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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Commission

OFFICE OF GENERAL
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
LONG ISLAND LIGHTING COMPANY)
)
(Shoreham Nuclear Power Station,)
Unit 1))

Docket No. 50-322-OL-4
(Low Power)

JOINT SUFFOLK COUNTY AND
NEW YORK STATE SUPPLEMENT TO
REQUESTS FOR CLARIFICATION OF
COMMISSION'S MAY 16 ORDER

Suffolk County and New York State file this Supplement to their "Requests [of May 22 and May 23 respectively] for Clarification of Commission's Order of May 16, 1984," in order to provide the Commission with further information which has developed in support of the matters addressed in their Requests. This further information stems from the "Application for Exemption" filed by LILCO on May 22. That Application fails to address substantively the standards of Section 50.12(a) and the Commission's May 16 Order, and does not even attempt to meet LILCO's burden of proof under Section 2.732 of the regulations.

1. The County and State have requested that, "The Commission should make clear that a pre-hearing schedule should not begin to run until the Board makes a finding that any LILCO exemption request is sufficiently complete with requisite infor-

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mation and factual support to permit the proceeding to go forward." On May 16, LILCO filed an "Application for Exemption." LILCO's filing, however, is woefully incomplete on its face, as well as being substantively deficient even where it purports to address the requirements of Section 50.12(a). For illustrative purposes, a few examples follow:

First, LILCO's Application for Exemption ignores the requirement of Section 50.12(a) that LILCO prove that the exemption it requests "will not endanger the common defense and security." Instead of properly addressing the merits of this requirement, LILCO casually asserts in a footnote the nonsequitur that the "common defense and security" requirement does not apply here and, indeed, does not even mean in this case what it has always meant: namely, the physical protection and other security arrangements of Part 73 of the regulations.

Moreover, LILCO goes so far as to state, "the Commission did not direct that [the security] aspect of §50.12(a) be addressed." (LILCO Application, p. 15, fn. 10.) One can only wonder what it takes for LILCO to get the message that it is not above complying with the Commission's regulations. When the Commission directed in its May 16 Order that any LILCO exemption request be filed under Section 50.12(a), the Commission imposed all of the requirements of Section 50.12(a), not just the parts with which LILCO wishes to comply. Indeed, the Commission went to the

extraordinary length of saying that this proceeding shall be conducted "in accordance with the rules." Those rules include Section 50.12(a), Part 73, and Section 2.732, which places the burden of proof on LILCO. LILCO's failure to address the security issue, and its failure even to attempt to meet its regulatory burden of proof, should thus be viewed by the Commission as a default by LILCO. For this reason alone, the Commission would be justified in rejecting LILCO's Application out-of-hand.

Second, in the May 16 Order, the Commission directed LILCO to address the following criterion in any exemption application it might file: "Its [LILCO's] basis for concluding that, at power levels for which it seeks authorization to operate, operation would be as safe under the conditions proposed by it, as operation would have been with a fully qualified onsite A/C power source." Order p. 3. LILCO makes a conclusory assertion (p. 8 of the LILCO Application) that its Chapter 15 analyses provide the basis for meeting the foregoing criterion. However, there is nothing in these analyses or in any other LILCO document which even begins to assess whether the new LILCO configuration of three non-safety related power lines supplying the safety loads at Shoreham is as safe as the prior configuration of five lines -- three of which were safety related -- supplying such loads. Thus, LILCO has again defaulted.

Third, LILCO's Application is a conclusory statement of unsupported assertions. Throughout the Application, LILCO fails to explain how the grant of an exemption from GDC 17 satisfies the substance of the criteria of Section 50.12(a): that is, how in any way the elimination of onsite power at Shoreham would be of affirmative public benefit. Similarly, LILCO's characterizations of "rational regulation," "foreign oil dependence," "good faith," "training benefits," and each of LILCO's other assertions are bald statements which provide no substantive support for the Application. In short, none of LILCO's assertions engages either the merits or the "exigent circumstances" requirement of Section 50.12(a) or makes the showing required by the Commission to justify going forward on LILCO's Application.

LILCO further states that it "has applied for an exemption based on the same core facts as supported in its Supplemental Motion. Only the legal garb has changed." (LILCO "Response to Requests for Clarification," May 24, p. 5, Emphasis added.) Such a cavalier view of this proceeding -- as only a matter of "legal garb" -- makes a mockery of the exemption requirements of Section 50.12(a). Just as the Commission requires under Section 2.101 a threshold review of the completeness and adequacy of applications for construction permits and operating licenses, it should clarify its May 16 Order to require a similar type of threshold review

for LILCO's Application for Exemption.^{1/} This particularly is important since the Commission has previously made clear that the use of Section 50.12 is "extraordinary." See May 16 Order, p. 2. Given the high standard which the Commission itself has established for Section 50.12 cases, the Commission should insist on a complete and thorough application before any party is required to address the merits. The alternative is to cause the parties to waste time and money on an unworthy application. LILCO here is seeking extraordinary relief. If it cannot sustain its burden, so be it. That truly is the standard of "rational regulation."^{2/}

^{1/} The County and State have requested by their filings of May 22 and 23 that the Commission establish a time for the County and State "to file motions for disposition as a matter of law" of LILCO's Application for Exemption. (County Request for Clarification, p. 3.) Given the wholesale inadequacy of LILCO's Application, the County and State intend to make such motions, either upon order of the Commission, or, if none, within a reasonable period of time.

