

# DOW, LOHNES & ALBERTSON

1255 TWENTY-THIRD STREET  
WASHINGTON, D.C. 20037-1194

TELEPHONE (202) 857-2800  
TELECOPIER (202) 857-2800  
TELEX 425546

WRITERS DIRECT DIAL NO  
(202) 857-2929

July 31, 1989

WILLIAM F. VINE  
RICHARD L. VALDETHIN  
JOHN A. WATSON  
JOHN D. WATSON  
STANLEY D. WATSON  
S. DWIGHT PERRY  
DANIEL W. TOOMEY  
BERNARD J. LONG JR.  
RALPH W. HARTZ JR.  
WANDER H. ALLEN  
WILLIAM S. SCHREIBER  
WILLIAM S. MACDONALD JR.  
CHARLES A. SANDOZ  
DAVID S. SANDOZ  
LEONARD J. BART  
WILLIAM BLUMENFELD  
CHARLES J. WARDEN  
CHARLES H. WELSH  
ALAN C. CAMPBELL  
JAMES L. TREASORER  
VICTOR A. HATTENBERGER  
BRENT S. BLANKENHORN  
J. MICHAEL WHELAN  
PAUL C. THOMPSON  
TERENCE S. JOHNSON  
JACK B. ALABRINI  
WENDELL M. GIBSON  
DAVID A. HILDEBRANDT  
JOHN R. KURZWEIL  
JOHN W. B. FISHER  
WYCKOFF H. ALLEN  
ALAN H. BLYE  
ROBERT J. C. WELLS  
ROBERT W. HOOKER, JR.  
RICHARD S. BELLE  
J. DONALD SCHWARTZ  
MARGARET F. BELMONT  
MICHAEL J. DAVIS  
ARNOLO F. LITNER  
MICHAEL S. GOLDSTEIN  
JOHN A. COLE JR.  
LESLIE H. WINTERFELDER  
KAREN F. REED

HONORARY LOHNES 1987-1994  
ANDREW M. COBBETT  
STANLEY J. BLOCH  
HOWARD COBBETT  
DAVID R. BRIDGES, JR.  
ROBERT T. CARNEY  
DAVID F. BARTON  
KATHLEEN R. COLLINS  
JOSEPH F. KELLY, JR.  
GORDON GOLDMAN BRAD  
STUART A. BRIDGES  
MICHAEL A. PAGE  
ALBERT H. TUNNICLIFFE  
DAVID S. REED  
JOSEPH S. REED  
WALDO J. REED  
ANNE E. MCKINLEY  
J. ERIC DAHLGREN  
HUNTER D. HALL  
JOYCE TRIMBLE BRADY  
KENNETH D. WALTON  
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WALTER S. TOSK  
JOHN C. JOY  
LEWIS D. WARD  
WALTER S. BRIDGES  
JUDITH A. WATSON  
RONALD D. HAYS  
TODD D. GARY  
JIMMY H. POMEROY  
LENA A. BERRY  
JUDITH J. KELLY  
LIZILE J. LEVINSON  
HETER C. CARROLL  
ELLEN R. TULLOCH  
CHRISTOPHER A. FINE  
JENNIFER D. BRADY  
RICHARD D. BRADY  
ELIOT J. BRADY  
LOUIE A. BRADY  
LARRY J. BRADY

OF COUNSEL  
FRED W. ALBERTSON  
ARON L. DANDON  
DAVID S. GARDFIELD  
RICHARD A. S. GARDFIELD  
JAMES F. MCGRAW, JR.  
EDWARD PERDUE JR. V. LITNER  
DAVID A. ROBERTS  
VINCENT T. RABENOLD

