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Education

June 1979	1979	High School Diplo	
	Westminster	School	
		Atlanta, GA	

Completed 1-1/2 years Harvard University Cambridge, MA

Employment

6/80 to 8/80

Research and Training Department Center for Rehabilitation Medicine Emory University 1441 Clifton Road Atlanta, GA 30322

Operated standard office machines, entered datz into computers, Xeroxed material, scored psychological tests, maintained office protocol, helped write a brochure for the Center for Rehabilitation Medicine, conducted tours for international visitors.

6/80 to 8/80

Peachtree World of Tennis 6200 Peachtree Corners West Norcross, GA

Assistant Tennis Pro. Coached girls ages 9 to 16.

2/79 to 3/79

Terminus International Racket Club 1775 Winer Place, N.W. Atlanta, GA

Assistant Tennis Pro. Coached girls ages 8 to]4.

July 21, 1981



For:

From:

The Commission

Martin G. Malsch Deputy General Counsel

Subject: DIRECTOR'S DENIAL OF 2.206 RELIEF (IN THE MATTER OF LONG ISLAND LIGHTING COMPANY)

Facility: Shoreham Nuclear Power Station, Unit 1

Purpose:

Review Time Expires:

Background:

\$107290281J 72-436

To inform the Commission of a denial of a request to suspend the construction permit for Shoreham Nuclear Power Station pending the outcome of a requested hearing on the extension of the permit, which,/

SECY-81-435

August 4, 1981, as extended.

On January 23, 1981, the Shoreham Opponents Coalition (SOC), intervenors in the operating license proceeding for the Shoreham Nuclear Power Station, submitted to the Director of NRR a petition (Attachment 1) asking for (1) a hearing on the November 1980 application of Long Island Lighting Company (LILCO) for an extension of its construction permit (see SECY-81-428), and (2) an immediate suspension of the construction permit under 10 CFR \$ 2.206 pending a final determination on the permit extension application. The construction permit for the Shoreham facility, which is presently approximately eighty-seven percent completed, was originally granted in 1973 and extended in 1979. The permit was to expire on December 31, 1980, and LILCO has asked for

CONTACT: Paul Bollwerk, OGC 4-3224 Lubrastica in this record was defered

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SECY NOTE: This paper and SECY-81-428 supersede SECY-81-395.

its extension through March 31, 1983. Under Commission regulations, 10 CFR § 2.109, the timely request of 'ILCO for an extension will cause the construction permit to remain in effect until the application is finally determined.

In its petition, SOC enumerated five items that it declared should be considered in any construction permit extension proceeding relating to the Shoreham facility. These included:

1. As a major federal action significantly affecting the human environment, under NEPA any extension of the construction permit must be accompanied by a supplemental environmental impact statement (a final environmental statement for the facility was issued in October 1977), which should include a new cost/benefit analysis and a consideration of Class 9 accidents.

2. The poor financial status of LILCO, as is alleged to be indicated by such factors as a recent downrating of its bonds and admitted cash-flow problems, brings into serious question the utility's ability to build and operate the plant properly.

3. Because of the population density and distribution, the topography, and the configuration of transportation corridors around the Shoreham plant, serious questions exist about compliance with proper siting and emergency planning requirements.

4. Documentation and further evaluation should be required in those instances in which the design of the Shoreham facility differs from the Standard Review Plan.

5. The lessons learned from the Three Mile Island accident require that there be a new analysis of systems interaction, the preparation of an interim reliability evaluation program to identify particular high risk accident sequences at the plant, and design modifications to better detect inadequate core cooling and implement hydrogen control measures. In seeking 2.206 relief, SOC contended that immediate suspension of the construction permit by the Director is required to avoid any further harm to the public health and safety while the construction permit extension hearing is ongoing.

On June 26, 1981, the Director denied the petition, DD-81-9, 13 NRC (1981) (Attachment 2) (see SECY-81-395). In analyzing SOC's request for immediate suspension, the Director declined to address specifically alleged deficiencies raised by SOC, indicating that they were matters to be dealt with in the ongoing operating license proceeding or in the context of any construction permit extension hearing that might be held. SOC's concerns afforded no basis for immediate relief, in his opinion, because, as they related only to the incomplete facility's operation, they could pose no imminent harm to the public health and safety while the facility is under construction. Any of SOC's questions, according to the Director, could be fully resolved prior to the grant of the operating license if it was necessary to ensure safe plant operation. Moreover, the Director declared, cost or difficulty of implementation cannot be considered in the operating license review, so continued construction cannot affect the outcome of the operating license review. Accordingly, the petition was denied.

Discussion:

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Recommendation:

Martin G. Malsch Deputy General Counsel

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Attachments: 1. SOC petition 2. Director's Denial 3. Draft Order

In a July 13, 1981 filing in the pending litigation before the United States Court of Appeals for the Second Circuit (see SECY-81-418), counsel for SOC has indicated that organization's intent to seek judicial review of the Director's Denial when that determination becomes final agency action. Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Friday, July 31, 1981.

Commission Staif Office comments, if any, should be submitted to the Commissioners NLT July 27, 1981, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an open meeting during the week of August 3, 1981. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

DISTRIBUTION Commissioners Commission Staff Offices Exec Dir for Operations Exec Legal Director Secretariat

ATTACHMENT 1

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UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION



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	In the	Matter of	
LONG	ISLAND	LIGHTING COMPANY	
(Shorehham Unit 1)	Nuclear	Power Station,	

Construction Permit Number CPPR-95

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PETITION OF THE SHOREHAM OPPONENTS COALITION (SOC) TO INSTITUTE PROCEEDINGS ON WHETHER GOOD CAUSE EXISTS TO EXTEND THE COMPLETION DATE OF THE SHOREHAM NUCLEAR POWER STATION - UNIT 1

Pursuant to Section 189 of the Atomic Energy Act of 1954 (42 USC, Section 2239) and pursuant 10 CFR, Section 2.206(a), the Shoreham Opponents Coalition* requests that a proceeding be instituted to determine whether good cause exists to extend the completion date for the above-referenced construction permit and, if such determination is made, to determine what requirements should be imposed as a condition of extending the construction permit. The Shoreham Opponents Coalition requests that, to protect public health and safety, the Shoreham construction permit be suspended pending the outcome of the hearing. As additional relief, the basis for which is set forth in this letter, SOC requests that the Shoreham construction permit be revoked at the conclusion of this hearing or reissued with conditions determined to be appropriate.

*Rereinafter "SOC". SOC has been admitted as an intervenor in the NRC Shoreham Operating Licensing Proceeding (Docket 50-322) pursuant to an Order of the Shoreham ASLB dated May 1, 1980.

