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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	)	Docket No. 50-322-OL-4
	)	(Low Power)
(Shoreham Nuclear Power Station, Unit 1)	)	

SUFFOLK COUNTY AND STATE OF NEW YORK MEMORANDUM
IN OPPOSITION TO LILCO'S MAY 22, 1984 MOTIONS
FOR SUMMARY DISPOSITION ON PHASE I
AND PHASE II OF LILCO'S PROPOSED "LOW POWER TESTING"

In this Memorandum, Suffolk County and the State of New York set forth their opposition to the two motions dated May 22, 1984, entitled "LILCO's Motion for Summary Disposition on Phase I Low Power Testing," and "Motion for Summary Disposition on Phase II Low Power Testing" (hereinafter, "Phase I Motion" and "Phase II Motion", respectively). For the reasons set forth below, and because there are in dispute issues of fact which are material to the issuance of the licenses LILCO seeks in the Phase I and Phase II Motions (see Statement of Issues Material to Summary Disposition on LILCO's Request for Licenses for Phase I and Phase II as to which there are Facts in Dispute attached hereto), the County and the State submit that the LILCO motions must be denied.1/

1/ By filing this Memorandum, the County and State do not concede that either LILCO's March 20, 1984 Supplemental

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I. Introduction

LILCO, by its Phase I and II license requests, is asking this Board:

-- To take action which is beyond the authority of the NRC. (The NRC is authorized to issue only construction permits and operating licenses; a low power license is an operating license. LILCO, however, is requesting an impermissible fragment of a license: a no power license.)

-- To take action which contradicts the May 16 Order of the Commission. (The Commission ruled that LILCO cannot be eligible to attempt to show that it is entitled to a license unless it first qualifies for an exemption from GDC 17 and other applicable regulations. LILCO has not done so yet, and, the County and State submit, it will not be able to do so even after the pending low power litigation.)

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Motion for Low Power Operating License, or its May 22, 1984 Application for Exemption, is, in whole or in part, proper, adequate, complete, or authorized as a matter of law.

Moreover, by its Motions for Summary Disposition, LILCO is asking this Board to ignore genuine issues of material fact that are here in dispute. For these reasons, the County and State urge the Board to reject LILCO's Motions for Summary Disposition of Phases I and II.

It is important to place LILCO's Phase I and II Motions in the context of what has occurred in this proceeding since January, 1984, when it became clear that the defective TDI diesels would bar the issuance of a low power license for Shoreham. From that time through the present, LILCO has submitted low power proposals which conflict with or misinterpret the NRC's regulations. The reasons for such LILCO proposals are well-documented: LILCO is in severe financial trouble because of its inordinate cost overruns at Shoreham; credit markets are thus closed to the company; and LILCO looks upon an NRC license -- an official-looking paper seemingly of any kind and for any purpose -- as a key to reopening those credit markets. For the moment, therefore, the device which LILCO has fashioned to serve its financial purpose is a "no power" license. Stripped of the trappings of legitimacy with which LILCO has adorned this type of "license" in its Summary Disposition Motions, however, the "no power" license is nothing more than a gimmick. There is no basis in law or fact for such such a gimmick, and the Board should say so.

In essence, LILCO's Summary Disposition requests are an invitation for this Board to commit legal error. The alternative, instead, is for the Board to do as the Commission expressly instructed in its May 16 Order: to conduct this proceeding in accordance with the rules. Those rules contemplate this Board considering only bona fide operating licenses for either full power or low power. They do not contemplate "no power" licenses or any other gimmick which LILCO creates out of thin air to satisfy its momentary urgings.

LILCO is clearly not entitled to a bona fide low power license by means of summary disposition. What LILCO has done, therefore, is to fragment the low power licensing process into the smallest possible piece with which LILCO can argue it complies -- thus, come the Phase I and II fragments of LILCO's self-styled operating license. This is merely a tactic of LILCO -- a satire of the Atomic Energy Act and the NRC's regulations. The County and State therefore request that LILCO's Phase I and II Motions be rejected.

II. The Board Has No Authority to Issue the License Requested by LILCO in its Phase I Motion

In its request for issuance of a license for Phase I, LILCO states that during "Phase I" it intends to load fuel into the reactor, and to perform various procedures, involving the loaded fuel, described as "core verification." Phase I Motion at 2. According to LILCO, during Phase I "the reactor will not be taken critical." Statement of Material Facts attached to Phase I Motion, para. 5. Indeed, throughout Phase I, the pressure vessel will be uncovered. Minor and Bridenbaugh Affidavit attached hereto, at para. 3. Thus, during Phase I, no power would or could be generated by the reactor. Id.

It is clear that none of the activities contemplated during Phase I can be said to constitute "operation" of the Shoreham reactor. Although fuel will be loaded into the core and certain manipulations performed, and during and following Phase I the reactor will be closer to being ready for future operation, in seeking a license for Phase I only, LILCO seeks a "no power" license that is nowhere authorized or contemplated in the Commission's regulations or the Atomic Energy Act. Accordingly, the Board has no authority to issue the license that is requested by LILCO in its Phase I Motion, and the Phase I Motion must be summarily rejected.2/

2/ The Phase II Motion is similarly deficient. While low levels of criticality are achieved, this does not

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The Atomic Energy Act contemplates the issuance of construction permits and operating licenses for nuclear reactors. There is no authorization in that Act for the issuance of a license to load fuel, or to manipulate a loaded core, as an end in itself without operating the reactor. See 42 USC § 2133 (authorization to issue commercial licenses pursuant to § 2131 et seq.); § 2232 (requirements of license applications for "a construction permit or an operating license"); and § 2235 (granting of construction permits, and granting of a license "upon finding that the facility authorized has been constructed and will operate"). And, the legislative history of the Act provides no indication that any such non-operating license was contemplated, intended, or authorized by the statute. What LILCO is requesting, therefore, has no foundation in the Atomic Energy Act.

Similarly, the Commission's regulations, which implement the Atomic Energy Act, authorize only the issuance of construction permits and operating licenses with respect to nuclear power plants. See e.g., 10 CFR §§ 50.23, 50.30, 50.57.3/

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constitute operation of the plant in any normal sense and there is no regulation authorizing such limited testing absent a more general permission to conduct operations.

3/ The Commission is also authorized to license operators of licensed facilities, 10 CFR, Part 55, and to issue

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There is no mention, let alone authorization, in any regulation of a license, that could be issued to a holder of a construction permit, involving the use of a commercial nuclear reactor, other than for operation of that reactor. To the contrary, the regulations clearly contemplate only two types of licensing for the use of a reactor -- the issuance of a construction permit and the issuance of an operating license. See e.g., 10 CFR § 50.33 on contents of applications (references only construction permits and operating licenses), and 10 CFR § 50.51 on duration and renewals of licenses ("Where the operation of a facility is involved . . . [and] Where construction of a facility is involved . . . .").

Thus, the regulations clearly contemplate only two steps or threshhold determinations in the licensing process relating to the use of a nuclear plant: the issuance of a construction permit and the issuance of an operating license. For example, 10 CFR § 50.55(d) provides:

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licenses for the ownership, transport, and possession of nuclear fuel, 10 CFR Part 70. However Part 70 licenses are conditioned to prohibit the use of such fuel in a nuclear reactor, except in accordance with the other Commission regulations. See 10 CFR § 70.32(a)(5).

> At or about the time of completion of the construction or modification of the facility, the applicant will file any additional information needed to bring the original application for license up to date, and will file an application for _an operating license_ or an amendment to an application for a license to construct and operate the facility for the issuance of _an operating license_, as appropriate . . . .

(emphasis added). Similarly, Section 50.56 states in pertinent part:

> Upon completion of the construction or alteration of a facility, in compliance with the terms and conditions of the construction permit . . . the Commission will . . . issue a license of the class for which the construction permit was issued . . .,

and Section 50.57 follows with:

> Pursuant to § 50.56, _an operating license_ may be issued by the Commission . . . upon finding that:
>
> (1) Construction of the facility has been substantially completed . . .; and
>
> (2) The facility _will operate_ . . . .

(emphasis added). The fact that Section 50.57 provides for both low power and full power licenses does not change the limitation of authority, set forth in that section, to the issuance of only licenses for operation.

Clearly, if the NRC had been authorized by Congress to establish an interim "no operation" or "no power" step in the licensing process between construction completion and low power operation, the Commission could have done so in its regulations. Pursuant to its authority under the Atomic Energy Act, the Commission has created in its regulations an elaborate scheme of specific licenses for particularized activities, such as licenses concerning by-products, 10 CFR Parts 30-33 and 35, licenses concerning radiographic operations, 10 CFR Part 34, licenses concerning source materials, 10 CFR Part 40, licenses respecting the packaging of radioactive materials for transport, 10 CFR Part 71, and licenses concerning the storage of spent fuel in independent spent fuel facilities, 10 CFR Part 72. The fact that this extensive licensing scheme does not include provision for a license limited to loading fuel and the other no power activities included in LILCO's proposed Phase I, is further evidence of the Commission's lack of authority to issue such a license.

LILCO has cited two alleged "precedents" for its no power license request. First, LILCO persists in relying on the Commission's Diablo Canyon decision. See Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-83-87, 18 NRC 1146 (1983). Diablo Canyon is completely

distinguishable: the Commission had already granted an operating license; the operating license had been suspended; and the Commission ordered a staged reinstatement of the license in the context of an enforcement proceeding.

Second, LILCO relies upon a Licensing Board decision in North Anna. See Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), LBP-77-64, 6 NRC 808 (1977). The County and State submit that that decision constitutes no precedent here. No party contested, and no portion of the Board's opinion concerns, whether a "no power" license is legal under the Atomic Energy Act or the NRC's regulations. Thus, the issue raised herein is one of first impression.4/

It is well established that an agency cannot act beyond the authority delegated to it in its enabling legislation. It is also beyond dispute that an agency must act in accordance with its own regulations. See 2 Davis, Administrative Law Treatise 98 ff § 7:21 (2d ed. 1979). It is clear that the NRC

4/ The County and State note, however, that even in a "no power" situation, the North Anna Board required full implementation of all aspects of the physical security plan. See 6 NRC at 813. As discussed in Section IV.B.5 hereof, LILCO does not comply with security requirements, thus constituting a further reason why the Phase I and II Motions must be denied.

is not authorized to issue a license that involves neither construction nor operation of a nuclear power plant. Accordingly, this Board does not have the authority to issue the Phase I license requested by LILCO, and for that reason alone, the Phase I Motion must be denied.

