILE: In conjunction with the
23 regulation, no, sir, it has not been done.

24 JUDGE FRYE: I see.

25 BY MR. IRWIN: (Continuing)

GW/gw

1 Q In fact, you testified at your deposition, did
2 you not, General Papile, that to the best of your knowledge
3 as of the date of that deposition, the ingestion pathway had
4 never been fully tested in the State of New York?

5 MR. LANPHER: Could I have a page number, please,
6 Mr. Irwin?

7 MR. IRWIN: Page 78.

8 MR. LANPHER: Was this the February 3 deposition?

9 MR. IRWIN: Yes, sir, Mr. Lanpher.

10 MR. LANPHER: Thank you.

11 (Witness Papier peruses document.)

12 WITNESS PAPILE: Which line are you referring to,
13 sir?

14 BY MR. IRWIN: (Continuing)

15 Q I am referring to lines 11 though 13, and the
16 question and answer that reads as follows -- actually, let's
17 go back up to Line 8. Question: Has ingestion pathway been
18 tested at every exercise? Answer: To the best of my
19 knowledge, no.

20 Question: Has it ever been tested fully?

21 Answer: To the best of my knowledge it has not
22 been fully tested.

23 That was correct then, was it not?

24 A (Witness Papile) It is true today.

25 Q Still true.

GW/gw

1 A I would like you to know at that time I wasn't
2 sure what you meant by, "fully," and at the same time I am
3 not sure what you mean by fully, but we will go by it.

4 Q Isn't it true that you were also asked at that
5 deposition whether New York State had ever deleted a
6 proposal by FEMA to test ingestion pathway participation at
7 an exercise during the period 1982 through 1986.

8 Further down on that Page 78, sir. And your
9 answer was, and I quote: I don't recall, but standing in my
10 position now, I would say that I would not accept any
11 objectives for the ingestion pathway, because we do not have
12 the guidance memorandum on ingestion pathway as yet. FEMA
13 has yet to publish it, although they keep promising it to
14 us.

15 Corect?

16 A That stands today also.

17 Q Mr. Petrone -- gentlemen, let's turn to the
18 recovery and re-entry aspects of your testimony, which
19 begins on Page 151.

20 (Witnesses refer to document.)

21 Q (Continuing) Are you saying in your testimony,
22 and here I am looking particularly at Page 155, that
23 recovery and re-entry is a major observable portion of an
24 offsite emergency plan.

25 I am looking at the bottom of Page 155, and the

GW/gw

1 sentence: Thus, this is one more major aspect of the LILCO
2 Plan, et cetera.

3 I am trying to figure out whether you intended to
4 use the word, "aspect," synonymously with, "portion?"

5 A (Witness Baranski) What is referred to here is
6 this is another major aspect of the plan that would ensure
7 that you had a complete plan.

8 Q In other words, you are not saying the recovery
9 and re-entry itself is a major observable portion of an
10 offsite plan?

11 A It isn't a portion of the plan that we have
12 attempted and have been noted to demonstrate in some of our
13 post exercise assessment reports, but here again it is a
14 PR-1 objective that I believe if you look in PR-1 still
15 needs guidance to be developed for that particular
16 objective.

17 We have taken the approach we have done as much
18 as we could to ensure that we had a working handle on the
19 recovery and re-entry aspects of a plan, and what we have
20 done from the State perspective is convened recovery and
21 re-entry committees to start discussing what would need to
22 be done in the recovery and re-entry phase.

23 Q Recovery and re-entry has not been consistently
24 performed in New York State offsite exercises, has it, sir?

25 A (Witness Papile) That is true, because FEMA has

GW/gw

1 yet to provide us the guidance. It fits into the same
2 picture with ingestion pathway. FEMA has told us that they
3 would give us guidance eventually on what they expect. I
4 would like to bring out at this time that most of our county
5 execs go into this regardless of the exercise, just to give
6 their staff some practice on what the recovery and re-entry
7 would be, sir, especially as far as Small Business
8 Administration goes, as far as recovery of any damages
9 received, the normal things that we do in a disaster, but in
10 this case here, they do try to get some practice out of it.

11 A (Witness Minor) I might add that Attachment 9 to
12 our testimony is a brief list of items to be observed in an
13 exercise that shows that there has been some thought to
14 including it in exercises.

15 Q General Papile, in your deposition of February
16 3rd, I just want to make sure that we are still on the same
17 wave length, at the bottom of Page 81, beginning at Line 20,
18 there is a question: Let's turn to recovery and re-entry
19 aspects of an exercise. How is recovery and re-entry
20 typically exercised, and what recovery and re-entry
21 functions are typically exercised?

22 And after some periphial matters you answered: I
23 will say a statement and then I will turn it over. At a
24 recent meeting with FEMA, we were told not to consider
25 recovery and re-entry. Question: Why not? Answer:

GW/gw

1 Because there is no Federal guidance on the objectives, or
2 the steps to be taken in recovery and re-entry. Until such
3 time as we receive that guidance, we have not taken any
4 objectives, as such, except in the first few exercises that
5 we did list a few objectives and we performed and received
6 no, to the best of my knowledge, any shortcoming, but we did
7 that on our own based upon a document that was not a
8 document, but guidance that we used of a general nature,
9 guidance of a general nature for recovery and re-entry for
10 any emergency. We stopped doing that after a few exercises,
11 because we did not receive any guidance from FEMA. I will
12 turn it over to Jim Baranski, now.

13 And Mr. Baranski, you supplemented that answer
14 with the following: We do not include a recovery and
15 re-entry objective, again, because we do not have any
16 Federal guidance on what is required for recovery and
17 re-entry, and what will be graded on recovery and re-entry.
18 So, we do not include it in our exercises.

