

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

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

AFFIDAVIT OF MICHAEL D. DIRMEIER

Michael D. Dirmeier, being duly sworn under oath hereby states as follows:

1. I am employed by Georgetown Consulting Group, Inc., located at 456 Main Street, Ridgefield, Connecticut 06877. Georgetown Consulting Group, Inc. is a financial and management consulting firm with extensive experience in the regulation of public utilities. I have been engaged by the County of Suffolk to analyze the effect of Shoreham on the rates and finances of Long Island Lighting Company ("LILCO") and to otherwise assist the County in analyzing financially related issues pertaining to Shoreham and LILCO. A statement of my professional qualifications is attached.

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2. I understand that LILCO is seeking a license from the Nuclear Regulatory Commission ("NRC") to operate Shoreham at low power. Such low power operation would likely precede any NRC decision regarding LILCO's pending request for a full power operating license.

3. The purpose of this Affidavit is to describe presently available information and data which document that LILCO, due to its weakened financial condition, is not financially qualified to operate Shoreham, or even to carry out the activities associated with low power testing. Unless and until LILCO's two major financial uncertainties are resolved -- the threat of reorganization due to the suspension of payments for Nine Mile Point No. 2 and revenue requirement recognition of Shoreham -- it cannot be determined that LILCO is financially qualified to operate Shoreham at any power level.

4. In order to conduct the proposed low power testing activities, it is my belief that LILCO will need to expend monies in addition to those which it is currently expending on Shoreham. The precise nature and extent of such additional expenditures cannot be precisely quantified at this time. Suffolk County has sought data from LILCO on this subject in discovery requests, but has been advised by LILCO that the

information sought will not be provided. I believe that the additional expenses to be incurred would include, at a minimum, the additional time required of personnel to load fuel and conduct testing activities, the need for more stringent security once fuel is placed in the reactor, and compliance with additional radiation, health and safety requirements in order to complete the construction and maintain an irradiated plant in a safe condition in conformance with the NRC's regulations.

5. Regardless of whether low power testing will require additional monetary expenditures by LILCO, however, it is my opinion that LILCO does not have, is unable, and likely will be unable, to obtain the necessary resources to finance its operating and construction activities during the period of low power testing.

6. During the past three months LILCO has made disclosures concerning its financial condition, the culmination of which make clear that the Company likely cannot avoid bankruptcy without both (1) an assumption by some other party of \$918 million of construction costs paid, and to be incurred, by LILCO for the construction of Nine Mile Point 2; and (2) an agreement concerning rate relief for Shoreham costs, on terms favorable to LILCO, that must be effectuated by other parties.

7. The information I have reviewed concerning LILCO's financial condition is contained in (a) LILCO's annual report on Form 10-K as filed with the Securities and Exchange Commission (SEC) on March 30, 1984 (Exhibit A attached hereto); (b) its current report on SEC Form 8-K dated February 21, 1984 (Exhibit B attached hereto); (c) LILCO's quarterly report on Form 10-Q, as filed with the SEC on May 15, 1984 (Exhibit C attached hereto); (d) financial information furnished by LILCO in rate proceedings which are pending before the New York Public Service Commission ("PSC"); and (e) a "Position Paper" dated May 30, 1984 which was submitted to the Governor of New York on May 31, 1984 (Exhibit D attached hereto).

8. Based on the information I have reviewed, it is my opinion that LILCO is on the brink of financial disaster. Thus, notwithstanding the fact that LILCO raised \$911 million through external financing during 1983, at the time of the filing of the Form 10-K (i.e. on or about March 30, 1984) the Company believed it only had "on hand sufficient cash and short term investments to continue the Company's operations until the Fall of 1984" (Form 10-K at 6).

9. More recently, in its quarterly report to the SEC on Form 10-Q for the three months ended March 31, 1984, LILCO more

specifically identified August 31, 1984 as the date beyond which it will not have "sufficient cash and short term investments to continue the Company's operations." (Form 10-Q at 22). The Form 10-Q also reveals that \$90 million of LILCO's outstanding bonds will mature on September 1, 1984, at a time when LILCO will not have the funds to meet such an obligation.

10. LILCO will run out of cash on August 31, 1984 notwithstanding that: (1) LILCO raised approximately \$63 million of external financing in January and February 1984 (Form 10-K at 6); (2) LILCO has instituted austerity measures intended to save \$100 million in cash (Form 10-K at 2); (3) LILCO has unilaterally ceased construction payments for its share of Nine Mile Point 2 even though such action threatens acceleration of \$500 million of LILCO's outstanding debt (Form 10-K at 58); and (4) LILCO has omitted common stock dividends which, by my calculation, would otherwise have amounted to approximately \$180 million, during the remainder of 1984.