BLISSMAN WETTER PERRY  
THOMAS R. DEWNEY  
LEONARD J. KENNEDY  
NANCY L. WOLF  
MEREDITH A. FURBER  
DAVID J. WITTEBETH  
THOMAS J. O'ROURKE  
THOMAS J. HUTTON  
DAVID C. WILD  
CORINNE M. HATLEY  
MICHAEL F. HOLBE  
FRANK THORNTON  
MICHAEL F. FISHER  
DAVID F. BARTH  
JOHN A. MARRAS  
NEAL S. BARR  
LAURENCE J. THORNTON  
CAPTAIN A. BRADY  
HARVEY D. FURBER  
RICHARD A. WELLS  
JOHN W. WELLS  
EDWARD J. O'CONNOR  
WILLIAM H. JOHNSON  
PAUL R. LANG  
MICHAEL D. BARKER  
SUZANNE PERDUE  
LESLIE S. PERDUE  
KELLY A. PERDUE  
CARMELA J. MONTGOMERY  
KATHERINE S. MONTGOMERY  
TERENCE HAYES  
DEBORAH A. BLANK  
WILLIAM J. BLYE  
BARBARA CHIC  
MICHELLE A. RUBIN  
DOUGLAS A. WYCOFF  
DOUGLAS J. HERRNER  
PETER C. WOLF  
JOHN W. HART  
ALAN H. BLYE  
TERESA M. WOLBER

JAMES F. BLISSMAN  
RICHARD A. COYLE  
BARBARA S. MARCELLO  
SHEILA F. ANTHONY  
JAMES A. DEWNEY  
DAVID S. MILLS  
MARSHALL A. ROSS  
MAYBELLE WALKER  
FREDERICK S. BLISSMAN  
LARRY H. WALKER  
JAMES W. COLLIER  
J. S. HARRINGTON  
SHEILA WALKER  
PAUL A. WILD  
MARY A. OULMAN  
LISA C. BURBAU  
ELIZABETH J. BUSTARCO  
KENNETH S. LEVINE  
ROBERT S. DEWNEY  
ROBERT A. SANDSTON  
JULIE M. WALKER  
A. WALL FURBER  
CHRISTOPHER S. WOODS  
DAVID J. WELLS  
KATHERINE A. STROGER  
JUDITH S. WELLS  
MAYN COLLINS WOODSTON  
JAMES S. ADAMS  
LESLIE S. WOLBER  
THOMAS J. WELLS JR.  
ELIOT W. BLANK  
GARY GARY WARD  
MATTHEW S. WELLS  
JOHN A. FURBER  
STEPHEN C. LOUISLAK  
JANE S. OLEARY  
DREW R. REYNE  
WANDA J. LEONARD  
RICHARD L. BLANK

MEMBER OF GEORGIA BAR ONLY  
MEMBER OF NEW YORK BAR ONLY  
MEMBER OF MARYLAND BAR ONLY

FRED W. ALBERTSON  
ARON L. DANDON  
DAVID S. GARDFIELD  
RICHARD A. S. GARDFIELD

JAMES F. MCGRAW, JR.  
EDWARD PERDUE JR. V. LITNER  
DAVID A. ROBERTS  
VINCENT T. RABENOLD

\* ADMITTED TO PRACTICE IN NY, IL ONLY

### VIA TELECOPY

Dr. Thomas E. Murley  
Director  
Office of Nuclear Reactor Regulation  
Mail Stop 12-G18  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: Third Supplement to The Section 2.206 Request by the Shoreham-Wading River Central School District and Scientists and Engineers for Secure Energy in U.S.N.R.C. Docket No. 50-322

Dear Dr. Murley:

This is to further supplement the requests for immediately effective orders in the subject docket with respect to the issues and on the bases set forth in the original request dated July 14, 1989 as supplemented by our letters of July 19 and July 21, 1989.