I. LEGAL BASIS AND STANDARDS FOR THIS REQUEST TO INSTITUTE PROCEEDING

The Long Island Lighting Company (LILCO) has requested that the NRC extend the completion date for Shoreham Nuclear Power Station - Unit 1 from December 31, 1980 to March 31, 1983 (Attachment A). The Commission's regulations (10 CFR, Section 50.55(a)) state that if the facility is not completed by the latest completion date in the construction permit, the permit shall expire and all rights thereunder shall be forfeited provided, however, that upon good cause shown, the Commission will extend the completion date for a reasonable period of time. SOC contends that good cause to extend the construction permit does not exist. Circumstances have arisen since the issuance of the construction permit in 1973 and since its extension in 1979 which demonstrate that the licensing board's previous finding pursuant to 10 CFR 50.35(a)(4) that "the proposed facility can be constructed and operated at the proposed location without undue risk to the health and safety of the public" is no longer valid. In addition, SOC believes that a supplemental FES for the Shoreham project is required as a prerequisite to action on LILCO's construction permit extension request. SOC contends that the NEPA analysis will lead to the revocation of the Shoreham construction permit in favor of a conservation alternative.

The licensing board opinion in the case of <u>Indiana</u> and <u>Michigan Electric Company</u> (Donald C. Cook Nuclear Plant, Units 1 and 2) ALAB-129, 6 AEC 414 (1973) shows that SOC is entitled to a proceeding to determine whether good cause to re-extend the construction permit axists in light of new circumstances. The facisions in

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the cases of <u>Brooks v. AEC</u>, 476 F2d 924 (D.C. Circuit, 1973) and <u>Sholly v. NRC</u>, F2d (U.S. Court of Appeals, District of Columbia Circuit, No. 80-1691, November 19, 1980) likewise show that residents in the vicinity of proposed nuclear facilities are entitled to hearings before extensions to constructions permits are issued.

Under 10 CFR Section 50.91, the licensing board is to evaluate a request for a construction permit extension by the same criteria it uses to evaluate the construction permit itself. While SOC is required by 10 CFR Section 2.206 to come forward with information constituting the basis for its request that the construction permit be suspended and subsequently revoked or reissued subject to conditions, the ultimate burden of proof in this proceeding is on the construction permit holder. See <u>Consumers Power Company</u> (Midland Plant, Units 1 and 2) ALAB-283, 2 NRC 11 (1975); <u>Toledo Edison Company</u> (Davis Besse Nuclear Power Station) 4 AEC 801 (1972); and <u>Union Electric Company</u> (Callaway Plant, Units 1 and 2) ALAB-348, 4 NRC 225 (1976).

The licensing board has the authority to revoke construction permits under 42 USC 2236(a) if it finds that conditions exist which would have warranted the board to refuse to issue a permit in the first place. The board has authority to extend the construction permit while imposing conditions, as requested in the alternative by SOC, under 42 USC Section 2233.

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II. THE SHOREHAM CONSTRUCTION PERMIT SHOULD BE REVOKED

A. NEPA Balance of Costs and Benefits

1. Requirement of a Supplemental FES

The Environmental Statement (FES) prepared for the Shoreham project (NUREG-0285; October, 1977) no longer accurately states the costs, risks or benefits of the Shoreham nuclear power plant because of changed circumstances since the FES was issued.

The proposed reissuance of a construction permit by extending the completion date is a federal action which requires reconsideration of the environmental risks, costs and benefits of the proposed project. In determining whether this reconsideration requires a new environmental statement, a supplemental environmental statement, or a negative declaration, the Commission is guided by the Council on Environmental Quality's guidelines published in 40 CFR 1500 et.seq. See 10 CFR Section 51.5(b).*

Environmental impact statements are to be included in every recommendation or proposal for major federal action significantly affecting the quality of the human environment. See 40 CFR Section 1502.3. In particular, agencies are to prepare supplements to final environmental impact statements if there are significant new circumstances or information relevant to environmental concerns, bearing on the proposed action

*The NRC has previously acknowledged its NEPA responsibilities relative to an extension of the Shoreham construction permit. LILCO's prior request for an extension of the Shoreham CP (dated December 18, 1978) prompted an environmental impact appraisal by the Commission's Division of Site Safety and Environmental Analysis which led to a Negative Declaration. SOC LILCO CP extension request require the preparation of a

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or its impacts. See 40 CFR 1502.9(c). The reissuance of a construction permit for a project approved by a federal agency constitutes a major federal action. See 40 CFR 1508.18(a) and (b)(4). The Commission's own regulations specifically authorize the Commission to require applicants for permit renewals to submit such information as may be useful. See 10 CFR Section 51.6(c)(3).

The Commission has held that where circumstances arise during construction which could change the NEPA balance of costs and benefits, the construction permit should be suspended until the effects of the new circumstances can be assessed. See <u>Public Service</u> <u>Commission of New Hampshire</u> (Seabrook Station, 1 and 2) <u>NRC</u>, NRR (CCH), para. 30,172, Commission Memorandum and Order, March 31, 1977. Accord, <u>George</u> <u>Power Company</u> (Alvin W. Vogtle Nuclear Plant, Units 1 and 2) ALAB-291, <u>NRC</u>, NRR (CCH), para. 30,017, September 24, 1975.

The NEPA issues raised in this Petition to Institute Proceedings cannot be deferred until the operating license stage. The circumstances of this case now show that the risks of constructing and operating Shoreham are greater than had previously been appreciated, the costs have increased, and the benefits have decreased. As a result, at this point the clearly superior alternative for supplying Long Island's power needs is the institution of a vigorous conservation effort and cancellation of Shoreham Nuclear Power Plant. Since NEPA cost/benefit analyses typically count construction costs expended on one alternative as part of the cost of undertaking another alternative, a NEPA analysis would be distorted if the conservation alternative were not considered until after completion of the plant.

See 14

The benefits of completing Shoreham will be far less than was anticipated in the Staff's Environmental Statement accompanying the construction permit application. The applicant's load forecasts concede demand for electricity on Long Island has plummeted, even since the December 18, 1978 request for a CP extension. As a result, the need-for-power determination made at the time of the construction permit application is no longer valid. See Attachment B.* A conservation program would fulfill the remaining need for power at a lower economic and environmental cost than the combined past and future costs of completing Shoreham.

In proceedings before the New York Public Service Commission (PSC), SOC has developed a "Conservation Alternative to the Power Plant at Shoreham, Long Island," prepared by Energy Systems Research Group (ESRG: tachment C). This report presents a cost/benefit analysis demonstrating the advantages of cancelling Shoreham in favor of a comprehensive conservation program. The ESRG report should be the foundation for the NEPA cost/benefit analysis to be prepared as part of the supplemental FES.

*A comparison of LILCO's 1978 and 1980 peak load projections for 1985 shows a drop of 605 Mw (from 3830 Mw to 3225 Mw).

