

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
+LONG ISLAND LIGHTING COMPANY) Docket No. 50-322
) (OL)
(Shoreham Nuclear Power Station,)
Unit 1))

NRC STAFF'S COMMENTS ON APPLICANT'S
"BACKGROUND OF PROCEEDINGS" STATEMENT

The NRC Staff generally agrees with the "Background of the Proceeding" statement contained in Appendix A of the Applicant's proposed Findings of Fact, subject to the changes set out below. Further, for the convenience of the Board, the Staff has reproduced and attached hereto a copy of the Applicant's "Background of the Proceeding" with deletions shown thereon crossed through and bracketed, and additions underlined.

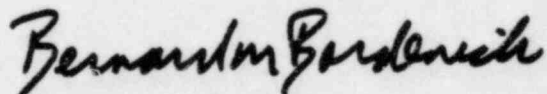
The changes the Staff advocates are:

- Page 1 Delete phrase "after one of the most extensive hearings in AEC history,1/" in first sentence.
Delete footnote 1.
- Pages 1 & 2 Delete second paragraph and table of contents listing.
- Page 3 Replace phrase "revised in December 1981" and following sentence in first paragraph with "has undergone numerous revisions, with the final revision published in December 1981."
Delete phrse "--3½ years after issuance of the FES." in second paragraph.
Add word "has" after "matters" in last sentence of paragraph.

- Page 5 Delete last half of paragraph beginning with "The Board was subsequently" and ending with "held to date."
- Page 6 Add words "extensive and" after "parties" in second paragraph.
- Page 8 Delete second sentence "As with OHILI/NSC, these parties' petitions were vigorously contested." in first paragraph.
- Add footnote after "January 24, 1980." in first paragraph, reading: "The NRC Staff did not oppose admission of SOC. However, as recommended by the Staff, SOC's participation was limited to matters arising subsequent to the TMI accident.
- Replace "was last heard from in" with "has not participated since." in second paragraph.
- Add words "Shortly after" after "until" in last sentence.
- Page 9 Add words "throughout the hearings" after "consistently."
- Delete period after consistently in first paragraph.
- Delete sentence "The intervening six years involved constant, complex activity." in second paragraph.
- Add to next to last sentence on page word "meetings" after the word "conferences."
- Add at beginning of last sentence phrase "Over 20 of"; replace phrase "occurred as follows:" with "took place in Bethesda, Boston, New York City or Shoreham or other places on Long Island in 1979, 1980 and 1981."
- Page 10 Delete table of dates and places.
- Page 11 Delete rest of paragraph beginning with "27 have been deposed..." and delete footnote 2 in second paragraph.
- Page 12 Replace word "successful" with word "granted." in first paragraph.
- Delete sentence "over two years after LILCO's initial attempts to obtain summary disposition of certain health & safety issues, the Company" replace with "After issuance of the SER in April 1981, LILCO" in third paragraph.
- Delete rest of footnote 2.

- Page 13 Delete last paragraph.
- Page 17 Replace "And the" with "The" and replace "is filled with" with "shows many" and delete "with" in second paragraph.
- Page 19 Replace last sentence in text and quote with, "A month later, after the Suffolk County Legislature rejected the proposed settlement, LIICO renewed its requests that hearings begin."
- Page 20 Delete indented paragraph.
- Pages 20-21 The last paragraph on p. 21 and the list on pp. 20-21 should be an appendix.
- Page 22 Delete first sentence in second paragraph.
- Add word "Numerous" to beginning of second sentence in second paragraph, and add words "made and" after "were."
- Add additional sentence at end of second paragraph reading: "However, public attendance at the hearings, whether conducted on Long Island or in Bethesda, has been very sparse."
- Page 34 Delete "Conclusion."

Respectfully submitted,



Bernard M. Bordenick
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 11th day of February, 1983

APPENDIX A:

BACKGROUND OF THE PROCEEDING

On April 12, 1973, ~~[after one of the most extensive hearings in AEC history,^{1/}]~~ the Atomic Energy Commission issued a construction permit to the Long Island Lighting Company for its Shoreham Nuclear Power Station, Unit 1. See 38 Fed. Reg. 14,183 (1973). The facility is an 820 MWe boiling water reactor located in Suffolk County, New York. The site covers 500 acres on the north shore of Long Island, near the village of Shoreham. At issue now is the plant's operation.

~~[The background of the Shoreham operating license proceeding, currently in its seventh year, is described below in these terms:~~

- ~~1. The Application~~
- ~~2. Staff Review~~
- ~~3. ACRS Review~~

^{1/} ~~There were 70 days of AEC hearings, which began on September 21, 1970 and continued episodically for 2-1/2 years, until ending on January 19, 1973. Another 22 days of related hearings were conducted in 1971 by the New York State Department of Environmental Conservation (DEC). Portions of the record of the DEC hearings "were received in evidence by the [ASLB] . . . to avoid duplication and to expedite [the AEC] proceeding." Long Island Lighting Co. (Shoreham Nuclear Power Station), LBP-73-13, 6 AEC 271, 274, 288 (1973).~~

~~4. Adjudicatory Review~~

~~(a) Atomic Safety and Licensing Boards~~

~~(b) Interveners~~

~~(c) Prehearing Process~~

~~(d) Discovery~~

~~(e) Summary Disposition~~

~~(f) Settlements~~

~~(g) Public Prehearing Examinations~~

~~(h) Hearings~~

~~5. Issues~~

~~(a) Non-Health and Safety Matters~~

~~(1) Environmental Issues~~

~~(2) Extension of the Construction Permit~~

~~(3) New Fuel~~

~~(b) Health and Safety Matters~~

~~6. Conclusion]~~

1. THE APPLICATION

This proceeding concerns LILCO's application to the Nuclear Regulatory Commission for a license to operate Shoreham. LILCO tendered the OL application for the plant, along with its Environmental Report and Final Safety Analysis Report, on August 28, 1975, pursuant to § 103 of the Atomic

Energy Act, 42 U.S.C. § 2133. The application, ER and FSAR, as amended on January 26, 1976, were docketed thereafter by the NRC Staff, and publicly noticed on March 18, 1976. See 41 Fed. Reg. 11,367 (1976). Another major licensing document, the Shoreham Design Assessment Report, was initially submitted by LILCO in January 1976 and has undergone numerous revisions, with the final revision published in December 1981. ~~The FSAR has been revised 27 times since its initial submission.~~

