

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,)
Unit 1))

Docket No. 50-322-OL-3
(Emergency Planning)SUFFOLK COUNTY'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS BY
FEMA, AND TO POSTPONE THE CROSS-EXAMINATION OF FEMA'S WITNESSES,
AND FOR ISSUANCE OF SUBPOENAS TO THE MEMBERS OF THE RAC

Pursuant to 10 CFR 2.740(f), Suffolk County hereby moves this Board to compel the Federal Emergency Management Agency ("FEMA") to produce 30 documents which FEMA has refused to produce on the asserted grounds of executive privilege. The County further moves for the issuance of subpoenas to the members of FEMA's Region II Regional Assistance Committee (hereinafter, "RAC"), so that the County can depose them regarding their participation in the RAC review of the LILCO Transition Plan. Finally, the County moves this Board to postpone the cross-examination of FEMA's emergency planning witnesses, now scheduled to commence on July 10, 1984, until the County has had the opportunity to conduct the discovery requested above. Such a postponement is warranted since the

County cannot meaningfully probe the bases for the FEMA witnesses' opinions and the findings and conclusions of the RAC, upon which the FEMA witnesses' testimony is based, without an opportunity to obtain and review the documents at issue and to question the RAC members regarding the bases for their evaluations of the LILCO Plan.

I. Facts

A. The County's Motion to Compel

On April 18, 1984, FEMA submitted to this Board the direct written testimony of four FEMA witnesses.^{1/} The FEMA testimony is based largely upon the findings of a review and evaluation of the LILCO Plan by FEMA's Region II RAC. Upon receipt of the FEMA testimony, the County served upon FEMA a Request for Production of Documents (hereinafter, "Request") on April 20, 1984. The County also submitted subpoenas to the Board for issuance to each member of the RAC, requiring them to appear to be deposed. The County noted, however, that it would not request that the subpoenas be issued unless depositions of the four designated FEMA witnesses were unsuccessful in revealing the bases for the conclusions contained in the RAC Report.^{2/}

^{1/} Direct Testimony of Thomas E. Baldwin, Joseph H. Keller, Roger B. Kowieski and Philip H. McIntire Concerning Phase II Emergency Planning (the "FEMA testimony").

^{2/} Memorandum Explaining Suffolk County Discovery Requests Relating to FEMA, at 4-5 (April 20, 1984).

FEMA's delay in responding to the County's Request prompted the County to file, on May 8, 1984, a Motion to Compel Response to Request for Production of Documents by FEMA. After the Board set a schedule for the parties to respond, the County received FEMA's Response to Suffolk County Request for Production of Documents (hereinafter, "FEMA Response") on May 15 (one day later than the schedule set by the Board). FEMA's Response identified 37 documents which were being withheld on grounds of asserted executive privilege. See FEMA Response at 5-8. In particular, FEMA claimed that the documents revealed pre-decisional communications pertaining to the RAC review process and thus required protection. On May 17, 1984, Suffolk County filed a Motion to Compel Production of Documents Identified by FEMA on May 14 and 15 (hereinafter, "County Motion"), requesting the Board to compel production of the 37 documents identified (but withheld) by FEMA, as well as all remaining documents responsive to the County's Request.

B. The Licensing Board's Order

During a conference call on May 18, the Licensing Board issued its ruling on the County's Motion and ordered FEMA to turn over to Suffolk County 30 of the 37 identified documents. On the same day, the Board issued a Memorandum and Order confirming its oral ruling.^{3/} The Board found that FEMA had

^{3/} Memorandum and Order Ruling on Suffolk County Motion to Compel Production of Documents by FEMA (May 18, 1984) (hereinafter, "Memorandum and Order").

asserted a valid claim of executive privilege with respect to the 37 documents at issue. Nevertheless, the Board concluded that the County's need for the documents outweighed FEMA's need to protect pre-decisional communications pertaining to the RAC process. The thrust of the Board's ruling was that since the RAC review was clearly pertinent to, and indeed formed the basis for, the FEMA witnesses' testimony, the County had a right to probe the underpinnings of the findings contained in the RAC review. Thus, the Board held:

[T]he FEMA findings of the RAC Committee are directly relevant to the issue in controversy in this licensing hearing. In general, the parties should be permitted to inquire into those findings and the procedures which were followed to arrive at the FEMA consensus. Only by probing those findings and determinations, will the parties and the Board be able to assess the weight to be given to those findings and determinations in our review under 10 C.F.R. § 50.47(a)(2).

Memorandum and Order at 7.

The Board further held that:

[I]t would be unfair to deny the County access to the underlying documents and processes by which the RAC Report achieved its final form. . . . [T]he County should be able to discover the underlying documents that went into the formulation of the publicly disclosed RAC Report because the information sought appears to be reasonably calculated to lead to the

discovery of admissible evidence. . . .
[W]e find that the documents which underlie
the RAC Report are centrally important to
the County's case in asserting that the
LILCO Plan does not comply with NUREG-0654.
We do not find that cross-examination
alone, without access to these documents,
will be equivalent.

Memorandum and Order at 8-9. The Board then ordered FEMA to
produce 30 of the 37 identified documents.^{4/} However, pursuant
to an oral request by FEMA's counsel, the Board stayed the
effect of its ruling until 5:00 p.m., Monday, May 21.

C. The Appeal Board's Order

On May 21, FEMA filed with the Appeal Board a Notice of
Appeal and Request for a Stay of an Order of the Atomic Safety
and Licensing Board. The Appeal Board granted FEMA a temporary
emergency stay on the same day. Following oral argument on the
stay request, the Appeal Board extended the stay pending full
briefing and argument of FEMA's appeal from this Board's May 18
Memorandum and Order.

In a June 13, 1984 decision, the Appeal Board reversed
this Board's ruling. In the Matter of Long Island Lighting

^{4/} The Board found that the County had not shown a compelling
need for the remaining seven documents. Memorandum and
Order at 9-10.

Company (Shoreham Nuclear Power Station, Unit 1), ALAB-773, ___
NRC ___ (June 13, 1984). The Appeal Board agreed with the
Board that FEMA had properly invoked executive privilege with
respect to the documents at issue, but disagreed that the
County had demonstrated, at least at the time of the appeal, a
compelling need to obtain the documents. Id., slip op. at
15-16. However, the Appeal Board was also emphasized the pre-
liminary nature and the narrowness of its ruling.

The Appeal Board acknowledged the County's right to
explore fully the underpinnings of the RAC review and the final
RAC conclusions. However, noting that depositions of the FEMA
witnesses had been scheduled but not yet taken, the Appeal
Board held that the County had not demonstrated that the rele-
vant information could not be obtained elsewhere -- for in-
stance, through the scheduled depositions. Id. Thus, the
Appeal Board stated:

Obviously, the County is entitled to probe
the FEMA findings, explore their bases,
assess their accuracy, and determine what
reliance should be placed on them. To that
end, FEMA will make its sponsoring
witnesses available for deposition and
cross-examination. They may be examined as
to the soundness and reliability of the
scientific assumptions or professional
judgments underlying the FEMA findings.
While the County may well find it helpful
to have predecisional materials -- for im-
peachment purposes or to reveal soft spots

in the final testimony, for example -- it has not shown that its right to explore the underpinnings of the FEMA findings and determinations cannot be satisfied without the documents it seeks.

Id.

The Appeal Board also gave weight to representations by counsel for FEMA that the FEMA witnesses would be "forthcoming" and that "the substantive bases or professional judgments underlying FEMA's findings" would be subject to scrutiny during the depositions. Id., slip op. at 16-17. The Board specifically noted, however, that if this were not the case:

there may, of course, be an eventual need to order release of the documents. That can be done at a later stage, albeit with some compromise in efficiency and additional delay.

Id., slip op. at 18. The Appeal Board also admitted it had "some uneasiness over the blanket assertion by FEMA that release of any or all portions of the thirty documents will have a chilling effect on its operations." Id., slip op. at 23.

The Appeal Board concluded by restating its position that if the County was unable to get the information it sought through other means, disclosure of the documents would be warranted. Id., slip op. at 25. Thus, the Appeal Board stated:

We emphasize the preliminary nature of our conclusion and the narrowness of our holding. Upon deposition or cross-examination of the sponsoring witnesses, or the review of documents voluntarily released, it may appear that there are good and sufficient reasons to warrant disclosure, such as significant differences of opinion among members of the RAC on important issues affecting the adequacy of LILCO's plan. It may turn out that the sponsoring witnesses are unable to defend or explain adequately the underlying bases for FEMA's determinations or reveal that they have relied to an inordinate degree on the views of others. In such circumstances (and, perhaps, in others), the County may well be able to establish a sufficiently compelling need for the underlying documents. (Emphasis added.)

Id. at 25.

D. The Depositions Of FEMA's Witnesses

Counsel for the County deposed FEMA's witnesses on June 27 and 29, 1984.^{5/} During the course of the depositions, it became clear that, at least initially, there was a substantial lack of unanimity among the RAC members on many of the findings contained in the RAC report. This fact was highlighted by

^{5/} The County had no control over the timing of these depositions -- counsel for FEMA represented that the witnesses were available only on June 27 and June 29. The deposition transcripts became available only this week and thus the County could not have filed the instant motion at an earlier time.

notes prepared at the suggestion of FEMA's counsel by FEMA witnesses Keller and Baldwin immediately prior to, and in preparation for, their depositions. These notes, which were turned over to the other parties and made exhibits to the depositions of Messrs. Keller and Baldwin, reflected, among other things, the number of comments received from RAC members on each NUREG 0654 element, prior to a meeting on January 20 with all RAC members in attendance. This meeting was chaired by Mr. Kowieski and led to the issuance of the final RAC report. Kowieski Tr. at 60-61, 83-85.^{6/} The Keller and Baldwin notes also reveal the number of comments which disagreed, at least initially, with the final RAC findings for each NUREG element of the LILCO Plan. Neither the Keller nor the Baldwin notes revealed, however, the identities of dissenting RAC members or the reasons for their dissenting views. Mr. Kowieski, the RAC Chairman, also prepared notes in preparation for his disposition, which reflected a breakdown of the total comments received from all RAC members, and a narrative description of those comments which disagreed with the final RAC findings (Kowieski Tr. at 51). Those notes were not produced to the parties, and Mr. Kowieski was not permitted to discuss them

^{6/} Cited pages from the deposition transcripts of Messrs. Kowieski, Keller, Baldwin and McIntire are appended to this motion as Attachments 1-4, respectively.

during his deposition, under instructions from FEMA's counsel. See, e.g., Kowieski Tr. at 54-56, 103, 104.

