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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION
Thomas E. Murley, Director

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| In the Matter of | ) | |
| | ) | |
| LONG ISLAND LIGHTING COMPANY | ) | Docket No. 50-322 (2.206) |
| | ) | |
| (Shoreham Nuclear Power Station, Unit 1) | ) | |

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

INTRODUCTION

On July 14, 1989, James P. McGranery, Jr., filed a request with the Executive Director for Operations pursuant to 10 C.F.R. § 2.206 on behalf of the Shoreham-Wading River Central School District requesting that action be taken with regard to Shoreham Nuclear Power Station Unit 1 (hereinafter School District Petition.) Specifically, the School District Petition requested that a temporary immediately effective order be issued to the Long Island Lighting Company (LILCO) to cease and desist from any and all activities related to the defueling and destaffing of the facility and return to the "status quo ante," pending further consideration by the Commission. The Petition further requested 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. Briefly summarized, the bases set forth for the Petition were that: (1) such an order is necessary to avoid

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potentially hazardous conditions arising from unreviewed safety questions, violations of the licensee's full-power operating license and unreviewed environmental questions; and (2) that LILCO is undertaking a course of action that will willfully avoid the full and effective Commission consideration of the environmental consequences of licensee action and is contrary to the provisions of the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) Guidelines, and the Commission's regulations by presenting for regulatory review defueling and destaffing plans that are the initial actions in a single course of action to transfer the license for Shoreham and to decommission the plant. The School District supplemented this Petition by a letter dated July 19, 1989, which, among other things, suggested that cumulative fines of at least $250,000 per day would be necessary to act as an economic deterrent to a continuing violation by LILCO.

By letter dated July 20, 1989, I acknowledged receipt of the School District Petition. In my acknowledgement letter, I indicated that a preliminary review of the concerns in the Petition did not indicate any need to take immediate action because, on the basis of current information, the licensee was currently in compliance with the provisions of its full-power license, as the defueling of the reactor vessel is an activity permissible under the terms of the Facility Operating License NPF-82, and the

destaffing of the plant would not be implemented until early August.

The School District responded to my July 20 letter by letter dated July 21, 1989, urging immediate reconsideration of my position as set forth in the July 20 letter, and taking issue with statements made therein.

On July 26, 1989, Mr. McGranery filed a Petition on behalf of Scientists and Engineers for Secure Energy, Inc., ("SE2") (hereinafter SE2 Petition). This Petition requested immediately effective orders and the institution of proceedings to the same extent and on the same bases as the request made by Shoreham-Wading River Central School District. The Petition stated that SE2 adopted and incorporated the July 14 request made by the School District as supplemented on July 19 and July 21, 1989, and requested consolidation of its Petition with that of the School District. By letter dated August 21, 1989, I acknowledged receipt of the SE2 Petition. On July 31, 1989, and January 23, April 5, May 4, November 14, and November 29, 1990, additional supplements to the Petitions filed by the School District and SE2 were submitted.

The July 31 supplement, among other things, requested that immediately effective orders be issued that: (1) barred LILCO from transferring John D. Leonard, Jr., Vice President-Nuclear

Operations, from his post or further depleting the Shoreham staff, and mandated that LILCO return LILCO and contractor personnel to their positions to allow for prior review of LILCO's proposed actions, and (2) barred LILCO from discontinuing any required maintenance or modifications.

The January 23, 1990, supplement alleged that the NRC has been pursuing a continuing course of conduct giving various forms of "permission" to LILCO that have adverse environmental impacts and diminish the choice of reasonable alternatives to be considered in the NEPA proceedings on the proposed Shoreham decommissioning.

The April 5 supplement requested that the Commission deny or, at least, defer until after publication of a Final Environmental Impact Statement (EIS), consideration of LILCO's request to reduce its on-site property insurance. This request by LILCO, according to Petitioners, constitutes another "segmented proposal" in furtherance of LILCO's decommissioning proposal. In their April 5 supplement, the Petitioners stated that they were incorporating into their Petition an enclosed" "comment" to the Secretary of the Commission (also dated April 5, 1990). In that comment, the Petitioners again asked the Commission to either (1) deny a request by the Long Island Lighting Company (LILCO) for an exemption from the on-site primary property damage insurance requirements of 10 C.F.R. § 50.54(w)(1) for operation of the

Shoreham facility and withdraw its proposal to consider the issuance of this exemption, or (2) announce its intention to defer decision until after publication of a Final EIS on the decommissioning proposal. The Petitioners alleged that LILCO's request was violative of NEPA, the Atomic Energy Act (AEA), the Administrative Procedure Act, and the regulations of the CEQ and the NRC. By letter dated April 27, 1990, I responded to this supplement, and informed the Petitioners that the requests in their April 5 supplement were denied.

On May 4, 1990, Petitioners submitted a further supplement reiterating their request that the proposed reduction in on-site property insurance be denied or, at least, deferred until after publication of a final EIS. In this supplement, the Petitioners stated that they were incorporating an enclosed "supplemental comment" dated April 23, 1990. The Petitioners stated that this supplement was deemed necessary because my April 27 letter did not recognize the existence of this comment.

The November 14 supplement alleged that the Commission has determined that LILCO has disbanded a portion of its technical staff and begun training the remaining staff for defueled operation only, that conditions exist as to staffing and training that are in direct violation of 10 C.F.R. Part 55, and that LILCO is in knowing violation of its license and technical specifications by having implemented these reductions in staffing and training prior

to NRC approval. Consequently, the Petitioners requested that a Notice of Violation be issued including a proposed civil penalty and remedial action plan to bring Shoreham's staffing and training into compliance with Part 55 and its license.

The November 29 supplement stated that LILCO had "recently" informed the NRC that 137 fuel support castings and 12 peripheral pieces from the Shoreham reactor vessel were being stored on the south separator/reheater roof above the turbine deck, causing posting of a high radiation area. According to the Petitioners, those circumstances raised questions as to whether LILCO is violating NRC regulations and a Confirmatory Order issued March 29, 1990, that had required continued maintenance of structures, systems and components necessary for full-power operation. The Petitioners also noted the pendency of a LILCO license amendment application for shipment of these parts to the Barnwell, South Carolina, low level waste storage facility for burial, and alleged that such a license amendment would be contrary to "the decision reached by the Commission on recommendations of SECY-89-247," other regulatory requirements of 10 C.F.R. Chapter I, the Low-Level Waste Policy Amendments Act of 1985, and NEPA, and that an attempt to bury these parts would violate a criminal statute. Consequently, the Petitioners requested that a Notice of Violation be issued including a proposed civil penalty and remedial action plan to bring LILCO into compliance with the Confirmatory Order and other

requirements and to assure proper preservation of these reactor parts.

On August 4, 1989, Leonard Bickwit, Jr., submitted a Petition on behalf of the Long Island Association requesting action regarding Shoreham Nuclear Power Station Unit 1 similar to that requested by Mr. McGranery and on similar bases. Specifically, the Long Island Association Petition requested that the Commission order the suspension of LILCO's actions in furtherance of a "minimum posture condition" at Shoreham, undertake an investigation into whether license violations have occurred, initiate an environmental review of the planned decommissioning of Shoreham, and devise a process to consider Shoreham issues. As grounds for its requests, the Petitioner asserted that LILCO has taken actions that are inconsistent with the premises underlying its license, including actions that constitute changes to its facility without prior Commission approval that give rise to an unreviewed safety question, having allowed New York State authorities to assume unauthorized control over the Shoreham license, and having commenced de facto decommissioning; and that LILCO is taking actions aimed at the ultimate filing of a decommissioning application, mandating Commission involvement consisting of an environmental review under NEPA and the regulations of the CEQ.