2. STAFF REVIEW

The NRC Staff reviewed the documents just listed, the plant itself and other data as necessary in order to determine whether, in the Staff's judgment, the facility complies with NRC regulations. Summaries of the results of the Staff's environmental review of Shoreham were published in a Draft Environmental Statement on March 24, 1977, and in a Final Environmental Statement on October 25 of that year. The aftermath of Three Mile Island interrupted the Staff's health and safety review. Thus, Shoreham's Safety Evaluation Report did not appear until April 17, 1981 [~~---3-1/2 years after issuance of the FES.~~] To date, SER Supplements have been issued in September 1981 (No. 1), and February 1982 (No. 2). The Staff's review of some matters ^{has} continued during the hearings. Steps were taken to make the Staff's conclusions available for

purposes of settling or litigating affected contentions prior to formal issuance of SER Supplements. See, e.g., Tr. 9145-47.

3. ACRS REVIEW

Shoreham was also reviewed by the Advisory Committee on Reactor Safeguards pursuant to § 182(b) of the Atomic Energy Act, 42 U.S.C. § 2233(b). The site was visited by an ACRS subcommittee on April 30, 1981. Hearings were held by the subcommittee in Washington, D.C. on September 30. The full committee held its hearings on October 15. Based on these public and certain private deliberations, the ACRS concluded in a letter to NRC Chairman Palladino, dated October 19, 1981:

We believe that if due consideration is given to the recommendations above, and subject to satisfactory completion of construction, staffing, and preoperational testing, there is reasonable assurance that Shoreham Nuclear Power Station Unit 1 can be operated at power levels up to 2436 Mwt without undue risk to the health and safety of the public.

SER Supp. No. 2, at 18-3.

4. ADJUDICATORY REVIEW

(a) Atomic Safety and Licensing Boards

On April 29, 1976, the Commission appointed an Atomic Safety and Licensing Board "to rule on petitions and/or

requests for leave to intervene." 41 Fed. Reg. 17,979 (1976). With one change in its membership, that same Board was designated on February 22, 1977 to hold hearings "at a time and place to be fixed" by it. 42 Fed. Reg. 11,294 (1977); see also Tr. 45. [~~The Board was subsequently reconstituted five times, ultimately having four different chairmen and ultimately retaining none of its original members. The reconstitutions were as follows:~~

| <u>Date of Change</u> | <u>ASLB Member Affected</u> |
|----------------------------------|--|
| February 6, 1978 | Replacement of chairman |
| March 2, 1981 | Replacement of chairman |
| December 17, 1981 | Replacement of environmental member |
| February 8, 1982 | Replacement of chairman |
| March 23, 1982 | Replacement of health and safety member |

~~See 43 Fed. Reg. 6346 (1978); 46 Fed. Reg. 16,384 & 62,571 (1981); 47 Fed. Reg. 6510 & 13,069 (1982). The Board as finally constituted in March 1982 concluded the prehearing phase of the case. It has sat throughout all evidentiary sessions held to date.]~~

On May 27, 1982, the Board appointed a member of the Atomic Safety and Licensing Board Panel to assist it, particularly in the area of safety classification and systems

interaction. See Confirmatory Order Appointing Administrative Judge Walter H. Jordan as Technical Interrogator and Informal Assistant (May 28, 1982).

On August 24, 1982, at the request of the Board, issues involving plant security were transferred to a different ASLB, which was "established . . . to continue to guide ongoing settlement efforts by the parties with respect to security planning issues and to preside over the proceeding on those issues only in the event that a hearing is required." See 47 Fed. Reg. 37,984 (1982). This transfer occurred because, given the demands of other aspects of the Shoreham proceeding, the Board was unable to give the requisite attention to the security issues. See Tr. 9306-07. On December 3, 1982, following approval by the security Board of the parties' ^{extensive and} successful settlement efforts, the security proceeding was dismissed. The security Board explained that LILCO and Suffolk County had:

held numerous meetings and negotiations concerning the security contentions of the County. Periodic reports were filed by the parties. Finally, on November 24, 1982, all parties herein filed the "Final Security Settlement Agreement."

. . . .

The Nuclear Regulatory Commission recognizes and encourages fair and reasonable settlement of contested issues. . . . We have considered the nine security contentions of the County, the Agreement of all parties

to resolve those contentions, and the Commission's policy encouraging settlement. Accordingly, we conclude that the Agreement is fair and reasonable and should be approved. The parties and their counsel are deserving of a special commendation for their outstanding efforts which led to a resolution of the security contentions in this proceeding.

Board Memorandum and Order Cancelling Hearing, Approving Final Settlement Agreement, and Terminating Proceeding at 1-2 (Dec. 3, 1982).

(b) Intervenors

Notice of opportunity for hearing on the OL application was published on March 18, 1976, and the deadline for filing petitions for intervention was set on April 19, 1976. See 41 Fed. Reg. 11367-68 (1976). Three groups filed timely petitions to intervene: the New York State Atomic Energy Council, now part of the New York State Energy Office (SEO), the Oil Heat Institute of Long Island, Inc. (OHILI), and the North Shore Committee against Thermal and Nuclear Pollution (NSC). Ten months later, on February 22, 1977, the SEO was granted participation under 10 CFR § 2.715(c) as an interested state, while OHILI and NSC were admitted as consolidated intervenors pursuant to § 2.714. See generally Board Memorandum and Order (Feb. 22, 1977), 5 NRC 481 (1977).

Subsequently, two other parties sought to intervene out of time. [~~As with OHILI/NSC, these parties' petitions were vigorously contested.~~] Suffolk County filed its petition eleven months after the deadline, on March 17, 1977. The Shoreham Opponents Coalition was 3-3/4 years late in seeking admission; SOC filed on January 24, 1980^{*}. Both parties were admitted under § 2.714, the former on October 11, 1977, and the latter on May 1, 1980. See Board Memorandum and Order (Jan. 27, 1978) (confirming rulings made during the Oct. 11, 1977 prehearing conference); Memorandum and Order Relating to Response of SOC to Board Order Dated March 5, 1980 (May 1, 1980). In the spring of 1982, shortly before the hearings began, Suffolk County asked that it be deemed a governmental participant under § 2.715(c) as well as an intervenor under § 2.714. Its request was granted. See Board Memorandum and Order Confirming Rulings Made at the Conference of Parties at 22-23 (March 15, 1982), 15 NRC at 617.

