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WRITER'S DIRECT DIAL NO.

(202) 857-2929

July 26, 1989

BY HAND

Victor Stello, Jr.
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Request Pursuant to 10 C.F.R. § 2.206
U.S.N.R.C. Docket No. 50-322

Dear Mr. Stello:

Pursuant to 10 C.F.R. § 2.206 (1988), Scientists and Engineers for Secure Energy, Inc. ("SE_2") hereby requests immediately effective orders and the institution of proceedings to the same extent and on the same bases as the Request made July 14, 1989, in U.S.N.R.C. Docket No. 50-322 by the Shoreham-Wading River Central School District ("School District"). SE_2 hereby adopts and incorporates herein by reference the School District's Request made on July 14, 1989 as supplemented by that Requestor's letters of July 19, 1989 and July 21, 1989, all of which are attached hereto. SE_2 further requests consolidation of its Request with the former Request made by the School District.

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SE_2's Interest

SE_2 is an incorporated, tax-exempt, nationwide organization formed in the Spring of 1976, whose membership consist of over 1,000 faculty members and researchers from American colleges and universities, both State and private, and other persons engaged in the sciences. Its purpose is to correct the alarming degree of misunderstanding on fundamental, scientific and technological issues permeating the national energy debate, especially with respect to the balancing of environmental concerns. In pursuing these objectives, SE_2 is committed to offering its views based on the considerable knowledge and expertise of its members to the public and to the various governmental agencies with responsibility for the resolution of energy issues, including participation in rulemaking and adjudicatory proceedings of the U.S. Nuclear Regulatory Commission. Many of SE_2's members live and/or work on Long Island in the vicinity of the Shoreham Nuclear Power Plant and rely on electricity from its license, Long Island Lighting Company. Therefore, the organization and its members have a special interest in the safe and environmentally benign operation of the Shoreham plant to provide them with reliable electricity and to avoid the substitution of fossil fuel plants relying on imported oil and gas, which would contribute not only to acid rain, the greenhouse effect and other effects adverse to the physical environmental, but also to our national trade deficit and the endangerment of national energy security and other effects adverse to our society.

Notice Requested

SE_2 requests that it be notified of all developments in U.S.N.R.C. Docket No. 50-322 by mail (a) to Professor Miro M. Todorovich, Executive Director, Scientists and Engineers for Secure Energy, Suite 1007, 570 Seventh Avenue, New York, New York 10018, as well as (b) to counsel at the Washington, D.C., address shown on this letterhead.

Notice and Intervention

SE_2 requests to be notified of all actions taken on this Section 2.206 Request and also requests intervenor status in any proceedings initiated by the Commission pursuant to the consolidated requests of SE_2 and the School District.

Consent

I am authorized to advise you of the Shoreham-Wading River Central School District's consent to the consolidation of its Request with this request by SE_2.

Respectfully,

James P. McGranery, Jr.
Counsel for Scientists and
Engineers for Secure Energy
and Shoreham-Wading River
Central School District

JPM:jmb
Enclosures

cc: Dr. Thomas E. Murley
(w/o enclosures)

bcc: Steward W. Brown
(w/o enclosures)

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July 19, 1989

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VIA TELECOPY

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

Re: Shoreham-Wading River Central School District
Section 2.206 Request Submitted July 14, 1989
U.S.N.R.C. Docket No. 50-322

Dear Mr. Stello:

In further support of the above-captioned Request ("Request"), the Shoreham-Wading River Central School District states as follows:

A. In Para E.(1) of the Request, the Requestor stated that there might be a "very slight, if any, additional margin of safety provided by the placement of the fuel in the spent fuel pool, as opposed to its continued residence in a reactor in a cold shutdown condition...." At this time, the Requestor notes that there may indeed be a reduced margin of safety if the Licensee is allowed to complete that transfer, since the public health and safety would no longer be

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protected by a combination of barriers provided by (a) the reactor vessel itself, (b) the primary containment and (c) the secondary containment, but would only be protected by the secondary containment once the fuel is in the spent fuel pool. The Requestor also suggests that the Administrator of Region I may recognize that the activities currently being conducted should require prior Commission review and approval in this case, since he has stated that "In this case, the circumstances are somewhat different" and has further stated that "there are some unique elements to the situation at Shoreham". See Request Para D.(1).

B. Attachment 1 hereto is an article which appeared in the New York Times on July 18, 1989. It provides support for the allegations that LILCO is removing the fuel and destaffing the plant as part of a single course of action to decommission the plant without applying to the Commission for permission to decommission, thus depriving the Commission of full and timely safety and environmental review of the proposed course of action. The article also quotes the Chairman of the New York State Public Service Commission as calling "the removal of the fuel rods 'one of a continuum of actions that LILCO must take to carryout their obligations under the settlement, which include not running the plant and also getting it into the least expensive configuration as possible'". This further supports the allegation that LILCO, in consort with the Governer of the State of New York and various other entities, is conducting a single course of action ("continuum of actions"), under NRC regulatory supervision, to unlawfully segment the review required by the National Environmental Policy Act of 1969 ("NEPA").

Further, the article quotes "some officials" as stating that the "decommissioning process ... began on Friday, as LILCO ... started the slow procedure for removing the 12-foot-high bundles ....", styling that process as being "... virtually unstoppable once it is started ...." This is a clear indication of concerted activity to evade the Commission's safety and environmental review which demands an immediate and temporarily effective order to cease and desist and return to the status quo ante so that the Commission may exercise its mandated jurisdiction pursuant to the Atomic Energy Act of 1954, as amended ("AEA") and NEPA to conduct a prior review of the proposed "continuum" of activities.

