

DOW, LOHNES & ALBERTSON

1255 TWENTY-THIRD STREET
WASHINGTON, D.C. 20037-1194

TELEPHONE (202) 857-2900
TELECOPIER (202) 857-2900
TELEX 468848

WRITER'S DIRECT DIAL NO.

July 14, 1989

(202) 857-2929

FAVETTE B. COV (1987-1988) HERMAN L. LINDEN (1987-1988)

WILLIAM F. BOSS
EDWARD L. CHALMERS
JOHN A. DUFFON
JOHN D. MATTHEWS
STANLEY D. SHIP
S. JUDITH PERRY
DANIEL W. TOOMEY
EDWARD J. LOPEZ, JR.
RALPH B. WADSWORTH, JR.
MARCUS H. ALLEN, S.
WILLIAM B. SCHNEIDER**
WILLIAM W. MACNEIGHT, JR.**
CHARLES A. SIMMONS**
DAVID S. BRIDGEMAN**
LEONARD J. BART
WILLIAM SILVERMAN
CHARLES J. BOKROS
ALAN C. CAMPBELL
JAMES A. TRENKOR, S.
HERNAN S. HARTENBERGER
BRENT N. BLISFORTH
J. MICHAEL HINES
PHILIP C. THOMPSON**
TERENCE S. ADAMSON
JACK B. ALBANESE
HENRY M. RIVERA
DAVID A. HILDEBRANDT
JEFFREY RUPPEL
JONATHAN S. HILL
PATRICK H. ALLEN
ARTHUR H. SILVERMAN
ROBERT J. BLACKWELL
ROGER W. HOCKER, JR.**
RICHARD S. BELAS**
J. DOMING MONAHAN
MARSHALL F. BERMAN
RICHARD D. MARKS
JOHN I. DAVIS
ARNOLD P. LUTZNER
MICHAEL S. GOLDREITER
JOHN F. REICH, JR.
LESLIE H. WIDENFELDER
KEVIN F. REED

ANDREW M. CRISSEN**
STANLEY E. BLOCH**
HOWARD GRANT**
NATHAN D. BREWER, JR.
ROBERT T. GARNY
DAVID F. BANTLON
KATHLEEN W. COLLINS
JOSEPH F. KELLY, JR.
DOMINA COLLEMAN DRISCOLL
STUART A. SHIELDS
MICHAEL A. RACE
ALBERT H. TURNIS
DAVID R. ROGOL**
JOSEPH S. PRATT
MARC J. FINK
ANNE E. MCKEY
J. ZIRC DAPLOREN
HUNTER D. HALE
JOYCE THOMAS E. DRISCOLL
KENNETH D. SALMON
JEFFREY J. LAWRENCE
CURTIS A. BITTER
JOHN T. BYRNES, JR.
JOHN S. DEAN
DATTEN D. KEMP
JOHN C. JOBT
JOHN D. WARD
A. BRUCE BECKNER
JUDITH A. MATHER
MICHAEL D. HAYS
TODD D. GRAY
JOHN H. ROBERTS
LINDA A. FRETTS
TIMOTHY J. KELLEY
LESLIE J. LEVINSON**
PETER C. CARFIELD**
BLAIR B. BLITNEC
J. CHRISTOPHER REICHERT
LAWRENCE D. SHREAD, S.
RICHARD P. MULLIGH
ELIOTT H. SHALLER
LOUIS A. DEJONG
LARRY I. GLICK**

OF COUNSEL

FRED W. ALBERTSON
AARON L. DANZIG**
GARY S. GAROFALO
RICHARD A. S. GLENER**

JAMES F. MCGANNERY, JR.
EDUARDO PEREZ DE VILLEGAS
DAVID A. ROSEN**
VINCENT T. WAGLEWICH

BLANCKE ROYER PERRY
THOMAS F. ROBERTS
LEONARD J. ROBERTS**
MARGY L. WOLF
MICROSOFT A. ROBERTS**
DAVID J. WITKOWSKI
TIMOTHY J. DRISCOLL
THOMAS J. HUTTON
DAVID D. WILD
CORINNE M. AMTLEY
MICHAEL F. HALLER
FRANK T. TRAINER
MICHAEL F. FISHER
DAVID F. SMITH
JOHN A. HARRIS**
NEAL S. BARKER**
LAURIE JO. TRAINER
GARRIE A. SACHS
HARVEY D. RUMELD
RICHARD A. WILHELM
JOHN W. WERTZ**
EDWARD J. O'CONNELL
WILLIAM H. DENNER
PAUL R. LANG
MICHAEL J. BAGLE
SUSAN PERCOTT
LESLIE S. PRICE
KELLY A. KNIGHT
CARMELA J. MONTESANO
KATHERINE R. SHERKMAN
TOSHA MAKAD
DEBORAH A. SKAKEL**
WILLIAM J. MATS
WANDA M. CHC
MICHELLE K. BLER
LESLIE A. RAYDO
SOLANGE J. HERRER
PETER C. WOLK
JONATHAN D. HART
ALAN R. SUTIN**
TERESA M. VOGLER