19 That, I take it, is still accurate for the State,
20 as you indicated a moment ago.

21 A (Witness Papile) I think that is what I told
22 Judge Frye.

23 A (Witness Baranski) That is correct.

24 Q Mr. Petrone, in your testimony, at the bottom of
25 Page 48, there is a question and answer which begins with

GW/gw

1 the statement: LILCO has suggested that its failure to
2 sound its sirens or to air a test message is excused because
3 of hostility to LILCO on Long Island.

4 Do you see that portion?

5 A (Witness Petrone) That question?

6 Q Yes, sir.

7 A Yes.

8 Q Now, during the period of the exercise when you
9 were in charge of Region II, were you aware of hostility to
10 LILCO on Long Island?

11 A I think the world was aware of hostility to LILCO
12 on Long Island.

13 Q What forms did that hostility take, Mr. Petrone?

14 A Well, I think the forms of hostility were varied,
15 depending on what circles we were talking about.

16 Q Well, give me some examples and some circles you
17 are thinking of.

18 A I think there was a tremendous hostility on the
19 public's part with regard to their feeling behind the
20 operation and licensing of the plant.

21 I think there was a great deal of hostility with
22 regard to the Government's part. With regard to LILCO's
23 desire to continue proceeding for a license to operate this
24 plant. And basically, those are the two groups where I saw
25 tremendous hostility, as Regional Director.

GW/gw

1 Q In which category would you place schools?

2 A I would have to consider them public and
3 government. It varies.

4 Q But examples of that form of hostility would
5 include various of the letters attached as Exhibits to your
6 testimony, would they not?

7 MR. LANPHER: I object to the question. I don't
8 understand what, "that form," refers to. It is not clear to
9 me at all. I don't understand what his question is asking
10 Mr. Petrone to answer.

11 JUDGE FRYE: I am not sure I understand either.

12 BY MR. IRWIN: (Continuing)

13 Q Let me break it down. Mr. Petrone, there are a
14 number of letters from school districts or schools
15 individually which are attached to your testimony, are there
16 not?

17 A (Witness Petrone) That is correct.

18 Q And some of them post date the exercise, and some
19 of them pre-date the exercise, don't they?

20 A Correct.

21 Q The one's which pre-date the exercise, would you
22 consider them as examples of hostility of school districts
23 which might be existing at the time of the exercise?

24 A The ones that pre-date did you say?

25 Q Yes. The ones that were written before --

GW/gw

1 A The were written prior to the exercise. Yeah, I
2 would say so.

3 Q Okay. In terms of governmental hostility, were
4 you aware of a local ordinance which was enacted by the
5 Suffolk County Legislature, and signed by the Suffolk
6 County Executive in the beginning of 1986, known as Local
7 Law 86-2?

8 A I was aware, yes.

9 Q And what was the nature of that law, sir?

10 A From the best of my recollection, I think the
11 nature of that law was the fact that the governments did not
12 want LILCO to proceed with actions that would supersede
13 their own authorities.

14 Q And that law was a criminal ordinance, wasn't it,
15 sir?

16 A I am not sure if that was the exact law. I will
17 take your word for it, that that was a criminal ordinance.

18 Q Do you know whether there was a process which the
19 Suffolk County Legislature followed following the enactment
20 of that law with respect to its implementation?

21 A I couldn't speak for the Suffolk County
22 Legislature.

23 Q You are a Suffolk County employee now, but you
24 don't know what the legislature did then?

25 A No, I really couldn't speak to it.

GW/gw

1 MR. LANPHER: It is clear on the record that he
2 was the Regional Director at FEMA in January 1986.

3 JUDGE FRYE: I think that is clear.

4 BY MR. IRWIN: (Continuing)

5 Q You were also a resident of Suffolk County,
6 weren't you?

7 A (Witness Petrone) That is right.

8 Q Do any members of this witness panel have any
9 recollection of Local Law 2-86 enacted by the Suffolk County
10 Legislature?

11 A (Witness Baranski) I do not.

12 A (Witness Czech) No.

13 A (Witness Papile) Not me.

14 A (Witness Minor) I don't either.

15 Q Mr. Petrone, do you recall whether during the
16 planning for the exercise, during the weeks immediately
17 preceding it, there was concern for the effects of the local
18 law on the exercise manifested either by FEMA Staff, or FEMA
19 contractors preparing for the exercise?

20 A Yes, that I do recall.

21 Q What was their concern, sir?

22 A Their concern basically was that they were
23 concerned about actually proceeding with the exercise on the
24 basis that they feared that they could be criminally
25 prosecuted.

GW/gw

1 Q Who expressed that fear?

2 A That fear was expressed to me by my own staff.

3 Q And by any contractors also?

4 A I can't speak for the contractors. As I said, I
5 didn't make a habit of talking to them directly. It was
6 presented to me by my staff specifically, and representative
7 of them was our regional counsel, Stuart Glass.

8 Q Do you recall any threats either by your staff or
9 by contractors not to participate in the development or
10 conduct or evaluation of the exercise because of their fear
11 under the local law?

12 A The staff was concerned that if this was not
13 resolved -- they feared participation, and they didn't want
14 to participate. In fact, this precipitated, I believe, a
15 discussion with the Justice Department based on what the
16 rights of these employees would be in that situation.

17 And as far as I can recall, it was resolved prior
18 to the exercise.

19 Q In fact, there was a law suit and a decision
20 issued a couple of days before the exercise, was there not?

21 A I believe so, yes.

22

23

24

25

SUE/sw

1 Q Let me come back to a light motif of this
2 testimony, gentlemen. There has been much discussion in the
3 testimony, and today, about the concept of major observable
4 portions of an off-site plan.

5 Can -- is the term "major observable portion"
6 different from the term "observable portion?" Are there
7 such things as observable portions of a plan which, in your
8 view, are not major observable portions?

9 (The witnesses are conferring.)