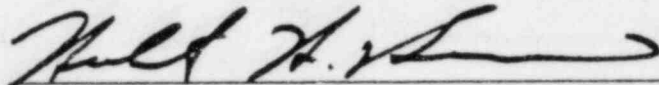
^{2/} A poignant example of the cavalier treatment LILCO has given the standards of Section 50.12(a) and the Commission's May 16 Order is the way LILCO has applied for multiple exemptions, but has not even identified the regulations from which it seeks those exemptions. Thus, LILCO states that it seeks exemption "from that portion of General Design Criterion 17, and from other applicable regulations, if any, requiring that the TDI diesel questions be fully adjudicated prior to" conducting low power operation. (Application, p. 4. Emphasis added.) It is for LILCO -- not the Commission, the ASLB, the Staff, the County, or the State -- to decide what LILCO wants, to apply for that properly, and then to go forward and prove its entitlement to the exemptions. Surely, without knowing what LILCO is even applying for at this point, the County and State cannot join issue with LILCO. This further demonstrates the need for the Commission to entertain motions for disposition of LILCO's Application as a matter of law.

2. The County and State have also requested that, "The scheduling of any hearing on a LILCO exemption request should remain flexible pending a determination of the issues which would actually be put into controversy." (County Request for Clarification, p. 2.) In addition to the reasons in support of this request set forth in the County's and State's Requests for Clarification, enclosed herewith is LILCO's May 23 letter concerning pre-hearing discovery and its "Request for Production of Documents." The breadth of LILCO's deposition requests alone -- 10 depositions already proposed and more promised if the County retains additional consultants -- will affect the length of time needed for discovery, given that the County, State, and Staff also will presumably wish to take depositions and seek documents. These burdens require that no schedule be adopted for a hearing until the scope of pre-hearing activities is understood and accommodated in accordance with the rights of the parties. What is already clear, however, is that there is no factual basis for the schedule proposed by the Commission on May 16 as "guidance" to the Licensing Board.^{3/}

^{3/} At this point, the County and State respectfully suggest that the Commission withdraw such "guidance" and, instead, consider the threshold issue of the completeness and legal sufficiency of LILCO's Application. Only after an adequate Application is submitted should a hearing schedule be considered.

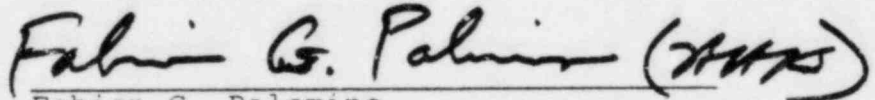
Respectfully submitted,

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May 30, 1984

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May 23, 1984

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By Telecopier

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Long Island Lighting Company
Shoreham Nuclear Power Station
Docket No. 50-322-OL-4 (Low Power)

Dear Larry:

This will address several matters concerning discovery incident to LILCO's Supplemental Motion for Low Power Operating License and Application for Exemption.

1. At your request, a visit to the Shoreham site has been arranged for tomorrow, May 24, 1984 at 10:30 a.m. Your letter of May 23 indicates those who will be in attendance from the County. I assume that if any representative of New York State wished to attend, he would have coordinated his request through you.

There are three caveats to LILCO's willingness to provide the site tour. First, inspection of the TDI diesels will not be permitted both because of work going on in the area and because they have no relevance to the health and safety issues in this proceeding. In any event, the County has previously inspected the diesels and their installation. Second, accompanying you will be two County police officers who intend to "assess the security arrangements proposed for low power operation." Their attendance will be permitted, though LILCO does not agree that security issues are relevant or material to any issue before the Licensing Board. LILCO's willingness to afford the police officers the opportunity to see the areas identified in your letter is not to be construed in any way as a waiver of LILCO's position that security issues

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Lawrence Coe Lanpher, Esq.

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are immaterial and irrelevant. Third, no photographs will be permitted in vital areas or in the normal switchgear room. Also before taking any photographs, the County must sign a nondisclosure agreement and agree that a copy of any photographs taken will be provided LILCO.

2. Enclosed is LILCO's Request for Production of Documents to the County. We request that the documents be produced in Hunton & Williams' Richmond Office no later than June 6, 1984.

3. Between June 7 and June 22, LILCO will depose the following persons:

- (a) Robert K. Weatherwax;
- (b) George Dennis Ely;
- (c) Aneesh Bakshi;
- (d) Dr. Christian Meyer;
- (e) Gregory C. Minor;
- (f) Professor Jose M. Roesset;
- (g) Dale Bridenbaugh;
- (h) Richard Hubbard;
- (i) Mohamed M. El-Gasseir;
- (j) Stanley Christensen.

LILCO will also depose during that period any additional consultants retained by the County, but not yet identified. We ask that you identify any such consultants as quickly as possible so that they may be deposed during the anticipated discovery period. Without waiving its objection to the raising of any security issue, LILCO will also depose Officers Roberts and McGuire during this time period if it is determined that security is an issue.

Rather than specify dates for the depositions of particular individuals, we have suggested a range of times to allow you maximum flexibility to arrange the depositions at a

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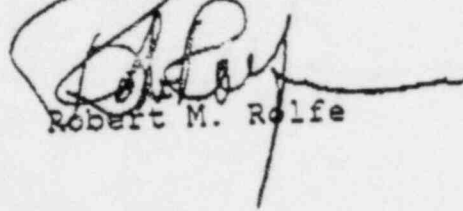
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convenient time for the deponents. Please let us know by May 30, at the latest, suggested dates for these depositions.

I look forward to your prompt response.

Sincerely yours,

A handwritten signature in black ink, appearing to read "R. Rolfe", with a long horizontal flourish extending to the right.

Robert M. Rolfe

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Enclosure

cc: Fabian Palomino, Esq.
Edward J. Reis, Esq.