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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 REQUEST OF SUFFOLK COUNTY AND NEW YORK STATE
FOR PROMPT CLARIFICATION OF THE POSTURE OF THIS PROCEEDING

By Order dated May 16, the Commission ruled that any effort by LILCO to obtain an operating license for Shoreham prior to adjudication of the adequacy of the TDI diesels would have to be by way of LILCO applying for a Section 50.12(a) exemption from the requirements of GDC 17 and other pertinent regulations. The Commission's Order stated that if LILCO were to apply for such an exemption, "The Licensing Board shall conduct the proceeding in accordance with the Commission's rules." (Order, p. 3.) The Commission did not establish the timetable or schedule for a hearing in the event LILCO filed an exemption request. Instead, the Commission provided a schedule only "as guidance" to the Licensing Board if a hearing became necessary.

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There are pending Motions to Clarify the Commission's May 16 Order, filed by the County and State on May 22 and 23, and pending Joint Motions to Strike LILCO's Motions for Summary Disposition of Phases I and II, filed on May 24. Thus, the pacing item in this proceeding is action by the Commission. Accordingly, in furtherance of the pleadings pending before the Commission, the County and State request the following actions:

(1) That the Commission clarify its May 16 Order in accordance with the requests of the County and State, filed May 22 and 23, and as supplemented by their joint filing of May 30;

(2) That the Commission strike LILCO's unauthorized pleadings in the form of Motions for Summary Disposition of Phases I and II, or call for briefing by the parties of the legal issue whether the NRC may issue the type of "no power license" which LILCO seeks; and

(3) That the Commission set a time for the filing of motions by the parties for the disposition, as a matter of law, of LILCO's deficient Application for Exemption. (The grant of such motions by the Commission would render a hearing unnecessary unless and until LILCO were to submit an adequate application for exemption under Section 50.12(a).)

Until the foregoing threshold issues are resolved by the Commission, it will remain premature for the Commission or

Licensing Board to consider the establishment of a pre-hearing and hearing schedule. As we have emphasized in our Supplemental Request for Clarification filed on May 30, LILCO's failure to comply with the requirements of the Commission's May 16 Order, of Section 50.12(a), and of Section 2.732 constitutes a default by LILCO with which the Commission could deal by rejecting LILCO's Application for Exemption. Only if LILCO were to file a new and adequate Application would the scheduling of a hearing be appropriate. Even then, however, such scheduling would have to depend on the facts actually before the Commission and Licensing Board, not on predetermined "guidance." Thus, the extent of discovery required by the parties (LILCO has already indicated a desire to take at least 10 depositions, making the Commission's "guidance" of 30 days for all discovery entirely unrealistic), the extent of the issues placed in controversy by LILCO's Application for Exemption (LILCO has made bald conclusory allegations on numerous issues, including reliance on foreign oil, its alleged good faith efforts to comply with GDC 17, and whether the public interest favors grant of an exemption), the scope and extent of direct testimony, and the needs for preparation of cross-examination and trial would all affect the pre-hearing schedule.

Moreover, we wish to point out once again that the security issue raises special logistic problems given the regulatory requirements for safeguarding security information. Safeguards procedures necessarily impose additional burdens which have to be

accommodated. To date, LILCO has ignored the substance of the explicit "common defense and security" requirement of Section 50.12(a). Instead, LILCO persists in treating security as a non-issue, disregarding the fact that the Staff addressed (albeit inadequately) security in its April 19 SER Supplement. The County and State submit that LILCO's failure to address security issues is alone reason to reject LILCO's Application for Exemption.

Finally, we note that LILCO's May 29 Response calls upon the County and State to respond before the Licensing Board to LILCO's May 22 Motions for Summary Disposition of Phases I and II. We believe such responses would be inappropriate for the reasons set forth in our Motions to Clarify and our Joint Motion to Strike, including the fact that the Commission's May 16 Order did not accept LILCO's arguments for such Summary Disposition and that the Commission lacks authority to issue a "no power" initial license.^{*/} Nevertheless, it is important that the Commission address this matter so as to eliminate the ambiguity which LILCO persists in seeking to create.

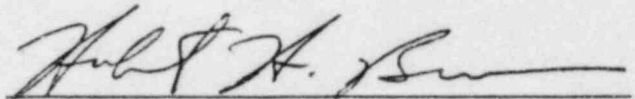
Given the events of recent months in this proceeding, we submit that the only course is for the Commission to adhere scrupulously to its regulations, including the requirements of

^{*/} We note also that until proper security procedures are established, the County and State are unable to prepare a complete response to the LILCO Summary Disposition Motions.

Section 50.12(a) and the high standards for an exemption which the Commission has previously established and recently confirmed in its May 16 Order. LILCO continues to ask the Commission for favors, for consideration of its grossly inadequate Application for Exemption, and for a "no power" license. However, the Commission's May 16 mandate is that this proceeding be "in accordance with the Commission's rules." Therefore, a statement by the Commission clarifying the posture of this proceeding in accordance with the requests of the County and State, and making clear to LILCO that it will have to follow the rules and not ask for favors, would be most helpful to set the record straight.

Respectfully submitted,

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May 31, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before The Atomic Safety And Licensing Board

_____)
In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,)
Unit 1))
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CERTIFICATE OF SERVICE

I hereby certify that copies of the JOINT REQUEST OF SUFFOLK COUNTY AND NEW YORK STATE FOR PROMPT CLARIFICATION OF THE POSTURE OF THIS PROCEEDING, dated May 31, 1984, have been served to the following this 31st day of May, 1984 by U.S. mail, first class, by hand when indicated by one asterisk, and by telecopier when indicated by two asterisks.

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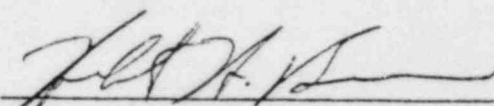
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DATE: May 31, 1984

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