The County attempted on many occasions during the FEMA depositions to ascertain the reasons for and the substance of the various RAC members' dissenting opinions on specific findings, but was unable to pursue its inquiry. Clearly, it is important for the County to determine which RAC members dissented from various RAC findings. This is a critically relevant inquiry because each RAC member represents an agency with a specific area of expertise. Thus, it is important to determine whether RAC members with expertise in a particular area disagreed at any time with the findings in the final RAC report, and if so why. Yet, counsel for the County was continually prohibited from obtaining answers to questions regarding the specific reasons or bases for RAC members' dissenting opinions by the witnesses' lack of recollection about such dissenting opinions and also by FEMA counsel's continued refusal to permit the witnesses to answer such questions. For example, during the deposition of FEMA witness Baldwin, the following exchange took place:

Q. And do you have any independent recollection? Are you able to tell me which five agencies or individuals provided this comments on Element A.1.A?

A. Not in specific detail, no.

Q. Would your answer be the same for each NUREG element set forth on the seven pages of your notes?

A. Yes, it would.

* * *

Q. For each element of NUREG 0654, are you able to tell me, based on your notes or anything else, which agencies or individuals of the RAC were at least initially in the minority with respect to how an item should be rated?

A. Which particular agencies, no. I would not be able to do that.

Baldwin Tr. at 150. Further, FEMA witness Kowieski was prohibited by FEMA's counsel from shedding further light on the issue.

Q. Now, I would like you, Mr. Kowieski, to contention by contention -- I am sorry. I would like for you, if you would please, using the RAC Report, element by element, to tell me the members of the Committee who believed that the rating finally determined in the RAC Report who initially believed that was a correct rating?

Mr. Glass: I object. You are trying to get through the back door the same information that you were tried to get through, and went up to the Appeal Board. You are trying to have him identify preliminary statements that were contained on the original documents which were held to be subject to privilege. You are trying to obtain the same, exact information. You are trying to have him identify which

individual said, 'adequate,' and which individual said, 'inadequate' on those preliminary documents, and the Appeal Board has upheld FEMA's position. And I do not see anything at this point which indicates you are entitled to that information, or that there is any need for that information.

* * *

As to this particular question, it is my understanding -- correct me if I am wrong -- that you are asking him to identify for you the positions of the individual RAC members as provided on their comment sheets to the RAC Chairman prior to the January 20th meeting. If that is what you are instructing him to do, I am instructing the witness not to answer your question.

Mr. Miller: Is your instruction the same if I asked Mr. Kowieski to identify representatives -- if I asked Mr. Kowieski to identify the agencies represented?

Mr. Glass: That is the same question. We have -- it is a very simple mathematical formula.

Mr. Miller: Was your instruction not to answer the question?

Mr. Glass: Let me finish my statement. It is a very simple mathematical formula you have. We have already provided you the names of the agencies and who the individuals are, so if he was to provide the answer to your second question, he would in effect be providing the same answer.

And, therefore, I am instructing the witness not to answer.

* * *

Mr. Miller: . . . I am talking about the position of the RAC members, including Messrs. Keller and Baldwin, in their written comments or otherwise, that were submitted prior to the January 20th meeting, I want to know the positions of the members of the Committee with respect to whether they were in agreement or disagreement with the rating finally derived and set forth in the RAC Plan issued to the NRC.

Mr. Glass: I am instructing the witness not to answer the question. You have had Mr. Keller here; you have had Mr. Baldwin here. You took the opportunity with Mr. Keller to inquire. He gave you a listing of what his original ratings were, so you have that information. And I am instructing the witness not to answer at this point.

* * *

Q. [Mr. Miller:] Mr. Kowieski, you have been instructed not to answer my question, and of course I have to abide by that. But I want to make it clear for the record that my opportunities to question Mr. Keller and Mr. Baldwin went to their involvement in the RAC.

Mr. Kowieski is here as Chairman of the RAC. He had the information available to him to tell me the members and their positions on the RAC; Mr. Keller and Mr. Baldwin both made clear they were not in a position to give me that information.

So, there is a difference.

Kowieski Tr. at 117-122; see also, Keller Tr. at 42, 69-70; Baldwin Tr. at 145-152; McIntire Tr. at 69.

Furthermore, the witnesses were unable to give meaningful explanations of the basis for the conclusions or opinions of individual RAC members, and they were unable to describe even what portions of the LILCO Plan the RAC members reviewed. For example, during his deposition, Mr. Baldwin testified as follows:

Q. But do you know what [the RAC members] did to reach their conclusions regarding those elements of NUREG 0654?

A. It's impossible for me to get inside of their head and to go through their thinking process.

Q. I'm not asking you about their thinking process. I'm asking you, do you know what these people did with respect to reaching their conclusions and judgments regarding the LILCO plan?

* * *

BY MR. MILLER: (Continuing)

Q. Mr. Baldwin, do you know what members of the RAC, including Mr. Keller, reviewed to reach their conclusions and judgments as set forth in their comments?

A. Yes. They reviewed the plan, the implementing procedures and the Appendix A of the evacuation study.

Q. And you specifically know that each member of the RAC and Mr. Keller did that; is that correct?

A. Yes. I know that each reviewed those various parts in order to be able to supply us with their comments.

Q. Now, can you tell me what parts or portions of each of the four volumes of the total LILCO plan the members of the RAC and Mr. Keller reviewed?

A. I have no specific direct knowledge of those parts which each member -- how each member went about their task. I have no direct knowledge of how each one went about reviewing their entire set of four documents, four volumes.

Baldwin Tr. at 42-43. Mr. Kowieski was unable to offer a more enlightening explanation:

Q: Mr. Kowieski, are you able to tell me what the members of the RAC Committee did in preparing their comments that were submitted prior to the January 20th meeting?

A: I don't understand your question.

Q: Well, you have told me that what you did in your review with respect to the RAC review process was that you reviewed the LILCO Plan, portions and parts of the LILCO Plan, correct?

A: At what point? At a certain point, yes.

Q: Okay. Now, those members of the RAC Committee who provided comments that were used at the January 20th meeting, do you know what they did; for example, what they looked at and reviewed in order to make determinations as set forth in their comment that was sent to your attention?

A: I can tell you the four volumes of the LILCO Transition Plan, and NUREG 0654. They used their professional judgment, expertise, based on their educational

background and experience gained in the past.

Q: Do you specifically know that the only thing the members of the Committee used in their review were the four volumes of the LILCO Plan?

A: If I know?

Q: Yes, sir.

A: They were requested to provide comments on the LILCO Transition Plan, Revision 3.

Q: Do you know, though, what they actually did do in providing their comments to you for use in the RAC review process?

A: They did not advise me otherwise when they submitted comments to me.

Q: I want to repeat my question. Do you know, specifically know, what members of the Committee did in preparing their comments on the LILCO Plan that was sent to you?

A: They --

Mr. Glass: This is getting back to the same situation which was gotten into in the three prior instances. If you are asking Mr. Kowieski was he present, and did he watch what each individual did, so that he can then say for a fact that he saw the person open and read all four volumes and NUREG 0654, you can understand his hesitancy to be able to respond to such a question.

BY MR. MILLER: (Continuing)

Q: I am sure, Mr. Kowieski, that you did not watch the members of the Committee in what their review consisted of, is that correct?

A: No, I did not sit in their office and watching them review the LILCO Transition Plan, Revision 3, that is correct.

Q: Did you ever specifically ask any member of the Committee, including Messrs. Keller and Baldwin, what they did in reaching their conclusions and judgments regarding the LILCO Plan?

A: At the meeting I asked -- at the January 20th meeting, okay, if, for instance, an issue came up, if they review, for instance, Appendix A. Basically I would insult their intelligence by asking, say: Have you reviewed the Plan. Did you base your comments on the Plan?

Because, you know, those people are professional individual, and are being designated by their respective agency to assist FEMA, and I have to maintain a certain relationship. I cannot insult them by asking them a very obvious question.

Q: Yes, sir, I understand. Did you ever specifically ask any member of the Committee, however, if they reviewed anything other than the LILCO Plan?

A: No, sir.

Q: The answer is, 'no?'

A: Yes, sir.

Kowieski Tr. at 104-107; see also Kowieski Tr. at 45-47, 107-108; Baldwin Tr. at 35-45, 155-156; McIntire Tr. at 71-72.

Furthermore, the County was not permitted to complete the deposition of Mr. Kowieski. Instead, counsel for FEMA

announced that Mr. Kowieski had to leave before the County had completed its questioning, despite an agreement between counsel for the County and counsel for FEMA that Mr. Kowieski's deposition would be permitted to continue into the evening, if necessary, in return for the County's agreement that the deposition of FEMA witness Baldwin would be taken first on Friday, June 29. Thus, the County was again prevented from obtaining information pertinent to the RAC review.

II. Discussion

A. The County Has Been Denied Its Right to Probe the Bases of the RAC Review and the Opinions of the FEMA Witnesses

Both this Board and the Appeal Board recognized that Suffolk County, as a party to this proceeding, has a right to probe the bases for the opinions and conclusions stated by the FEMA witnesses in their testimony and in the RAC Report attached to their testimony, both for impeachment purposes and to develop a full and complete record. Memorandum and Order at 7-8; ALAB-773, slip op. at 15-16. This right is founded in the NRC's own regulations which provide that a party is entitled to conduct "such cross-examination as may be required for full and true disclosure of the facts." 10 CFR § 2.743(a). Likewise, 10 CFR § 2.740 guarantees the right to prior discovery of materials reasonably calculated to lead to admissible evidence.

The need for the County to explore the underpinnings of the RAC review is especially important here because it serves as the very foundation upon which the testimony of FEMA's witnesses is based. This fact prompted the Board to determine that the findings of the RAC are "directly relevant to the issue in controversy in this licensing hearing." Memorandum and Order at 7. Indeed, the Board found that the information sought by the County was "centrally important to the County's case in asserting that the LILCO Plan does not comply with NUREG 0654." Id. at 9. Thus, the Board concluded that:

Only by probing those findings and determinations will the parties and the Board be able to assess the weight to be given to those findings and determinations in our review under 10 CFR § 50.47(a)(2).

Id. at 7.

