

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Director, Office of Nuclear Reactor Regulation

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,
Unit 1))

) Docket No. 50-322

Long Island Lighting Company's Request for an Exemption
from the Update Requirements of 10 C.F.R. § 50.71(e)(4)

I. Introduction

Pursuant to 10 C.F.R. § 50.12, Long Island Lighting Company (LILCO or the Company) hereby requests an exemption from the requirement imposed by 10 C.F.R. § 50.71(e)(4) that the Company submit an annual update of the Shoreham Updated Safety Analysis Report (USAR). Under operation of § 50.71(e)(4), LILCO is required to submit the annual update (Revision 8) to the USAR on or before December 7, 1989. LILCO will not be able to meet this deadline. Instead, LILCO requests an extension, until June 1, 1990, to submit the update. An exemption from § 50.71(e)(4) is justified and should be granted, for the reasons given below.

**II. The Exemption Is Authorized by Law, Will Not
Present an Undue Risk to the Public Health and Safety,
and Is Consistent with the Common Defense and Security**

The legal standard for obtaining an exemption from specific NRC regulations is provided by 10 C.F.R. § 50.12. The rule uses a two tier test to determine if a licensee's

8912080136 891205
PDR ADDCK 05000322
P PIC

request for an exemption should be granted. Under the first test, exemptions may be granted which are

authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security.

10 C.F.R. § 50.12(a)(1).

LILCO's request satisfies this standard. First, the NRC is plainly authorized to grant LILCO what, in practical effect, is a six month extension of time to submit a regulatory filing. Second, it is evident that granting the exemption would have no impact on the "common defense and security" of the United States. See Florida Power & Light Co. (Turkey Point Nuclear Generating Station, Units 3 and 4), 4 AEC 9, 12 (1967). Finally, as explained below, the exemption would not present an "undue risk" to the public health and safety.

The annual update requirement of § 50.71(e)(4) serves to ensure the availability of an updated version of a facility's Final Safety Analysis Report (FSAR), for use as a reference document for safety analyses performed by the licensee or the NRC Staff. See, e.g., Nuclear Utility Backfitting and Reform Group, DPRM-86-4, 24 NRC 635, 641-42 (1986).^{1/} LILCO is presently completing and intends to submit in the near future

^{1/} Additionally, when the Commission first proposed to require annual updates of a nuclear facility's FSAR, it stated the purpose of such a requirement as follows:

Revision of the FSAR to reflect the current status of a facility's safety related structures, systems and components would be of value to provide a reference document for recurring safety analyses performed by the applicant or licensee and the Commission.

41 Fed. Reg. 49123 (Nov. 8, 1976). The Commission reiterated this rationale for the regulation when the final rule was adopted, stating that the rule is "only a reporting requirement to insure that an updated FSAR will be available," and that "[s]ubmittal of updated FSAR pages does not constitute a licensing action . . ." 45 Fed. Reg. 30615 (May 9, 1980).

a Defueled Safety Analysis Report (DSAR), which will describe the level of activity needed to protect the public health and safety for a defueled Shoreham. LILCO intends to update the Shoreham USAR on or before June 1, 1990. In the interim, however, submission of the DSAR will better serve the regulation's stated purpose of providing a "reference document for recurring safety analyses performed by the . . . licensee and the Commission." 41 Fed. Reg. 49123.

Moreover, apart from those changes associated with defueling, no significant alterations have been made to the plant since the last USAR update. LILCO's preliminary review indicates that Revision 3 of the USAR will contain less than 40 changes, all of them relatively minor. Since, under the Settlement Agreement, LILCO will not operate Shoreham, submission of the DSAR will provide the NRC with the most pertinent information regarding the defueled Shoreham plant. Granting LILCO an exemption in these circumstances clearly will not present an "undue risk" to the public health and safety.

III. The Exemption Would Provide Only Temporary Relief and LILCO Has Made Good Faith Efforts to Comply with the Regulation

The exemption request also satisfies the second tier of the NRC's exemption standard, which provides that an exemption will not be considered unless one or more of six "special circumstances" listed under § 50.12(a)(2) exist. The "special circumstance" identified in clause (v) applies to LILCO's situation. Specifically, this provision states that

[t]he exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

10 C.F.R. § 50.12(a)(2)(v).

As has been noted, in requesting the exemption, LILCO does not seek to be excused entirely from the requirement that it submit an update to the Shoreham USAR. Rather, LILCO requests temporary relief, in the form of an extension of time until June 1, 1990, to submit the update.

In addition, LILCO has made a good faith effort to comply with the update requirement.^{2/} Updating the Shoreham USAR is, under ordinary circumstances, a time consuming task requiring intensive effort on the part of plant personnel. In light of the Settlement Agreement with New York State, moreover, LILCO is not only responsible for meeting all of its obligations under its operating license and NRC regulations, but is engaged in preparing the DSAR and various other technical and regulatory documents to support future license amendment and exemption requests, as well as an application to transfer Shoreham's license to an entity of New York State. As a consequence, personnel that normally would have been available to work exclusively on the annual USAR update have also had to spend considerable time and effort preparing the DSAR and other related documents.

Once LILCO has submitted the DSAR, clearly the NRC's consideration of that document will be of significant, if not overriding, regulatory concern. The information contained in the DSAR and related submittals will be of paramount importance to the NRC in determining the future posture of the Shoreham plant. With these practical considerations in mind, LILCO has made a good faith determination that the development of the DSAR prior to the completion of the annual USAR update is an appropriate ordering of priorities and a prudent allocation of resources. Accordingly, the exemption request satisfies the "special circumstance" standard of § 50.71(e)(4).

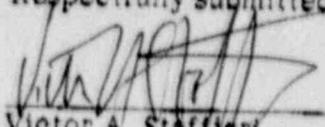
IV. Conclusion

For the reasons given above, LILCO respectfully requests an exemption from the requirement of 10 C.F.R. § 50.71(e)(4) that it file an annual update to the Shoreham

^{2/} Prior to the Settlement Agreement with New York State, LILCO complied with the update requirement by submitting on December 2, 1986, its initial update of the Shoreham Safety Analysis Report. (SNRC-1296). Revisions 1 and 2 were submitted on December 4, 1987 (SNRC-1397) and December 5, 1988 (SNRC-1519), respectively.

USAR by December 7, 1989. The required update will be submitted on or before June 1, 1990, and will reflect the condition of the plant as of the time the Settlement Agreement took effect and LILCO became contractually obligated not to operate the plant.

Respectfully submitted,



Victor A. Staffler
General Counsel
Long Island Lighting Company

Long Island Lighting Company
175 East Old Country Road
Hicksville, New York 11801

DATED: December 5, 1989