The SEO took part in various aspects of the prehearing process, but not in the hearings themselves. OHILI^{has not participated} [~~was last~~ since heard from in] 1978, although it has not formally withdraw from the proceeding. On November 27, 1978, NSC renounced its link with OHILI, and focused thereafter on matters involving new fuel and emergency planning. NSC has rarely appeared at the hearings. Once admitted, SOC was quite active until^{shortly after} the

*/ The NRC Staff did not oppose admission of SOC. However, as recommended by the Staff, SOC's participation was limited to matters arising subsequent to the TMI accident.

hearings began. Thereafter, like NSC, it has rarely appeared, either settling its contentions with LILCO before hearings began on them or leaving their prosecution to Suffolk County. The County, LILCO and NRC Staff have been active consistently throughout the hearings.

(c) Prehearing Process

The prehearing phase of this proceeding lasted more than six years, from March 18, 1977, when notice of opportunity for hearing was published, to the actual beginning of hearings on May 4, 1982. [~~The intervening six years involved constant, complex activity.~~]

There were four prehearing conferences, held on:

| | | |
|-------------------|---------------|------------------|
| November 10, 1976 | (Tr. 1-42) | |
| October 11, 1977 | (Tr. 43-143) | |
| March 9-10, 1982 | (Tr. 144-529) | |
| April 14, 1982 | (Tr. 645-831) | <u>meetings,</u> |

There were also numerous informal conferences, and other communications among the parties. The more significant of these prehearing exchanges among the parties -- "significant" when measured by the number of participants involved, the extent of work before, during and after the meetings, and the amount of information exchanged took place in Bethesda, Boston, New York City, Shoreham or other places on Long Island in 1979, 1980 and 1981.

| <u>Meeting Dates</u> | <u>Meeting Places</u> |
|---------------------------------|--------------------------|
| March 30, 1979 | Bethesda |
| April 20, 1979 | Shoreham |
| May 2, 1979 | Boston |
| June 5, 1979 | Shoreham |
| August 21, 1979 | New York City |
| November 2, 1979 | Shoreham |
| December 11-12, 1979 | Boston |
| June 17, 1980 | Shoreham |
| July 17, 1980 | Riverhead |
| July 29-30, 1980 | Boston |
| August 29, 1980 | Bethesda |
| September 12, 1980 | Bethesda |
| October 9, 1980 | Boston |
| November 13, 1980 | Shoreham |
| January 21-22, 1981 | Shoreham |
| February 24, 1981 | Bethesda |
| April 9, 1981 | Shoreham |
| May 14, 1981 | Boston |
| May 28, 1981 | Shoreham |
| July 9, 1981 | Shoreham |
| September 9, 1981 | Mineola |

In addition to much cooperation among the parties during the prehearing phase, there were also frequent formal

disputes, resulting in many Board rulings. Controversy centered on intervention, contentions and discovery. See, e.g., Board Orders cited in note 8 below.

(d) Discovery

During the October 11, 1977 prehearing conference, the Board ordered that discovery begin. Tr. 120-21; see also Order Relative to Requests for Clarification and Reconsideration of the Board Order of January 27, 1978, at 4-5 (March 8, 1978). There ensued and has continued to date extensive resort to formal means of discovery -- interrogatories, requests for production, and depositions. Even more extensively, there has also occurred the informal sharing of information, principally in the context of settlement negotiations. Much of the discovery, formal and informal, has taken place after the hearings began. Thus, of the 37 persons deposed so far in this proceeding, [~~27 have been deposed since May 1982, in places from California to New York. The other ten deponents testified shortly before the hearings began, on March 31 and April 22, 1982. All told, extremely large amounts of data have been exchanged, both in writing and orally, during formal and informal discovery.~~^{2/}]

[^{2/} ~~By March 1980, the Board agreed that. "As LILCO correctly points out, formal discovery was set in motion long ago and has~~

(footnote cont'd)]

(e) Summary Disposition

LILCO on June 23, 1978, and the NRC Staff on June 28, 1978, sought summary disposition of issues raised under the National Environmental Policy Act. On December 18, 1978 and February 5, 1979, LILCO requested summary disposition of certain issues raised under the Atomic Energy Act. The motions concerning the environmental issues were ^{granted.} [successful.] See page A-23 below.

The motions concerning health and safety issues were rejected as "premature since discovery will not close until . . . after the issuance of the SER." Board Order Relative to Applicant's "First Group" of Motions for Summary Disposition at 3 (March 8, 1979); Board Order Relative to Applicant's Motion for Summary Disposition on the "Second Group" of Contentions (March 8, 1979).

After issuance of the SER in April 1981, LILCO
~~[Over two years after LILCO's initial attempts to obtain summary disposition of certain health and safety issues, the Company]~~ filed motions for summary disposition of all or parts

[~~(footnote cont'd)~~

~~followed a tortuous path." Order Ruling on Petition of Shoreham Opponents Coalition at 12 (March 5, 1980). But while discovery had already "followed a tortuous path" by 1980, in fact the process was still in its infancy, as measured against the discovery yet to come.]~~

of five SOC contentions. See LILCO Motions for Summary Disposition of SOC Contentions 1, 2, 3, 6(a)(i), and 12 (Part Two) (July 13, 1981). LILCO withdrew its motions concerning Contentions 3 and 12 (Part Two) after agreeing with SOC about the particularization of the underlying issues. See LILCO's pleading on Matters Pending for Board Decision at 3 n.1 (Dec. 23, 1981). SOC withdrew its Contention 6(a)(i) "in lieu of responding to LILCO's motion for summary disposition of that contention." Board Memorandum and Order Confirming Rulings Made at the Conference of Parties at 20 (March 15, 1982), 15 NRC at 616. SOC Contentions 1 and 2, "as framed by the filing of SOC in response to the motions for summary disposition by LILCO and the Staff, and SOC's response to the Board's Order of February 8, 1982, and the discussion at the conference (Tr. 346-385), were dismissed as a challenge to the Commission's emergency planning regulations." Id. at 24, 15 NRC at 618.

