UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of	)	
	)	
LONG ISLAND LIGHTING COMPANY	)	Docket No. 50-322-OL-3
	)	(Emergency Planning
(Shoreham Nuclear Power Station, Unit 1)	)	Proceeding)
	)	

LILCO'S PETITION FOR REVIEW OF ALAB-832

Long Island Lighting Company hereby petitions the Commission, pursuant to 10 CFR § 2.786, to review the Appeal Board's March 26, 1986 decision, ALAB-832, concerning emergency planning factual issues for the Shoreham Nuclear Power Station. An earlier decision of the Appeal Board, ALAB-818, had ruled on legal authority aspects of emergency planning at Shoreham; the Commission granted LILCO's petition to review that decision on December 19, 1985.[1/]

ALAB-832 reviews factual issues raised on appeal by Intervenors from the two Licensing Board decisions which, taken together, compose its Initial Decision on Shoreham emergency planning matters. LBP-85-12, 21 NRC 644 (1985); LBP-85-31, 22 NRC 410 (1985).[2/] Its preponderant result is to confirm the Licensing Board's factual

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1/ In granting review, the Commission indicated that it desired to postpone briefing until the other aspects of emergency planning at Shoreham -- then pending before the Appeal Board and now the subject of this Petition for Review -- were ripe before it.

2/ LBP-85-12 covers the entire range of factual issues litigated in the 77 days of initial emergency planning hearings for Shoreham in 1983-84. LBP-85-31 covers the discrete set of issues determined to have been necessary to be decided in a supplemental proceeding, ultimately spanning eight months in 1985, concerning use of the Nassau Coliseum as a reception center.

findings, the most fundamental of which is that there is nothing unique about Long Island which would make it unsuitable for emergency planning. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-85-31, 22 NRC 410, 427 (1985). However, the Appeal Board remanded four isolated issues to the Licensing Board[3/] and failed, for the second time, to treat certain factual issues placed before it by LILCO for decision.[4/] In doing so, the Appeal Board committed the following errors on important questions of fact, law and policy which require correction by the Commission:

1. The Appeal Board committed an important error of law in relying solely on the provisions of 10 CFR § 50.47(b) in its determinations of each of the issues before it,

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3/ The remanded issues raise the following questions:

1. EPZ: Must there be still more litigation over whether the 10-mile plume exposure EPZ should be expanded because of certain "local conditions"? (ALAB-832, slip op. 13-22)

2. "Role conflict" of school bus drivers: Must evidence about a 1982 survey of volunteer firemen be added to the existing record on the issue of whether school bus drivers would abandon their duties in order to rejoin their families? (Id. at 23-33).

3. Hospitals: Must the three hospitals in the EPZ be treated exactly like nursing homes, notwithstanding categorical differences, and be required to have written agreements from other hospitals to receive evacuating patients? (Id. at 33-40).

4. Adequacy of the reception center: Must there be additional litigation over a host of issues, most of them previously litigated, about the adequacy of the Nassau Coliseum reception center for evacuees? (Id. at 40-51).

4/ In its appeal from the Licensing Board's first decision, LBP-85-12, LILCO raised two factual issues which were closely allied to the legal-authority issues forming the core of its appeal: the effect of the absence of a Shoreham-specific New York State emergency plan (Contention 92), and the effect of asserted conflicts of interest among certain management-level LILCO employees in their emergency response functions (Contention 11). In ALAB-818, the Appeal Board deferred ruling on them until the general run of factual issues, which had been separated out for later briefing, would be before it. 22 NRC 651, 677-78. Those issues were still before the Appeal Board when it rendered ALAB-832, along with an additional issue prompted by the second Licensing Board decision, LBP-85-31 (whether the capability to monitor the entire population of an EPZ -- not just that fraction expected to evacuate to a reception or relocation center -- must be provided at such a center). However, the Appeal Board failed to resolve any of these issues in ALAB-832, apparently on the theory that its adverse decision on legal authority issues, ALAB-818, mooted the need for any further action by it on emergency planning matters raised by LILCO, unless and until it was directed otherwise by the Commission. ALAB-832 at 5-8.

thus ignoring the applicability of 10 CFR § 50.47(c)(1) to its decision, notwithstanding the fact that § 50.47(c)(1) was promulgated by the Commission with utility emergency plans in mind and has been an intrinsic part of the basis of judgment in this proceeding from its inception.