2. "Class 9" Accident Analysis

1. 1

On December 24, 1980, NRC Staff Counsel Bordenick issued a document captioned "NRC Staff's Position Regarding Consideration of "Class 9" Accidents" relative to the Shoreham OL proceedings (Docket No. 50-322). Staff has concluded that it will not consider "Class 9" accidents in the Shoreham proceeding absent a showing of "special circumstances" pursuant to 10 CFR Section 2.578(b). The sole justification for the exclusion of "Class 9" accidents is the fact that the FES for Shoreham was issued in October, 1977 and thus Shoreham is not automatically subject to the "Class 9" review otherwise mandated by the Commission's recent "Statement of Interim Policy on Nuclear Power Plant Accident Considerations Under The National Environmental Policy Act of 1969" (45 Fed. Reg. 40101; June 13, 1980). Staff's position is shortsighted, contrary to genuine concerns regarding public health and safety, and, in the words of Commissioners Bradford and Gilinsky, "...absolutely inconsistent with an even-handed reappraisal of the former, erroneous position on Class 9 accidents." (45 Fed. Reg. 40103, n.5)

Both Staff Counsel Bordenick and NRR are undoubtedly aware of the criticisms of the President's Council on Environmental Quality (CEQ) of the NRC's prior treatment of accident considerations under NEPA (see e.g., letter from CEQ Chairman Speth to Commissioner Ahearne dated March 20, 1980). CEQ has specifically recommended the preparation of a supplemental FES addressing "Class 9" accidents as part of the CP extension review for the Bailly Generating Station, Nuclear 1 (Attachment D). The circumstances prompting a "Class 9" analysis for the Bailley-1 unit are sufficiently similar to the circumstances at Shoreham to require a "Class 9" assessment in the Shoreham proceeding. The Applicant and Staff will undoubtedly argue that Shoreham's "advanced" stage of construction should preclude a Class 9 evaluation in this case. However, SOC believes that serious questions of public safety may not legally be ignored on the basis of cost of plant modifications. Furthermore, in view of the unique siting considerations regarding Shoreham, particularly in the area of evacuation, Staff's decision to ignore Class 9 considerations at Shoreham would foreclose development of vital emergency preparedness measures. Finally, as the <u>Petition</u> documents, LILCO's claims that SNPS is almost completed are exaggerated.

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The environmental risks of operating a nuclear power plant are now better understood than they were when the final environmental statment was issued to accompany the construction permit. The Commission's June 13th Statement of Interim Policy directs that environmental impact statements should consider the environmental consequences of accidents including those resulting in melting of the reactor core. Environmental impact statements should discuss not only environmental risks but also health and safety risks to people. The Commission states its rationale for the interim policy statement as follows:

[A] beginning should now be made in the use of these [risk-assessment] methodologies in the regulatory process; and... such use will represent a constructive and rational forward step in the discharge of [the Commission's] responsibilities.

While the Commission cautions against reopening or expanding previous or ongoing proceedings, such considerations do not apply to the Shoreham plant because the hearing accompanying a construction permit extension is not an extension of the construction permit hearings but rather a separate proceeding to determine whether good cause exists to reissue the permit. In any case, the Staff is explicitly directed to consider preparing a supplement describing the environmental consequences of a "Class 9" accident in a case such as

- 5 -

Shoreham. The statement of interim policy directs:

[I]t is also the intent of the Commission that the Staff...identify additional cases that might warrant early consideration of either additional features or other actions which would prevent or mitigate the consequences of a serious accident. Cases for such consideration are those for which a final environmental statement has already been issued at the construction permit stage but for which the operating license review stage has not yet been reached. In carrying out this directive, the Staff should consider relevant site features, including population density, associated with accident risk in comparison to such features at presently operating plants. Staff should also consider the likelihood that substantive changes in plant design features which may compensate further for adverse site features may be more easily incorporated in plants when construction has not yet progressed very far.

In preparing a supplemental EIS pursuant to 40 CRF Section 1506.3 and 1502.9(c), NRR must make an independent determination of the probable completion date and remaining construction costs. As outlined in this Petition, LILCO has repeatedly failed to accurately assess either the project cost or completion date for Shoreham and thus LILCO's cost estimates or completion schedule cannot be accepted at face value for purposes of the requested NEPA review. It is essential that NRR critically examine the likely Shoreham completion schedule (and likely project cost); evaluate the site-specific consequences from "Class 9" accidents; and compare those costs with the benefits of the ESRG conservation scenario before reaching any final decision on extending the Shoreham construction permit.

SOC therefore requests that the Board suspend the Shoreham construction permit while the NRC Staff prepares a supplemental anyironmental impact statement on the Shoreham plant. The supplement should include three elements. The first element should be a specific analysis of the probability and consequences of:

- anticipated operational releases;
- (2) infrequent accidents and
- (3) "Class 9" accidents.

This analysis should include consequences to the liquid pathway. The second element of the supplement should be an analysis of the probable costs of completing the Shoreham Nuclear Power Station and the period of time likely to be required for such completion. The third element of the supplement should be an evaluation of the present need for power in LILCO's service area and the relative merits of addressing this need with a nuclear power plant versus addressing the need with a conservation program. When these analyses have been performed, the Staff should then restate its assessment of the environmental costs and benefits of the Shoreham plant.

B. LILCO'S FINANCIAL QUALIFICATIONS

As mentioned above, the licensing board is required by 10 CFR Section 50.91 to evaluate construction permit extensions by the same criteria it uses to evaluate applications for construction permits. One of the criteria for issuance of a construction permit is the issue of the applicant's financial qualifications. See 42 USC Section 2232(a), 10 CFR Section 50.33(f) and 10 CFR Part 50, Appendix C.

SOC contends that because of past cost overruns and schedule slippages and because of the near certainty that the plant will be finished behind schedule and over budget, if at all, LILCO is not financially qualified to build and operate a nuclear power plant. Under 10 CFR Section 50.33(f), the applicant must come forward with information sufficient to demonstrate to the Commission that it either has, or has reasonable assurance of obtaining, funds necessary to meet construction costs and fuel cycle costs.* The evidence submitted by LILCO itself in Case No. 27774 before the New York State Public Service Commission requires an assessment of LILCO's financial qualifications prior to a decision by the NRC on whether or not the Shoreham CP should once again be extended.

The enormous cost overruns at the Shoreham project have severely jeopardized the financial viability of LILCO. In the year the Shoreham CP was issued,

*The Commission's authority to evaluate the applicant's financial and technical capabilities is also authorized by 10 CFR Section 50.40.

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Shoreham's estimated cost was \$350 million. LILCO's latest estimate, submitted as a basis for its May, 1980 request for \$228 million in rate relief, is \$2.235 billion. In the two years since the last Shoreham CP extension, Shoreham's estimated cost has risen \$1 billion, from \$1.24 billion to \$2.235 billion.

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During the past three years, LILCO has repeatedly sought emergency rate relief to cover the cost overruns at Shoreham. LILCO'S 1980 request for emergency rate relief totalled \$95.5 million (PSC Case 27774). The company's estimates of 1980 Shoreham construction expanditures were so uncertain that the emergency rate hearings had to be suspended for 30 days to permit wholesale revisions to the Company's financial testimony to account for a \$45 million underestimate in 1980 Shoreham construction expenditures.

