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February 19, 1988

BY TELECOPY

James P. Gleason, Chairman
Dr. Jerry R. Kline
Mr. Frederick J. Shon
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Docket No. 50-322-OL-3

Dear Members of the Board:

Suffolk County is in receipt of two documents filed by LILCO yesterday: (1) LILCO's Motion For a Discovery Cutoff and For Summary Termination of Witness Designations ("LILCO's Motion"); and (2) a letter from LILCO's attorneys relating to the New York Court of Appeals decision in Cuomo v. LILCO. On behalf of Suffolk County, we comment briefly on each of these.

1. LILCO's Motion

Suffolk County disagrees with the statements in LILCO's Motion regarding allegations of purposeful delay by the County in designating witnesses. The allegations are untrue. We will address LILCO's false allegations in the County's formal response to the Motion. Suffice it to state for now that the County has been diligent in designating witnesses and in providing witnesses for deposition (three were deposed yesterday and another today). Also, LILCO should have advised the Board that LILCO itself has already de facto extended discovery well beyond today by filing discovery requests which call for responses on February 22, March 1, and March 9. Thus, the actual "reality" of the reasons that discovery must be extended are different from and more complex than those set forth by LILCO in the Motion.

At any rate, for now the parties are proceeding with the scheduling of depositions for next week. As of now, it appears that all depositions will be completed by February 26, the date

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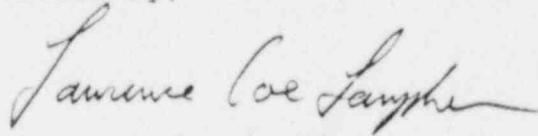
when the parties' scheduling views are due to be filed. Thus, there is no basis to believe that an extension of discovery through February 26 would adversely impact anything in this proceeding. Since the parties already are proceeding with the depositions for next week, no action of the Board seems necessary. The rest of LILCO's Motion about new witness designations, etc., is pure speculation by LILCO; no Board action would be appropriate.

2. Cuomo v. LILCO

The Court of Appeals' decision changes nothing. Despite the advisory opinion ruling, the fact remains that the five New York State judges (Justice Geiler of the Supreme Court and four Justices of the Supreme Court Appellate Division) who addressed the merits of the legal authority issues were unanimous that LILCO has no legal authority to implement its Plan. The NRC surely is in no position to put itself above what those five Justices have determined New York law to be after thoroughly considering the merits of the issue. Thus, no purpose would be served by further briefing this self-evident point.

If the Board decides further briefing is necessary, the Governments will follow the schedule set by the Board. However, the five days for reply briefs suggested by LILCO's attorneys in their letter is inadequate time to permit the Governments to coordinate their views.

Sincerely,



Lawrence Coe Lanpher

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