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April 15, 1988

BY TELECOPIER

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

Gentlemen:

The purpose of this letter is to inform the Board of a new development related to discovery in the CLI-86-13 remand proceeding and to request the Board's resolution of a resulting discovery impasse before close of business today.

Yesterday morning, all parties and the Board received a copy of the "Governments' Objection to Portions of February 29 and April 8 Orders in the Realism Remand and Offer of Proof." That filing includes the testimony which the Governments intend to submit in the upcoming hearing (other than that on the issue of immateriality). By the filing of that testimony, the Governments have now identified their remaining intended witnesses -- Suffolk County Executive Patrick G. Halpin and Chairman of the New York State Disaster Preparedness Commission, Dr. David Axelrod.

In light of this new development, the Governments yesterday morning sent to all parties a proposed schedule for the deposition of all the witnesses identified by the parties to date. The proposed schedule permits all depositions to take place before the close of discovery on April 22. Copies of the Governments'

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letters are attached hereto. The comprehensive schedule proposed by the Governments is as follows:

| | |
|------------|--|
| Tuesday: | County witness Halpin |
| Wednesday: | LILCO witnesses (5 persons as a panel) |
| Thursday: | County witnesses Minor and Sholly |
| Friday: | State witnesses Hartgen and Axelrod |

The Governments' proposed schedule accommodates the depositions of 10 witnesses next week. In fact, an eleventh witness, FEMA's new EBS witness, will also need to be scheduled next week.

The Governments believe that the identification of the two witnesses it intends to present, along with the production of their actual testimony (in addition to the Governments' earlier identification of their three witnesses on the immateriality issues), obviates any basis for, or need to, proceed with the depositions of the other nine County and State employees whom LILCO had previously identified as persons it speculated the Governments might call as witnesses.

In discussions late yesterday among counsel on the deposition schedule, however, LILCO took the position that it is still entitled to depose all the individuals it has identified, even though only Dr. Axelrod and County Executive Halpin, and the three previously identified immateriality witnesses (Messrs. Hartgen, Minor and Sholly) will be presenting testimony on behalf of the Governments in the upcoming proceeding. LILCO's letter addressing this matter is also attached. Thus, LILCO's position is that it is entitled to depose all five individuals identified as witnesses for the Governments, plus an additional nine other Government employees.

The Governments, on the other hand, believe that the Board's order of Monday, dealing with LILCO's proposed depositions of people LILCO predicted might be Government witnesses, clearly has been superceded by the Governments' identification of its actual witnesses, all of whom are available to be deposed before the end of the discovery period. Moreover, any LILCO argument that it needs to depose additional Government personnel in order to prepare its own case is without basis for two reasons.

First, the individuals whom the Governments have designated as witnesses have been so designated because they are high ranking County and State officials who are able to speak, knowledgeably, authoritatively, and on behalf of the Governments,

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on the matters at issue. Further, since the matter at issue here is the intended actions of the Governments, the Governments are entitled to designate the persons to appear and speak on their behalf in a legal proceeding such as this, and this Board must respect that right.^{1/}

LILCO's primary basis for insisting upon going forward with the depositions of an additional nine individuals appears to be its assertion that it needs "to learn as much about Intervenor's response capabilities and intentions as possible." (See LILCO's attached letter). LILCO has made no showing that it cannot obtain from the Governments' designated witnesses any legitimate discovery related to the Governments' intended "best efforts" response and the Governments' intended testimony in this proceeding. In the absence of such a showing, there is no basis for requiring the Governments to produce the additional nine persons LILCO has sought to depose.

Second, LILCO has supposedly already submitted its "prima facie case" in this proceeding. By definition, such a case, standing alone, must be sufficient to meet LILCO's burden of proof. If, in fact, LILCO needs to prove its case through the mouths of the Governments, then a fortiori LILCO has not submitted a prima facie case, and the proceeding should not go forward.

The Governments request that the Board rule that LILCO may depose the witnesses identified by the Governments, but that the depositions of the other nine Government employees need not be held. Because of the obvious need to notify deponents and otherwise deal with difficult logistical arrangements, the Governments request that the Board so rule no later than this afternoon (Friday, April 15), and that the Board notify the parties by telephone of its ruling. It is the Governments' understanding that LILCO supports the need for a prompt resolution of the current impasse. The Governments are available for a conference call should the Board believe such a call is necessary.

The Governments emphasize one additional point. LILCO's proposal to depose nine individuals in addition to the five witnesses the Governments have identified would mean that a total of 20 individuals, located in Albany, Long Island, and Washington, D.C., would have to be deposed in five days next week. These

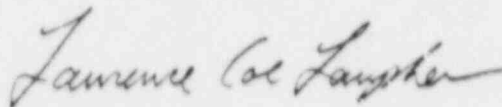
^{1/} See, e.g., Fed. R. Civ. P. 30(b)(6); 10 CFR § 2.720(h)(2)(i), which discuss analogous situations.

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include FEMA's new EBS witness, LILCO's five identified witnesses, the Governments' five identified witnesses, plus the nine additional LILCO-identified Government deponents. There are limits to what is physically possible; the proposition of preparing for, conducting and defending 20 depositions in five days exceeds those limits. Even if resources were stretched to the limit, the Governments could not fairly accomplish such a task, particularly since Mr. Zahnleuter, who is entitled to be present at all such depositions to represent the interests of his client, the State of New York, cannot be in two -- not to mention three or four -- places at once. For this additional reason, then, the Governments request that the Board rule that the additional nine depositions requested by LILCO need not be held.

