Attachment to County State
September 14, 1984 Filing

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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 STATEMENT OF ADDITIONAL VIEWS AS TO WHY THE SEPTEMBER 5, 1984 ASLB ORDER MAY NOT SERVE AS A BASIS FOR ISSUANCE TO LILCO OF A PHASE I AND II LICENSE

In this Statement, Suffolk County and the State of New York set forth their additional views as to why the Licensing Board's September 5 Order may not serve as a basis for issuance to LILCO of a Phase I and II license and why such a license may not, in any event, be issued here.

I. Introduction

LILCO, by its Phase I and II license requests, is asking the Commission:

-- 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.)

It is important to place LILCO's Phase I and II Summary Disposition 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 has been in severe financial trouble because of its inordinate cost overruns at Shoreham; credit markets have been 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, which it has named a Phase I and II license. Nowhere in the Commission's regulations or in the Atomic Energy Act can one find any reference to such a license. Stripped of the trappings of legitimacy with which LILCO has attempted to adorn this type of "license," however, the "no power" license is nothing more than a gimmick with which LILCO is trying to achieve its avowed purpose of having a "signal" sent by Washington to Wall Street. There is no basis in law or fact for such a gimmick, and the Commission should say so.

In essence, LILCO's Phase I and II license request is an invitation for the Commission to commit legal error. The Licensing Board was instructed on May 16 to follow the rules. It has not done so but, instead, has accepted LILCO's invitation to commit error. The proper course for the Commission now is to vacate the Board's September 5 Order and to apply the Commission's May 16 Order and the NRC's Regulations to LILCO's proposal. Those regulations contemplate the Commission 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 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 the Commission reject LILCO's effort to secure a Phase I and II license.

II. The Commission Has No Authority to Issue the License Requested by LILCO in its Phase I and II Motions

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. Thus, if all goes according to plan during Phase I, no power would or could be generated by the reactor.

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 although during and following Phase I the reactor will be closer to being ready for future operation, the Phase I license which LILCO seeks is a "no power" license that is nowhere authorized or contemplated in the NRC's regulations or the Atomic Energy Act. Similarly, the so-called Phase II license is also not an operating license, since in Phase II LILCO proposes only to perform cold criticality testing, a step which again only brings the reactor closer to being ready for future operation. Accordingly, the Commission has no authority to issue the license that is requested by LILCO for Phases I and II and thus the Board's Order recommending a Phase I and II license must be summarily rejected.

In the County/State June 13 filing opposing low power operation, the lack of authority for issuance of a "no power" license was thoroughly discussed. However, the Licensing Board has never even aluded to the issue in any of its orders, much less confronted the County/State arguments. Since the Board has recommended approval of a Phase I/II license, it effectively has rejected the County/State position. However, under

settled NRC law, the Board was required to explain why it was rejecting our position. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33,40-42 (1977). The Board unquestionably violated this long standing rule, as well as the NRC's directive in CLI-84-8 to conduct the proceeding in accordance with the NRC's rules. This alone is sufficient basis to vacate the September 5 Order.

The Atomic Energy Act contemplates the issuance of only construction permits and operating licenses for nuclear reactors. There is no authorization in that Act for the issuance of a license to laod 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 the issuance of only construction permits and operating licenses with respect to nuclear power plants. See, e.g., 10 CFR §§ 50.23, 50.30, 50.57. The regulations do not even mention -- let alone authorize -- the issuance of a license to a holder of a construction permit for the purpose of using but not operating a commercial power reactor. To the contrary, the regulations clearly contemplate only two types of licensing: 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 . . . . ").

For example, 10 CFR § 50.55(d) provides:

> 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" stage 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 Phases I and II 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. 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. In the instant case, LILCO does not comply with security requirements and the Licensing Board, pursuant to the NRC's Orders of July 18 and August 20, is now proceeding to consider the security issues.

Finally, the Licensing Board's September 5 Order relies upon the Staff's action in letting Duke Power load fuel and conduct pre-criticality testing at Catawba. Order, p. 10. Our understanding is that at Catawba the intervenors agreed to such a license and there was no adjudication of the issue. Thus, again this was not a contested case where the no power license issue was squarely confronted.