By letter dated August 24, 1989, I acknowledged receipt of the Long Island Association Petition. In my acknowledgement letter,

I indicated that action would be taken upon the Petitioner's request within a reasonable time.

A notice was published in the Federal Register indicating that the Petitioners' requests were under consideration. 54 Fed. Reg. 36077 (August 31, 1989). By letter dated September 15, 1989, the licensee was requested to respond to the School District, SE2 and Long Island Association Petitions. By letter dated November 10, 1989, the licensee responded to the Petitions.

I have now completed my evaluation of the School District and SE2 Petitions and the Petition filed by the Long Island Association. I have determined, for the reasons set forth below, that the Petitions should be denied. (The issues discussed in the Petitioners' November 29, 1990, supplement will be addressed by a separate Director's Decision).

## BACKGROUND

On February 28, 1989, LILCO entered into an agreement with the State of New York to transfer its Shoreham assets to an entity of the State of New York for decommissioning. However, LILCO continued to pursue with the NRC its request for a full-power license to operate Shoreham Station. On April 21, 1989, the NRC issued Facility Operating License NPF-82 to LILCO which allows full-power operation of the Shoreham plant. On June 28, 1989,

LILCO's shareowners ratified LILCO's agreement with the State of New York.

Consistent with the terms of the settlement agreement, which prohibits further operation of the Shoreham facility by LILCO, LILCO began a defueling operation of the facility on June 30, 1989, which was completed on August 9, 1989, and reduced its operating and support staff. Further, LILCO is proceeding with its plans to discontinue customary maintenance for systems LILCO considers unnecessary to support operation when all the fuel is placed in the spent fuel pool, by deenergizing and protecting these systems rather than maintaining them in an operationally ready condition. On January 12, 1990, LILCO submitted a letter to the NRC in which it stated that it would not place nuclear fuel back into the reactor without prior NRC approval. This commitment was confirmed by a Confirmatory Order issued on March 29, 1990. 55 Fed. Reg. 12758 (April 5, 1990). On June 28, 1990, LILCO and the Long Island Power Authority (LIPA) submitted a joint application for an amendment to LILCO's license to authorize transfer of the Shoreham facility to LIPA. That application is still pending before the staff and has not yet been noticed in the Federal Register.

## DISCUSSION

Briefly summarized, the Petitioners make two broad arguments in support of their request for action; namely, that: (1) there

are unreviewed safety questions, violations of the licensee's full-power operating license, including technical specifications, and unreviewed environmental questions which may result in potentially hazardous conditions, and (2) that LILCO is undertaking a course of action in a manner which will willfully avoid the full and effective Commission consideration of the environmental consequences of licensee action contrary to the provisions of NEPA, the CEQ Guidelines, and the Commission's own regulations, by presenting for regulatory review defueling and destaffing plans which are the initial actions in a single course of action to transfer the license for Shoreham and decommission the plant. As such, the Petitioners assert that the Commission should not wait until the last step of the process (i.e., application for decommissioning) to conduct its NEPA review.

As specific bases for these assertions, the Petitioners argue that: (1) the defueling of the core of the Shoreham Station involves an unreviewed safety question, because it is unnecessary and because the transfer of fuel to the spent fuel pool will result in a reduced margin of safety; (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 (ORAT) Report; (4) the licensee's plan to substitute fossil-fuel-burning units for the Shoreham station is a matter that may result 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 as provided by its license; (5) such an order would allow for a full environmental review pursuant to NEPA, the CEQ guidelines, and the Commission's regulations in 10 C.F.R. Part 51; and (6) if the Commission does not issue an order to the licensee to restore the plant and staff to the "status quo ante" at this time, it would be allowing the licensee to "whittle away the scope of the action being considered" to the point where there would be an insufficient staff to operate the plant and the plant may have deteriorated to the point where several years might be required to make it available as a source of electricity.

With regard to the Petitioners' broad assertions, the NRC has determined that LILCO currently satisfies all applicable terms and conditions of its operating license for the Shoreham facility. As will be discussed more fully below, staffing at the Shoreham Station meets NRC requirements, including the technical specifications for the plant's defueled condition, and also meets levels stated in the Shoreham Updated Safety Analysis Report (USAR). With regard to defueling, removal of fuel from the reactor core and subsequent storage of the fuel in the spent fuel storage pool is

an activity associated with normal nuclear plant operations. It is an activity that is permitted by Shoreham's technical specifications. Finally, with regard to maintenance, the LILCO staff currently performs maintenance and surveillance activities necessary to demonstrate operability of systems required to be operable at all times. The NRC has determined that LILCO's decision to defer maintenance on systems and components unnecessary to support their current configuration is a reasonable action. This deferral of maintenance renders these items inoperable and surveillance requirements are not applicable to inoperable equipment. These systems and components are not required by the terms of LILCO's license or the NRC's regulations to be operable in a defueled condition. If the licensee were to resume operation after shutdown, it would be obligated to perform all required maintenance and surveillance activities to restore system and component operability.

With regard to the Petitioners' assertion that LILCO is undertaking a single course of action to transfer the license for Shoreham and decommission the plant, and that the Commission should act now to conduct its NEPA review,[1] LILCO has repeatedly restated

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[1] I note that the Petitioners made a similar argument before the Commission in six "Petition[s] to Intervene and Request[s] for Hearing[s]" regarding the Confirmatory Order issued March 29, 1990, prohibiting LILCO from placing nuclear fuel in the reactor vessel without prior NRC approval; a request by LILCO for an amendment to the Shoreham operating license allowing changes in the physical security plan of the plant; and a request by LILCO for an amendment to the Shoreham operating license removing certain license

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to the NRC its commitment to abide by all terms and conditions of its license and NRC regulations so long as it remains the Shoreham licensee.[2]

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[1](...continued)
conditions regarding offsite emergency preparedness activities. In its decision regarding those Petitions, CLI-90-08, 32 NRC ___, (October 17, 1990), the Commission determined, inter alia, that the request by Petitioners that the Commission order the staff to prepare an EIS on the proposed decommissioning of the Shoreham facility and to consider in the EIS resumed operation as an alternative to decommissioning should not be granted. On October 29, 1990, the Petitioners petitioned the Commission for reconsideration of CLI-90-08.

[2] In a letter dated August 30, 1989, the staff requested LILCO to provide its written commitment and plans to assure that, until decommissioning or other disposition of the facility is authorized by the NRC: 1) all systems required for safety in the defueled mode are maintained in fully operable status; 2) all systems required for full-power operation of the facility are to be preserved from degradation, with such maintenance and custodial services and appropriate documentation as may be necessary to ensure such preservation, and 3) there shall be an adequate number of properly trained staff to ensure plant safety in the defueled state, including the ability to cope with malfunctions, accidents, and unforeseen events. LILCO, in a letter dated September 19, 1989, submitted the details of its system lay-up (equipment preservation) program. This program was developed and implemented to prevent the Shoreham plant from "decommissioning itself", as requested by the NRC staff in its letter of August 30. Further, the NRC staff, based on its review of LILCO's system lay-up program, found this program to be well defined, properly implemented in accordance with approved procedures, and adequate to prevent deterioration of protected systems (Inspection Report 50-322/90-01).