10 MR. LANPHER: I object. The question is overly
11 broad.

12 JUDGE FRYE: Do you think you can answer that
13 question or not?

14 WITNESS PAPILE: I would like to, speaking from
15 my viewpoint, sir. Everything is a major as far as we are
16 concerned. We have never considered an exercise or
17 objectives as saying this is major, this is minor, this is
18 in between. We have taken them as -- and I will use the
19 statement again, as portions of the plan that should be --
20 and I will use the wording of Appendix E, should be tested.

21 But, to say major versus non-major, we may
22 consider that in our mind when we are thinking it over but
23 never when we write the objectives.

24 JUDGE FRYE: Okay.

25 MR. IRWIN: I have no further questions.

SUE/sw 1

JUDGE FRYE: How much does the Staff have?

2

MR. PIRFO: Less than 10 minutes.

3

JUDGE FRYE: Less than 10 minutes? And, how much
redirect do you anticipate?

5

MR. ZAHNLEUTER: Approximately 10 minutes.

6

JUDGE FRYE: Do you want to take a break?

7

MR. LANPHER: Why don't we go through the Staff
and then --

9

JUDGE FRYE: All right. That's a good
suggestion.

10

11

MR. PIRFO: Fine. Thank you, Mr. Chairman.

12

CROSS EXAMINATION

13

BY MR. PIRFO:

14

Q Mr. Petrone, would you turn to Page 25 of your
testimony, please?

16

(The witness is complying.)

17

Are you there, sir?

18

A (Witness Petrone) Yes.

19

Q And, on that page in your testimony you state
that, "Thus, it is essential that the initial exercise be as
complete as possible." And in a footnote to that sentence
you say that, "An initial full participation exercise also
provides a basis for plan revision and perhaps plan
modification."

25

Can you cite me any examples during your

SUE/sw

1 involvement at FEMA where full participation exercises led
2 to significant plan modification and plan revisions for a
3 particular nuclear plant?

4 A I can't give you dates specifically, but I can
5 tell you that in the entire Indian Point scenario and the
6 number of exercises that took place at Indian Point,
7 exercises tended to produce plan modifications. We had a
8 plan modification with regard to a transportation study --
9 I'm sorry, transportation program in Westchester County.
10 There was a problem with the transportation, and as a result
11 there was a study put together and a plan modification done.

12 And, that was as a result of one of the exercises
13 and what was reviewed and evaluated through the exercise.

14 Q We are talking here about the initial exercise,
15 are we not? Did this change at Indian Point occur after the
16 initial exercise?

17 A I think there were changes after the initial
18 exercise, yeah. But, I can't recall what they were
19 specifically right today. But, there were changes.

20 We are going back to '82 now.

21 Q Do you have any other specific examples of
22 revisions or modifications that were made?

23 A I don't have any specifics I can give you off the
24 top of my head right now. But, it's a fairly normal
25 practice. I mean, exercises are for evaluating preparedness

SUE/sw

1 levels and response levels. And, following that there are
2 corrective actions and recommendations made.

3 And, in some cases there are plan revisions that
4 follow that. It has been the philosophy always at FEMA --
5 and I guess it still is today -- that the plan is a living
6 document. It just keeps changing as time goes on.

7 And, it's these exercises that present the
8 evidence for the need to change.

9 Q Well, I think that what you have just stated is a
10 pretty sensible approach to why you have an exercise and why
11 you would have revisions thereafter. But, I am concerned
12 with your specific background or experience with initial
13 full participation exercises and what kind of errors,
14 omission, whatever you want to call it, existing in a plan
15 were pointed out in an initial full participation exercise
16 during your watch at FEMA.

17 A Yeah. I can't recall, because I think my initial
18 exercise, the only initial exercise I can think of there was
19 that first Indian Point exercise.

20 Q So, is it fair to say then that this Footnote 9
21 is based on, as I characterize it, a common sensible
22 approach or is this based strictly on Indian Point?

23 A It would be based on my experience and my
24 experience with an initial exercise was Indian Point.

25 Q That's the only experience this footnote is

SUE/sw

1 based on, Indian Point?

2 A It's the only initial exercise that I believe I
3 had responsibility for.

4 Q Okay. Do you think it might be a better -- a
5 more fair representation there to say that with Indian
6 Point, an initial full participation exercise also
7 illustrated a basis for plan revision?

8 A I will modify it.

9 Q So, you modify your testimony there to limit it
10 to Indian Point?

11 A I will modify it, since that is the only initial
12 exercise that I have experience with.

13 Q Okay. Thank you. Would you turn to Page 4?
14 (The witness is complying.)

15 About three-quarters of the way down you state,
16 "I was involved in the FEMA decision to conduct the February
17 13, 1986, exercise." And, the next sentence after that, "I
18 proceeded with full concurrence with FEMA that this was a
19 limited exercise."

20 Could you describe for me what you mean there by
21 the full concurrence of FEMA?

22 A Well, it's obvious that there were letters that
23 went back and forth between the Nuclear Regulatory
24 Commission and FEMA which set forth the fact that there
25 would be an exercise and that it would be limited. FEMA

SUE/sw

1 expressed this. And, this was concurred upon by all
2 parties.

3 Q I guess the problem I'm having is that you state
4 there, "I proceeded with full concurrence with FEMA..."
5 This is just as an aside. I assume the "with" stands. It
6 hasn't been corrected.

7 Should it be "with?" It's the second "with" in
8 that sentence.

9 A Let me read it again.

10 (The witness is looking at the document.)

11 Perhaps it should be "of" instead of "with."

12 Q Okay. So, you proceeded with the full
13 concurrence of FEMA? I'm simply not sure what you mean by
14 full concurrence in the sense that you tell me you were not
15 involved in these decisions and you did not -- you didn't
16 tell me, you told Mr. Irwin on cross that you were not
17 involved in designing the scenarios or listing the
18 objectives, but yet you proceeded with full concurrence.

