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September 14, 1988

James P. Gleason, Esq., Chairman  
Dr. Jerry R. Kline  
Mr. Frederick J. Shon  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

BY TELECOPIER

Re Exercise; Intervenors' and Staff's Motions

Dear Mr. Gleason and Members of the Board:

LILCO has received Intervenors' September 13 motion to the Appeal Board<sup>1</sup> (with covering letter to this Board), contesting this Board's jurisdiction over the Staff's September 9 scheduling motion<sup>2</sup> and the 1988 Shoreham exercise generally, and requesting the appointment of a new licensing Board.

As LILCO will state imminently to the Appeal Board, Intervenors are simply incorrect. This Board has jurisdiction over all emergency planning issues but for those specifically delegated elsewhere, and the only issues to have been so delegated were those relating to the 1986 exercise. Those were lodged in a new docket, OL-5. However, the OL-5 Board disbanded in March 1988, after finding its mandate to have been limited to the 1986 exer-

<sup>1</sup> Suffolk County, et al. Motion for Appointment of Licensing Board with Jurisdiction to Hear Exercise Issues (before the Atomic Safety and Licensing Appeal Board, Docket 50-322-OL-5), September 13, 1988.

<sup>2</sup> NRC Staff Motion for Schedule for Litigation of the June 1988 Exercise, September 9, 1988 (Before the Atomic Safety and Licensing Board, Docket 50-322-OL-3).

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cise itself.<sup>3</sup> The only remaining OL-5 issues are certain appeals from the 1986 exercise still pending before the Appeal Board.

Thus this Board retains plenary jurisdiction to consider emergency planning issues, including the Staff's September 9 motion concerning scheduling of litigation of the 1988 exercise. While Intervenor aver (September 9 Motion at 6 footnote 6) that they intend to delay responding to the Staff's scheduling motion to this Board until a new Licensing Board "with appropriate jurisdiction" has been appointed, they cannot unilaterally alter deadlines set in the Rules of Practice any more than any other party, and they will disregard the September 19 deadline obtaining under the Rules at their own peril. LILCO intends to respond to the Staff's motion ahead of the deadline set in the Rules, so that Intervenor will be on notice of LILCO's views and can respond to them in timely fashion.

Respectfully submitted,



Donald P. Irwin  
One of Counsel for  
Long Island Lighting Company

cc: Appeal Board Members  
Counsel for All Parties

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<sup>3</sup> In so doing, the OL-5 Board specifically rejected arguments that it construe its mandate to extend to corrective actions following the 1986 exercise. Memorandum and Order (Concerning Retention of Jurisdiction) (Docket 50-322-OL-5, LBP-88-7, 27 NRC 289 (March 9, 1988)). This reconfirms the plenary emergency planning jurisdiction of this Board, subject only to a proper motion to carve out a class of emergency planning issues - such as those relating to the 1988 exercise -- and assign them to a new Board and docket. Needless to say, the motion presently before the Appeal Board is not such a motion.