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Gentlemen:

This responds to Mr. Lanpher's letter of this morning and treats, preliminarily, matters raised by Intervenor's filings of April 13 and letters of April 14.

Yesterday morning counsel for LILCO received from Intervenor two sets of communications. The first was a brief with attachments, dated April 13, 1988 and entitled "Governments' Objection to Portions of February 29 and April 8 Orders in the Realism Remand and Offer of Proof." The attachments consist of proffers of direct testimony by the Suffolk County Executive, Patrick G. Halpin, and the Chairman of the New York State Disaster Preparedness Commission, David Axelrod. Intervenor's brief is lengthy and apparently thoroughly considered, and appears to have required substantial preparation time. The proffered direct testimony is short and merely repeats Intervenor's earlier positions, that while in an emergency they will exert their "best efforts," they will not plan ahead themselves, they will not collaborate in response with LILCO, and they will not authorize LILCO to act independently. The testimony not only contains no suggestion of what those best efforts would be, it categorically refuses to engage the matter. The brief supports Intervenor's apparent anticipatory refusal to submit testimony to rebut the presumption of 10 CFR § 50.47(c) that the best-efforts response of a nonparticipating government to an emergency would "generally follow" an available utility plan.

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The second communication from Intervenors yesterday was a pair of April 14 letters from counsel for Suffolk County, Mr. Lanpher, regarding deposition discovery,^{1/} including the 9 depositions of Suffolk County and New York State personnel whom the Board had ordered be produced during a telephone conference call last Monday, April 11.^{2/} Asserting unilaterally that "[e]vents have now overtaken" the scheduling of the nine Board-ordered depositions, and that Intervenors' "Objection" "obviates" the need for them, the letters declined to make those personnel available and instead proposed that only Messrs. Halpin and Axelrod be deposed on realism issues. In a subsequent telephone conversation Mr. Lanpher stated his view that the designation of Messrs. Halpin and Axelrod as witnesses confined the scope of LILCO's deposition discovery to them, notwithstanding the unresponsive nature and scope of their proffered testimony, and notwithstanding the fact that Intervenors stated that they intend to contest LILCO's case on realism issues.^{3/}

Intervenors have served notice in their "Objection" that they refuse to do what the Commission has expected ever since CLI-86-13 and what this Board has, with increasing degrees of sternness, insisted on since last September: that they come forward with actual information as to their expected response in the

^{1/} Those letters, with LILCO's response of yesterday, are attached to Mr. Lanpher's letter of this morning.

^{2/} In the April 11 conference, LILCO sought relief from Intervenors' failure to make discovery on realism issues. In that call, Intervenors asserted, in response to a question from the Board, that they were considering the question of whether to present witnesses on those issues, but declined to discuss the matter further. One outcome of the call was that the Board ordered Intervenors to produce all ten county and state employees whose depositions had been noticed by LILCO concerning realism issues.

^{3/} In the meantime, arrangements for depositions of LILCO and Intervenors witnesses on "immateriality" issues have been agreed upon for next week. So have times for depositions of Messrs. Halpin and Axelrod. However, by waiting until Thursday, April 14 to respond to LILCO's repeated efforts to schedule these depositions, Intervenors have effectively made it impossible to complete discovery on realism issues (except on unacceptable terms dictated by them) without a further extension of the discovery period beyond the end of next week.

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event of a radiological emergency at Shoreham, unless they wish to be deemed to generally follow the LILCO plan, as is presumed by 10 CFR § 50.47(c). Nevertheless, they assert a desire to contest (actually, recontest), in hearing, the prima facie case established by LILCO. And they appear to be refusing to comply with the Board's order that they make available, within the established discovery period, persons whose depositions LILCO believes can establish factual information on the capabilities and intentions of the county and state governments in the event of a radiological emergency -- information which may prove necessary in the event that any factual issues on these matters are still admitted for hearing.^{4/}

LILCO believes that the Intervenors' "Objection," combined with their refusal to give timely access to nine persons whose depositions the Board has ordered, has drastically and unexpectedly altered their position and the circumstances of this proceeding. While LILCO is still studying Intervenors' "Objection," it appears to LILCO that Intervenors may have acquiesced in the operation of the legal presumption of § 50.47(c) that they will "generally follow" the LILCO plan. LILCO intends to file an appropriate paper on this subject within the imminent future.

In the meantime, LILCO believes that the agreed-upon depositions of witnesses on "immateriality" issues, and of Messrs. Halpin and Axlerod, should proceed next week as scheduled, and no Board intervention on them is required.^{5/}

With regard to Mr. Lanpher's letter of this morning, LILCO disagrees with both the assertions (1) that a party, by its choice of witnesses, can limit legitimate discovery by another party, and (2) that LILCO's belief that it has established its prima facie case deprives it of the right to learn information on matters in litigation, when that information is within the possession of experts employed by another party but not designated as witnesses. As to the timing of the nine realism-related depositions which the Board has ordered, LILCO recognizes that Intervenors have effectively delayed them but believes that a brief

^{4/} Indeed, Intervenors' refusal to be forthcoming -- a matter not expected by LILCO and not known to LILCO until yesterday -- may well require LILCO to obtain yet further discovery to obtain information within the possession of Intervenors, if issues involving actual governmental response remain in contest.

^{5/} This has been confirmed by telephone agreement between Messrs. Lanpher and Irwin.

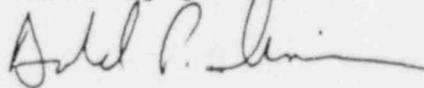
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delay is preferable, unless the Board finds Intervenors in default, to having to proceed without information that is potentially vital.

If the Board decides to take up this matter with the parties today by telephone, LILCO believes that it would be appropriate to confirm the agreed-upon "immateriality" depositions, plus those of Messrs. Halpin and Axelrod. As to the nine realism-related depositions ordered by the Board, LILCO believes that the appropriate course is to order Intervenors to make them available at the first possible time (recognizing that this may postpone the end of discovery beyond April 22) pending consideration of whether Intervenors have mooted the matter by anticipatory acquiescence in the operation of the presumption of § 50.47(c).

Sincerely yours,



Donald P. Irwin
Counsel for Long Island
Lighting Company

Attachments

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