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 is not authorized to issue a license that involves neither construction nor operation of a nuclear power plant. Accordingly, the Commission does not have the authority to issue the Phase I and II license requested by LILCO.

III. No License Can Be Issued Without the Prior Grant of an Exemption for LILCO's Non-Compliance with GDC 17 and Other Regulations

LILCO's license request is premised on LILCO's assertion that onsite AC power is not necessary for the activities involved in Phases I and II. 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 license.

Although LILCO argues that its Phase I and Phase II proposal satisfies the requirements of GDC 17, even assuming there is no operable onsite AC power source, LILCO has recognized that that argument flies in the face of the Commission's May 16 Order. Thus, LILCO stated in its Phase I summary disposition motion:

> 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. On July 24, the Licensing Board held unequivocally that an exemption was required, thus rejecting LILCO's argument and accepting the positions of the NRC Staff, the State of New York, and Suffolk County. On September 5, the Board reversed itself. This reversal was clear error.

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 GDC 17 and other applicable regulations before its low power operation proposal, or any portion thereof -- including LILCO's self-styled Phase I and II -- 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.

CLI-84-8 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 Phases I and II. Accordingly, the rulings contained in the Commission's 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." CLI-84-8 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; and

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 Phases I and II at considerable length in arguing that no exemption from GDC 17 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 interpreting 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 asks that the Commission rule now and grant its motions for summary disposition for Phases 1 and 2. (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 than 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.

CLI-84-8 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, the applicant should modify its application to address the determinations to be made under 10 C.F.R. 50.12(a).

Id. 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 Phases I and II.

Thus, the Commission's rulings that GDC 17 is applicable to LILCO's low power proposal and that LILCO must address in a modified 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 portions of LILCO's low power license application, it certainly would have said so. Indeed, LILCO had expressly requested the Commission to rule that it could obtain a license for Phase I and 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. 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. That is the unmistakable law of this case. In short, therefore, an exemption from GDC 17 and other applicable regulations must be obtained by LILCO before any license may be issued.

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; the Board's Acceptance of LILCO's Argument Contradicts the May 16 Order

In its motions, LILCO has argued that obtaining an exemption from GDC 17 is not a prerequisite to the issuance of LILCO's self-styled licenses for Phases I and II. Thus, LILCO has asserted 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 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)
>
> -- [For 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 accepting those arguments in its September 5 Order, the Board ruled contrary to the very decision of the

Commission that rejected those arguments. The Board, therefore, contradicted, if not repudiated, 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.

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 view that despite the plain words of GDC 17, an onsite electric source does not have to be provided in order to obtain a license.

C. LILCO Also Has Failed to Comply With Regulations Other Than GDC 17.

LILCO's Phase I and II Motions are premised upon the unavailavility 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 described 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 Phases I and 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 electric power configuration rather than that required by the regulations and identified in the Shoreham

FSAR, requires an examination of that configuration's compliance with "applicable regulations" in addition to 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. The Licensing Board ignored this fact, even though LILCO's failure to comply with other regulations was explicitly raised in the State/County June 13 filing. Again, therefore, the Board ignored the Seabrook rule of explaining the bases for its decision.

As set forth in the Affidavit of Gregory C. Minor and Dale G. Bridenbaugh, attached to the County/State June 13 filing, 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 new 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.

On the state of the record before the Board on September 5, LILCO's non-compliance with these other regulations was undisputed. Therefore, under the May 16 Order, LILCO clearly was required to obtain an exemption from compliance with all the above regulations before any kind of license for Phase I or

Phase II activities arguably could be issued. LILCO's summary disposition motions and the Board's September 5 Order completely ignore this fact, by discussing only GDC 17. This Commission, therefore, must reverse the grant of LILCO's motions for failure to resolve the issues raised by LILCO's non-compliance with these NRC's regulations.

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NUCLEAR REGULATORY COMMISSION

Before The Commission

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 VIEWS AS TO WHY THE ASLB'S SEPTEMBER 5 ORDER MAY NOT SERVE AS A BASIS FOR A "PHASE I AND II" LICENSE, dated September 14, 1984, have been served on the following this 14th day of September, 1984 by U.S. mail, first class, except as otherwise indicated.

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