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April 13, 1984

Robert M. Rolfe, Esq.
Hunton & Williams
707 East Main Street
P.O. Box 1535
Richmond, Virginia 23212

Re: Low Power Discovery; Docket
No. 50-322-OL-4 (Low Power)

Dear Bob:

Thank you for your letter of April 12 to Doug Scheidt of this office. I am responding since Doug is on his way to Long Island to pursue document discovery. I also have this morning received a second April 12 letter from you, this one addressed to me. I will respond to that letter as well.

Your letter to Doug makes clear that LILCO cannot produce and copy all the requested documents in the time permitted by the Board for discovery. The County can understand why such compliance is impossible, since the Board allowed a total of only 10 days for discovery under its "expedited" schedule.

The LILCO proposal for low power operation raises a host of factual issues concerning the reliability of LILCO's scheme for delivering AC power to Shoreham. Indeed, by its very nature, LILCO's motion requires a party to analyze detailed data pertaining to each of the multiple power sources relied upon by LILCO. That is the reason that the "tens of thousands" of documents you refer to are relevant (LILCO has interposed no relevance objection) and must be carefully reviewed and analyzed before meaningful positions can be taken regarding the specifics of LILCO's proposal.

LILCO admits it is unable to produce and copy the requested documents by April 16. Obviously, it is also impossible for the County to complete meaningful review of these materials in the time remaining prior to the scheduled submission of testimony on April 20. This highlights, in our view, the unfair and unrealistic nature of the schedule which the Board has adopted.

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As we discussed last night, three persons from this office will be at LILCO's offices today to begin identifying the documents LILCO is making available as responsive to our requests. The County agrees to pay reasonable fees for copying and sending documents to us at our request. We've never had any problems with such charges in the past and expect none now. As I informed you on the telephone, our representatives will not be staying "around the clock through the close of discovery" to identify documents. The County's personnel have other responsibilities as well. After our discovery visit today, we shall advise you if and when we next intend to review documents.

In your letter to Doug, you have characterized our discovery requests as "surprisingly tardy in light of the fact that all parties received the Board's order last Friday and review [sic] of the April 16, 1984 discovery cutoff." We disagree. The County received the Board's order on Friday and immediately instructed its consultants to begin preparation of discovery requests. Work was performed over the weekend and early this week and completed late on Wednesday when they were Federal Expressed to you.^{1/} To get out discovery requests within five days (three business days) of the opening of a discovery period is by all standards timely and diligent. What makes things difficult, of course, is the total of 10 days for discovery; in our view, that time period is unreasonable.

In your letter to me of April 12, you state that I advised that the County has not retained any experts and that the County will not identify or produce any witnesses for depositions before close of discovery on April 16. Let me clarify what I said and what the facts are. I made clear to you that the County is in the process of retaining experts, but that when a government like Suffolk County seeks to contract, it necessarily takes some time. The County expects to have at least three new experts by early next week. Further, your letter implies that we have no experts working on this matter. In fact, our consultants from MHB are assisting us and thus are "retained." In addition, we may call upon Mr. Eley, our diesel consultant for advice concerning LILCO's mobile diesels.

^{1/} In your letter to Doug you express surprise why our discovery requests were not telecopied to you or sent by computer. As I told you last night, telecopying did not make sense because the requests were not completed until after close of business on Wednesday. Computing was not feasible because Hunton & Williams' attorneys have previously stated that they do not wish to receive documents by computer.

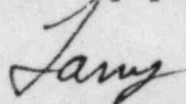
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We have not decided upon persons to be witnesses at trial and, indeed, cannot until we have had an opportunity to pursue discovery, including review of documents produced by LILCO and the Staff in response to our discovery requests. Thus, we have not identified persons to be deposed because we cannot in good conscience state that we have identified any persons who will be witnesses. You surely would not expect us to designate Mr. Eley as a witness on the LILCO mobile diesels and produce him for deposition when he hasn't even obtained, much less reviewed, the critical documents pertaining to those diesels. The deposition would be fruitless.

In your April 12 letter to me you have unfortunately decided to attack motives as well, asserting that our second set of discovery requests "has all the earmarks of being no more than a reaction to our favorable response to your first request -- merely an effort to find the limit at which we are unable to respond." We are all working hard enough without such allegations. I am sorry you misunderstood my words when we talked last night about our second document discovery requests. There was no intention to mislead you or to test LILCO's limit, as you put it. The fact is that these constitute additional, relevant document requests (except for several clarifications of the first requests) that had not been completed in time to be sent on Wednesday. They certainly were in existence when we talked last night, although I personally did not know whether they would go out last night or today. If you were "shocked and disappointed," I think it would have been a lot better if you had just called me or Doug and I think any misunderstanding could certainly have been cleared up.

I believe this responds to most of the points raised in your letters. Please contact me if you have any questions. Since you have served your April 12 letters on the Board, I will similarly copy the service list.

Sincerely yours,



Lawrence Coe Lanpher

LCL/dk
cc: Service List