The testimony of LILCO's principal financial witness in the 1980 PSC rate hearings, Thomas H. O'Brien, Senior Vice President-Finance, dramatically underscored the company's serious financial condition. Mr. O'Brien noted that the major financial rating agencies periodically analyze LILCO's financial soundness by examining such factors as LILCO's ability to refinance short-term debt and its level of internal cash generation (Case 27774, Tr. 883). Mr. O'Brien noted that three financial agencies downrated LILCO's securities after the Company filed its request for \$228 million in rate relief on May 29, 1980:

Moody's	Old Rating	New Rating	Date of Change
1st Mtge. Bonds	Aa	A	8/79
G&R Bonds	A	Baa	6/80
Prer. Stock	A	Baa	6/80
Comm'l. Paper	P-2	P-3	6/80

Standard & Poor's	Old Rating	New Rating	Date of Change
1st Mtge. Bonds	λ-	Bbb	7/80
G&R Bonds	A-	Bbb	7/80
Pref. Stock	A-	Bbb	8/76
Comm'l. Paper	A-2	A-3	7/80
Fitch			
1st Mtge. Bonds	A	A-	6/80
G&R Bonds	A	Bbb+	6/80
Pref. Stock	A-	Bbb	6/80
Comm'l. Paper	F-1	F-2	6/80

(Case 27774; Tr. 884-885)

Mr. O'Brien further stated that the Company's program to refinance short-term debt could not be carried out without emergency rate relief (Case 27774; Tr. 886); that the ability to refinance short-term debt was critical to the Company's construction program (Case 27774; Tr. 889); and that the Company's 1981 construction program was similarly dependent upon satisfactory levels of emergency rate relief (Case 27774; Tr. 891). Mr. O'Brien testified that the drain of Shoreham's construction expenditures on LILCO's cash flow was endangering the Company's ability to provide adequate service (Case 27774; Tr. 891) and that the failure to provide adequate rate relief could place the financial position of the Company in jeopardy (Case 27774; Tr. 892). Mr. O'Brien even admitted that the Company's cash flow position during 1981 would be "far from satisfactory ... even if the full amount of rate relief which the Company is seeking is granted." (Case 27774; Tr. 892) The Company was precluded from asking for a greater amount of rate relief in 1980 since "that would have placed too much of an increased burden on consumers." (Case 27774; Tr. 893)

These dire warnings of the Company's chief financial witness should be an alarming signal to the NRC that LILCO's financial capabilities at the stage of the Shoreham project is questionable at best. It must be further emphasized that the above financial assessment is predicated on a total project cost of \$2.2 billion, based on a fuel load date of May, 1982 and an in-service date of January, 1983.

According to LILCO Senior Vice President Charles Davis, a one-year delay in the in-service date would add \$200-300 million to the project cost (Case 27774; Ex. 44). In view of the substantial delays in meeting the timetable established by the Company's June 1980 Master Construction Schedule*; the recent slippage in the issuance of the Shoreham SER (Attachment F); and the numerous remaining regulatory and construction hurdles such as TMI requirements, ATWS, and containment inerting, a minimum delay in the completion of Shoreham of at least one year is a virtual certainty. LILCO's financial ability to complete the project is highly questionable.

The foregoing paragraphs have discussed LILCO's history of optimistic representations to the Public Service Commission which subsequently turned out to have been inaccurate. The Public Service Commission cannot be presumed to be willing to indefinitely go on

*The Company issues "Monthly Status Reports" on the progress of Shoreham construction, many of which were marked as Exhibits in Case 27774. Most recently (November report), the Company has felt the impact on its construction schedule of its artificial systems turnover practices. In order to demonstrate that Shoreham construction was "on schedule", the Company deferred an unusually large number of unfinished items to its Master Punch list and this practice is now further jeopardizing the Master Construction Schedule (Attachment E). It is essential that NRR review these monthly reports to establish the degree of control which LILCO has over the Shoreham project and to attempt to assess a date by which the project could be completed. saddling ratepayers with Shoreham construction expenditures when LILCO's promised performance consistently fails to materialize. In fact, the PSC's restiveness with LILCO's repeated rate-relief requests is demonstrated by the fact that the most recent proceedings on rate relief were combined with an inquiry into the alternatives to completing Shoreham. The PSC's receptiveness to further rate-relief requests can be expected to be dampened even further by the spectacle of the current Grand Jury investigation into LILCO's involvement with the Bokum Resources Corp.

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Finally, SOC contends that LILCO's break-neck construction schedule and its chronic capital shortgage create a troubling incentive to cut corners during construction. LILCO should be required to demonstrate to NRC inspectors that its cash-flow problem has not and will not result in any compromise of quality control.

SOC believes that NRR's evaluation of LILCO's technical and financial capabilities must carefully review the integrity of the Company's Master Construction Schedule, in particular, the practice of accelerating subsystem turnov rs from the constructor to the LILCO Start-Up Organization. In his summary of the May 8-9, 1980 Caseload Forecast Panel Visit, NRC Shoreham Project Manager Jerry Wilson was critical of the Company's faiure to have developed "the detailed interface between the construction schedule and the preoperational test schedule." (Attachment G) That "interface", known as the Master Construction Schedule, was completed in June of 1980. When it was issued, it contained a number of "negative slack" schedule items (i.e., subsystems that were already behind schedule at the time the schedule was established) and a highly optimistic 16-month preoperational test schedule (Attachment G).

In an attempt to maintain the appearance of being "on schedule", LILCO has accepted as "turned over" a number of sybsystems with a high number of unresolved construction items. These items have created a rapidly ballooning "Master Punch List" which is becoming the responsibility of the LILCO Start-Up Organization. In addition to jeopardizing the construction and preoperational test schedule (see Attachment E), there is no assurance that LILCO has the capability to resolve these numerous Punch List items, complete construction and conduct the preoperational testing without compromising the overall integrity of the plant's construction.

The Commission's regulations (10 CFR Part 50, Appendix C) state that the applicant should provide an estimate of total nuclear production plant costs accompanied by a statement describing the basis from which the estimate is derived. Part 4 of the same Appendix authorizes the Commission to request the applicant to submit additional or more detailed information respecting its financial arrangements and status of funds. SOC therefore requests that the present construction permit be suspended and that the completion date not be extended unless:

 LILCO specifies its present estimate of all remaining construction costs and provides the basis for these estimates;

(2) The NRC evaluates these estimates and makes findings on whether they are realistic, and, if they are not, on whether LILCO can finance the true project cost;

(3) LILCO provides the NRC Staff with estimates of all fuel cycle costs including the cost of waste disposal as required by 10 CFR Section 50.233(f);

(4) The NRC completes an investigation into whether items characterized by LILCO as "turned over" have in fact been completed or nearly completed; and

(5) The NRC determines that LILCO's financial position presents no threat to quality control in the construction of Shoreham.