ONE RAVINIA DRIVE SUITE 1300 ATLANTA GEORGIA 30348 2108 TELEPHONE (404) 395-8800  
TELECOPIER (404) 395-8874 TELEX 4995255  
437 MADISON AVENUE NEW YORK, NEW YORK 10022 7380 TELEPHONE (212) 826 3300  
TELECOPIER (212) 826 3322 TELEX 277285  
80 WEST STREET ANNAPOLIS MARYLAND 21401-3401 TELEPHONE (301) 260-0043

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Two events occasion this third supplement. First, the briefing presented by the Long Island Lighting Company ("LILCO"), licensee in the above-captioned docket, to you and other members of senior management at the NRC on Friday, July 28, 1989 revealed certain new information and reinforced other information relevant to the bases on which the Section 2.206 requests were originally made. Second, and most important, I attach (as Exhibit 1 hereto) a letter of July 27, 1989 from Admiral Watkins to Admiral Carr which states among other things:

" . . . the Department would support the issuance by the NRC of an immediately effective order prohibiting LIICO from taking actions which, in effect, initiate the decommissioning process for Shoreham before NRC permission is sought and granted for that action following a full adjudicatory hearing."

In short, President Bush's Administration supports the request for immediately effective orders made by the School District and SE2. Both of these matters are addressed below in detail.

A. INFORMATION FROM THE JULY 28 BRIEFING

The July 28 briefing addressed various matters concerning the defueling, destaffing and maintenance "activities" (or lack of maintenance activities) at the Shoreham Nuclear Power Station ("Shoreham") as well as LILCO's plans for licensing amendments in the future; neither the licensee or the NRC Staff addressed their respective obligations under the National Environmental Policy Act of 1969 ("NEPA") at that meeting.

1. Defueling: LILCO reported that as of the morning of July 28 approximately 287 of the 560 fuel bundles had been removed from the core and that if that activity is allowed to continue, LILCO expects to complete the defueling between August 5 and August 8. LILCO also described various Section 50.59 analyses of the defueling and the risk of the subsequent residence of the fuel in the spent fuel pool which are being conducted, but which are not complete at this time. That revelation in and of itself is a sufficient basis for the NRC to find that LILCO does not have the appropriate basis at this time to make the required determination, under Section 50.59, that the defueling activity does not involve

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an "unreviewed safety question". Further, none of those analyses described at the briefing consider the issue raised in our request of July 14, namely, the acceptability of the risk in light of the fact that the defueling is unnecessary. We do not argue that there is a great risk in the defueling activity and subsequent residence of the fuel in the spent fuel pool; rather, we argue that previous reviews of defueling activities have addressed the acceptability of that risk in light of the benefit to be achieved (i.e., either reloading of new fuel for continued operation or, in rare cases, mitigation of an accident) which is totally lacking here. Thus, the current defueling presents an unreviewed safety question deserving careful scrutiny by the NRC in the conduct of its regulatory activities.

In short, the briefing clearly demonstrated that this defueling activity is not being conducted in accordance with Section 50.59 and demonstrated the need for immediately effective orders requiring the cessation of defueling and the return of the fuel bundles, which have been removed, to the reactor vessel where the health and safety of the public will be protected not only by the secondary containment, but also by the primary containment and the reactor vessel itself until reviews of the activity pursuant to the Atomic Energy Act of 1954 as amended ("AEA") and NEPA have been completed.

2. Destaffing: Contrary to one of the premises of your interim reply to the School District request, the July 28 briefing also revealed that LILCO has already significantly reduced staff at Shoreham as of July 28 and has plans for even more significant reductions in the very near future. The most significant staffing change which was revealed at that meeting was LILCO's intent to transfer John D. Leonard, Jr., Vice President - Nuclear Operations, from that post effective August 1, 1989 and to replace him with the current plant manager. Mr. Leonard is not only extraordinarily well respected in the industry, but also he is unarguably the key man on whom the NRC relies for assuring compliance with the full power operating license terms.

In our initial request, we reported that in the June 30, 1989 LILCO-NRC Region I meeting, Mr. Leonard had said among other things "I think you all know me very well enough that I try to run the show the way you want it run, and there will be no violation in that license, as long as I have it in my power to control it." SWRCSD Request pursuant to 10 C.F.R. §2.206 (July 14, 1989), at D.(3). We considered that qualification ominous at the time and

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therefore stressed the qualification in our report of the meeting to the NRC. Our worst fears will now be fulfilled, unless the NRC acts promptly to prevent his transfer.