The Appeal Board did not dispute the County's right to information regarding the bases for the conclusions found in the RAC report. Rather, its chief difference with this Board's ruling was that the County, in the Appeal Board's opinion, had not yet demonstrated that the information was unavailable through means other than disclosure of the documents at issue. ALAB-773, slip op. at 15-16. Indeed, the Appeal Board strongly suggested that if the County was not provided with the

information it sought through the scheduled depositions of the four FEMA witnesses, then disclosure of the FEMA documents would be warranted. See id. at 16, 18, 25. According to the Appeal Board, a compelling need for disclosure could be demonstrated where:

- (1) There are "significant differences of opinion among members of the RAC on important issues affecting the adequacy of LILCO's plan;"
- (2) The "witnesses are unable to defend or explain adequately the underlying bases for FEMA's determinations;" or
- (3) The "witnesses reveal that they have relied to an inordinate degree on the views of others."

Id. at 25.

The County now finds itself in the very circumstances which the Appeal Board contemplated would compel disclosure. For instance, the County was able to determine during the depositions held on June 27 and 29 that, in many instances, there was a difference of opinion among RAC members as to whether a particular portion of LILCO's Plan should be rated as adequate or inadequate. This fact is evident from the notes produced by Mr. Baldwin and Mr. Keller, which are attached to the depositions as Keller Exhibit 1 and Baldwin Exhibit 2. The County, however, was precluded from discovering the nature of the

dissenting RAC members' opinions, the bases for those opinions, or even whether the dissenters were from agencies with expertise in the area at issue. This was due not only to the witnesses' lack of knowledge or recollection, but also to FEMA counsel's refusal to permit the witnesses to testify on these matters when they admittedly were able to do so. See, e.g., Kowieski Tr. at 117. Thus, despite assurances from FEMA's counsel that the information sought would be forthcoming, the County was prohibited from probing the bases for the findings in the RAC review. Similarly, the FEMA witnesses were unable to defend or explain the procedures followed by RAC members reviewing the Plan or the materials reviewed by individual RAC members.

In light of these circumstances, and despite the diligence of the County's efforts, it is now plain that the County needs the documents withheld by FEMA in order to pursue the rights guaranteed to the County under the NRC's regulations. Without the documents, the County will be unable to conduct a meaningful cross-examination of FEMA's witnesses. Thus, this Board should order FEMA to release the 30 documents which were the subject of the Board's previous Memorandum and Order.

Further, the Board should order FEMA to produce the notes which were prepared by Mr. Kowieski immediately prior to his deposition on June 29. The existence of those notes was revealed during Mr. Kowieski's deposition and they were repeatedly requested by counsel for Suffolk County, since Mr. Kowieski was referring to them in connection with his answers to deposition questions. He also indicated that by reference to the notes he had prepared for his use during his deposition he could have answered the County's questions concerning the substance and sources of dissenting RAC member comments. Kowieski Tr. at 117. Clearly, such notes, which were prepared by the witness himself, solely as a means of preparing himself for his deposition, are not privileged. They were not prepared during or as any part of any "decision-making" process and counsel for FEMA failed to state on the record of the Kowieski deposition any legitimate basis for his refusal to produce them. Further, even assuming the notes are somehow privileged, any alleged privilege would have been waived by FEMA's production of the similar notes prepared under identical circumstances by Mr. Baldwin and Mr. Keller.

B. The Board Should Issue Subpoenas to Depose All
of the RAC Members

On April 20, 1984, the County submitted to the Board a number of subpoenas directed to individual RAC members. The County did not then request that those subpoenas be issued, in the hope that during their depositions the four FEMA witnesses would be able to respond satisfactorily to the County's questions regarding the RAC review. Memorandum Explaining Suffolk County Discovery Requests Relating to FEMA, at 4-5 (April 20, 1984). The County specifically stated:

If, however, the FEMA witnesses are not able to provide the information requested by the County, or if FEMA either does not have in its custody, or refuses to produce pertinent documents related to the RAC review, it may be necessary for the County to pursue the additional discovery described above directed to individual RAC members. . . .

Id.

It is now apparent that FEMA's witnesses are unable to explain what individual members of the RAC did in reviewing LILCO's Plan and what their opinions were as a result of that review. Indeed, as noted above, FEMA's counsel prohibited the County's inquiry into these issues by instructing FEMA's witnesses not to answer relevant questions on this issue.

Therefore, the only way for the County to discover this relevant information is to depose each RAC member. Thus, the Board should issue the April 20 subpoenas so that the depositions can be arranged and taken expeditiously.

C. Cross-Examination of FEMA's Witnesses Should Be Postponed Until the County Has Received and Reviewed the FEMA Documents and Deposed the RAC Members

As noted above, the County is entitled to conduct a full cross-examination of FEMA's witnesses after having had the opportunity to discover all evidence relevant to the issues at hand. The County, however, has not had the opportunity to explore the relevant facts behind and the underpinnings of the RAC review and the RAC findings and conclusions and thus would be severely prejudiced if compelled to go forward with its cross-examination of the FEMA panel. Such cross-examination of this time would be based on only partial knowledge of the facts.

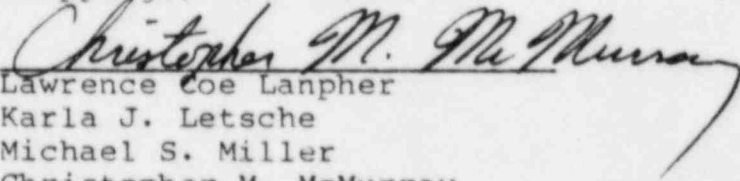
The County therefore submits that it would be inappropriate to go forward with any cross-examination of FEMA's witnesses before it has had the opportunity to pursue the discovery to which it is entitled relating to the bases for the RAC findings. Indeed, to do so would deny the County of the rights guaranteed by the NRC's regulations and recognized by both this Board and the Appeal Board.

Conclusion

For the reasons stated above, the County's Motion to Compel Production of Documents by FEMA and to Postpone the Cross-Examination of FEMA's Witnesses, and for Issuance of Subpoenas to the Members of the RAC should be granted.

Respectfully submitted,

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Dated: July 6, 1984

ATTACHMENT 1 .

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

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In the Matter of: :
:
LONG ISLAND LIGHTING COMPANY : Docket No. 5-322-OL-3
:
(Shoreham Nuclear Power Station, : (Emergency Planning
Unit 1) : Proceeding)
:
-----X

Federal Emergency Management Agency
26 Federal Plaza, Room 1349
New York, New York 10278

Friday, June 29, 1984

Deposition of ROGER B. KOWIESKI, called for
examination by counsel for the Intervenor, Suffolk County,
taken before Garrett J. Walsh, Jr., Court Reporter, begin-
ning at 3:55 p.m., pursuant to notice.

1 A Are you asking me off the top of my head.
2 All elements, or --

3 Q Well, if you can do it. But let's look at
4 Exhibit 1. Mr. Fish from DOE is the first person listed,
5 correct?

6 A That is correct. But there are specific
7 assignments that RAC members have, and they are responsible
8 to review certain elements.

9 Q Okay. Let's discuss that first. Do you make
10 the assignments to members of the RAC Committee?

11 A The assignments list came from National Office,
12 you know, at least two or three years ago.

13 Q Okay. We have had discussions about this with
14 Mr. Keller, I think. Maybe Mr. Baldwin also. This is
15 where there is a memorandum in the agency setting out what
16 those agencies should review and a matrix, or something
17 of that sort?

18 A Your understanding is correct.

19 Q So you do not specifically make any assignments
20 to the agencies that are represented on the RAC?

21 A I don't. However, I do encourage to go beyond
22 whatever is specified on -- by the guidelines supplied by

1 National Office.

2 What I am saying by going beyond, to provide
3 more comments on more elements than just those they are
4 responsible for.

5 Q How do you encourage these members of the RAC
6 to do that?

7 A You have to develop a certain relationship with
8 RAC members, saying: Listen, okay, if you -- don't stop
9 when you comment on -- when you read the plan, if you have
10 a comment please comment, please provide comments on other
11 elements if you can, because this would be very helpful when
12 we meet later on and discuss the final document.

13 Q Did you encourage the members of the RAC for
14 Revision 3 of the LILCO Plan to go beyond their areas of
15 responsibility?

16 A I did not specifically encourage them to go --
17 for Shoreham to go beyond. It is an understanding, it is
18 a common practice in our Region that automatically provide
19 comments not only on the elements that they are responsible
20 for, that each time they see anything in the Plan that they
21 feel it is important to know, to provide comments to me.

22 Q Do you know, Mr. Kowiesti, if in fact the members

1 of the RAC did, indeed, go beyond their areas of responsi-
2 bility in conducting the review process for Revision 3 of
3 the LILCO Plan?

4 A Some of them did.

5 Q Some of them not?

6 A That is correct.

7 Q Can you tell me which ones did, and which ones
8 did not?

9 A It would take me probably a great amount of time
10 to go and identify which RAC members did not go beyond what
11 was required. I would have to go into my detailed comments.

12 Q Would you have to go back and look at the
13 written comments received from the members?

14 A Yes, sir.

15 Q You can't do it sitting here today?

16 A No, sir.

17 MR. MILLER: Mr. Glass, has the County been
18 provided with the matrix -- the memorandum to the agencies
19 which we have been discussing that sets forth areas of
20 responsibility?

21 MR. GLASS: I really don't know. I don't know
22 if it was part of the FOIA material that came in under that,

1 testimony -- for example, look at page 9 of the FEMA testimony
2 if you would, sir, which is Contention 20. If we were
3 to go through this FEMA testimony contention by contention,
4 could you identify for me the basis for the testimony
5 regarding each contention.

6 For example, whether the basis would be the
7 RAC Report or the LILCO Plan or personal judgment, or 0654,
8 or any combination of those things?

9 A Well, I think I will be able to. For instance,
10 Contention 20, the information that appeared here were
11 provided by one of the RAC members, which again we did not
12 identify. Marian Jackson, which is public information
13 officer, and she is part of FEMA, Region II. And some of the
14 input provided on public information and education were
15 provided by Marian Jackson.

16 Q Mr. Kowieski, have you prepared notes regarding
17 tabulation, compilation of comments received from members
18 of the RAC and how those comments relate to each planning
19 element of 0654?

20 A I have my personal notes.

21 Q And are you aware of the fact, Mr. Kowieski, that
22 Mr. Baldwin and also Mr. Keller also prepared notes regarding

1 understanding of what transpired prior to and during the
2 January 20th RAC meeting, and we were taking notes in our
3 own way.

4 Q How is it, Mr. Kowieski, that the notes were
5 independently prepared if you were in one room, sitting
6 together, looking at the same material and participating
7 in discussions with one another?

