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(BY TELECOPY)

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Dear Tony:

Your abrasive reply to my letter of February 26 clearly demonstrates that LILCO's so-called "settlement proposal" was nothing more than amateurish posturing aimed at the Licensing Board.

Let's look at the facts. The County, not LILCO, first proposed settlement of the diesel litigation through a testing program. As you well know, we earlier stated that the crankshafts would be acceptable at particular loads if either they meet classification society rules (which they do not at or above 3500 kW) or if they have been tested at the true value of such loads for 10^7 cycles (about 740 hours) and been subsequently found to be free of defects. We also said that the cracked engine blocks of diesels 101 and 102 could be acceptable for operation at particular loads if one of those blocks were tested at the true value of such loads for 10^7 cycles and been subsequently found to have suffered no significant ligament or circumferential crack propagation and no initiation of stud-to-stud cracks. These settlement offers have been "on the table" for many months, and were reconfirmed as open offers earlier this month on the record in the presence of the Board. Tr. 27,101; 27,113.

Has LILCO ever responded to these settlement offers? No. Instead, in October of 1984 LILCO chose to test diesel 103, with its replacement engine block, for 525 hours at a nominal load of 3300 kW. Taking into consideration instrument error of ± 70 kW, that test run conservatively was at only 3230 kW. LILCO took credit for some 220 hours of prior operation of diesel 103 with the replacement crankshaft and the original defective block which LILCO has since replaced.

Before LILCO began that test run we strongly urged the Staff, which was acting as a "go-between" to try to arrange some settlement, to persuade LILCO to test either diesel 101 or 102 and at loads higher than 3300 kW. Our position, which I am certain was communicated to LILCO, was that because the replacement block of diesel 103 was uncracked, of a different design and of a stronger material than the cracked blocks on diesels 101 and 102, the test run on diesel 103 could not possibly resolve our concerns with the cracked blocks. We also indicated that testing at only 3300 kW was risky because a maximum load of 3300 kW had not been justified. Because LILCO had maintained that the diesels were capable of safe operation at loads of 3500 kW to 3900 kW, we could not understand why LILCO was unwilling to put its theories to a test.

The Staff responded that LILCO, not the Staff, had selected 3300 kW as the maximum load for testing, and that the Staff had not yet determined whether such a maximum load was justified. The Staff said that diesel 103 was to be tested because cracks on the blocks of the other diesels would preclude strain gage measurements of the cam gallery area; however, the Staff acknowledged that those measurements could be taken in only about ten hours. There was no reason for not running the 10[7] cycle test on diesel 101 or 102, except that LILCO must have been afraid of the consequences.

On February 22 LILCO sent us its settlement proposal, purportedly "in response to Judge Brenner's suggestion." This proposal did not mention, much less address, the County's continuing settlement offer, despite Judge Brenner's comment about the County's offer. Tr. 27,113. Moreover, LILCO's proposal overlooked Judge Brenner's questioning regarding testing at 10^7 cycles of diesels 101 or 102, and his statement that if LILCO believes the diesels are acceptable at 3500 kW, why doesn't LILCO "put your money where your mouth is and run it at that load." Tr. 27,098. See also Tr. 27,117. If LILCO had cared to respond to the County's offer in a meaningful way, these comments would have put into context Judge Brenner's suggestion that you discuss with the "highest levels" of LILCO management practical steps that LILCO might take to settle the diesel litigation. Tr. 27,111.

But aside from the LILCO proposal being unresponsive to Judge Brenner's comments, it was also unresponsive to the County's concerns, for the reasons summarized in my letter yesterday. For the sake of clarity, we will respond briefly to the arguments in your letter of February 27.

First, as to the 220 hours of additional crankshaft testing, we do not accept the Regulatory Guide 1.108 twenty-four hour test as an applicable standard for crankshafts that fail to meet classification society rules. The original crankshafts on your diesels ran hundreds of hours longer than 24 hours before they broke.

Second, Dr. Bush's prefiled testimony has not yet been subjected to cross-examination. We believe his analysis of crankshaft failure modes is faulty and not supportable. Dr. Bush and the Staff witnesses previously testified that the crankshafts should be acceptable at 3500 kW only if tested 10^7 cycles at that load.

Third, inspections of suspect crankshafts after testing is no substitute for adequate crankshafts. If cracks initiate and propagate in a crankshaft during a LOOP/LOCA event, your inspections will have been useless. LILCO's own witness, Dr. McCarthy of Failure Analysis Associates, testified that there would be only a short time between crankshaft crack initiation and the severing of the crankshaft (Tr. 23,009) and that there is little purpose to be served by periodic crankshaft inspections. Tr. 23,065.

Fourth, your letter confirms that your test would be at a "median" level, would allow operators a "+ 100 kW control band," and would disregard instrument error of $\pm$100 kW. Hence, the test could be performed at a true value of only 3300 kW.

Fifth, your statement that testing the cracked blocks of diesels 101 or 102 would not be meaningful is absurd. It is based upon LILCO's specious "cumulative damage analysis," which we do not accept. Obviously if one completely accepts that analysis, testing would be superfluous. Let's put the LILCO theory to a real test. The County was willing to test its theory concerning the origin of cam gallery cracks (over LILCO's objections), and we were proved wrong. Why won't LILCO "put its money where its mouth is"? Test one of the cracked blocks for 10^7 cycles and we will all see whether or not your theories are correct. LILCO's refusal to carry out such a test speaks louder than all of LILCO's words.

Your letter closes by stating your intention to submit the LILCO proposal and our exchange of correspondence to the Board. We are already before the Board; that's what this litigation is all about. If LILCO really wanted a settlement, LILCO might have responded to the County's long-outstanding settlement offer. You

might have given us a proposal which responded to our concerns. You might have suggested we discuss the issues in person or by telephone. Instead, you sent one non-responsive proposal and one intemperate letter.

In our view, taking these matters to the Board will accomplish nothing in the way of furthering a settlement. We cannot stop you from proceeding with your ill-conceived plan, but we will only discuss your "proposal" with the Board if the Board orders us to participate and if such discussions are on the record.

The County has settled most of the issues in the diesel litigation. We settled our contention regarding pistons. We settled our contention on cylinder heads. We settled our concerns [illegible] cam gallery cracks. We have made offers to settle the crankshaft and cylinder block issues, based upon the testing of those components for 10' cycles at the true value of the loads they may experience. We will continue to be reasonable, but we will not be intimidated by your theatrics.

The State of New York shares the views expressed in this letter.

Very truly yours,

Alan Roy Dynner

ARD/dk

cc: Edwin J. Asia, Esq.
Fabian G. Palomino, Esq.