~~[No summary disposition phase occurred between the Board's final prehearing ruling on litigable contentions and the beginning of hearings themselves because of the short interlude involved and because of the demands of testimony preparation and discovery. The only summary disposition motion filed during the hearings was withdrawn prior to ASLB ruling. See Tr. 4983-90, 4995-96.]~~

(f) Settlements

This proceeding has been characterized by sustained, often successful efforts to resolve issues without the need for further litigation. Settlement negotiations began in earnest early in 1979. They have continued with infrequent interruption, involving thousands of hours of effort.

During the first two years of negotiations, attention focused on clarifying, narrowing and/or eliminating contentions. As the Board stated in its June 28, 1979 Order approving the parties' first stipulation:

The Applicant, NRC Staff, and Suffolk County (SC) entered into a stipulation on June 5, 1979, which provides for the withdrawal of several SC contentions and a commitment of the Applicant to assume additional responsibilities.

The Board accepts the stipulation and encourages the parties to continue their efforts to resolve or particularize contentions.

See also, e.g., Order Relative to Stipulation Concerning 10 CFR Part 70 (Oct. 5, 1979); Memorandum Concerning the Second Stipulation Regarding Certain Suffolk County Contentions (Nov. 16, 1979); Order Relative to the Second Stipulation Concerning Suffolk County Contentions (Jan. 7, 1980); Order Accepting Third Stipulation Regarding Certain Suffolk County Contentions (June 26, 1980); Order Relative to Stipulation by the NRC Staff

and Shoreham Opponents Coalition (June 26, 1980); Order Accepting Fourth Stipulation Regarding Certain Suffolk County Contentions (Oct. 27, 1980) ("The Board . . . commends the parties for their continuing efforts to resolve differences and to sharpen the issues"); Order Relative to Fifth Stipulation on Certain Suffolk County Contentions (Feb. 17, 1981) (" . . . the parties are again to be commended in their continuing efforts"); see also comments of the security Board set out on pages A-6 to -7 above.

From spring through fall 1981, negotiations became more ambitious, involving an intense effort -- ultimately unsuccessful -- to reach a comprehensive settlement between the County and the Company. As counsel for Suffolk County explained to the Board in late October 1981:

Since April of this year, the County and the Applicant have been engaged in negotiations regarding the possible settlement of the County's intervention in the O.L. proceedings. Since the end of May, the County's negotiation team has included members of the Executive and Legislative Branches of the County, along with the County Attorney and the County's technical consultants. Pursuant to a Suffolk County Resolution passed in June of this year, it was mandated that approval by the Suffolk County Legislature would be needed before the County could enter into any final settlement agreement.

At a meeting in June of 1981, the representatives of the Applicant and the County agreed upon a final version of the

proposed Sixth Stipulation. It was understood between the representatives at that meeting that upon receipt of a letter from LILCO's Chairman of the Board, indicating his approval of the proposed Sixth Stipulation, a resolution would be introduced into the County Legislature, calling for legislative approval of the Sixth Stipulation. On October 13, 1981, a letter was sent from Charles R. Pierce, Chairman and Chief Executive Officer of the Applicant, to Peter F. Cohalan, Suffolk County Executive, indicating that he was prepared to recommend to the Board of Directors of the Company that the Board authorize execution of the Sixth Stipulation by the appropriate representatives of the Company once it has finally been approved by Mr. Cohalan and the County Legislature, and executed in behalf of the County.

At this point, a resolution requesting legislative approval will be introduced to the Suffolk County Legislature at its next legislative session. After legislative deliberation, passage of such a resolution could occur as early as November 10, 1981. Should the County Legislature authorize the County Executive to sign the Sixth Stipulation, then the agreement would be offered to the Applicant's Board of Directors for its approval. It is at this time that the Sixth Stipulation could be offered to the Board for its review.

Suffolk County's Response to the Applicant's Motion that a Hearing Schedule be Set, at 1-2 (Oct. 21, 1981). On December 8, the County Legislature rejected the settlement.

From the collapse of comprehensive negotiations in December 1981 until the beginning of hearings, there was no

settlement activity. It resumed in May 1982 and has since resulted in the resolution of numerous contentions. They are listed in Appendix B below, "Sequence of Settlements."

At all times, the Board has encouraged and facilitated the settlement process. The present Board, at the request of the parties, has cancelled hearings at times to permit negotiations to go forward undistracted. See, e.g., Tr. 9936-42, 9956-59. The Board on other occasions has reduced the length of hearing days to the same end. See, e.g., Tr. 8318, 9327. [~~And the~~ ^{The} Transcript [~~is filled with~~ ^{evidences many} Board-imposed deadlines for reports by the parties on the progress of their negotiations and [~~with~~ Board inquiries into what disputes remain and why they remain.

g. Public Prehearing Examinations

On October 29, 1982, the Board "noted that it was considering ordering that the parties conduct cross-examination, redirect and recross examination with respect to the Phase I emergency planning contentions initially by means of public prehearing depositions." Board Memorandum and Order Ruling on Licensing Board Authority to Direct that Initial Examination of the Pre-Filed Testimony Be Conducted by Means of Prehearing Examinations at 1 (Nov. 19, 1982); see also Tr. 12,541-43. After giving all parties ample opportunity to address the

legality and wisdom of the proposed procedure, e.g., Memorandum Advising SOC and NSC of Board Proposal to Require Depositions and of Opportunity to File Views (Nov. 9, 1982), the Board adopted the procedure. Suffolk County, SOC and NSC refused to participate in the depositions so ordered. Accordingly, on November 23 and 30, 1982, the Board dismissed all Phase I emergency planning contentions not previously settled. Tr. 14,746-49, 14,753; see generally Board Memorandum and Order Confirming Ruling on Sanctions for Intervenors' Refusal to Comply with Order to Participate in Prehearing Examinations (Dec. 22, 1982).