If the transfer occurs, the NRC will no longer have Mr. Leonard to rely on, and it will not have had the opportunity to review the qualifications of his proposed successor prior to that person taking control. Moreover, there may be a cascading effect throughout the LILCO organization with people being promoted to positions which they have not previously handled and for which the NRC has no assurance they are qualified.

Under these circumstances, there is a crying need for immediately effective orders requiring LILCO not to transfer Mr. Leonard, not to further deplete the Shoreham staff and to return LILCO and contractor personnel to the required personnel positions to allow for prior review of LILCO's proposed actions under both the AEA and NEPA.

3. Maintenance: At the July 28 briefing, LILCO said that it was going to continue maintenance in accord with its obligations under the full power operating license, but (a) it was not going to make further modifications required of other full power operating licensees, and (b) it explicitly described what it was going to do with maintenance of existing plant systems: Defining the plant as 124 operating systems, LILCO said it was going to maintain 40 systems as "operable," (i.e., meet Technical Specification requirements), 42 systems in a "functional condition", 36 systems in a "secured" condition, and 7 systems in a "preserved" condition. Exhibit 2 hereto displays our understanding of how LILCO intends to address maintenance for each of the 124 plant systems.

There are two key concepts involved in understanding LILCO's proclaimed pattern of maintenance: (a) the concept of Operating Condition 6 ("OC 6") and (b) the definitions of "operable", "functional", "secured", and "preserved". There is no Operational Condition 6 in LILCO's Technical Specifications. See NUREG - 1357 (April 1989), at Table 1.2. And while the Shoreham Technical Specifications do contain a definition of "operable", those Technical Specifications contain no definitions of "functional", "secured", or "preserved". See NUREG - 1357 at Section 1.0 passim and Specification 1.26. In short, LILCO has directly informed the NRC staff that it is creating a new Operating Condition (i.e., OC 6) and that it will not maintain 84 of

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the Shoreham Plant's 124 systems in accord with the Technical Specifications.

For example, LILCO appears to state that it will not maintain the feed water control system, the neutron instrumentation system, the reactor reverse shutdown system, the core spray system, the residual heat removal system, the radwaste off gas system, the primary containment inerting system, the primary containment cooling system, the post-accident monitoring systems, nor many other systems which are essential to the health and safety of the public. See Exhibit 2-3.

The Requestors suggest that the licensee's proclamation of its non-modification plans and its non-maintenance plan also cry out for immediately effective orders to bar the licensee from discontinuing any required modifications or maintenance to protect the health and safety of the public, to protect the environment and to preserve alternatives for the Shoreham plant prior to full review pursuant to the AEA and NEPA.

4. Licensing Plans: At the July 28 briefing, LILCO's said that it "hoped" to come in for a license amendment "before the end of the year" and, in response to Staff questions, represented that it was having a hard time deciding whether to transfer the full power operating license to LIPA or to apply for a reduction of the full power operating license to a "possession only" license prior to applying for a transfer of the license to LIPA. The requestors believe that this is strictly a stalling tactic by LILCO so that the plant will "decommission itself" prior to applying for either license amendment.

The agreements among LILCO, LIPA and the others involved in the so-called "Settlement Agreement" make unarguably clear the precise order in which LILCO is required to proceed in seeking license amendments. For example: "Promptly after the Effective Settlement Date, LILCO will (i) unless previously accomplished, remove the fuel from Shoreham's reactor and deposit the fuel in the Shoreham spent fuel pool, . . . [and then] apply to the NRC for a "possession only" license and/or other license amendments as are necessary to facilitate the License Transfer. . . ." See Exhibit 1 to the Requestors' July 14, 1989 letter at its Exhibit 3, Section 5.1(b).

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The entire context of the July 28 briefing and all other documentation available to the NRC Staff make it indisputable that LILCO has embarked upon a single continuum of actions from defueling through decommissioning which may have adverse environmental effects and that, if allowed to segment this unitary course of conduct, LILCO will significantly reduce the scope of alternatives available for Commission review under both the AEA and NEPA, contrary to the purposes of both of those acts.

