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April 16, 1984

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FILE NO.

DIRECT DIAL NO. 804 788-

BY TELECOPIER

Lawrence Coe Lanpher, Esquire  
Kirkpatrick, Lockhart, Hill,  
Christopher & Phillips  
1900 M Street, NW  
Washington, DC 20036

Re: Supplemental Low Power License Motion  
Docket No. 50-322-OL-4 (Low Power)

Dear Larry:

Since receiving the County's first document requests on April 12, I have attempted to document LILCO's extraordinary efforts to afford the County the discovery it seeks, despite the lateness of the requests. A review of the correspondence concerning the County's discovery requests will indicate several inaccuracies in your April 13 letter. So that there will be no misunderstandings, following is a point-by-point response to your letter.

1. Your April 13 letter incorrectly relates that LILCO responded that it would be impossible to comply with the County's first document requests. In fact, on April 13, LILCO made available to the County all non-privileged documents in its possession believed to be responsive to the County's first document requests. LILCO also produced in New York documents transported from General Electric's offices in California.

My letter advised that LILCO might not be able to copy all requested documents and produce them in your Washington office. Therefore, LILCO made them available at Shoreham and Hicksville on April 12 (the documents at Melville were brought to Shoreham). In fact, those documents Doug Scheidt requested Friday to be copied were copied over the weekend and Federal

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Expressed to your office in Washington since the County agreed to bear all related expenses. Similarly, LILCO will comply with the County's second document requests by producing documents on Monday, April 16. In sum, compliance with the County's document requests is not "impossible" and, in fact, has been accomplished.

2. LILCO does not agree with the County's repeated characterizations of the schedule for discovery and hearings incident to this proceeding as "unfair and unrealistic." Reargument of that issue is not warranted at this point. Nevertheless, it should be noted that the bulk of the factual material that you believe relevant to LILCO's motion is not new. Only the GM EMD diesels and the 20 mw gas turbine at the site are new. Certainly the County has previously scrutinized LILCO's off-site power system and its Chapter 15 safety analyses in determining issues to be raised before the Partial Initial Decision was rendered. The County's professed unpreparedness to deal with the issues raised in LILCO's Supplemental Motion For Low Power License simply underscores the fact that the Board is affording the County an opportunity to participate in these hearings beyond that normally afforded an intervenor who, prior to being entitled to hearings, must demonstrate a basis for any contentions to be heard.

3. You complain that it is impossible for the County to complete "meaningful review" of the documents before the scheduled submission of testimony on April 20. This complaint rings hollow in at least two respects. First, LILCO received no discovery requests from the County until mid morning on April 12, despite the service of LILCO's Supplemental Motion For Low Power License on March 20 and issuance of the Board's scheduling order on April 6. Second, LILCO offered to make its documents available for the County's inspection and review beginning at 12:00 noon, Friday, April 13, and continuing around the clock through the close of discovery on April 16. This would have afforded the County an opportunity to continue its review of documents concurrently with the copying process. Instead, the County chose to engage in a cursory review of LILCO's documents by one lawyer and two paralegals, from approximately 1:30 p.m. to approximately 5:00 p.m. on April 13 and further chose not to accept LILCO's invitation to inspect documents over the weekend.

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4. Your explanation as to the tardiness of the County's discovery requests also does not bear scrutiny. In most respects, the County's first document requests merely reiterate, in slightly more detail, the items enumerated in Suffolk County's Preliminary Views on Scheduling Regarding LILCO's New Motion filed with the Board on March 26. The requests do not describe specific technical documents, but instead refer to general categories of documents. They are the type that could easily have been drafted based on LILCO's Supplemental Motion served on the County on March 20.

5. With respect to the County's failure to identify or produce witnesses for deposition, the facts are simple. On April 10, Tony Earley telecopied a letter to you and Fabian Palomino requesting the identity of the County's and State's witnesses, if any, and noticing the depositions of any such witnesses for April 13, 14 and 16. In order to make necessary arrangements for such depositions, he requested that any such witnesses be identified by the close of business on Wednesday, April 11. We received no response from the County or the State of New York to that inquiry. When you and I spoke late in the afternoon on April 12, I asked whether the County would identify and produce for deposition any witnesses before the close of discovery. Your answer was "no."

Your April 13 letter reiterates the position expressed in our April 12 telephone conversation. To date, the County has not identified any witnesses and remains unwilling to produce any witnesses for depositions before the close of discovery. As a result, LILCO will move to strike any testimony offered by the County or the State of New York. In the event that you plan to offer testimony, however, please notify us at the earliest possible moment of the witnesses' identities.

6. No further discussion of the County's motives in propounding discovery requests in the manner employed would be fruitful or warranted. Suffice it to say that the imminence and breadth of the County's second discovery requests, which were being prepared during our April 12 telephone conversation, merited a more definite forewarning than the simple statement that the County "might have" additional discovery requests in the future. As you know, LILCO is undertaking extraordinary efforts to afford the County the discovery it seeks within the time frame

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set by the Board. I hope in the future you will respond in a similar spirit of cooperation.

7. You should not mistake the absence of relevance objections thus far for LILCO's agreement that all of the documents requested are relevant to the issues raised in LILCO's motion and outlined in the Board's April 6 order. Simply, in order to afford the County the greatest possible opportunity for discovery, LILCO has produced documents quickly without time consuming discussions concerning their relevance.

8. Finally, you allude to the fact that my April 12 letters were served on the Board. The service of those letters on the Board and other parties was precipitated by the County's service on the Board of its first document requests and Doug Scheidt's cover letter. You will recall that you confirmed during our conversation late Thursday afternoon that your letter and document request had been served on the Board. Given the County's initiation of that procedure, it is important that the Board be provided a full and accurate picture of the discovery process.

Sincerely yours,



Robert M. Rolfe

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cc: Service List