11. Had LILCO not unilaterally ceased construction payments for its share of Nine Mile Point 2 in February 1984, it is estimated that it would have had to have paid \$114 million for such construction during 1984. Of this amount, only \$11.5 million was paid before LILCO ceased making further payments.

12. As further evidence of LILCO's dire financial condition, its Form 10-K states ". . . given the various adverse factors now impacting the Company, little or no assurance can be given regarding the Company's ability to raise additional funds in 1984 and in future years in order to meet construction and other capital requirements and operational needs." (Form 10-K at 6).

13. In addition, LILCO's outside auditors, Price Waterhouse, qualified their report on the Company's financial statements to the effect that Price Waterhouse's opinion was "subject to the Company's continued financial viability." (Form 10-K at 49). In its report to LILCO, Price Waterhouse enumerated specific matters, the outcome of which was indeterminable, as were their effects on the financial position or results of operation of LILCO. Specifically, Price Waterhouse noted the following:

- (a) That the Staff of the New York Public Service Commission, on February 10, 1984, alleged "serious mismanagement and inefficiency throughout" the Shoreham project;
- (b) That LILCO has been notified that other participants in the Nine Mile Point 2 project consider

LILCO to have defaulted in its financial obligations to the project; that LILCO's suspension of its payments for Nine Mile Point 2 may have constituted a violation of LILCO's agreement with lending banks; that the banks have effectively given LILCO a renewable (at the bank's option) 30-day grace period; and that in the absence of such a grace period other "long term debts of the Company could become due and payable as a result of cross-defaults and result in rights of acceleration of maturities of such debt";

- (c) That recovery of \$118 million in costs of abandoned nuclear projects and \$111 million advanced to a supplier of uranium concentrates were (as evidenced elsewhere in the Form 10-K) uncertain.

Price Waterhouse concluded, therefore, that LILCO "cannot give any assurance of its ability to meet its capital and operating requirements." (Form 10-K at 49).

14. LILCO has stated that it will require \$700 million in cash during 1984 to meet anticipated capital expenditures in that year. (Form 10-K at 46).^{1/} As of December 31, 1983, the

^{1/} The \$700 million does not reflect putative savings of \$100 million resulting from LILCO's austerity plan.

Company had approximately \$275 million in cash and temporary cash investments. (Form 10-K at 52). By February 20, 1984 the \$275 million figure had dwindled to \$214 million (Form 8-K at 1); and by March 31, 1984 cash and short term investments amounted to only \$174 million (Form 10-Q at 4).

15. Assuming that LILCO is able to save \$100 million as a result of its "austerity" program, the Company would still need \$325 million in cash, beyond cash and investments on hand as of December 31, 1983, in order to meet its planned capital expenditures during 1984. Of the \$325 million necessary, LILCO raised approximately \$63 million of external financing during January and February 1984 (Form 10-K at 6), and after consideration of omitted common dividends, the net shortage in 1984 is approximately \$80 million. Thus, if all of LILCO's cash conservation plans were fully realized during 1984, it would still be approximately \$80 million short of funds by the end of the year. In fact, Mr. Sideris, LILCO's Vice-President for Finance, has filed testimony before the New York Public Service Commission indicating LILCO's year-end shortfall will be between \$44 million and \$64 million.

16. All of LILCO's existing lines of credit have been drawn down (Form 10-K at 8), and the Company has disclosed no commitments from any source to furnish LILCO additional financing. Indeed, as noted in paragraph 9 above, in the absence of outside financing, LILCO will be unable to pay the \$90 million due on outstanding bonds which will mature on September 1, 1984.

17. LILCO's dire financial straits have affected its access to the capital markets. Thus, the various ratings services have all lowered their ratings of the Company's securities. Indeed, Moody's Investors Service, Inc. ("Moody's") has lowered its ratings of the Company's securities on three occasions: in December 1983, January 1984 and March 1984. (Form 10-K at 9). The Company has stated: "In Moody's view, since December 1983, when it reduced the Company's ratings on all of the Company's fixed income securities, the Company's prospects for continued financial flexibility and for reduction of the Shoreham safety plan impasse have worsened." (Form 10-K at 9). Neither Moody's, Standard & Poor's Corporation, nor Duff & Phelps considers any of the Company's securities to be of investment grade. (Form 10-K at 10). Moreover, as of March 31, 1984, "[t]he Company's commercial paper ratings have all been withdrawn." (Form 10-Q at 26). By

May 30, 1984, none of LILCO's securities were "considered of investment grade" (Position Paper, 46). The Company has stated: "In view of LILCO's financial condition, external financing is not presently available" (Position Paper, 1).