None of the steps being taken by LILCO at this time is justified independently of the continuum of actions; none of them so far has been accompanied by an adequate environmental impact statement; and each one of them will prejudice the ultimate decision under the program. Under these circumstances, the policy behind Section 51.101 of the Commission's Regulations clearly requires an immediately effective order directing LILCO to cease and desist from defueling, destaffing, and reduction of maintenance activities and a return to the status quo ante. See 10 C.F.R. § 51.101 (1988). Given the facts that have been presented to the NRC Staff, inaction would also constitute a "form of permission" without environmental review in violation of 10 C.F.R. § 51.100(a)(1) (1988), since there is no question but that the final step of the continuum (i.e., an application for decommissioning) is subject to the requirement for an environmental impact statement or a supplement to an environmental impact statement. See 10 C.F.R. § 51.20(b)(5) (1988).

5. Public Comment: At the conclusion of the July 28 briefing, you thanked LILCO for its "reassurances" and invited comments from members of the public present for that briefing. At that time, that I offered comments on behalf of the School District and SE2 on matters discussed, and not discussed, during the briefing which relate to the pending requests for immediately effective orders.

In addition to the points identified and expanded on above, my comments included the following: (1) Contrary to your summation to the effect that the briefing had "offered reassurances" to the Staff, I suggested that the briefing gave clear notice to the Staff that LILCO was not abiding by, and did not intend to abide by, its license conditions and commitments; (2) The LILCO response to an expressed staff concern that LILCO might let the plant become a "rust bucket" was totally inadequate when the assurance was that LILCO was maintaining a "full staff of 30 janitors"; as

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I said then, without denigrating the value of janitors, we do not believe that the janitorial staff is the most important element in assuring the proper maintenance of a nuclear power plant; (3) The requestors repeat their impression that LILCO's mode of dealing with staffing and maintenance (namely, saying in general terms that they intend to abide by their license conditions and commitments, but then explicitly detailing the myriad of ways in which they were not going to comply with those conditions and commitments) is a way of asking the Commission to "put its head in the sand and pretend it doesn't know what is going on"; and (4) The requestors repeat their concern that neither the Commission Staff nor the Licensee addressed their respective responsibilities pursuant to NEPA during the briefing.

B. THE DEPARTMENT OF ENERGY LETTER OF JULY 27, 1989

The Requestors have kept the Department of Energy aware of the request for immediately effective orders pending before the NRC.

On July 27, 1989, Admiral James B. Watkins, U.S. Secretary of Energy, directed a letter to Admiral Kenneth M. Carr, Chairman of your Commission, with copies to the other Commissioners, in which he stated the Department of Energy's positions on both (a) the need for Shoreham and (b) the procedures which can be followed in assuring a full review of the alternatives by your Commission. As part of the relevant procedures, Admiral Watkins said ". . . the Department would support the issuance by the NRC of an immediately effective order prohibiting LILCO from taking actions which, in effect, initiate the decommissioning process for Shoreham before NRC permission is sought and granted for that action following a full adjudicatory hearing." See Exhibit 1 hereto, at 2.

This "support" by the Cabinet Secretary responsible for energy matters constitutes unmistakable evidence of where the "public interest" lies. See 10 C.F.R. § 2.202(f) (1988).

The Requestors suggest that the Commission is entitled to give this support for immediate effective orders by a Cabinet Secretary at least as much weight as, and perhaps more weight than, the Commission gave to the letter of October 4, 1977 from Stuart E. Eizenstat, an Assistant to the President, in deciding to discontinue the generic environmental statement on mixed oxide fuel ("GESMO") proceedings. In the GESMO proceedings, the Commission gave Mr. Eizenstat's letter decisive weight. See, e.g., 42 Fed.

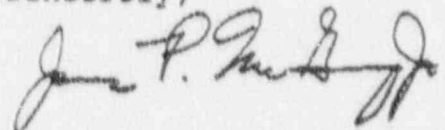
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Reg. 65334 (December 30, 1977); In the Matter of Mixed Oxide Fuel, 7 NRC 711, 722 (CL1-78-10) (1978).