III. The Requested Licenses Cannot be Issued Without the Prior Grant of an Exemption for LILCO's Non-Compliance with GDC 17 and Other Regulations

LILCO's motions are premised on LILCO's assertion that onsite AC power is not necessary for the activities involved in Phases I and II. See Phase I Motion at 4, 5; Phase II Motion at 3, 4, 6. Building on this assertion, LILCO argues further that no exemption is required under Section 50.12(a) for LILCO's proposed Phase I and Phase II licenses. Indeed, the motions expressly state that "even assuming that LILCO's onsite diesel generators do not operate," the summary disposition motions should nonetheless be granted. Phase I Motion at 5; Phase II Motion at 6. Although LILCO argues that its Phase I and Phase II proposals satisfy the requirements of GDC 17, even assuming there is no operable onsite AC power source, LILCO appears to recognize that that argument flies in the face of the Commission's May 16 Order. Thus, LILCO states:

> If the Licensing Board believes the Commission's May 16 Order requires an exemption from the regulations for all four phases of low power testing, then the Board should treat this motion as a motion for summary disposition of all health and safety issues with respect to Phase I.

Phase I Motion at 5, note 1. An identical statement, with "Phase II" substituted for "Phase I" is in footnote 2 of the Phase II Motion.

A. The Commission's May 16 Order Requires an Exemption for Phases I and II

There can be no doubt that the Commission's May 16 Order requires that LILCO must first obtain an exemption from applicable General Design Criteria, including expressly GDC 17, before its low power operation proposal, or any portion thereof, could be granted.

First, the Commission's May 16 Order, in the Commission's words, was:

> on the applicability of the General Design Criteria (particularly GDC 17) to the proposal of the Long Island Lighting Company (applicant) to operate the Shoreham facility at low power.

May 16 Commission Order at 1 (emphasis added). The LILCO "proposal" with which the Order dealt was that contained in LILCO's

Supplemental Motion for Low Power Operating License, dated March 22, 1984, which, in turn, included a description of the four phase "low power testing program" which is also the subject of LILCO's May 22 Application for Exemption. Thus, the LILCO proposal which was the subject of the May 16 Commission Order included Phase I and Phase II which are the subject of the pending summary disposition motions. Accordingly, the rulings contained in that Order are applicable to Phases I and II.

Second, the Commission's May 16 Order was based upon "the oral arguments and written submissions of the parties." May 16 Order at 1. LILCO filed with the Commission the following "written submissions" relating to its Low Power Motion:

1. LILCO's Response to various Suffolk County/New York State Requests Dated April 16 and Received April 17, 1984, dated April 19, 1984.

2. LILCO's Comments in Response to the Commission's Order of April 30th, dated May 4, 1984.

3. LILCO's Motion for Summary Disposition on Phase I Low Power Testing, dated May 4, 1984.

4. Motion for Summary Disposition on Phase II Low Power Testing, dated May 4, 1984.

5. Letter to Chairman Palladino from Anthony F. Earley, Jr., dated May 9, 1984, with copies to the other Commissioners.

With the exception of Item 5, every one of LILCO's written submissions to the Commission explicitly discussed Phase I and Phase II as integral parts of LILCO's low power motion. See, e.g., April 19 submission at 10; May 4 "Comments" at 26-27, 33-36; both of the May 4 Summary Disposition Motions in toto.

Similarly, during the May 7 oral argument before the Commission, LILCO's counsel discussed Phase I and Phase II at considerable length in arguing that no exemption from GDC was required prior to the issuance of a low power license to perform Phase I and Phase II activities. For example, the following statements were made to the Commission by LILCO's counsel:

> -- GDC-17 states that the AC power systems that are available, have to provide sufficient capacity and capability to assure that the specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded, as a result of the anticipated operational occurrences, and two, that the core is cool and that the containment integrity and other vital functions are maintained in the event of postulated accidents.
>
> LILCO has that capacity and its proof has shown that, indeed, for Phases 1 and 2, no such capacity is even needed in this case because no AC power is required to ensure the public health and safety. But for all the phases, Phases 1, 2, 3, and 4, of the low power program that LILCO outlines in its supplemental motion, for all those phases LILCO will prove, and indeed has proved in the hearings, that it has the capacity to provide these assurances. (Rolfe, Tr. 9-10).

-- We meet [GDC 17] in light of its application to [a] low power license. We do not have an onsite power system strictly speaking. However, in order to apply GDC-17 at this level of operation, you have to take into consideration the meaning of 50.57(c). And what LILCO says is that in interpretating the regulation for low power licensing, one ought to look at the level of operation intended and interpret the regulation, the General Design Criterion, accordingly . . . .

We meet it, sir, in that the functions prescribed in GDC-17, the safety functions listed there, are met. (Rolfe, Tr. 15).

-- LILCO . . . demonstrates that in Phases 1 and 2 you don't need any AC power and in Phases 3 and 4 that there is sufficient AC power available and it can be restored well within the time parameters for the limiting event and the Loss Of Coolant Accident. And that's the method in which LILCO approaches that and provides the technical justification to show that the public protection will be equivalent to or greater than that [at] full power operation. (Rolfe, Tr. 22).

-- [F]or Phases 1 and 2 there is no risk to public health and safety because there is no need for AC power . . . . And for those reasons, LILCO <u>asks that the Commission rule now and grant its motions for summary disposition for Phases 1 and 2</u>. (Rolfe, Tr. 24; emphasis added).

-- [Offsite emergency planning is] not an important ingredient here because the level of protection afforded by LILCO during this operation at five percent power is equivalent to what you would have in a plant that did have onsite diesels. And let me hasten to add that again, this is only an important

issue for Phases 3 and 4 because in Phases 1 and 2 you don't need any AC power. (Rolfe, Tr. 32).

-- We've been after those four phases from the beginning. And we pointed out, from the beginning, that Phase 1 ain't Phase 4, in effect. It's a pale shadow of Phase 4. So we are, in fact, interested in all four phases. We would like to get the ones that can be gotten quickly as quickly as we can get them, but [what] we are suggesting in the papers that we filed with you on the 30th is the following: that as to Phases 1 and 2, we proceed by summary disposition. If the summary disposition is granted, then there's no need for further hearings. If it's not granted, then obviously whatever remains must go to hearing . . . .

Commissioner, we are very interested in getting Phase 1, even, if that's all we can get, soon. But you have pending before you, summary disposition papers on Phases 1 and 2 . . . . We hope you all will act on them, but as to the first two phases we strongly believe they can be resolved by affidavit. And if they can't be wholly resolved by affidavit, we believe that process ought to focus what the remaining issues are and they, then, can go back for evidentiary hearings.

So yes, we want all four phases, and we think that the lower numbered phases should be easier to obtain, given the facts then the higher numbered phases . . . .

We are asking that the four phases be looked at separately, if that's necessary. (Reveley Tr. 47-49).

The Commission rejected LILCO's express arguments that no exemption from GDC 17 was necessary for Phases I or II of its low power proposal. It stated:

> After reviewing the oral arguments and written submissions of the parties, the Commission has determined that 10 C.F.R. 50.57(c) should not be read to make General Design Criteria inapplicable to low-power operation.

May 16 Order at 1. The Commission stated further:

> [T]he applicant made clear at the May 7 oral argument its intent to seek an exemption under 10 C.F.R. 50.12(a). If it intends to follow that course, <u>the applicant should modify its application to address the determinations to be made under 10 C.F.R. 50.12(a)</u>.

May 16 Order at 2 (emphasis added). The "application" referenced by the Commission necessarily meant the items submitted by LILCO for the Commission's consideration -- that is, LILCO's Supplemental Motion for Low Power Operating License, and LILCO's summary disposition motions on Phase I and Phase II.

Thus, the Commission's rulings that GDC 17 is applicable to LILCO's low power proposal, and that LILCO must address in a <u>modified</u> application for a low power license the determinations which must be made in granting an exemption from regulatory

requirements under 10 C.F.R. § 50.12, are applicable to Phase I and Phase II of LILCO's proposal.

If the Commission had intended to limit its ruling on the requirement for an exemption to only <u>portions</u> of LILCO's low power license application, it certainly would have said so. <u>Indeed, LILCO had expressly requested the Commission to rule that it could obtain a license for Phase I and Phase II activities without having first obtained an exemption by having submitted to the Commission its motions for summary disposition on Phase I and Phase II, and by its counsel's statements during oral argument cited above</u>. However, the Commission did not grant LILCO's summary disposition motions, and did not in any way limit or restrict the applicability of its May 16 ruling on LILCO's need for an exemption in order to obtain its requested low power license.

At best, LILCO's pending motions can be considered only as motions for <u>partial</u> summary disposition, although, for the reasons set forth in Section IV_ below, even those partial motions must be denied because material issues are in dispute and because it is not at all clear precisely what issues LILCO seeks to have this Board decide summarily.5/ In fact,

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5/ The LILCO footnote states only that the Board should treat the motions as "for summary disposition of all health and

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however, the LILCO motions are premature, because they cannot be granted, consistent with the Commission's May 16 Order, unless LILCO is first found to be entitled to an exemption following the instant litigation.

B. LILCO's Argument that Onsite AC Power is not Required by the Commission's Regulations for Phases I and II is Contrary to the Commission's May 16 Order and is Without Basis.

In its motions LILCO has attempted to justify its hope that this Board would rule that obtaining an exemption from GDC 17 is not a prerequisite to the issuance of LILCO's selfstyled licenses for Phases I and II. Thus, LILCO asserts that summary disposition is proper on Phases I and II because "the reliability of LILCO's onsite diesel generators is not material" to either of those phases since, according to LILCO, "there is no need for any AC power" during those phases. LILCO uses this logic to conclude that the requirements of GDC 17 would be met during Phases I and II, even assuming LILCO's onsite diesel generators do not operate. See Phase I Motion at

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safety issues with respect to" Phase I and Phase II. See Phase I Motion, footnote 1; Phase II Motion, footnote 2. Those "issues" are nowhere discussed or even identified by LILCO in its motions.

4, 5; Phase II motion at 3, 6. The identical argument was made by LILCO in its May 4 Comments submitted to the Commission. Thus, in that pleading, LILCO asserted as follows:

> -- For low power testing however, such an "onsite" qualified power source is not necessary to satisfy GDC 17. (at p. 25)
>
> -- [F]or proposed Phases I (fuel load and pre-criticality testing) and II (cold criticality testing) at Shoreham, the evidence before the Commission demonstrates that no AC power is needed to achieve compliance with GDC 17. That criterion requires only that an onsite electric power system and an offsite system "provide sufficient capacity and capability" to achieve the specified goals. With respect to Phases I and II, the "sufficient capacity" is zero. Hence, no onsite AC power source is necessary to meet the criterion's requirements. (at pp. 26-27)
>
> -- The technical justifications for operation of Shoreham during [Phase I] is set out in more detail in LILCO's motion for summary disposition concerning Phase I activities, filed with these comments. In summary . . . no AC power, either onsite or offsite, is required to protect the public health and safety during this phase. (at p. 35)
>
> -- Again, detailed justification for permitting operation of Shoreham during Phase II is contained in LILCO's motion for summary disposition concerning Phase II. As in Phase I, during Phase II, the accident and transient events analyzed in Chapter 15 would pose no threat to the public health and safety, even assuming the unavailability of an onsite power source. (at p. 35)

See also citations from transcript of oral argument set forth above.

