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November 29, 1990

VIA TELECOPY AND MAIL

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

Re: Eighth 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 to the Request for Immediately Effective Orders and other relief 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 and our letters of January 23 and April 5, May 4, and November 14, 1990.[1/]

By this supplement, we wish draw your attention to the fact that LILCO has recently informed the NRC that 137 fuel support castings and 12 peripheral pieces from the Shoreham reactor vessel "are currently being stored in boxes on the South Separator/Reheater Roof above the turbine deck, causing the posting of the only High Radiation Area now in effect at the plant, per 10 C.F.R. Part 20." November 16, 1990 letter from LILCO Vice President John D. Leonard, Jr. to Seymour H. Weiss, Director, Non-Power Reactor, Decommissioning and Environmental Project Directorate (SNRC-1774).

1/ Our letter of November 14, 1990 was mistakenly captioned "Sixth Supplement"; please consider it to be the "Seventh Supplement".

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These admitted circumstances raise serious questions as to whether LILCO is violating NRC regulations and/or prudence in the storage of irradiated equipment and further raise questions as to whether LILCO is in violation of the Confirmatory Order of March 29, 1990 which requires the continued maintenance of structures, systems, and components not required for safety in a defueled mode, but necessary for full-power operation consistent with NRC regulations and LILCO's license obligations. See also, Letter from Dennis M. Crutchfield, Director, Division of Reactor Projects-III, IV, V and Special Projects to LILCO Vice President John D. Leonard, Jr., dated October 1, 1990.

We also note the pendency of a LILCO license amendment application for the shipment of the above-referenced reactor internals to the Barnwell South Carolina low-level waste storage facility for burial. As we stated in our Comments submitted to others at the NRC yesterday (which are attached hereto and incorporated herein by reference), such a license amendment would be contrary to the decision reached by the Commission on recommendations of SECY-89-247, as well as contrary to other regulatory requirements of 10 C.F.R. Chapter I, the Low-Level Waste Policy Amendments Act of 1985, and the National Environmental Policy Act of 1969 as amended.

Drawing your attention to 42 U.S.C. § 2284, we suggest that the attempt to bury the critical reactor internals at issue here (at least such an attempt before issuance and judicial review of a possession-only license) is a violation of that criminal statute requiring immediate preventative action by you. See, e.g., 42 U.S.C. § 2280.

We believe that the existence of these circumstances requires enforcement actions by you to assure, among other things, the proper preservation of these important and valuable reactor internals pursuant to LILCO's license, the Confirmatory Order, NEPA and the other authorities referenced.

The purpose of enforcement actions is to ensure compliance with NRC regulations and license conditions, obtain prompt correction of violations, and adverse quality conditions which may affect safety and deter future violations and occurrences of conditions adverse to quality. 10 C.F.R. Part 2, Appendix C.I. (1990). This state of affairs cries out for enforcement action pursuant to 10 C.F.R. Part 2, Subpart B & Appendix C.

It is imperative 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 to assure proper preservation of these valuable and perhaps practically irreplacable reactor internals.

On behalf of the Shoreham-Wading River Central School District and Scientists and Engineers for Secure Energy, Inc., I urge you to take prompt action pursuant to the above referenced authorities to investigate LILCO's conduct and correct and/or prevent the alleged violations of both the Atomic Energy Act and National Environmental Policy Act.

Respectfully submitted,

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

JPM:jmb

BEFORE THE UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of Long Island Lighting Company Docket No. 50-322, Shoreham Nuclear Power Station, Unit 1, Suffolk County, New York (Application to Amend Operating License Under Exigent Circumstances to Allow Shipment of Reactor Internals to the Low-Level Radioactive Waste Disposal Repository at Barnwell, South Carolina)	USNRC Docket No. 50-322 License No. NPF-82

CORRECTION OF AND SUPPLEMENT TO
COMMENT ON PROPOSED NO SIGNIFICANT HAZARDS
CONSIDERATIONS DETERMINATION, REQUEST FOR HEARING,
NOTICE OF INTENT TO INTERVENE,
AND OPPOSITION TO ISSUANCE OF AMENDMENT
BY AND ON BEHALF OF
SHOREHAM-WADING RIVER CENTRAL SCHOOL DISTRICT
AND
SCIENTISTS AND ENGINEERS FOR SECURE ENERGY, INC.