C. SITING CRITERIA

SOC contends that operating a nuclear power plant at the Shoreham site endangers public health and safety because the population density and distribution, the topography, and the configuration of transportation corridors would make prompt evacuation of Eastern Long Island virtually impossible during unfavorable weather conditions. The Commission's regulations (10 CFR Section 50.35(a)) require that the licensing board make a finding that "taking into consideration the site criteria contained in Part 100, the proposed facility can be constructed and operated at the proposed location without undue risk to the health and safety of the public before issuing a construction permit." Pursuant to 10 CFR Section 50.91, this consideration would also govern the reissuance of a construction permit.

The accident at Three Mile Island has sensitized the Commission to the importance of evacuability and siting. That accident has led the Commission to recognize the need for more effective emergency response capability. In proposing new rules on the subject, the Commission stated that it now regards "emergency planning as equivalent to rather than secondary to siting and design in public protection." See 44 Fed. Reg. 75169 (December 19, 1979).

On August 19, 1980, the Commission published final rules which require workable evacuation plans within an emergency planning zone of ten miles as a condition for operation of a plant (45 Fed. Reg. 55402 et.seq.). Furthermore, the NRC Staff acknowledges in NUREG-0396 that a ten-mile radius is not the furthest extent of the area threatened by plume exposure in the event of a "Class 9" accident. The Commission's regulations (10 CFR Part 50, Appendix E, Part 3) now require an applicant for an operating license to demonstrate in the FSAR that appropriate measures can and will be taken in the event of an emergency.

The Commission recently directed its Staff to prepare new siting criteria which could be used as a basis for proposed rule-making on the issue of plant location. In response, the Staff published NUREG-0625 in August, 1979. In NUREG-0625, the Staff acknowledged that the risk of accidents including "Class 9" accidents is so high that the consequences of such accidents should be considered in the siting decision. See NUREG-0625, page 42. The report recommends that a minimum radius for an emergency planning zone would be ten miles and that the actual emergency planning zone around a given plant should be determined by the relationship of topography, transportation corridors and population. In any case, the emergency planning zone should be capable of being evacuated promptly. See NUREG-0625, page 48. The report also acknowledges that the consequences of a "Class 9" accident are not limited to the emergency planning zone but extend to an area twenty miles in radius. Population density within this large area must be considered in the siting decision. See NUREG-0625, pages 48-50. The report follows up this recommendation with a subsequent recommendation recommending that permitees avoid sites with characteristics that require compensatory, unique design features. See NUREG-0625, page 57. The report explicitly states as a premise that

Although site acceptability is established during the construction permit review, substantive new information could require reopening the issue of site acceptability any time during the plant life.

SOC contends that the Commission's recent acknowledgement that siting is a necessary component of "defense in depth" is precisely the kind of "new information" which should be taken into consideration. SOC contends that Long Island residents living east of Shoreham are "entrapped" in an area from which they can only be evacuated by traveling closer to the plant. The capacity of the roads serving the area does not permit "relatively prompt evacuation". During the summer, a large seasonal population strains the road capacity even under non-emergency conditions. During the winter, storms and snow accumulation frequently reduce road capacity to a point that makes prompt evacuation impossible. LILCO admits in the January, 1979 version of the FSAR that it would take eighty minutes to notify and evacuate only the people living within a two-mile radius of the plant. See Revision 15 of the FSAR dated January, 1979, figure 13.3.5-3.

NUREG-0625 also recommends that soil characteristics at the site of a nuclear power plant be such that it would be possible to isolate a melted core before radioactive material escapes in large amounts into the acquifer. See NUREG-0625, page 53. The task force envisions plants being located on soil permitting only a slow rate of groundwater movement. This makes it possible to take interdictive measures before groundwater transport contaminates large amounts of ground and surface water. Long Island soil and subsoil is extremely porous and permits rapid groundwater transport.

In summary, both the Commission and Staff have recognized as a result of the accident at Three Mile Island, that "Class 9" accidents are possible and that siting must play a role in preventing such accidents from causing widespread harm. To license Shoreham, with its unfavorable site characteristics, would constitute a distressing willingness to "grandfather" plants now under construction even though the Commission recognizes the importance of siting in protecting public health and safety.

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New construction permit requests have flowed to a trickle. If the lessons of Three Mile Island are not applied to plants under construction, the net result will be that only the tiny number of people affected by plants entering the application process now will benefit from these lessons.

SOC requests that the effectiveness of the construction permit be suspended while the applicant and the NRC determine whether "relatively prompt evacuation" of eastern Long Island is possible in the event of a "Class 9" accident at Shoreham. It is essential that this relief be granted at the CP extension stage and not at the operating license stage. As the appeal board put it in Northern Indiana Public Service Company (Bailey Generating Station, Nuclear 1) ALAB-619, _______ NRC_____

[W]e are unimpressed with the argument of the applicant and the Staff that petitioners can appropriately be told to withold their site suitability contentions until the operating license stage has arrived. It does no disservice to the concept of a two-step licensing process to conclude that in circumstances such (emphasis added). Manifestly, if there currently exists substantial cause to believe that the... the matter further--rather than years hence when, investment, the facility is nearing completion

In the alternative, SOC requests that the effectiveness of the construction permit be suspended while the NRC determines whether facility modifications, rather than cancellation of the entire project, should be ordered to compensate for Shoreham's unfavorable site characteristics. III. CONDITIONS THAT MUST BE IMPOSED ON THE COMPANY IF THE CONSTRUCTION PERMIT IS EXTENDED

A. Documentation of Deviations

SOC contends that the Board should reissue the construction permit, if at all, only if it imposes three conditions. The first condition is that LILCO agree to provide documentation of all the instances in which the design of Shoreham differs from the standards set forth in the Standard Review Plan and that LILCO show in each instance that the deviation involves no compromise of safety. The second condition is that the Staff determine which version of the Standard Review Plan it will use in evaluating LILCO's FSAR and in issuing a SER. The third condition is that the Staff scrutinize LILCO's documentation of the deviations from the Standard Review Plan, make an independent determination of whether safety is compromised by the deviations, and require facility modifications where the Staff determines they are required.

Because of the extremely long interval between the time LILCO ordered the Shoreham plant from LILCO's vendor and the time LILCO published the FSAR, the issue of which version of the standard review plan to use in evaluating the FSAR is particularly compelling. Unless the most recent version of the standard review plan is used, the technical lessons drawn from the accident at Three Mile Island will not benefit the public living close to the Shoreham plant. This issue is interpenetrated with the issue of whether and when to require that deviations from the SRP, and justifications for those deviations, be documented. The NRC and its Staff have acknowledged in a number of ways that the existing use of the standard review plan needs improvement. A memorandum from Leonard Bickwit to the Commission, dated August 14, 1980, on the subject, states:

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We and OPE recommend that the review process be improved so as to provide better documentation and greater assurance that the regulations are complied with.... We recommend that the Staff compare the Standard Review Plan and the regulations, document that comparison, and, when and if necessary, amend either the standard review plan or the regulations. In this way the Commission would be confident that all of the regulations are covered in the Standard Review Plan... We recommend that where practical, applicants with pending applications be requested to state, with supporting references, that each and every applicable NRC regulation is complied