18. In addition to running out of cash on August 31, the ultimate recoverability by LILCO of Shoreham-related costs through rate relief is very much in doubt as a result of LILCO's alleged "serious mismanagement and inefficiency throughout the project." (Form 10-K at 48). Thus, according to LILCO, the New York Public Service Commission (PSC) is "currently investigating the prudence of the costs incurred by the Company in the construction of Shoreham." (Form 10-K at 22). In that proceeding, the staff of the PSC has recommended that "no more than \$2.296 billion of the Shoreham costs be allowed in rate base." (Id.) Assuming July 1, 1985 is the earliest possible date on which LILCO might hypothetically put Shoreham into commercial service, at an estimated overall cost of \$4.1 billion (Form 10-K at 19) the PSC staff's recommendation, if adopted by the PSC, would mean that LILCO would have to absorb \$1,804,000,000 of Shoreham-related costs.^{2/} To the extent

^{2/} Certain intervenors in the proceeding, including Suffolk County, have sought to limit LILCO's recovery to \$1.9 billion--a projected shortfall of \$2.2 billion. (Form 10-K at 22)

LILCO's continuously escalating estimate of \$4.1 billion for Shoreham is exceeded, of course, the PSC staff's recommendation would require LILCO to absorb a figure greater than \$1.8 billion.^{3/} LILCO has recently made clear that a settlement of the prudency proceeding, on terms favorable to LILCO, is an underlying assumption of a LILCO plan to stave off bankruptcy. (Position Paper, 50). The terms which LILCO proposed, and which have been rejected by the Governor of New York, involve an absorption by LILCO of only \$250 million -- instead of between \$1.8 billion and \$2.2 billion -- of Shoreham-related costs. (Position Paper at 51.)

19. Non-Shoreham related rate increases are not likely to help stave off a financial disaster for LILCO. According to the Company's own figures, even if 100% of pending non-Shoreham rate relief is obtained, LILCO will still have a cash deficit of \$43.3 million in September 1984 and of almost \$61 million in December 1984. (June 21, 1984 letter from Gerard A. Maher, counsel for LILCO, to Hon. Frank S. Robinson, Administrative Law Judge, NYPSB, a copy of which is attached hereto as Exhibit E.)

^{3/} Indeed, because of the "uncertainties concerning Shoreham and the Company's financial condition," other proceedings before the PSC, concerning how to treat Shoreham for rate-making purposes, have been suspended indefinitely (Form 10-K at 4).

20. As noted previously, on February 9, 1984, LILCO "suspended" payments for its 18% share of construction costs of Nine Mile Point 2, a nuclear generating unit under construction near Oswego, New York. The cotenants of Nine Mile Point 2, in addition to LILCO, are Niagara Mohawk Power Corporation, who acts as agent for the cotenants, New York State Electric and Gas Corporation, Rochester Gas and Electric Corporation and Central Hudson Gas and Electric Corporation. (Form 10-K at 27). As a result of this unilateral suspension on the part of LILCO, "Niagara Mohawk has notified the Company that it considers the Company to be in default of its obligations to the other cotenants and has demanded payment." (Form 10-K at 27). LILCO's share of construction costs for 1984 is approximately \$114 million, of which LILCO had already paid \$11.5 million before it unilaterally suspended further payments on February 9, 1984.

21. As a result, Niagara Mohawk has advised LILCO that Niagara Mohawk "may institute litigation against the Company . . . [which] could result in encumbering, diminishing or eliminating" LILCO's interest in Nine Mile Point 2. (Form 10-K at 27). As of December 31, 1983 the cost of LILCO's share of Nine Mile Point 2 was \$585 million. (Form 10-K at 27).

22. It now appears that the estimated cost of completing Nine Mile Point 2 will amount to \$5.1 billion. (Form 10-Q at 8). LILCO's share (18%) of that figure amounts to almost one billion dollars (\$918 million). On May 30, 1983 LILCO disclosed that, in addition to requiring rate relief for Shoreham (by settling the prudency proceeding), the Company will need an immediate governmental (e.g., New York Power Authority) bailout from its \$918 million participation in Nine Mile Point 2 (Position Paper at 4-5, 52).

