UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
LONG ISLAND LIGHTING COMPANY	)	Docket No. 50-322 O.L. (Emergency Planning Proceedings)
(Shoreham Nuclear Power Station, Unit 1)	)	

RESPONSE OF SUFFOLK COUNTY TO THE NRC STAFF'S AND LILCO'S OBJECTIONS TO PHASE ONE CONSOLIDATED EMERGENCY PLANNING CONTENTIONS

On July 27, 1982, the Board ordered the intervening parties to submit by August 20, 1982 revised Phase I Emergency Planning Contentions reflecting the County's review of LILCO's revised emergency plan (submitted to the NRC on June 28, 1982) and the Board's request for consolidation and further particularization of some contentions. Pursuant to the Board's Order, counsel for Suffolk County met on June 26, 1982 with counsel for LILCO, the NRC Staff, SOC and NSC in a meeting lasting the entire day. During that meeting, the parties discussed in detail a majority of the emergency planning contentions. At another meeting held on the afternoon of August 3, counsel for Suffolk County and LILCO met again to discuss the remaining contentions.

As a result of those meetings and further conversations among counsel for intervening parties, the Phase I emergency planning contentions underwent substantial revision and consolidation. In addition, based upon review of LILCO's revised emergency plan of June 28 and documents obtained during discovery, Suffolk County dropped contentions concerning the Safety Parameter Display System (SPDS), human factors and a mobile radiological laboratory.

As the Board ordered, counsel for Suffolk County transmitted a draft of the revised contentions to counsel for LILCO and the NRC Staff on August 16. The County submitted its Phase I Emergency Planning Contentions on August 20, 1982. LILCO and the Staff filed their objections to that pleading on August 24.

The Board has requested that the County limit its instant Response in order to avoid rearguing points that have previously been argued. In that spirit, this Response will address generally some recurring themes in LILCO's and the Staff's objections and meet only a limited number of specific objections which raise arguably new matters.

With respect to the former, the County takes issue with LILCO's suggestion (LILCO Objections at 2-5) that the County has been dilatory in pursuing settlement and that, as a result, certain contentions deemed by the Board to be

susceptible to settlement (see, e.g., LILCO Objections to EP 2D and ED 2E) should be struck. In so doing, LILCO has mischaracterized its actions and the County's posture with respect to settlement.

The County has received draft settlement proposals from LILCO on several contentions. None of those proposals has yet been accepted by the County; not for the reasons for dilatory practice which LILCO implies, and not for lack of interest in resolving those issues that can be resolved. Indeed, the County precipitated a number of LILCO's proposals by requesting revised settlement language in LILCO's plan at the meetings discussed above.

The County has expressed to LILCO several times in recent weeks that while the County was interested in pursuing resolution of issues, the virtually full-time deposition schedule established by the parties, calling for depositions every day from August 6 through August 27 (sometimes with two depositions running simultaneously), would preclude the careful review that such proposals required until after completion of the depositions. As the County informed counsel for LILCO, every attorney for the County involved in emergency planning was taking a deposition or preparing for one almost every day during that period of time (including Saturdays and Sundays). Thus, it was obviously necessary to defer settlement discussions until the parties completed depositions.

Moreover, and despite knowing full well of the practical considerations which stood in the way of settlement meetings, LILCO's counsel persisted in sending letters to the County complaining that the County was not pursuing settlement at a pace satisfactory to LILCO. Those letters were compiled and attached to LILCO's objections, thus raising the question whether the letters were written more for the purpose of creating a paper record than of seeking meaningful settlement of the issues. It is noteworthy that LILCO did not include in its attachments the County's letter of August 23 which proposed a date certain for settlement discussions to begin; an offer which LILCO has accepted. Rather, LILCO relegated the County's offer to a footnote (LILCO Objections at 3) stating, "We do not find it necessary to attach this letter to the pleading . . . ." The County has attached its August 23 letter to this pleading.