These LILCO arguments were considered and rejected by the Commission. By reiterating these rejected arguments here as the premise of its Phase I and II summary disposition motions, LILCO is requesting this Board to rule contrary to the decision of the Commission that went against LILCO. LILCO thus asks this Board in effect to contradict the Commission's ruling that the GDC 17 requirement of an onsite AC power source is applicable to all phases of LILCO's proposed low power proposal, and that LILCO must modify its low power license application to include a request for an exemption from compliance with GDC 17 and other pertinent regulations. Clearly, this Board cannot rule as LILCO requests. LILCO's transparent attempt to reargue a position already rejected by the Commission must be summarily rejected by this Board. In the absence of a properly granted exemption from GDC 17, and other pertinent regulations, LILCO's summary disposition motions must be denied.

Furthermore, LILCO's argument that the requirements of GDC 17 would be met during its proposed Phase I and Phase II ignores the plain language of that criterion. The first sentence of GDC 17 states:

> *An onsite electric power system* and an offsite electric power system *shall be provided* . . . .

(emphasis added). The LILCO motions are premised on the assumption that there is no operable onsite power system at Shoreham. All LILCO's arguments about its supposed "compliance" with GDC 17 constitute a challenge to GDC 17, since they amount to nothing but a rehash of LILCO's belief that despite the plain words of GDC 17, an onsite electric source does *not* have to be provided for low power. Since the Commission has already categorically rejected LILCO's argument, this Board must do the same, and should deny LILCO's summary disposition motions.

IV. The Motions Must Be Denied Because There Are Material Facts in Dispute

As discussed in Section III above, LILCO' [illegible] ns are premature, since the requested licenses ca [illegible] issued unless LILCO first obtains an exemption from [illegible] and other pertinent regulations. The motions must also be denied, pursuant to the standards set forth in 10 C.F.R. § 2.749(d), because this Board cannot find either "that there is no genuine issue as to any material fact," or that LILCO is entitled, as a matter of law, to a license under 10 C.F.R. § 50.57(c) for its proposed Phase I and Phase II activities.

The LILCO footnotes which we discuss in Section III above (note 1 in the Phase I Motion and note 2 in the Phase II Motion), request that the Board treat LILCO's motion as one for summary disposition "of all health and safety issues with respect to" Phases I and II respectively. The motions, however, do not identify, define, or describe those issues which, in LILCO's view, constitute "all health and safety issues" relevant to the grant of a Section 50.57(c) license for Phase I or for Phase II, even though LILCO purports to seek a summary decision on such issues. LILCO's motions are thus deficient under 10 C.F.R. § 2.749, which places upon the proponent of a summary disposition motion the burden of identifying what decision is sought. Clearly, without such an identification, neither the other parties nor the Board can evaluate, respond to, or rule upon the request.

If LILCO believes that either (1) the issues listed in the "Statements of Material Facts as to Which There Is No Genuine Issue of Facts to be Heard" which are attached to its motions, or (2) the nearly identical discussion at pages 8-10 of its Application for Exemption, identify "all the health and safety issues" relevant to its request for summary issuance of licenses for Phase I and for Phase II, LILCO is incorrect. Set forth below are "health and safety issues," the resolution of

which is a prerequisite to a decision on LILCO's application for licenses for Phase I and for Phase II, and as to which there are material facts in dispute.

A. LILCO's Failure to Comply With Regulations Other Than GDC 17.

LILCO's Phase I and Phase II Motions are premised upon the unavailability of the TDI diesel generators and the absence of any operable onsite AC power system. In its March 20, 1984 Supplemental Motion for Low Power Operating License, LILCO describes a proposed alternate AC power configuration involving a gas turbine and mobile diesel generators. As recognized by the Commission in its May 16 Order, and reflected in LILCO's Application for Exemption, the Shoreham plant configuration postulated by LILCO for its proposed "low power" operation including its Phase I and Phase II activities, differs substantially from the configuration mandated by the regulations. Thus, in its Application for Exemption, LILCO states that it

> seeks an exemption under § 50.12(a) from that portion of General Design Criterion 17, _and from other applicable regulations_, if any, requiring that the TDI diesel generators be fully adjudicated prior to conducting the low power testing described in LILCO's March 20 motion. . . .

Application for Exemption at 4 (emphasis added). LILCO thus appears to acknowledge that its proposal to operate Shoreham

with its unique plant electric power configuration rather than that required by the regulations and identified in the Shoreham operating license application and FSAR, requires an examination of that configuration's compliance with "applicable regulations" <u>in addition to</u> GDC 17. Although LILCO fails to identify the "other applicable regulations" from which it needs and seeks an exemption, the state of compliance of its newly proposed plant configuration with those "other" regulations raises factual issues which (1) are not identified or addressed in LILCO's summary disposition motions, and (2) must be resolved prior to the issuance of the licenses for Phase I and II sought by LILCO.

As set forth in the Affidavit of Gregory C. Minor and Dale G. Bridenbaugh attached hereto, the plant configuration now proposed by LILCO does not satisfy the requirements in the following regulations:

GDC 1 -- Quality Standards and Records
GDC 2 -- Natural Phenomena
GDC 3 -- Fire Protection
GDC 4 -- Environmental and Missile Design Bases
GDC 17 -- Electric Power Systems
GDC 18 -- Inspection and Test of Electric Power Systems
GDC 33 -- Reactor Coolant Makeup
GDC 34 -- Residual Heat Removal
GDC 35 -- Emergency Core Cooling
GDC 37 -- Testing of Emergency Core Cooling System
GDC 38 -- Containment Heat Removal
GDC 40 -- Testing of Containment Heat Removal System

GDC 41 -- Containment Atmosphere Cleanup
GDC 43 -- Testing of Containment Atmosphere Cleanup Systems
GDC 44 -- Cooling Water
GDC 46 -- Testing of Cooling Water System
Part 50, Appendix B -- Quality Assurance Criteria.

See Minor and Bridenbaugh Affidavit at paras. 6-8. LILCO is not in compliance with GDC 1, 2, 3 and 4 because its proposed plant configuration does not include any safety-related, seismically or environmentally qualified onsite AC power sources. Id. at para. 6. LILCO does not comply with GDC 17, 18, 33, 34, 35, 37, 38, 40, 41, 43, 44 and 46, because (a) there is no onsite emergency AC power source in the proposed Shoreham plant configuration, and (b) since there is no such source, the transfer from offsite to onsite power cannot be tested as required by those criteria. Id. at para. 7, 10. Finally, the proposed alternate plant configuration has not been designed, installed, tested, nor will it be operated in accordance with the criteria set forth in Part 50 Appendix B. Id. at para. 8.

In addition, the proposed alternate AC power configuration renders LILCO unable to comply with the new ATWS rule approved by the Commission on June 1, 1984, which requires that ATWS mitigating systems and a diverse reactor trip system must be capable of performing in the event of a loss of offsite power. Id. at 9.

Clearly, LILCO must obtain an exemption from compliance with all the above regulations before any kind of operating license or license for Phase I or Phase II activities could be issued. LILCO's summary disposition motions completely ignore this fact, by discussing only GDC 17. This Board cannot properly grant LILCO's motions without resolving the issues raised by LILCO's blatant non-compliance with the NRC's regulations.

B. LILCO's Failure to Meet the requirements of Section 50.57(a)

In order to grant LILCO's summary disposition motions on Phase I and II -- that is, to issue a license under Section 50.57(c) for Phase I or for Phase II activities, as requested in LILCO's March 20, 1984 Supplemental Low Power Motion -- this Board "shall make findings on the matters specified in paragraph (a) of [Section 50.57] as to which there is a controversy. . . ." 10 C.F.R. § 50.57(c). As detailed in the affidavits of Gregory C. Minor and Dale G. Bridenbaugh, and Michael D. Dirmeier and Jamshed K. Madan which are attached hereto, the Shoreham plant with LILCO's recently proposed alternate AC power configuration, does not satisfy the requirements set forth in Section 50.57(a).

LILCO's March 20, 1984, Supplemental Motion for Low Power License does not address any of the Section 50.57(a)

requirements or the Section 50.57(c) requirement that the 50.57(a) findings must be made. In its original Motion for Low-Power Operating License filed with the Brenner Board on June 8, 1983, LILCO asserted that the only matters in controversy (apart from offsite emergency planning) for purposes of § 50.57(c), were those identified in the contentions upon which hearings were held in 1982 and 1983.

At the time of that filing -- June 1983 -- LILCO may have been correct. Clearly, however, the facts have subsequently changed as a result of the failure of the TDI diesels, the LILCO's precarious financial situation, the totally new alternate AC power configuration first proposed by LILCO as a part of its Supplemental motion for a Low Power Operating License in March 1984, and the security-related concerns raised by the new AC power configuration. The prior contentions, the litigation thereon, the Security Settlement Agreement of December 1982, and the Partial Initial Decision issued in September 1983, did not consider -- and could not have considered -- the new AC power configuration which LILCO <u>first</u> proposed as a basis for licensing Shoreham operation in <u>March 1984</u>. While it may generally be true that, in the normal case, where a low power license application is based upon the same plant configuration as the full power license application (as

was the version of LILCO's Motion filed in 1983 before the failure of the TDI diesels), existing contentions and Partial Initial Decisions may limit the matters in controversy for purposes of Section 50.57(c), it cannot be denied that this is _not_ the normal case. Here, LILCO has itself placed into controversy an entirely new proposal for the provision of onsite AC power in connection with its most recent version of its low power license motion.

Although aspects of prior litigation or decisions may be pertinent to LILCO's new proposed plant configuration, they cannot be said to eliminate from controversy in this proceeding the question whether the _new_ configuration satisfies the requirements set forth in Section 50.57(a). Thus, by the mere fact of its having requested that a brand new, previously unheard of plant configuration be licensed for fuel load and the activities prepared for Phases I and II, LILCO has itself placed into controversy -- indeed, it has _created_ -- the factual issue whether the required Section 50.57 findings can be made with respect to that new Shoreham plant configuration. For the reasons discussed below, there are material issues of fact concerning each of the Section 50.57(a) findings which have not been addressed by LILCO, and accordingly, summary disposition on LILCO's license requests cannot be granted.

