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UNITED STATES OF AMERICA '84 DEC 14 P3:49
NUCLEAR REGULATORY COMMISSION

Before the Commission

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

NEW YORK STATE AND SUFFOLK COUNTY MOTION FOR LEAVE
TO REPLY TO LILCO'S REQUEST FOR THE COMMISSION TO
IGNORE STATE ENERGY OFFICIAL'S SWORN STATEMENT THAT
SHOREHAM'S CAPACITY WILL NOT BE NEEDED FOR MORE THAN TEN YEARS

On November 29, New York State and Suffolk County requested the Commission, inter alia, to permit oral arguments as to whether LILCO should be issued a Phase III and IV license for Shoreham. Holding such arguments would require the Commission: (1) to remain impartial for the time being as to whether LILCO should be issued such a license; and (2) to delay a decision on the license for a few days or weeks. Surely, this request is reasonable.

In support of this request, the State and County filed the affidavit of the Director of the Energy Planning Bureau of the New York State Energy Office. This affidavit states conclusively that Shoreham's capacity will not be needed for 13 years. Therefore, it follows that a delay of days or weeks to accommodate oral arguments -- when there is at least a 10 year leeway --

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would not in any way harm the public interest. Indeed, holding such arguments would clearly serve the public interest by affording the Commission the opportunity to hear from the very governments whose views the Commission has previously claimed deserve "great weight." See Commission's Brief before U.S. Court of Appeals in the Diablo Canyon case, p. 34.

LILCO, however, has asked the Commission to ignore the affidavit of New York State's Director of Energy Planning. See LILCO's Objections to Suffolk County and State of New York Supplementary Affidavit, December 12, 1984. There is no legitimate basis for LILCO's request. Further, LILCO's pleading contains several serious misstatements. Accordingly, for reasons set forth below, Suffolk County and the State of New York seek leave to reply to LILCO's pleading.

First, LILCO's statement that "there is a very real need for Shoreham in the short term" (Pleading, p. 3) directly contradicts what LILCO told Governor Cuomo's Shoreham Commission. Indeed, LILCO's own voluminous filings with the Governor's Commission purported to demonstrate -- with extensive analyses and testimony -- that replacement capacity for Shoreham will not be needed for 10 years. See Report of the New York State Fact Finding Panel on the Shoreham Nuclear Power Facility, p. 33. Thus, relying on LILCO's own evidence and other relevant data, the Shoreham Commission concluded in its final report:

The projections for Long Island's future electrical energy needs on which the Shoreham construction schedule was originally based were obviously over-estimates. The Panel is persuaded that

ample LILCO generating capacity currently exists to satisfy probable demand for at least the next decade, and probably longer. Such estimates are of course subject to the same uncertainties that cause the original projections to be so wrong. But at this time, it is difficult to see how the demand for electricity could be so great as to require a Shoreham-sized plant within a decade or more.

Id. at 37 (emphasis added).

Second, LILCO asserts that the "need for power issue" is not an appropriate factor for the Commission to consider at this time. (Pleading, p. 2). In so asserting, however, LILCO is again asking the Commission to ignore the rule of law. Indeed, we remind the Commission that the issue here is whether to grant an exemption from NRC regulations. This is thus a proceeding governed by the particular rules applicable to an exemption decision. The NRC's own precedents establish beyond any doubt that the need for power is relevant to decisions on exemption requests. See United States Department of Energy (Clinch River Breeder Reactor Plant), CLI-83-1, 17 NRC 1, 4 (1983); Washington Public Power Supply System (WPPSS Nuclear Projects Nos. 3 and 5), CLI-77-11, 5 NRC 719 (1977).

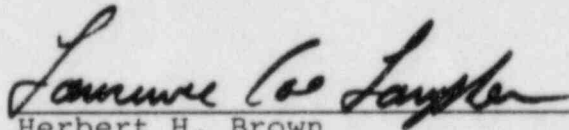
Finally, LILCO criticizes the County and State for allegedly failing to proffer the need for power evidence "before the Licensing Board during the nine days of evidentiary hearings." (Pleading, p. 2). It is shocking that LILCO has made this statement. As LILCO itself well knows, the State of New York did proffer testimony to the Miller Board which established that there is no need for Shoreham's power for at least 10 years.

However, at LILCO's urging, the Miller Board refused to admit this New York testimony. See Tr. 2902-03.

Given the extraordinary nature and misdirection of LILCO's pleading of December 12 and the LILCO affidavit attached therewith, the State and County request leave to file a reply. The grant of such leave would contribute to a factually accurate record on the subject matter. Indeed, the Commission should not deny itself the common knowledge of everyone else that Shoreham's capacity is not now needed, and that there is no acceptable reason for the Commission to rush to judgment or otherwise prejudice the interests of the State and County in this proceeding. The record is clear that LILCO is now simply asking the Commission for a favor at public expense. This is no basis for NRC action. Indeed, it is the public alone that must benefit from NRC action.

Respectfully submitted,

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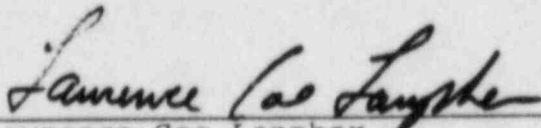
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