C. COPIES FOR THE COMMISSIONERS

Under these circumstances and, especially, in light of Admiral Watkins' "support" for the issuance of immediately effective orders, I am furnishing copies of this letter (and its exhibits) directly to the Commissioners so that they may exercise their supervisory power over delegated staff functions to protect the health and safety of the public, preserve the human environment, and preserve the Shoreham facility in support of U.S. energy policy. 10 C.F.R. §2.206(c)(1) (1988).

Sincerely,



James P. McGranery, Jr.

Counsel for  
Shoreham-Wading River  
Central School District  
and  
Scientists and Engineers  
for Secure Energy

JPM/clk  
Enclosures

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





The Secretary of Energy  
Washington, DC 20585

July 27, 1989

Admiral Kenneth M. Carr  
Chairman, Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Admiral Carr:

I understand that, pursuant to the Atomic Energy Act of 1954, as amended, an application or applications will be filed shortly with the Nuclear Regulatory Commission (NRC) by the Long Island Lighting Company (LILCO) and the Long Island Power Authority (LIPA) seeking the required consent of the NRC for (1) LILCO's surrender of its full power operating license in favor of a possession-only license for its Shoreham facility; (2) transfer of the possession-only license to LIPA; and (3) the decommissioning of Shoreham by LIPA utilizing the technical services of the New York Power Authority (NYPA) to perform the decommissioning activities. These NRC authorizations will be sought solely to effectuate an agreement among LILCO, LIPA and New York State pursuant to which the Shoreham facility is to be sold for a token consideration in order to dismantle it before it ever generates electricity commercially.

The dismantling of this invaluable energy resource, the safety of which has been affirmed by the NRC through years of technical review and extensive litigation, would be a colossal mistake. Shoreham's destruction would be contrary to every principle associated with the establishment and maintenance of a sensible national energy policy and would be inconsistent with the provision of an adequate and reliable supply of energy in the Northeast. Further, dismantling of this facility will necessitate the increased use of fossil fuels and the concomitant adverse environmental impacts associated with their use--the very impacts which the Bush Administration is striving to mitigate and, where possible, avoid.

The Atomic Energy Act provides that any person whose interests may be affected by the issuance of a proposed operating license amendment may request a public adjudicatory hearing to contest the proposed amendment. Important questions exist regarding the technical, managerial and financial qualifications of LIPA to hold an NRC license for the purpose sought, and these matters raise considerations of the type which, under the Commission's regulations (10 CFR 50.92), require that a requested adjudicatory hearing be conducted before the Commission approves the proposed amendments.

*Film Xtra pages*

The Commission also has discretion pursuant to the Atomic Energy Act and its regulations to hold a prior hearing if it determines that such a hearing should be held in the public interest. There could hardly be a stronger case than this one for the exercise of such discretion. Significant issues of first impression are obviously raised by the proposal to transfer a new, baseload electric generating facility, possessing a full power operating license, to an entity with no expertise in and no experience with nuclear facilities for the express purpose of tearing it down. In addition, once the license transfer and dismantling are authorized and commenced, the consequences would be irreversible and the availability of any remedy following a hearing on the significant public issues involved would be entirely foreclosed.

In this regard, I am extremely concerned that the plans recently announced by LILCO for ~~defueling the reactor~~ and for drastic reductions in plant staffing will have the effect of disabling the facility before LILCO and LIPA ever approach the NRC with the aforementioned license amendment requests. There have been disturbing reports in the public media that, following dispersal of the Shoreham operations staff as currently planned, it may take as long as two to three years to reassemble the operating staff required to safely operate Shoreham. LILCO should not be allowed to disable the facility indirectly prior to formal approval by the NRC of the decommissioning of the plant through the license amendment process. I would urge the Commission to monitor closely any actions, such as defueling, destaffing or reduced maintenance, which are intended to commence the dismantling. In this regard, the Department would support the issuance by the NRC of an immediately effective order prohibiting LILCO from taking actions which, in effect, initiate the decommissioning process for Shoreham before NRC permission is sought and granted for that action following a full adjudicatory hearing.