Yesterday, the Shoreham-Wading River Central School District ("School District") and Scientists and Engineers for Secure Energy, Inc. ("SE2") furnished, by counsel, the requested comments, a request for hearing on the proposed amendment prior to its issuance, gave notice of their intent to intervene in any hearing, and opposed the issuance of the above-captioned amendment.

The School District and SE2 hereby correct the last line of Section 7 of that submittal on page 18 by deleting "U.S.C. § 709" and substituting "U.S.C. § 706".

Further, the School District and SE2, recognizing that the Shoreham Nuclear Power Station, Unit 1 is currently a

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utilization facility licensed under the Atomic Energy Act, and that it will remain such a facility (at least until a possession-only license is issued and survives judicial review), state that the shipment of the 137 fuel support bearings and 12 peripheral pieces of the reactor vessel for burial as waste would constitute intentional and willful destruction of, and/or the causing of physical damage to, a utilization facility licensed under the Atomic Energy Act in violation of 42 U.S.C. § 2284(a). And such unnecessary disposal at this time, given the possibility (regardless of how remote the Staff or LILCO may consider that possibility) of future operation of Shoreham, would be an intentional and willful attempt to cause an interruption of normal operation of the facility in further violation of 42 U.S.C. § 2284(b).

Finally, given the statement by LILCO in SNRC-1774 (November 16, 1990) that those reactor internals are "currently being stored in boxes on the South Separator/Reheater Roof above the turbine deck," there is a serious question as to whether LILCO is in violation of the Confirmatory Order of March 29, 1990. That is, there is a question whether the current mode and site of storage constitutes continued maintenance of components necessary for full power operation consistent with NRC regulations and LILCO's license obligations. If NRC investigation reveals that mode and/or site of storage for those reactor internals is not in accordance with appropriate standards, it would constitute "tampering with the . . .

components . . . of any such facility" also in violation of 42 U.S.C. § 2284(b).

The foregoing violations, or impending violations, of 42 U.S.C. § 2284 also (a) demonstrate that the current and proposed activities of LILCO with respect those reactor internals cannot be the subject of a no significant hazards considerations determination and (b) form more than an adequate basis for the denial of the license application and enforcement actions pursuant to Appendix C of Part 2 of the Commission's Regulations.

Finally, the School District and SE2 contend that, due to the speed with which irreversible actions can and would be accomplished under the proposed amendment, the granting of a hearing subsequent to issuance of the amendment would be a violation of their rights to a hearing under the Atomic Energy Act, the Administrative Procedure Act, and the Due Process Clause of the Constitution.

Respectfully submitted,

November 29, 1990

James P. McGranery, Jr.

Counsel for the Petitioners
Shoreham-Wading River Central
School District and Scientists and
Engineers for Secure Energy, Inc.

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[1] NOT ADMITTED IN THE DISTRICT OF COLUMBIA

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August 8, 1989

BY HAND

Dr. Thomas E. Murley
Director
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

Re: Long Island Lighting Company, Shoreham Nuclear Power Station, Unit 1

Dear Dr. Murley:

Enclosed are an original and one copy of the Long Island Association's Petition for an Order Suspending Lilco's "Minimum Posture" Activities Pending an Investigation and Environmental Review. This Petition is filed in relation to the operating license issued to Long Island Lighting Company for Shoreham Nuclear Power Station, Unit 1.

Sincerely,

Leonard Bickwit, Jr.

LB/mpc

Enclosures

UNITED STATES NUCLEAR REGULATORY COMMISSION

In the Matter of LONG ISLAND LIGHTING COMPANY, SHOREHAM NUCLEAR POWER STATION, UNIT 1	))))

PETITION FOR AN ORDER SUSPENDING LILCO'S "MINIMUM POSTURE" ACTIVITIES PENDING AN INVESTIGATION AND ENVIRONMENTAL REVIEW

As described in its recent July 28 meeting with Commission staff, the Long Island Lighting Company has embarked on a course of conduct aimed at achieving a so-called "minimum posture condition" at Shoreham Nuclear Power Station, Unit 1 that raises serious questions under the Atomic Energy Act, the National Environmental Policy Act, and the Commission's regulations. In fact, the Long Island Association believes that, in certain respects, Lilco's conduct contravenes those statutes and regulations. The Association therefore petitions the Commission to suspend that conduct pending (1) an investigation into whether license violations have occurred, (2) an environmental review of the planned decommissioning of Shoreham, and (3) the formulation of an orderly process, under the Commission's regulations, to govern the future consideration of Shoreham issues.