Much the same use of prehearing examinations was subsequently made in order to narrow and focus the hearings on an aspect of the QA dispute. See Board Memorandum and Order of December 22, 1982, above, at 15-16. The County, the only intervenor active in the quality assurance litigation, participated in these depositions.

h. Hearings

Early in 1978, two years after the start of the Shoreham OL proceeding, LILCO first began to press for hearings or for some other definitive means of resolving issues that the Company thought had become ripe for resolution.^{3/}

^{3/} See, e.g., Applicant's Request that the Board Set a Schedule for Resolution of Environmental Issues (Feb. 24,

Five and one half years after the OL proceeding began, on October 6, 1981, LILCO filed "Applicant's Motion that a Hearing Schedule Be Set," asking that the Board take concrete steps to end the prehearing process -- steps beginning on November 4 with "[a]ll parties . . . either (1) agreeing on a list of particularized issues to be litigated further . . . or (2) stating their disagreements," and ending on February 23, 1982 with the actual start of hearings. The Board denied the motion by telegram, on November 6, 1981. A month later, [LILCO] after the Suffolk County Legislature had rejected the projected settlement, LILCO renewed its request that hearings begin, [explaining]

~~[The Suffolk County Legislature rejected yesterday the Sixth Stipulation and Settlement that had been negotiated in great detail, and at great length, by representatives of the County, LILCO and the NRC Staff.~~

~~It has become even more crucial than before, accordingly, that the Board set a schedule for the rest of this proceeding, beginning with a deadline for particularizing contentions. Their particularization has been underway literally for years.]~~

(footnote cont'd)

1978); Applicant's Request for Summary Disposition of OHILI/Committee Contentions 7a(ii) and (iii) (June 23, 1978); Applicant's Request for Summary Disposition of Suffolk County Contentions 4a(vii), (x); 7a(ii)-(iii), (vi)-(vii); 12a (viii); and 14a (Dec. 18, 1978) (with an alternative request for hearings if summary disposition was unavailable); Motions of Long Island Lighting Company for summary disposition of SOC Contentions 1-3, 6(a)(i) and 12 (Part Two): Overview (July 13, 1981) (with an alternative request for hearings if summary disposition was unavailable).

~~At the risk of becoming grimly monotonous on the subject, LILCO feels compelled to stress, once again, the protracted nature of nuclear proceedings on Long Island.]~~

Further LILCO Supplement to the Recent Status Report of the County and Staff (Dec. 9, 1981).

Hearings did begin on May 4, 1982. To date, there have ensued 23 weeks of evidentiary sessions spread over eight months. More than 7,000 pages of written direct testimony and attachments have been filed. The Transcript has reached 17,533 pages. Over 170 exhibits have been generated, as well as many motions, briefs and ASLB orders. Almost 100 witnesses have testified.^{4/} For further detail, see Appendices C ("Sequence of Testimony"), D ("Witnesses in Alphabetical Order"), and E ("Exhibits by Party and Number").

^{*}[The 1982 evidentiary hearings took place on the dates and at the places set out below:

| <u>Weeks</u> | <u>Dates</u> | <u>Transcript Pages</u> | <u>Places</u> |
|--------------|--------------|-------------------------|---------------|
| 1 | May 4-7 | Tr. 982-1845 | Riverhead |
| 2 | May 25-28 | Tr. 1846-2677 | Riverhead |
| 3 | June 1-4 | Tr. 2678-3609 | Riverhead |

^{4/} If a particular person has testified on more than one contention, he has been counted anew for each contention on which he has been a witness.

*The Staff believes this may be appropriate as an appendix.

| | | | |
|----|----------------------|-------------------|-----------|
| 4 | June 8-11 | Tr. 3610-4321 | Hauppauge |
| 5 | June 15, 17-18 | Tr. 4322-991 | Hauppauge |
| 6 | June 22-25 | Tr. 4992-5700 | Riverhead |
| 7 | July 6-9 | Tr. 5701-6412 | Riverhead |
| 8 | July 13-16 | Tr. 6413-7168 | Riverhead |
| 9 | July 20-22 | Tr. 7169-904 | Riverhead |
| 10 | July 27-30 | Tr. 7905-8686 | Riverhead |
| 11 | Aug. 3-5 | Tr. 8687-9302 | Riverhead |
| 12 | Aug. 24-27 | Tr. 9303-10,036 | Hauppauge |
| 13 | Sept. 14-17 | Tr. 10,037-616 | Hauppauge |
| 14 | Sept. 21-24 | Tr. 10,617-11,308 | Hauppauge |
| 15 | Oct. 12-15 | Tr. 11,309-12,021 | Bethesda |
| 16 | Oct. 27-29 | Tr. 12,022-543 | Bethesda |
| 17 | Nov. 2-5 | Tr. 12,544-13,275 | Bethesda |
| 18 | Nov. 9-12 | Tr. 13,276-14,025 | Bethesda |
| 19 | Nov. 16-19 | Tr. 14,026-712 | Bethesda |
| | Nov. 23 | Tr. 14,713-749 | Hauppauge |
| 20 | Nov. 30, Dec. 1-3 | Tr. 14,750-15,476 | Bethesda |
| 21 | Dec. 7-10 | Tr. 15,477-16,190 | Bethesda |
| 22 | Dec. 14-17 | Tr. 16,191-17,006 | Bethesda |
| 23 | Dec. 20-22 | Tr. 17,007-533 | Bethesda] |

The hearings have always been open to the public, with

the exception of sessions held in camera from May through July, both on the record and in chambers, to discuss the security of new fuel on site, and except for a September 13, 1982 prehearing conference before the Board charged with the litigation concerning plant security.

[~~Numerous people made limited appearances, though no members of the public were present during most of the 1982 hearings.~~ ^{Numerous} ~~made and~~ ^{made and} Limited appearances were received on April 13-14, May 27, and June 2 and 8, 1982. See Tr. 530-644, 832-981, 2475-80, 3123-29, 3813-16. However, public attendance at the hearings, whether conducted on Long Island or in Bethesda, has been very sparse.

The Board on November 30, 1982 directed the parties to file findings of fact and conclusions of law on all disputed matters litigated before September 14, 1982, on the following schedule: LILCO initially on January 10, 1983, SC/SOC/NSC on January 20, the Staff on January 31, and LILCO in reply on February 7. Tr. 14,789-92. On January 5, 1983, in response to the County's unopposed request, these deadlines were extended by one week. Tr. 17,539.

-5- ISSUES

(a) Non-Health and Safety Issues

In addition to the health and safety contentions heard and/or settled since the beginning of evidentiary hearings, the Board and parties have also engaged three other sorts of issues: those involving (1) environmental matters, (2) extension of Shoreham's construction permit, and (3) new fuel.