1. <u>Construction of Shoreham has not been substantially completed in conformity with the construction permit and LILCO's operating license application.</u>

LILCO's operating license application, as detailed in its primary licensing document, the FSAR, includes the provision of onsite emergency AC power by three independent, environmentally and seismically qualified, safety grade, TDI diesel generators. The FSAR postulates the inclusion of such diesels for both full and low power operation. Those diesel generators were to be designed and constructed in accordance with Part 50 Appendix B quality assurance and quality control standards, and were to be designed to meet the single failure criterion. <u>See</u> Minor and Bridenbaugh Aff., para. 4. LILCO's Supplemental Low Power License Motion requests a license for a plant without the diesel generators relied upon in the FSAR. Instead, LILCO proposes to use four mobile diesel generators and one 20 MW gas turbine, none of which is seismically or environmentally qualified, safety-grade, designed or constructed in accordance with Appendix B, or designed to meet the single failure criterion. The new LILCO proposal is nowhere mentioned in the FSAR. Thus, the plant configuration now proposed as a basis for obtaining its requested Phase I and Phase II licenses, is radically different from the configuration postulated in LILCO's licensing application documentation.

Furthermore, construction of the Shoreham plant, as envisioned in the FSAR, is not only not "substantially completed," it is no longer apparently even contemplated, and certainly will not be completed before LILCO's proposed fuel load and other activities included in Phases I and II. First, LILCO now plans to install three new diesel generators manufactured by Colt Industries, to replace the defective TDI diesels. Apparently, only one of the Colt diesels has even been delivered to the Shoreham site; the other two have not yet been delivered. None have been installed. See Position Paper -- Shoreham Nuclear Power Station, dated May 30, 1984, submitted to Governor Mario Cuomo by LILCO, page 19.

Second, LILCO is in the process of constructing or planning construction of (1) a fuel storage facility for the Colt diesels; (2) a new Class I structure to house the three Colt diesels in separate compartments with safety-related support equipment; and (3) an underground concrete raceway between the two structures described in (1) and (2). Minor and Bridenbaugh Aff. at para. 1[illegible]. As of May 24, 1984, when the County's consultants visited the site and observed the ongoing construction, none of this construction was even nearing completion. Id.

Third, before construction can be described as being "substantially completed," LILCO must also install and test the Colt diesels and all supporting equipment, and it must construct safety-grade raceways and connections for the cable which will connect the Colt diesels to the auxiliary building, the emergency switchgear rooms, and the control room. As of May 24, it did not appear that any of this construction had even begun. Id. at para. 14. Thus, this Board cannot find that construction is "substantially completed" with respect to the onsite emergency AC power source that is described in LILCO's FSAR.

Fourth, LILCO also plans to perform the construction work necessary to run underground a 50 foot section of the cable connecting the EMD diesels to the auxiliary building. This work had not been started as of the May 24 inspection. Id. at para. 13. Thus, even with respect to the new LILCO proposed power configuration, this Board cannot find that construction is substantially completed, as required by Section 50.57.

Finally, for the reasons set forth in detail in the Affidavit of Michael D. Dirmeier and Jamshed K. Madan attached hereto, given LILCO's current financial condition, including the facts that it will run out of money in September 1984 and

has no available source of additional cash, LILCO may be unable to complete construction of Shoreham. See Dirmeier and Madan Aff., para. 8.

Although LILCO's motions ignore the facts that construction is not substantially completed, that because of its dire financial condition LILCO likely cannot complete construction, and that construction, even if it could be completed, would not be in conformity with its FSAR, such facts clearly prohibit the granting of its summary disposition motions for Phase I and Phase II licenses. LILCO has failed to demonstrate that this Board can make the findings required under Section 50.57(a)(1).

For all the same reasons, this Board cannot find that Shoreham will operate at low power, or that the activities proposed for Phase I or Phase II, will be conducted in conformity with LILCO's operating license application, as required by Section 50.57(a)(2) and (a)(3).

2. Shoreham has not been constructed, it will not operate, and the proposed Phase I and Phase II activities cannot be conducted, in compliance with the NRC regulations

For the reasons set forth in Part IV.A above, which give rise to LILCO's need for an exemption from the requirements of GDC 17 and the other regulatory requirements discussed in that

part, LILCO has failed to demonstrate (1) that construction of Shoreham has been substantially completed in accordance with the Commission's rules and regulations; (2) that Shoreham will operate in conformity with the rules and regulations of the Commission; and (3) that there is reasonable assurance that the Phase I and Phase II activities proposed by LILCO will be conducted in compliance with the Commission's regulations. Minor and Bridenbaugh Aff., para. 11. Accordingly, summary disposition cannot be granted with respect to the requested Phase I and Phase II licenses because this Board has no basis for making the findings required under Section 50.57(a)(1), (2), and (3).

3. <u>LILCO is not financially qualified to engage in the activities proposed for Phase I and Phase II</u>

During the last half of the 1970's and the early 1980's (indeed, until 1983), LILCO's financial condition, while perhaps not the best in the utility industry, was sufficiently healthy that there was no serious question whether it was financially qualified to operate a nuclear plant. Thus, during that period LILCO paid common stock dividends regularly, and possessed the traditional indicia of financial health (*e.g.*, SEC coverages, etc.) so that it was able to, and did, successfully raise monies in the capital markets. Dirmeier and Madan

Affidavit, para. 12. However, beginning in 1983, LILCO's financial condition and the perception of that condition by the financial community deteriorated rapidly. Id., para. 13. Indeed, LILCO's financial condition, even according to LILCO's own statements to the public, has deteriorated to the point that presently no outside sources of cash are available to LILCO. The State and County submit that in light of LILCO's current financial straits, which place it in immediate danger of bankruptcy, this Board cannot make the Section 50.57(a)(4) finding, required for issuance of a license under Section 50.57(c), that LILCO is financially qualified to conduct the activities for which it seeks a license.6/

In order to conduct the activities proposed for Phase I and Phase II, LILCO will need to expend monies in addition to those which it currently is expending on Shoreham. Although the precise nature and extent of such additional expenditures cannot be determined at this time, such expenses likely would include, at a minimum, additional costs attributable to

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6/ The State and County yesterday received a June 7, 1984 Commission Policy Statement issued, by three Commissioners, concerning the Commission's response to the mandate of the U.S. Court of Appeals for the D.C. Circuit in New England Coalition on Nuclear Pollution v. NRC, 727 F.2d 1127 (D.C. Cir. 1984). For the reasons set forth in the dissent of Commissioner Asselstine, the State and County believe that policy statement is illegal.

personnel and security. Dirmeier and Madan Aff., para. 5. Even if Phase I and Phase II did not require additional expenditures by LILCO, however, there is no assurance that LILCO has or will be able to obtain the financial resources necessary either to complete Shoreham or to finance the proposed Phase I and II activities, for the reasons set forth below.

LILCO is on the brink of financial disaster. All its financial and operating resources are committed at this time. Unless additional sources of cash are made available, the company will run out of cash in September 1984 and there is no reasonable likelihood of an improvement of that condition. If LILCO is predicted to or in fact does run out of cash, it cannot be found to be financially qualified to conduct the proposed Phase I and II activities. Accordingly, under the present circumstances, the grant of a license or an exemption to permit a license would be a violation of the regulations and contrary to the public interest. Dirmeier and Madan Aff., para. 7 and 9.

Due to its financial condition, LILCO may be unable to continue to provide safe and adequate electric service on Long Island, and unable to safely operate a nuclear unit, even at the Phase I and Phase II levels being proposed. Thus, at page 46 of LILCO's 1983 SEC Form 10-K, LILCO stated:

> [L]ittle 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 its construction and other capital requirements and operational needs.

Similar statements appear elsewhere in LILCO's 1983 10-K:

> The Company may be unable to obtain the necessary financing or adequate rates or to conserve sufficient cash to meet its operating and capital requirements pending the completion, installation and testing of the new generators. (p. 23)
>
> The Company's ability to continue its planned construction program, including the completion of Shoreham, depends upon the ability of the Company to continue to obtain the funds required. (p. 45)

Dirmeier and Madan Aff., para. 8(a).

LILCO has also recently implemented a severe "austerity" program, canceled its common stock dividends, and suspended payments on its obligations as a part owner of the Nine Mile Point Nuclear Plant in New York. LILCO's Vice President for Finance, Mr. Sideris, has stated in recent testimony filed before the New York Public Service Commission ("NYPSC"):

> Furthermore, the austerity program, the elimination of the common stock dividend, and the suspension of scheduled payments in connection with Nine Mile Point Unit No. 2 are all extraordinary measures -- measures which neither LILCO nor any other utility would consider for more than an instant except for the most critical and urgent of circumstances.

Dirmeier and Madan Aff., para. 8(b) (emphasis added).

LILCO's "austerity" program was implemented in March 1984, and was designed to save $100 million in 1984. This program involved layoffs of 741 LILCO employees and 246 outside contractors, and the loss of 11 percent of the budgeted 1984 construction program. Page 456 of LILCO's May 30, 1984 "Position Paper -- Shoreham Nuclear Power Station" submitted to New York State Governor Mario Cuomo, indicates that customers are subject to longer service response times and reduced customer service as a result of the austerity plan. Thus, customer service has already been negatively affected by the existing LILCO austerity program. Dirmeier and Madan Aff., para. 8(e).

Furthermore, LILCO's austerity program itself may lead to further deterioration in LILCO's financial and operating position. For example, in a letter to NYPSC Administrative Law Judge Robinson dated May 3, 1984, LILCO's counsel stated "LILCO is now assuring safe and adequate service for the short run -- not the long haul. It will continue to do so. As a result, substantial cost increases for necessary operations will be identified with very short lead times, and their magnitude and timing simply cannot be forecast." Dirmeier and Madan Aff., para. 8(c) and (f). It is thus clear that LILCO's austerity

program is an extreme step which provides strong evidence of the seriousness of LILCO's current financial difficulties.

Similarly, LILCO's cancellation, in March 1984, of payments of common stock dividends for the remainder of 1984, is a highly significant indication of LILCO's serious financial troubles. Ready access to capital markets is a mainstay of utility financial operation, and cancellation of the common stock dividend makes such access extremely difficult, if not impossible. Dirmeier and Madan Aff., para. 8(g). Indeed, even prior to the cancellation of stock dividends, in its 1983 SEC Form 10-K, LILCO stated "At December 31, 1983, the Company had borrowed all of the $400 million of funds available under its Revolving Credit Agreement and its Eurodollar Revolving Credit Agreement." And, more recently, in a letter dated May 3, 1984, LILCO's counsel stated, " [T]he Company can no longer obtain external financing for its operations." Dirmeier and Madan Aff., para. 8(c). In addition, suppliers to LILCO have tightened up the availability of normal credit to the Company, increasing the Company's cash difficulty. As Mr. Sideris, LILCO's Vice President for Finance, stated at page 11 of his recently filed testimony before the NYPSC, " [O]ur major oil suppliers now require payment at the time of or prior to delivery." Dirmeier and Madan Aff., para. 8(h).