C. Attachment 2 to this supplement is a letter from the Governor of the State of New York to the people of Long Island, dated March 21, 1989, which indicates he has

engineered the "Settlement Agreement" (which is currently subject to judicial review in at least two civil suits in New York State courts and is subject to many conditions subsequent) on the basis of the substitution of his judgment of the risk the Shoreham Nuclear Power Station poses to the health and safety of the public for the judgment made by the Commission in issuing the full power operating license on April 21, 1989 in violation of the doctrine of Federal Pre-emption of this area. As the Court said in Pacific Gas & Electric Co. v. State Energy Resources Conservation Comm., 461 U.S. 190, 213, 103 S.Ct. 1713, 1727 (1983):

> "A state moratorium on nuclear construction grounded in safety concerns falls squarely within the prohibited field. Morover, a state judgment that nuclear power is not safe enough to be further developed would conflict directly with the countervailing judgment of the NRC, see, infra, at 1729-1730, that nuclear construction may proceed not withstanding extant uncertainties as to waste disposal. A state prohibition on nuclear construction for safety reasons would also be in the teeth of the Atomic Energy Act's objective to insure that nuclear technology be safe enough for widespread development and use - and would be pre-empted for that reason. Infra, at 1731.

In particular, the Governor states in that letter that the proposed settlement will "forever" remove "[t]he threat of a nuclear accident ... from Long Island's future". And he states further that the Shoreham plant "... is of questionable reliability and, because it is located in an area where evacuation is impossible, raises overwhelming concerns about safety". That letter also reveals that the Governor intends to "close and dismantle the plant, provide alternative energies sources to replace it, and give LILCO customers rates lower than those they would have have to pay if the Shoreham were to operate".

This contradicts the judgments already made by the Commission in its review of the need for the plant, the alternatives to the plant, and the costs and benefits of the plant by the Commission pursuant to NEPA as well as the AEA. It further demonstrates the need for a cease and desist order so that a unified NEPA review of the proposed plan of action

involving the exercise of the Commission's regulatory and licensing authority can be conducted.

D. Attachment 1 also demonstrates that the New York Public Service Commission and the Licensee are pursuing the current course of conduct in order to put the plant "into the least expensive configuration as possible" and "to save about $43 million on Shoreham this year". This further demonstrates the need for a cease and desist order and an order to return to the status quo ante so that the Commission may exercise its regulatory health and safety jurisdiction to the determine whether the economic objectives of the New York Public Service Commission and the Licensee are consistent with the responsibilities accepted pursuant to the full power operating license, or whether the New York Public Service Commission is subjecting the Licensee to unlawful economic pressures that would cause violations of the commitments the Licensee has made in obtaining its license.

E. In the Request at Para D.(7), the Requestor suggested that any immediately and temporarily effective orders issued pursuant to this Request be accompanied by an announcement of the Commission's intention pursuant to 10 C.F.R. § 2.205 to fine the Licensee a substantial amount per day for any violation or continuing violation of the Commission's orders in an amount that would deter any economic incentives which the Licensee may have to violate the orders. That request identified at least six violations. See Request at Para D.(1)-(6). It is recognized that "in no instance will a civil penalty for any one violation exceed $100,000 per day". 10 C.F.R. Part 2, App. C, V.B. (1988). However, it is also recognized that "If an evaluation of such multiple violation shows that more than one fundamental problem is involved, each of which, if viewed independently, could lead to civil penalty action by itself, then separate civil penalties may be assessed for each such fundamental problem." 10 C.F.R. Part 2, App. C.V.B.5.(3) (1988). Given the anticipated "saving" of "about $43 million on Shoreham this year" identified in Attachment 1 hereto, it would appear that cumulative fines of at least $250,000 per day would be necessary to act as an economic deterrent to continuing violations.

The Requestor looks forward to a considered response to its Request as supplemented herein, but urges prompt orders to cease and desist and return to the status quo ante to arrest the illegal, continuing evasion and

erosion of the Commission's jurisdiction described in Attachment 1 hereto.

Respectfully submitted,

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

JPM:jmb
Enclosures

cc: Chairman Kenneth M. Carr
Commissioner Thomas M. Roberts
Commissioner Kenneth C. Rogers
Commissioner James R. Curtiss

ATTACHMENT 1

The New York Times

Metropolitan News

NEW YORK, NEW JERSEY, CONNECTICUT/TUESDAY, JULY 18, 1989 B1

Lilco Removes Fuel Rods At Shoreham

Action Could Signal Its Eventual Dismantling

By PHILIP S. GUTIS
Special to The New York Times

RICKSVILLE, L.I., July 17 — The Long Island Lighting Company has begun removing uranium fuel rods from the Shoreham nuclear-power plant, taking the first step toward what could be the eventual dismantling of the $5.5 billion reactor.

Lilco, which has agreed to sell Shoreham to New York State for $1 and dismantle it in return for 10 years of rate increases, has yet to apply to the Federal Nuclear Regulatory Commission for permission to decommission the plant.

But it began to remove the reactor's 560 fuel rods on Friday as a way of controlling costs at the plant.

Besides starting to remove the fuel rods, Lilco has also begun to transfer about 150 employees from its 590-person work force at Shoreham to other jobs. Altogether the utility expects to save about $40 million on Shoreham this year.

Even as Lilco workers withdrew fuel rods from the plant on Long Island's North Shore, Federal and state officials continued to argue about the reactor's future.

In an interview on Sunday with Newsday at the economic summit in Paris, President Bush's chief of staff, John H. Sununu, questioned why New York would want to destroy Shoreham. "Why make unusable something that might someday be usable?" he asked.

Federal energy officials had previously vowed to fight the shutdown of the plant because of Long Island's tight energy situation and the county's dependence on imported

Gov. Mario M. Cuomo, in a statement today, called the Federal Government's actions "unjustified and arrogant interference" and called on President Bush to clarify the Administration's position and "pro-

Continued on Page B2

Lilco Removes Shoreham Rods, Signaling Close

Continued From Page B1

vide justification to the people of Long Island for the Administration's efforts to stop the decommissioning of the plant."