19 A That's correct. I think I also stated that I was
20 supervising the units and the divisions that handled the
21 actual development of the exercise. And, I was in charge of
22 the resources that would be necessary in order to make this
23 exercise a reality.

24 So, I did proceed.

25 Q Okay. Let's get back to the full concurrence.

SUE/sw

1 I don't understand what you mean by full concurrence. I
2 mean, concurrence to me is -- you are either in or out.
3 It's like pregnant. You are either one or the other.

4 I don't understand full concurrence, what you
5 mean by that.

6 A That there was agreement basically. That there
7 was agreement that this was a limited exercise.

8 Q Would you expand on that just a little bit?
9 That's the problem I'm having.

10 A I'm having a problem, too. If you can explain to
11 me what you mean by expand, I would --

12 Q Well, tell me the nature -- you say it's full
13 concurrence. That leaves little room for very little play
14 in the wheels there, if you know what I mean.

15 I don't understand, you got a full concurrence
16 that this was a limited exercise. What do you --

17 A FEMA admitted that this was a limited exercise.
18 And, that was my basis for proceeding.

19 Q Okay.

20 A On the basis that it would be limited. And there
21 was concurrence with FEMA that it was limited. And, this is
22 all documented in writing.

23 Q I understand. But, did you have this full
24 concurrence in mind at the time the exercise was conducted,
25 or is this full concurrence, in your mind, something that

SUE/sw

1 now looking back on it at this point or at the time of your
2 deposition --

3 A No, no. I --

4 Q Do you want me to repeat the question?

5 A No. You don't have to repeat the question. I
6 think we -- I believe this was a situation prior to the
7 exercise.

8 Q And, you've always believed this was the
9 situation from --

10 A Yes.

11 Q -- the time of the exercise?

12 A Yes.

13 Q Now, on Page 59, please.

14 (The witness is complying.)

15 The answer -- you start an answer there which is
16 actually responsive to a question on Page 58 with regard to
17 FEMA personnel suggesting apparently during deposition that
18 it's not necessary to include public education activities as
19 part of the exercise because Shoreham wasn't operating at
20 that time.

21 A Excuse me, Mr. Pirfo. Where are you?

22 Q I'm simply paraphrasing the question. The
23 question is on Page 58. The sole response starts on Page
24 59, okay.

25 My question goes to a sentence on Page 60. I

SUE/sw

1 don't think it's necessary to -- take as much time as you
2 like, but I just wanted to refresh your memory with regard
3 to what the question was.

4 My question goes to the first full sentence on
5 Page 60.

6 (The witness is looking at the document.)

7 This is where you solely sponsor an answer
8 that, "Shoreham to date has no public education or
9 information program."

10 Now, are you ready?

11 A Yeah.

12 Q Now, holding aside whether that is indeed a fact
13 -- let's assume it's a fact for purposes of these questions,
14 when did you come to recognize that as a fact, what you
15 state here at the top of Page 60, "Shoreham to date has no
16 public education or information program?"

17 A As far as my experience -- I'm sorry, at the time
18 of my testimony.

19 Q So, at the time of your deposition you had not
20 recognized that as a fact?

21 A No, I didn't.

22 Q And, you did not recognize it as a fact by
23 definition then when you were Director of FEMA Region II?

24 A No.

25 Q So, then is it fair to say -- strike that,

SUE/sw

1 please.

2 Would it be fair to say that your ignorance of
3 this fact -- and I don't use ignorance disparagingly, simply
4 the fact that you did not recognize it as a fact, that you
5 condoned this fact as Regional Director of FEMA?

6 MR. LANPHER: I object to the question. He has
7 testified he didn't realize the fact. So, how could he
8 condone something that he didn't realize.

9 JUDGE FRYE: It's sustained.

10 BY MR. PIRFO: (Continuing)

11 Q If you didn't condone it then, is it something
12 that you should have been aware of?

13 MR. LANPHER: Irrelevant. I object.

14 MR. PIRFO: I think it's relevant. He was in
15 that position at the time. His testimony says FEMA cannot
16 and should not condone this. I want to know if this was a
17 fact which existed at the time --

18 WITNESS PETRONE: Let me clarify --

19 JUDGE FRYE: Let the witness clarify this if he
20 wants.

21 MR. LANPHER: Judge, whether he should have been
22 or should not have been aware of something back in 1985 or
23 '86 I don't think is relevant to anything in this testimony.

24 JUDGE FRYE: Well, it may be. But, the witness
25 wants to clarify it, and I think it might help. So, let him

SUE/sw

1 do so.

2 WITNESS PETRONE: It was stated prior to the
3 exercise that there was no public information brochure that
4 was actually mailed out. In fact, we have a document to
5 that fact. And, that there would be no way that it could be
6 put into the exercise.

7 That doesn't mean that it -- that the situation
8 should be condoned.

9 BY MR. PIRFO: (Continuing)

10 Q Okay. But, FEMA -- I repeat your testimony.
11 "FEMA cannot and should not condone this," is a view you
12 reached after leaving the Directorship of FEMA?

13 A Yes. Yes.

14 MR. PIRFO: Thank you. I have no more questions.

15 WITNESS PETRONE: Sure.

16 JUDGE FRYE: Redirect, is it going to be lengthy?

17 MR. ZAHNLEUTER: No, it won't be lengthy. But,
18 we would appreciate about five minutes.

19 JUDGE FRYE: If we take 15, is that going to
20 crowd you too much on your time?

21 MR. LANPHER: No. But, we would like to, if it's
22 possible, do the Contention 21 --

23 JUDGE FRYE: We will take 10.

24 MR. IRWIN: Just one ministerial note. I forgot
25 during my examination to move the three Federal Register

SUE/sw

1 notices in and Mr. Papile's letter into evidence, although
2 we have marked them.