In February, 1984, LILCO placed at risk its $570 million investment in Nine Mile Point Unit No. 2 by unilaterally suspending its payments toward the completion of that plant. Niagara Mohawk has informed LILCO that it considers LILCO to be in default of its obligations to the cotenants in that project. Dirmeier and Madan Aff., para. 8(d). LILCO had financed its share of the Nine Mile Point No. 2 plant construction program through a Construction Trust, and its failure to make construction payments constitutes a default under the Trust Agreement unless a grace period is agreed to by banks holding two-thirds of the Construction Trust debt. Such grace periods are for only 30 days. A default means that the entire $500 million loaned by the banks to LILCO would be immediately due and payable. In addition, due to cross-default terms, a default on the Construction Trust is likely to lead to a default on <u>all</u> LILCO's long term debt. Thus, LILCO is now subject to potential default on all its long term debt obligations at 30 day intervals. In addition, LILCO's default on its Nine Mile Point obligations has increased the possibility of reorganization under the federal bankruptcy laws. Dirmeier and Madan Aff., para. 8(i). LILCO's actions with respect to the Nine Mile Point plant, and the dire consequences of those actions, are a further and clear manifestation that it lacks the

financial qualifications to conduct its proposed Phase I and Phase II activities.

As a result of all the above, LILCO presently has no ability to raise cash either by borrowing or by additional sale of stock. It is likely that LILCO will not have any such ability unless and until the major existing uncertainties surrounding emergency planning, emergency diesel generators, the potential reorganization due to the Nine Mile Point plant, and rate treatments for the Shoreham and Nine Mile Point investments are resolved in LILCO's favor. Thus, LILCO's ability to conduct its proposed Phase I and II activities depends on whether its current revenues from operations are sufficient to cover all expenses. Dirmeier and Madan Aff., para. 9.

At the present time, LILCO has included in its base rates $94.5 million of emergency rate relief granted by the NYPSC in the Fall of 1983. LILCO has asked the NYPSC that the interim relief be made permanent and that an additional $186.5 million be added to its rates effective October 1, 1984. Opponents, including Suffolk County and the New York State Consumer Protection Board, have argued that none of this relief is proper and that, in addition, $116 million should be <u>removed</u> from LILCO's base rates because the LILCO austerity program

represents a reduction in the level of service being provided. It is impossible to predict what rate relief, if any, LILCO will ultimately receive. It is nonetheless projected that LILCO will run out of money by September 1984 even if it were to receive the full rate relief it has requested. See Dirmeier and Madan Aff., para. 9 and the table therein.

It is clear, therefore, that the cash necessary to satisfy LILCO's current requirements cannot be obtained by LILCO. Furthermore, even assuming that the entire amount of LILCO's pending rate increase were to be granted, LILCO still would face considerable borrowing requirements during 1984 and 1985, at a time when its borrowing capacity has already been fully utilized. Dirmeier and Madan Aff., para. 9.

Finally, there is no reasonable probability that LILCO will be able to make up the cash shortfalls projected for 1984 and 1985 by either borrowing or sale of stock; the capital markets are effectively closed to LILCO due to its desperate financial situation. Id. at para. 10. Since LILCO already is in desperate financial condition and since it shortly will run out of cash, LILCO is not financially qualified to carry out Phase I and II activities.

LILCO's motions fail even to mention LILCO's precarious financial conditions, and the impact of that condition upon its ability and qualification to perform the activities for which it seeks a license. LILCO has not demonstrated -- and the State and County submit it cannot demonstrate -- that it is financially qualified to operate Shoreham or to conduct the activities proposed for Phases I or II. Accordingly, this Board cannot make the finding required under Sections 50.57(c) and 50.57(a)(4), and LILCO's summary disposition motions must be denied.

4. LILCO has failed to demonstrate that issuance of licenses for Phases I and Phase II will not be inimical to the security of the public

Under Section 50.57(a)(6), the NRC must find that issuance of the licenses sought by LILCO "will not be inimical to the common defense and security . . . ." There are material facts in dispute concerning this issue. However, until the Board establishes the requisite procedures for handling safeguards information here, the County and State cannot lawfully discuss the facts and implications of security matters and thus, can only highlight the issues. (Please note that we have repeated, requested the establishment of necessary safeguard procedures, and we hereby do so once again.) Briefly, therefore, the following points document material security-relate issues in

disputed which preclude summary disposition the grant of the requested licenses.

(a) In 1982, the Licensing Board admitted 9 County security contentions in the Shoreham proceeding. The contentions were predicated on alleged security deficiences pertaining to the LILCO's proposed method of operating Shoreham at that time, including certain matters related to LILCO's proposed emergency onsite power system, the TDI diesels.

(b) On December 3, 1982, the Board approved a Security Settlement Agreement and considered the contentions resolved. The Settlement Agreement was premised on actions taken by LILCO to resolve the County's concerns. The County found these actions adequate given LILCO's proposed method of operating Shoreham that existed at that time.

(c) In March 1984, LILCO announced a radical change in its planned operation and plant configuration. Most significant from a security viewpoint is the fact that the TDI diesels are now considered inoperable and are "replaced" by a 20 MW gas turbine located completely outside the protected area and 4 mobile EMD diesels located within the protected area but in an exposed location and with their cable and conduit supplying the safety loads in an exposed location.

(d) The security concerns which were resolved as of December 3, 1982, can no longer be considered fully resolved because the County asserts that LILCO has inadequate means to protect its proposed alternate emergency AC power system. Therefore, the County's prior contentions are revived to the extent they pertain to matters pertinent to the new power configuration, particularly in relation to the standards set forth in Section 73.55.

(e) The NRC Staff has recognized security matters to be a concern at low power. See SSER Supp. 5, at pp. 13-2 through 13-4. However, the Staff has concluded erroneously that there is no identifiable need to protect the offsite power sources as vital equipment. See id. at 13-3. The County and State disagree with this conclusion and note that in NUREG-0992, "Report of the Committee to Review Safeguards Requirements at Power Reactors," it is recommended (p. 14) that "[d]iesel generators or other onsite AC power sources and principal DC power sources" be protected as vital equipment. The County and State also disagree with the Staff premise that a sabotage induced LOCA can be assumed to be precluded at low power, thus leading to the Staff view that the LILCO AC power sources need not be protected as vital equipment. See Supp. 5 at 13-2. In fact, the County submits that there are bases to be concerned about a

simultaneous LOCA and loss of all AC power induced by the Part 73 design basis threat. Finally, the County and State allege that LILCO's new proposed emergency AC power system, as presently configured in its exposed location, does not comply with 10 CFR § 73.55 in that LILCO has failed to provide the required "high assurance" of protection against the Part 73 design basis threat.

(f) For any license issued for Shoreham, the plant's security system must be fully implemented and in compliance with 10 CFR § 73.55. See 10 CFR §73.55; Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), LBP-77-64, 6 NRC 808, 813 (1977). Suffolk County and the State of New York allege that the security system at Shoreham does not comply with Part 73.

The foregoing data, set forth only in summary form in the absence of the necessary safeguards procedures, demonstrate that LILCO's motions for summary disposition must be denied. There are material facts in dispute, particularly, whether LILCO's security plan meets Section 73.55 and adequately protects the exposed new LILCO AC power system which must be relied upon for emergency power in the event of a sabotage induced LOCA. Given the material facts that are in dispute,

this Board cannot even consider granting the summary disposition motions.

V. Conclusion

For the foregoing reasons, LILCO's Phase I and Phase II Motions must be denied.

Respectfully submitted,

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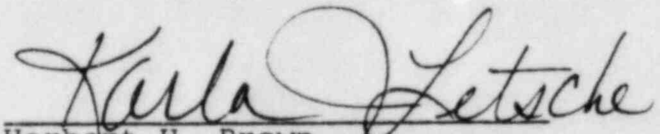

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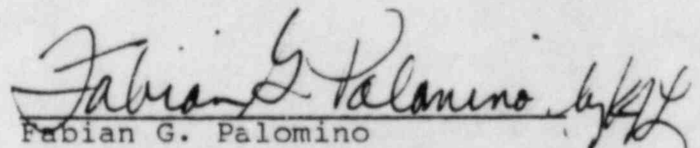

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Dated: June 13, 1984

STATEMENT OF ISSUES MATERIAL TO SUMMARY DISPOSITION OF LILCO'S REQUEST FOR LICENSES FOR PHASE I AND PHASE II AS TO WHICH THERE ARE FACTS IN DISPUTE

1. Whether during LILCO's proposed Phase II, the total time during which the reactor is critical is substantially greater than five minutes, contrary to the assertion in paragraph 4 of the Statement of Material Facts as to Which There is no Genuine Issue to be Heard which is attached to the LILCO Phase II Motion. Minor and Bridenbaugh Affidavit, para. 16.

2. Whether, given LILCO's proposed alternate AC power configuration, the Shoreham plant complies with any of the following regulations:

General Design Criterion 1
General Design Criterion 2
General Design Criterion 3
General Design Criterion 4
General Design Criterion 17
General Design Criterion 18
General Design Criterion 33
General Design Criterion 34
General Design Criterion 35
General Design Criterion 37
General Design Criterion 38
General Design Criterion 40
General Design Criterion 41
General Design Criterion 43
General Design Criterion 44
General Design Criterion 46

Part 50, Appendix B, Criterion III
Part 50, Appendix B, Criterion VII
Part 50, Appendix B, Criterion VIII
Part 50, Appendix B, Criterion X
Part 50, Appendix B, Criterion XI

Part 50, Appendix B, Criterion XIII
Part 50, Appendix B, Criterion XVII

Minor and Bridenbaugh Affidavit, paras. 6,7,8,10.

3. Whether, given LILCO's proposed alternate AC power configuration, the Shoreham plant complies with the final ATWS rule as approved and described by the Commission on June 1, 1984. Minor and Bridenbaugh Affidavit, para. 9.

4. Whether construction of Shoreham is substantially completed in conformance with the operating license application as detailed in the FSAR. Minor and Bridenbaugh Affidavit, paras. 11-15.

5. Whether, given LILCO's proposed alternate AC power configuration, the activities proposed for Phases I or II, or operation of the Shoreham plant, will be conducted in conformance with the NRC's regulations. Minor and Bridenbaugh Affidavit, paras. 6-11, 17.

