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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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

JOINT MOTION OF SUFFOLK COUNTY AND THE STATE OF NEW YORK TO STRIKE LILCO'S THREE UNAUTHORIZED PLEADINGS ENTITLED "LILCO'S MOTION FOR SUMMARY DISPOSITION ON PHASE I LOW POWER TESTING;" "MOTION FOR SUMMARY DISPOSITION ON PHASE II LOW POWER TESTING;" AND "MOTION FOR PROMPT RESPONSE TO LILCO'S SUMMARY DISPOSITION MOTIONS."

On May 23, Suffolk County and the State of New York received three pleadings filed by LILCO with the ASLB: "LILCO'S MOTION FOR SUMMARY DISPOSITION ON PHASE I LOW POWER TESTING;" "MOTION FOR SUMMARY DISPOSITION ON PHASE II LOW POWER TESTING;" and "MOTION FOR PROMPT RESPONSE TO LILCO'S SUMMARY DISPOSITION MOTIONS." The instant Joint Motion is being filed with the Commission, rather than the Licensing Board, because LILCO's three pleadings disregard and, indeed, challenge the substance of the Commission's Order of May 16 in this proceeding. Thus, the County and State request the Commission to exercise the inherent jurisdiction it continues to hold over its May 16 Order and thereby to preserve the integrity of that Order.

For the following reasons, the County and State urge the Commission to preemptorily strike the subject LILCO Motions.

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First, LILCO's pleadings request the Commission to issue licenses for only "fuel loading" and "cold criticality testing" activities which LILCO itself admits do not involve operation of Shoreham. Under NRC regulations, however, the Commission does not issue such types of licenses. Since LILCO's Motions are for permission to carry out activities manifestly short of "operating" Shoreham, the Motions are for "licenses" not authorized by NRC regulations. Accordingly, the Motions are unauthorized pleadings and should be stricken.*/

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*/ LILCO's request for the Commission to issue what amounts to a "No-Power License" was the subject of discussion at the May 7 oral argument before the Commission. The County there made clear that there is neither legal basis nor precedent for issuance of such a no-power license. While LILCO and the Staff argued that the Diablo Canyon proceeding provides support for such a license, that case in fact demonstrates the opposite: (1) Diablo Canyon was an enforcement proceeding, not an initial licensing case such as Shoreham. (2) The initial license in Diablo Canyon was a low power license, not a no-power license which LILCO here requests. (3) The Commission's decision to phase-in operation of Diablo Canyon was an integral part of the Commission's Independent Design Verification Program (IDVP) for reinstatement of a suspended license. In that "reinstatement" context, phase-in was the way the Commission determined the public would best be protected, given the extraordinary series of design deficiencies which were discovered over a long period of time. Shoreham is an entirely different situation: it is not an enforcement proceeding; there is no suspended license; and there is no IDVP. In Shoreham, there is room only for an operating license.

In the event the Commission wishes to pursue the matter of legality of a "no-power license," the County and State submit that this matter should be briefed by the parties and addressed by the Commission itself. We emphasize, however, that the issue was discussed by the parties and Commission at the May 7 oral argument. The fact that the Commission heard LILCO's

(footnote cont'd on next page)

Second, the Commission's Order of May 16 -- which was issued after the oral argument where each of the parties presented its views on the legitimacy of "licenses" for Phase I and Phase II of LILCO's proposal -- does not mention the possibility of such a license application being even considered, let alone granted. Indeed, the Commission stated, "If [LILCO] intends to [seek an exemption under 10 C.F.R. 50.12(a)], the applicant should modify its application for low power operation . . . . " (Order, p. 2. Emphasis added.) Similarly, the Commission stated that LILCO's request for an exemption should include a discussion of, "its basis for concluding that, at power levels for which it seeks authorization to operate . . . . " (Order, p. 3. Emphasis added.) Thus, the Commission was clear that LILCO's only option was to seek a license to operate Shoreham.

What LILCO has done once again is to ask this Commission for a favor: namely, for a document -- a "license" -- which authorizes something LILCO can use in pursuing its own purposes unrelated to operating Shoreham. By now, everyone should know that these purposes embrace LILCO's worn-out strategy for gaining access to Wall Street's credit markets. It is a strategy of no relevance to the NRC, where public safety must be the only objective.

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*/ (footnote cont'd from previous page)
arguments and did not rule on May 16 in accordance with LILCO implies that the Commission agreed with the County and State's position that a "no-power license" may not be issued.

Finally, LILCO claims that it has filed its Motions "in a continuing effort to have the merits of its case engaged . . . . " The way to do that properly, however, is not by LILCO's Motions for the Commission to take ultra vires action, but to follow the NRC's regulations and the Commission's May 16 Order. Indeed, that Order went so far as to state: "The Licensing Board shall conduct the proceeding on the modified application in accordance with the Commission's rules." (Order, p. 3.) However, within mere days of that admonition, LILCO has already filed Motions for licenses not contemplated by the rules or by the Commission's May 16 Order. After what has transpired over the past two months, this proceeding has seen more than enough of LILCO's short-cuts and corner-cutting.**/

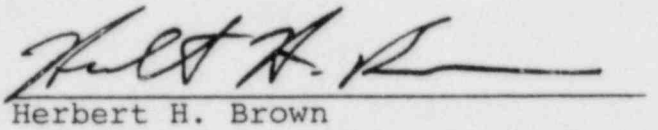
**/ LILCO's Motion For Prompt Responses To LILCO's Summary Disposition Motions" is most unfitting given the problems caused earlier by "expeditiousness" in this proceeding. It is time for the Commission's regulations to be applied as intended.