An Administration official, W. Henson Moore, the deputy energy secretary, said Mr. Cuomo's comments indicated to him that "we must really be getting under his skin."

"We think we have justified it numerous times," Mr. Moore said. "But we certainly would be willing to meet with the Governor anytime he wants and we would welcome him into our offices."

As for removing the fuel rods from Shoreham, Mr. Moore said it was not of great concern to the Department. "Lilco is simply signaling that it has no intentions to operate the plant," he said. "We view this as short of actual decommissioning and doesn't make putting that plant on stream economically impossible."

Lilco's application to the Nuclear Regulatory Commission to begin decommissioning is expected before the end of the year after officials of the Long Island Power Authority, which is to own Shoreham, and the New York Power Authority, which is to dismantle it, agree on how to proceed.

Slow Removal Procedure

But for now officials the decommissioning process — which they said is virtually unstoppable once it is started — began on Friday as Lilco flooded the reactor vessel and an adjacent spent-fuel pool and started the slow procedure for removing the 12-foot-high bundles that each contain 62 fuel rods.

So far, at a pace of one bundle every 30 minutes, the utility has shifted approximately 80 bundles from the reactor to the spent-fuel pool. The process, which is scheduled for two 10-hour shifts a day, six days a week, should be completed within a month, said a Lilco vice president, Joseph W. McDonnell.

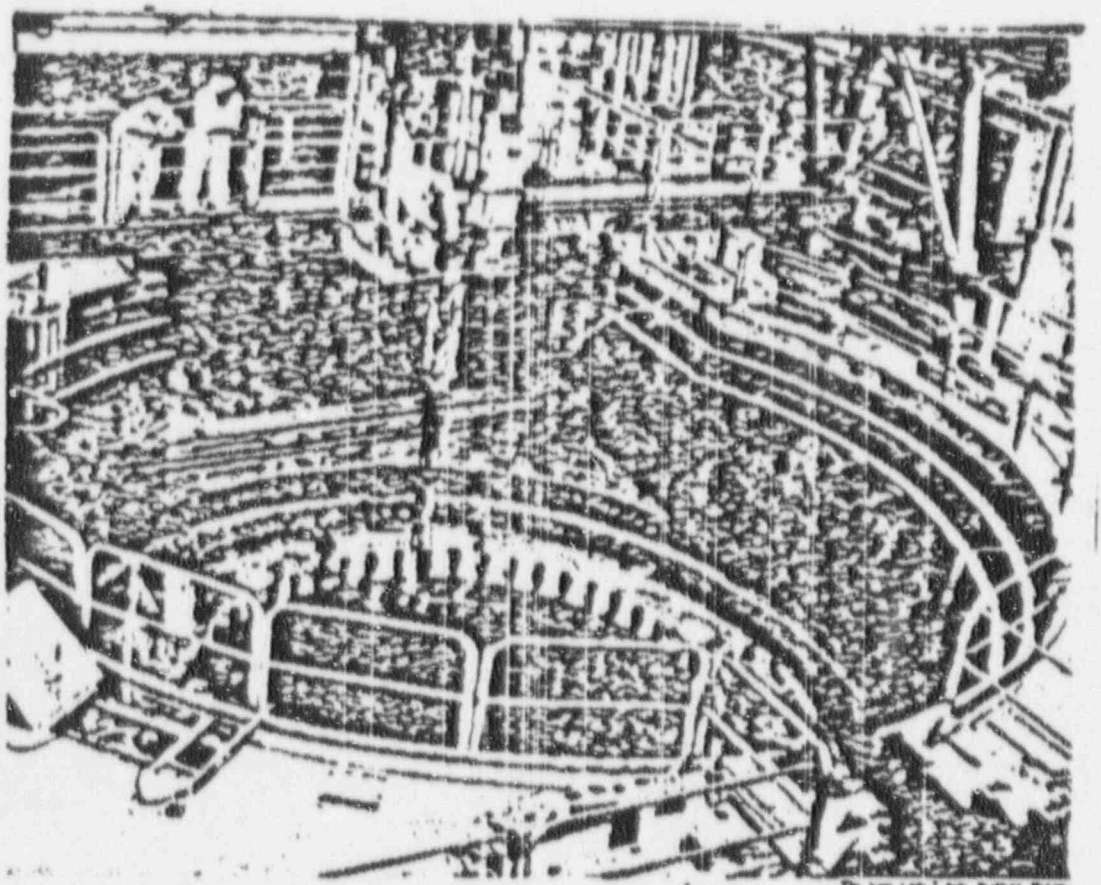
Officials sought to play down the significance of removing the fuel rods. "This is a routine process," Mr. McDonnell said. "It takes place at all nuclear plants during normal refueling and for maintenance they could be placed back into the reactor and used again."

Peter A. Bradford, the chairman of the State Public Service Commission, called the removal of the fuel rods "one of a continuum of actions that Lilco must take to carry out their obligations under the settlement, which include running the plant and also getting it into the least expensive configuration as possible."

Lilco completed Shoreham in 1985 but was unable to win a commercial operating license for the plant because of the unwillingness of New York State and Suffolk County to participate in emergency planning.

Though the Federal Nuclear Regulatory Commission awarded the plant a full-power license earlier this year, Lilco had already agreed to a settlement with Governor Cuomo in which it agreed to sell the plant to the state.

[Column 1 of the above appeared in The New York Times, July 18, 1989, in Column 5 of page B1; Columns 2 and 3 above, and the picture appeared in Column 2 of page B2]



Mechanics at the Shoreham nuclear power plant removing uranium fuel rods from the $3.5 billion reactor.