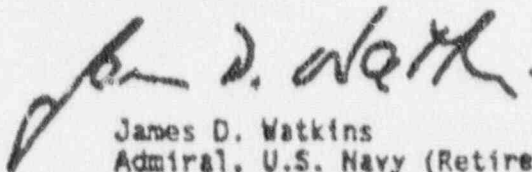
I also strongly urge the Commission and the NRC staff not to consider the various steps leading to the dismantlement of Shoreham (license surrender, license transfer, and decommissioning) as independent requests for discrete actions which can be segmented for purposes of the NRC's required safety and environmental review. These actions must be viewed as integral parts of the basic and overriding plan to dismantle Shoreham that was actually memorialized in a written agreement. The possession-only license and LIPA's qualifications to hold an NRC license can be assessed properly only in the context of the activities to be authorized under the license. These license amendment requests should only be considered in light of both a full analysis of the decommissioning plan required by the NRC's regulations and a full evaluation of the consequences of destroying Shoreham required under the National Environmental Policy Act (NEPA).

In this case, the written agreements among the parties clearly establish that the impending request by LILCO for a possession-only license is intended to formally initiate the process of dismantling Shoreham. Certainly the Commission should treat this license amendment no differently than do the parties to this ill-considered plan. Under

these circumstances, approval by the NRC of action leading to the dismantling of a newly completed, licensed nuclear facility in the face of increasing energy reliability problems on Long Island is clearly a "major federal action significantly affecting the quality of the human environment." Accordingly, NEPA requires that a detailed comprehensive environmental impact statement must be prepared and circulated for public comment prior to the approval of any of the impending license amendment requests. Aside from the significant environmental impacts associated with alternative energy sources, with the exacerbation of the energy reliability problems on Long Island and with the decommissioning itself, there are alternatives to the impending proposal which are obviously superior to dismantling the facility. 7

The Shoreham plant is a significant domestic energy source that is capable of meeting the electricity requirements of Long Island and the surrounding region in a safe, reliable and economical manner for years to come. The dismantling of Shoreham would be a grave mistake even if the energy situation on Long Island were more favorable. Taking this action under present circumstances would be simply irresponsible. Thus, it is obvious that the proposal for the NRC to authorize the destruction of the plant raises, and requires the NRC to address, issues involving power needs, alternatives and other important environmental considerations in an EIS. Following completion of that document, these matters should be fully evaluated in the public hearing afforded those whose interests may be affected before the NRC determines whether to permit Shoreham to be destroyed. The interests of this Department, the Northeast and the Nation will be affected in a far-reaching manner by the Commission's ultimate decision in this matter.

Sincerely,



James D. Watkins  
Admiral, U.S. Navy (Retired)

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

Exhibit 2-1OPERABLE

\*\*/

B21	Nuclear Boiler
C51	Neutron Instrumentation
C71	Reactor Protection
D11	Process Radiation Monitoring
D21	Area Radiation Monitoring
F12	Servicing Aids (Fuel)
F15	Refueling
G11	Radwaste
G33	Reactor Water Cleanup
M43	Fire Protection
M50	RBSV & Control Room Chilled Water
P41	Service Water
P64	Meteorological Monitoring
R11	Station Transformer (NSS & RSS)
R21	Non-Segregated Buses
R22	Metal Clad Switchgear
R23	Load Centers and Unit Substations
R35	AC Instrument Power
R36	AC Uninterruptible (Vital) Power
R42	Battery Power (125V DC)
R43	Diesel Emergency Power
R62	Station Protection and Metering
R71	Fire Detection & Station Security
R81	Heat Tracing
S23	138/69KV Switchyard Pot. Transformer
S24	138KV Switchyard Relay Panels
T21	Reactor Building
T22	Reactor Building Superstructure
T23	Reactor Primary Containment
T31	(RB) Cranes, Hoists and Elevators
T41	Reactor Building Ventilation
T46	Reactor Building Standby Vent
U41	Turbine Building Ventilation
V41	Radwaste Building Ventilation
W12	Screenwell Canal
X41	Miscellaneous HVAC
X60	Diesel Generator Ventilation
X61	Control Room Air Conditioning
Y25	Barge Dock and Waterfront
Z94	Seismic Monitoring
Z96	Post Accident Sampling

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\*\*/ "Secured" for OC6.