By letter dated November 8, 1990, LILCO informed the staff that it desired to ship 137 fuel support castings and 12 peripheral pieces to the Low-Level Radioactive Waste Repository at Barnwell, South Carolina, before December 7, 1990. On November 14, 1990, the staff responded to LILCO's November 8th letter informing LILCO that such an activity requires NRC authorization and its November 8th letter was being processed as a request for an amendment of its license. This request is still under consideration. The Petitioners' November 29, 1990, supplement alleges that LILCO is storing these parts on the south separator/reheater roof above the turbine deck, and that this raises questions as to whether LILCO

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The NRC regulations applicable to transferring or terminating an operating license are found in Title 10 of the Code of Federal Regulations, Sections 50.80 and 50.82, respectively. As already indicated, LILCO has submitted an application for an amendment to its license to authorize the transfer of the Shoreham facility to LIPA. The NRC will ensure that the applicable regulations are satisfied in considering this request. After giving notice to interested parties and performing all appropriate and prescribed reviews, the NRC may approve the transfer if the transfer is otherwise permissible and if it determines that LIPA is qualified to be the license holder.

Similarly, LILCO has not engaged in decommissioning of the facility. None of the actions taken at Shoreham are inconsistent with the operation of the facility by some entity other than LILCO, and the NRC does not consider LILCO's actions to date to be "irreversible." The Commission's regulations in 10 C.F.R. Part

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[2](...continued)
is violating NRC regulations and the March 29, 1990, Confirmatory Order requiring continued maintenance of structures, systems and components necessary for full-power operation. The Petitioners further allege that a license amendment allowing shipment of these parts for burial would be contrary to "the decision reached by the Commission on recommendations of SECY-89-247," other regulatory requirements of 10 C.F.R. Chapter I, the Low-Level Waste Policy Amendments Act of 1985, and NEPA, and that an attempt to bury these parts would violate a criminal statute. Consequently, the Petitioners requested that a Notice of Violation be issued including a proposed civil penalty and remedial action plan to bring LILCO into compliance with the Confirmatory Order and other requirements and to assure proper preservation of these reactor parts. These concerns and requests will be considered in a separate Director's Decision.

51, which implement Section 102(2) of NEPA, require that each applicant for a license amendment authorizing the decommissioning of a production or utilization facility submit a supplement to its environmental report, and that in connection with the amendment of an operating license to authorize the decommissioning of such a facility, the NRC staff will prepare a supplemental environmental impact statement or environmental assessment. See 10 C.F.R. § 51.95(b). However, there is no requirement that an environmental review of decommissioning be undertaken prior to the submittal of an application for the decommissioning of a facility. LILCO has not to date submitted an application for the decommissioning of its Shoreham facility. Consequently, there is no requirement that an environmental review of decommissioning be conducted at this time. At such time as LILCO submits an application for the decommissioning of the facility, an environmental review will be conducted. Moreover, prior to any decision with respect to decommissioning, any authorization by the NRC to amend the Shoreham license will be accompanied by the required environmental review called for by 10 C.F.R. Part 51 and consistent with the Commission's decision in CLI-90-08.

Turning now to the Petitioners' specific bases in support of their broad assertions, the School District and SE2 Petitions first assert that the defueling of the core involves an unreviewed safety question because it is unnecessary and will result in a reduced measure of safety due to the risk of accident in transfer to the

spent fuel pool. Therefore, the Petitioners assert that the defueling is in violation of 10 C.F.R. § 50.59 and requires prior Commission approval.

As explained above, movement of fuel to, and storage of fuel in, the spent fuel storage pool is a normal operating procedure permitted by the existing Shoreham technical specifications. The design and construction of the Shoreham spent fuel storage pool was reviewed as part of the USAR that was submitted by LILCO and approved by the Commission in granting the operating license for Shoreham Station. Further, the most radiologically severe fuel handling accident considered credible is hypothesized and analyzed in Chapter 15, Accident Analysis, of the Shoreham USAR. The radiological consequences of this hypothetical accident do not exceed any criteria specified in current regulatory requirements. Therefore, the movement of fuel to the spent fuel pool does not involve changes in the facility or procedures as described in the USAR, does not involve a change in Shoreham's technical specifications, and does not constitute an unreviewed safety question or otherwise require prior Commission approval.

The Petitioners next argue that issuance of the full power operating license was premised, among other things, upon adequate staffing; that the licensee has openly declared to the Commission its intention to willfully reduce that staff, which constitutes a willful violation of the bases of the issuance of the license and

the licensee's prior commitments to the Commission, and that the NRC Regional Administrator, Region I, has "openly admitted" that if he found staff at any other plant reduced by 40 or 50 percent, this would call for enforcement action, and there is no reason why the Shoreham plant should be treated differently than any other plant.

As explained above, current staffing at Shoreham Station meets NRC requirements, including the technical specifications for the plant's defueled condition, and also meets the levels stated in the Shoreham USAR. This was verified by a site inspection conducted in September, 1989, (Inspection Report 50-322/89-91) and continues as the Station hires, trains and qualifies personnel to maintain its non-licensed staffing requirements. Two additional inspections were conducted from January 29 to May 5, 1990, and May 6 through August 25, 1990 (Inspection Reports 50-322/90-01 and 50-322/90-02) which determined that the staffing levels were reasonable for the current defueled plant status. In fact, the Shoreham site staff has NRC-licensed operators (Senior Reactor Operators and Reactor Operators) in excess of current requirements. In addition, LILCO has committed to promptly notify the NRC of any substantial variations from the staffing plan assessed during the above-referenced inspections.

The Petitioners next assert that the proposed lack of conduct of maintenance activities at Shoreham appears to be contrary to the

Operational Readiness Assessment Team (ORAT) Report. In further support of this assertion, the Petitioners state that at a briefing presented by LILCO before the NRC on July 28, 1989, LILCO stated that it was going to maintain 40 operating systems as "operable," 42 systems in a "functional condition," 36 system in a "secured" condition, and seven systems in a "preserved" condition. The Petitioners argue that the Shoreham technical specifications contain no definitions of "functional," "secured," or "preserved," and that LILCO is creating a new Operating Condition ("OC 6").

The Operational Readiness Assessment Team inspection was conducted March 11 through March 27, 1989, to determine the operational readiness status of the plant and staff for purposes of determining readiness for full-power operation of the Shoreham facility. The findings of that inspection, documented in a report issued April 4, 1989, are inapplicable to the current status of the plant, which is in a defueled condition.

With regard to the Petitioners' argument that LILCO is creating a new operating condition in violation of its technical specifications, Table 1.2 of the Shoreham technical specifications defines the operational conditions of the plant. However, because the reactor is defueled and the vessel is drained, the operational conditions specified in Table 1.2 are not applicable. Therefore, the only specifications that are applicable to the Shoreham plant are those that are annotated as such in the applicability statement

of each technical specification. LILCO is in full compliance with all requirements of the Shoreham technical specifications which are applicable at this time.

The Petitioners next state that Appendix B, Paragraph 3.1 of the Shoreham license, forbids the licensee from making changes in facility operations effecting the environment if the change would involve an "unreviewed environmental question" and would "significantly affect the environment," and that a proposed change shall be deemed to involve an unreviewed environmental question if it concerns a matter which may result in significant increase in any adverse environmental impact previously evaluated in the Final Environmental Statement (FES) or a matter not previously reviewed and evaluated in the FES which may have a significant adverse environmental impact. The Petitioners assert that LILCO's plans to substitute fossil-fuel-burning units for the Shoreham Nuclear Power Station is a matter which may result in a significant increase in any adverse environmental impact previously evaluated in the FES.[3] As such, it is argued that these matters involve unreviewed environmental questions which require prior Commission approval pursuant to the license. Therefore, according to the

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[3] The Petitioners enclose with their Petition two sections of the FES (Section 8, "Need for Station," and Section 10, "Benefit/ Cost Summary") which they state "represent the bases for the conclusions that the Shoreham Nuclear Power Station is needed, that it is the preferable alternative realistic source of electric energy and that it has a favorable cost benefit analysis for the people of Long Island."