JAMES F. BROWN
PETER H. DOTY
GARDNER S. WOODRILL
SUSAN F. ROBERTS**
JAMES A. ROBERTS**
DAVID S. BILLS
MARGARET F. REED
MARGARET H. HUTTON
ELLEN M. BLOOM
LARRY M. FOLLER
JAMES L. GELLER
J. W. HARRINGTON**
KIM BARE BOYLAN
PAUL A. LIZO
MARY K. DALYAN
LISA C. BURBAU
ELIZABETH J. GUSTAFSON
KENNETH M. LEVINE**
RODNEY S. DEANAN**
ROSE H. SANDSTON
JULIE M. PALMER
R. WILL PALMER
CHRISTINA S. MADYKA
BARRY A. PERRY
KATHERINE A. STROGER
JOE S. BROWNE
KAREN S. FINKELSTEIN**
SARA COLLINS GOSSETON
JANE M. ADAMO**
LESLIE S. HULLO**
NOMAS J. PETERS, N.
ELIOT M. BLANK
GRANT DAVID WARD
MATTHEW G. WEBER
JOHN A. FRANCIS
STEPHANE B. LAGHLEN
JANE W. COLLEBY
CRIS F. DEVAZ
RICHARD J. BLANCO**

*MEMBER OF GEORGIA BAR ONLY
**MEMBER OF NEW YORK BAR ONLY
MEMBER OF MARYLAND BAR ONLY

ADMITTED TO PRACTICE IN SPAN ONLY

Victor Stello, Jr.
Executive Director for Operations
U.S. Nuclear Regulatory Commission
One Whiteflint North
11555 Rockville Pike
Rockville, Maryland 20852

Re: Request Pursuant to 10 CFR § 2.206

Dear Mr. Stello:

The Shoreham-Wading River Central School District ("Requestor") requests, pursuant to 10 C.F.R. § 2.206 (1988), that you institute a proceeding pursuant to 10 CFR § 2.202 (1988) to require the Long Island Lighting Company ("LILCO") the possessor of a full power operating license for the Shoreham Nuclear Power Station Unit 1 to cease and desist from any and all activities related to, among other things, the defueling and destaffing of that utilization facility and to further require the licensee to return to the status quo ante, including requirements to reinsert any fuel bundles removed from the reactor vessel, to drain the cavity, to reinsert the dryer and separator, to pull out the main steam line plugs, and to replace the head and retension the studs.

The Requestor asserts that such a temporarily effective order pending further consideration by the Commission is necessary to avoid potentially hazardous

ONE RAVINIA DRIVE SUITE 1300 ATLANTA, GEORGIA 30346 2103 TELEPHONE (404) 395 8800
TELECOPIER (404) 395-8874 TELEX 4995255
437 MADISON AVENUE NEW YORK, NEW YORK 10022 7380 TELEPHONE (212) 328 3300
TELECOPIER (212) 328-3303 TELEX 277268
80 WEST STREET ANNAPOLIS, MARYLAND 21401 2401 TELEPHONE (301) 263 0043

8907310441
XA 1989

2F01
1/0

10-004613

Mr. Victor Stello, Jr.
July 14, 1989
Page 2

conditions arising from unreviewed safety questions, violations of the licensee's full power operating license (including its Technical Specifications) and unreviewed environmental questions. The Requestor asserts further that LILCO is undertaking a course of action (see Exhibits 1 and 3) on questionable legal authority in a manner which will willfully avoid the full and effective Commission consideration of the environmental consequences of licensee actions and announced actions contrary to the provisions of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4331 et seq., the Council on Environmental Quality Guidelines, 40 CFR Parts 1500-17 (1988), and the Commission's own regulations, 10 CFR Part 51 (1988), by presenting for regulatory review only defueling and destaffing plans which do not stand alone, but rather are the intital actions in a single course of action to transfer the license for Shoreham to another party or parties and to decommission the plant. The bases for these allegations are set forth in greater detail below. The need for a temporarily effective order is urgent given the fact that the licensee has this day started to defuel.