The NRC on December 11, 1980 issued an advance notice of proposed rule-making on changes in nuclear power plant facilities after issuance of the construction permit. See 45 Fed. Reg. 81602. This proposed rule-making addresses itself to the troubling fact that no standards exist for deciding how much of a change from a construction permit an applicant may make before being required to go through the formal. construction permit amendment process. At present, a permitee is bound by "the principal architectural and engineering criteria". In wrestling with the question of "what are principal architectural and engineering criteria and when does a proposed change fall within these criteria?" (see 45 Fed. Reg. 81602), the Staff has suggested that these criteria should be defined by the Standard Review Plan, the general design criteria, the regulatory guides, and the branch technical position. The Commission summarizes the problem as follows in its notice of proposed rule-making:

The key problem, then, is to clarify and specify to what information the CP holder should be bound, at what point in the licensing process, under what circumstances, and through what means. There is also a need to control the way in which a CP holder implements the NRC criteria. SOC contends that the problem addressed in this proposed rule-making is another facet of the problem addressed in the Bickwit memo. As construction permit holders deviate from the principal architectural and engineering criteria embodied by the Standard Review Plan, it becomes necessary to create a record of what these deviations are and whether they affect safety. SOC contends further that if LILCO agreed to document Shoreham's deviations from the standard review plan, the problem addressed by the notice of proposed rule-making would be resolved in LILCO's case.

In fact, the NRC has previously taken the position that LILCO ought to document Shoreham's deviations from the Standard Review Plan. See NRR Office Letter #9 by D.C. Rusche, dated June 18, 1976. Mr. Rusche subsequently exempted Shoreham from the requirements of documenting deviations. However, the current director of the Office of Nuclear Reactor Regulation reaffirmed that documentation of deviations in the SER "may be desirable." See Memorandum from Harold Denton to the Comission, dated June 13, 1980 re compliance of operating license applicants with current NRC regulations. Enclosure 1 to that letter stated that the NRR is reviewing Mr. Rusche's Office Letter #9 to determine if the policy of documenting deviations could be extended to more plants. Shoreham is a likely candidate for addition to the list and that question should be confronted now.

The Commission published a notice of proposed rule-making on the issue of documenting deviations on Thursday, October 9, 1980. See 45 Fed. Reg. 67099. In that notice of proposed rule-making, the Commission stated:

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Requiring license applicants to identify and justify deviations from the acceptable criteria in the applicable revision of the SRP would enhance the quality of the Staff's review of applications and assist the Staff in making the determinations required by 10 CFR Part 50. In addition, such documentation would more clearly identify the bases for the acceptability of plant design and their relationship to current licensing criteria.

Given the support that has been expressed for the documentation procedure, the Board should assure that Shoreham's SER will document deviations from the standard review plan. This documentation is practically indispensable when a plant is being reviewed to determine what retrofits or updating of facility design should be made. If documentation is permitted to slip pass the OL stage, applying the lessons of TMI to Shoreham will only be that much more difficult. In addition, if the documentation procedure should show that design modifications were needed, documentation before the plant went critical would permit such modifications to be made without worker exposure or load distribution problems resulting from shut-downs.

The need to perform a documentation of deviations for Shoreham is particularly compelling in view of the fact that Shoreham is a 1960's design and is scheduled to come on line in the 1980's. In view of the Bingham amendment (Section 110 of P.L.96-295, June 30, 1980) requirement that documentation of deviation will be required for all operating plants, it is logically indefensible to defer a commitment to that requirement at this stage of Shoreham's construction.

B. TMI-Related Measures

The history of accidents at operating reactors has demonstrated the need for changes in nuclear regulatory strategy. In particular, the accident at Three Mile Island triggered extensive inquiry within and outside the NRC on what changes were called for. The Staff's analysis of this question was published as NUREG-0660. The sufficiency of the measures described in NUREG-0600 (hereinafter referred to as TMI-related issues) is the subject of ongoing debate and litigation.

There are two different classes of TMI-related lessons which must be applied to SNPS now in order to protect public health and safety. First, the analytical techniques applied to the safety analysis of Shoreham must be improved. Second, specific design modifications must be required now.

1. Analyses and Classifications

(i) Systems Interaction.

The accidents at Three Mile Island, Dresden-2, Browns Ferry, and Crystal River showed that, to assure safety, the Staff must consider the potential for adverse, accident-causing or accident-contributing interactions between or among different nuclear plant systems.

In the accident at TMI-2, the combination of closed auxiliary feedwater valves, stuck open pilot-operated relief valves, and misinformation to the operator allowed the failure of adequate feedwater and the partial blow-down to create voids in the primary coolant. The voids in turn produced misleading pressurizer level indications. This resulted in the operator terminating emergency cooling water, which

eventually resulted in failure of the fuel. The release of radioactivity was due to the high sump level causing the pump to turn on and pump radioactive waste to the Auxiliary Building where it was released to the environment as a result of additional errors. The radioactivity in the atmosphere fed back through the control room ventilation system thereby raising the levels to the point where special breathing apparatus had to be worn by the operators trying to control the accident. After the accident, the high radiation levels in the containment and the primary loop have continued to make it very difficult to work on the system to perform the necessary maintenance functions. In general, the multiple, interrelated failures involving various systems and their interactions (with and without human intervention) were not foreseen in the safety analyses conducted as part of the licensing process.

The other accidents cited above all involved the effects of one system on another as well. In each instance, the interaction produced more serious consequences than had previously been expected.

The NRC has repeatedly acknowledged the need for better understanding of the implications of systems interaction for safety. (See, e.g., pp. 148-151, NUEG/CR-1250; NUREG-0585, p.3-3; NUREG-0660, "Task" II.C.3.)

SOC therefore contends that LILCO should be required to complete a systems interaction study demonstrating that adverse interactions will not jeopardize public health and safety at Shoreham.

(ii) Interim Reliability Evaluation Program (IREP).

The need for plant-specific assessment of accident probabilities for operating reactors has been acknowledged by the NRC's Advisory Committee on Reactor

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safeguards. See letter of Milton S. Plesset, ACRS Chairman, to J.F. Ahearne, entitled "ACRS Report on NTOL Items from Draft 3 of NUREG-0660", dated March 11, 1980, NRC News Release 80-56. The preparation of an IREP for Shoreham would address the need to identify particularly high-risk accident sequences at that plant and would permit a determination of what design modifications would help prevent these high-risk sequences.

SOC therefore contends that preparation of a plant-specific IREP should be a condition of construction permit renewal.

The current classification of systems and equipment into "safety-related" and "non-safety-related" is unsatisfactory and is linked to the now-discredited design basis accident/single failure approach to safety analysis. As a result, the range of structures, systems, and components subject to quality assurance requirements and NRC review needs to be expanded, paying special attention to potentially damaging effects of non-safety equipment on safety equipment. This must be done either by enlarging the safety-related category or by establishing intermediate classifications between systems judged most and least important to safety.

