LILCO, April 19, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
LONG ISLAND LIGHTING COMPANY	)	Docket No. 50-322-OL-4
	)	(Low Power)
(Shoreham Nuclear Power Station, Unit 1)	)	
	)	

LILCO'S RESPONSE TO VARIOUS SUFFOLK COUNTY/NEW YORK STATE REQUESTS DATED APRIL 16 AND RECEIVED APRIL 17, 1984

I.

One month ago, on March 20, 1984, LILCO served by hand its "Supplemental Motion for Low Power License." That motion stated in pertinent part:

> As a practical matter, LILCO believes that whether Shoreham is entitled to such a license is a question that only the Nuclear Regulatory Commission itself can decide. The intensely political environment that now envelops Shoreham makes virtually certain that the NRC's highest tribunal must act before the plant will be allowed to conduct any operations, even loading fuel. Recognition of this reality prompts LILCO to request:
>
> 1. That this Board promptly refer the present supplemental motion to the Commission for decision, pursuant to 10 CFR § 2.718;
>
> 2. That if the Board decides against immediate referral, it then consider and decide this supplemental motion in an expedited fashion and thereafter certify its decision to the

> Commission, pursuant to 10 CFR § 2.730.

Id. at 3-4.

Suffolk County (SC or County) responded six days later, vigorously rejecting any thought of referring LILCO's motion to the Commission. SC said:

> LILCO has requested that this Board [Judges Brenner, Ferguson and Morris] refer the Motion directly to the Commission pursuant to 10 C.F.R. § 2.718. . . . The County preliminarily believes that such referral would be especially inappropriate in this case. This Board has extensive familiarity with the matters at issue and has set standards for an anticipated low power proposal by LILCO. LILCO's attempt to circumvent this Board ignores the plethora of factual and technical issues which the proposal raises, and which can only be adequately addressed after investigation and testimony in a separate "collateral" proceeding. Moreover, LILCO's arguments for referral or certification . . . contain numerous assertions of alleged facts which the County maintains are false and misleading. An inquiry into these assertions should be required before any determination is made to circumvent this Board and a factual hearing on the merits.

Suffolk County's Preliminary Views on Scheduling Regarding LILCO's New Motion at 10-11 (March 26, 1984) (emphasis supplied).

Now comes the sea change. The County, having failed to get its way "on scheduling regarding LILCO's new motion," has had a complete change of heart about the value of immediate Commission action.[1]

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[1] Perhaps SC wanted to avoid the Commission only if the Licensing Board remained the precise ASLB to whom LILCO submitted

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Thus, "the County . . . emphasize(s) that there is a pending request of the Suffolk County Executive, Peter F. Cohalan, that the present Licensing Board with jurisdiction over LILCO's low power license request be promptly disestablished by the Commission and a further Commission order be issued to assure no further Licensing Board violations of due process of law." Joint Request of SC/NYS for the Commission to Direct Certification at 1 (April 16, 1984).[2] And the County

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its March 20 motion. That Board was replaced upon its "advice . . . that two of its members [were] heavily committed to work on another . . . proceeding . . . ." 49 Fed. Reg. 13612 (April 5, 1984). Those members, however, sat in the massive evidentiary proceeding that led to the equally massive Partial Initial Decision on Shoreham of September 21, 1983. That decision found strikingly little substance to the County's claims and was, at times, severely critical of SC's misuse of the record. See generally Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-57, 18 NRC 445 (1983). In short, LILCO did not reluctantly file its March 20 motion with the Brenner Board; the motion contemplated that that Board might well choose to act on the request and, had it done so, LILCO believed then and still believes that the result would have been fair and timely.