The County intends to pursue settlement discussions with LILCO, or any other party where the County perceives the other party to have a reasonable position and an inclination to reach a settlement consistent with the interests of the County's residents. With a new interim testimony filing date of October 12, the emergency planning schedule should offer sufficient time for such discussions. Nevertheless, in recognizing that some issues may be susceptible to settlement, the

Board should not base the admissibility of a contention on such a consideration. Whether a contention may be settled or not is irrelevant to its admissibility, and LILCO cites no authority to the contrary. A contention is admissible if it is relevant, particularized, and not a challenge to the regulations. Indeed, if a contention were not admitted because it appears likely to settle, LILCO would have little incentive thereafter to enter into a settlement on that issue. The County therefore respectfully submits that LILCO's assertions that contentions should be struck merely because the parties have not yet reached agreement on those issues is illogical, and without legal basis.

LILCO also states in its Objections at 4 that the emergency planning "contentions have hardly changed from the original contentions the County filed two months ago." Even a cursory glance at the contentions filed on August 20 reveals that LILCO's complaint is without merit. As noted above, the contentions have undergone substantial changes in language to meet the Board's standards of particularization and consolidation. In fact, some contentions were dropped based on contacts between the parties. Where a contention has not undergone substantial narrowing, it is based on the County's belief that the contention adequately states the issue and that all of the parties understand the nature of the contention. A number of

LILCO's objections on grounds of particularity imply that without further particularity it cannot understand the contention. It is clear, however, that LILCO understands quite well the thrust of the County's contentions. Indeed, if LILCO really had not understood a number of the contentions due to a perceived lack of particularity, it would have been in no position to offer settlement language on those precise contentions.

While LILCO and the Staff suggest that a number of the contentions remain insufficiently particularized, some of their comments suggest that they are using the concept of particularization to eliminate, rather than refine, the County's contentions. As an example, LILCO's Objections at 11 state that Contention 2D should be more particularized to list "the facilities the County alleges are to be notified through tone alerts. . . ." As LILCO knows, the facilities are listed in LILCO's own report prepared by Wyle Labs. In fact, LILCO (through Wyle Labs) designed the tone alert system. Thus, the objection clearly lacks merit.[1/]

In addition to the above general responses, the County responds to particular objections as follows:

1/ If LILCO truly needs to know where the tone alerts are to be installed, the County hereby directs LILCO's attention to the LILCO's own Wyle Report at H-1 through H-8.

EP 1

LILCO and the Staff complain that EP 1, which alleges at length that the plan as a whole is flawed for not being capable of implementation, is still overly broad and lacking in particularity. Their comments miss the point of EP 1. Whatever breadth EP 1 has mirrors the breadth of the flaw in LILCO's plan. That is, nowhere is it apparent that LILCO has developed its plan with consideration of the local conditions which the County has enumerated. It is not possible to cite a page or a paragraph which is the "smoking gun" in LILCO's plan. The plain fact is that LILCO ignored the real conditions and real behavior of people on Long Island when it prepared its plan. Its error, therefore, is more in what it left out of its plan than what it put in.

In developing a plan that fails to take into account the social and behavioral characteristics of the people of Long Island and the environment within which they reside, LILCO has failed to address local conditions which have an impact upon protective action recommendations (particularly evacuation versus sheltering), notification of the public, public education, and radiation monitoring systems, among others. The contention as it now exists has further defined with particularity the local conditions that LILCO has ignored and explains the impact of their absence upon emergency planning for Shoreham.

Any further particularity would change EP 1 from a contention to a detailed brief, which is not required under any rules of pleading. Thus, the objections of LILCO and the Staff on grounds of particularity are without basis.

LILCO and the Staff further suggest that the County has not tied EP 1 to any particular emergency planning standard. That suggestion, however, is inaccurate. Section 50.47(a) of 10 C.F.R. sets forth the standard that emergency plans must give "reasonable assurance that adequate protective measures can and will be taken in the event of a radiolocical emergency." Furthermore, an applicant's plan must offer reasonable assurance that it "can be implemented." EP 1 alleges with specificity that LILCO's plan does not meet these regulatory standards.