6. Whether given LILCO's present financial condition of being on the brink of bankruptcy and projected to run out of cash in September 1984, LILCO is financially qualified to operate the Shoreham plant or to conduct the activities proposed for Phase I or Phase II. Dirmeier and Madan Affidavit, paras. 4-13.

7. Whether, given LILCO's proposed alternate power configuration, operation of the Shoreham plant, or the activities proposed in Phase I or Phase II, would be inimical to the security of the public.

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)	)	

AFFIDAVIT OF GREGORY C. MINOR AND DALE G. BRIDENBAUGH

Gregory C. Minor and Dale G. Bridenbaugh, being duly sworn, state as follows:

1. We are both consultant engineers, founders, and partners of MHB Technical Associates, 1723 Hamilton Avenue, San Jose, California. We have both been working on the Shoreham operating license issues since 1977. Our professional qualifications have previously been filed in the Shoreham proceeding.

2. The purpose of this Affidavit is to identify and discuss various technical issues related to LILCO's May 22, 1984 Motions for Summary Disposition on Phase I and Phase II of its Supplemental Motion for Low Power Operating License, dated March 20, 1984. In our opinion, the facts we address below indicate that the Shoreham design is not in compliance with many

of the NRC's regulations and that the findings required under 10 C.F.R. Section 50.57 for the issuance of an operating license cannot be made for Shoreham at this time.

3. In its Motions for Summary Disposition, LILCO requests licenses to perform certain activities that are described as "Phase I" and "Phase II." Phase I, according to LILCO, consists of loading fuel into the core and the performance of certain core verification activities involving no criticality, but requiring the movement of control rods. LILCO Phase I Motion, p. 8. During Phase I, the pressure vessel head will be removed, and no power generation will occur. Phase II, according to LILCO, consists of criticality up to 0.001% of rated thermal power, and the performance of certain cold criticality testing. LILCO Phase II Motion, p. 2.

4. LILCO's operating license application, as supported and detailed in the FSAR, includes the provision of onsite emergency AC power by three safety-related, seismically and environmentally qualified diesel generators manufactured by Transamerica Delaval Inc. (the "TDI diesels"), and designed to meet the single failure criterion. (FSAR Section 8.3 and Table 3.2.1-1)

5. In its Motions for Summary Disposition, LILCO postulates the unavailability of the TDI diesels during its proposed Phases I and II. LILCO Phase I Motion, p. 5; Phase II Motion, p. 4, 6. It also proposes, in its Supplemental Motion for Low Power Operation, an alternate AC power configuration consisting of a 20 MW gas turbine and 4 mobile diesel generators (the "EMD diesels").

6. LILCO has not classified either the EMD diesels or the gas turbine as safety-related, even though they are important to safety in that they will be relied upon to prevent exceedance of fuel design limits during operation. Therefore, GDC 1, 2, 3 and 4 are applicable to this equipment. The FSAR for Shoreham describes an onsite emergency power source which is safety-related and meets GDC 1, 2, 3 and 4. FSAR, Table 3.2.1-1, page 11, and Section 8.3. Absent an onsite emergency AC power source as described in the FSAR, Shoreham is not in compliance with these GDC. Although LILCO is requesting the issuance of an operating license, it has not obtained an exemption from the requirements in GDC 1, 2, 3 and 4.

7. The newly proposed Shoreham design also does not meet several GDC which involve the design and testing of systems important to safety during periods when the onsite power source

is supplying power (and offsite power is not available), because (a) there is no onsite emergency AC power source postulated in the proposed Shoreham configuration, and (b) as a result, under the proposed configuration, the transfer from offsite to onsite power cannot be tested as required. The applicable GDC, which are not satisfied at Shoreham, are as follows:

GDC 17 -- Electric Power Systems

GDC 18 -- Inspection and Testing of Electric Power Systems

GDC 33 -- Reactor coolant makeup

GDC 34 -- Residual heat removal

GDC 35 -- Emergency core cooling

GDC 37 -- Testing of emergency core cooling systems

GDC 38 -- Containment heat removal

GDC 40 -- Testing of containment heat removal system

GDC 41 -- Containment atmosphere cleanup

GDC 43 -- Testing of containment atomsphere cleanup systems

GDC 44 -- Cooling water

GDC 46 -- Testing of cooling water systems

LILCO has not obtained an exemption from the requirements of the GDC listed above.

8. Shoreham also is not in compliance with the Part 50 Appendix B requirements for quality assurance with respect to the design, installation, testing and operation of the EMD diesels and gas turbine. A fully qualified onsite emergency AC power source as envisioned by GDC 17 must meet these Appendix B requirements. See FSAR Table 3.2.1-1. However, the Appendix B requirements are not satisfied by the alternative AC power configuration proposed by LILCO. Among the specific criteria which are applicable to the EMD diesels and gas turbine power sources, but which are not satisfied, are:

Criterion III	Design control
Criterion VII	Control of purchased material, equipment and services
Criterion VIII	Identification and control of material, parts and components
Criterion X	Inspection
Criterion XI	Test control
Criterion XIII	Handling storage and shipping
Criterion XVII	QA records

9. A final rule on ATWS, unanimously approved by the Commission on June 1, 1984 (Letter Chilk to Dircks, et al., dated June 1, 1984, Subject: Staff Requirements - Affirmation/Discussion and Vote, 11:30 a.m., Friday, June 1, 1984),

contains two requirements: (1) a diverse reactor trip system and (2) mitigating systems. In its discussion of the rule, the Commission stated that these systems "must be capable of performing safety functions with loss of offsite power" (Chilk Letter at p. 24). With LILCO's proposed alternate AC power configuration, LILCO does not comply with the ATWS rule.

10. LILCO's proposed alternate AC power configuration fails to meet the requirements of GDC 17 because it does not provide for an "onsite electric power system."

11. In light of LILCO's failure to demonstrate compliance with the regulations we cite in paragraphs 6-11 above, the Shoreham plant will not be constructed, would not operate, nor could Phase I or Phase II activities be performed, in conformity with the NRC's regulations.

12. During a recent inspection of the Shoreham site on May 24, 1984, Mr. Minor observed substantial amounts of ongoing construction. These involved the following areas important to safety, some of which were safety-related or security areas:

a. Construction of an onsite safety-related diesel fuel storage facility is at the stage of major concrete emplacement, involving numerous workers and heavy equipment.

b. Major construction is underway on a new building to house the safety-related diesel generators manufactured by Colt Industries, which are intended eventually to replace the TDI diesels. This is a Class I structure which will house the three Colt diesels in separate compartments, and also necessary safety-related support equipment such as day tanks, fuel pumps, cooling systems, controls, fire protection, electrical equipment and ventilation equipment.

c. An underground concrete raceway between the above two structures is also under construction. This raceway appears to be designed to carry fuel and/or control lines between the two buildings described in paragraphs (a) and (b) above, but does not appear to connect either structure to the auxiliary building.

13. Mr. Minor was informed by LILCO during the site inspection that it plans to perform the construction work necessary to run underground a 50 foot section of the cable connecting the mobile EMD diesels to the auxiliary building. As of May 24, 1984, this cable was above ground mounted on wood

blocks, and the planned construction had not been started. This proposed construction would disrupt the availability and reliability of the EMD power source.

14. Before the Colt diesels, which are intended to replace the TDI diesels, can be made operational, LILCO must construct and install the necessary electrical and control connections between the Colt diesel building (not yet complete) and the auxiliary building and the control room. This construction will involve the tie-ins to the safety-related and security areas of the control room and emergency switch gear room. As of May 24, 1984, there was no evidence that any of this work had begun.

15. Construction is not completed, and the proposed Phase I and Phase II activities will not be performed in conformance with LILCO's operating license application as reflected in the FSAR and Technical Specifications, for the following reasons:

a. The FSAR describes operation, including preoperational testing and low power testing, with redundant, safety-related, seismically and environmentally qualified diesel generators which are designed to meet the single failure criterion. LILCO's proposed Phase I and Phase

II activities, using EMD diesels or the 20 MW gas turbine, would not be in conformance with the standards set forth in the FSAR for onsite AC emergency power.

b. The activities proposed in Phases I and II will necessitate the violation of many of the Shoreham Technical Specifications, including limiting conditions for operation and subsequent actions to be taken with one or more onsite emergency diesel generators inoperable. Technical Specifications require a plant shut down within a limited time if one onsite diesel is unavailable. If two or more onsite diesels are unavailable, the plant must shut down immediately.

c. LILCO has proposed to take certain actions beyond the existing Technical Specifications in an attempt to provide protection from a potential loss of AC power (e.g., shut down in the event of seismic event of 0.01 g or a severe weather warning). To the best of our knowledge, these proposed limiting conditions of operation have

not been incorporated into the Shoreham Technical Specifications, nor have all of the necessary procedures to implement such conditions been finalized, submitted, and approved.

d. The new Class I buildings being constructed to house the not-yet-delivered or installed Colt diesels, their fuel, and the necessary interconnections, have not been incorporated into the drawings for the plant nor are they described in the FSAR. Also, the equipment, both safety-related and important to safety, to be housed in the new structures has not been included in the plant operating procedures.

16. The LILCO Phase II Motion appears to contradict LILCO's earlier Supplemental Motion for Low Power Operating License of March 20, 1984. During LILCO's proposed Phase II, according to LILCO's witness Notaro (Notaro Aff. at para. 8, attached to March 20 Supplemental Motion), there will be many approaches to criticality, involving repeated control rod withdrawals and insertions, as part of LILCO's proposed operator training. In contrast, the May 22, 1984 LILCO Motion for

Summary Disposition on Phase II implies that the reactor will only be critical for a 5 minute period and then will be shut down (LILCO Phase II Motion, p. 2 and Statement of Material Facts As to Which there is No Genuine Issue to be Heard on Phase II Low Power Testing, para. 4).

17. For the following reasons, LILCO's proposal to perform the activities defined as Phase I and Phase II, given the proposed alternate AC power configuration at the Shoreham plant and the LILCO assumption of no onsite AC power during Phases I and II, would be contrary to normal industry practice and NRC regulations:

a. Construction of vital safety facilities is not complete.

b. Noncompliance with Technical Specifications is inherent in the proposed actions.

c. Procedures impacted by the lack of a safety-related source of onsite AC power are not finalized.

d. The FSAR does not reflect the proposed configuration which is being used as a basis for these license requests.

e. The possibility that the plant may not receive an operating license or may be abandoned has not been evaluated in considering whether to make the plant radioactive as part of this expedited pursuit of low power operation. The potential for worker exposure during the proposed Phase I, Phase II and subsequent low power activities and decommissioning would be eliminated (consistent with ALARA) if the decisions on LILCO's requests for licenses for Phase I, Phase II, as well as on its other low power phases, were deferred until the full power decision is imminent.

f. This unusual action and its deviations from normal regulatory practices, has an inherent risk of instilling in the inexperienced Shoreham operators a disregard for compliance with regulations and establishing a poor precedent for future decisions and actions.