A. THE REQUESTOR

The Requestor is Shoreham-Wading River Central School District ("District"), a school district duly organized under the laws of the State of New York, located in the town of Brookhaven, County of Suffolk, State of New York, within which the Shoreham Nuclear Power Station is located. The District relies upon LILCO for the provision of large amounts of reliable electricity for its operations. The District has consumed in excess of 6,000,000 kilowatt hours of electricity per year in the past and has paid approximately \$5,000,000 to LILCO for electric power over the last ten years. The District also derives approximately 90% of its revenue from real property taxes assessed against the Shoreham Station.

B. THE FULL POWER OPERATING LICENSE

On April 21, 1989, the Commission issued Facility Operating License No. NPF-82 to LILCO for the Shoreham Station. That license (including all Attachments and Appendices except the technical specifications, NUREG-1357) is Exhibit 2 to this request. As relevant to this request the following findings, determinations and conditions in that license are cited:

Mr. Victor Stello, Jr.
July 14, 1989
Page 3

- (1) Finding 1.C states: "The facility will operate in conformity with the application, as amended, the provisions of the Act, and the regulations of the Commission"
- (2) Finding 1.D states: "There is reasonable assurance: that such activities will be conducted in compliance with the Commission's regulations set forth in 10 C.F.R. Chapter I"
- (3) Finding 1.E states: "The licensee is technically qualified to engage in the activities authorized by this operating license in accordance with the Commission's regulations set forth in 10 C.F.R. Chapter I;"
- (4) Finding 1.H states: "After weighing the environmental, economic, technical, and other benefits of the facility against environmental and other costs and considering available alternatives, the issuances of Facility Operating License No. NPF-82, subject to the conditions for protection of the environment set forth in the Environmental Protection Plan attached as Appendix B, is in accordance with 10 C.F.R. Part 51 of the Commission's regulations and applicable requirements have been satisfied;"
- (5) Paragraph 2.B states that: "Subject to the conditions and requirements incorporated herein, the Commission hereby licenses the Long Island Lighting Company ... to possess, use and operate the facility at the designated location ... in accordance with the procedures and limitations set forth in this license;"
- (6) Paragraph 2.C.(2) incorporates the Technical Specifications and Environmental Protection Plan into the license.
- (7) Paragraph 2.C.(5) requires the licensee to implement and document all required design changes discussed in Attachment 1 and to perform an acceptable procedure verification

test for the remote shutdown system design
"[p]rior to start up following the first
refueling outage...."

- (8) Paragraph 2.E states: "The licensee shall fully implement and maintain in effect all provisions of the Commission-approved physical security, guard training and qualification, and safeguards contingency plans"
- (9) Appendix A, Specification 1.26 defines "OPERABLE-OPERABILITY" as: "A system, subsystem, train, component or device shall be OPERABLE or have OPERABILITY when it is capable of performing its specified function(s) and when all necessary attendant instrumentation, controls, electrical power, cooling or seal water, lubrication or other auxiliary equipment that are required for the system, subsystem, train, component or device to perform its function(s) are also capable of performing their related support function(s)."
- (10) Appendix A, Table 1.2 defines five "operational conditions" namely, "power operation", "startup", "hot shutdown", "cold shutdown", and "refueling". "Refueling" is further defined as "Fuel in the reactor vessel with the vessel head closure bolts less than fully tensioned or with the head removed". [It does not define any operating condition described as condition "0", "6", or "Asterisk".]
- (11) Appendix B, Para 3.1 states: "The licensee may make changes in facility design or operation or perform tests or experiments affecting the environment providing such activities do not involve an unreviewed environmental question, and do not involve a change in the EPP. Changes in facility design or operation or performance tests or experiments which do not significantly affect the environment or that are covered by the SPDES permit are not subject to the requirements of this EPP. ... Before engaging in ... operational activities which may significantly affect the environment, the

Mr. Victor Stello, Jr.
July 14, 1989
Page 5

licensee shall prepare and record an environmental evaluation of each such activity. ... When the evaluation indicates that such activity involves an unreviewed environmental question, the licensee shall provide a written evaluation of such activity and obtain prior NRC approval. ... A proposed change ... shall be deemed to involve an unreviewed environmental question if it concerns (1) a matter which may result in a significant increase in any adverse environmental impact previously evaluated in the FES-OL, environmental impact appraisals, or in any decisions of the Atomic Safety and Licensing Board; ... or (3) a matter not previously reviewed and evaluated the documents specified in (1) of this Subsection, which may have a significant adverse environmental impact."

C. OPERATIONAL READINESS ASSESSMENT

On March 3, 1989 the NRC Commissioners specified that, before the Shoreham Nuclear Power Station is authorized to operate above 5% power, an operational readiness assessment must be made. The report of that assessment, is Exhibit 4 to this request.