ATTACHMENT 2

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

MARIO M CUOMO
GOVERNOR

March 21, 1989

Dear Long Islander:

I am writing to inform you about an agreement that, once and for all, will provide a comprehensive solution to the agonizing saga concerning the nuclear power plant at Shoreham. This agreement will close and dismantle the plant, provide alternative energy sources to replace it, and give LILCO customers rates lower than those they would have to pay if the Shoreham plant were to operate.

This agreement is still subject to approval by the State Public Service Commission (PSC), the Long Island Power Authority, the New York Power Authority and the shareholders of LILCO.

The agreement provides for the dismantling of the plant by the New York Power Authority after careful planning and public hearings. The threat of a nuclear accident will be forever removed from Long Island's future.

Just think of it. For the first time in nearly two decades, the controversy surrounding Shoreham will finally end and we can devote all our energies to solving the other pressing problems confronting Long Island.

Regrettably, no matter what course of action is taken regarding Shoreham, LILCO's electric rates will rise in the future. Of all the options available, this agreement will provide the lowest rates possible -- much lower than if Shoreham were to operate. At this moment, I have the Executive Director of the State Consumer Protection Board fighting before the PSC to assure this result.

The lower rates under my agreement are possible because closing Shoreham will make it unnecessary to spend any additional money on the plant and will guarantee that LILCO and the federal government share the losses with you.

(over)

Last year my administration negotiated an agreement that accomplished many of these same goals. The State Legislature, however, was unwilling to make the hard choices necessary to close the plant and declined to act on the agreement. But now I have found a way to do it without the legislators.

I share the outrage of many Long Islanders about the waste associated with the Shoreham controversy. For six years I asked LILCO to stop investing taxpayers' and ratepayers' money. Too much time and money was put into a nuclear power plant that is of questionable reliability and, because it is located in an area where evacuation is impossible, raises overwhelming concerns about safety.

Unfortunately, there is nothing we can do to recover all the losses associated with Shoreham. There is, however, one sure way to end the waste and provide Long Island with a reliable energy future at the lowest rates possible. That way is the agreement that I have negotiated to close Shoreham and allow us to devote all our attention to building a better future for Long Island.

Sincerely,

Mario M. Cuomo

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July 21, 1989

VIA TELECOPY

Thomas E. Murley
Director
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Murley:

Your letter of July 20, 1989 states that a preliminary review of the "concerns" expressed in the Shoreham-Wading River Central School District request pursuant Section 2.206 of your regulations does not indicate "any need" to take immediate action, because

> "... on the basis of current information, the licensee is currently in compliance with the provisions of its full-power license. The defueling of the reactor vessel is an activity permissible under the terms facility operating license NPF-82 the destaffing of the plant will not be implemented until early August".

You also state that "... defueling the Shoreham facility is authorized by the Shoreham operating license and does not constitute a separate federal action subject to NEPA".

The Requestor urges the need for an immediate reconsideration of your interim decision to address all, not some, of issues raised in that request and to prevent the further deterioration of a valuable electric resource.

The statement that "[t]he defueling of the reactor vessel is an activity permissible under the terms of the facility operating license NPF-82" is, at best, disingenuous. The Administrator of Region I has openly admitted that this is not a normal defueling. As the Requestor stated in its letter of July 14, 1989, the defueling being conducted here is an unreviewed safety question, since it is not occasioned by any of the events normally initiating a defueling and since it will provide none of the benefits sought to be achieved by a "normal defueling". Therefore, it presents unnecessary and unreviewed risks to the public health and safety and to the environment.

Your statement that "[t]he destaffing of the plant will not be implemented until early August" is clearly in error. Attachment 1 to the Requestor's supplemental letter of July 19, 1989 is a New York Times report that "LILCO has also begun to transfer about 150 employees from its 590 person workforce at Shoreham to other jobs" as of three days ago now. (Emphasis added.)

Most revealing, however, is the fact that you could say (although in error) "destaffing of the plant will not be implemented until early August". (Emphasis added.) This clearly demonstrates that the Commission is at this time fully aware of what New York State Public Service Commission Chairman Bradford styled "a continuum of actions" that has been announced by the licensee to include (a) defueling, (b) destaffing, (c) reduction in maintenance, (d) application for a reduction in its operating license to a "possession only" license, (e) application for a transfer of that "possession only" license to a New York State entity (e.g., Long Island Power Authority), and then (f) application for a license to decommission the facility (for which LILCO will be fully financially responsible). The Requestor respectfully suggests that the Commission should not "put on blinders" to this overall plan.

The Commission is currently involved in significant regulatory actions regarding the fate of the Shoreham plant. This is sufficient to trigger NEPA review at this time. See 10 C.F.R. § 51.10(b) (1988). The Commission need not, and certainly should not, wait until the last step of the process

described above (i.e., application for decommissioning) to conduct its NEPA review. This would clearly be "locking the barn door after the horses are stolen". Lathan v. Volpe, 350 F. Supp. 262, 266, aff'd 506 F.2d 677 (9th Cir.)(1974) (footnote omitted).

The Commission's regulations clearly state that "no person within the United States shall ... transfer, acquire, possess, or use any production or utilization facility except as authorized by a license issued by the Commission." 10 C.F.R. § 50.10(a)(1988). Those regulations further provide that: "Any actions concerning the proposal taken by an applicant which would (i) have an adverse environmental impact, or (ii) limit the choice of reasonable alternatives may be grounds for denial of the license." 10 C.F.R. § 51.101(a)(2)(1988) (emphasis added). The regulations also provide that: "This section does not preclude any applicant for an NRC permit, license, or other form of permission, or amendment to or renewal of an NRC permit, license or other form of permission, (1) from developing any plans or designs necessary to support an application; or (2) after prior notice and consultation with NRC staff, (i) from performing any physical work necessary to support an application, or (ii) from performing any other physical work relating to the proposed action if the adverse environmental impact of that work is de minimis". 10 C.F.R. § 51.101(c) (1988). The actions planned and/or taken are not de minimis, do have adverse environmental impacts, and do incrementally limit the choice of reasonable alternatives.