[2] This so-called "pending request" of Mr. Cohalan is appropriately disregarded. It is nothing other than a letter from him to Chairman Palladino. As such, it was not a request filed by Mr. Cohalan's NRC counsel, who exhaustively represent his interests in the OL proceeding. Presumably that is why the letter was improperly sent only to the Commission and not also to this Licensing Board, which has active, immediate jurisdiction over the matters in question. And presumably that is why the letter was impermissibly sent as an ex parte communication. The letter went to Chairman Palladino, with copies to Governor Cuomo and the four other Commissioners, on April 11; LILCO was not copied on the letter, and it did not receive a copy from the County until April 16. The inflamed tone of Mr. Cohalan's argument, his total disregard of the jurisdiction of this

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says that

> the Board should immediately vacate the Low Power Order. If the Board fails or refuses to vacate the Low Power Order, the Board should immediately stay the Low Power Order and certify these issues to the Commission for its prompt decision. If the Board rules against the Joint Objections, such ruling and the Low Power Order should be referred forthwith to the Commission and the Low Power Order should be stayed pending a determination by the Commission. By service of these Objections on the Commission, the County and the State are requesting the Commission to direct the certification of these issues to it.

SC/NYS Joint Objections at 4 (April 16, 1984).

There are two short answers to SC's desires. First, the County offers no significant new arguments why, in SC's words, "the Board should immediately vacate the Low Power Order;" the County simply repeats arguments it made in detail to the Board prior to its decision.

Second, the County makes no meaningful attempt to explain why it meets the criteria for a stay of the order pending the extraordinary appeal it seeks; indicatively, SC does not even mention these criteria, which are set forth in the Commission's regulations at 10 CFR § 2.788(e).[3] In this

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Board, and his ex parte overture, all make clear that the letter was meant for political not legal purposes.

[3] The criteria for a stay pending appeal, which are applicable to any decision or action of a Licensing Board and are de-

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regard, it is well to be clear what is at issue here -- at issue is not a decision authorizing fuel load, but simply an interlocutory scheduling order setting the beginning of another phase of hearings in a proceeding that has already had over 150 days of hearings since May 1982. Scheduling -- totally independent of any request for a stay -- is a matter committed to Licensing Board discretion, 10 CFR § 2.718, with which the Appeal Board has expressed a "natural and deep seated reluctance" to interfere. Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-344, 4 NRC 207, 209 (1976). Licensing Board schedules should not be interlocutorily reviewed absent a "truly exceptional situation." Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-293, 2 NRC 660 (1975). See also Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-393, 5 NRC 767 (1977).* Such orders are not even subject to

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rived from the seminal case of Virginia Petroleum Jobbers v. FPC, 921, 925 (D.C. Cir. 1958), are as follows:

> (1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;
> (2) Whether the party will be irreparably injured unless a stay is granted;
> (3) Whether the granting of a stay would harm other parties; and
> (4) Where the public interest lies.

10 CFR § 2.788(e).

* In Marble Hill, the Appeal Board denied an interlocutory appeal by the Commonwealth of Kentucky, complaining that it was

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interlocutory appeal as of right, 10 CFR § 2.730(f), much less to stays pending appeal.

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deprived of due process by a Licensing Board schedule giving it nine days to respond to testimony that had taken two months to prepare. The Appeal Board stated:

> As we have observed on previous occasions, during the course of lengthy proceedings licensing boards must make numerous interlocutory rulings, many of which deal with the reception of evidence and the procedural framework under which it will be admitted. It simply is not our role to monitor these matters on a day-to-day basis; were we to do so, "we would have little time for anything else." Toledo Edison Co. (Davis-Besse Nuclear Power Station, Unit 1), ALAB-314, 3 NRC 98, 99 (1976). What we said there applies equally to this case (3 NRC at 100):
>
> > In the last analysis, the potential for an appellate reversal is always present whenever a licensing board (or any other trial body) decides significant procedural questions adversely to the claims of one of the parties. The Commission must be presumed to have been aware of that fact when it chose to proscribe interlocutory appeals (10 CFR § 2.730(f)). That proscription thus may be taken as an at least implicit Commission judgment that, all factors considered, there is warrant to assume the risks which attend a deferral to the time of initial decision of the appellate review of procedural rulings made during the course of trial. Since a like practice obtains in the Federal judicial system, that judgment can scarcely be deemed irrational.