Finally, LILCO argues that EP 1 is redundant to other contentions. This objection ignores the thrust of EP 1. No other contention takes issue with LILCO's methodology in preparing its emergency plan in ignorance of the actual local conditions and human behavior of the public which would be affected by an accident at Shoreham. The County believes that the LILCO plan, as a whole, should be rejected by the Board and that LILCO should be ordered to prepare a plan which takes into account the real conditions in which Shoreham exists. In short, the mere "paper plan" which LILCO has prepared is

unworkable in the real world of Long Island. Without taking into account the conditions that the County has detailed, LILCO's plan will be neither capable of being implemented nor a basis for integration with the County's plan, as required by §50.47.

EP 5

The Board at Tr. 9716 asked the County to address the following sentence which appears in EP 5:

> In addition, LILCO has not assessed the relative benefits of various protective actions under the particular conditions existing in the Shoreham vicinity.

Contrary to LILCO's assertion (LILCO Objections at 17) that the preceding sentence is vague, in fact it specifically points out a vital flaw in LILCO's plan. Nowhere in LILCO's plan are protective actions discussed in the context of conditions existing on Long Island. For instance, nowhere is the feasibility of evacuation discussed in terms of the actual topography of Long Island, and there is no discussion of the evacuation shadow phenomenon. Nor is there a discussion of the relative benefits of sheltering in the types of homes found on Long Island. Without knowing the sheltering characteristics of houses as built on Long Island, LILCO cannot determine the adequacy of

shelter that such houses will afford. Thus, it cannot offer adequate, protective action recommendations to State and County authorities as required by §50.47(b)(10). Without consideration of such conditions, LILCO's plan is fatally flawed.

EP 13

In EP 13A the County has asserted that there is missing information in specific EALs. The Staff has responded (Staff Objections at 7) that "most of the blanks relating to instrumentation will be filled in later as a result of start-up testing . . . . [Thus] the assertions fail to establish a litigable concern of safety significance because the information must be provided prior to fuel load." The County has discussed this issue with the Staff and LILCO and related its willingness to resolved the issue subject to a commitment by LILCO that all blanks and missing information in the EALs be completed prior to commencement of fuel load. The Board should admit the contention, however, pending final resolution among the parties.

With respect to 13B, the Board has noted that there are two references to FSAR Section 15.1.13. This was a typographical error, and one of those references should be changed to Section 15.1.12.

EP 14C

Pursuant to an earlier resolution of contention 28a(iii) (Iodine Monitoring), the County introduced in its August 20 filing a new iodine monitoring contention (EP 14C). The main issue in EP 14C is that the stack iodine sampling system is subject to large errors during the important period of release following an accident. The periods of inaccuracy may be as long as 1-200 hours. This is shown graphically, in the LILCO settlement report on 28(a)(iii), in the graph marked "transmission factor." Specifically, figure 2 of that agreement shows the results of a concentration of iodine at the inlet to the stack in terms of the iodine collected and monitored for use in emergency planning decisions. The curve shows iodine as an increasing function which peaks at approximately 40 hours after the initiation of the accident whereas the ratio of the quantity of iodine collected to the iodine at the inlet of the sampler approaches unity only after more than 200 hours. The delay is several days; far more than should be allowed if timely decisions are going to be based on this data. LILCO plans to use a correction factor whereby they will multiply the reading by a factor of 7 or 8 to correct for these inaccuracies due to plateout. In some cases this may result in excessively conservative reactions and ultimately cause more public disruption than is necessary. A further concern is the uncertainty of the "fudge" factor.

The accuracy of the iodine monitoring system is properly the subject of an emergency planning contention. As stated in the June 11, 1982 agreement signed by LILCO, the Staff, SOC and the County:

> It is understood that this resolution is without prejudice to the right of SC or SOC to submit a contention in the emergency planning proceeding which would contest the adequacy of the accuracy of iodine monitoring at Shoreham. Assuming LILCO performs steps 1-3 above in accordance with this resolution, SC and SOC agree that the scope of an iodine monitoring contention in the emergency planning proceeding would not contest the details of the iodine monitoring system or LILCO's compliance with NUREG-0737 or Regulatory Guide 1.97 with respect to iodine monitoring but rather may allege that the accuracy achieved in iodine monitoring is not satisfactory to meet the requirements of 10 CFR Sec. 50.47, Part 50, Appendix E or NUREG-0654.