8 A What I am saying to you, that when we discuss
9 each planning criteria, and when we agree that what
10 actually happened during the RAC meeting on January 20th,
11 Mr. Keller was taking notes in his own way and fashion,
12 I was taking in my own way, and Mr. Baldwin was taking
13 notes the way he wanted.

14 Q Well, do you have a copy of your notes with
15 you?

16 A Yes, sir.

17 MR. MILLER: Mr. Glass would you like to
18 distribute those notes.

19 MR. GLASS: At the moment, there has been
20 no foundation laid for a need for those notes. It may
21 be that Mr. Kowieski, utilizing the notes already provided
22 by Mr. Keller and Mr. Baldwin may be able to answer your
questions.

1 WITNESS KOWIESKI: I would like to just only
2 -- for the record, I am very reluctant to release my notes,
3 for Number 1, the very simple reason that while I was taking
4 my notes I did not keep in mind the third -- the second
5 party will have to read my notes. If someone, you sir,
6 anybody else in this room would take a set of notes, my
7 notes, cryptic notes, may misinterpret what I am saying.
8 I feel that only I can understand and interpret these
9 notes. That is the only reservation I have.

10 MR. MILLER: I understand that, sir. That is
11 always the problem with notes, I suppose. We had the
12 same discussion with Mr. Baldwin and Mr. Keller, and I
13 will be glad to give you the opportunity to discuss these
14 notes today, and we might even have the opportunity down
15 the road.

16 MR. GLASS: At this point there has been no
17 foundation. We are at a different stage with Mr. Kowieski
18 than we were with certainly Mr. Keller in the fact that we
19 now have available Mr. Keller and Mr. Baldwin's material,
20 and Mr. Kowieski may be able to inquire. He is not using
21 those notes right now to testify. They are his personal
22 notes, and if he is able to answer your questions using

1 the other notes, I just don't see where you have any right
2 to them.

3 MR. MILLER: Well, we will get to my right
4 to them. Let me continue with some other things.

5 BY MR. MILLER: (Continuing)

6 Q Mr. Kowieski, before we actually get into the
7 RAC report and the need for your notes, can you just describe
8 for me the -- if you would, describe for me your involvement
9 in the RAC review process for the LILCO Plan. If you will
10 just give me a chronology beginning back in September, and
11 I would appreciate the detail of what you went through.
12 I understand it has been a lot of work.

13 Is that a chronology you are looking at?

14 A I do have my own chronology.

15 MR. MILLER: Do you know, Mr. Glass, if that
16 document has been produced to the County?

17 MR. GLASS: Again, Mr. Kowieski has informed
18 me these are his notes, they are typed. There are a number
19 of other handwritten notes throughout. He has answered most
20 of your questions up to this particular point. There is
21 no foundation.

22 MR. MILLER: Well, my questions --

1 MR. GLASS: The same thing -- we had Mr.
2 Baldwin reading his calendar, and you had Mr. Keller reading
3 his calendar. It is just the same type of thing.

4 MR. MILLER: I didn't request the other documents.
5 I am requesting this chronology.

6 MR. GLASS: Let me look at the chronology.
7 Do you want to proceed with another area.

8 MR. MILLER: Let me just proceed.

9 BY MR. MILLER: (Continuing)

10 Q Mr. Kowieski, if you could, because I am not
11 looking for a particular date. I am looking for a general
12 understanding of the process. If you could describe for
13 me your involvement in the RAC review process, and how that
14 process worked for the Shoreham plant, and I guess begin
15 if you would, please, sir, back in September or October when
16 the request came in to conduct a RAC review for the Shoreham
17 plant.

18 A Shortly after Frank Petrone, the Regional
19 Director, sent a letter to RAC members requesting a review
20 of LILCO Transition Plan, Revision 1, shortly after I was
21 in touch with each RAC member and two consultants. And
22 I explained the target dates or deadline for submission

1 Q The comments were given to Mr. Acerno and Mr.
2 Baldwin to work with, is that correct?

3 A That is correct.

4 Q And they put together, or they modified the report
5 which had been prepared for Revision 1 to take into account
6 the comments in Revision 3, correct?

7 A That is correct.

8 Q And then I think you said, Mr. Kowieski, you
9 spent several days working with Mr. Baldwin and Mr. Acerno
10 in going through the flip chart and the working document
11 for the January 20th meeting, and in preparing for the
12 January 20th meeting, correct?

13 A That is correct.

14 Q Now, during the January 20th meeting, could
15 you describe to me how that meeting was conducted. You,
16 as Chairman, conducted the meeting, correct?

17 A That is correct.

18 Q So how did you conduct the meeting?

19 A I opened the meeting. I stated the purpose of
20 the meeting, and I proposed the agenda, and the agenda was
21 to review, element by element, consolidated working document.
22 I also stated that anybody who has objections, additional

1 comments, it is a good time, it is the time to modify, to
2 change, and -- because we have to finalize the document.

3 So we went element by element through the
4 working document, and questions or issues were raised, we
5 discussed those issues, and if necessary, to make some
6 adjustments.

7 Q Do you recall, Mr. Kowieski, whether there was,
8 indeed, discussion on each and every element that was addressed
9 in the RAC report?

10 A What you are asking here, I understand, if we
11 discussed every element that we commented on?

12 Q I am asking if there was discussion of each
13 and every NUREG 0654 element.

14 A That is what I stated on the record, that we
15 discussed A through P, and we discussed every single element
16 and comment, as it applies to NUREG 0654 planning criteria.

17 Q If, for example, Mr. Kowieski, the comments
18 received from members of RAC were unanimous in terms of
19 how they thought an item should be rated, did you nonetheless
20 spend time discussing that element?

21 A To a lesser extent where there was a difference
22 in the rating among RAC members.

1 Q And as you discussed each element of the RAC
2 Report, Mr. Kowieski, there were various discussions by
3 the various members of the RAC Committee, correct?

4 A And both consultants, Mr. Keller and Mr.
5 Baldwin.

6 Q And as you thought those discussions came to an
7 end for a particular element, did you say -- how did you
8 decide it was time that we went to the next element.

9 A Very simple. I made ten or fifteen copies of the
10 working document. I distributed it. Everybody -- everyone
11 who was present at the meeting. In addition, a set of
12 comments, our own comments submitted to me, plus there were
13 two flip charts. The one flip chart, another document which
14 is modification of comments in Revision 1.

15 So, if there was an issue raised by one of the
16 RAC members, and this was the case, we would go back to the
17 initial set of comments, restate each comment, go back to the
18 Plan if necessary, verify that this particular element or
19 statement is correct, the Plan reflects this. Then finally,
20 we would agree on the final language, and there was
21 interaction.

22 Nobody can recall every single word that was

1 providing Mr. Kowieski with Mr. Baldwin's notes, which was
2 identified as Baldwin Exhibit No. 2, and Mr. Keller's notes,
3 which were identified as Keller -- I think that was Keller
4 No. 1, if I am correct.

5 MR. MILLER: I think so.

6 MS. McCLESKEY: I believe that is right.

7 BY MR. MILLER: (Continuing)

8 Q Do you have the information --

9 A Yes, sir.

10 Q Mr. Kowieski, was this the kind of information
11 that you put together in preparing your personal notes?

12 A Yes, sir.

13 MR. MILLER: Mr. Glass, again I request
14 production of Mr. Kowieski's notes.

15 MR. GLASS: There has been no foundation laid.
16 Mr. Kowieski -- he has created personal notes. He is not
17 utilizing those personal notes at this time to refresh his
18 memory. You are asking him questions. He is utilizing two
19 documents that have already been provided to you, and you
20 have not reached the point where he is unable to answer
21 your questions utilizing those documents.

22 I don't think you have established any need for

1 those personal notes.

2 BY MR. MILLER: (Continuing)

3 Q Mr. Kowieski, have you reviewed the notes of
4 Mr. Baldwin and Mr. Keller prior to today?

5 A No, sir. I stated for the record.

6 Q So you had no chance or opportunity to see if
7 the notes you prepared reflect the same information ascertained
8 -- determined by Mr. Keller and Mr. Baldwin, is that correct?

9 A That is correct.

10 MR. MILLER: Well, Mr. Glass, in light of the
11 fact that I am running out of time -- I have three minutes
12 to go, I again request you produce Mr. Kowieski's notes,
13 because otherwise going through these notes, Mr. Kowieski
14 is going to have to sit here and read these notes for the
15 first time.

16 MR. GLASS: I think I will stand by my present
17 position at this time.

18 BY MR. MILLER: (Continuing)

19 Q Mr. Kowieski, are you able to tell me what the
20 members of the RAC Committee did in preparing their comments
21 that were submitted prior to the January 20th meeting?

22 A I don't understand your question.

1 Q Well, you have told me that what you did in your
2 review with respect to the RAC review process was that you
3 reviewed the LILCO Plan, portions and parts of the LILCO
4 Plan, correct?

5 A At what point? At a certain point, yes.

6 Q Okay. Now, those members of the RAC Committee
7 who provided comments that were used at the January 20th
8 meeting, do you know what they did; for example, what they
9 looked at and reviewed in order to make determinations
10 as set forth in their comment that was sent to your
11 attention?

12 A I can tell you the four volumes of the LILCO
13 Transition Plan, and NUREG 0654. They used their professional
14 judgment, expertise, based on their educational background
15 and experience gained in the past.

16 Q Do you specifically know that the only thing the
17 members of the Committee used in their review were the four
18 volumes of the LILCO Plan?

19 A If I know?

20 Q Yes, sir.

21 A They were requested to provide comments on the
22 LILCO Transition Plan, Revision 3.

1 Q Do you know, though, what they actually did do
2 in providing their comments to you for use in the RAC
3 review process?

4 A They did not advise me otherwise when they
5 submitted comments to me.

6 Q I want to repeat my question. Do you know,
7 specifically know, what members of the Committee did in
8 preparing their comments on the LILCO Plan that was sent
9 to you?

10 A They --

11 MR. GLASS: This is getting back to the same
12 situation which was gotten into in the three prior instances.
13 If you are asking Mr. Kowieski was he present, and did he
14 watch what each individual did, so that he can then say
15 for a fact that he saw the person open and read all four
16 volumes and NUREG 0654, you can understand his hesitancy
17 to be able to respond to such a question.

18 BY MR. MILLER: (Continuing)

19 Q I am sure, Mr. Kowieski, that you did not watch
20 the members of the Committee in what their review consisted
21 of, is that correct?

22 A No, I did not sit in their office and watching

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1 them review the LILCO Transition Plan, Revision 3, that
2 is correct.