The Long Island Association is a not-for-profit organization with more than 4,000 members, companies, and organizations. Its membership includes businesses, labor

organizations, trade associations, economic development agencies, local chambers of commerce, and educational institutions. The Association is the region's largest business and civic organization and seeks to advance its membership's interests in improving Long Island as a place to live, work, and do business. The Association and its members are located within close proximity of Shoreham, are customers and ratepayers of the plant, and have a vital interest in ensuring that Long Island has available adequate sources of power and that the region's public health and safety are protected.

The Association strongly believes that, as a matter of long-term energy, environmental, and national security policy, it is in Long Island's and the nation's interests to preserve Shoreham's ability to function as an efficient and safe source of clean power. But even if the plant never operates again, the Association has a strong interest in seeing that the plant's proposed decommissioning is carried out safely and in complete compliance with the Commission's regulations. The activities leading to decommissioning must be carefully supervised to avoid the risk of harm to the public safety or the environment. To achieve that goal, the Commission must act now to devise an orderly process, in full compliance with the terms and objectives of its regulations.

I. CONSISTENT WITH ITS REGULATORY OBLIGATIONS, THE COMMISSION SHOULD SUSPEND LILCO'S MOVEMENT TOWARD A "MINIMUM POSTURE CONDITION"

Shoreham presents the Commission with a novel and difficult situation. Based on a lengthy and exhaustive analysis, the Commission recently granted Lilco a full-power license to operate the plant in accordance with the representations made in its application. Now, however, Lilco has contractually disabled itself from operating the plant. After being ravaged by extraordinary delays in the licensing process, Lilco has sought to buy peace with the state and to obtain some relief from its financial woes by capitulating to the demands of state authorities. It has signed an agreement that obligates it to refrain from operating the plant and to cooperate fully with the state's efforts to bring about Shoreham's dismantlement in return for guaranteed rate and other relief.

The Commission is thus confronted with a regulatory anomaly. On the one hand, Lilco continues to retain a full power license with all the rights and privileges that entails. On the other hand, it has bound itself contractually to take actions that are inconsistent with the understandings on which issuance of the license was based. Lilco seeks to dismiss concerns about that anomaly by repeatedly emphasizing that it has no intention of ever operating the plant. See Tr. 7, 18, 60, 63 (July 28, 1989). But that response can give the Commission little comfort. It not only perpetuates the

regulatory anomaly but also distorts the Commission's regulatory process.

Indeed, Lilco's strategy seems designed to maximize its ability to take actions that depart from the commitments underlying its full-power license, while forestalling formal Commission oversight in a public proceeding. By refusing to amend its license, Lilco can shield itself from the need to obtain advance Commission approval of the actions that it is taking at Shoreham in furtherance of the state's dismantlement objectives. As a consequence, Lilco is now making judgments about what procedures can be terminated or modified and what staff can be eliminated or redeployed at Shoreham without following any regularized or formal regulatory process.

The uneasiness of the Commission's staff with that approach was apparent at the recent July 28 meeting. For example, noting that it was entering "new territory" and navigating "uncharted waters," the staff expressed the need to think through further the "fundamental," longer-term questions presented by Lilco's plan to move to a "minimum posture condition" at Shoreham. Tr. 86 (stmt. of T. Murley). The staff understandably wants to avoid "allow[ing] the plant . . . to decommission itself" or to "sit there and rust." Id. at 81. Thus, the staff exhibited considerable skepticism regarding the "long-term" viability and acceptability of Lilco's "minimum posture" approach and expressed the need to engage in "a lot more discussion." Id.

at 78, 81. In fact, the staff noted that it would be advisable "to stand back and look at the whole thing" so that "an overall consideration" could be given to the course of decommissioning rather than examining only isolated individual actions, on an after-the-fact basis, to determine whether they satisfy the "absolute minimum" required by the "tech specs." Id. at 37.

In the Association's view, now -- not later -- is the time to "stand back" and take that "look." The Commission should suspend the minimum posture program at Shoreham until it has thoroughly examined the issues and devised an overall plan for resolving them properly. By continuing to permit Lilco to take actions inconsistent with the premises underlying its license and merely relying on an after-the-fact review without the benefit of adequate documentation or explanation, the Commission is following a course fraught with danger. Both the regulatory scheme and principles of responsible regulation require the agency to examine the issues thoroughly before irreversible action is undertaken, environmentally preferable options are foreclosed, and safety hazards are created.