5 NRC at 768 (footnote omitted). See also Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 NRC 179, 188-89 (1978).

As an application for a stay, Suffolk County's papers are fatally defective both procedurally and substantively. Taking the procedural defects first:

1. The Commission's rules require that applications for stays be filed within ten days after service of the decision or action sought to be stayed. 10 CFR § 2.788(a). The County's papers are dated April 16, ten days after the Licensing Board's April 6 Memorandum and Order. LILCO is informed, although it has not yet received a certificate of service from the County, that the certificate states that the April 16 papers were timely served that day on the Commission and Licensing Board by hand. LILCO, however, did not receive the April 16 papers until April 17, by Federal Express. If the Commission and Board were in fact served on April 16, then the County violated § 2.788(c), which requires that service of an application for a stay on the other parties be by the same method as that used for filing the application with the Commission.

2. The regulations require that an application for a stay be no longer than ten pages, exclusive of affidavits, and that it contain concise summaries of the decision or action requested to be stayed and of the grounds for stay, with specific reference to the four-fold substantive test for a stay (see § 2.788(e) and note 3 above). SC's papers are, of course, 49 pages long exclusive of supporting materials, not ten; and they do not contain any reference to, much less focused discussion of, the four-fold test.

Substantively, the application for a stay is equally defective. First, aside from its already rejected legal argument on General Design Criterion 17, at no point does the County attempt to make any, much less a strong, showing that it is likely to prevail on the merits -- i.e., that on the merits, LILCO will not be able to show that its proposed backup power configuration is acceptable for fuel loading and low power testing.[5] Instead, the bulk of the County's presentation consists of complaints about how it will be unprepared to present any case whatever in the time allowed.

Second, the County has not attempted any showing of irreparable injury to itself from the development of the record in hearings as scheduled. The reason may be obvious: there is no potential for such injury. Two weeks of hearings are not irreparable injury for a party such as Suffolk County, with its significant resources and voracious appetite for hearing after hearing. If Suffolk County is correct -- though LILCO firmly believes it is not -- in its conclusory assertion that LILCO's motion is hopelessly flawed, then surely two weeks of hearings will lay bare at least the outline of certain defects, thereby giving the County a factual predicate now lacking for the arguments it wants to make to the Commission and, quite possibly, the courts.[6] Two weeks of hearings, in other words, cannot

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[5] The requirement of a strong showing on the merits was deliberately chosen when the Commission promulgated the stay regulations. 42 Fed. Reg. 22128, 22129 (cols. 2-3) (May 2, 1977).

[6] Predictably, these arguments will include claims that the hearing record established the need for further evidence on particular points.

hurt the County if it is actually interested in engaging the merits.[7]

Third, the County's papers do not discuss whether the granting of stay would harm other parties. It would, of course, be grievously harmful to LILCO and its customers. Daily debt service on Shoreham is approximately $1,300,000, and LILCO remains wholly dependent on foreign oil to fuel its existing power plants. The sooner Shoreham operates, the sooner these burdens will be lessened.

Fourth, the County's April 16 papers do not address the question of where the public interest lies. Once again, the public interest lies in developing efficiently the narrow factual issues posed by LILCO's pending low power motion. Any difficulties with the motion that require further consideration would no doubt be exposed during the two weeks of hearings now scheduled and any necessary readjustments in schedule, if

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[7] This reality should not be obscured by the County's tactics. It has become clear that these tactics hinge on prolonging the litigation of Shoreham until no life remains in LILCO. Thus, SC seeks to avoid any consideration of the facts of specific issues for as long as possible and, along the way, reargues over and again procedural rulings with which it disagrees. These tactics often involve claims that threshold legal issues preclude reaching the facts -- e.g., SC's claims that "law" precluded conducting prehearing evidentiary depositions and that "law" precluded consideration of a utility-only emergency plan. See generally Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-107, 16 NRC 1667 (1982); LBP-82-115, 16 NRC 1923 (1982). Now, the County claims, GDC 17 precludes holding any hearings whatsoever on LILCO's current low power motion.

warranted, could be made at that time. The public interest is not served by arbitrarily delaying the beginning of these vital hearings.

In short, the County's application for a stay deserves summary rejection.