(1) Environmental Issues

The Board raised certain environmental questions that were answered to its satisfaction. OHILI/NSC, Suffolk County, and SOC also raised issues under the National Environmental Policy Act. Some of their NEPA contentions were rejected at the pleading stage for a variety of defects; some were dismissed because their proponents failed to respond to discovery concerning them; others did not withstand motions for summary disposition.^{5/}

On August 4, 1978, the Board ruled that:

[T]here are no remaining environmental issues to be considered in this case. Therefore an environmental hearing will not be held.

Memorandum and Order Relative to Board Concerns Regarding Fish-Return System and Chlorine Discharge at 6 (Aug. 4, 1978). The Shoreham Opponents Coalition failed in its attempt to reverse this ruling when SOC entered the proceeding over a year after the ruling came down.^{6/}

^{5/} See, e.g., Board Memorandum and Order at 17-18 (Jan. 27, 1978); Order Relative to NRC Staff Motion to Compel Discovery and Impose Sanctions (April 19, 1978); Order Relative to Motions for Summary Disposition from Applicant and NRC Staff of Consolidated Intervenor (CI) Contentions 7(a)(ii) and (iii) (July 25, 1978); Memorandum and Order Relative to Board Concerns Regarding Fish-Return System and Chlorine Discharge (Aug. 4, 1978).

^{6/} See, e.g., Order Ruling on Petition of Shoreham Opponents Coalition at 22-24 (March 5, 1980); Memorandum and Order

(2) Extension of the Construction Permit

On December 18, 1978, LILCO requested an extension of Shoreham's construction permit. An extension to December 31, 1980 was granted on May 14, 1979. See 44 Fed. Reg. 29,545 (1979).

On November 26, 1980, the Company requested a further extension of the permit, which was opposed by the Shoreham Opponents Coalition. On January 23, 1981, SOC requested a hearing on the extension application and moved under 10 CFR § 2.206 to have the permit suspended and/or revoked. Six months later, SOC sued the NRC in federal district and circuit courts to the same ends. The suits were dropped once the NRC granted SOC an opportunity for hearing on the CP extension and ruled on SOC's § 2.206 request.

On July 22, 1981, the Commission issued an order stating that it had:

determined that the request [for a CP extension hearing] will be granted, subject to the petitioner advancing at least one litigable contention, and that an Atomic Safety and Licensing Board is to be convened to consider whether SOC's petition raises issues litigable in this construction permit extension proceeding,

(footnote cont'd)

Relating to Response of SOC to Board Order dated March 5, 1980, at 8 (May 1, 1980).

and, if so, to hear and decide those issues on the merits.

NRC Order at 2 (July 22, 1981) (footnote omitted). Five days later, the Board sitting in the Shoreham OL proceeding was also appointed to deal with the CP extension issues. 46 Fed. Reg. 39,516 (1981). After considering extensive written and oral arguments, the Board found that SOC had failed to raise "at least one litigable contention" and, therefore, ordered that no hearing be held on the CP extension application. See Tr. 497-501 (March 10, 1982); Board Memorandum and Order Ruling on SOC's Construction Permit Extension Contentions and Request for Hearing of Shoreham Opponents Coalition (May 14, 1982), 15 NRC 1295 (1982). SOC did not appeal the denial of its hearing request. On July 15, 1982, the construction permit was extended until March 31, 1983. 47 Fed. Reg. 32,502 (1982).

SOC's § 2.206 request for a stay and/or revocation of the CP had been previously denied. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), DD-81-9, 13 NRC 1125 (June 26, 1981).

(3) New Fuel

On September 25, 1978, LILCO applied for a license to receive, possess and store new fuel on site, pursuant to 10 CFR Part 70. On November 3, 1978, the Staff notified the Board and

parties of the pendency of the Part 70 application. Almost eight months thereafter, on July 27, 1979, the North Shore Committee against Thermal and Nuclear Pollution opposed the application, requested a hearing on it, and sought a stay of the issuance of any license pending Board action. LILCO and the Staff, in turn, opposed NSC's requests. Negotiations ensued, leading to settlement of the dispute. See Stipulation Regarding Application for a Special Nuclear Material License (Sept. 18, 1979). The Board thereafter ruled:

On September 24, 1979, the Staff transmitted a stipulation dated September 18, 1979, concerning the issuance of materials license pursuant to 10 C.F.R. Part 70, to permit receipt, possession and storage of unirradiated new fuel assemblies at the site. The stipulation was signed by the North Shore Committee Against Thermal and Nuclear Pollution, the Staff and the Applicant.

The stipulation is accepted by the Board.

Order Relative to Stipulation Concerning 10 C.F.R. Part 70 (Oct. 5, 1979). Suffolk County took no part in any aspect of these developments; SOC was not yet a party to the proceeding.

In May 1982, LILCO received a Part 70 license. Immediately thereafter, at the request of Suffolk County, the Board temporarily forbade shipment of new fuel pursuant to the license. See Interim Order Staying Shipment of Fuel (May 20, 1982, corrected, May 24, 1982). LILCO and Suffolk County, with

the concurrence of the NRC Staff, then negotiated a resolution of the County's concerns about the security of the new fuel once on site. On June 9, 1982, the Board approved the parties' agreement and removed the stay. See Tr. 4031-32; Confirmatory Order Lifting "Interim Order Staying Shipment of Fuel" (June 14, 1982). Following implementation of the LILCO/County agreement, new fuel reached the site in mid-July 1982.