Petitioners, LILCO is in violation of the conditions of its license.

NEPA requires all federal agencies to consider, in connection with proposals for every major federal action significantly affecting the environment, reasonable alternatives to the proposed action. Consequently, at such time as LILCO submits an application for the decommissioning of the Shoreham facility, the NRC will conduct an environmental review which will consider such alternatives. However, in a recent Memorandum and Order, CLI 90-08, 32 NRC _____ (Oct. 17, 1990), the Commission has determined that the NRC need not address resumed operation of a facility as an alternative in its NEPA analysis of the request for approval of activities associated with decommissioning. In its Memorandum and Order, the Commission responded to an argument made by these same Petitioners, who had filed Petitions to Intervene and Requests for Hearings related to various actions taken by the NRC Staff and LILCO concerning the Shoreham facility,[4] that the actions taken by LILCO and the NRC Staff amount to de facto decommissioning requiring an EIS under NEPA, and that such an EIS must consider resumed full-power operation of Shoreham as an alternative to

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[4] As noted earlier, the Petitioners filed six "Petition[s] to Intervene and Request[s] for Hearing[s]" regarding the Confirmatory Order issued March 29, 1990, prohibiting LILCO from placing nuclear fuel in the reactor vessel without prior NRC approval; a request by LILCO for an amendment to the Shoreham operating license allowing changes in the physical security plan of the plant; and a request by LILCO for an amendment to the Shoreham operating license removing certain license conditions regarding offsite emergency preparedness activities.

decommissioning. See footnote 1, supra. In its Memorandum and Order, the Commission noted that, while basic NEPA principles require that an agency consider "reasonable" alternatives to a proposal for a recommended course of action, there is no need to consider alternatives of speculative feasibility, or which could only be implemented after significant changes in governmental policy or legislation. As the Commission noted, under NRC regulations, while the NRC must approve a licensee's decommissioning plan, including consideration of alternative ways whereby decommissioning may be accomplished, the regulations do not contemplate that the NRC need approve of a licensee's decision that a plant should not be operated. In fact, absent highly unusual circumstances not present here, the NRC lacks authority to direct a licensee to operate a licensed facility, and LILCO is legally entitled under the Atomic Energy Act and NRC regulations to make an irrevocable decision not to operate Shoreham. The alternative of "resumed operation" or other methods of generating electricity are alternatives to the decision not to operate Shoreham and, as such, are beyond the Commission's authority. The NRC need only consider alternatives to the method of decommissioning that the licensee's plan proposes and review the plan to assure that it provides for safe and environmentally sound decommissioning, as opposed to reviewing the decision of whether to decommission a facility. CLI-90-08, 32 NRC ____, slip op. at 9.

The Petitioners next assert that an order to LILCO mandating that it cease and desist from activities related to defueling and destaffing would allow a full environmental review to be conducted pursuant to NEPA, the CEQ guidelines, and the Commission's regulations. In this connection, Petitioners argue that LILCO is engaged in a unitary course of action leading to decommissioning of the Shoreham facility and, while it may not be involved in the actual management of decommissioning, it is responsible for the total financial support of that activity.

The Commission's regulations in 10 C.F.R. Part 51, which implement Section 102(2) of NEPA, require that each applicant for a license amendment authorizing the decommissioning of a production or utilization facility submit a supplement to its environmental report, and that in connection with the amendment of an operating license to authorize the decommissioning of such a facility, the NRC staff will prepare a supplemental environmental impact statement or environmental assessment. See 10 C.F.R. § 51.95(b). However, there is no requirement that an environmental review of decommissioning be undertaken prior to the submittal of an application for the decommissioning of a facility. To date, LILCO has not submitted an application for the decommissioning of its Shoreham facility. Consequently, there is no requirement that an environmental review be conducted at this time. At such time as an application for the decommissioning of the facility is submitted, an environmental review will be conducted. Furthermore,

as noted above, prior to any decision with respect to decommissioning, any authorization by the NRC to amend the Shoreham license will be accompanied by the required environmental review called for by 10 C.F.R. Part 51 and consistent with the Commission's decision in CLI-90-08.

With regard to the CEQ regulations, by way of background, on November 29, 1978, pursuant to Executive Order, the CEQ published final regulations relating to the implementation by federal agencies of all of the procedural provisions of NEPA. Accordingly, the NRC revised 10 C.F.R. Part 51. The CEQ reviewed NRC's NEPA procedures (revised 10 C.F.R. Part 51) and determined that these regulations addressed all of the sections of the CEQ regulations required to be addressed. See 49 Fed. Reg. 9380 (March 12, 1984). As stated above, these regulations do not require that an environmental review be conducted at this time.

Finally, the Petitioners argue that the Commission's regulations recognize that the Commission need not passively wait for a license application authorizing decommissioning, but should conduct its regulatory functions in a manner which is receptive to environmental concerns. In this connection, Petitioners assert that the Regional Administrator, Region I, has expressed concern that the activities currently being conducted by the licensee may require application for a license amendment. The Petitioners

assert that if the Commission does not issue a cease and desist order to the licensee to restore the plant and staff to the "status quo ante" at this time, there will be insufficient staff to operate the plant and the plant will have deteriorated so that several years might be required to make it again available.

LILCO has assured the NRC staff that it is not permitting the condition of plant systems, including "non-safety" systems, to deteriorate. The NRC does not believe that the reduction in number of the licensee's operating staff should be treated as the equivalent of de facto decommissioning. Provided that there is an adequate number of properly trained staff to meet NRC requirements and to ensure safety of the facility in the defueled condition, the NRC does not intend to require that additional staff sufficient to operate the plant at full power be maintained while the decommissioning plan is under development and, in any event, does not consider the current reductions to represent an irreversible action. The NRC will continue to monitor and evaluate the licensee's activities on an ongoing basis and, if necessary, will take appropriate action to ensure plant safety pending the development and NRC review of decommissioning plans.

With regard to the need for activities being conducted requiring application for a license amendment, as already indicated, the NRC staff has determined that LILCO is in full compliance with its license and NRC regulations. In those

instances in which LILCO has sought relief from the requirements of its license or NRC regulations, LILCO has submitted the appropriate requests for license amendments or exemptions to the NRC, which have either been approved or are being currently reviewed by the NRC staff.

As noted above, the School District and SE2 submitted supplements dated July 19, 21, and 31, 1989, and January 23, April 5, May 4, November 14, and November 29, 1990, in which additional assertions are made in support of their requests for action. Provided below is a summary of each of these assertions, followed by the NRC's response to that assertion:

(1) Assertion: An article which appeared in the New York Times on July 18, 1989, supports the allegation that LILCO is removing the fuel and destaffing the plant as part of a single course of action to decommission the plant without applying for permission to decommission. This article also demonstrates that the New York Public Service Commission and licensee are pursuing the current course of conduct in order to put the plant into the least expensive configuration as possible.

Response: The article that the Petitioner references does not provide any new information not already known to the NRC. Nothing in its license prohibits LILCO from removing fuel as a way of

controlling costs at the plant. Regarding destaffing, as described above, current staffing levels satisfy all NRC requirements.

(2) Assertion: A letter from the Governor of the State of New York to the people of Long Island, dated March 21, 1989, indicates that the Governor engineered the settlement agreement on the basis of the substitution of his judgment of the risk posed by the facility and the need for the facility for that made by the Commission in issuing the full-power operating license, in violation of the doctrine of federal preemption.