3 And, if there is no objection I would like to
4 move them into evidence at this point.

5 MR. PIRFO: No objection.

6 MR. ZAHNLEUTER: No objection.

7 JUDGE FRYE: So ordered.

8 (LILCO Exercise Exhibits 17, 18,
9 19 and 20, previously marked for
10 identification, are admitted into
11 evidence.)

12 (Whereupon, a recess is taken at 3:17 p.m., to
13 reconvene at 3:30 p.m., this same date.)
14
15
16
17
18
19
20
21
22
23
24
25

GW/gw

1 JUDGE FRYE: Shall we go back on the record,
2 please? Mr. Lanpher, or Mr. Zahnleuter?

3 REDIRECT EXAMINATION

4 BY MR. ZAHNLEUTER:

5 Q Gentlemen, you just fielded some questions by
6 Mr. Irwin regarding recovery and re-entry. Is recovery and
7 re-entry a PR-1 objective?

8 A (Witness Baranski) Yes, sir.

9 Q Could you identify specifically where it appears
10 in PR-1 as an objective?

11 A Objective No. 35, demonstrate ability to
12 determine and implement appropriate measures for control,
13 recovery, and re-entry.

14 Q Do you believe that the PR-1 objectives
15 correspond to major observable portions?

16 A Yes, sir.

17 Q And do recovery and re-entry objectives
18 constitute major observable portions under Appendix E?

19 A By definition.

20 Q Is your answer, yes?

21 A Yes.

22 Q Also, in response to questions from Mr. Irwin,
23 you stated that you understand ingestion pathway testing is
24 an NTOL Appendix E requirement, is that correct?

25 A Yes, sir.

GW/gw

1 Q Have there been any NTOLs issued in New York
2 State?

3 A NTOLs have been issued, but none that we have
4 done the emergency planning for.

5 Q Since the --

6 A Since the implementation of the regulation for
7 emergency planning exercises, the answer is, no. All of our
8 exercises have been with operating units.

9 JUDGE FRYE: Do you know, by chance, when the
10 last operating license was issued?

11 WITNESS BARANSKI: Approximately mid-'75, Indian
12 Point 3.

13 BY MR. ZAHNLEUTER: (Continuing)

14 Q How do you reconcile your position that recovery
15 and re-entry and ingestion pathway activities should be
16 included in an exercise prior to the issuance of an NTOL,
17 but those same activities should not have been included in
18 other full participation exercises in New York State?

19 A (Witness Baranski) Well, for one looking at
20 Appendix -- 10 CFR Part 50, Appendix E, there is a
21 regulatory requirement under F, Training, 1, that for a full
22 participation exercise for an NTOL, and I am paraphrasing a
23 little bit, shall include participation by each state and
24 local government within the plume exposure pathway EPZ and
25 each state within the ingestion exposure pathway EPZ.

GW/gw

1 So, for an NTOL, I view this as a regulatory
2 requirement. How do we reconcile our stand regarding
3 ingestion pathway for current exercises? We actually have
4 demonstrated ingestion pathway activities during many of our
5 early exercises.

6 Our problem is not one so much of should we, or
7 should we not, include ingestion exposure pathway, but it is
8 primarily from our end, it is a state activity. If you look
9 at our exercise schedule, which we had gone through
10 yesterday and today, you will notice that at times we were
11 doing three exercises; whether you want to call them full
12 scale, at least they were major workload.

13 You were involving the same state agencies, the
14 same state personnel several times a year for ingestion
15 pathway. We didn't get credit, if you will, for having
16 satisfied a full ingestion pathway exposure. There was no
17 particular guidance as to what FEMA was looking for for
18 that, or what sort of evaluation yardstick.

19 So, we said we have done a bunch of these, we are
20 waiting for you to provide further guidance, FEMA.

21 Q Now, Mr. Irwin asked you questions about the NRC
22 regulations that were in effect on January 1, 1984, and
23 those regulations are LILCO's Exhibit 19.

24 Did that regulation define either full
25 participation or full scale exercises?

GW/gw

1 A That regulation refers to full scale and small
2 scale exercises, and I cannot find a definition of a full
3 scale exercise in the 1984 regulation.

4 Q Did that regulation require the testing of
5 ingestion pathway for an NTOL?

6 A The 1984 regulation did require an ingestion
7 pathway EPZ participation from each state.

8 A (Witness Papile) I would like to qualify that,
9 if I may. The word is, enable each state to do it. We
10 don't think that was a requirement; rather, it enabled us to
11 do it because of the way it was written.

12 Q Well, tell me, where do you see those words,
13 "will enable?"

14 A (Witness Baranski) It is Page 480 on the
15 exhibit, and it is paragraph B. For each site at which a
16 power reactor is located for which the first operating
17 license for that site is issued after July 13, 1982, within
18 one year before issuance of the first operating license for
19 full power, and prior to operation above 5 percent of rated
20 power of the first reactor, which will enable each state and
21 local government within the plume exposure pathway EPZ and
22 each state within the ingestion pathway EPZ to participate.

23 Q And you do not interpret that as a requirement?

24 A (Witness Papile) As compared to the following
25 regulation, no. This is not the same wording. We would

GW/gw

1 take this as more permissive than the one that followed.

2 Q With respect to PR-1, on Page 2, Item 2,
3 Mr. Irwin asked you questions about whether this represented
4 FEMA's practice. In your experience, did FEMA's practice
5 always conform to this particular section of PR-1?

6 A Would you restate the question, please?

7 Q Okay. I am on Page 2 of PR-1, Item 2 under
8 Attendant Criteria. Are you with me? There is a reference
9 there to the 35 exercise objectives. Do you see where I am?

10 A (Witness Baranski) Yes, sir.

11 Q Mr. Irwin asked you questions about whether this
12 represented FEMA's practice. My question is: In your
13 experience, did FEMA's practice always conform to PR-1?

14 A No. We have had additional requirements that
15 have been placed on us, in addition to the objectives that
16 are outlined in PR-1 for our exercises that we have
17 conducted in New York State.