23. LILCO's suspension of payments for Nine Mile Point 2 has raised the spectre of the acceleration of all of its outstanding Nine Mile Point debt -- approximately \$500 million as of December 31, 1983. Thus, counsel for the banks who made loans to LILCO for purposes of Nine Mile Point 2 has questioned whether LILCO's suspension of payments for Nine Mile Point 2 violates the terms of LILCO's debt obligation. (Form 10-K at 57). In order to forestall immediate acceleration of LILCO's debt, however, LILCO and the lending banks for Nine Mile Point 2 have agreed that, only for so long as holders of two-thirds of the Nine Mile Point 2 debt continue to agree, no default on the debt will be declared for successive 30-day periods beginning April 27, 1984. (Id.)

24. As noted previously, the PSC staff has alleged "serious mismanagement and inefficiency throughout" the Shoreham project, and has proposed to disallow at least \$1,800,000,000 of Shoreham-related expenditures -- a disallowance that would increase, dollar-for-dollar, with any increase in construction costs beyond \$4.1 billion. Intervenors in the prudence investigation have proposed disallowance of all sums in excess of \$1.9 billion. Any disallowance has the potential, in the Company's own words, to "jeopardize the Company's ability to meet its financial obligations." (Form 10-K at 23).

25. In its Position Paper, LILCO made a proposal to the Governor of New York which, "assures a continuous electric supply, minimizes rate increases and saves LILCO from bankruptcy." (Position Paper at 4). A necessary condition of LILCO's proposal, and hence of avoiding bankruptcy, is "that LILCO's share, past and present, in the Nine Mile Point 2 nuclear plant is assumed by others." (Position Paper at 5). LILCO proposes that the New York Power Authority or "other state bonding agencies" undertake this bail-out (Position Paper at 52).

26. As of December 31, 1983, LILCO had invested \$585 million (including payments for fuel and debt service) in Nine

Mile Point 2. Since then, it has paid \$11.5 million in January 1984. LILCO is still obligated to pay \$65 million in financing costs for Nine Mile Point 2 during 1984 (Form 10-K at 27), even though it has already defaulted on \$102.5 million of 1984 construction payments for the project. Thus, without curing the default, by the end of 1984 LILCO will have invested a total of \$661.5 million which someone else must assume if LILCO is to avoid bankruptcy. Furthermore, as revealed in LILCO's recent report to the SEC on Form 10-Q, it now appears that the total estimated cost for completing Nine Mile Point 2 is to be \$5.1 billion. (Form 10-Q at 8) LILCO's share of that amount (18%) is estimated to be \$918 million. Assuming that someone else is found to bail LILCO out of its Nine Mile Point 2 involvement, that someone else will have to incur obligations of at least yet another \$256.5 million (beyond the payments LILCO will have made by the end of 1984) before the project is completed.

27. The Position Paper also revealed, for the first time, that not only would LILCO require a \$918 million bailout, but that the bailout would have to be coupled with rate relief, satisfactory to LILCO, to cover Shoreham-related costs. Thus, the Position Paper states:

Two measures form the foundation of this proposal [to save LILCO from bankruptcy]. The first assumes that LILCO is relieved of its past and future obligation for Nine Mile Point 2 and that its cash investment in that plant is returned to the Company.

The second measure crucial to the stability of the Company is a settlement of the prudency case.

(Position Paper at 50 emphasis added).

28. The Position Paper also makes clear that a bailout for Nine Mile Point 2 and settlement of the prudency proceeding are the only alternative for LILCO. According to that document: "In view of LILCO's financial condition, external financing is not presently available, and the Company's current estimates show that it will run out of cash in September 1984." (Position Paper at 1). Additionally, the Position Paper reveals, again for the first time, that additional austerity measures would not suffice to avert bankruptcy. Thus, LILCO states: "Other austerity measures and suspension of preferred dividends cannot solve LILCO's financial crisis, nor can they avert the threat of bankruptcy." (Position Paper at 47).

29. Finally, until the Position Paper was issued, the public was ignorant of the effect on LILCO's customers of the Company's "austerity plan." That document revealed, however,

that LILCO's customers are already suffering as a result of the Company's past financial excesses. In LILCO's words, "The effects of LILCO's financial crisis are presently to be suffered . . . by its customers, who are subject to longer service response times and reduced customer service under the austerity plan." (Position Paper at 46).

Michael D. Dirmeier
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Subscribed and sworn to before me this 6th day of July, 1984, in the City of London, State of Kentucky.

Notary Public
TERESA A. READMAN
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1988

My Commission expires: 3/31/88