These regulations clearly announce the Commission's intent not to allow the applicant to conduct any activities which would either have an adverse environmental impact, limit the choice of reasonable alternatives to the action, or perform any physical work relating to the proposed action unless the adverse environmental impact of that work is de minimis. The explicitly identified remedy ("denial of the license") is obviously intended to be a deterrent to a licensee conducting a constructive activity, as opposed to a destructive activity, as in this case. However, the expression of that remedy does not limit the Commission's authority pursuant subpart B of Part 2 of its regulations to impose requirements by order or to take other actions as may be proper against any person subject to the jurisdiction of the Commission. 10 C.F.R. § 2.200(a)(1988). In particular, you are authorized to take such action if you determine that an emergency exist and that the public health, safety or interest requires a temporarily effective order. The

Requestor suggests, respectfully, that the situation at Shoreham cries out for such orders, as previously requested.

Eighteen years ago (almost to the day), the Court of Appeals denounced the Commission's interpretation of NEPA saying: "We believe that the Commission's crabbed interpretation of NEPA makes a mockery of the Act." Calvert Cliffs' Coord. Comm. v. U.S.A.E.C., 146 U.S.App. D.C. 33, ___, 449 F.2d 1109, 1117 (1971), cert denied, 404 U.S. 942 (1972). The court said further: "The word 'accompanied' ... must not be read so narrowly as to make the Act ludicrous. It must, rather, be read to indicate a Congressional intent that environmental factors as compiled in the 'detailed statement,' be considered through agency review processees". 146 U.S. App. D.C. at ____, 449 F.2d at 1117-18 (emphasis in original; footnote omitted).

The current failure to act appears to be a case of "déjà vu, all over again". Your letter indicates that an agency review process is underway. You are also aware of the "continuum of actions" described above. Pursuant to NEPA, orders should be issued to stop those actions, so that an environmental impact statement can be prepared to accompany the proposal through the review process so, among other things, the alternatives can be considered before they are limited or foreclosed with possible adverse effects to the human environment.

The Requestor understands that in approximately four days' activities, the licensee has removed about 100 fuel bundles from the reactor vessel and is conducting other activities contrary to the commitments given to the Commission that form the basis for the full-power operating license. According to your letter, the licensee may be allowed to continue such activities contrary to the public interest for as long as another ten days before you will act. Under these circumstances, I am furnishing copies of this letter directly to the Commission so that it may exercise its supervisory power over delegated staff functions to protect

the health and safety of the public, preserve the human environment, and preserve the Shoreham facility. 10 C.F.R. § 2.206(c)(1) (1988).

Sincerely,

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

JPM:jmb
Enclosure

cc: Chairman Kenneth M. Carr
Commissioner Thomas M. Roberts
Commissioner Kenneth C. Rogers
Commissioner James R. Curtiss

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

July 20, 1989

Mr. James P. McGranery, Jr., Esq.
Dow, Lohnes & Albertson
1255 Twenty-Third Street
Washington, D.C. 20037-1194

Dear Mr. McGranery:

This letter is to acknowledge receipt of the petition filed by you on July 14, 1989, on behalf of the Shoreham-Wading River Central School District. In your petition you request that the Executive Director for Operations issue an immediately effective order to Long Island Lighting Company to cease and desist from any and all activities related to the defueling and destaffing of Shoreham Nuclear Power Station, Unit 1, and return to the "status quo ante," pending further consideration by the Commission. You further request that such an order be accompanied by an announcement of the Commission's intention to fine the licensee a substantial amount per day for any violation or continuing violation of the Commission's orders.

As bases for your request, you assert that (1) the defueling of the core of the Shoreham Station involves an unreviewed safety question, because it is unnecessary and because the increased risk of accidents in the transfer of fuel to the spent fuel pool outweighs the slight additional margin of safety provided by the spent fuel pool, and, as such, requires prior Commission approval in accordance with 10 C.F.R §50.59; (2) the issuance of the full-power operating license for the facility was premised, among other things, on adequate staffing, and the licensee has now declared to the Commission its intention to willfully reduce staffing by about half, which would violate the basis of the issuance of its license and the licensee's prior commitments to the Commission; (3) the lack of maintenance activities at the facility is contrary to a March 1989 Operational Readiness Assessment Report; (4) the licensee's plan to substitute fossil-fuel-burning units for the Shoreham station is a matter that may result in a significant increase in an adverse environmental impact previously evaluated in the Final Environmental Statement for the operating license and, as such, presents an unreviewed environmental question that requires prior Commission approval; (5) such an order would allow for a full environmental review pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality ...lations, and the Commission's regulations in 10 C.F.R Part 51; and (6) the issuance of a license amendment authorizing decommissioning is a major Commission action significantly affecting the quality of the environment and requires an environmental impact statement or supplement to an environmental impact statement as specified in 10 C.F.R §§51.20(b)(5) and (b)(13).

Your petition has been referred to me pursuant to 10 C.F.R §2.206 of the Commission's regulations. As provided by Section 2.206, action will be taken on your request within a reasonable time. However, a preliminary review of the concerns in your petition does not indicate any need to take immediate action as you request because on the basis of current information, the licensee

is currently in compliance with the provisions of its full-power license. The defueling of the reactor vessel is an activity permissible under the terms of Facility Operating License NPF-82. The destaffing of the plant will not be implemented until early August.