18 JUDGE PARIS: Placed on you by FEMA?

19 WITNESS BARANSKI: That is affirmative, sir.

20 WITNESS PAPILE: I would like to be more specific
21 now. FEMA Region II.

22 BY MR. ZAHNLEUTER: (Continuing)

23 Q What are those additional requirements?

24 A (Witness Papile) The additional requirement was
25 on public education and public information.

GW/gw

1 A (Witness Baranski) Just as an additional comment
2 on PR-1 objectives, you will note that in the PR-1
3 objectives they do not require the ability to demonstrate the
4 ability to implement protective actions for the plume
5 exposure pathway.

6 That objective is missing from PR-1. It is
7 incorporated in Draft Ex. 3, but this is still one of the
8 objectives that we had to demonstrate in our exercises,
9 which is another example of additional material, or
10 additional requirements that were placed on us that are
11 outside the scope of PR-1.

12 Q Now, also with respect to PR-1, same page, but
13 Item 1, above, there were questions about the NTOL and
14 Appendix E. Do the FEMA regulations have an NTOL
15 requirement that parallels Appendix E?

16 A (Witness Papile) There are none that we know
17 of.

18 Q With respect to Page 42 of your testimony on the
19 top portion, which concerns the characterization of the
20 alert notification system as a major observable portion --

21 A (Witness Baranski) Yes.

22 Q My question is: If, for example, an exercise
23 left out all interaction with an EBS radio station, would
24 that constitute a test of this major observable portion?

25 A No, that would be an incomplete test based on

GW/gw

1 our experience of that portion.

2 Q Based on what experience?

3 A The experience of having conducted exercises --
4 approximately 11 or 12 , I forget the number now, Federally
5 evaluated exercises in New York State with FEMA Region II.

6 Q If all the procedures, up to but not including
7 the sounding of sirens and the broadcasting of EBS messages
8 were carried out in an exercise, would there still be or
9 would there not still be a need to demonstrate what you
10 referred to on Page 42 as a coordination among relevant
11 entities?

12 A (Witness Papile) I think there would still be a
13 lack in demonstrating the coordination, or the meshing, the
14 interplay of the people themselves.

15 We feel as though that is very, very important,
16 especially when you are talking between governmental
17 executives and the radio station, and then with your PIOs
18 and public information people working in between.

19 It becomes a very, very coordinated effort. That
20 is how we feel.

21 MR. ZAHNLEUTER: Thank you. I have no other
22 questions.

23 JUDGE FRYE: Any questions for your witnesses,
24 Mr. Lanpher?

25 MR. LANPHER: No. We coordinated.

GW/gw

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE FRYE: Okay. Recross?

MR. IRWIN: Just a couple of questions, Judge
Frye.

REXCROSS EXAMINATION

BY MR. IRWIN:

Q I believe it was you, Mr. Baranski, who was asked
by Mr. Zahnleuter just a few moments ago about various
guidance memorandum, PR-1 objectives, and whether they
correspond to major observable portions, or major observable
elements of an emergency plan.

You responded yes, they did, and that they
correspond to major observable portions of a plan.

Do you recall that question and answer, sir?

A (Witness Baranski) Yes, sir.

Q Didn't you mean they corresponded to major
observable elements? I thought that is what we discussed
this morning.

A Okay. I think we are getting wrapped around the
axle here on some words. The 35 objectives, if you look on
Page 2 of PR-1, it says the 35 objectives are the major
elements of the plans and preparedness, and that these
elements would constitute I don't know how many portions of
an exercise there are, but it takes more than one of these
elements. It could be only one, but a number of elements

GW/gw

1 to include a portion.

2 Q Fine. With respect to the testing of ingestion
3 pathway aspects of an emergency plan in initial licenses for
4 plants which have not yet received an operating license,
5 Mr. Czech, I believe it was you who indicated your belief
6 that the NRC's regulations in Appendix E require the
7 participation of all states in the ingestion pathway in such
8 an exercise. Do you recall stating that, sir?

9 A (Witness Czech) I recall, and I stand by what I
10 said.

11 Q What do you mean by, "participate?"

12 A That is something I believe FEMA would have to
13 determine. The same problem we have with our full
14 participation. However, it would be more than just a
15 telephone call, and at this stage of the game I really don't
16 know. We haven't had that problem on other sites.

17 Q And you are not aware of any regulatory guidance
18 that says it is more than a telephone call, or less than
19 mobilizing every state trooper, or indeed, any regulatory
20 guidance that defines "participation" in any fashion, are
21 you, sir?

22 A If it were a telephone call, my feeling is that
23 the drafters of this regulation would have used something to
24 the effect of communicating with the states within the
25 ingestion EPZ. But that terminology was not used.

GW/gw

1 Therefore, I feel it was something much more than
2 just communications that was implied. Because if you look
3 at other regulations or other parts of 10 CFR 50, in
4 Appendix E, that in the past we have used words like,
5 "communications."

6 Q But you are not aware of anything more specific
7 than your inference, are you sir/

8 A No, I am not, sir.

9 Q Okay. When you -- I guess it was either you,
10 Mr. Czech, or you, General Papile, indicated that the State
11 of New York had participated in various ingestion pathway
12 elements of exercises, but you quit after a while. Can you
13 describe in general terms what the state typically did in
14 that ingestion pathway participation?

15 A If you reviewed some of the post exercise
16 assessments from FEMA -- one comes to mind from Ginna of about
17 '83, and some other ones, you will find some wording in
18 there where you got credit for a partial, but typically it
19 would involve things such as looking at the source term,
20 doing calculations of potential deposition, potential impact
21 through the food chain, sending out someone to collect
22 samples or perhaps milk, vegetation, fruits or vegetables,
23 collecting those samples. We have actually even had the
24 samples rushed back to Albany by Civil Air Patrol and or by
25 State Police courier service; everything up to, but short

GW/gw

1 of actual laboratory analysis.