One final point bears mention. LILCO has already indicated its belief that action by the Commissioners themselves will be required, as a practical matter, before Shoreham may load fuel. If LILCO's March 20 motion had been referred directly to the Commission, as the Company requested, LILCO believes that the NRC might well have acted on at least Phases I and II of Shoreham's low power request on the basis of affidavits and argument alone.[8] It is also quite possible that the Commission would have directed the holding of just the sort of hearings now scheduled, in order to provide a predicate for Commission action on Phases III and IV. Accordingly, at least as to Phases I and II, LILCO believes that the present procedural arrangements give Suffolk County more than due process requires. And by any balanced view of due process, two weeks of hearings will give the County reasonable opportunity to focus the issues and sharpen the facts in its image if they

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[8] Phase I entails fuel load and precriticality testing; Phase II involves cold criticality testing. See LILCO's March 20, 1984 motion at 5-11, citing Pacific Gas and Elec. Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-83-27, 18 NRC 1146 (1983).

can, in fact, be so shaped. The Commission will then have ample, prompt occasion to hear and consider the views of all parties, most vocally the County's.

In sum, SC has offered no reasons that justify suspending the scheduled hearings. To repeat, first, the County's arguments for vacating the Board's order simply reiterate claims already heard by the Board and rejected in its April 6 order. Second, even assuming immediate interlocutory review of the order by the Commission, SC has failed to make the showings necessary to stay the order (and thus the hearings it scheduled), pending Commission review; SC could not have made these showings even if it had tried, which it didn't. Third, the hearings will obviously not preclude, or materially delay, Commission consideration of all relevant matters. The hearings will simply provide a factual background against which the review can more productively be conducted.

II.

What has been said above is dispositive of the pending requests, in LILCO's judgment. In an excess of caution, however, the Company responds to certain of the County's more prominent assertions.

A. Time to Prepare

Suffolk County complains extensively that the time contemplated by the April 6 order is inadequate to permit it to prepare for litigation of low power issues. The County's complaint is groundless: it understates the time available to SC to gain knowledge concerning matters relative to this litigation; overstates the scope of the litigation and hence the breadth of matters to be inquired into; and ignores the County's own dilatoriness in using its available time.

The County attempts to depict the Board's Order of April 6, 1984 as providing the first indication that low power proceedings involving emergency power sources other than the TDI diesels would be conducted. But SC was on explicit notice of LILCO's exact proposal as of March 20, when it was served on the County. That proposal was supported by four detailed affidavits, with attachments, sponsored by LILCO's experts. Moreover, the County knew nearly a month earlier, as of the February 22, 1984 prehearing conference, that LILCO would likely be filing proposals for low power operation using backup power sources in addition to the TDI diesels, when Judge Brenner indicated that on the basis of the record then before the Board, low power operation could not be approved before litigation of the TDI diesels.[9]

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[9] The County has repeatedly mischaracterized the Atomic Safety and Licensing Board's action at the February 22

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Further, the County has been on notice for years of the existence of virtually all of the factual issues it now portrays as being newly created. The same provision -- General Design Criterion 17 -- which the County now says prevents hearings on LILCO's power motion, also applied to Shoreham back in 1977-81, when the County was formulating its safety contentions. GCD 17 applies to the capacity of offsite as well as onsite electric power systems to support the performance of specified safety functions in the event of postulated accidents. GDC 17 also requires that provisions be made to minimize the probability of losing electric power supplies. See 10 CFR Part 50, Appendix A, Criterion 17, first and last paragraphs. In short, the same offsite power sources that Suffolk County now demands extended periods to examine were used in the Chapter 15 FSAR analyses for Shoreham and were available for litigation, with the required assumption that onsite power was lost, when Suffolk County was framing its safety contentions years ago. The only development since then concerning the reliability of offsite power sources is their enhancement by

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prehearing conference. The Board did not then reject any specific proposal on the merits for fuel load and low power; nor did it decide generally the concept of low power operation for Shoreham prior to litigation of the TDI diesels. All it observed was that what was then before it did not, in its view, afford a basis for a low power license.

the addition of certain new power sources, a 20 MW gas turbine and four mobile diesel generators physically located on the Shoreham site (though not deemed "onsite" for regulatory purposes). The time to have raised GDC 17 issues (with the limited exception of the new sources) was years ago, not now.

