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January 23, 1990

VIA TELECOPY AND BY HAND

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

Re: Fourth Supplement to the Section 2.206 Request by the Shoreham-Wading River Central School District and Scientists and Engineers for Secure Energy, Inc. in USNRC Docket No. 50-322

Dear Dr. Murley:

This is a further supplement the Request 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, July 22, and July 31, 1989.

The U.S. Nuclear Regulatory Commission ("NRC" or "Commission") in issuing, and the Long Island Lighting Company ("LILCO" or "licensee") in accepting, full power operating license NPF-82 committed LILCO to maintaining certain levels of staffing as detailed in the license, the Licensee's Updated Safety Analysis Report and the Operational Readiness Assessment Team Report (Shoreham ORAT Inspection 50-322/89-80 (3/11-27/89)) which was transmitted to the licensee by the Regional I Administrator's letter of April 4, 1989, and to maintaining personnel training and replacement training programs, as specified in the licensing documents and other NRC guidance. By that license, the NRC also required, and LILCO committed itself to, maintaining, inspecting and operating plant equipment in accordance with the licensing documents and other NRC requirements consonant with full power operation.

Since the issuance of that license, LILCO has announced to the NRC, over and over again, by written communication and in management meetings with the NRC Staff that LILCO does not currently intend to operate the Shoreham Plant, but rather

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will seek to transfer its license for that plant to the Long Island Power Authority ("LIPA") for decommissioning.

We have contended that LILCO has announced a unitary series of actions which it is improperly segmenting, but which together constitute a "major federal action" requiring the preparation of an Environmental Impact Statement pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations, and the Commission's own regulations (10 C.F.R. Part 51).

Since the Shoreham plant is at the beginning of its life, not at the end of its life by virtue of age or accident, the generic environmental consideration of decommissioning options last year does not operate to remove such a decommissioning proposal from the mandatory requirements of 10 C.F.R. § 51.20(b)(5) (1988). In any event, the Commission should determine that this course of action proposed by LILCO and others constitutes a major Commission action significantly affecting the quality of the human environment. See 10 C.F.R. §§ 51.20(b)(13) and 51.22(b).

In these circumstances, the Commission's own regulations forbid it from giving the licensee LILCO any "form of permission" which may have adverse environmental effects or limit the choice of reasonable alternatives to be considered until after the NEPA process has been completed. See 10 C.F.R. §§ 51.100 and 51.101.

In this supplement, we draw your attention to the fact that the NRC has been pursuing a continuing course of conduct 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 on the proposed decommissioning of the Shoreham Nuclear Power Plant.

In particular, we draw your attention to the following:

1. At an upper management conference between the NRC Staff and LILCO on September 28, 1989, the NRC Staff, and you personally, gave the licensee permission to dismantle or partially dismantle the plant, namely acts totally inconsistent with the operation of that plant. Such dismantlement both delays and increases the cost of future availability in a manner which tilts against a future decision to operate. At that meeting, LILCO also announced its intention not to institute any personnel replacement training classes; the failure of the Staff to object to this conduct inconsistent with LILCO's license responsibilities constituted permission to proceed with that course of conduct in violation of your regulations by delaying and increasing the cost of the alternative of operation.

2. Various actions have been taken with respect to the Shoreham Security Training and Qualification Plan which are not available on the public record, but which may also be inconsistent with NRC regulation and policy and LILCO's responsibilities pursuant to its license. See, for example, letter of Ronald R. Bellamy,

Chief, Facility Radiological Safety and Safeguards Branch, Division of Radiation Safety and Safeguards, NRC Region I, in docket 50-322 dated October 12, 1989.

3. On December 18, 1989, Mr. James Linville of NRC Regional I transmitted Shoreham Inspection Report 50-322/89-91 which gave approval to LILCO for (a) reduction of its staff, (b) implicit discontinuance of its replacement training program, and (c) failure to maintain, inspect and operate the facility in accordance with the purpose of its full power operating license.

4. On December 20, 1989, Mr. Ronald R. Bellamy transmitted NRC Regional I Inspection Report No. 50-322/89-10 which approved an inspection of a partial participation emergency exercise without the participation of any local emergency response organization.

5. A flow of surrendered operator's licenses has been allowed without any NRC inquiry into prudent plans for their replacements.

In addition, we suggest that there has been a continuing course of conduct by action and inaction whereby the NRC Staff has given forms of permission to the licensee to continue on a course of conduct and take particular actions which are inconsistent with the availability of the Shoreham Nuclear Power Plant for operation pursuant to its license and which would prejudice consideration of the alternative of operation.

We are also aware of some, but probably not all, of a series of license exemption and/or amendment requests which LILCO has filed with the Commission as part of the overall decommissioning plan. In one recent application for a "possession only" license (which LILCO styles a "Defueled Facility Operating License"), LILCO states explicitly that "approval of its request for a Defueled Facility Operating License will, by reducing licensee authority and responsibilities, facilitate the eventual transfer of Shoreham to LIPA." Letter of W. E. Steiger, Jr., Assistant Vice President, Nuclear Operations, LILCO to U.S. Nuclear Regulatory Commission (Docket No. 50-322, SNRC-1664 dated January 3, 1990). This is an undeniable explicit recognition of the unitary decommissioning plan demanding unified consideration in an Environmental Impact Statement.

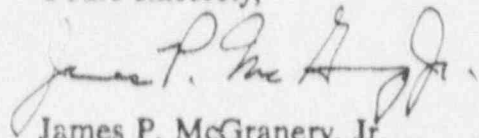
NEPA demands the LILCO not be allowed to piecemeal or improperly segment this single course of action intended to lead to decommissioning. Concomitantly, NEPA demands that the NRC cease and desist from piecemeal consideration of this unitary decommissioning proposal which has been before it over six months now and which the NRC has, contrary to its own regulations, permitted to go forward until this point.

With the expectation that the Commission will recognize its responsibilities under NEPA and take appropriate actions to require LILCO to maintain a staff

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adequate to operate the Shoreham facility (including hiring and training) and to conduct inspections and maintenance of the physical plant in accordance with the requirements for a full power operating reactor, all in accordance with the responsibilities of the full power operating license, at least until NEPA review of the decommissioning proposal is completed and the proposed action is approved or denied, I am,

Yours sincerely,



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