For example, during the course of the TMI-2 accident, several systems that had been classified as non-safety systems were used to mitigate the accident. The reactor coolant pumps were used at various times to accomplish core cooling. Had the accident included the loss of offsite power, the reactor coolant pumps would have been unavailable. The loss of offsite power during an accident is an event that must be considered in accordance with the provisions of General Design Criteria-17. However, since the reactor coolant pumps were classified as non-safety components, the lack of an onsite emergency power supply to operate the pumps was not required. Other examples of systems classified as non-safety which affected the course of the TMI-2 accident are the pressurizer level ...struments, the PORV and its associated block valve and the auxiliary feedwater system. The failure of the pressurizer level instruments required termi..ation of reactor coolant pump operation. As a result, although provisions have been made to supply onsite power to the pressurizer level instruments, the design is such that a single failure will result in loss of power to all three pressurizer level instruments.

The TMI-2 accident also pointed up the need to require that systems classified as important to safety meet <u>all</u> the requirements applicable to safety grade equipment. For example, the emergency core cooling system was not designed to prevent operator interference with completion of its safety function. The protection system signals used to initiate ECCS operation were not derived from direct measurements of the desired variable-reactor vessel water level. The containment isolation system was not initiated by diverse

Finally, the TMI-2 accident disclosed the inadequacy of the design basis event for which safety grade systems must provide protection. For example, during the TMI-2 accident, an attempt was made to use the Decay Heat Removal (DHR) system for core cooling. This attempt was unsuccessful for two reasons. First, the design basis did not require the DHR system to be operable up to the design pressure of the reactor coolant system. Second, the DHR system leak rate and radiation shielding design was established on the basis that it would always be carrying water with a relatively low level of radioactive contamination. Because of the extensive core damage at TMI-2, the DHR system could not

be used because its leak rate and radiation shielding were inadequate to prevent excessive radiation exposure and reactor coolant system pressure was higher than the RHR system design pressure.

The preceding demonstrates that the licensing review of TMI-2, while based on a fundamental distinction between "safety" and "non-safety" equipment, was not adequate to identify all equipment important to safety, to define the design bases for such equipment, or to identify and prevent adverse interactions between non-safety and safety equipment which can compromise the ability of safety systems to perform their necessary functions.

SOC therefore contends that an extension of the construction permit should be conditioned upon LILCO's agreement to either: (a) suspend construction while the Staff completes its reclassification of the instrumentation, control, and electrical equipment deemed to be safety-related, or (b) upgrade any such equipment which is subsequently reclassified from non-safety-related to safety-related.

2. Design Modifications

SOC contends that the in-plant consequences of the TMI-2 accident demonstrate the need to require two TMI measures:

(1) Identification and installation of instrumentation needed for detection of inadequate core cooling; and

(2) Determination of need for hydrogen recombiners and implementation of hydrogen control measures adequate to protect health and safety in light of the analysis published in SECY-80-107, <u>Hydrogen Control Requirements</u> for Small Containments, January 22, 1980.

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Public health and safety require that these TMI-related measures be applied to the Shoreham plant. By requiring LILCO to undertake these studies and design modifications now rather than at the Operating License stage, the Board will assure that the needed changes in plant design can be made with the least possible cost and disruption to construction.

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IX. CONCLUSION

The Shoreham Opponents Coalition contends that the Atomic Energy Act of 1954, the National Environmental Policy Act, and public health and safety require:

 that a hearing be held to determine whether good cause exists to extend the completion date in CPPR-95;

(2) that the Staff prepare a supplement to the Final Environmental Statement for SNPS;

(3) that a Licensing Board revoke the SNPS construction permit, or in the alternative, re-issue the permit subject to the conditions specified by SOC in Section III. of this Petition.

Respectfully submitted by Stephen B. Latham

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TWOMEY, LATHAM & SCHMITT Attorneys for SHOREHAM OPPONENTS COALITION 33 West Second Street Riverhead, N.Y. 11901

(516) 727-2180

Dated: January 23, 1981

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LONG ISLAND LIGHTING COMPANY

SHOREHAM NUCLEAR POWER STATION P.O. BOX 618, NORTH COUNTRY ROAD + WADING RIVER, N.Y. 11782

November 26, 1980

SNRC-517

Mr. Harold R. Denton Director of Nuclear Reactor Regulation U. S. Nuclear Regulatory Commission Washington, D. C. 20555

> SHOREHAM NUCLEAR POWER STATION - UNIT 1 Construction Permit No. CPPK-95



Dear Mr. Denton:

Pursuant to 10 CFR § 50.55(b), Long Island Lighting Company requests that the Nuclear Regulatory Commission extend the date for completion of the Shoreham Nuclear Power Station, Unit 1, from December 31, 1980 / to March 31, 1983. The extension is needed for a number of reasons which include:

- 1. New Regulatory Requirements
- Evolving Interpretation of Existing Regulatory Requirements
- 3. Late Delivery of Equipment
- Unexpected Difficulties in Completion of Required Plant Modifications

These factors are discussed below:

1. New Regulatory Requirements

As a result of the accident at Three Mile Island and the subsequent investigation of that accident, a significant number of new regulator; requirements have been adopted or are in the process of being adopted. Accordingly, LILCO has had to factor additional time into the construction schedule to accommodate:

- A. the time required for the promulgation of final regulatory requirements;
- B. the reworking of systems where existing equipment must be modified and/or replaced; and
- C. the design, procurement and installation of new systems and equipment.

See 44 Fed. Reg. 29545 (1979)

ATTACHMENT A

FC-8935

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Mr. Harold R. Denton Re: Construction Permit No. CPPR-95

November 26, 1980 Page 2

Significant new requirements include the Technical Support Center (TSC), Post Accident Sampling Facility, and the Emergency Operations Facility (EOF). Each of these necessitates the modification of existing buildings or the construction of new buildings. Additional sampling capability and instrumentation are also being developed to meet the functional requirements of these facilities. Moreover, development.

2. Evolving Interpretation of Existing Regulatory Requirements

NRC regulations are primarily stated in general terms. Using all available guidance, LILCO and its contractors designed Shoreham such that, in their judgment, compliance with these general requirements was achieved. In exercising its review with the general Commission regulations, has questioned compliance LILCO had been able to present sufficient information to resolve these Staff concerns. In a number of cases, however, LILCO has elected to incorporate modifications requested by the Staff. An example of such modifications is the addition of a new system

3. Late Delivery of Equipment

Late delivery of components has continued to cause delays in the completion of Shoreham. A significant example is the delivery date for the 480 volt LPCI motor generator (MG) sets. To address the Staff's concerns raised during preparation of the Shoreham power supplies. Difficulties in the design of the LPCI system caused the vendor's expected delivery date to be delayed from December 1979 until March 1981.

The unavailability of small bore piping valves, orifices, and hanger materials has slowed the completion of piping work in the Main Steam Tunnel. The absence of this equipment not only delayed completion of the systems for which it is needed, but it also had an adverse impact on the completion of other efforts in the area.