3 Q Did you ever specifically ask any member of the
4 Committee, including Messrs. Keller and Baldwin, what they
5 did in reaching their conclusions and judgments regarding
6 the LILCO Plan?

7 A At the meeting I asked -- at the January 20th
8 meeting, okay, if, for instance, an issue came up, if they
9 review, for instance, Appendix A. Basically I would
10 insult their intelligence by asking, say: Have you reviewed
11 the Plan. Did you base your comments on the Plan?

12 Because, you know, those people are professional
13 individuals, and are being designated by their respective
14 agency to assist FEMA, and I have to maintain a certain
15 relationship. I cannot insult them by asking them a very
16 obvious question.

17 Q Yes, sir, I understand. Did you ever specifically
18 ask any member of the Committee, however, if they reviewed
19 anything other than the LILCO Plan?

20 A No, sir.

21 Q The answer is, 'no?'

22 A Yes, sir.

1 MR. GLASS: He is asking you at this point did
2 you ever ask any of the RAC members if they ever reviewed
3 anything other than the LILCO Plan. What is your response?

4 WITNESS KOWIESKI: Other than -- no.

5 BY MR. MILLER: (Continuing)

6 Q Do you know, Mr. Kowieski, whether command and
7 control issues are addressed in NUREG 0654?

8 A Sure.

9 Q Do you know whether those issues are addressed
10 in the RAC report?

11 A Yes, sir.

12 Q Can you tell me why FEMA is submitting no
13 testimony on Contentions 11 and 15?

14 A I was advised by my counsel not to submit
15 testimony on those particular contentions.

16 Q Do you know why?

17 A It is not my decision. It is counsel who is
18 making the decision.

19 Q Mr. Kowieski, have you at this time been asked
20 to provide any testimony on behalf of FEMA regarding training
21 issues?

22 A I understand that we eventually will provide

1 compensating plan, provided our comment, and as a result
2 of it, obviously later on the exercise came about.

3 The letter was different.

4 Q Mr. Kowieski, you have told me that you have
5 the information available to you to identify the members
6 of the RAC Committee who initially in their comments to the
7 Committee believed items should be rated 'adequate' and/or
8 'inadequate' correct?

9 A That is correct.

10 Q Now, I would like you, Mr. Kowieski, to contention
11 by contention -- I am sorry. I would like for you, if you
12 would please, using the RAC Report, element by element, to
13 tell me the members of the Committee who believed that
14 the rating finally determined in the RAC Report who initially
15 believed that was a correct rating?

16 MR. GLASS: I object. You are trying to get
17 through the back door the same information that you were
18 tried to get through, and went up to the Appeal Board. You
19 are trying to have him identify preliminary statements that
20 were contained on the original documents which were held to
21 be subject to privilege. You are trying to obtain the
22 same, exact information. You are trying to have him identify

1 which individual said, 'adequate,' and which individual
2 said, 'inadequate' on those preliminary documents, and the
3 Appeal Board has upheld FEMA's position. And I do not see
4 anything at this point which indicates you are entitled to
5 that information, or that there is any need for that
6 information.

7 MS. McCLESKEY: In addition, it is almost a
8 quarter to seven.

9 MR. MILLER: I understand what time it is.
10 Mr. Kowieski, I am going to ask the question again, and then
1 your counsel can instruct you one way or the other.

12 BY MR. MILLER: (Continuing)

13 Q What I am asking is for you to tell me, element
14 by element, based upon the final RAC report, those members
15 of the RAC who in their initial comments believed that the
16 rating that was finally derived, following the January 20th
17 meeting, was in fact the rating they suggested in their
18 written comments prior to January the 20th?

19 MS. McCLESKEY: Mr. Miller, do you intend to
20 abide by the agreement that we made that the State and LILCO
1 were to have an opportunity to question Mr. Kowieski before
2 seven o'clock?

1 MR. MILLER: I don't think I have made any
2 agreement, because I disagree with this whole process of
3 cutting off at seven o'clock.

4 MS. McCLESKEY: Do you intend to allow the State
5 and LILCO to ask Mr. Kowieski any questions before seven
6 o'clock.

7 MR. MILLER: It is not that I am allowing or
8 disallowing. I am not disallowing questions by the State
9 or LILCO.

10 MS. McCLESKEY: Well, are you going to conclude
11 your questioning right now, at a quarter to seven.

12 MR. MILLER: I am in the middle of a question
13 right now.

14 MR. GLASS: As to this particular question, it
15 is my understanding -- correct me if I am wrong -- that you
16 are asking him to identify for you the positions of the
17 individual RAC members as provided on their comment sheets
18 to the RAC Chairman prior to the January 20th meeting. If
19 that is what you are instructing him to do, I am instructing
20 the witness not to answer your question.

21 MR. MILLER: Is your instruction the same if I
22 asked Mr. Kowieski to identify representatives -- if I asked
Mr. Kowieski to identify the agencies represented?

1 MR. GLASS: That is the same question. We
2 have -- it is a very simple mathematical formula.

3 MR. MILLER: Was your instruction not to answer
4 the question?

5 MR. GLASS: Let me finish my statement. It is
6 a very simple mathematical formula you have. We have
7 already provided you the names of the agencies and who
8 the individuals are, so if he was to provide the answer
9 to your sencond question, he would in effect be providing
10 the same answer.

11 And, therefore, I am instructing the witness
12 not to answer. I am concerned now that we have two other
13 parties who have expressed an interest --

14 MR. MILLER: I understand. Let me try to wrap
15 it up. Let me try one more time so that we have a complete
16 understanding of what my question is.

17 BY MR. MILLER: (Continuing)

18 Q Mr. Kowieski, what I am asking you is would you
19 identify for me those members of the RAC who agreed and
20 disagreed with the -- let me start again.

21 I am asking you to identify those members of the
22 RAC, including Messrs. Keller and Baldwin, who at the time

1 their comments were submitted for the January 20th meeting,
2 agreed and disagreed with the rating that was finally assigned
3 in the RAC Report as issued by FEMA to the NRC?

4 MR. GLASS: I am having trouble understanding
5 your question. If your question is: Did the members agree
6 -- to finally agree with all the conclusions, Mr. Kowieski
7 has stated a number of times that there was concurrence.

8 MR. MILLER: That is not my question. I am
9 talking about the position of the RAC members, including
10 Messrs. Keller and Baldwin, in their written comments or
11 otherwise, that were submitted prior to the January 20th
12 meeting, I want to know the positions of the members of the
13 Committee with respect to whether they were in agreement
14 or disagreement with the rating finally derived and set
15 forth in the RAC Plan issued to the NRC.

16 MR. GLASS: I am instructing the witness not
17 to answer the question. You have had Mr. Keller here; you
18 have had Mr. Baldwin here. You took the opportunity with
19 Mr. Keller to inquire. He gave you a listing of what his
20 original ratings were, so you have that information. And
21 I am instructing the witness not to answer at this point.

22 MS. McCLESKEY: Mr. Miller, I object to the

1 question. It is the same question you have been asking for
2 half an hour, and it is clear at this point that you insist
3 on repeating it to take up the remaining ten minutes of time
4 that this witness will be here, and to disallow LILCO and the
5 State an opportunity to question Mr. Kowieski.

6 MR. MILLER: Ms. McCleskey I would appreciate
7 your not trying to interpret my motives. It upsets me. It
8 is unprofessional, and I think it is uncalled for.

9 BY MR. MILLER: (Continuing)

10 Q Mr. Kowieski, you have been instructed not to
11 answer my question, and of course I have to abide by that.
12 But I want to make it clear for the record that my opportunities
13 to question Mr. Keller and Mr. Baldwin went to their involvement
14 in the RAC.

15 Mr. Kowieski is here as Chairman of the RAC. He
16 had the information available to him to tell me the members
17 and their positions on the RAC; Mr. Keller and Mr. Baldwin
18 both made clear they were not in a position to give me that
19 information.

20 So, there is a difference.

21 MR. GLASS: You made your statement, and I
22 stand by my statement.

1 MR. MILLER: I will conclude my questions
2 with another statement. The statement is that I am not
3 finished my questioning with Mr. Kowieski. I very much
4 would like to continue my questioning of Mr. Kowieski. I
5 do not feel I have been given adequate opportunity in light
6 of the fact that Mr. Baldwin did take much longer than
7 anticipated, and in light of the fact of the importance
8 of Mr. Kowieski to this proceeding, and I, therefore, would
9 request again that you provide me some additional time, Mr.
10 Glass.

11 I think perhaps another half hour or so I
12 would finish my questions, and if you don't provide me the
13 additional time, all I can do is tell you I reserve the right
14 to call back Mr. Kowieski. I will not say that this deposition
15 concludes today. And if we decide to call back Mr. Kowieski,
16 and if you don't produce him voluntarily, that is an issue
17 we would take to the Board.

18 MR. GLASS: I will state for the record that we
19 had an agreement. That the agreement was -- and this was
20 the agreement -- that we were not going to make a motion or
21 insist upon, bring the issue to the Board that our witnesses
22 only be deposed as a panel. We explained to you our concerns

1 both on and off the record for that.

2 In exchange, the agreement was that the deposition
3 would take place in New York, and it would be limited to two
4 days, two business days.

5 We then went through -- and this has all been
6 negotiated -- we asked that we be allowed to have Mr. Baldwin
7 go first and Mr. Keller go second this Friday. You agreed
8 to that, but indicated that you had more questions to spend
9 with Mr. Kowieski than with Mr. Baldwin, and I agreed
10 -- and as I remember our discussion, I agreed to go to
11 six o'clock.

12 You took longer with Mr. Baldwin, and that was
13 just because -- you were asking questions, I was not, and
14 now we have reached the situation where I have already provided
15 Mr. Kowieski an additional hour beyond the time. I think we
16 have done everything that we can comply. We have also provided,
17 you know, those two sets of list for Mr. Baldwin and Mr.
18 Keller, which I think certainly expedited and saved time in
19 the cross examination of those two witnesses.

20 If you don't have any other statement, we will
21 move on to the State of New York.

22 MR. MILLER: We both have made our statements, and

1 there would no reason for me to repeat anything.

2 MS. McCLESKEY: I would like the record to show
3 that counsel for Suffolk County is conferring with Counsel
4 for New York State.

5 MR. MILLER: The record can certainly reflect
6 anything it wants to, Ms. McCleskey. I don't understand
7 why you feel compelled to point out these things, but feel
8 free to point them out.

9 MR. GLASS: Mr. Zahnleuter, are you ready --

10 MR. ZAHNLEUTER: I am sorry. I was listening
11 to Ms. McCleskey's point, and I wasn't listening to Mr.
12 Miller, so I don't even know what he told me.