Second, the scope of issues properly before the Board is narrowly limited. Motions pursuant to 10 CFR § 50.57(c) do not provide an occasion for the litigation of new, unrelated contentions. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 77 (1983).[10] See also Southern California Edison Company (San

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[10] There the Appeal Board stated:

> When an applicant for an operating license files a motion for authority to conduct low power testing in a proceeding where the evidentiary record is closed but the licensing board has not yet issued an initial decision finally disposing of all contested issues, the board is obligated under 10 CFR 50.57(c) to issue a decision on all outstanding issues (i.e., contentions previously admitted and litigated) relevant to low power testing before authorizing such testing. But such a motion does not automatically present an opportunity to file new contentions (i.e., contentions not previously filed in response to the Commission's original notice of opportunity for hearing) specifically aimed at low power testing or any other phase of the operating license application. A party may, of course, identify for the Board those previously filed and litigated contentions that it contends must be decided before authorization of low power testing.

17 NRC at 801 n.72.

Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-3, 15 NRC 61, 186 (1982) ("the low power motion context is not a free opportunity to bring in new contentions").

Suffolk County's papers raise at least four issues that have no place in this litigation: need for power, LILCO's financial qualifications, its technical qualifications, and security. Need for power is definitionally not an issue in operating license proceedings; it cannot be raised in the guise of a complaint about the pace of an OL proceeding. Financial qualifications, though potentially a subject on which the Staff must make a finding,[11] have not been raised in any fashion that requires expansion of this proceeding. LILCO's technical qualifications are also a matter about which the County has never filed contentions, despite its public discussion of these qualifications for years. Security issues are governed generally by an extensive settlement agreement dated November 22, 1982 among LILCO, Suffolk County and the NRC Staff, which resolved all outstanding County security contentions and which governs the relations of the parties on security prospectively.

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[11] On February 7, 1984, the U.S. Court of Appeals for the D.C. Circuit issued its decision in New England Coalition on Nuclear Pollution v. NRC, ___ F.2d ___, No. 82-1581 (1984), remanding to the Commission its rule excluding consideration of financial qualifications in operating license proceedings. The court issued its mandate on April 16. Commission implementation of the court's order is expected soon.

Even as to issues properly before this Board, the County has not taken advantage of the time available to it. As outlined above, SC was aware of potential factual issues that would be developed well before the Board's April 6 order. At the very latest, the County could have begun inquiring actively into LILCO's exact case on March 20, the day LILCO's supplemental low power motion was served on it. The County has often seized the opportunity for formal or informal discovery with alacrity in other aspects of this proceeding; its failure to do so here must be taken as deliberate.[12]

Notwithstanding the County's contrary desires, this Board's intention to move quickly was signaled unquestionably by its telephone notice of March 30 setting an April 4 oral argument, its remarks at the ensuing conference, and its April 6 order. Still LILCO did not receive any discovery requests from Suffolk County until April 12, eight days after the conference and six after after the Board's order.[13] Even at that, the SC discovery requests, though extraordinarily burdensome, were of the boilerplate type that could have been formulated on a first reading of LILCO's March 20 motion and affidavits.

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[12] The County did capitalize on one opportunity for free discovery during this period: its representatives attended an open meeting, convened by the NRC Staff, on March 29 to discuss LILCO's low power motion.

[13] One discovery request was dated April 11 but not received until April 12 because sent by Federal Express rather than telecopier; the request dated April 12 was telecopied and received that evening.

The County's pursuit of the document discovery actually requested has been equally desultory. LILCO, following receipt of the County's first discovery request, had documents assembled for examination and copying on Long Island the next day, April 13, and offered to make them available around the clock. Suffolk County responded to the invitation by sending one lawyer and two paralegals; they spent between three and four hours going through some of the available documents, requested extensive copying (which was performed overnight), and departed, not to return.[14] Further, despite knowledge since March 20 of LILCO's potential witnesses' identities and of the gist of their proposed testimony, Suffolk County neither took nor requested depositions.[15] And while proclaiming an intent to retain expert witnesses, the County has not yet indicated to LILCO that such consultants have been retained, despite LILCO's repeated requests that SC inform the Company of their identity. The County, of course, has had at least since March 20 to engage its consultants.