Dale G. Bridenbaugh

Gregory C. Minor

Subscribed and sworn to before me by Gregory C. Minor this 13th day of June, 1984, in the City of Washington, D.C. ~~State of ____________.~~

Patricia C. Hopkins
Notary Public

My commission expires: My Commission Expires January 31, 1985

Subscribed and sworn to before me by Dale G. Bridenbaugh this _____ day of June, 1984, in the City of ______________, State of ____________.

Notary Public

My commission expires: ______________

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)	)	

AFFIDAVIT OF MICHAEL D. DIRMEIER AND JAMSHED K. MADAN

Michael D. Dirmeier and Jamshed K. Madan, being duly sworn, do state under oath:

1. We are both employed by Georgetown Consulting Group, Inc., located at 456 Main St., Ridgefield, CT 06877. Georgetown Consulting Group, Inc. is a financial and management consulting firm with extensive experience in the regulation of public utilities. We 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. Statements of our professional qualifications are attached.

2. We 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 request for a full power operating license.

3. We further understand that for LILCO to receive a low power license, even for so-called Phases "I" and "II," there must be findings by the NRC that LILCO has demonstrated it is financially qualified to carry out the low power activities it is proposing and that such operation is in the public interest.

4. The purpose of this Affidavit is to describe presently available information and data which document that LILCO, due to its deteriorating financial condition, is not financially qualified to operate Shoreham, or even to carry out the Phase I and II activities, and that the grant of a license to conduct such activities would not be in the public interest.

5. In order to conduct the proposed Phase I and Phase II activities, LILCO will certainly need to expend monies in addition to those which it currently is expending on Shoreham. The precise nature and extent of such additional expenditures cannot be precisely quantified in this Affidavit; Suffolk County has sought such data from LILCO in discovery requests, but has not yet received the requested information from LILCO. We expect such expenses to include, however, at a minimum, the additional time required of personnel to load fuel and to conduct the Phase I and II activities, and the need for more stringent security once fuel is actually placed in the reactor.

6. Regardless whether Phases I and II will require additional monetary expenditures by LILCO, however, in our opinion, there is no assurance that LILCO has or will be able to obtain the financial resources necessary to complete Shoreham or to finance the proposed Phase I and II activities.

7. Long Island Lighting Company is on the brink of financial disaster. All its financial and operating resources are committed at this time. Unless additional sources of cash are made available, which we believe is unlikely, the Company will run out of cash in September 1984. If LILCO is predicted to or in fact does run out of cash, in our opinion, it is not financially qualified to conduct the proposed Phase I and II activities; the grant of a license or an exemption to permit a license in these circumstances would be contrary to the public interest.

8. Data documenting LILCO's financial crisis include the following:

a) LILCO may be unable to continue to provide safe and adequate electric service on Long Island, and unable to safely operate a nuclear unit, even at low power levels. Thus, at page 46 of LILCO's 1983 SEC Form 10-K, LILCO states:

> . . . 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 its construction and other capital requirements and operational needs.

Similar statements appear elsewhere in the LILCO 1983 10-K:

> The Company may be unable to obtain the necessary financing or adequate rates or to conserve sufficient cash to meet its operating and capital requirements pending the completion, installation and testing of the new [diesel] generators. (p. 23)

> The Company's ability to continue its planned construction program, including the completion of Shoreham, depends upon the ability of the Company to continue to obtain the funds required. (p. 45)

b) LILCO has implemented a severe "austerity" program, canceled its common stock dividends, and suspended payments on its Nine Mile Point No. 2 obligations. LILCO's Vice President for Finance, Mr. Sideris, states in recent testimony filed before the New York Public Service Commission ("NYPSC"):

> Furthermore, the austerity program, the elimination of the common stock dividend, and the suspension of scheduled payments in connection with Nine Mile Point Unit No. 2 are all extraordinary measures -- measures which neither LILCO nor any other utility would consider for more than an instant except for the most critical and urgent of circumstances. (Page 16 of pre-filed NYPSC testimony).

c) The 1983 LILCO SEC Form 10-K, page 58, states "At December 31, 1983, the Company had borrowed all of the $400 million of funds available under its Revolving Credit Agreement

and its Eurodollar Revolving Credit Agreement." In a letter dated May 3, 1984, LILCO's counsel states, ". . . the Company can no longer obtain external financing for its operations."

d) In February, 1984, LILCO placed at risk its $570 million investment in Nine Mile Point 2 by suspending its payments toward the completion of that plant. Niagara Mohawk has informed LILCO that it considers LILCO to be in default of its obligations to the cotenants in that project.

e) In March, 1984, LILCO implemented an "austerity" program designed to save $100 million in 1984. This program represents a loss of 741 positions at LILCO, 246 jobs with outside contractors, and 11 percent of the budgeted 1984 construction program. Page 46 of LILCO's May 30, 1984 "Position Paper -- Shoreham Nuclear Power Station" indicates that customers are subject to longer service response times and reduced customer service under the austerity plan. Thus, customer service has already been negatively affected by the existing LILCO austerity program.

f) The austerity program, itself, may lead to further deterioration in LILCO's financial and operating position. In a letter to NYPSC Administrative Law Judge Robinson dated May 3, 1984, LILCO's counsel stated "LILCO is now assuring safe and adequate service for the short run -- not the long haul. It will

continue to do so. As a result, substantial cost increases for necessary operations will be identified with very short lead times, and their magnitude and timing simply cannot be forecast."

g) In March, 1984, LILCO cancelled payment of its common stock dividend for the remainder of 1984. It would be difficult to overstate the importance of this action. Ready access to capital markets is a mainstay of utility financial operation, and cancellation of the common stock dividend makes such access extremely difficult, if not impossible.

h) Suppliers to LILCO have tightened up the availability of normal credit to the Company, increasing the Company's cash difficulty. As Mr. Sideris, LILCO's Vice President for Finance, states at page 11 of his recently filed testimony before the NYPSC, ". . . our major oil suppliers now require payment at the time of or prior to delivery."

i) LILCO had financed its share of the Nine Mile Point 2 construction program through a Construction Trust. After the cancellation of payments for Nine Mile Point 2, LILCO negotiated an amendment to the Trust Agreement to the effect that the failure to make construction payments would not constitute a default prior to April 27, 1984, with additional 30 day grace periods to be agreed to by banks holding two-thirds of the Construction Trust debt. A default would mean that the entire $500 million loaned by the banks would be due and payable. In addition, due to cross-default terms, a default on the Construction Trust is

likely to lead to a default on all of LILCO's long term debt. Thus, LILCO now finds itself subject to potential default on all its long term debt obligations at 30 day intervals, as well as possible reorganization.

9. Based on the foregoing, our experience in utility financial matters, and our work related to LILCO, it is our opinion that LILCO presently has no ability to raise cash either by borrowing or by additional sale of stock. It is unlikely that LILCO will have any such ability unless the major existing uncertainties surrounding emergency planning, emergency diesel generators, the potential reorganization due to Nine Mile Point No. 2, and rate treatments for the Shoreham and Nine Mile Point investments are resolved in LILCO's favor. Thus, LILCO's ability to conduct Phase I and II activities depends on whether its current revenues from operations are sufficient to cover all expenses. At the present time, LILCO has included in its base rates $94.5 million of emergency rate relief granted by the NYPSC in the Fall of 1983. LILCO has asked the NYPSC that the interim relief be made permanent and that an additional $186.5 million be added to its rates effective October 1, 1984. Opponents including the County of Suffolk and the New York State Consumer Protection Board have argued that none of this relief is proper and that, in addition, $116 million should be removed from LILCO's base rates since the LILCO austerity program represents a reduction in the level of service being provided. It is

impossible to predict what rate relief, if any, LILCO will ultimately receive. What is significant, however, is that LILCO is projected to run out of money by September 1984 even if it receives the full rate relief requested.

LILCO's Projected Cash Shortfalls (in millions of dollars)

	No Relief (1)	Full Relief (2)
1984		
September	$ 12.8	$ 12.8
October	9.1	4.3
November		
December	59.5	39.3
1985		
January	148.5	113.7
February	139.6	86.1
March	164.8	98.1
April	165.3	84.9
May	210.1	114.7
June	242.7	133.0
July	258.5	133.3
August	324.0	180.8
September	341.3	179.7
October	343.0	161.6
November	352.8	155.8
December	378.9	167.3

(1) Beyond present level of interim relief of $94.5 million.

(2) Entire request of $281 million is granted on October 1, 1984.

The above schedule shows that, assuming the present level of interim relief is made permanent, LILCO will have significant additional borrowing and capital requirements during 1984 and 1985. The cash necessary to satisfy these requirements appears

to be unattainable to LILCO. Even assuming that the entire amount of LILCO's pending rate increase were granted, LILCO still faces considerable borrowing requirements during 1984 and 1985, at a time when its borrowing capacity has already been fully utilized.

10. There is no reasonable probability that LILCO will be able to make up the cash shortfalls described in paragraph 9 via either borrowing or sale of stock. This is because the capital and debt markets are effectively closed to LILCO due to its desperate financial situation.

11. Since LILCO already is in desperate financial condition and since it shortly will run out of cash, we conclude that LILCO is not financially qualified to carry out Phase I and II or other low power activities and no exemption would be in the public interest.

12. LILCO's current financial condition is of relatively recent origin. During the last half of the 1970's and the early 1980's (indeed until 1983), LILCO's financial condition, while perhaps not the best in the utility industry, was sufficiently healthy that there was no serious question whether it was financially qualified to operate a nuclear plant. Thus, during that period LILCO paid common stock dividends regularly, and had other traditional indicia of financial health (e.g., SEC coverages, etc.) so that it was able to, and did, successfully raise monies in the capital markets.

13. Beginning in 1983, LILCO's financial condition and the perception of that condition by the financial community deteriorated rapidly. The Form 10-K data cited above document the decline in 1983, which decline has now reached the point that we predict that LILCO is likely to run out of money very shortly.

____
Michael D. Dirmeier

____
Jamshed K. Madan

Subscribed and sworn to before me this ___ day of June, 1984, in the City of __________________, State of __________________________.

____
Notary Public

My commission expires:_____________

STATEMENT OF QUALIFICATIONS

Q. WOULD YOU STATE YOUR NAME AND ADDRESS?

A. My name is Michael D. Dirmeier and my business address is 456 Main Street, Ridgefield, Connecticut. I am a member of the firm of Georgetown Consulting Group, Inc..

