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BY FEDERAL EXPRESS

James P. Gleason, Chairman
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Mr. Frederick J. Shon
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
East-West Tower, Room 407
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Bethesda, Maryland 20814

LILCO's "Realism" Testimony
Long Island Lighting Company
(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322-OL-3

Gentlemen:

Enclosed is LILCO's written testimony on the "realism/best efforts" issues, Contentions 1-2, 4-8, and 10.

In light of the Intervenor's decision not to present evidence, or even to respond to discovery, on what they could or would do in a real emergency, LILCO's written testimony has little to say that has not already been said several times before. In LILCO's view, the remaining realism issues should be resolved in LILCO's favor, largely on the basis of the revised emergency planning rule and the "best efforts" principle, which dictates that the State and County would generally follow the utility plan. As we have argued at some length, LILCO believes that by declining to carry their burden of going forward, the Intervenor's have invited a merits ruling, adverse to them, that LILCO's prima facie case satisfies NRC requirements.

In order to make the enclosed written testimony readable, LILCO's witnesses have had to reiterate a number of points that have already been established and are no longer litigable. Many

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of these passages, though not all of them, can be identified because they contain citations to the Partial Initial Decision (PID) or to Admitted Facts. Always in the past Intervenors have argued that if something is in LILCO's written testimony, they are entitled to cross-examine on it. Here, that is not the case. Much of the enclosed testimony is for background and context and recites matters already proved. LILCO will object to extensive cross-examination on these passages of the testimony.

There is one particularly noteworthy example. LILCO has described at some length, both in this testimony and in its earlier pleadings, the communications between LILCO/LERO and the "first line" of State and County authorities. This issue, however, was expressly made part of the scope of "Phase I" of this proceeding. Prehearing Conference Order (Phase I -- Emergency Planning), slip op. 11 (July 27, 1982) (unpublished); see also Phase I Contention EP 11, 16 NRC at 1026-27 (1982). In LILCO's view, therefore, the Intervenors are barred from contesting the adequacy of initial communications to them.

Since all of the dedicated (RECS) lines and backup commercial lines are still in place, as they have been from the very first, this issue of communications to the State and County would not be an issue at all, except that the State has apparently sabotaged the telephone at its end of the RECS lines. The State represents that it has disconnected the RECS phones in some manner, though whether merely by unplugging them or by actually cutting the lines LILCO cannot tell. This raises a significant evidentiary and procedural question: Can parties who have been barred from litigating an issue resurrect the issue by sabotaging the very system whose safety they seek to contest? LILCO submits that, if the former Licensing Board's sanctions are to have any meaning, the Intervenors should not be allowed to rely on their own deliberate disabling of the RECS lines. LILCO suggests that, if nevertheless the Board declines to enforce the other Board's sanctions and allows the State and County to contest the adequacy of first-line communications, then it should allow them to do so only upon the condition that the State reconnect the RECS phones and allow LILCO to relocate the RECS lines to the appropriate State offices. LILCO believes that the Board has the authority to do this as a condition of the Intervenors' going forward.

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At the hearing, if there is one, LILCO will object to questions going to the basic viability of the LILCO Plan, which was litigated in 1983 and 1984; to questions about what the State and County would do in an emergency, since the answer is given by the revised NRC rule; and to hypothetical questions postulating that the State or County would behave irrationally or contrary to the "best efforts" principle.

In addition to the enclosed written testimony, LILCO proposes to offer into evidence the current revision of the LILCO emergency plan. By the time of hearing, LILCO anticipates that Revision 10 of the plan will have been issued. LILCO submits that the placing of the plan into the record does not subject every word to cross-examination. As was done in 1983 and 1984, the plan will be in the record for reference and citation as necessary. See Tr. 833. But not every passage of it is in issue in this proceeding. The issues that are litigable are defined, as usual, by the current version of the contentions.

Finally, as part of its direct case LILCO is submitting the following plans:

1. Volume I of the draft Suffolk County plan prepared in November 1982, including the portion prepared by PRC Voorhees
2. The New York State Radiological Emergency Preparedness Plan (Rev. 8/87)

Copies of these are enclosed for the Board, FEMA, and the NRC Staff. The Intervenor already have copies.

Suffolk County also apparently has a disaster plan for hurricanes and other emergencies. LILCO would likely have submitted it for the record as well, had we had a current copy, but Suffolk County has declined to provide us one.

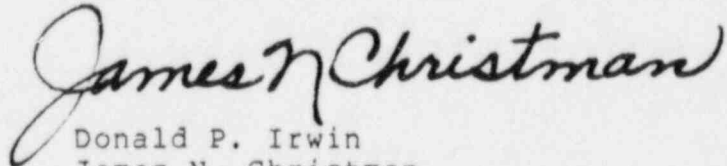
LILCO has placed before the Board motions to dismiss Contentions 1-2, 4-8, and 10 or, in the alternative, to compel the Intervenor to respond to LILCO's discovery requests. Obviously the disposition of these motions may determine whether the enclosed LILCO testimony is needed at all or, conversely, whether

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it can be supplemented with additional details. If the Board denies LILCO's motions in whole or in part, it may be necessary for LILCO to ask the Board to subpoena certain State and County government employees, such as Messrs. Papile, Czech, Baranski, Rimawi, and others from New York State and Messrs. Regan and others from Suffolk County, to testify at the hearing.

Yours very truly,



Donald P. Irwin
James N. Christman
K. Dennis Sisk

JNC/dlo
Enclosure

cc: Herbert H. Brown, Esq.
Richard J. Zahnleuter, Esq.
William R. Cumming, Esq.
Edwin J. Reis, Esq.