Response: The views expressed in the Governor's March 21, 1989, letter are irrelevant to any decision which will be made by the NRC regarding the Shoreham operating license. The NRC will exercise its regulatory responsibilities and make its own independent determinations regarding any issue concerning the licensing of the Shoreham facility.

(3) Assertion: My [Dr. Murley's] statement in my July 20, 1989, letter that the "destaffing of the plant will not be implemented until August" is clearly in error, as revealed by the New York Times article dated July 18, 1989, which states that LILCO had begun to transfer about 150 employees to other jobs three days before the article was written. Similarly, my statement in that letter that defueling is permissible under the license is, at best, "disingenuous," because LILCO's defueling is not the "normal type

of defueling", as the NRC Regional Administrator, Region I, has admitted.

Response: In its letter to the Region I Regional Administrator dated July 5, 1989, LILCO stated that it "expects to complete defueling by about August 15. Between now and August 15 the Company intends to reduce staffing levels as discussed on June 30, consistent with our obligations under the operating license." Thus, the transfer of approximately 150 employees of the Nuclear Operations staff to other positions (within LILCO) that began in mid-July, 1989 and continued throughout the summer, is consistent with LILCO's stated intent. In its letter dated July 20, 1989, (SNRC-1615), LILCO announced staffing changes at Shoreham. These staffing changes affected the Vice President-Nuclear Operations, and the managers of nuclear engineering, nuclear quality assurance, operations and nuclear operations support. However, while LILCO may have finalized its plans to reduce Shoreham site staffing by reassigning LILCO personnel to other areas in its company and to reduce contractor support on site and notified the affected personnel prior to August 1, 1989, the actual implementation of these changes did not occur until after August 1, 1989.

With regard to the Petitioners' assertion that LILCO's defueling is not the "normal type of defueling", while the defueling (off-loading) of the Shoreham reactor core for this purpose may not have been explicitly considered when the Shoreham

plant was licensed, the ability to off-load and store the entire Shoreham reactor core, for whatever reason, was reviewed and found acceptable. The NRC staff found, based on its review of the design of the Shoreham spent fuel pool, that the spent pool is capable of storing 2,184 irradiated fuel assemblies (390 percent of a full core load). This capacity meets the requirements of 10 C.F.R. Part 50 Appendix A, General Design Criteria 62 (see NUREG 0420, section 9.1.2).

(4) Assertion: The briefing presented by LILCO to NRC senior management on July 28, 1989, revealed certain "new information". Specifically this information included that: (1) defueling has not been conducted in accordance with 10 C.F.R. § 50.59 in that, because LILCO's § 50.59 analysis was incomplete, there is no basis from which to conclude that defueling does not involve an unreviewed safety question, and the § 50.59 analysis did not consider the acceptability of the risk in light of the fact that defueling is unnecessary; (2) that it had already reduced staff and has plans for more significant reductions. In this regard, the Petitioners express concern regarding the transfer of John D. Leonard, Jr., LILCO's Vice President-Nuclear Operations, because he is the "key man" on whom the NRC relies for assuring compliance with the terms of the operating license, and because his transfer may lead to a "cascading effect" of staff being promoted to positions for which they may not be qualified; and (3) LILCO's statement that it was having a hard time deciding whether to

transfer its license to LIPA or apply for a "possession only" license is a "stalling technique" which will allow the plant to decommission itself.

Response: As explained above, removal of fuel from the reactor core and subsequent storage of the fuel in the spent fuel storage pool is an activity associated with normal nuclear plant operations. It is an activity that is permitted by Shoreham's technical specifications and is not a change, test or experiment that involves a change in plant technical specifications or an unreviewed safety question. Thus, defueling and storage of Shoreham's fuel in its spent fuel storage pool does not require a 10 C.F.R. § 50.59[5] evaluation. The then-uncompleted safety analysis to which LILCO personnel referred at the July 28 briefing was an analysis being developed by LILCO's Nuclear Engineering Department to support certain license amendment and regulatory exemption requests that LILCO was preparing to submit to the NRC. (See Transcript of Management Level Meeting between the Nuclear Regulatory Commission and Long Island Lighting Company at 14 (July 28, 1989), which is a publicly available document.) LILCO was not

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[5] 10 C.F.R. § 50.59 permits a licensee to make changes to a facility without prior Commission approval provided that such changes do not involve a change to its technical specifications or an unreviewed safety question. A proposed change is deemed to involve an unreviewed safety question if the probability or consequences of an accident previously evaluated in the safety analysis report may be increased; or if a possibility of an accident different than any evaluated previously in the safety analysis may be created; or if the margin of safety as defined in the basis of any technical specification is reduced.

required to complete and submit this analysis to the NRC prior to defueling Shoreham.

As explained above, LILCO publicly announced planned staffing changes in its letter dated July 5, 1989. Nevertheless, LILCO to date remains within the staffing requirements of its operating license. With respect to the transfer of Mr. Leonard from the Shoreham site and his replacement by Mr. Steiger as the senior LILCO manager directly responsible for the Shoreham facility, LILCO is free to make such management changes. The qualifications of Mr. Steiger were reviewed by the NRC, along with those of a number of other LILCO employees who changed positions as a result of LILCO's destaffing efforts. The NRC staff found that, generally, the staffing, technical support, and program functions are as described in the Shoreham USAR and as required by the Shoreham technical specifications.[6] However, Mr. Steiger has since been promoted to Vice-President, Office of Engineering and Construction, and Mr. Leonard, as Vice-President, Office of Corporate Service and Office of Nuclear, once again is the licensee's corporate officer responsible for the Shoreham facility.

With regard to the Petitioners' statement that LILCO's statement that it cannot decide whether to transfer its license to

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[6] The Radiological Controls Division Manager did not meet the explicit requirements of Regulatory Guide 1.8 (1973). However, the individual who reports to the Radiological Controls Division Manager does meet those qualifications. Therefore, the NRC staff has determined that this does not pose a safety concern.

LIPA or apply for a "possession only" license is a "stalling technique," as already described, LILCO in its letter of September 19, 1989, committed to an equipment preservation program to prevent degradation of the plant until NRC authorization of decommissioning or other disposition of the facility. The NRC staff has reviewed the LILCO program and, based on its review, found this program to be well-defined, properly implemented in accordance with approved procedures, and adequate to prevent deterioration of protected systems. Thus, the plant will not be allowed to "decommission itself". With regard to LILCO's November 8, 1990 letter concerning its desire to ship certain fuel support castings and peripheral pieces to the Low-Level Waste Repository,[7] the staff is evaluating that proposed action as a license amendment request and will ensure that the required environmental review called for by 10 C.F.R. Part 51 is performed.

(5) Assertion: A letter dated July 17, 1989, from Admiral James B. Watkins, United States Secretary of Energy, to NRC Chairman Kenneth M. Carr, stating that the Department of Energy 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, indicates where the public interest lies, and supports the issuance of an immediately effective order.

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[7] See n. 2 (pp. 10 - 11).