In particular, the Requestor draws your attention to the following findings in that Report:

- (1) In Detail 2.2: "Physical security was inspected separate from the ORAT inspection, and was found to be satisfactory."
- (2) At Detail 2.3.2 under "Facility Management": Management staffing, qualifications, and performance are acceptable. One open item related to the license's [sic] transition plan for replacing contractors with compar. employees is to be submitted for NRC review."
- (3) Under Detail 2.3.2 at "Plant Operations": "An ample and well-qualified operations staff is ready to operate the plant safely. The licensee has committed that each Shift Technical Advisor will train and perform

assigned duties with his or her assigned shift."

- (4) In Detail 3.2 subpara 3: "Extensive review of Figures 1 through 11 with the licensee resulted in several changes to the organization charts. While the staffing numbers were a snapshot of a changing situation, it was concluded that the numbers and qualifications of personnel are adequate to support power operation."
- (5) Detail 3.6 found the licensee's quality assurance organization to be "a significant licensee strength" based in part on the staffing representations contained in Figure 2 to that report.
- (6) Para 3.8 found that one of the "open items" is "LILCo's transition plan for replacing contractor employees with LILCo employees [which] is to be submitted for NRC review."
- (7) Para 3.9 presented the inspection teams "Conclusions on Facility Management": "Upon resolution of the open item in Detailed 3.8, the Shoreham Management Organization is ready to assure safe operation at power."
- (8) And, in general, the ORAT report relies extensively on the adequacy of the amount of staffing and the particular individuals currently retaining those slots for its basic conclusion that the plant was ready to assure safe operation at power. See, e.g., Details 4.2, 4.3, 4.4, 4.11, 4.13, 5.2, 5.3, 5.9, 6.2, 6.3, 6.4, 6.10, 7.2, 7.3, 7.14, 7.15, 8.2, 8.3, 8.4, 9.2, 9.3, 9.4.2, 10.2, 10.3, 10.4, 10.5, 11.4, 11.7, 12.2, 12.3, and 13.0.
- (9) The Inspection Team Report found the licensee maintenance program adequate based upon the personnel and the levels of effort inspected and described at Details 5.1-5.15 and 9.1-9.13 and 11.1-11.8 and 12.10.

- (10) LILCO's Vice President-Nuclear Operations responded to the Operational Readiness Assessment Team's request to set forth the LILCO program with respect to transiting to a full LILCO staff from the combined LILCO and contract personnel staff by Letter of March 30, 1989, which is attached as Exhibit 5 hereto. Writing that letter one month after entering into the so-called "Settlement Agreement" with the Governor of the State of New York. Mr. Leonard stated that the LILCO Office of Nuclear Operations "has now over 620 LILCO personnel serving in authorized positions and the total number of contract personnel on site in LILCO vacancies is slightly over 100 personnel." The letter then goes on to state LILCO's plans (a) to convert some contract personnel to LILCO employees, (b) to return "80 or more personnel" to the Office of Nuclear Operations from "other positions within" LILCO, (c) "to recruit personnel through various professional periodicals ... and through general advertising" and (d) to utilize "several companies known to be effective in the nuclear personnel employment area."

D. THE JUNE 30, 1989 LILCO-NRC REGION I MEETING

A meeting between the NRC staff and LILCO was held at Region I Headquarters on June 30, 1989. The following is an effort to report significant parts of that meeting. If you desire the tape, it will be furnished.

- (1) In initiating that meeting, Mr. William T. Russell, the Regional Administrator said among other things: "This is the type of meeting that we have frequently with utilities prior to outages. In this case, the circumstances are somewhat different". Mr. Russell also said "there are some unique elements to the situation at Shoreham, some of the issues associated with reducing staffing, and I need to understand what staffing you are going to have available, and how you are going to be conducting this activity."

- (2) Mr. Anthony F. Earley, Jr., LILCO's President, then made various representations to the NRC saying, among other things; "So we have fairly resounding instructions from our owners that we are to pursue the settlement, and as a result of that vote, the settlement agreement with the State of New York is now effective. Under that agreement, LILCO may not operate the Shoreham Nuclear Plant. I think that's important as we go forward, and I think everything that we do and that you look at, people understand that. We are not permitted under that agreement, we cannot and we are committed, we have no intention of operating the Shoreham Nuclear Plant. Under the Agreement we are obligated to remove the fuel from the reactor, and we are obligated to work with the Long Island Power Authority or some other designated state agency to cooperate in applying to the Nuclear Regulatory Commission for transfer of that plant from LILCO to the Long Island Power Authority or whatever state agency the State designates. LILCO is not obligated and will not be involved in the decommissioning of the plant. We have no intention to decommission the plant. We are just transferring it."
- (3) Mr. John Leonard, Vice President, Nuclear Operations for LILCO then made a presentation in which he said among other things: "I think you all know me very well enough that I try to run the show the way you want it run, and there will be no violation in that license, as long as I have it in my power to control it. In fact, there is a memo that was put out to my managers yesterday to stress point." [emphasis added.]
- (4) And Mr. Leonard later said: "We will begin under our existing license to reduce our intensity of effort. We will not continue our modification program and that's an example. During this interim, no systems or components will be terminally removed from the plant. I said "terminally", that is, if we get a call from an operating plant to loan them something, they pay it back, but there will no

disassembling of the system, or components during this interim period."