We are currently evaluating the effects of these changes in staffing level to ensure that they will not be inimical to either the common defense and security or to the public health and safety. This evaluation will be completed before the end of July, and we will take appropriate action if warranted. Furthermore, with regard to your assertion that an environmental impact statement (EIS) or supplement to an EIS should be prepared, we note that defueling the Shoreham facility is authorized by the Shoreham operating license and does not constitute a separate federal action subject to NEPA. Although you are correct that the decommissioning of a facility requires a license amendment necessitating the preparation of an EIS, such an amendment has not yet been applied for in this case. If the Commission issues a license amendment authorizing the decommissioning of the Shoreham facility, an environmental review will be performed in accordance with the Commission's regulations.

Sincerely,

Thomas E Murley

Thomas E. Murley, Director
Office of Nuclear Reactor Regulation

DOW, LOHNES & ALBERTSON

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July 19, 1989

VIA TELECOPY

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

Re: Shoreham-Wading River Central School District
Section 2.206 Request Submitted July 14, 1989
U.S.N.R.C. Docket No. 50-322

Dear Mr. Stello:

In further support of the above-captioned Request ("Request"), the Shoreham-Wading River Central School District states as follows:

A. In Para E.(1) of the Request, the Requestor stated that there might be a "very slight, if any, additional margin of safety provided by the placement of the fuel in the spent fuel pool, as opposed to its continued residence in a reactor in a cold shutdown condition...." At this time, the Requestor notes that there may indeed be a reduced margin of safety if the Licensee is allowed to complete that transfer, since the public health and safety would no longer be

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protected by a combination of barriers provided by (a) the reactor vessel itself, (b) the primary containment and (c) the secondary containment, but would only be protected by the secondary containment once the fuel is in the spent fuel pool. The Requestor also suggests that the Administrator of Region I may recognize that the activities currently being conducted should require prior Commission review and approval in this case, since he has stated that "In this case, the circumstances are somewhat different" and has further stated that "there are some unique elements to the situation at Shoreham". See Request Para D.(1).

B. Attachment 1 hereto is an article which appeared in the New York Times on July 18, 1989. It provides support for the allegations that LILCO is removing the fuel and destaffing the plant as part of a single course of action to decommission the plant without applying to the Commission for permission to decommission, thus depriving the Commission of full and timely safety and environmental review of the proposed course of action. The article also quotes the Chairman of the New York State Public Service Commission as calling "the removal of the fuel rods 'one of a continuum of actions that LILCO must take to carryout their obligations under the settlement, which include not running the plant and also getting it into the least expensive configuration as possible'". This further supports the allegation that LILCO, in consort with the Governor of the State of New York and various other entities, is conducting a single course of action ("continuum of actions"), under NRC regulatory supervision, to unlawfully segment the review required by the National Environmental Policy Act of 1969 ("NEPA").

Further, the article quotes "some officials" as stating that the "decommissioning process ... began on Friday, as LILCO ... started the slow procedure for removing the 12-foot-high bundles ....", styling that process as being "... virtually unstoppable once it is started ...." This is a clear indication of concerted activity to evade the Commission's safety and environmental review which demands an immediate and temporarily effective order to cease and desist and return to the status quo ante so that the Commission may exercise its mandated jurisdiction pursuant to the Atomic Energy Act of 1954, as amended ("AEA") and NEPA to conduct a prior review of the proposed "continuum" of activities.

C. Attachment 2 to this supplement is a letter from the Governor of the State of New York to the people of Long Island, dated March 21, 1989, which indicates he has

engineered the "Settlement Agreement" (which is currently subject to judicial review in at least two civil suits in New York State courts and is subject to many conditions subsequent) on the basis of the substitution of his judgment of the risk the Shoreham Nuclear Power Station poses to the health and safety of the public for the judgment made by the Commission in issuing the full power operating license on April 21, 1989 in violation of the doctrine of Federal Preemption of this area. As the Court said in Pacific Gas & Electric Co. v. State Energy Resources Conservation Comm., 461 U.S. 190, 213, 103 S.Ct. 1713, 1727 (1983):

> "A state moratorium on nuclear construction grounded in safety concerns falls squarely within the prohibited field. Morover, a state judgment that nuclear power is not safe enough to be further developed would conflict directly with the countervailing judgment of the NRC, see, infra, at 1729-1730, that nuclear construction may proceed not withstanding extant uncertainties as to waste disposal. A state prohibition on nuclear construction for safety reasons would also be in the teeth of the Atomic Energy Act's objective to insure that nuclear technology be safe enough for widespread development and use - and would be preempted for that reason. Infra, at 1731.

In particular, the Governor states in that letter that the proposed settlement will "forever" remove "[t]he threat of a nuclear accident ... from Long Island's future". And he states further that the Shoreham plant "... is of questionable reliability and, because it is located in an area where evacuation is impossible, raises overwhelming concerns about safety". That letter also reveals that the Governor intends to "close and dismantle the plant, provide alternative energies sources to replace it, and give LILCO customers rates lower than those they would have have to pay if the Shoreham were to operate".

This contradicts the judgments already made by the Commission in its review of the need for the plant, the alternatives to the plant, and the costs and benefits of the plant by the Commission pursuant to NEPA as well as the AEA. It further demonstrates the need for a cease and desist order so that a unified NEPA review of the proposed plan of action

involving the exercise of the Commission's regulatory and licensing authority can be conducted.

D. Attachment 1 also demonstrates that the New York Public Service Commission and the Licensee are pursuing the current course of conduct in order to put the plant "into the least expensive configuration as possible" and "to save about $43 million on Shoreham this year". This further demonstrates the need for a cease and desist order and an order to return to the status quo ante so that the Commission may exercise its regulatory health and safety jurisdiction to the determine whether the economic objectives of the New York Public Service Commission and the Licensee are consistent with the responsibilities accepted pursuant to the full power operating license, or whether the New York Public Service Commission is subjecting the Licensee to unlawful economic pressures that would cause violations of the commitments the Licensee has made in obtaining its license.