Although the staff has properly expressed discomfort with Lilco's approach, it has not yet seen the need for taking affirmative and immediate action. The staff apparently believes that no such action is necessary in the short-term because, at present, Lilco is in technical compliance with its

license. Id. at 81, 86. But that justification for inaction will not withstand scrutiny for three reasons.

1. Violation of § 50.59. The licensee is taking actions, without prior Commission approval, that give rise to an unreviewed safety question as defined by 10 C.F.R. § 50.59(a)(2). Under the regulations, absent a license amendment, a licensee is prohibited from making a change at a plant that "involves a change in the technical specifications incorporated in the license or an unreviewed safety question." 10 C.F.R. § 50.59(a)(1). A change

> shall be deemed to involve an unreviewed safety question (i) if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased; or (ii) if a possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created; or (iii) if the margin of safety as defined in the basis for any technical specification is reduced.

10 C.F.R. § 50.59(a)(2).

Here, Lilco's efforts to move to a "minimum posture condition" have a number of adverse safety implications under the regulations. Cutting staff, disregarding Commission upgrade orders, reducing maintenance and surveillance, and deactivating procedures -- all of which are part of the "minimum posture condition" at Shoreham -- will undoubtedly

increase the risks of accident or malfunction that would be associated with operating the plant as contemplated by the license and raise safety issues that have not been "previously evaluated." Indeed, the Commission evaluated the safety of Shoreham under a set of parameters wholly different from the conditions that currently exist at the plant.

Lilco itself has conceded, for example, that the substantial destaffing occurring at the plant is incompatible with the safety standards imposed by its license. See, e.g., Tr. 35 (stmt. of W. Steiger). Lilco seeks to excuse that shortcoming on the ground that it does not ever intend to operate the plant. But Lilco's assurances cannot shelter it from the requirements of the regulations. The regulations do not make the existence of an unreviewed safety question turn on the licensee's "intentions." Rather, the changes being implemented at the plant must be evaluated in light of what the licensee is authorized to do. Here, Lilco has been granted, and continues to retain, a full-power license, yet it is making changes that depart significantly from the basis on which that license was granted and that increase the risks associated with operation under the license. Absent a license amendment, such changes are flatly forbidden by the regulations.[1]

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[1] At the July 28 hearing, the NRC staff emphasized the importance of enforcing compliance with the existing license. The staff stated: "[A]s long as there is a valid operating license, we intend to make sure that the equipment and condition [are] kept appropriate to a plant with an operating

Nor can Lilco elude the requirements of § 50.59 on the ground that no violation of the licensee's technical specifications has yet occurred. As the NRC staff has noted, reliance on the technical specifications cannot be the sole test here. The Commission did not

> draft these tech specs and write them on the basis that a plant would be in the extended non-operating period for months, if not years, on its way to decommissioning. So, . . . there may be certain parts of the plant that could just turn into rust buckets under [the] tech specs.

Tr. 37 (stmt. of T. Murley) (July 28, 1989). Similarly, the staff noted that, without regard to the technical specifications, the "minimum posture condition" changes being effectuated by Lilco "could impact sections of the updated FSAR and/or other commitments made to the NRC in the [licensing] process" and thus constitute a violation of § 50.59. Id. at 39 (stmt. of W. Russell).

The Association believes that such a violation has occurred and that Lilco should be made to comply with the requirements of § 50.59. But even if the Commission is not prepared to make such a finding, it should institute an investigation into the issue. Otherwise, Lilco will be left free to continue to make judgments about the safety of the changes it is effectuating without prior NRC approval and in

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license." Tr. 12 (stmt. of T. Murley).

possible contravention of the regulations. Moreover, the changes at issue are being made pursuant to a methodology developed solely by Lilco and, as yet, not fully documented or explained to the Commission. That is wholly incompatible with § 50.59 and sound safety regulation.

2. Unauthorized Control. New York state authorities, through the settlement agreement, have assumed unauthorized control over the Shoreham license. Under the Atomic Energy Act, no license may "be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person" without prior Commission approval. 42 U.S.C. § 2234; see also 42 U.S.C. § 2233(c), 10 C.F.R. § 50.80(a). The reason for that prohibition is obvious. To protect the public health and safety, Congress has provided that only those persons or entities whose technical, financial, and legal qualifications have been fully evaluated by the Commission should be permitted to exercise control over and conduct operations under a nuclear license.

In the present case, however, an entity that has not undergone such review is exercising a substantial degree of control over activities under the license. Under the settlement, the State has purchased a voice in the management of Shoreham. It has obtained Lilco's commitment that it will not operate Shoreham and that it will cooperate fully in helping to effectuate the plant's demise.