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[14] Documents responsive to the second request were also assembled and made available for review on Long Island by April 14; Suffolk County forwent this opportunity, choosing instead to have them copied and sent to its attorneys' offices in Washington, which was accomplished by April 16.

[15] The County's diffidence about taking depositions here is in marked contrast to its conduct in other phases of the case, where the County, according to LILCO records, has taken depositions of at least 51 of LILCO's and other parties' experts and noticed (but not taken, for one reason or another) many more.

The inescapable conclusion is that the County's professed unpreparedness to proceed at this point is substantially if not entirely of its own making. SC has deliberately chosen not to bestir itself.

B. Waiver

Suffolk County argues at length that, under its construction of GDC 17, LILCO was required to seek a waiver of that regulation pursuant to 10 CFR § 2.758. This argument, of course, merely reclamors an issue that the County raised, and lost, on April 6. For the reasons outlined in this Board's April 6 Memorandum and Order at 4-7, GDC 17 cannot be read in isolation, but rather must be harmonized with other applicable regulations including 10 CFR § 50.57(c), which requires a Licensing Board to make findings on any contested issues with respect to the contested activity sought to be authorized. Ignoring relevant differences between requirements for operation at full power and at, e.g., 5% power, as the County urges, would, as the Board recognized, read § 50.57(c) out of the regulations. Thus the County's argument is both untimely and incorrect.

Even if a waiver or exception as to GDC 17 were thought to be required, however, § 2.758 is not tne sole vehicle; the provisions of § 50.12(a), permitting the granting of exceptions from the requirements of the regulations in Part 50, are also applicable.[16] Further, under the full adjudicatory procedure

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[16] If, hypothetically, a § 50.12 exception were necessary, the required testimony on the factual issues posed by

now contemplated, including evidentiary hearings and the high likelihood of referral to the Commission, any procedural requirements of §§ 2.758 and 50.12 can, as a practical matter, be more than satisfied.[17]

C. Expedition

Shoreham's operating license proceeding is now eight years old; it has been underway since April 1976. With few interruptions, these eight years have involved constant, complex licensing activity. Hundreds of issues have been raised by a large array of intervenors. Immense informal and formal discovery has taken place -- e.g., hundreds of thousands of pages of documents have been formally produced or made available for inspection; the depositions of over 100 people have been taken in places from New York to California; scores of issues have been settled after the informal exchange of great amounts of

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§ 50.12(a) would closely match the affidavits filed by LILCO on March 20 and the testimony to be filed by it on April 20.

[17] Section 2.758 contemplates initial examination of proposals for waivers by a Licensing Board on the basis of pleadings and affidavits, and certification of any prima facie showing to the Commission, which makes the ultimate determination. Section 50.12 contemplates decision by the "Commission," which in the context of Part 50, applies both to the Commission itself and "its duly authorized representatives," 10 CFR § 50.2(h), i.e., Licensing Boards in the case of licensing proceedings. No direct involvement by the Commission is necessarily contemplated by § 50.12.

information and extended discussion and negotiation. Since the beginning of formal evidentiary sessions two years ago, over 10,000 pages of prefiled direct testimony have been served; over 150 days of hearings have been held; and the transcript has passed 28,000 pages. Since 1976, rulings by the various Licensing and Appeal Boards involved in the proceeding, as well as by the Commission itself, have exceeded 2,700 pages.

As suggested by the vast amount of time consumed and verbiage generated, the licensing process has often moved at a glacial pace. Along the way, due process pressed down and overflowing has been provided to those who wished to question and challenge the Shoreham application.[18]

Confronted by this situation, LILCO has been driven to ask for expedition on numerous occasions. The request accompanying the Company's March 20, 1984 motion is only the latest in a long series of attempts by the Company to obtain rudimentary fairness for the applicant, including an end ultimately to the licensing proceeding.