2 Q And that involved a cadre of state employees,
3 primarily from Albany, sir/

4 A That is true.

5 Q The same employees from exercise to exercise
6 --the same organization?

7 A At the state emergency operating center, the
8 decision makers, command people, will be somewhat the same,
9 although we have more than coverage than for one shift, but
10 that group would be the same. The people who would actually
11 go out and collect samples would be different. Typically,
12 they would come from state employees who work in that
13 particular region. So, for example, if you are running an
14 exercise at Nine Mile, the people would probably come from
15 the Oswego - Syracuse area. If we are talking about the
16 Ginna area, they would be someone who is probably working
17 out of an office near the Rochester area.

18 Q But with respect to the people in Albany, the
19 same cadre were involved from exercise to exercise, as I
20 understand it, in the ingestion pathway?

21 A A large pool of the same people are used, yes.

22 Q And as I understand it, the ingestion pathway
23 functions for those people do not vary significantly from
24 exercise to exercise, do they, for the ingestion pathway?

25 MR. ZAHNLEUTER: I object. This is beyond the

GW/gw

1 scope of my redirect, and irrelevant to the Contention 15
2 and 16.

3 JUDGE FRYE: I agree it is beyond the scope of
4 your redirect. Sustained.

5 BY MR. IRWIN: (Continuing)

6 Q Mr. Czech, with respect to the state employees
7 participation in ingestion pathway activities, did you feel
8 that it was a productive use of state employees time and
9 effort to continue to perform these repetitive exercises,
10 the ingestion pathway portions of them?

11 MR. ZAHNLEUTER: Objection.

12 JUDGE FRYE: Sustained.

13 BY MR. IRWIN: (Continuing)

14 Q Why did the state cease to perform the ingestion
15 pathway activities?

16 JUDGE FRYE: Objection.

17 JUDGE FRYE: Sustained.

18 MR. IRWIN: Judge Frye, if the state says that we
19 are required to perform ingestion pathway activities, and
20 they believe that -- and they performed them themselves at
21 one point -- even though there was no regulatory guidance
22 governing them, and they quit performing them, my view is it
23 would be useful to find out why they ceased to perform
24 them.

25 JUDGE FRYE: I have been sustaining the

GW/gw

1 objections because it is beyond the scope of redirect, and I
2 think that is true.

3 BY MR. IRWIN: (Continuing)

4 Q Mr. Barenski, you indicated, I believe, that
5 draft FEMA Guidance Memorandum Ex. 3, would modify -- I will
6 try a different approach.

7 You indicated there was a new objective
8 specified in Draft Guidance Memorandum Ex. 3. Do you recall
9 saying that, sir?

10 A (Witness Baranski) I did not specifically say
11 there was one. I gave you an example of one.

12 Q Would you tell me which one it is again, just so
13 I am clear?

14 A If you look through PR-1.

15 Q Tell me which number it is in Ex. 3.

16 A There is no number in PR-1 for the objective
17 that exists in Ex. 3.

18 Q Can you give me the number in Ex. 3?

19 A Sure. It is Number 6: Demonstrate ability to
20 implement protective action for plume pathway hazards.

21 That objective does not exist in PR-1. But
22 common sense would tell you that you are testing the plume
23 exposure pathway, and implementing and developing
24 recommendations that you would try and implement those
25 recommendations. So, we do it.

GW/gw

1 Q Do you have available to you the objectives from
2 PR-1, sir?

3 A Yes, sir.

4 Q Would you look at Objective 15 in PR-1?

5 A Demonstrate the organizational ability and
6 resources necessary to manage an orderly evacuation of all
7 or part of the plume EPZ?

8 Q Yes, sir. Isn't that -- that also deals with
9 taking protective actions from the plume EPZ, doesn't it?

10 A Sir, if you look at the cross reference for that
11 particular objective, it calls for EOC and it calls for
12 field activity, and in our experience with this particular
13 objective, what we do here is that you have a command and
14 control decision making process and then you try and
15 demonstrate a sample of resources necessary to conduct that
16 orderly evacuation.

17 MR. ZAHNLEUTER: Mr. Baranski, have you finished
18 that answer?

19 WITNESS BARANSKI: Yes, I have.

20 BY MR. IRWIN: (Continuing)

21 Q If you continue across in your tabular references
22 with PR-1, objective 15 to the NUREG 0654 references, those
23 provide the authority and basis for the objective, don't
24 they?

25 A (Witness Baranski) Yes. That is an attempt to

GW/gw

1 cross reference 0654 elements in the particular standards to
2 an objective.

3 Q Right. And the cross reference for Objective 15
4 of PR-1 is to NUREG 0654 elements J.9 and J.10G, correct?

5 A That is what is stated on the PR-1 document,
6 yes. I haven't cross checked them with 0654 but that is
7 what this says.

8 Q Okay. Now, if you look at Ex. 3, and we look at
9 Objective 6.

10 A Yes, sir.

11 Q Isn't it true that NUREG 0654 cross references
12 are also to Objectives J-9 and J-10G/

13 A That is affirmative.

14 Q In other words, exactly the same cross references

15 --

16 A The same cross reference, but the intent of the
17 objective and the performance, and the demonstration of
18 those objectives, based on our experience in many exercises
19 in New York State are completely two different things.

20 Q And the cross references to corresponding parts
21 of the modular format for Ex. 1, -- Objective 15, sorry,
22 PR-1, Objective 15, are to EOC Section 7.A, and to FA
23 Section I, correct?

24 MR. LANPHER: I object to the question. These
25 documents speak for themselves. This witness has already

GW/gw

1 explained why he thinks these objectives are different. I
2 would like a ruling on my objection. I think this is just
3 repetitive examination. The documents can be compared, but
4 he has explained why the words of the objective are
5 different.