Thus, this is not the typical situation in which a state simply seeks to assert its usual authority to regulate utility rates. Rather, the state here has entered into a binding contract with the company for the purpose of obtaining legal authority to direct and influence operational decisions. Under the contract, for example, Lilco must remove the fuel and deposit it in the spent fuel pond; withdraw applications to receive 25 and 50 percent power operating licenses; apply for a "possession only" license and other amendments to facilitate transfer; "cooperate with representatives of the Power Authorities on transition and personnel planning and report matters of significance concerning the status of Shoreham"; and to keep the state authorities informed of any changes in the "normal" status of the facility. Amended and Restated Asset Transfer Agreement, Art. V, § 5.1(b).

The state also has a contractual right to obtain specific performance to enforce Lilco's obligations under settlement. Id. Art. X, § 10.5. Thus, for example, if Lilco decided not to carry out the defueling at this time or refused to cooperate with the state's "transition and personnel planning" wishes, the state would have a right to seek an injunction forcing Lilco to take the desired action. Consistent with the statute and the regulations, such operational matters should not be under the control or influence of state authorities. They have neither appeared

before the Commission nor been found to comply with applicable statutory and regulatory requirements.

As a consequence of the settlement agreement, Lilco has ceded the power to operate the facility in accordance with its independent judgment. In the words of J. W. McDonnell, a Lilco vice president, the licensee is contractually obligated to "cooperate fully with the state as it determines what to do with the plant as a policy matter." N.Y. Times, Apr. 22, 1989, at 30, col. 4. Thus, with respect to decisions involving issues of resource commitments, Lilco has emphasized that it will "ensure that all expenditures are prudent and consistent with the terms of the agreement" with the state authorities. Tr. 13 (stmt. of J. Leonard) (July 28, 1989).

Similarly, Peter Bradford, Chairman of the New York Public Service Commission, has emphasized in press accounts that his staff will review Lilco's spending plans at Shoreham to make sure that they do not include "expenditures above and beyond decommissioning." Newsday, June 29, 1989, at 28. The press has also reported that the state "is planning to allow Lilco to spend no more at Shoreham than is absolutely necessary, even if that means letting the plant deteriorate to a state where restarting it someday would be virtually impossible, or prohibitively expensive." Id. at 4. Thus, the state has made clear its intentions. Its ultimate goal is dismantlement, and it seeks to minimize its costs in the interim. Indeed, it is the state's objectives that are

driving Lilco's movement toward a "minimum posture condition" at Shoreham.

The potential for conflict with considerations of public safety and proper nuclear plant maintenance and management looms large. It is apparent that all decisions regarding resource commitments at Shoreham must be cleared with and approved by the state. Thus, even if Lilco were to determine that public safety or plant maintenance considerations require an expenditure of funds, that determination may be effectively overruled by the state. The state's shadow control over the license must be halted pending the outcome of a proceeding to consider a properly filed transfer of control application.

3. De Facto Decommissioning. A de facto decommissioning of Shoreham is already underway. The decision to decommission has been made, Lilco and the state have contracted to implement that objective, and the parties are taking actions designed to lead to the plant's ultimate dismantlement. In fact, but for the decision to decommission, the licensee's current actions would not be taking place.

Given the reality that present activities at the plant are aimed toward decommissioning, the Commission should put those actions "on hold" until it has worked out an overall procedure for ensuring that the entire decommissioning process is conducted in a way that will further the public health and safety. Otherwise, the Commission may later confront issues

that should have been anticipated or realize that it has lost options that should have been kept alive. In fact, absent careful and decisive action at this juncture, the Commission may soon find that the state's hope that "[t]he plant could gradually decommission itself" has come to pass. Newsday, June 29, 1989 at 28 (stmt. of P. Bradford).

II. NEPA REQUIRES THAT THE COMMISSION INITIATE AN ENVIRONMENTAL REVIEW TO ENSURE THAT ALL REASONABLE ALTERNATIVES ARE PRESERVED

The issuance of a license authorizing Lilco to conduct full-power operations at Shoreham involved a major federal action that required the Commission to undertake a thorough environmental analysis in accordance with the requirements of NEPA, 40 U.S.C. §§ 4321 et seq. Shoreham continues to be a major federal project, requiring substantial Commission involvement. That has not been changed by the plan to dismantle, rather than operate, the plant. Indeed, the Commission's regulations specifically provide that issuance of a license amendment authorizing the decommissioning of a nuclear power reactor is a regulatory action requiring environmental review.