- (5) Mr. John Scalice, the Shoreham Plant Manager, then made a presentation in which he said among other things: "Part of our study assumed that we would not anticipate receiving any amendments in our license during 1989. We are also working on the assumption, at this point, we will be taking through mid-August to have defueled the core." Mr. Russell briefly interjected that the NRC had received calls "from New York State and from the Public Service Commission. They don't understand why its going to take until August [to defuel the core]. They say it takes less time than that to do a normal refueling."
- (7) Mr. Scalice went on to say: "One of the objectives of what we are doing during the next several weeks in compliance with our settlement is to establish a posture that is consistent with maintaining the OL as we have it now, but at a least-cost level to us, and that includes the . . . we are going to make sure our expenditures are prudent, and we intend to stay within all the requirements of the existing license . . . given the condition of plant under that license. I'll briefly tell you what our personnel authorizations and changes will be and then I'll let John precede to tell you the more particulars of that plan proceeding. We have had in the past an authorized personnel level of 837 people, we anticipate that after we have completed the defueling activity, we would be down to a total level of 452. That would take place after we have done the defueling. With respect to contractors, we currently have over 500 contractors on the property; that level will drop to approximately just 200."
- (8) A LILCO participant indicated that as to emergency planning LILCO would maintain only the single emergency planning condition that is not tied to a power level requirement and would not observe the others.

- (9) A LILCO participant later indicated that the defueling activity would be conducted on a two-shift schedule not more than six days a week.
- (10) And yet later a LILCO participant made a distinction between "operable systems" and "functional systems" to justify the maintenance of some and the lack of maintenance for others.
- (11) Mr. Russell, after several questions, asked: "Am I getting a hair-splitting argument between operable and functional?" A LILCO participant answered "Yes". Mr. Russell continued "... as it relates to maintaining some systems in accordance with the surveillance on a ... requirement?" The LILCO participant further responded: "I think you might be; it's a fine line".
- (12) After further exchanges, Mr. Russell said: "It seems to me that this is an area that the sooner you can define what is going to be done, and what will be maintained and what is not going to be maintained and make that available to the NRC for use, so we don't get into arguments later about something that should have been maintained that wasn't."
- (13) After further discussion, Mr. Russell: "We're trying to understand ... you might want to use a 50.59 review process, and to what extent we are going to have to review those, I don't want to become a consultant and do a review ... ahead of time, but at the same time, I need to understand what are the objectives so that we can go in on an audit sample basis and decide for ourselves whether the appropriate system, operability and functionality had been maintained."
- (14) Still later a LILCO participant stated LILCO's intent to reduce the engineering department from about 70 or 80 people to about 56 people, on another staff to reduce 43 people to 27 people, on another staff to reduce 36 contract personnel to 5.

- (15) As these various staff reduction plans were described, Mr. Russell interjected at one point: "We issued a full-power license based upon certain staffing levels and capability with the objective of being of able to operate. In fact, we had many meetings -- some in this room -- and, John, I remember putting you through the ringer pretty hard on staffing, and whether you had adequate staff to meet the terms and conditions. You are proposing to make some rather substantial staff reductions, and yet still operate within the terms of a full-power license, that raises potential questions as to whether there should be some modifications to that license to reflect the changed status of the plan in order to support the reduce staffing associated with it."
- (16) After still further discussion by the LILCO staff reduction plans, Mr. Russell said at one point: "I don't know that I have a safety problem, but I may have a regulatory problem."
- (17) And still later, Mr. Russell said: "Regulatory space, that is the condition you are in. If I went to any other facility in a refueling outage, and found that there were substantially less staff by some 40-50% over what was proposed or identified as a condition of issuance of the operating license, I would be in enforcement space."
- (18) In discussing the defueling activity further, in particular the advisability of proceeding on one shift per day, instead of two shifts per day Mr. Russell said: "There is somewhat of a trade-off, because I think that there is a potential that you could start losing qualified staff, give that there is not some uncertainty that the company is not going to operate the plant."
- (19) Later in discussing emergency planning, a LILCO participant said: "We will be eliminating the 5% power commitment."