LILCO has offered (LILCO Objections at 21) additional language to EP 14C "because it does not adequately reflect the parties' settlement agreement on the iodine monitoring issue." The contention, it asserts, should be rewritten to state:

> Even though the equipment intended for use by LILCO to monitor iodine released to the environment in the case of a radiological accident meets the specifications of NUREG-0737 and Regulatory Guide 1.97, the accuracy of the equipment is not satisfactory to meet the requirements of [specify the requirement] because [explain why].

According to this language, LILCO would have the agreement be read to oblige the County to state affirmatively in any future iodine monitoring contention that LILCO's iodine monitoring system complies with NUREG-0737 and Regulatory Guide 1.97.

Such a reading of the agreement, however, does not comport with its true meaning. The agreement as written states only that Suffolk County will not contest the compliance of the iodine monitoring system with NUREG-0737 and Regulatory Guide 1.97. In accordance with that agreement, Suffolk County has not questioned LILCO's compliance with those provisions, but rather, as stated in the preamble to EP 14, has contested the iodine monitoring system's compliance with 10 C.F.R. §50.47(b) (8) and (9). Thus, the language as put forth by Suffolk County comports with the agreement among the parties and should not be revised as requested by LILCO.

EP 14D

In EP 14D, the County points out that many of the EALs in Chapter 4 of the plan state that readings from certain effluent radiation monitors will be utilized in determining what EAL exists. The EALs do not, however, provide specific information as to which effluent monitor will provide those readings and, as LILCO appears to concede in its Objections at 21, a number of such monitors exists. The County's objective in this contention is to have LILCO identify which effluent monitor will provide a reading for any particular EAL. Furthermore, contrary to LILCO's assertion, the County has provided appropriate regulatory cites (10 C.F.R. §50.47(b)(2),(4),(8),(9) and (10)) in the preamble to EP 14.

EP 21

The County is still in the process of reviewing LILCO's EPIPs for completeness. However, as noted above, the EPIPs are not complete because the EALs (SP 69.020) contain numerous blanks and missing information as described in EP 13 and EP 14C. If the County's review reveals that the EPIPs are complete and approved, and if it receives adequate assurances that the information described above will be supplied, EP 21 may then be resolved.

EP 22

LILCO has incorrectly objected to EP 22 (LILCO Objections at 25) by stating that the County is attempting to relitigate Contention 7B. That is not the thrust of this contention. Rather, the County has noted that for the various accidents identified in Chapter 4, emergency levels depend in many cases on readings from a variety of instruments. The EALs do not specify which of these instruments are safety-related and which are not. Thus, it cannot be determined, in evaluating whether an emergency action level exists, whether the instrument providing that information is reliable under emergency conditions. If it is not reliable, the County contends that the uncertainty inherent in depending upon a non-safety-related instrument to evaluate emergency conditions

should be taken into account when evaluating whether a particular emergency action level exists. The County's concerns are thus unrelated to Contention 7B.

EP 24

The County reserved the right in its July 6 filing to file contentions regarding the Technical Support Center (TSC). In its August 20 filing it elected to exercise that right, asserting the specific concern that the TSC would not be functional by fuel load. Though the contention stated that fuel load was projected for September 20, 1982, LILCO's own projected fuel load date has now been moved back to November 1982. Nevertheless, the thrust of the County's contentions remains - i.e., that the TSC will not be functional by fuel load even if in November. As so stated, it established a specific question of fact which is litigable. If LILCO or the Staff believes the contention to be factually in error, the County is ready to discuss the matter. Nevertheless, it should be admitted as a contention pending resolution, if any, by the parties.

Conclusion

The County's contentions are adequately particularized and consolidated and, as such, should be admitted by the Board. This is so whether or not the issues may appear appropriate for settlement among the parties.