6 JUDGE FRYE: Yes, I know he has. Are we
7 accomplishing anything with this?

8 MR. IRWIN: Well, I am not sure, but I think he
9 said they are different in that they went to different
10 objectives and have different bases, and in fact, both of
11 the objectives and bases if one compares the tables cross
12 referencing these objectives, are identical.

13 JUDGE FRYE: Well, can't we do that ourselves
14 without having to bother the witness?

15 MR. LANPHER: Absolutely.

16 JUDGE FRYE: It is in the record, is it not. I
17 mean, you can cite to it, I would think.

18 MR. IRWIN: I can sure cite to it. I was just
19 trying to understand how --

20 MR. LANPHER: The citation to it has already been
21 explained by this witness; the words of the objective and
22 their experience in Region II practice are that these
23 objectives would require completely different kinds of
24 demonstrations and testing.

25 BY MR. IRWIN: (Continuing)

GW/gw

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Mr. Baranski, let me try one more. Has Region II ever applied draft guidance memo Ex. 3 in practice?

MR. ZAHNLEUTER: Objection. It is beyond the scope of my redirect.

MR. IRWIN: Well, Mr. Baranski is the man who brought it up.

JUDGE FRYE: I think I will overrule that one.

WITNESS BARANSKI: Ex. 3 -- Draft Ex. 3 is not being used in my experience at FEMA Region II.

SUE/sw

1 Q So, you have not yet had an opportunity to apply
2 it in a specific exercise, have you, sir?

3 A That's affirmative, because it's still a draft
4 document.

5 JUDGE PARIS: But, you did say that FEMA
6 sometimes requires you to do things that are on EX-3 in
7 addition to things that are in PR-1, right?

8 WITNESS BARANSKI: That's correct, sir.

9 MR. IRWIN: I don't have any further questions,
10 Judge Frye.

11 MR. PIRFO: The Staff has no recross.

12 MR. ZAHNLEUTER: No questions.

13 JUDGE FRYE: Fine. Gentlemen, thank you very
14 much. We very much appreciate you coming and testifying.

15 WITNESS PAPILE: Thank you very much.

16 (The witnesses stood aside.)

17 JUDGE FRYE: Quickly -- I don't know to what
18 extent we want to get into argument on these motions at this
19 hour. But, I do want to know so that I have it clearly in
20 my mind precisely what has been withdrawn at this point.

21 And, I understand that Suffolk County has
22 withdrawn its testimony identified in the LILCO motion which
23 was to respond to Dr. Miletic.

24 MR. LANPHER: That's correct. And, my
25 understanding is that LILCO accordingly no longer seeks to

SUE/sw

1 submit supplemental testimony of Dr. Mileti.

2 JUDGE FRYE: And withdraws its motion.

3 MR. ZEUGIN: That's correct.

4 JUDGE FRYE: Okay. So that is put aside. Now,
5 LILCO has withdrawn its testimony to which Suffolk County
6 objected in Roman Numeral I of its motion, if I'm not
7 mistaken; is that correct?

8 MR. ZEUGIN: In large measure, Judge Frye. If
9 you have the Suffolk County motion in front of you I can
10 tell you the two respects in which LILCO is not withdrawing
11 testimony.

12 JUDGE FRYE: Okay.

13 MR. ZEUGIN: The first one is the first entry,
14 Page 5. That full paragraph, LILCO is not withdrawing that
15 testimony. And, on Page 8, the first paragraph, LILCO is
16 withdrawing only one sentence of that paragraph, and it is
17 the third sentence that begins with the word, "However..."
18 And, that actually reads, "However, as is demonstrated in
19 the testimony, the size of the samples taken at Shoreham
20 were consistent with or larger than those in the 38 other
21 exercises evaluated by LILCO."

22 JUDGE FRYE: Okay.

23 MR. ZEUGIN: That would be the only sentence that
24 LILCO would withdraw from that. With regard to the other
25 remaining seven entries on Part I of the Suffolk County

SUE/sw

1 motion, LILCO is withdrawing that testimony.

2 JUDGE FRYE: Okay. And, so we have a controversy
3 still remaining with regard to Roman II in the Suffolk
4 County motion and Roman III in the Suffolk County motion?

5 MR. ZEUGIN: That's correct.

6 MS. CASEY: And with regard to the balance of the
7 testimony which we had moved to strike on Pages 5 and 8. We
8 would still move to strike those passages.

9 JUDGE FRYE: Oh, all right. Surely. All right,
10 I think in light of the hour it might be better to do that
11 at a conference call.

12 Shall we set that for 3:30 tomorrow?

13 MR. LANPHER: Could I go off the record for one
14 second?

15 JUDGE FRYE: Yeah.

16 (An off-the-record discussion ensued.)

17 JUDGE FRYE: Okay, back at 9 o'clock on Tuesday.

18 (Whereupon, the hearing was adjourned at 3:58
19 p.m., Thursday, May 21, 1987, to reconvene at 9:00 a.m.,
20 Tuesday, May 26, 1987.)

21
22
23
24
25

CERTIFICATE OF OFFICIAL REPORTER

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

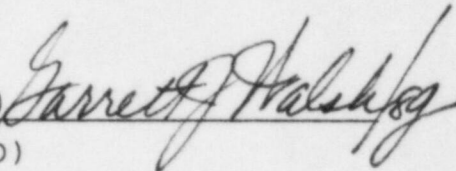
NAME OF PROCEEDING: LONG ISLAND LIGHTING COMPANY
(SHOREHAM NUCLEAR POWER
STATION, UNIT 1)

DOCKET NO.: 50-322-OL-5 (EP Exercise)

PLACE: HAUPPAUGE, NEW YORK

DATE: THURSDAY, MAY 21, 1987

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

(sig) 

(TYPED)

GARRETT J. WALSH

Official Reporter

ACE-FEDERAL REPORTERS, INC.
Reporter's Affiliation