E. In the Request at Para D.(7), the Requestor suggested that any immediately and temporarily effective orders issued pursuant to this Request be accompanied by an announcement of the Commission's intention pursuant to 10 C.F.R. § 2.205 to fine the Licensee a substantial amount per day for any violation or continuing violation of the Commission's orders in an amount that would deter any economic incentives which the Licensee may have to violate the orders. That request identified at least six violations. See Request at Para D.(1)-(6). It is recognized that "in no instance will a civil penalty for any one violation exceed $100,000 per day". 10 C.F.R. Part 2, App. C.V.B.5. (1988). However, it is also recognized that "If an evaluation of such multiple violation shows that more than one fundamental problem is involved each of which, if viewed independently, could lead to civil penalty action by itself, then separate civil penalties may be assessed for each such fundamental problem." 10 C.F.R. Part 2, App. C.V.B.5.(3) (1988). Given the anticipated "saving" of "about $43 million on Shoreham this year" identified in Attachment 1 hereto, it would appear that cumulative fines of at least $250,000 per day would be necessary to act as an economic deterrent to continuing violations.

The Requestor looks forward to a considered response to its Request as supplemented herein, but urges prompt orders to cease and desist and return to the status quo ante to arrest the illegal, continuing evasion and

erosion of the Commission's jurisdiction described in Attachment 1 hereto.

Respectfully submitted,

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

JPM:jmb
Enclosures

cc: Chairman Kenneth M. Carr
Commissioner Thomas M. Roberts
Commissioner Kenneth C. Rogers
Commissioner James R. Curtiss

ATTACHMENT 1

The New York Times

Metropolitan News

NEW YORK, NEW JERSEY, CONNECTICUT/TUESDAY, JULY 18, 1989 B1

Lilco Removes Fuel Rods At Shoreham

Action Could Signal Its Eventual Dismantling

By PHILIP S. GUTIS
Special to The New York Times

HICKSVILLE, L.I., July 17 — The Long Island Lighting Company has begun removing uranium fuel rods from the Shoreham nuclear-power plant, taking the first step toward what could be the eventual dismantling of the $5.5 billion reactor.

Lilco, which has agreed to sell Shoreham to New York State for $1 and dismantle it in return for 10 years of rate increases, has yet to apply to the Federal Nuclear Regulatory Commission for permission to decommission the plant.

But it began to remove the reactor's 84,720 fuel rods on Friday as a way of controlling costs at the plant.

Besides starting to remove the fuel rods, Lilco has also begun to transfer about 150 employees from its 590-person work force at Shoreham to other jobs. Altogether the utility expects to save about $43 million on Shoreham this year.

Even as Lilco workers withdrew fuel rods from the plant on Long Island's North Shore, Federal and state officials continued to argue about the reactor's future.

In an interview on Sunday with Newsday at the economic summit in Paris, President Bush's chief of staff, John H. Sununu, questioned why New York would want to destroy Shoreham. "Why make unusable something that might someday be usable?" he asked.

Federal energy officials had previously vowed to fight the shutdown of the plant because of Long Island's tight energy situation and the country's dependence on imported

Gov. Mario M. Cuomo, in a statement today, called the Federal Government's actions "unjustified and arrogant interference" and called on President Bush to clarify the Administration's position and "pro-

Continued on Page B2

Lilco Removes Shoreham Rods, Signaling Close

Continued From Page B1

vide justification to the people of Long Island for the Administration's efforts to stop the decommissioning of the plant."

An Administration official, W. Henson Moore, the deputy energy secretary, said Mr. Cuomo's comments indicated to him that "we must really be getting under his skin."

"We think we have justified it numerous times," Mr. Moore said. "But we certainly would be willing to meet with the Governor anytime he wants and we would welcome him into our offices."

As for removing the fuel rods from Shoreham, Mr. Moore said it was not of great concern to the department. "Lilco is simply signaling that it has no intentions to operate the plant," he said. "We view this as short of actual decommissioning and doesn't make putting that plant on stream economically impossible."

Lilco's application to the Nuclear Regulatory Commission to begin decommissioning is expected before the end of the year, after officials of the Long Island Power Authority, which is to own Shoreham, and the New York Power Authority, which is to dismantle it, agree on how to proceed.

Slow Removal Procedure

But for some officials the decommissioning process — which they said is virtually unstoppable once it is started — began on Friday as Lilco flooded the reactor vessel and an adjacent spent-fuel pool and started the slow procedure for removing the 12-foot-high bundles that each contain 62 fuel rods.

So far, at a pace of one bundle every 30 minutes, the utility has shifted approximately 50 bundles from the reactor to the spent-fuel pool. The process, which is scheduled for two 10-hour shifts a day, six days a week, should be completed within a month, said a Lilco vice president, Joseph W. McDonnell.