Operable: System(s) maintained to meet Technical Specification requirements.

Total of 41 operable systems (40 for OC6).

Exhibit 2-2FUNCTIONAL

B11	Reactor Assy
G41	Fuel Pool Cool & Cleanup
M41	Heating & Auxiliary Boiler
M42	Domestic Water
M44	Sanitary Sewage
M61	Building Service Miscellaneous
N34	Lubricating Oil
N39	Turning Gear
N42	Hydrogen Seal
N43	Generator Stator Cooling
N45	General Hydrogen & CO2 Purge
N71	Circulating Water
O61	Plant Security
P11	Condensate Transfer & Storage
P21	Demineralizer & Makeup Water
P33	Sample System
P43	TBCLCW
P50	Compressed Air
P71	Low Conduct & SW Drains
R24	Motor Control Centers
R34	Auxiliary Grounding
R41	DC Instrument Power (4BVDC)
R51	Communication (Intra Plant)
R52	Comm-Telephone (Leased Line)
R53	Comm-Sound (Powered Telephone)
R54	Comm-Radio
R55	Closed Circuit TV
R61	Unit Protection & Metering
S21	Plant Substation
S25	69KV Switchyard/Gas Turbine
T51	Reactor Building Lighting
U31	(Turbine Building) Cranes, Hoists, Elevators
U51	Turbine Building Lighting
V31	RW Cranes, Hoists and Elevators
V51	Radwaste Building Lighting
W23	Chlorination
X37	Security Building
X46	Office Building HVAC
X50	Office Building Annex
X70	Secondary Access Facility
Y46	Cathodic Protection
Y51	Yard Lighting

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 Functional: Essential support system(s) not required per  
 Technical Specifications but necessary for  
 minimal plant functions, habitability, and  
 preservation concerns.

Total of 42 Functional systems.

Exhibit 2-3SECURED

C11	CRD Hydraulic Control
C32	Feedwater Control
C41	Standby Liquid Control
C51	Neutron Instrumentation
C61	Reactor Remote Shutdown
C91	Process Computer
E11	Residual Heat Removal
E21	Core Spray
E32	MISV Leakage Control
M60	Main Chilled Water
N11	Main Steam
N21	Condensate and Feedwater
N22	Heater Relief and Vent Lines
N23	Miscellaneous Drains Secondary Plant
N24	Sealing Water
N25	Feedpump TSI
N31	Turbine
N33	Seal and Radwaste Steam
N35	Moisture Separator Reheater & Drains
N36	Extraction Steam
N37	Main Turbine Supv Instrumentation
N44	Vacuum Priming & Air Removal
N52	Condensate Demineralizer
N62	Radwaste Offgas
P42	RBCLCW
P63	Radwaste Solids Handling
P65	Vibration Monitoring
R13	Isolated Phase Bus
S22	138KV Transformer Breaker
T24	Primary Containment Inerting
T47	Primary Containment Cooling
T48	Primary Containment Atmospheric Control
T49	Primary Containment Inter Leak Test
X62	Control Room Self Contained Air Supply
Z92	Excess Flow Check Valves
Z93	Post Accident Monitoring

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 \*/ "Operable" for OC4, 5 and 6.

Secured: System not to be operated or maintained that will be left in a de-energized/safe state.

Total of 35 Secured Systems (36 for OC6).

PRESERVED

B31	Reactor Water Recirculation
E41	High Pressure Coolant Injection
E51	Reactor Core Isolation Cooling
N32	Turbine Control
N41	Generator
N51	Excitation
S11	Main Power Transformer

Preserved: System equipment of considerable value preserved for sale/salvage. Items preserved are at LIICO discretion and may be secured as seen fit.

Total of 7 Preserved Systems.