13 I do not wish to place any time constraints
14 upon you, Mr. Miller, in conducting the cross examination
15 that you have a right to or that you want to. If I have
16 a time allotment, I am free, and I feel that I would like
17 to give it to you if you would like to use that time
18 allotment.

19 MR. MILLER: What is your position as to Mr.
20 Kowieski's availability beyond seven o'clock.

21 MR. GLASS: You are pusing him, you know, to
22 this time. Let me just confer off the record.

1 (Mr. Glass confers with Mr. Kowieski)

2 MR. GLASS: The Court Reporter has graciously
3 agreed to stay, so he can make a later plane. We can work
4 it out that we can give you another ten minutes, and then
5 give the County some time to wrap up. New York State doesn't
6 appear to have -- I hope I am not putting words there -- but
7 doesn't appear to have any questions. We can proceed that
8 way.

9 MR. MILLER: I appreciate your offer of ten
10 minutes. I do not feel I can finish in ten minutes. Perhaps
11 in half an hour.

12 MR. GLASS: It would just be prohibitive
13 not only on Mr. Kowieski, but as well for the Court
14 Reporter, because I have to give the other parties an
15 opportunity.

16 MR. MILLER: I stick by my statement, then,
17 that I reserve my rights to continue this deposition.

18 MR. GLASS: I don't want to waste time on the
19 record. We can argue later on whether you have those rights
20 to reserve.

21 MR. ZAHNLEUTER: Are you asking questions now
22 for ten minutes?

ATTACHMENT 2

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

Federal Emergency Management Agency
Region II
26 Federal Plaza
Room 1349
New York, New York 10278

Wednesday, 27 June 1984

DEPOSITION OF JOSEPH H. KELLER

The deposition of JOSEPH H. KELLER, called for
examination by counsel for the County of Suffolk, convened
at 2:07 p.m., pursuant to notice, before Rebecca E. Eyster,
a notary public in and for the District of Columbia, when
were present on behalf of the respective parties:

On behalf of the County of Suffolk:

MICHAEL S. MILLER, ESQ.
Kirkpatrick, Lockhart, Hill, Christopher & Phillips
1900 M Street, N.W.
Washington, D. C. 20036

On behalf of the NRC Staff:

ORESTE RUSS PIRFO, ESQ.
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

1 interpretation?

2 A Aside from the, as you characterized it, mechanical
3 gathering. That is my understanding, yes.

4 Q And Mr. Kowieski then reviewed that working
5 paper and made the final decision as to the verbiage and
6 so forth that went into the position paper presented on
7 January 20?

8 A That is my understanding, yes.

9 Q And from looking at your notes, Mr. Keller, or
10 just from your recollection, is it fair to say that you are
11 unable to identify for me which members of the committee
12 were in the minority in terms of feeling an issue
13 should be either rated adequate or inadequate?

14 A From these notes, aside from myself, I cannot
15 identify any individuals.

16 Q Do you know, Mr. Keller, if anyone else has
17 put together this sort of a tabulation of comments and
18 opinions of the RAC committee?

19 A Yes.

20 Q Who else has done that?

21 A Mr. Baldwin and Mr. Kowieski.

22 Q Did they also do it just yesterday?

1 have been rated adequate?

2 A I made no comment. I did not.

3 Q You didn't participate in any way?

4 A No. I think I did participate in the discussion.

5 Q And in what way did you participate, for or
6 against an adequate rating?

7 A For the adequate rating. This plan replaces
8 state and local, and into the intent of 0654, C.2.A, this
9 plan meets that intent.

10 Q So going into the discussion of that particular
11 item, C.2.A, four individual members' comments had
12 argued for an inadequate rating?

13 A That is correct. And that, I presume, was the
14 basis of the working position of an "I" to begin with.

15 Q So that, Mr. Keller, so that four of the
16 individual members' comments going into the January 20th
17 meeting felt the item should be rated inadequate, the item
18 ended up being rated adequate, and that was due to, as you
19 say, discussion among the members of the committee?

20 A That is correct. And I tried to give you the basis
21 of that discussion.

22 Q If I were to ask, Mr. Keller, the four members who

1 felt that item should have been rated inadequate going into
2 the January 20th meeting, could you identify those members?

3 A I have told you numerous times, unless it is
4 myself, I can make no identification of people based on these
5 notes.

6 Q From your recollection can you make an identifica-
7 tion?

8 A I cannot.

9 Q Could you make an identification from your
10 recollection from having been at the meeting of any members
11 and the particular positions taken by members of the RAC
12 committee?

13 A Occasionally, certainly not in every position,
14 but I can remember some positions that were taken, yes.

15 MR. MILLER: Why don't we take a break.

16 (Recess.)

17 BY MR. MILLER:

18 Q Mr. Keller, after the January 20th meeting
19 where the consensus was arrived at regarding the RAC
20 review, is it fair to say that your next involvement
21 with the Shoreham plant came in preparing your written
22 testimony on behalf of FEMA?

ATTACHMENT 3

1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

3 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

4 -----X
5 In the Matter of: :
6 LONG ISLAND LIGHTING COMPANY : Docket No. 5-322-OL-3
7 (Shoreham Nuclear Power Station, : (Emergency Planning
Unit 1) : Proceeding)
8 -----X

9
10
11
12 Federal Emergency Management Agency
13 26 Federal Plaza, Room 1349
New York, New York 10278

14 Friday, June 29, 1984

15 Deposition of THOMAS E. BALDWIN, called for
16 examination by counsel for the Intervenor, Suffolk County,
17 taken before Garrett J. Walsh, Jr., Court Reporter, begin-
18 ning at 9:37 a.m., pursuant to notice.
19
20
21
22

1 thirty-one I think, could you give me an estimate as to the
2 number of the thirty-one total implementing procedures, the
3 number that you have read in their entirety; is that possible?

4 A Yes. I can estimate that. From tab to tab,
5 on the order of five to eight. And the others I have
6 cross-checked with when we have been in discussions and
7 examined those procedures and done counts of emergency
8 workers, et cetera.

9 Q Let me ask you this, Mr. Baldwin. Do you
10 specifically know whether any member or members of the RAC,
11 including Mr. Keller for purposes of this question, have
12 specifically read cover to cover the implementing procedures
13 of the LILCO plan?

14 MR. GLASS: Let me see if I understand this
15 question. Do you mean that all the members in total would
16 have, combined, read them all, or what each -- that there
17 was at least one individual who read them all?

18 I'm a little confused on that question.

19 MS. MC CLESKEY: I have the same confusion.

20 BY MR. MILLER: (Continuing)

21 Q Let me break it down, Mr. Baldwin. If I were
22 to go through the RAC members and ask you about each member

1 specifically, could you tell me whether that member had
2 specifically reviewed and read the implementing procedures
3 of the LILCO plan?

4 A All of the RAC members, all of the procedures?

5 Q If I were to go through each member one at a
6 time and asked you?

7 A No.

8 Q You could not tell me whether that particular
9 member had reviewed the implementing procedures?

10 A No. I could not.

11 Q Are you able to tell me whether you specifically
12 know that the RAC Committee in total, if you will, all the
13 members, have reviewed the LILCO procedures, all the LILCO
14 procedures?

15 In other words, if one person reviewed ten and
16 another person reviewed eight, and so forth, so that when
17 all was said and done that the totality of the implementing
18 procedures had been reviewed?

19 Can you specifically tell me whether that has
20 been done by the RAC?

21 A No. I cannot tell you whether all of these
22 procedures have been read cover to cover.

1 Q Can you tell me whether all the procedures have
2 been reviewed by the RAC?

3 Do you specifically know that?

4 A I do not specifically know that, no.

5 Q Now, let's go back to where we were a few
6 minutes ago. With respect to the procedures which you
7 said you did not specifically review, the listing that you
8 gave to me, can you tell me the members of the RAC, includ-
9 ing Mr. Keller for purposes of this question, who reviewed
10 those procedures you did not review?

11 MR. GLASS: He has already answered that
12 question.

13 WITNESS BALDWIN: No, I can't. Again, I can't
14 tell which RAC members have read which procedures with the
15 exception of when a reference to a particular procedure is
16 reflected in the written comments that have been supplied
17 to us or when they mention it and it appears in my notes
18 from a RAC meeting.

19 BY MR. MILLER: (Continuing)

20 Q Mr. Baldwin, would you look at Appendix A of
21 the plan? Before we get to Appendix A, let me ask you,
22 do you specifically know whether the members of the RAC,

1 including Mr. Keller for purposes of this question, have
2 reviewed the LILCO plan, the one volume plan; do you know
3 that?

4 A Are we talking about -- we are talking about the
5 Appendix?

6 Q I'm sorry. I'm asking you about the LILCO plan,
7 the plan itself --

8 A This is it.

9 Q -- do you specifically know whether the members
10 of the RAC, including Mr. Keller, have read and reviewed
11 the LILCO plan volume? I'm talking about the one volume.

12 A RAC members typically have a matrix, if you
13 will, of assignments which are keyed to the NUREG 0654
14 criteria document. And their agencies review the elements
15 of the plan with regard to those to which they are assigned.

16 Some review particular elements. Some concentrate
17 on a few particular elements and provide additional comments,
18 and others provide less than full comments.

19 Q Are you saying, Mr. Baldwin, that some members
20 of the RAC would not have reviewed the entire one volume
21 plan?

22 A Yes.

1 Q Now, do you know --

2 A Now, I can't speak as to whether or not they
3 have done that or not. In consolidating the comments, I
4 am aware of the elements that we got responses on and how
5 many responses we got from various RAC members in total,
6 so that I know the number that have provided us with
7 comments on each element and I know numerically how many
8 rated it in various ways.

9 Q Yes, sir. But, having received a comment on
10 a particular element of NUREG 0654 would not necessarily
11 mean that that RAC member had read the LILCO plan; isn't
12 that correct?

13 A That's correct.

14 Q So, back to my question --

15 A It would not necessarily mean that.

16 Q So, back to my question. Do you know whether
17 any member of the RAC, including Mr. Keller for this
18 question, other than yourself has specifically reviewed the
19 entire LILCO plan?

20 A Well, I --

21 Q I'm talking about the one volume plan.

22 MR. GLASS: Mr. Miller, at this point we are

1 getting into a very difficult area. It's a very strange
2 area. I look around the table here , everybody has shoes
3 on this morning but I could not swear that every single
4 person at this table put on their shoes because I was not
5 there to see every single person do that. And I think
6 this is the same type of problem that Mr. Baldwin is find-
7 ing himself in.