- (20) Later a LILCO participant addressed the question of NRC correspondence, saying: "Those that are related to systems that are being maintained operable/functional will be addressed as appropriate or letters that require an NRC response will be address as appropriate. Those that do not require a response, or not directly related to something that is operable, we will log and file, but we do not intend to take any other action at that time."
- (21) With respect to site security, a LILCO participant said: "The only change that we envision after defueling, for those of you who might not be familiar with the site, we have two access points -- the primary and secondary. We are looking at closing the secondary and making that just a fence line rather than having guards posted there, which would allow us to reduce some of the guard force, and that is allowed under ... as we redefine it."
- (22) Later a LILCO participant said that with respect to the area of contracts and procurement, LILCO intends to reduce their staff of about 116 people to 87, and that in the area of contractors, they intend to reduce the current 31 to 9, "the bulk of those being emergency planning people".
- (23) And that participant went on to say that LILCO plans a reduction of "about 40 security guards", and a reduction of "40 temporary clerical people for a reduction of about 80 in that force from about 206 to 127".
- (24) At the end of the meeting, Mr. Russell invited the undersigned to comment as an observer. At that point, I addressed the representation by LILCO that it would never operate the plant, and that a decision has been made. In particular, I said: "The agreements that they have agreed to have a lot of conditions that could cause the agreements to unravel of their own weight and there are various legal

attacks currently pending and that may be pending that may cause the agreements to unravel. One other point, although LILCO may not operate this plant, it does not mean that someone won't operate it. And I would think that insofar as the staffing and the great team effort that has gone into building that staff over the years is undone at this time, it could significantly delay the time during which a valuable electrical resource might be needed."

- (25) Mr. Russell responded: "I want recognize that. That is why I raised the question of the reductions in staffing and how we need handle that from the regulatory standpoint. That is not an issue that we are presently involved in. We don't have a ... pending before the Commission that I am aware of and, at this point in time, we have the company's statement of what is their intent from an inspection standpoint. We make sure that the activities that are conducted in near-term are conducted safely."

E. THE NEED FOR AN IMMEDIATELY EFFECTIVE ORDER

The regulations provide that the Executive Director for Operations may issue a temporarily effective order pending further order "during an emergency as determined by the EDO" if he finds "that the public health, safety, or interest so requires or that the violation is willful." 10 C.F.R. § 2.202(f). The Requestor asserts that the public health, the public safety and the public interest (where the public interest is understood to encompass the objectives of the National Environmental Policy Act) each require an immediately effective order to remedy an emergency in this case and that the violations are willful. Of course, it is not necessary for the EDO to find that all four conditions exist, but only one of them, in order to issue a temporarily effective order. The independent bases are as follows:

(1) The defueling of the entire core of the Shoreham Station at this time involves an unreviewed safety question, because the defueling activity is unnecessary. It is inherent in the establishment of acceptable risks in this activity, that there is a risk-benefit analysis taking as its premise the need to perform the activity. In this context,

Mr. Victor Stello, Jr.
July 14, 1989
Page 14

defueling activities are considered necessary in the case of an accident or, normally, when the fuel has reached the end of its useful life. Neither of these two conditions obtains in this case. Further, the very slight, if any, additional margin of safety provided by the placement of the fuel in the spent fuel pool as opposed to its continued residence in the reactor in a cold shutdown condition is more than outweighed by the increased risk of accidents in the transfer of that fuel from the reactor to the spent fuel pool. For these reasons the Requestor asserts that any review and approval of the defueling activity conducted by the licensee pursuant to 10 C.F.R. § 50.59 is in violation of that rule and that the proposed defueling activity requires prior Commission approval in these circumstances. An immediately effective order to require the licensee to cease and desist from defueling and take other actions as described in the first paragraph this request is necessary and appropriate to protect the public health and safety.

(2) The issuance of the full power operating license NPF-82 was premised, among other things, upon adequate staffing of the facility to be determined in an Operational Readiness Assessment Team Report. The details of that staffing was reviewed by the Team (see Exhibit 4 hereto) and the particular representations by the licensee in Figures 1-12G to that report were relied on by the Team and in turn by the Director of the Office of Nuclear Reactor Regulation in issuing that license. The licensee has now openly declared to the Commission its intention to willfully reduce that staff to about half in the next 30 days. This would constitute a willful violation of the bases of the issuance of the license and the licensee's prior commitments to the Commission. The Administrator for NRC Region I has openly admitted that if he found a staff at a plant reduced by 40 or 50% "at any other plant" that it would call for enforcement actions. See Para D.(17) above. There is no reason why the Shoreham plant should be treated differently than any other plant. In this case, an immediately effective order requiring the licensee to (a) cease and desist all destaffing activities, (b) revoke all cease and stop work orders already issued to contractors, and (c) retransfer LILCO personnel to the Station is necessary and appropriate to protect the public health and safety and to maintain the status quo ante pending further consideration of these matters by the Commission.