Respectfully submitted,

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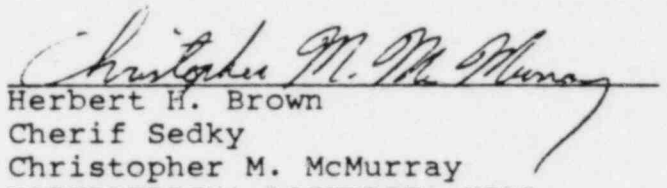

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Dated: August 30, 1982

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NUCLEAR REGULATORY COMMISSION

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LONG ISLAND LIGHTING COMPANY	)	Docket No. 50-322 (O.L.)
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Response of Suffolk County to the NRC Staff's and LILCO's Objections to Phase One Consolidated Emergency Planning Contentions" were sent on August 30, 1982 by first class mail, except where otherwise noted, to the following:

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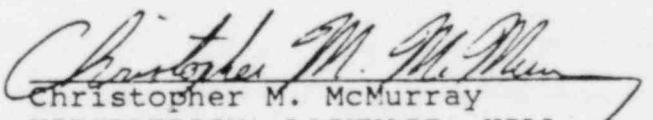

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August 23, 1982

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Dear Ms. McCleskey and Mr. Christman:

The following replies to your correspondence of August 5, 13, 16 and 17, 1982.

August 5, 13 and 17

Your letters of August 5, 13 and 17 contained proposals for a settlement of various emergency planning issues, as well as a total of eighty-eight (88) informal interrogatories.

With respect to LILCO's settlement proposals, as we have stated to you by phone, the County is quite willing to enter into settlement discussions with LILCO. Our initial reading of your proposals suggests that many of them (e.g., old EP 3(C) and EP 6(C), old EP 7(B), old EP 17 and old EP 18) look promising for settlement. Others (e.g., old EP 12(A) and (C) and old EP 16) are going to require more intensive discussion and negotiation.

You must recognize, however, that you have chosen to submit your proposals during an intensive period of discovery involving at least one deposition, and often two depositions, a day. This schedule has placed a demand on the County's time that has precluded counsel from devoting itself to the thorough and thoughtful review that such proposals require. In light of the compressed discovery schedule, counsel for the County is unable to participate in settlement discussions with LILCO until the current depositions have been completed. Furthermore, to engage in settlement discussions prior to the end of depositions may have the effect of denying both sides a good

deal of relevant information that could prove useful in narrowing and focusing the issues. Therefore, settlement discussions should be more fruitful after the depositions are complete.

As you are aware, the last deposition (other than that of Frank Jones on September 1) is scheduled for August 27. After that date, we will be pleased to sit down with you and engage in serious discussions which, hopefully will lead to the production of an onsite plan that will assure the health and safety of the residents of Suffolk County. To help move things along, and as a sign of the County's good faith, we propose a meeting of the parties on Tuesday, September 7, 1982, at which time we can begin to discuss your proposals and put forth the County's position with respect to them. These discussions may take longer than a day, but on September 7 we can establish a further schedule for ongoing discussions. We hope that you will accept this offer in the same good faith with which it is presented. We further believe that many, if not all eighty-eight of your informal interrogatories, can be answered during the settlement discussions. Therefore, and in light of existing time constraints, we are unable to answer them in writing at this time.

August 13

Besides containing draft settlement proposals and interrogatories, your letter of August 13 contained text with which the County must take exception. First, you imply there that the meetings of July 30 and August 3, in which the parties met in an endeavor to particularize further the emergency planning contentions, were not productive. We strongly disagree. Our meetings with you covered several hours of intensive discussions, most of which were attended by counsel for the North Shore Committee and the Shoreham Opponents Coalition who appeared in Washington though it was not convenient for them to do so. As a result of those meetings, the County and the other intevenors have submitted new consolidated emergency planning contentions which incorporate virtually all of the revisions suggested by counsel for LILCO, as well as those suggested by the Board.

Next, your letter attempts to make the County appear dilatory in pursuing settlement discussions with LILCO. Let us suggest that your own client caused any delay in discussing settlement or revised emergency planning contentions when it

surprised the County with seven volumes of totally revised emergency planning materials in mid-July. That action required Suffolk County's experts and counsel to expend a great deal of time and effort reading the new plan and comparing it with the old plan. Those efforts were ongoing during late July and August -- at the same time you were presenting your proposals and seeking draft contentions. Therefore, it should be little wonder that the County was not in a position to send you draft proposals or contentions before completing its review of those materials.