4. Unexpected Difficulties in Completing Plant Modifications

There have been unexpected difficulties in modifying systems to meet regulatory requirements. For example, system designs within impingement, and separation criteria which evolved subsequent to the original design effort. This work has proceeded more slowly than anticipated because of space constraints in the tunnel. Additionally, the delays in completing the piping systems have resulted in secondary delays in electrical conduit and instrumentation installation as noted above.

Mr. Harold R. Denton Re: Construction Permit No. CPPR-95

November 26, 1980 Page 3

Another example of the unexpected difficulties in completing the construction effort is reflected in the motor control centers/ cable/conduit design and installation difficulties resulting from the imposition of final pipe break analysis criteria.

LILCO has, wherever possible, made scheduling and administrative changes to compensate for the ticipated delays described above. The net result, however, has to extend the expected fuel

We reported to the NRC Caseload Forecast Panel in May 1980 that the plant would be ready to load fuel between June and September 1982. Our current project plans establish a May 31, 1982 fuel load. Accordingly, and in order to provide a suitable margin for the completion of Shoreham, it is requested that the latest completion date be extended from December 31, 1980 to March 31, 1983.

Very truly yours,

P. Novarro, Project Manager Shoreham Nuclear Power Station

RH/cc

cc: Mr. B. J. Youngblood, Chief, Licensing Branch No. 1

ATTACHMENT 2

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00-81-9

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION Harold R. Denton, Director

In the Matter of

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Docket No. 50-322

LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1)

(10 C.F.R. 2.206)

DIRECTOR'S DECISION UNDER 10 C.F.R. 2.206

In filings dated December 31, 1980, and January 23, 1981, the Shoreham Opponents Coalition (SOC) requested pursuant to section 189 of the Atomic Energy Act of 1954, as amended, and 10 C.F.R 2.206 of the NRC's Rules of Practice that the Director of Nuclear Reactor Regulation institute a proceeding to determine whether good cause exists to extend the construction permit for the Shoreham Nuclear Power Station, Unit 1. SOC also requested "that, to protect public health and safety, the Shoreham construction permit be suspended pending the outcome of the hearing [on the construction permit extension]." Petition at 1 (Jan. 23, 1981). The Long Island Lighting Company (LILCO) had requested on November 25, 1980, an extension of Construction Permit No. CPPR-95 to March 31, 1983. 1/ By separate memorandum, the NRC staff has made recommendations to the Commission with respect to SOC's request for a hearing on the extension.

^{1/} See Attachment A to Petition (Jan. 23, 1981). The construction permit would have expired on December 31, 1980. Under 10 C.F.R. 2.109, which derives from section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), the permit remains in effect until the application for its renewal has been finally determined.

of the construction permit. $\frac{2}{}$ The remainder of this decision is concerned with SOC's request that I suspend construction of the Shoreham facility pending the outcome of the proceeding on extension of the construction permit.

SOC claims that suspension of the permit should be ordered "to protect public health and safety". At no point in the petition does SOC give reasons why public health and safety would be threatened imminently if permit suspension were not ordered. To be sure, SOC lists a number of matters which it believes should be considered in connection with the application for permit extension. $\frac{3}{}$ These matters concern, however, primarily issues that go to the question of whether LILCO should be granted an operating license for the Shoreham plant. Whether or not these matters are litigable in a proceeding on permit extension, they do not reveal any threat to public health and safety that stems from the facility's construction. Rather, SOC

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^{2/} A copy of this memorandum has been served with this decision on SOC and LILCO. SOC's petition lists a number of items which SOC believes should be litigated in a hearing on the construction permit extension or should be imposed as conditions on any permit extension. Because SOC has requested that these matters be litigated in the permit extansion proceeding, the Staff will respond to these matters in the proceeding on permit extension, not under 10 C.F.R. 2.206. See Pacific Gas & Electric Go. (Diable Canyon Nuclear Power Plant, Units 1 & 2), CLI-BI-D (May B, 1981).

^{3/} In part, the petition styles these matters as arguments for "revocation" of the construction permit. Petition at 4-20 (Jan. 23, 1981). However, SOC wants these matters litigated in the construction permit proceeding. If these matters are litigable in that proceeding and if SOC's views prevail, extension would be denied and thereby the permit would be terminated.

has alleged only that <u>operation</u> of the facility would be unsafe or environmentally unsound, because of the facility's siting, the risk of severe accidents, and the need for additional safety systems and analyses. Thus, the petition does not raise allegations that might provide a basis for suspension, pernaps even immediate suspension, of construction: <u>e.g.</u>, construction of the facility has been improper under existing requirements or implementation of the quality assurance program has been inadequate. $\frac{4}{}$

The only nexus between any of the matters raised by SOC and its request for immediate suspension of the permit is SOC's request that suspension of the permit be ordered pending a determination of the feasibility of evacuation after a severe accident during operation of the facility. $\frac{2}{}$ SOC's citation to a recent Appeal Board decision is inapposite as a basis for SOC's request. <u>Northern Indiana Public Service Co.</u> (Bailly Generating Station, Nuclear 1), ALAB-619, 12 NRC 558, 569-70 (3980). The <u>Bailly</u> decision suggests only that it may be appropriate to consider site suitability contentions in a proceeding on construction permit extension, not that suspension of construction pending resolution of such issues in the permit extension proceeding is appropriate. The feasibility of evacuation, as it relates to emergency planning, is relevant to the assessment of whether the plant should operate. Although that issue must be resolved

<u>4/ See Proposed General Statement of Policy and Procedure for Enforcement Actions</u>, 3 17.0., 45 Fed. Reg. 66,754, 66,757 (Oct. 7, 1980).
<u>5/ Petition at 20 (Jan. 23, 1981).</u>

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before operation of the facility, evacuation considerations pose no imminent threat to public health and safety that would warrant immediate suspension of construction.

Suspension of construction is not mandated, therefore, by law or Commission policy. As noted above, a construction permit or any other Commission license generally remains effective under a timely application for renewal until the Commission has finally determined the application. $\frac{6}{}$ The permittee pursues construction work under a construction permit at its own risk pending approval of permit extension or of the application to operate the plant. $\frac{7}{}$ Even where unresolved safety questions are raised after issuance of the construction permit, institution of proceedings to suspend the permit is not required, because "permitting continued construction of the plant despite unresolved safety questions does not of itself pose any danger to the public health and safety". $\frac{3}{}$

Before LILCO may receive an operating license, it will be required to do anything necessary to ensure safe operation of the plant. The cost or difficulty associated with implementing needed actions to ensure safety are not relevant consideration to this agency. The safety standards which an applicant must meet to obtain an operating license are unconditional. $\frac{9}{2}$

- 5/ 10 CFR 2.109; 5 U.S.C. 558(c).
- 7/ See Power Reactor Development Co. v. International Union of Electrical, Radio & Machine Workers, 367 U.S. 396 (1961).
- B/ Porter County Chapter of the Izaak Walton League, Inc. v. NRC, 606 F.20 1363, 1369 (D.C. Cir. 1979).
- 9/ Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2). ALAB-023, 12 NRC 570, 577-73 (1980).

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