Response: Chairman Carr responded to Secretary Watkins by letter dated September 15, 1989. In that letter, he stressed that, because the activities that LILCO is carrying out thus far are authorized under the existing license as amended and because the Commission will continue on-site inspections to ensure that such activities comply with the requirements of the operating license and NRC regulations, at this time the NRC did not perceive a regulatory need to issue an order halting activities currently going on at the Shoreham facility. As Chairman Carr explained, if necessary, the NRC will issue appropriate orders or sanctions to ensure compliance with Commission regulations in the event of improper activities such as safety violations, violations of license conditions, or the start of decommissioning without Commission approval.[8]

(6) Assertion: The NRC has been "giving various forms of permission to LILCO" which have adverse environmental impacts and diminish the choice of reasonable alternatives to be considered in the NEPA proceedings. These include, at a September 28, 1989, management conference, permission to dismantle the plant and failure to object to a proposal by LILCO not to institute personnel

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[8] Secretary Watkins sent an additional letter to Chairman Carr dated September 18, 1990, in which he requested that the staff prepare an EIS prior to taking any action on the issuance of a "possession only" license amendment to LILCO, and expressed concern that failure to do so would allow LILCO to "make the destruction of the facility a "fait accompli". The matter of whether an EIS or an Environmental Assessment (EA) should be prepared with regard to issuance of a possession-only license is currently being considered by the Commission.

replacement training classes; actions regarding LILCO's Security Training and Qualification Plan, approval in Inspection Reports of LILCO's reduction of staff, discontinuance of training, failure to maintain the facility, and partial participation emergency exercise without participation of any local emergency response organization; and allowance of a "flow" of surrendered operator's licenses without inquiry into LILCO's plans for replacement. The Petitioners also state that they are aware of a series of license exemption and amendment requests allegedly recognizing a unitary decommissioning plan demanding unified consideration in an EIS.

Response: With regard to the Petitioners' assertion that the NRC has been giving permission to LILCO to take actions which adversely impact the environment, each of the license amendments and exemptions to the NRC regulations which have been approved to enable the licensee to take the requested actions have been in accordance with all applicable environmental regulations of 10 C.F.R. Part 51. Moreover, none of the actions authorized were considered by the staff to be irreversible;[9] therefore they do not "diminish the choice of reasonable alternatives to be considered in NEPA proceedings," as alleged by the Petitioners. With respect to the Petitioners' assertion that these exemption and amendment requests recognize a "unitary decommissioning plan demanding unified consideration in an EIS," the staff has granted only those requests that the staff has determined do not impact safety or

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[9] See n. 3 (p. 12).

adversely affect the environment and, as stated above, these actions are not considered by the staff to be irreversible. Therefore these actions are not considered to be decommissioning actions.

(7) Assertion: An exemption which was granted to LILCO allowing reduction of on-site property insurance at Shoreham further allows LILCO to engage in "piecemeal" decommissioning, and is in violation of NEPA, the AEA, the Administrative Procedure Act, and the regulations of the CEQ and the NRC. The proposed reduction of on-site property insurance should be denied or, at least, deferred until after publication of a final EIS on the decommissioning proposal. Furthermore, my letter of April 27, 1990, which denied relief based upon this assertion, did not recognize a comment by the Petitioners dated April 23, 1990.

The Petitioners make three broad arguments in support of this assertion. These can be summarized as follows:

(1) Neither the fact that Shoreham is presently shut down, nor the mere existence of the settlement agreement under which LILCO does not operate Shoreham, renders LILCO similarly situated to those licensees previously receiving exemptions. NRC consideration of exemptions to 10 C.F.R. § 50.54(w) exemption requests to date has uniformly rested upon one of two circumstantial predicates: the plant's physical characteristics,

or possession of other than a full-power operating license. LILCO has based its request on neither. Furthermore, Shoreham differs from other facilities for which exemptions have been granted.

(2) A decision to grant the insurance exemption request would violate the AEA. In conjunction with this assertion, Petitioners argue that:

(a) 10 C.F.R. § 50.54(w) does not except licensees in extended outages from carrying the full insurance coverage. Both the lack of a provision addressing reactor licensees in extended outages, and the existence of a provision anticipating the possibility of resumed operation following an accident, support the conclusion that granting an exem[illegible]n for Shoreham would be at variance with this regulation.

(b) 10 C.F.R. § 50.12, which addresses the criteria for the grant of an exemption, provides in part that the Commission may grant only exemptions which are authorized by law, and that the Commission will not grant an exemption unless certain special circumstances are present. With regard to whether an exemption is authorized by law, an inquiry must be made as to whether the proposed action would violate other pertinent laws. In the present case, granting the requested exemption would violate the AEA and NEPA. Furthermore, although LILCO argued that its request should be considered under the special circumstance provision which

provides that an exemption will be granted if application of the regulation would not serve the underlying purpose of the rule (Section 50.12(a)(2)(ii)) or the provision which provides that an exemption will be granted if compliance would result in undue hardship or other costs that are in excess of those incurred by others similarly situated (Section 50.12(a)(2)(iii)), no special circumstances justifying this exemption are present.

(c) A grant of the exemption request would violate the Commission's rules for license amendment proceedings. The exemption, in effect, amends LILCO's operating license and, as such, the Commission should have provided for a hearing on the proposed exemption.

(3) The exemption is in violation of NEPA and the NEPA regulations promulgated by the CEQ and NRC. The proposed exemption is one part of the larger decommissioning action and cannot be considered independently from the decommissioning proposal, which requires preparation of an EIS. 10 C.F.R. § 51.101 prohibits the Commission from taking any action which would have an adverse environmental impact or limit the choice of reasonable alternatives. A decision to grant LILCO's exemption request would do both. Furthermore, the Commission has violated NRC and CEQ regulations calling for preparation and distribution of a draft finding of no significant impact in these circumstances. The Petitioners allege that, as a discreet action, the exemption

proposal is without precedent; that as part of the larger decommissioning action, it is part of an action which requires preparation of an EIS; and that, as an action with NEPA implications, the exemption merits comment. For all of these reasons, a draft finding of no significant impact should have been prepared, accompanied by a request for public comment. Finally, the Environmental Assessment (EA) of this exemption request was inadequate because the Commission focussed only upon the proposed property insurance exemption and failed to recognize the proposal as an interdependent part of the larger decommissioning proposal; neither the basis for the proposed action nor the environmental impacts of that action are explained in adequate detail to allow for a meaningful evaluation of the action or its consequences; the EA neglected to mention that LILCO had previously made an almost identical exemption request which was rejected; the EA provides an inadequate basis for the finding of no significant impact; the NRC erroneously asserted in the EA that the possibility that the environmental impact of licensed activities would be altered by changes in insurance coverage is extremely remote; and the staff did not consult other agencies or persons.

Response: With regard to the Petitioners' first argument (that consideration of exemption requests to date has rested upon the plant's physical characteristics or possession of other than a full-power operating license), although these factors certainly may provide a basis for an exemption as they have in the past,

other factors, too, may provide justification. As I briefly explained in my April 27, 1990 letter acknowledging receipt of this supplement to the Petition, the purpose of the insurance requirements set forth in 10 C.F.R. § 50.54(W) is to assure the financial ability of a licensee to establish and maintain a stable condition for a nuclear power plant following an accident, including necessary decontamination, to protect the public health and safety. Thus, the amount of insurance coverage called for is not driven by the value of the facility, but rather by the potential cost of establishing and maintaining a safe, stable condition following an accident. This, in turn, is a function of the potential accidents to which a facility might be subject and the consequent radiological hazard, for example, the fission product inventory available for release. These factors were expressly addressed in each of the exemptions which the Petitioners cited in their Petition, as they acknowledge. These factors are indeed the very factors relied on in granting the exemption to LILCO for the Shoreham facility. Notwithstanding that the Shoreham facility is new, in granting the requested exemption, I considered that all fuel has been removed from the reactor, that little fission product inventory is available in light of the extremely short period of operation, and (although not explicitly stated in the exemption) that, in accordance with the Confirmatory Order issued on March 29, 1990, fuel cannot be reloaded in the reactor and the reactor cannot be operated without prior NRC approval. In light of these specific factors, it is evident that the potential

for an accident is extremely low and the potential cost of any cleanup likewise is much lower than for a normally operating facility. Accordingly, the exemption granted is wholly consistent with the Petitioners' own position that the amount of insurance coverage be adequate to ensure that sufficient funds will be available to meet the consequences of the worst accident possible in light of the authorization accorded by the operating license.