Sincerely,



Lawrence Coe Lanpher

cc: All Counsel (by telecopier)
Docketing and Service
ASLB Panel

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April 14, 1988

VIA TELECOPY

Donald P. Irwin, Esq.
Hunton & Williams
P.O. Box 1535
707 E. Main Street
Richmond, Virginia 23212

Dear Don:

Since Monday, we have been contacting persons that LILCO has sought to depose in order to identify available dates. Events have now overtaken that effort.

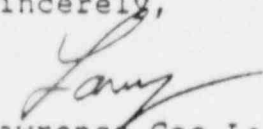
This morning you will receive a legal memorandum together with the two pieces of testimony the Governments intend to file in the CLI-86-13 remand proceeding. The testimony is sponsored by Dr. David Axelrod of New York State and Suffolk County Executive Halpin. The designation of these witnesses obviates the need for LILCO to depose the other persons who have been noticed.

In view of the current situation, the Governments suggest the following tentative schedule for next week's depositions:

| | |
|--------------------|---|
| Wednesday, 9:00 AM | LILCO Panel (Long Island) |
| Thursday, 9:00 AM | Minor and Sholly as a panel (Washington, D.C.) |
| Friday, 9:00 AM | Hartgen (Albany) |
| Friday, 3:00 PM | Axelrod (Albany) |

We expect to have available times for Mr. Halpin shortly.

Sincerely,


Lawrence Coe Lanpher

cc: All Counsel

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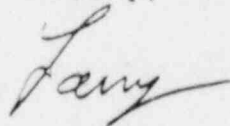
VIA TELECOPY

Donald P. Irwin, Esq.
Hunton & Williams
P.O. Box 1535
707 E. Main Street
Richmond, Virginia 23212

Dear Don:

To follow up on my letter of earlier this morning, I have determined that Mr. Halpin is tentatively available for deposition next Tuesday afternoon.

Sincerely,



Lawrence Coe Lanpher

cc: All Counsel

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By Telecopy

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Realism Deposition Schedule

Dear Larry:

We received your letters this morning setting forth the Intervenor's proposed deposition schedule in the realism proceeding.

We have also received by Federal Express this morning a substantial document (70 pages of new material, over 200 pages all told with attachments) entitled "Governments' Objections to Portions of February 29 and April 8 Orders in the Realism Remand and Offer of Proof," dated April 13. It has not, of course, been possible fully to assimilate its substance and import in the six or so hours since its arrival in our office. Clearly, while it reaffirms that Intervenor's would undertake a "best efforts" response to a radiological emergency at Shoreham, it suggests that Intervenor's do not intend to present direct evidence as to the substance of that actual "best efforts" response. This position seems clearly contrary to the Board's Orders, particularly in its April 8 memorandum, that Intervenor's present such testimony.

Totally apart from consistency with the Board's orders, however, the "Objections" does not indicate that Intervenor's do not intend to contest the sufficiency, for purposes of satisfying the realism doctrine now embodied in 10 CFR § 50.47(c), of a response based on the LILCO offsite plan and LERO resources, supplemented by Intervenor's best efforts, whatever they may turn out to be. Absent such an indication, LILCO has no choice but to learn as much about Intervenor's response capabilities and intentions as possible. For that reason, the proposed deposition schedule set in your letters of this morning is not sufficient, and LILCO will

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Lawrence Coe Lanpher, Esq.

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need to pursue each of the depositions granted to it by Board's order during the April 11 telephone conference.

I realize that, as you put it in our telephone conversation about an hour ago, you believe that "the world is different" since the filing of Intervenor's "Objections." However, that belief -- even if accurate -- does not necessarily relieve LILCO, for the reasons outlined above. In addition, the position taken in your letters with respect to the availability of State and County witnesses during the discovery period simply disobeys the Board's April 11 order granting LILCO's motion to compel those persons to appear for depositions. We urge you to reconsider your position and to provide us immediately with the availability dates for those State and County personnel.

In addition, we have the following comments on the partial deposition schedule proposed by you. LILCO agrees to make its witnesses available for deposition in a panel on Wednesday of next week. All LILCO witnesses will be available for the full day except Mr. Weismantle, who will have to leave by 1:45 p.m. for a prior commitment. He can return to the deposition around 4:00 p.m. if necessary.

LILCO does not agree to take the depositions of Messrs. Minor and Sholly in a panel, but we will agree to depose Mr. Minor at 9:00 a.m. next Thursday and Mr. Sholly immediately afterwards, we hope at about 1:00 p.m. We accept the deposition schedule for Mr. Halpin (Tuesday, 1:00 p.m.) and for Mr. Hartgen (Friday, 9:00 a.m.). We agree to depose Dr. Axelrod on Friday but with a starting time of 1:00 p.m., instead of 3:00 p.m.

LILCO does not agree to any advance limitation on the duration of the depositions. We expect to continue each deposition, if necessary, into the evening and the next day to complete the examination of each deponent.

In short, LILCO agrees to the following partial schedule:

April 19, 1:00 p.m.
April 20, 9:00 a.m.
April 21, 9:00 a.m.
April 21, 1:00 p.m.
April 22, 9:00 a.m.
April 22, 1:00 p.m.

Halpin (Long Island)
LILCO Panel (Long Island)
Minor (Washington, DC)
Sholly (Washington, DC)
Hartgen (Albany)
Axelrod (Albany)

HUNTON & WILLIAMS

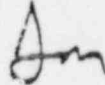
Lawrence Coe Lanpher, Esq.

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This schedule can be expanded once the State and County apprise LILCO of the availability dates of the following individuals: David DeVito, James Papile, James Baranski, Lawrence Czech, Frank Petrone, Dr. David Harris, William Regan, Daniel Guido, and Richard Roberts. Please let us know as soon as possible when these individuals will be available for depositions next week.

Sincerely yours,



Donald P. Irwin

cc: Richard J. Zahnleuter, Esq.
William R. Cumming, Esq.
Richard G. Bachmann, Esq.