8 MR. MILLER: I appreciate Mr. Baldwin's problem.
9 I'm trying to make this as simple as I can.

10 My problem is that we have been given specific
11 witnesses that we are entitled to depose. I'm trying to
12 find out through the witnesses we have been provided, what
13 they know about what was done in the RAC review process.
14 And I think those terms I'm trying to explore with Mr.
15 Baldwin now what he knows about what other members of the
16 RAC did.

17 MR. GLASS: And I think he has explained these
18 document comments. He has explained he has reviewed the
19 comments. He has explained the fact that the comments,
20 he has checked them, and they seem to make sense, the
21 person couldn't have just made it up from old cloth.

22 MR. MILLER: That's fine. I understand all of

1 that. I'm trying to find out though what Mr. Baldwin
2 specifically knows. I think I'm entitled to do that.

3 MR. GLASS: I'm not objecting to it. I just
4 want to let you be aware of the problem as I see it. It's
5 a practical problem that any individual is very careful,
6 and he is not flip in his answers. He is responding to
7 the questions fully.

8 WITNESS BALDWIN: I do not have direct immediate
9 knowledge of which RAC members have read exactly what
10 portions and how extensively their review has been con-
11 ducted.

12 I have reviewed their written comments and
13 consolidated those, and attended the RAC meeting of the
14 20th at which point everyone seemed to be quite knowledgeable
15 in this plan and able to speak to a wide variety of issues
16 that came up.

17 BY MR. MILLER: (Continuing)

18 Q Mr. Baldwin, it's fair to say though that you
19 just don't know what other members of the RAC Committee,
20 including Mr. Keller for purposes of this question, have
21 done with respect to their review of the LILCO plan; is
22 that right?

1 A I know which elements various people have re-
2 viewed and supplied us comments on.

3 Q Yes, sir. But do you know what they did to
4 reach their conclusions regarding those elements of
5 NUREG 0654?

6 A It's impossible for me to get inside of their
7 head and to go through their thinking process.

8 Q I'm not asking you about their thinking process.
9 I'm asking you, do you know what these people did with
10 respect to reaching their conclusions and judgments regard-
11 ing the LILCO plan?

12 MR. GLASS: The witness seems to be having some
13 problem. Can you give us a definition to help us in some
14 way?

15 I'm not trying to be difficult, Mr. Miller. I
16 just think you are in a very hard area and any assistance
17 you can provide the witness will be appreciated.

18 MR. MILLER: Okay.

19 BY MR. MILLER: (Continuing)

20 Q Mr. Baldwin, do you know what members of the
21 RAC, including Mr. Keller, reviewed to reach their
22 conclusions and judgments as set forth in their comments?

1 A Yes. They reviewed the plan, the implementing
2 procedures and the Appendix A of the evacuation study.

3 Q And you specifically know that each member of
4 the RAC and Mr. Keller did that; is that correct?

5 A Yes. I know that each reviewed those various
6 parts in order to be able to supply us with their comments.

7 Q Now, can you tell me what parts or portions of
8 each of the four volumes of the total LILCO plan the members
9 of the RAC and Mr. Keller reviewed?

10 A I have no specific direct knowledge of those
11 parts which each member -- how each member went about
12 their task. I have no direct knowledge of how each one went
13 about reviewing this entire set of four documents, four
14 volumes.

15 Q Do you know, Mr. Baldwin, if any member of the
16 RAC, or Mr. Keller, reviewed anything other than the four
17 volumes of the LILCO plan in setting forth in reaching
18 conclusions regarding the adequacy of the LILCO plan?

19 A There was nothing else that I'm aware of that
20 was submitted to us for review.

21 Q So, as far as you are aware, they reviewed
22 nothing other than portions or parts of these four volumes;

1 is that correct?

2 A That's correct.

3 Q Is it possible, Mr. Baldwin, that members of the
4 RAC and Mr. Keller could have reviewed other material to
5 reach their conclusions?

6 A What do you mean by other material?

7 Q Other material.

8 MS. MC CLESKEY: Mr. Miller, what are you
9 talking about?

10 MR. MILLER: I'm talking about other material.
11 I want to try to do this as fast and as quickly as I can,
12 but there are certain words in the English language such as
13 "did" and "other material" which I don't think need defin-
14 ing.

15 BY MR. MILLER: (Continuing)

16 Q Mr. Baldwin, are you having trouble with my
17 question?

18 MS. MC CLESKEY: He said he was. He said he
19 didn't understand what you were talking about.

20 WITNESS BALDWIN: The other material -- by that
21 I mean, the RAC was asked by FEMA to review the LILCO
22 Transition Plan consisting of the plan, two volumes of

1 implementing procedures and Appendix A, the evacuation plan.
2 And that's all that I'm aware of that the RAC Committee was
3 asked to evaluate.

4 So there are no other materials that were
5 submitted for review.

6 BY MR. MILLER: (Continuing)

7 Q Yes, sir. I understand that. But there would
8 be other materials that perhaps members could have reviewed;
9 isn't that correct? For example, transcripts of the hear-
10 ings, the Shoreham hearings. That's other material, okay.

11 MR. GLASS: That's what we were asking, Mr.
12 Miller, to help him out.

13 BY MR. MILLER: (Continuing)

14 Q Other written prefiled testimony submitted by
15 parties to the proceeding. That would be other material.
16 There is an array of other material related to this pro-
17 ceeding.

18 A I see what you are saying.

19 Q Now, to your knowledge, did any member of the
20 RAC, including Mr. Keller for purposes of this question,
21 review any such other material?

22 A I see. No. To my knowledge, no one of the RAC

1 members read any of that other material in the process of
2 doing the RAC review.

3 Q I asked you a minute ago to look at Appendix A
4 and we got sidetracked. Would you look at Appendix A,
5 the Table of Contents?

6 A (The witness is looking at document.)

7 Q Mr. Baldwin, can you, by looking at that Table
8 of Contents, which is rather sketchy, I guess, can you
9 tell me what portions of Appendix A you specifically review-
10 ed?

11 A No, I cannot, because this Appendix is rather
12 difficult to follow for a number of reasons. The Table of
13 Contents is only one part of it. But there are a large
14 number of maps that separate the pages. You almost--
15 you have to go through it page by page and find things in
16 that fashion.

17 MR. GLASS: If you had your own set of the plan,
18 which I understand you did not bring the whole set of the
19 plan, would you be more likely to be able to answer his
20 question as it relates to Appendix A and as to the pro-
21 cedures?

22 WITNESS BALDWIN: Well, Appendix A is the piece

1 A Correct.

2 Q And, is it fair to say --

3 A And in my judgment, I tried to reflect the views
4 that were coming across from those that provided the comment.

5 Q Okay. Let me ask you, do these notes reflect,
6 Mr. Baldwin, the members who provided the rating?

7 For example, let's look at A.2.A. You have
8 indicated in your notes that three RAC members indicated
9 initially the item should be rated inadequate; correct?

10 A Correct.

11 Q Now, can you tell me, based upon these notes,
12 would you be able to tell me who those three members were?

13 MR. GLASS: Just listen to the question. He
14 is just asking you whether you could do that.

15 WITNESS BALDWIN: No. I cannot tell you who,
16 what agencies, provided -- which agencies and/or contractors
17 represent these three.

18 BY MR. MILLER: (Continuing)

19 Q Let me ask you, Mr. Baldwin, outside the scope
20 of looking at these notes, can you today tell me, would
1 you be able to tell me who the three individuals were that
2 made the judgment that Item A.2.A was inadequate?

1 A Outside the scope -- could you rephrase your
2 question?

3 Q My first question was, if you look at your notes,
4 do these notes provide you a way of being able to say: Yes,
5 I know those three RAC members and they are as follows?

6 You have told me based on these notes you can't
7 do that.

8 A That's true.

9 Q I'm asking now, irrespective of these notes,
10 are you able to tell me, for example, the three members of
11 the RAC who initially thought Item A.2.A was inadequate?

12 MR. GLASS: He is just asking you do you
13 remember who those three are. That's the only question,
14 without going any further.

15 WITNESS BALDWIN: We come back to the issue of,
16 do I recall it. I do not recall it. No. I do not have a
17 recall on A.2.A of these agencies that represent the three
18 I's, which they aren't.

19 BY MR. MILLER: (Continuing)

20 Q Which they are?

21 A Oh, I'm sorry. I do not recall which agencies
22 comprise those three I's.

1 Q Mr. Baldwin, how many agencies are represented
2 on the RAC?

3 A I have to think about that. Department of
4 Commerce is not represented on the RAC right now, is not
5 participating.

6 Q Did they participate in the Shoreham RAC?

7 A No.

8 Q Okay.

9 A Department of Transportation, Department of
10 Energy, NRC, FEMA, U. S. Department of Agriculture, Food
11 and Drug Administration.

12 Q What about EPA?

13 A Yes, EPA.

14 Q I have seven that you have listed.

15 MR. GLASS: We could refresh his memory by
16 giving him a section of 44 CFR if you want us to do that.

17 BY MR. MILLER: (Continuing)

18 Q Well, let me ask, Mr. Baldwin, are there eight
19 different agencies on the RAC, or were there eight different
20 agencies represented on the RAC for Shoreham?

21 A Just a moment. I'm trying to make a list.
22

1 MS. MC CLESKEY: I would like to note for the
2 record that a list of the agencies that were represented
3 on the RAC were sent to counsel for Suffolk County about a
4 month ago by counsel for FEMA.

5 WITNESS BALDWIN: The list is FEMA, DOE, NRC,
6 USDA, FDA, DOT, EPA, and there are two outside contractors
7 that supplied comments, myself from Argonne Laboratories,
8 ANL is the abbreviation, and Joseph Keller from Idaho
9 National Engineering Laboratory, INEL.

10 BY MR. MILLER: (Continuing)

11 Q Going back to the one example we seem to have
12 focused on, Mr. Baldwin, the A.2.A element indicates eight
13 comments were received.

14 Can you tell me which representative of the RAC
15 did not submit a comment on that particular element?

16 A No.

17 Q Are you saying, based on these notes, you cannot
18 tell that information?

19 A No, I can't tell that information.

20 Q Do you have an independent recollection as to
21 which agency, which individual, between yourself and Mr.
22 Keller, did not submit a comment on that element?

1 A No, I don't.

2 Q Mr. Baldwin, is it fair to say that if we went
3 through this complete listing of seven pages of your notes,
4 would you have any independent recollection as to particular
5 members who presented comments to the RAC with respect to
6 the various elements of NUREG 0654?