Moreover, you did receive draft contentions through our computer systems on Monday, August 16, 1982, eight days before your response to them was due. While you imply that the County was somehow committed to producing new draft contentions by July 30, we were in fact under no commitment to do so that early, especially in light of the fact that the Board's written Order, explaining in detail its concerns with the contentions, appeared only three days earlier -- that is, on July 27. The County sent you its draft contentions with ample time to review them, which was clearly within the letter and spirit of the Board's Order of July 27.

Finally, your letter of August 13 proposes settlement discussions on Phase II issues. In light of the time constraints imposed by the Board, we are simply unable to address the resolution of Phase II issues at this time. We are sure, however, that there will be ample time to attempt resolution of Phase II issues as the time for litigating these issues approaches.

August 16

In your letter of August 16, you ask to be directed to the Board's request that the parties propose a new filing date for emergency planning testimony on August 3, 1982 -- the date Mr. Black of the NRC informed the Board of the Staff's new onsite appraisal date. That request appears in the transcript at 8698. The County has proposed November 1 as the new filing date, which is consistent with the Board's original criteria for setting September 14 as the initial date for filing testimony -- that is, November 1 is approximately thirty days from receipt of the Staff's appraisal report. As you know, the Board has previously recognized the importance of the appraisal report to the parties, especially its ability to adduce facts that will assist in narrowing and focusing the

issues before the Board. The importance of the report has not diminished, and the County will still require thirty days to evaluate its results.

You state in your letter that November 1 is, under any circumstances, unacceptable to LILCO, and that LILCO is prepared to file on September 14. We find that position puzzling in light of the fact that the emergency planning hearings are unlikely to go forward much before November. It hardly seems practical to file testimony on September 14 as the issues are not going to be litigated until well over a month later. We therefore request that you reconsider your intransigence on this point and that you agree with us that November 1 (or thirty days after receipt of the NRC Staff appraisal) is a practical and realistic date for the filing of Phase I emergency planning testimony.

August 13 (II)

In another letter dated August 13, you complain that our letter of August 11, 1982, which described the discovery materials which the County was withholding on the basis of privilege, "does not provide any information regarding the basis for your claim of privilege. It merely lists the documents you have refused to produce to LILCO." We believe our letter clearly sets forth three separate bases for a claim of privilege and, under each basis, describes the documents withheld by date, parties, and subject matter.

Furthermore, your letter states, with respect to discovery of the County's documents, that "it was our understanding that you were producing any remaining documents on Friday, August 6." Whatever "understanding" you had to this effect was erroneous. As we have repeatedly told you, you have sought a wide range of documents existing in the files of dozens of County agencies. Naturally, to respond to such a request takes some time, and you were told explicitly that the County could not commit to producing all documents by a date certain. The County is proceeding in producing documents with all deliberate speed.

Let us remind you that the County sought to expedite document discovery in its letter of July 26, 1982, which requested that LILCO narrow its request so that the County would not be searching for, copying and producing material pertaining to clearly irrelevant emergency procedures. In your letter of August 5, however, you explicitly refused to do so. Thus,

your own unreasonable refusal to help expedite discovery with more focused requests is at the heart of any delay in document production.

In any event, you have received to date several boxes of documents. Though you describe this effort as "piecemeal," what it truly reflects is the County's good faith effort to produce documents as soon as they are pulled from County files and processed, rather than waiting until all documents have been compiled. We are rather disappointed that LILCO has chosen to disparage the County's efforts rather than applaud them.

August 13 (III)

In yet another letter dated August 13, you requested that the County identify its expert with respect to (old) EP 19(A), (B) and (F), EP 25, EP 26 or EP 27. This response will memorialize our subsequent conversations with you and Jeff Edwards in which the County informed you that Greg Minor of MHB Associates is the County's expert with knowledge on those issues. As I understand it, LILCO thereafter deposed Mr. Minor on August 18. Mr. Minor and/or other experts may submit written testimony on one or more aspects of the foregoing contentions.

* * *

I believe that we have now responded to all of your correspondence to date. We look forward to meeting with you shortly to begin discussions with an eye towards settlement of some issues and narrowing of others. In the meantime, feel free to contact us should you have any questions regarding this letter.

Yours truly,

Cherif Sedky
Christopher M. McMurray