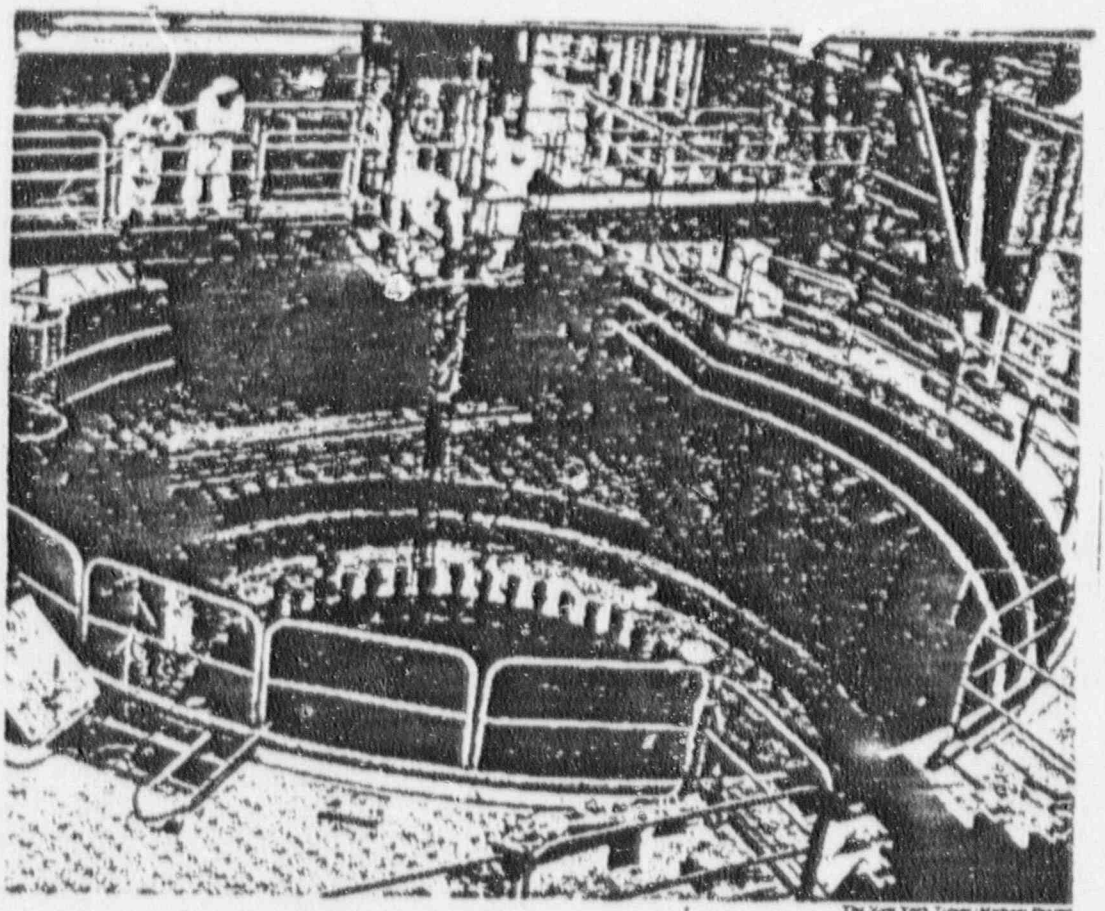
Officials sought to play down the significance of removing the fuel rods. "This is a routine process," Mr. McDonnell said. "It takes place at all nuclear plants during normal refueling and for maintenance they could be placed back into the reactor and used again."

Peter A. Bradford, the chairman of the State Public Service Commission, called the removal of the fuel rods "one of a continuum of actions that Lilco must take to carry out their obligations under the settlement, which include not running the plant and also getting it into the least expensive configuration as possible."

Lilco completed Shoreham in 1985 but was unable to win a commercial operating license for the plant because of the unwillingness of New York State and Suffolk County to participate in emergency planning.

Though the Federal Nuclear Regulatory Commission awarded the plant a full-power license earlier this year, Lilco had already agreed to a settlement with Governor Cuomo in which it agreed to sell the plant to the state.

[Column 1 of the above appeared in The New York Times, July 18, 1989, in Column 5 of page B1; Columns 2 and 3 above, and the picture appeared in Column 2 of page B2]



The New York Times/ Michael Shaw

Mechanics at the Shoreham nuclear-power plant removing uranium fuel rods from the $5.5 billion reactor.

ATTACHMENT 2

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

MARIO M. CUOMO
GOVERNOR

March 21, 1989

Dear Long Islander:

I am writing to inform you about an agreement that, once and for all, will provide a comprehensive solution to the agonizing saga concerning the nuclear power plant at Shoreham. This agreement will close and dismantle the plant, provide alternative energy sources to replace it, and give LILCO customers rates lower than those they would have to pay if the Shoreham plant were to operate.

This agreement is still subject to approval by the State Public Service Commission (PSC), the Long Island Power Authority, the New York Power Authority and the shareholders of LILCO.

The agreement provides for the dismantling of the plant by the New York Power Authority after careful planning and public hearings. The threat of a nuclear accident will be forever removed from Long Island's future.

Just think of it. For the first time in nearly two decades, the controversy surrounding Shoreham will finally end and we can devote all our energies to solving the other pressing problems confronting Long Island.

Regrettably, no matter what course of action is taken regarding Shoreham, LILCO's electric rates will rise in the future. Of all the options available, this agreement will provide the lowest rates possible -- much lower than if Shoreham were to operate. At this moment, I have the Executive Director of the State Consumer Protection Board fighting before the PSC to assure this result.

The lower rates under my agreement are possible because closing Shoreham will make it unnecessary to spend any additional money on the plant and will guarantee that LILCO and the federal government share the losses with you.

(over)

Last year my administration negotiated an agreement that accomplished many of these same goals. The State Legislature, however, was unwilling to make the hard choices necessary to close the plant and declined to act on the agreement. But now I have found a way to do it without the legislators.

I share the outrage of many Long Islanders about the waste associated with the Shoreham controversy. For six years I asked LILCO to stop investing taxpayers' and ratepayers' money. Too much time and money was put into a nuclear power plant that is of questionable reliability and, because it is located in an area where evacuation is impossible, raises overwhelming concerns about safety.

Unfortunately, there is nothing we can do to recover all the losses associated with Shoreham. There is, however, one sure way to end the waste and provide Long Island with a reliable energy future at the lowest rates possible. That way is the agreement that I have negotiated to close Shoreham and allow us to devote all our attention to building a better future for Long Island.

Sincerely,

Mario M. Cuomo