Insofar as substantive County and State responses to LILCO's Motions are concerned, the parties await (1) the Commission's ruling on the instant Joint Motion that such LILCO Motions be stricken as unauthorized pleadings; and (2) the assertion of jurisdiction in this new proceeding by the Licensing Board and the establishment of procedures and timetables. Only if LILCO's submittedly unauthorized pleadings were permitted to stand would it be appropriate for substantive responses thereto.

Finally, LILCO's "Application for Exemption," filed May 22, is incomplete and substantively inadequate given the explicit requirements of Section 50.12(a). The County and State have requested, by separate pending Motions for Clarification, that the Commission provide a procedural means by which the County and State may seek remedies to deal with such inadequacies.

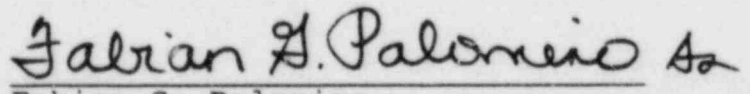
Respectfully submitted,

Martin Bradley Ashare
Suffolk County Department of Law
Veterans Memorial Highway
Hauppauge, New York 11788



Herbert H. Brown
Lawrence Coe Lanpher
KIRKPATRICK, LOCKHART, HILL,
CHRISTOPHER & PHILLIPS
1900 M Street, N.W., Suite 800
Washington, D.C. 20036

Attorneys for Suffolk County



Fabian G. Palomino
Special Counsel to the Governor
of New York State
Executive Chamber, Room 229
Capitol Building
Albany, New York 12224

Attorney for MARIO M. CUOMO
Governor of the State of New York

May 24, 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)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the JOINT MOTION OF SUFFOLK COUNTY AND THE STATE OF NEW YORK TO STRIKE LILCO'S THREE UNAUTHORIZED PLEADINGS ENTITLED "LILCO'S MOTION FOR SUMMARY DISPOSITION ON PHASE I LOW POWER TESTING;" "MOTION FOR SUMMARY DISPOSITION ON PHASE II LOW POWER TESTING;" AND "MOTION FOR PROMPT RESPONSE TO LILCO'S SUMMARY DISPOSITION MOTIONS," dated May 24, 1984, have been served to the following this 24th day of May 1984 by U.S. mail, first class, unless otherwise indicated.

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

Judge Glenn O. Bright*
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Judge Elizabeth B. Johnson **
Oak Ridge National Laboratory
P.O. Box X, Building 3500
Oak Ridge, Tennessee 37830

Eleanor L. Frucci, Esq.
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Edwin Reis, Esq.*
Counsel for NRC Staff
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Edward M. Barrett, Esq.
Long Island Lighting Company
250 Old Country Road
Mineola, New York 11501

Honorable Peter F. Cohalan
Suffolk County Executive
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

By Hand *
By Federal Express **
By Telecopier ##

Fabian Palomino, Esq. ##
Special Counsel to the Governor
Executive Chamber
Room 229
State Capitol
Albany, New York 12224

W. Taylor Reveley, III, Esq. ##
Anthony F. Earley, Jr., Esq.
Robert M. Rolfe, Esq.
Hunton & Williams
P.O. Box 1535
707 East Main Street
Richmond, Virginia 23212

Mr. Martin Suubert
c/o Congressman William Carney
1113 Longworth House Office Bldg.
Washington, D.C. 20515

Martin Bradley Ashare, Esq.
Suffolk County Attorney
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

Nunzio J. Palladino, Chairman *
U.S. Nuclear Regulatory Commission
Room 1114
1717 H Street, N.W.
Washington, D.C. 20555

Commissioner Victor Gilinsky *
U.S. Nuclear Regulatory Commission
Room 1103
1717 H Street, N.W.
Washington, D.C. 20555

Commissioner James K. Asselstine *
U.S. Nuclear Regulatory Commission
Room 1136
1717 H Street, N.W.
Washington, D.C. 20555

Commissioner Frederick M. Bernthal *
U.S. Nuclear Regulatory Commission
Room 1156
1717 H Street, N.W.
Washington, D.C. 20555

Commissioner Thomas M. Roberts *
U.S. Nuclear Regulatory Commission
Room 1113
1717 H Street, N.W.
Washington, D.C. 20555

James B. Dougherty, Esq.
3045 Porter Street, N.W.
Washington, D.C. 20008

Mr. Brian McCaffrey
Long Island Lighting Company
Shoreham Nuclear Power Station
P.O. Box 618
North Country Road
Wading River, New York 11792

Jay Dunkleberger, Esq.
New York State Energy Office
Agency Building 2
Empire State Plaza
Albany, New York 12223

Stephen B. Latham, Esq.
John F. Shea, Esq.
Twomey, Latham and Shea
33 West Second Street
Riverhead, New York 11901

Docketing and Service Branch
Office of the Secretary
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Herbert H. Brown

Herbert H. Brown
KIRKPATRICK, LOCKHART, HILL,
CHRISTOPHER & PHILLIPS
1900 M Street, N.W., Suite 800
Washington, D.C. 20036

DATE: May 24, 1984