7 A I have a recollection of the substance of the
8 comments that were submitted.

9 Q Yes, sir. Not the substance. Can you tell --
10 would you be able to tell by looking at these notes, for
11 example, which agencies and whether you and Mr. Keller
12 presented comments for each element of NUREG 0654 reflected
13 on your notes?

14 MR. GLASS: I don't understand that question.
15 I think you have a compound question there.

16 MR. MILLER: I'm trying to do this the shorthand
17 way.

18 BY MR. MILLER: (Continuing)

19 Q Mr. Baldwin, what I'm trying to get at, look at
20 that very first element, A.1.A. And that reflects five
21 comments were received and I'm asking, do these notes,
22 first of all, reflect which agencies or individuals of the

1 RAC presented these five comments?

2 A No.

3 Q And do you have any independent recollection?
4 Are you able to tell me which five agencies or individuals
5 provided these comments on Element A.1.A?

6 A Not in specific detail, no.

7 Q Would your answer be the same for each NUREG
8 element set forth on the seven pages of your notes?

9 A Yes, it would.

10 Q And I assume, Mr. Baldwin, that you would also
11 be unable to tell me which agencies or individuals were
12 in the minority initially with respect to how an item
13 of NUREG 0654 should be rated; is that correct?

14 A Could you ask the question again, please?

15 Q For each element of NUREG 0654, are you able to
16 tell me, based on your notes or anything else, which agencies
17 or individuals of the RAC were at least initially in the
18 minority with respect to how an item should be rated?

19 A Which particular agencies, no. I would not be
20 able to do that.

21 Q Are you able, Mr. Baldwin, based on your notes
22 or anything else, to tell me which agencies and individuals

1 thought an element of NUREG 0654 should be rated adequate
2 and which agencies or individuals of the RAC thought an
3 element should be rated inadequate?

4 A I can tell you with respect to my own comments
5 from this.

6 Q These comments would reflect, for example, three
7 of eight thought adequate; five of eight thought inadequate.
8 But could you tell me the particular agencies or individuals --

9 A Are we speaking of A.2.A?

10 Q I'm trying to do this without talking about any
11 particular element. Okay. I'm trying to ask you, do you
12 have knowledge and can you testify about what particular
13 agencies thought, regarding how an item should be rated,
14 either as adequate or inadequate?

15 MR. GLASS: At what point in time?

16 MR. MILLER: As of right now.

17 BY MR. MILLER: (Continuing)

18 Q As of the time, Mr. Baldwin, comments were
19 initially submitted by the RAC members. Okay. Now, as
20 of that time, can you tell me for any elements of NUREG
21 0654 which agencies or individuals of the RAC thought the
22 item should be rated adequate and which agencies or

1 individuals initially thought the item should be rated
2 inadequate?

3 A Given the amount of information that I have had
4 to hold in my head about all of this material, both plan
5 and comments and revisions thereof, it would be impossible
6 for me to try and recall, without making a great many errors
7 in it, which agencies provided which comments.

8 This table does one thing only for me. It
9 provides me with a numerical breakdown of how the rating
10 came out and it gives me some essence of the substance of
11 the comment that was provided to us. It summarizes that.

12 Q Now, Mr. Baldwin, you have told me that your
13 review process in terms of what you did to reach judgments
14 regarding the adequacy of the LILCO plan under NUREG 0654
15 always consisted of looking at 0654 and then the LILCO plan,
16 correct?

17 A Right.

18 Q Can you tell me, or do you know, what members of
19 the RAC Committee and Mr. Keller, what they specifically did
20 to reach their judgments regarding the adequacy or inadequacy
21 of the LILCO plan?

22 A No. I can't get into their thought processes

1 it at some length this morning.

2 MR. MILLER: I understand you have an objection.

3 BY MR. MILLER: (Continuing)

4 Q Mr. Baldwin, can you tell me, do you know what
5 RAC members did?

6 A Well, the basis for their -- as I've said
7 before, the basis for the draft working document that we
8 took into the 20th meeting was supplied in writing. In
9 the process of doing the consolidation, I either requested
10 Roger Kowieski or Robert Acerno to recontact that RAC
11 member and provide us with clarification as to what it
12 meant, or I called that person, or we put it in the document
13 and then we discussed it at the RAC meeting on January 20th.

14 Q Yes, sir. Let's back up and make sure we under-
15 stand one another.

16 I'm talking about the initial comments that were
17 presented on Revision 3 by members of the RAC. Do you
18 know what -- do you personally know what those members of
19 the RAC did to reach judgments and to present their comments
20 regarding the adequacy or inadequacy of the LILCO plan?

21 This is one point where I wouldn't want you to
22 presume or to speculate, Mr. Baldwin. I want to know if you

1 personally know this information.

2 A I do not personally know, because I didn't
3 personally watch them do the RAC review, go page by page,
4 see what other guidance documents that they might have
5 that referred to the roles of their agencies and their
6 responsibilities.

7 Q Yes, sir. I'm not asking if you personally
8 watched them. It would include, did you ever have a
9 conversation with members of the RAC in which you said,
10 or discussed, what those members did --

11 A No.

12 Q -- in their involvement with the Shoreham plan?

13 A No. No.

14 Q Did you ever have any discussions of any kind
15 in that regard?

16 A As a preliminary discussion to the RAC meeting
17 on January 20th, there was a good deal of informal conversa-
18 tion about that, about how extensive the plan was and how
19 much time it took for them to do it. And based on that,
20 that has been my exposure to it. That would be my first-
21 hand knowledge of how people went about their plan review.

22 Q Is it fair to say, Mr. Baldwin, that persons of

ATTACHMENT 4

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

1 - - - - -X
2 :
3 In the Matter of: :
4 LONG ISLAND LIGHTING COMPANY : Docket No. 50-322-OL-3
5 (Shoreham Nuclear Power Station, : (Emergency Planning)
6 Unit 1) :
7 - - - - -X

7 Federal Emergency Management Agency
8 Region II
9 26 Federal Plaza
10 Room 1349
11 New York, New York 10278

12 Wednesday, 27 June 1984

13 DEPOSITION OF PHILIP MC INTIRE

14 The deposition of PHILIP MC INTIRE, called for
15 examination by counsel for the County of Suffolk, convened
16 at 9:43 a.m., pursuant to notice, before Rebecca E. Eyster,
17 a notary public in and for the District of Columbia, when
18 were present on behalf of the respective parties:

19 On behalf of the County of Suffolk:

20 MICHAEL S. MILLER, ESQ.
21 Kirkpatrick, Lockhart, Hill, Christopher & Phillips
22 1900 M Street, N.W.
Washington, D. C. 20036

On behalf of the NRC Staff:

ORESTE RUSS PIRFO, ESQ.
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

1 A What do you mean by the underlying basis? I know
2 what the basis of the RAC review are the comments provided by
3 the RAC members.

4 Q Now, do you know what conclusions or determinations
5 or judgments were made by the individual members of the
6 RAC committing in forming the RAC report? Do you personally
7 know that information?

8 A I know that their reports and their portions of
9 the material that was used in the RAC report was done by
10 them because they have certain levels of expertise, and we rely
11 on their expertise to provide information in the RAC review
12 regarding the plan and its meeting of the 0654 standards.

13 Q More specifically, looking -- if we look at the
14 RAC report, are you in a position or do you know what
15 conclusions or judgments were made by the individual members
16 of the RAC committee in forming the RAC report, putting
17 together the RAC report?

18 A No, I do not.

19 MR. GLASS: Mr. Miller, you are attempting to
20 go through each of the individual contentions.

21 MR. MILLER: I am not attempting to do that.
22 That is why I am trying to do this in a general basis.

1 Q Other than portions of the LILCO plan, do you
2 know what other documents, if any, would have been reviewed
3 by members of the RAC committee in forming their conclusions
4 as set forth in the RAC report?

5 A Certainly NUREG 0654 and some of the radiological-
6 related standards. There are other guidance documents which
7 I am sure were reviewed by the people.

8 Q Portions of the LILCO plan, NUREG 0654, other
9 guidance documents. Would you know of anything else that
10 the members of the RAC committee reviewed or looked at
11 in forming their conclusions and judgments as set forth in the
12 RAC report?

13 A No, I wouldn't. But followed the same process that
14 they have followed for every other site in the region.
15 From everything that I can understand, it was a full, formal
16 RAC review of which they have done several previous to this
17 one.

18 Q I am trying to understand specifically what was done
19 by these individuals.

20 Is it fair to say that you just do not know what
21 these individual members would have done in putting together
22 the RAC report other than looking at portions of the LILCO

1 plan, NUREG 0654, and other guidance documents?

2 A And submitting a report to the RAC chairman and
3 then coming to the meeting on January 20.

4 Q Other than those things, do you know of anything
5 else they would have done?

6 A I do not know the individual work habits of the
7 RAC members, no.

8 Q I am not looking at the work habits as much as what
9 they looked at or reviewed in putting together the RAC report

10 A As I have answered before, they used the same
11 material, it is my understanding, that they do for any formal
12 RAC review.

13 Q Do you know, for example, Mr. McIntire, did
14 members of the RAC committee look at the prefiled written
15 testimony in this proceeding, in the Shoreham proceeding?

16 A Our prefiled testimony?

17 Q Not FEMA's. Testimony of other parties in the
18 proceeding, would they have looked at that, do you know?

19 A I don't know for sure. It is my assumption that they
20 did not because they would not have access to this material.
21 The reason that I have access to it is because Mr. Glass
22 receives copies of all transcripts and, therefore, I rely on

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,)
Unit 1))

) Docket No. 50-322-OL-3
) (Emergency Planning)
)
)
)

CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS BY FEMA, AND TO POSTPONE THE CROSS-EXAMINATION OF FEMA'S WITNESSES, AND FOR ISSUANCE OF SUBPOENAS TO THE MEMBERS OF THE RAC dated July 6, 1984, have been served to the following this 6th day of July 1984 by U.S. mail, first class, except as otherwise noted.

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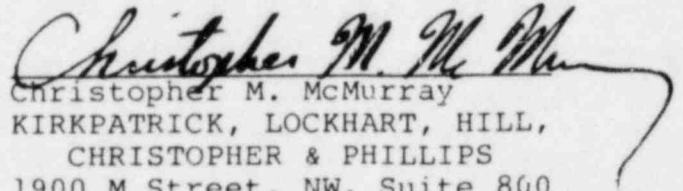
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Dated: July 6, 1984

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By Telecopier