Q. WHAT IS THE BACKGROUND OF YOUR FIRM?

A. Georgetown Consulting Group, Inc. is a financial management consulting firm specializing in utility regulation. Members of our firm have analyzed petitioner's testimonies, and have testified, before numerous commissions in regulatory cases for telephone, water, electric and gas utility companies throughout the United States.

Q. WHAT REGULATORY EXPERIENCE HAVE YOU HAD?

A. I have analyzed Company testimony, managed the preparation of accounting testimony or testified in the following jurisdictions:

Colorado

- Public Service Company of Colorado (1981) I&S 1525
  (1983) I&S 1640
- Mountain Bell Telephone (1982) I&S 1575
  (1984) I&S 1655

Delaware

- Diamond State Telephone Company (1982) — Docket No. 82-32

Maryland

- Delmarva Power & Light Company — Case No. 7734
- Baltimore Gas and Electric Company
  (1977) — Docket No. 7070
  (1983) — Docket No. 7695
- Potomac Electric Power Company (1982) — Docket No. 7662

Minnesota

- Northwestern Bell Telephone Company (1981) — Docket No. P-421/GR-80-911
- Northwestern Bell Telepohone Company (1983/4 divestiture case) — Docket No. P-421/GR-83-600

Mississippi

- South Central Bell Telephone Company Accounting and Divestiture — Docket No. U-4415

New Jersey

- Atlantic City Electric Company (1982) — Docket No. 822-116
- Elizabethtown Gas Company (LPGA, 1981)
- Hackensack Water Company (1980) — Docket No. 804-275
  (1981) — Docket No. 815-447
  (1982) — Docket No. 815-447
- Jersey Central Power & Light Co. (2 cases: 1979,1980) — Docket No. 795-427
- Middlesex Water Company (2 cases: 1979, 1980) — Docket No. 793-269

- New Jersey Bell Telephone Co.	
(1978)	Docket No. 7711-1136
(1981)	Docket No. 815-458
Expensing Station Connections	Various Dockets
- New Jersey Bell Telephone Co. (1983 divestiture case)	Docket No. --
- New Jersey Natural Gas Company (1982)	BPU Docket No. 815-459 (Phase II)
- PURPA ratemaking standards (1980)	
- Rockland Electric Co. (LEAC, 1979 and 1980)	Docket Nos. 7911-920 & 7611-1100
- South Jersey Gas Company (Overearnings case, 1981)	Docket No. 808-517
- West Keansburg Water Co. (1978)	Docket No. 7710-1026

New Mexico

- Mountain States Telephone and Telegraph Co. (1979)	Docket No. 877

New York

- Consolidated Edison Company (1980)	Docket No. R-800-11069
- Long Island Lighting Company	
(1980) Rate Case	Docket No. 27774
(1982/3 Shoreham Phase-In)	Docket No. 28252
- New York Telephone Company (2 cases: 1979, 1980)	Docket Nos. 27469 & 27710

Ohio

- Columbus and Southern Ohio Electric Co. (1977/8)	Docket No. 77-545-EL-AIR
(1978/9)	Docket No. 78-1439-EL-AIR

- Toledo Edison Electric Co. (1979)	Docket No. 79-143-EL-AIR

<u>Pennsylvania</u>

- Bell of Pennsylvania (1982 accounting)	RID 1819
- Bell of Pennsylvania (1983) (Accounting & Divestiture)	Docket R-811319
- Duquesne Light Company (1982)	Docket No. R-21945
- Metropolitan Edison and Pennsylvania Electric Co. (2 cases: 1979, 1980)	Docket Nos.I-79040308 & M-79040129
- Metropolitan Edison Company (1980)	Docket No. R-80051196
(1981)	Docket No. R-80011601
(1983)	Docket No. R-822249
- Pennsylvania Electric Company (1980)	Docket No. R-80051197
(1981)	Docket No. R-80011602
(1983)	Docket No. R-822250
- UGI-Luzerne Electric Division (1979)	Docket No. R-78030572
- Pennsylvania Bell Telephone Co. 1982)	Docket No. 811819

<u>Rhode Island</u>

- Newport Electric Company (1979)	Docket No. 1410

<u>South Carolina</u>

- PURPA ratemaking standard (1980)

<u>U.S. Virgin Islands</u>

- Virgin Islands Telephone Company (1978)	Docket No. 180
- Virgin Islands Water & Power Authority	

Q. WHAT OTHER PROFESSIONAL EXPERIENCE HAVE YOU HAD?

A. Prior to joining Georgetown Consulting Group, Inc., I was employed by Touche Ross and Co. My consulting experience includes operations reviews, system implementation and product-line analysis.

Before joining Touche Ross, I was a financial analyst with the Bendix Corporation. My work included capital budgeting, investment analysis, financial modeling and planning, analysis of acquisitions and divestments, and preparation of financial reports for the Board of Directors.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I hold a Master of Business Administration degree in finance from the University of Chicago, received in 1973, and a Bachelor of Science degree in Physics, received from Texas A&M University in 1971.

I hold a Certificate in Management Accounting, which is a professional certification for management accountants and financial managers awarded by the Institute of Management Accounting of the National Association of Accountants.

STATEMENT OF QUALIFICATIONS

Q. WOULD YOU PLEASE STATE YOUR NAME AND ADDRESS?

A. My name is Jamshed K. Madan and my business address is 456 Main Street, Ridgefield, Connecticut.

Q. BY WHOM ARE YOU EMPLOYED?

A. I am a principal in the management consulting firm of Georgetown Consulting Group, Inc.

Q. WOULD YOU DESCRIBE THE GENERAL NATURE OF YOUR FIRM'S SERVICES?

A. Our firm offers services in financial and management consulting with special emphasis on utility regulation. Members of our firm have performed or are performing analyses of petitioners' testimonies and have presented testimony before many commissions and boards in regulatory cases involving telephone companies, air carriers, pipeline companies, and electric, gas and water utility companies.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I graduated from the Massachusetts Institute of Technology in 1966 with a Bachelor of Science Degree in Electrical Engineering. I continued my graduate studies at M.I.T. and in 1968 I graduated with a Master of Science Degree in Management

1 from the Alfred P. Sloan School of Management. During my
2 graduate studies, I held the position of research assistant
3 and teaching assistant in areas related to financial
4 management.
5
6 Q. WHAT IS YOUR EMPLOYMENT EXPERIENCE?
7 A. From August of 1968 through April 1979 I was primarily
8 employed by Touche Ross & Co., an international public
9 accounting firm. I was promoted to principal in September
10 1977 and held the position of National Director of Regulatory
11 Consulting. I left Touche Ross & Co. to become a principal in
12 Georgetown Consulting Group in May of 1979.
13
14 Q. PLEASE PROVIDE A BRIEF SUMMARY OF YOUR EXPERIENCE IN UTILITY
15 REGULATION.
16 A. I have presented testimony on accounting and related matters
17 on behalf of Rate Counsel, the public or intervenors before
18 various public utility commissions in the following rate
19 proceedings:
20
21 Alabama

22 - Continental Telephone of the South - Alabama — Docket No. 17968

23 - South Central Bell — Case Nos. 10875 & 10876

24
25

Arkansas

- Southwestern Bell Telephone Company	Docket No. 83-045-U

Colorado

- Mountain States Telephone & Telegraph Company	Docket Nos. 1400 and 1575
- Public Service Company of Colorado	Docket Nos. 1425 and 1525

Connecticut

- Southern New England Telephone Company	Docket Nos. 770526 & 800418

Delaware

- Delmarva Power and Light Company	Docket No. 41-79
- Delmarva Power and Light Company	Complaint Docket No. 279-80
- Delmarva Power and Light Company	Docket Nos. 80-29
- Delmarva Power and Light Company	Docket No. 81-23, 81-13, 81-12

Georgia

- Southern Bell Telephone Company	Docket No. 3393-U

Maryland

- Baltimore Gas and Electric Company	Case No. 6985
- Potomac Electric Power Company	Case No. 7348
- Chesapeake and Potomac Telephone Company	Case Nos. 7467 and 7591
- Delmarva Power and Light Company	Case No. 7427

Massachusetts

- Boston Edison Company — DPU-906

Minnesota

- Northwestern Bell Company — Docket No. P-421/GR80-911

New Jersey

- Atlantic City Electric Company — Docket Nos. 701-641 & 772-113
- Elizabethtown Gas Company — Docket No. 727-624
- Elizabethtown Water Company — Docket No. 727-606
- Hackensack Water Company — Docket No. 744-315
- Jersey Central Power and Light — Docket Nos. 743-184 & 7610-1021
- New Jersey Bell Telephone Company — Docket No. 747-522, 7512-1251,7711-1136, 802-135 and 815-458
- Public Service Electric and Gas Company — Docket Nos. 744-335 & 794-310 and 812-76

New York

- Long Island Lighting Company — Case Nos. 27374 & 27375; Case No. 27774
- New York Telephone Company — Case Nos. 27100 & 27469

Ohio

- Columbus and Southern Ohio Electric Company — Docket No. 78-1439 EL-AEM
- Ohio Bell Telephone Company — Case No. 79-1184 TR-AIR
- Cleveland Electric Illuminating — Case No. 81-146 EL-AIR

Pennsylvania

- Bell Telephone Company of Pennsylvania	R.I.D. 367 and 811819
- Metropolitan Edison Company	R.I.D. 434, 626 & 308
- Pennsylvania Electric Company	R.I.D. 392, 599 & 308
- Philadelphia Electric Company	R.I.D. 295, et al.

Vermont

- New England Telephone and Telegraph Company	Docket No. 3806

Virgin Islands

- Abramson Bus Lines	
- Manassah Bus Lines	Docket No. 150
- Virgin Islands Telephone Company	Docket Nos. 104, 105, 108, 126, 121, and 180
- Virgin Islands Water & Power Authority	Docket No. 193

Q. PLEASE DESCRIBE YOUR OTHER EXPERIENCE.

A. Besides regulatory consulting, I have been the project leader on other projects, including:

- operations reviews
- financial feasibility studies
- economic studies
- marketing studies

- cash flow analyses
- cost reduction studies
- system planning studies

I have given talks before American Management Association meetings entitled, "Rate of Return Concept - A Management Tool."

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 Suffolk County and State of New York Memorandum in Opposition to LILCO's May 22, 1984 Motions for Summary Disposition on Phase I and Phase II of LILCO's Proposed "Low Power Testing" have been served on the following this 13th day of June 1984, by U.S. mail, first class, except as otherwise noted.

* 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

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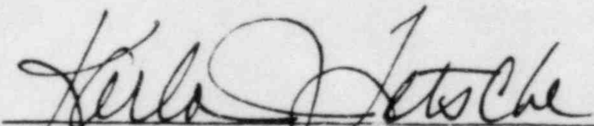

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DATE: June 13, 1984

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