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May 7, 1990

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## By Telecopy

Mr. Walter R. Butler  
Director, Project Directorate I-2  
Division of Reactor Projects I/II  
U.S. Nuclear Regulatory Commission  
One White Flint North Building  
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Requests for Voluntary Suspension of Effectiveness  
of Prospective NRC Administrative Actions  
Concerning Shoreham Nuclear Power Station  
(NRC Docket 50-322, Facility Operating License NPF-82)

Dear Mr. Butler:

Late last Friday afternoon, May 4, I received, as LILCO counsel, copies of two letters sent earlier that day to you by James P. McGranery, Jr., counsel for the Shoreham-Wading River Central School District and Scientists and Engineers for Secure Energy, Inc.

The first of those letters requested that the NRC Staff voluntarily stay the effectiveness of any action which it might take on pending applications by LILCO to modify the physical security plan and to discontinue the local offsite emergency response measures (the so-called "LERO" amendment) for the Shoreham Nuclear Power Station, pending action by the U.S. Court of Appeals on a stay request which Mr. McGranery had not yet filed on a third matter, namely, the NRC's issuance to LILCO of an exemption from onsite property insurance requirements. Each of these three requests flows from the 1989 agreement between LILCO and New York State that LILCO will not operate the Shoreham plant and will transfer the plant to the Long Island Power Authority for ultimate disposal.

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The second of Mr. McGranery's letters recited that the Staff has agreed to his request, and proposed language memorializing that agreement.

Since LILCO did not receive either timely information or opportunity to participate in whatever discussions may have taken place on these matters with Mr. McGranery, LILCO has no way of knowing the accuracy of his representations. LILCO understands that Mr. McGranery is not asking the Staff to suspend completion of its work on the security and LERO matters, but rather to stay their effectiveness pending the outcome of litigation involving the insurance exemption. The balance of this letter is premised on that distinction.<sup>1/</sup>

LILCO objects to suspension of the effectiveness of either the security or the LERO amendments pending the disposition of litigation on the insurance exemption. None of the matters LILCO has sought to modify in the security amendment and the LERO amendment is needed in the nonoperating, defueled state of the Shoreham plant, and the Staff has so found in its Proposed Findings of No Significant Hazards Consideration. Thus, absent Mr. McGranery's request, the Staff would act on these matters in due course, and LILCO believes that this action would in fact take place imminently.

LILCO's analyses to date indicate that these measures would save LILCO on the order of \$ 7 to 8 million annually in the case of the LERO exemption, and close to \$ 1 million annually in the case of the security amendments. In addition, delay constrains LILCO's administrative flexibility in ways that cannot be easily monetized. On the assumption that the Court of Appeals took a month to decide the stay request, the Staff's granting of Mr.

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<sup>1/</sup> LILCO understands that Mr. McGranery included a similar request concerning the effective date of the property insurance exemption along with many other requests in a letter dated April 23. LILCO did not specifically object to that request, though it did oppose Mr. McGranery's request generally. However, even that request related to a matter then under consideration directly by the NRC. His present request bootstraps the security and LERO matters on top of the only matter legitimately before the Court of Appeals (the insurance exemption). Thus analytically the insurance exemption is not a legitimate precedent for his current request, and the absence of specific objection from LILCO to suspension of the effectiveness of the insurance exemption should not be taken as an indication that LILCO does not object to the current request.

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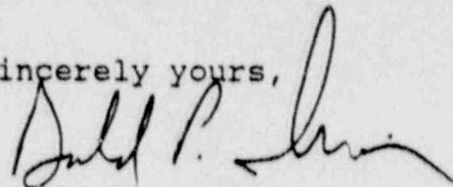
McGranery's request would cost LILCO upwards of \$ 600,000 as well as non-monetizable costs. Mr. McGranery's request thus prejudices LILCO directly and substantially.

LILCO understands that Mr. McGranery intends to represent to the Court of Appeals that the Staff has voluntarily agreed to stay the security and LERO matters pending the outcome of his appeal from the insurance exemption. This, it may be assumed, will be used by him as a basis for an argument that the Court should grant such a stay itself since the Staff has no objection to it. Thus, for the Staff to agree voluntarily to suspend the effectiveness of its approval of the LERO and security requests could be misused in support of an argument attempting to put a measure of responsibility for the resulting costs on the Staff, rather than isolating it where it belongs, namely, on the party initially requesting the suspension. Since there is no health-and-safety reason to defer their effectiveness, LILCO opposes Mr. McGranery's request to the Staff.

LILCO also strenuously opposes the notion that the Staff would have agreed to discuss, much less grant, such a request, which directly affects LILCO's license, without giving LILCO an opportunity to participate in the decision. LILCO requests that the Staff not again consider any such ex parte requests from third parties on matters that affect the Shoreham operating license without ensuring that LILCO is notified and given an opportunity to participate in the decision.

Thus LILCO requests that the Staff promptly notify Mr. McGranery that he is not authorized to represent to the Court of Appeals that the Staff consents to the imposition of a stay on the effectiveness of the security and LERO exemptions. LILCO also requests that if the Staff has agreed to suspend the effectiveness of the security and LERO matters, it rescind that agreement forthwith, since that agreement was made ex parte, in derogation of LILCO's rights and to LILCO's substantial prejudice.

Sincerely yours,



Donald P. Irwin  
Counsel for Long Island  
Lighting Company

cc: James P. McGranery, Jr., Esq.  
Steven F. Crockett, Esq.  
Honorable Samuel J. Chilk