(b) Health and Safety Matters

Thirty-six sets 7/ of health and safety contentions

7/ See the partial initial decision, above, at note 3 for the definition of a "set" of contentions. The system of numbers used for these contentions had its origins in the various intervenors' designations of their initial contentions. See, e.g., County of Suffolk's Amended Petition to Intervene (Sept. 16, 1977), which raised numerous proposed contentions numbered:

| | |
|--|------------------------------|
| 2(a)(i)-(vi) | 16(a) |
| 3(a)(i)-(iii), (b)-(d) | 17(a)(i)-(iv) |
| 4(a)(i)-(xviii), (b) | 18(a)(i)-(xi) |
| 5(a)(i)-(xx), (b)(i)-(iii), (c)(i)-(iv) | 19(a)(i)-(vi) |
| 6(a)(i)-(iv), (b) | 20(a)(i)-(ii) |
| 7(a)(i)-(vii) | 21 |
| 8(a)(i)-(ii) | 22 |
| 9(a)(i)-(iv), (b)(i)-(iv) | 23 |
| 10(a)(i)-(v), (b) | 24 |
| 11(a)(i)-(v), (b) | 25 (incorporating as conten- |
| 12(a)(i)-(viii) | tions all "critical com- |
| 13(a)(i)-(vi), (b)-(c) | ments" on the Draft Environ- |
| 14(a) | mental Statement) |
| 15(a)(i)-(ix) | 26(i)-(iii) |
| | 27 |

See also the numerous, similarly numbered contentions in SOC's Petition to Suspend Construction Permit . . . and to Renotify Hearings . . . , or in the Alternative, to Permit Late Intervention of SOC Pursuant to . . . Section 2.714 (Jan. 24, 1980).

were finally accepted for hearings by the Board.^{8/} [~~These contentions emerged from hundreds of proposed issues, years of informal negotiations, stipulations, settlements, and many formal disputes among the parties, plus numerous responsive rulings by the Board.~~]^{9/} Of these 36 sets of issues, almost 20

^{8/} Beginning with a May 1976 ruling, there have followed to date over 30 orders concerning the contentions to be litigated. These rulings include: Memorandum and Order (May 7, 1976); Memorandum and Order (Feb. 22, 1977); Memorandum and Order (Aug. 1, 1977); Memorandum and Order (Jan. 27, 1978) (confirming rulings made during the Oct. 11, 1977 prehearing conference); Order Relative to Requests for Clarification and Reconsideration of the Board Order of January 27, 1978 (March 8, 1978); Order Relative to NRC Staff Motion to Compel Discovery and Impose Sanctions (April 19, 1978); Memorandum and Order Relative to Board Concerns Regarding Fish-Return System and Chlorine Discharge (Aug. 4, 1978); Order Granting NRC Staff Motion of August 18, 1978 to Impose Sanctions (Oct. 27, 1978); Order Approving the June 5, 1979 Stipulation (June 28, 1979); Order Relative to Stipulation Concerning 10 CFR Part 70 (Oct. 5, 1979); Memorandum Concerning the Second Stipulation Regarding Certain Suffolk County Contentions (Nov. 16, 1979); Order Relative to the Second Stipulation Concerning Suffolk County Contentions (Jan. 7, 1980); Order Ruling on Petition of Shoreham Opponents Coalition (March 5, 1980); Certification to the Commission (March 14, 1980); ALAB Memorandum (March 25, 1980); Memorandum and Order Relating to Response of SOC to Board Order Dated March 5, 1980 (May 1, 1980); ALAB Order (May 20, 1980); Order Accepting Third Stipulation Regarding Certain Suffolk County Contentions (June 26, 1980); Order Relative to Stipulation by the NRC Staff and Shoreham Opponents Coalition (June 26, 1980); Order Admitting Shoreham Opponents Coalition (SOC) Contention 12-3rd Subpart (July 2, 1980); Order Accepting "Joint Motion for Acceptance of SOC Contentions 6(a)(i) and for Extension [of Time] to Complete Particularization" (Oct. 27, 1980); Order Accepting Fourth Stipulation Regarding Certain Suffolk County Contentions (Oct. 27, 1980); Order Relative to Fifth Stipulation on Certain Suffolk County Contentions (Feb. 17, 1981); Memorandum and Order (Ruling on Shoreham Opponents Coalition's Motion for Acceptance of Particularized Contention 19) (July 7, 1981); Order Approving Stipulation (Aug. 10,

(footnote cont'd)

have so far been settled before reaching hearings, and one more has been settled after hearings were held on it. Nine fully litigated sets of contentions are the subject of this partial initial decision. The rest of the contentions remain either actually in hearings, awaiting their beginning, or in settlement negotiations.

Members of the Board have examined witnesses in detail and have from time to time requested information on matters both within and beyond the scope of admitted contentions. See, e.g., Tr. 1156-73, 1410-11, 2355-56, 10,043-47, 14,787-88, 14,792-96. The Board has not determined sua sponte, however, that "a serious safety, environmental, or common defense and security matter exists." See 10 CFR § 2.760a.

(footnote cont'd)

1981); Order (Aug. 25, 1981); Memorandum and Order Approving Stipulations, Deferring Rulings on Summary Judgment Pending Further Particularization, Scheduling a Conference of Parties and Setting an Estimated Schedule for the Filing of Testimony (Feb. 8, 1982); Memorandum and Order Confirming Rulings Made at the Conference of Parties (Regarding Remaining Objections to Admissibility of Contentions and Establishment of Hearing Schedule) (March 15, 1982) (confirming rulings during the March 9-10 prehearing conference); Prehearing Conference Order (April 20, 1982); Memorandum and Order Ruling on SOC's Construction Permit Extension Contentions and Request for Hearing of Shoreham Opponents Coalition (May 14, 1982); Prehearing Conference Order (Phase I -- Emergency Planning) (July 27, 1982); Supplemental Prehearing Conference Order (Phase I -- Emergency Planning) (Sept. 7, 1982); Appendix B to September 7, 1982 Supplemental Prehearing Conference Order (Phase I -- Emergency Planning) (Oct. 4, 1982).