With regard to the Petitioners' second argument (that a decision to grant the exemption would violate the AEA), the exemption was issued pursuant to 10 C.F.R. § 50.12(a)(2)(iii), it having been concluded that insurance coverage in the amount of $337 million would be adequate in these circumstances to satisfy the regulatory objective of 10 C.F.R. § 50.54(w) and the overall objective of the AEA. Thus, the exemption is authorized by law. As the Petitioners correctly note, the Commission has not granted exemptions from the requirements of 10 C.F.R. § 50.54(w) to licensees whose facilities are in extended shutdown; the premise is that such facilities have been in operation, have generated a substantial fission product inventory and will resume operation. On the other hand, no request for exemption addressing this circumstance has been submitted for consideration by licensees whose facilities are in extended shutdown.[10] In any event, unlike

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[10] The NRC has received requests for exemptions from other licensees who have also requested that their operating licenses be amended to reflect a permanent shutdown condition. These requests are currently under NRC review.

those situations, LILCO has determined that it will not operate Shoreham, a decision which it on its own is free to make. See CLI-90-08, supra. It is also a decision that it would have to address in the context of post-accident cleanup, as noted in the regulation. That LILCO's decision is made at this juncture is of no moment in the context of the exemption request.

The Petitioners argue that 10 C.F.R. § 50.12 provides that the Commission will not grant an exemption unless certain special circumstances exist, and that no such circumstances are present in this case. However, the staff, in granting the exemption, determined that requiring LILCO to carry insurance coverage in the amount of $1.06 billion would impose undue economic hardship on LILCO based on Shoreham's defueled condition. Consequently, the staff determined that the special circumstances of 10 C.F.R. § 50.12(a)(2)(iii) exist in this instance. The Petitioners claim that LILCO's reliance on "undue hardship" is misplaced, and that it did not make an adequate showing. The staff disagrees. LILCO asserted that insurance in the amount of $337 million is sufficient, now that the fuel has been removed from the reactor core. The staff has evaluated this assertion and concluded that this position is correct, based on the plant's defueled condition and the attendant decreased likelihood and reduced consequences of an accident. LILCO expects that the premium for $337 million in coverage would be approximately $2.1 million, or $1.66 million less than its current coverage. Since the staff concluded that

requiring LILCO to maintain insurance coverage beyond $337 million is unnecessary, it agrees with LILCO that an unnecessary expenditure of $1.66 million would impose an undue hardship and constitutes special circumstances warranting the grant of an exemption in accordance with 10 C.F.R. § 50.12(a)(2)(iii). Furthermore, although not explicity relied upon in granting the exemption, I note that in the circumstances described above, requiring LILCO to maintain full coverage required by the rule would not serve the underlying purpose of the rule and is not necessary to achieve the underlying purpose of the rule. Therefore, granting the exemption also would be warranted based on the special circumstance of 10 C.F.R. § 50.12(a)(2)(ii).

The Petition also suggests that the exemption constitutes a step in the eventual decommissioning of Shoreham and, as such, is an amendment to the Shoreham operating license of the type contemplated by the Commission's decommissioning regulations, thus requiring an opportunity for a hearing. That is not the case. As the Commission made clear in promulgating the decommissioning regulations in 10 C.F.R. § 50.82, decommissioning is defined to include those activities necessary "to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license." See 10 C.F.R. § 50.4. It is only activities associated with such removal from service and reduction of residual radioactivity to which the decommissioning process

applies; the insurance requirement from which an exemption was granted is not a necessary element of decommissioning which has a wholly independent financial requirement. See 10 C.F.R. §§ 50.75 and 50.82.

With regard to the Petitioners' third argument (that the exemption granted violates the requirements of NEPA in that an environmental impact statement has not been prepared discussing all alternatives to the decommissioning of Shoreham, including the alternative of resumed operation, and that the Environmental Assessment and Finding of No Significant Impact that was prepared prior to issuance of the exemption violates both the NRC's and the CEQ's regulations in that it was not first published in draft form for comment,, this argument must be rejected. As noted above, the decision not to operate a facility is one which the licensee may on its own make without NRC approval or action which would otherwise require an environmental review. See CLI-90-08, supra. Thus, resumed operation of the Shoreham facility need not be considered as an alternative in any environmental review otherwise necessary in connection with an action which the NRC must take, for example, the issuance of a license amendment. Id. What is required when acting on a matter calling for NRC approval is that the action being approved not foreclose any alternatives to the method of decommissioning or demonstrably increase the cost of such alternatives. Id.; see also 10 C.F.R. § 51.101. It is clear that the insurance exemption here involved does neither. It is likewise

clear that the exemption does not authorize an action by the licensee which would have any significant environmental impact; hence, the preparation of an environmental assessment, as opposed to an environmental impact statement, and the publication of a final, as opposed to a draft, finding of no significant impact without consultation with other federal agencies were fully justified and in keeping with the Commission's regulations.

In this regard, the NRC's earlier rejection of LILCO's first exemption request, in July 1989, is not inconsistent with the recent action granting LILCO's second request. While, in the first instance, the request was denied because the non-operating status of Shoreham was essentially self-imposed, it is significant that now, the non-operating status is compelled by the NRC's Confirmatory Order of March 29, 1990. Should the suspension of operation that is mandated by that Order be rescinded such that operation could lawfully be resumed, the insurance exemption would, by its own terms, expire and the licensee would be obligated to obtain the full amount of coverage called for by 10 C.F.R. § 50.54(w) or otherwise seek a new exemption.

With regard to the Petitioners' other arguments concerning the adequacy of the EA, all of the requisite findings were made consistent with the regulations, and the level of detail normally

contained in exemption requests. In any event, these arguments do not provide a basis for any action pursuant to 10 C.F.R. § 2.206.[11]

(8) Assertion: The Commission has determined (in CLI 90-08) that LILCO has disbanded a portion of its technical staff and begun training the remaining staff for defueled operation only. This Commission finding recognizes that conditions exist at Shoreham as to both staffing and training that are in direct violation of 10 C.F.R. Part 55 and LILCO's full power operating license. Further, since LILCO has submitted various applications for license amendments and other request for relief from the requirements of its license, this finding by the Commission recognizes that LILCO is in knowing violation of its license and technical specifications by having implemented these reductions in staffing and training prior to NRC approval.

Response: As already fully explained, LILCO is in full compliance with all NRC requirements, including the requirements of its license. With regard to the matter raised involving LILCO's training of its staff for defueled operation only, this modification in training has not been implemented by the licensee

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[11] The Petitioners assert that in my letter dated April 27, 1990, which denied relief based upon their April 5, 1990 supplement to their Petition, I failed to recognize their comment dated April 23, 1990. The Petitioners are correct that my letter of April 27, 1990, did not address their comment of April 23, 1990. However, this comment does not raise any new information or issues that were not considered in granting the exemption.

and is the subject of a pending exemption request by the licensee which is under consideration by the NRC staff.