While LILCO does ask for expedition now, as often in the past, by no stretch of imagination has this operating license proceeding involved a rush to judgment. The proceeding's

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[18] With rare exception, and none pertinent to low power operation, all questions and challenges to date -- once tested during sworn adjudicatory hearings -- have been systematically and persuasively answered or refuted.

place in history is secure as one of the most protracted, intense adjudications in American administrative practice. Expedition now to bring one phase of the proceeding to a conclusion will not offend due process. The obverse would; it has long since ceased to be either fair as a matter of law or desirable as a matter of public policy to compel LILCO to devote tremendous human and financial resources to service litigation that has already gone beyond the outer bounds of that which would be deemed tolerable in virtually any other judicial or administrative setting.

Expedition is also appropriate because low power testing of Shoreham's systems and operators ought to begin as soon as is feasible in the interests of rational energy policy.[19] LILCO's current generating plants are wholly fired by foreign oil. Common sense dictates that Shoreham, a large baseload unit not dependent on foreign oil, be available to generate electricity as soon as it can be brought on line. If foreign oil supplies to Long Island were interrupted -- a risk far more likely than any of the nuclear accidents analyzed for

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[19] Contrary to SC's suggestion, counsel for LILCO did not futilely "attempt" to discuss the need for Shoreham during the April 4, 1984 oral argument before the Board. Counsel for LILCO, having sat through the County's erroneous litany of anti-need arguments, offered to respond if the Board believed the litany was relevant to pending issues. The Board correctly did not; nor did LILCO. Brief discussion here of need occurs lest continued silence be mistaken as support for SC's claims.

NRC licensing purposes -- a new sort of political uproar would arise concerning Shoreham, replacing the species currently fashionable. The new uproar would focus on how it could possibly be that steps were not taken to have Shoreham available for use during a clearly foreseeable oil crisis.[20]

One final point: SC implies that a meeting between LILCO's new chairman, Dr. Catacosinos, and Chairman Palladino has some bearing on present matters. The implication is false. When Dr. Catacosinos briefly introduced himself to the Chairman, there was no discussion whatsoever pertinent to Shoreham litigation.

III.

For the reasons stated, the present requests should be denied.

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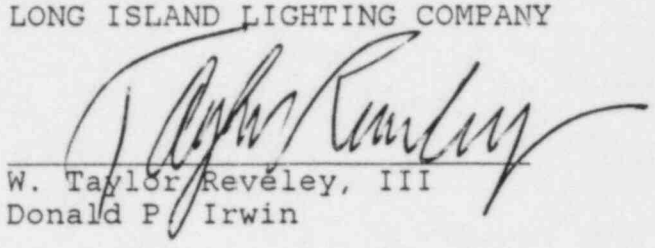
[20] It also bears mention that by 1985 LILCO will begin to experience a deficit in its reserve capacity unless Shoreham is on line. Thus it is flatly wrong to claim, as SC does, that Shoreham will not be needed to meet load growth for another decade or so. Beyond load growth, Shoreham is also needed well before the mid-1990s to permit the retirement of aging units on LILCO's system. And, of course, given the extreme difficulty of finding sites in southeastern New York State that might be licensable for power plants, the existence of a completed baseload plant on a licensable site at Shoreham provides southeastern New York with a rare addition to its indigenous energy resources. To provide another such addition in the future, if in fact a large new baseload power plant can ever again be built in Consolidated Edison's and LILCO's service territories, would take years, plus political and legal machinations of sweeping dimensions.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY



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DATED: April 19, 1984

LILCO, April 19, 1984

CERTIFICATE OF SERVICE

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322-OL-4 (Low Power)

I hereby certify that copies of LILCO'S RESPONSE TO VARIOUS SUFFOLK COUNTY/NEW YORK STATE REQUESTS DATED APRIL 16 AND RECEIVED APRIL 17, 1984 (Before the Commission and Before the Atomic Safety and Licensing Board) were served this date upon the following by U.S. mail, first-class, postage prepaid, and in addition by hand (as indicated by one asterisk) or by Federal Express (as indicated by two asterisks).

Judge Marshall E. Miller*
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Judge Glenn O. Bright*
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