The course of events, once hearings began, is summarized below in terms of the 36 sets of health and safety contentions. They are listed in the order in which they have been litigated and/or their settlements have been accepted by the Board:

| <u>Sets</u> | <u>Contention Numbers</u> | <u>Subjects</u> | <u>Hearing and/or Settlement Dates</u> |
|-------------|-----------------------------|--|--|
| 1 | SC/SOC 7B; SOC 19(b) | Safety Classification and Systems Interaction | 5/4-7 6/15, 17-18, 22-25 7/6-9, 13-16, 21-22 |
| 2 | SC 2 | Dirt in Diesel Generator Relays | 5/7 Settled |
| 3 | SC 17 | Fire Protection | 5/7 Settled |
| 4 | SOC 19(j) | Turbine Orientation | 5/7 Settled |
| 5 | SC 4 | Water Hammer | 5/25-27 10/14 Stipulation on Receipt into Evidence of Sup- plemental Testimony |
| 6 | SC 10 | ECCS Core Spray | 5/28 |
| 7 | SC 5 | Loose Parts Monitoring | 6/1-4 12/7 Settled |
| 8 | SC 11 | Valve Failure | 6/4, 8-9 |
| 9 | SOC 19(e) | Seismic Design | 6/9-10 |
| 10 | SOC 16 | Clad Swelling and Flow Blockage | 6/11 Settled |
| 11 | SC 28(a)(iii)/ SOC 7A(3) | Iodine Monitoring | 6/15 Settled |

| <u>Sets</u> | <u>Contention Numbers</u> | <u>Subjects</u> | <u>Hearing and/or Settlement Dates</u> |
|-------------|--|-------------------------------------|---|
| 12 | SC 28(a)(iv)/ SOC 7A(4) | SPDS | 7/8 Settled |
| 13 | SC/SOC 22; SC 28(a)(vi)/ SOC 7A(6) | SRV Tests and Challenges | 7/27-30; 8/3 10/14 Stipulation on Receipt into Evidence of Sup- plemental Testimony |
| 14 | SOC 9 | Notice of Disabled Safety System | 8/5 Settled |
| 15 | SC 28(a)(i)/ SOC 7A(1) | ECCS Cutoff | 8/5 Settled, but Needs Supplemental Agreement |
| 16 | SC 16 | ATWS | 8/3-5 |
| 17 | SC 27/SOC 3 | Post Accident Monitoring | 8/24-25 10/14 Partially Settled |
| 18 | SC 9 | ECCS Pump Blockage | 8/25 Settled |
| 19 | SC 21 | Mark II | 8/26-27 |
| 20 | SC/SOC 12; SC 13-15 | Quality Assurance | 9/14-17, 21-24 10/12-15, 27-29 11/2-5, 9-12, 16-19, 30 12/1-3, 7-10, 14-17, 20-22 and ongoing |
| 21 | SC 19 | Human Factors (HF) -- Procedures | 10/14 Settled |
| 22 | SC 20 | HF -- Simulator | 10/14 Settled |
| 23 | SC 25/ SOC 19(a) | RPV Integrity and Testing | 10/14 Settled |
| 24 | SC 26 | ALARA | 10/14 Settled |

| <u>Sets</u> | <u>Contention Numbers</u> | <u>Subjects</u> | <u>Hearing and/or Settlement Dates</u> |
|-------------|-------------------------------|---|--|
| 25 | SC/SOC/NSC EP 1-14 | Phase I Emergency Planning | |
| | EP 1(A) | Effect of Weather on Sirens | 11/23 Settled |
| | EP 3 | Federal Resources | 11/23 Settled |
| | EP 5(C) | Notification with Emergency Classification | 11/23 Settled |
| | EP 6 | Training of Offsite Agencies | 11/23 Settled |
| | EP 7(A) | Emergency Director and Response Manager | 11/23 Settled |
| | EP 8 | Emergency Operations Facility | 11/23 Settled |
| | EP 9 | Radiological Exposure | 11/23 Settled |
| | EP 10(A) | Field Monitoring | 11/23 Settled |
| | EP 11(D) | Redundant Power Supplies | 11/23 Settled |
| | EP 11(E) | Communications through Beepers | 11/23 Settled |
| | EP 11(F) | NAWAS | 11/23 Settled |
| | EP 12(A) | Number of Personnel in EOF | 11/23 Settled |
| | EP 1(B) | Backup Power | 11/23 Dismissed by the Board because SC/SOC/NSC Defaulted on Oblig- atory Prehearing Examinations |
| | EP 1(C) | Gaps in Siren Coverage | 11/23 Dismissed |
| | EP 2(A) | Adequate Medical Services | 11/23 Dismissed |

| <u>Sets</u> | <u>Contention Numbers</u> | <u>Subjects</u> | <u>Hearing and/or Settlement Dates</u> |
|-------------|---------------------------|--|--|
| | EP 2(B) | Ground Transportation to Hospital | 11/23 Dismissed |
| | EP 4 | Protective Actions | 11/23 Dismissed |
| | EP 5(A) | Role Conflict | 11/23 Dismissed |
| | EP 5(B) | Traffic | 11/23 Dismissed |
| | EP 7(B) | Table B-1 | 11/23 Dismissed |
| | EP 10(B) | Real-time Monitors | 11/23 Dismissed |
| | EP 10(C) | Iodine Monitoring | 11/23 Dismissed |
| | EP 11(A) and (B) | Communications with Offsite Response Organizations (A) Sabotage, Power Outage, Overload (B) Vulnerability to Weather | 11/23 Dismissed |
| | EP 13 | Interim SPDS | 11/23 Dismissed |
| | EP 14 | Accident and Dose Assessment Model | 11/23 Dismissed |
| 26 | SC Security 1-9 | Security Planning | 12/3 Settled |
| 27 | SC 18 | HF -- Equipment | 12/7 Settled |
| 28 | SC 1 | Remote Shutdown Panel | 12/21 Settled |
| 29 | SC 3/SOC 8 | Inadequate Core Cooling | 12/22 Settled |
| 30 | SC 31/SOC 19(g) | Electrical Separation | |
| 31 | SC 24/SOC 19(c) and (d) | Cracking of Materials | |
| 32 | SC 8/SOC 19(h) | Environmental Qualifications | |

| <u>Sets</u> | <u>Contention Numbers</u> | <u>Subjects</u> | <u>Hearing and/or Settlement Dates</u> |
|-------------|-------------------------------|-----------------------------|--|
| 33 | SOC 19(i) | Seismic Qualifications | |
| 34 | SC 23 | Containment Isolation | |
| 35 | SC 32/SOC 19(f) | Electrical Penetration | |
| 36 | SC/SOC/NSC | Phase II Emergency Planning | |

[~~6.~~ CONCLUSION

~~The Shoreham operating license proceeding has been vigorously underway for almost seven years. It has occasioned discovery far beyond the norm for administrative litigation. It has involved sustained, often successful efforts to narrow and focus the issues for hearings or to settle disputes outright without the need for hearings. No negotiations of comparable scope and effect have occurred in other NRC litigation. And the hearings themselves, already approaching 90 days and not yet complete, will rarely be surpassed in agency practice.]~~