(9) Assertion: LILCO recently informed the NRC that 137 fuel support castings and 12 peripheral pieces from the Shoreham reactor vessel are being stored on the south separator/reheater roof above the turbine deck, causing posting of a high radiation area. These circumstances raise questions as to whether LILCO is violating NRC regulations and the Confirmatory Order issued March 29, 1990, which required continued maintenance of structures, systems and components necessary for full-power operation. Furthermore, the granting of a LILCO license amendment application for shipment of these parts to the Barnwell, South Carolina, low level waste storage facility for burial of those parts would be contrary to "the decision reached by the Commission on recommendations of SECY-89-247," other regulatory requirements of 10 C.F.R. Chapter I, the Low-Level Waste Policy Amendments Act of 1985, and NEPA, and an attempt to bury these parts would violate a criminal statute.

Response: As noted above, this concern will be considered in a separate Director's Decision. See footnote 2, supra.

The Long Island Association Petition raises arguments similar to those raised by the School District and SE2 Petitions. First, the Petitioner asserts that LILCO has bound itself to undertake actions that are inconsistent with the understandings on which the

issuance of its license was based, and that the Commission should issue an order suspending these "minimum posture" activities pending an investigation into whether license violations have occurred, environmental review of the planned decommissioning, and the formulation of an orderly process to govern the future consideration of Shoreham issues. The "actions" that are inconsistent with the premises of LILCO's license include such actions as cutting staff, disregarding Commission "upgrade orders," and reducing maintenance and surveillance and deactivating procedures, all of which are changes without prior Commission approval that give rise to an unreviewed safety question as defined by 10 C.F.R. § 50.59. In this connection, the Petitioner claims that LILCO cannot elude the requirements of § 50.59 on the grounds that no violation of the licensee's technical specifications has yet occurred, because the changes could impact sections of the updated FSAR or other commitments made to the NRC. In addition, the Petitioner asserts that LILCO has allowed New York State authorities, through the settlement agreement, to assume unauthorized control over the Shoreham license; and taken actions which constitute a de facto decommissioning of Shoreham.

As already explained, LILCO has not undertaken any actions to date which are inconsistent with its license. Specifically, plant staffing levels meet the requirements of the Shoreham technical specifications for the defueled condition, and LILCO is performing all required maintenance and surveillance activities. The "upgrade

orders" to which the Petitioner refers are actually requests for information called generic letters and bulletins. LILCO currently meets the requirements for responding to such information requests as specified by 10 C.F.R. § 50.54(f). The LILCO staff currently performs maintenance and surveillance activities necessary to demonstrate operability of systems required operable at all times, and those additional systems required to support the shutdown and defueled condition.

With regard to the Petitioner's claim that LILCO cannot "elude the requirements of § 50.59" on the grounds that no violation of the licensee's technical specifications has yet occurred, because the changes could impact sections of the updated FSAR or other commitments made to the NRC, the staff has found no evidence that LILCO has been trying to "elude" these requirements. LILCO has been conducting reviews as required by that regulation. Based on the staff reviews of the annual reports submitted by LILCO pursuant to the requirements of § 50.59 and the normal on-site reviews performed by the staff of licensee's analyses supporting these changes, the staff has found no instance in which LILCO failed to comply with the requirements of 10 C.F.R. § 50.59.

With regard to the argument that the licensee has allowed New York State authorities to assume unauthorized control over the Shoreham license, the NRC emphasizes that every licensee is obligated to comply with the terms and conditions of its license

and the requirements of the NRC's regulations. No private agreement can relieve a licensee of this responsibility, and a licensee may not contract away its obligations as a licensee. With regard to the matter of Shoreham, although LILCO has submitted an application for a license amendment to authorize transfer of the Shoreham facility to LIPA, there is no indication that LILCO has surrendered control over Shoreham to New York State. To the contrary, LILCO has committed to the NRC that it fully intends to abide by all of the terms and conditions of its license until transfer is authorized, and that, while under the terms of the settlement agreement LILCO is obligated not to operate Shoreham and to cooperate with New York State in obtaining NRC permission to transfer the plant, in all matters concerning regulatory compliance and conduct of licensed activities, LILCO will continue to exercise its own independent judgment. Furthermore, LILCO has committed that, should a conflict arise between its obligation under the settlement agreement and its duty as an NRC licensee, LILCO will do whatever is required to meet its NRC obligations. See "LILCO's Response to the September 15, 1989 Letter from NRC (T. Murley) to LILCO (W. Steiger, Jr.)" (November 10, 1989).

With regard to the argument that the licensee is taking actions which constitute a de facto decommissioning of Shoreham, this is a similar argument to that raised by the School District and SE2 and has already been addressed above. As already discussed, these actions do not constitute a de facto decom-

missioning because none of the actions taken to date prevent the future operation of the plant by some entity other than LILCO. With respect to LILCO's desire to ship certain fuel support castings and peripheral pieces to the Low-Level Waste Repository, as noted above, the staff is evaluating that proposed action as a license amendment request and will ensure that any environmental review required by 10 C.F.R. Part 51 is performed.

The Long Island Association alleges further that the actions being implemented at Shoreham are aimed at the ultimate filing of a decommissioning application. As such, the Petitioner argues that the requirements of NEPA and the CEQ mandate that the Commission take steps now to ensure that proper environmental studies are undertaken. This too is a similar argument to that raised by the School District and SE2. As explained above, there is no obligation under NEPA or the Commission's regulations, which have been approved by the CEQ, to conduct an environmental review at this time.

## CONCLUSION

For the reasons explained above, I find that there is no basis to take the actions requested by the Petitioners. (The issues discussed in the Petitioners' November 29, 1990, supplement will be addressed by a separate Director's Decision). I have made this decision based upon all information that is currently available to

the NRC. This information includes the inspection reports that resulted from the September, 1989, team inspection and Resident Inspector inspections conducted January through August, 1990, at Shoreham (Inspection Reports 50-322/89-91, 50-322/90-01 and 50-322/90-02), the Updated Safety Analysis Report, plant technical specifications, and a review of correspondence between the NRC and LILCO.

As fully discussed in this decision, in its current shutdown and defueled status, Shoreham satisfies all applicable requirements of its operating license and the Commission's regulations. The Commission's regulations in 10 C.F.R. Part 51, which implement Section 102(2) of NEPA, require that each applicant for a license amendment authorizing the decommissioning of a production or utilization facility submit a supplement to its environmental report, and that in connection with the amendment of an operating license to authorize the decommissioning of such a facility, the NRC staff will prepare a supplemental environmental impact statement or environmental assessment. However, there is no requirement that an environmental review be undertaken prior to the submittal of an application for the decommissioning of a facility. As LILCO has not to date submitted an application for decommissioning of the Shoreham facility, and I have determined that the licensee has not engaged in de facto decommissioning of the facility, the Petitioners have failed to demonstrate that an environmental review is necessary or required at this time. Furthermore, the

Petitioners have failed to demonstrate that an unreviewed safety question is involved, and have not raised any substantial health and safety issues that warrant the requested relief. As the Petitioners have failed to raise substantial health and safety issues, no basis exists for taking the actions requested in the Petitions based on the asserted health and safety concerns. See Consolidated Edison Company of New York (Indian Point, Units 1, 2 and 3), CLI-75-8, 2 NRC 173, 176 (1975); Washington Public Power Supply System (WPPSS Nuclear Project No. 2), DD 84-7, 19 NRC 899, 923 (1984). Accordingly, the Petitions are denied. A copy of this decision will be filed with the Secretary for the Commission's review in accordance with 10 C.F.R. § 2.206(c).

FOR THE NUCLEAR REGULATORY COMMISSION

Thomas E. Murley

Thomas E. Murley, Director
Office of Nuclear Reactor
Regulation

Dated at Rockville, Maryland
this 20th day of Dec., 1990