(3) The proposed conduct, or lack of conduct, of maintenance activities at the Station appear to be contrary

Mr. Victor Stello, Jr.
July 14, 1989
Page 15

to the ORAT report. Compare Para C.(9) above with Para D.(4), (7), (10), (11), (12), (13), and (20) above. It appears that the licensee may be under heavy pressure from the Chairman of the New York Public Commission to put cost considerations ahead of NRC required maintenance. See, Exhibit 3. In these circumstances a direct order to the licensee to continue maintenance in accordance with its license and Technical Specifications and prior commitments to the Commission is necessary and appropriate to protect the public health and safety and the viability of the plant.

(4) Facility Operating License No. NPF-82 at Appendix B, Para 3.1 forbids the licensee from making changes in facility operations affecting the environment if the change would involve an "unreviewed environmental question" and would "significantly affect the environment" without obtaining "prior NRC approval". That part of the license states that a proposed change shall be deemed to involve an unreviewed environmental question, if it concerns (1) a matter which may result in significant increase in any adverse environmental impact previously evaluated in the FES-OL or a matter not previously reviewed and evaluated in the FES-OL which may have a significant adverse environmental impact. Exhibit 6 hereto consists of the summary and conclusions, section 8 (Need for the Station), and Section 10 (Benefit/Cost Summary) of the Final Environmental Statement related to the operation of Shoreham Nuclear Power Station Unit 1 (NUREG 0285). These sections represent the bases for the conclusions that the Shoreham Nuclear Power Station is needed, that it is the preferable alternative realistic source of electric energy, and that it has a favorable cost benefit analysis for the people of Long Island. The opposite conclusions are represented in Exhibits 1 and 3 hereto and are the bases for the licensee's current course of conduct. The applicant's plans to substitute fossil fuel burning units at some time in the next 12 years for the Shoreham Nuclear Power Station is certainly a matter which "may result in significant increase in any adverse environmental impact previously evaluated in the FES-OL" especially in view of the increased awareness that now exists with respect to the greenhouse effect, acid rain and global warming, as well as the national security aspects of reliance on imported oil and gas. As such, these matters involve "unreviewed environmental questions" which require prior Commission approval pursuant to the license. This addresses not only the source of energy, but also its cost and the need for electricity on Long Island. Therefore, the licensee in pursuing its current course of conduct in defueling,

Mr. Victor Stello, Jr.
July 14, 1989
Page 16

destaffing, transferring the license and decommissioning the Shoreham Nuclear Power Station is and would be in violation of NPF-82, Appendix B, Para 3.1. For these reasons, an immediately effective order to the licensee to cease and desist all defueling and destaffing activities and return to the status quo ante as elsewhere described herein is appropriate and necessary.

(5) A cease and desist order requiring a return to the status quo ante at the beginning of the defueling and destaffing activities is necessary and appropriate in the public interest to allow for a timely and full environmental review of the licensee proposed course of action pursuant to the National Environmental Policy Act, the Counsel on Environmental Quality Guidelines and the Commission's regulations in Part 51. Exhibits 1 and 3 hereto clearly indicates a unitary course of action leading from defueling and destaffing through transfer of the license to decommissioning of the Shoreham Nuclear Power Plant. This was also clearly disclosed in the June 30, 1989 LILCO/NRC Region I meeting, as described above in Section D. At that meeting, the licensee did attempt to say that it "will not be involved in the decommissioning of the plant". See Section D.(2) above. However, this is clearly contradicted by Section 5.3 of the Amended and Restated Asset Transfer Agreement which is an Exhibit 3 to Exhibit 1 hereto. That Section states that "LILCO will pay LIPA for Costs Attributable to Shoreham" where "Costs Attributable to Shoreham" are defined to include "all Costs incurred by LIPA or NYPA after the Closing Date attributable LIPA's or NYPA's ownership, possession, maintenance, decommissioning or dismantling of Shoreham". Exhibit 3 to Exhibit 1 hereof at Section 1.11(c) (emphasis added). Thus, while LILCO may not be involved in the management of decommissioning or dismantling, it is responsible for the ultimate sine qua non of decommissioning and dismantling, namely, the total financial support of that activity.