The Commission cannot escape its NEPA responsibilities by claiming that its environmental obligations are not triggered until the filing of a formal decommissioning application. The actions that the parties are currently implementing at Shoreham pursuant to the settlement agreement are aimed at the ultimate filing of a

decommissioning application. Thus, NRC involvement is foreordained.

Under 40 C.F.R. § 1501.2(b) of the regulations of the Council on Environmental Quality, the Commission is "require[d] . . . to take steps toward ensuring that" proper "environmental studies" are "initiate[d] . . . as soon as federal involvement . . . can be foreseen." 46 Fed. Reg. 18,026, 18,028 (1981). The purpose of that directive is "to ensure that environmental factors are considered at an early stage in the planning process and to avoid the situation where the applicant for a federal permit or approval has completed planning and eliminated all alternatives to the proposed action by the time the EIS process commences or before the EIS process has been completed." Id. at 18,028. "[T]he purpose [of § 1501.2] cannot be fully served if consideration of the cumulative effects of successive, interdependent steps is delayed until the first step has already been taken." Thomas v. Peterson, 753 F.2d 754, 760 (9th Cir. 1985). Thus, consistent with the CEQ mandate that agencies "integrate the NEPA process with other planning at the earliest possible time" (40 C.F.R. § 1501.2), the Commission should make certain that appropriate environmental review of activities at Shoreham and of the long-term decommissioning plan begins now and that options are not lost.

Moreover, case law makes clear that the agency's current NEPA responsibilities cannot be circumvented on the

theory that particular actions now being implemented at Shoreham do not, standing alone, constitute major matters and do not yet necessitate the invocation of federal processes. Where, as here, actions are taken that are part of an overall plan or project that will culminate in federal involvement, they cannot properly escape environmental scrutiny. See Lathan v. Volpe, 455 F.2d 1111, 1120-21 (9th Cir. 1971); Thompson v. Fugate, 347 F. Supp. 120, 124 (E.D. Va.), aff'd in relevant part, 452 F.2d 57 (4th Cir. 1972). Under the reasoning of those cases, NEPA's requirements cannot here be avoided through piecemeal action on segments of an overall plan leading to federal consideration of whether to decommission Shoreham. It is therefore impermissible for the Commission to permit the parties, through segmentation of the decommissioning process, to avoid NEPA's requirements and to make unguided decisions that may foreclose future options.

In Conner v. Burford, 836 F.2d 1521 (9th Cir. 1988), the court held that an EIS was required before an oil lease on federal land could be granted even though site-specific proposals for development had not yet been submitted. The court explained that "relinquishing the 'no action' alternative without preparation of an EIS" would subvert the purposes of NEPA. Id. at 1531-32. The "heart" of the EIS "requires federal agencies to consider seriously the 'no action' alternative before approving a project with significant environmental effects. That analysis would serve

no purpose if at the time the EIS is finally prepared the option is no longer available." Id. at 1532. Thus, the court held, an EIS must be prepared prior to granting the lease unless the lease forbids any surface-disturbing activities pending completion of the EIS. Id.

To prevent a similar frustration of NEPA's purposes here, the Commission must likewise halt any activities that are inconsistent with the "no action" option of preserving the Shoreham plant in an operating condition until an environmental review has been undertaken. Thus, before Lilco's current plans make a return to "no action" infeasible, the Commission should suspend further steps toward decommissioning and initiate an appropriate environmental review of the decommissioning process from its inception. That may require the Commission's undertaking an environmental review or its ordering the parties to prepare environmental analyses that are faithful to NEPA's objectives. In either event, decisive action is necessary now.

CONCLUSION

The Commission should order the suspension of Lilco's actions in furtherance of a "minimum posture condition" at Shoreham, investigate the matters raised in this petition, initiate appropriate environmental reviews, and devise a process for the orderly consideration of Shoreham issues.

Respectfully submitted,

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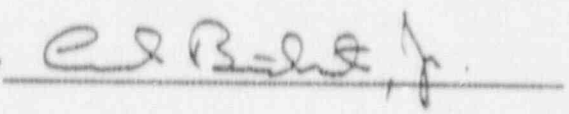
By 

CERTIFICATE OF SERVICE

I certify that the foregoing Petition for an Order Suspending Lilco's "Minimum Posture" Activities Pending An Investigation and Environmental Review has been served this 4th day of August, 1989, by mailing a true and correct copy thereof to the following persons:

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