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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Commission

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OFFICE OF SECRETARY  
DOCKETING & SERVICES  
BRANCH

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

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

SUFFOLK COUNTY AND STATE OF NEW YORK MOTION  
TO STRIKE LILCO'S UNAUTHORIZED PLEADING

On February 14, 1985, LILCO filed a motion purportedly asking for "clarification" of the Commission's February 12, 1985 low power exemption order, CLI-85-01. The Commission should summarily strike and reject this motion for the following reasons:

1. The point on which LILCO seeks clarification is in no way ambiguous. Indeed, the Commission's Deputy General Counsel, Mr. Malsch, specifically brought this point to the Commission's attention at the February 12 affirmation session, and the Commission decided to let the Appeal Board do its job without being encumbered by the content of the Commission's immediate effectiveness decision.

I wanted to indicate one additional thing to call to your attention. We provided specifically here on page 6 that this is without, everything the Commission says

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here, is without prejudice of pending appeals before the Appeal Board.

This matter was argued orally before the Appeal Board yesterday and the Commission does have a choice as to whether certain of its views expressed in its order should or should not be binding on the Appeal Board during appeal. Now, we have taken the view here, and the order specifically provides, that none of this is binding on the Appeal Board. But that's an issue the Commission should be aware of. And we discuss it in the paper before you. Feb. 12 Tr. at 11.1-12.

The Commission then adopted the language identified by Mr. Malsch.

2. Since November 1984, LILCO has been characterizing the Commission's review as a mere immediate effectiveness review in order to squeak through the NRC's licensing process. Indeed, it so argued to the Appeal Board as recently as February 12, 1984, during a conference call with the Board and parties. Apparently, LILCO now finds that it could better pamper its own interests if the Commission's Order were not a mere immediate effectiveness review, but something of more substantive import. LILCO's pleading has thus put LILCO into the position of speaking inconsistently and contrary to the clear language of the Commission's Order.

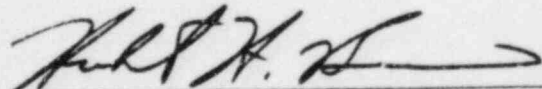
3. The objective of LILCO's pleading is obviously to persuade the Commission to send a message to the Appeal Board. LILCO could have, but did not, write directly to the Appeal Board; presumably because LILCO knew that the Board

could not accept LILCO's argument, which would have required the Board to repudiate the Commission's Order. Nevertheless, LILCO sent a copy of its pleading to the Appeal Board with the obvious intent of having the Board read the content. This was not proper.

For the foregoing reasons, the Commission should promptly strike and reject LILCO's unauthorized Motion for Clarification. If the Commission intends to address the merits of LILCO's Motion, we ask the opportunity to submit our views on those merits.

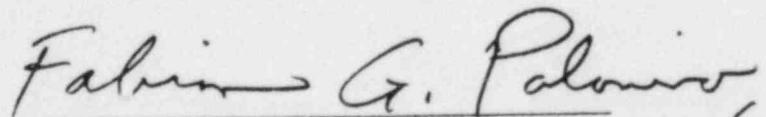
Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of Suffolk County and State  
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have been served on the following this 19th day of February,  
1985 by U.S. mail, first class, except as otherwise noted.

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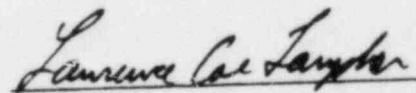
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Date: February 19, 1985

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