(6) The Commission's regulations recognize that the issuance of a license amendment authorizing the decommissioning of a nuclear power reactor and any other action which the Commission determines is a major Commission action significantly affecting the quality of the human environment requires an environmental impact statement or a supplement to an environmental impact statement. 10 C.F.R. § 51.20(b)(5) and (13) (1988). Those regulations also recognize that the Commission need not passively wait for a license application, but that the Commission "recognizes a

Mr. Victor Stello, Jr.
July 14, 1989
Page 17

continuing obligation to conduct its domestic licensing and related regulatory functions in a manner which is ... receptive to environmental concerns...." 10 C.F.R. §§ 1.10(b) (1988). At present, the NRC is devoting significant regulatory attention to the activities at the Shoreham Nuclear Power Station and the Administrator of NRC Region I has expressed the concern that the activities currently being conducted by the licensee perhaps require application for a license amendment. See Section D.(15) above.

If the Commission does not issue a cease and desist order including an order to the licensee to restore the plant and staff to the status quo ante at this time, it would be allowing the licensee to whittle away the scope of the action actually being considered to the point where there would be an insignificant staff to operate the plant and the plant itself may have deteriorated to the point where several years might be required to make it available once again as a valuable source of electricity to the people on Long Island and in the Northeast.

The timing of an environmental impact statement has been the subject of consideration by the Courts. In the context of the liquid metal fast breeder reactor program, the Court of Appeals addressed the appropriate point in time to require an overall environmental impact statement on that program. In Scientists' Institute for Public Information, Inc. v. AEC, 156 U.S. App. D.C. 395, _____, 481 F.2d 1079, 1093 (1973), the Court said:

"In our view, the timing question can best be answered by reference to the underlying policies of NEPA in favor of meaningful, timely information on the effects of agency action.

The court emphasized that:

"Answers to questions like these require agency expertise, and therefore the initial and primary responsibility for striking a balance between the competing concerns must rest with the agency itself, not with the courts. At the same time, however, some degree of judicial scrutiny of an agency's decision that the time is not yet ripe for a NEPA statement is necessary in order to

Mr. Victor Stello, Jr.
July 14, 1989
Page 18

ensure that the policies of the Act are not being frustrated or ignored. Agency decisions in the environmental area touch on fundamental personal interests in life and health, and these interests have always had a special claim to judicial protection."

156 U.S. App. D.C. at _____, 481 F.2d at 1094 (footnotes omitted). And later the Supreme Court, in considering whether the Department of the Interior was required to prepare a regional EIS for several geographically related actions with respect to coal mining, said:

"The determination of the region, if any, with respect to which a comprehensive statement is necessary requires the weighing of a number of relevant factors, including the extent of the interrelationship among proposed actions and practical considerations of feasibility. Resolving these issues requires a high level of expertise and properly left to the informed discretion of the responsible federal agencies."

Kleppe v. Sierra Club, 427 U.S. 390, 412, 96 S.Ct. 2718, 2731 (1976) (citation omitted).

The Council on Environmental Quality Guidelines require that an EIS "shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made (§§ 1500.2(c), 1501.2, and 1502.2). 40 CFR § 1502.5. As is sometimes said, this requirement does not allow agencies "to meet their responsibilities by locking the barn door after the horses are stolen". Lathan v. Volpe, 350 F. Supp. 262, 266, aff'd 506 F.2d 677 (9th Cir. 1974) (footnote omitted).

If the Commission remains passive, the Commission will indeed be left with the sorry task of "locking the barn door after the horses are stolen."

(7) The Chairman of the New York Public Service Commission has been reported to have observed that the only regulatory actions which the NRC can take against the licensee in these circumstances would be to suspend or revoke

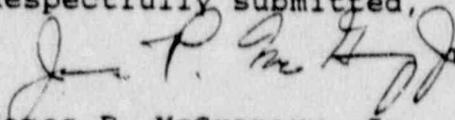
Mr. Victor Stello, Jr.
July 14, 1989
Page 19

the operating license which is the ultimate objective of New York State and the licensee. See Exhibit 3 hereto. The course of action suggested by the Requestor herein testifies to the contrary. Further, the Requestor suggests that any immediately effective orders issued pursuant to this request be accompanied by an announcement of the Commission's intention pursuant to 10 C.F.R. § 2.205 to fine the licensee a substantial amount per day for any violation or continuing violation of the Commission's orders in an amount that would deter any economic incentives which the licensee may have to violate the orders.

REQUEST FOR PARTICIPATION

If you decide to constitute the requested proceeding, the Requestor desires to participate in the proceeding as an intervenor pursuant to 10 C.F.R. § 2.714 (1988).

Respectfully submitted,


James P. McGranery, Jr.
Counsel for the
Shoreham-Wading River
Central School District

JPM:jmb
Enclosures