2. The Appeal Board committed important errors of fact and law in that, while the bases for the remands ordered by ALAB-832 are couched in procedural terms, they are premised on implicit factual determinations that are contrary to determinations of the Licensing Board and to determinations of Boards in other proceedings, ignore substantial evidence already in the record bearing on the remanded issues, and are clearly erroneous.

3. The Appeal Board committed important errors of law and abused its discretion by ordering the remand for further trial-level litigation, at the end of a long and complex proceeding, of four issues which have no major safety significance, without itself investigating the record and seeking the assistance of the parties as to whether the issues could be resolved by less cumbersome means.

4. The Appeal Board committed important errors of law and policy in failing to decide, in some instances for the second time, issues which were properly placed before it by LILCO and whose resolution is essential to a final disposition of this proceeding.

5. The Appeal Board committed important errors of law and policy by disposing of closely intertwined issues at the end of a long and complex case in a fashion which, rather than focusing and channeling them for review by this Commission, fragments them and scatters them to all three levels of the Commission's adjudicatory system, thus virtually guaranteeing at least one to two more years of trial-level litigation, threatening disjointed and incoherent decisionmaking, and risking ultimate failure of the agency's basic obligation to render licensing decisions within a manageable time frame.

I. The Appeal Board Erroneously Ignored 10 CFR § 50.47(c)(1)

A fundamental error made by the Appeal Board in ALAB-832 was applying the wrong legal framework, one limited to the conventional provisions applicable to review of emergency plans submitted by states and localities (10 CFR § 50.47(b) and 40 CFR Part 350), and thereby failing to address 10 CFR § 50.47(c)(1). Ever since the Brenner Board and the Commission denied Suffolk County's motion to terminate this proceeding in 1983, its emergency planning aspects have gone forward under 10 CFR § 50.47(c)(1). Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-22, 17 NRC 608 (1983), aff'd, 17 NRC 741 (1983). Indeed, the entire LILCO Plan is an "interim compensating action" under § 50.47(c)(1). Although the Plan has been measured against NUREG-0654 criteria, FEMA both reviewed the LILCO Plan and conducted the February 13, 1986 exercise of the LILCO Plan pursuant to NRC's request under the FEMA-NRC Memorandum of Understanding, not under 44 CFR Part 350. Letter dated June 1, 1983 from Edward L. Jordan, NRC, to Richard W. Krimm, FEMA; Memorandum dated June 20, 1985 from Edward L. Jordan, NRC, to Richard W. Krimm, FEMA; Letter dated October 29, 1985 from Samuel W. Speck, FEMA, to William J. Dircks, NRC; Letter dated November 12, 1985 from William J. Dircks, NRC, to Samuel W. Speck, FEMA. The adequacy of LILCO's Plan must therefore be judged by the process of the NRC-FEMA Memorandum of Understanding, not that of 40 CFR Part 350, and by the standards of § 50.47(c)(1) as well as those of § 50.47(b).

Section 50.47(c)(1) was intended to apply in precisely the situation in which LILCO finds itself. Although the Commission, when it promulgated its emergency planning regulations in 1980, doubted that states and localities would refuse to cooperate in emergency planning, it recognized that they might, and it provided a solution. See Transcript of Commission Meeting, July 23, 1980, at 85-89; Consolidated Edison Co. of

New York (Indian Point Units 2 & 3), CLI-83-11, 17 NRC 731, 733 (1983) (recognizing that "to some extent" the emergency planning problems were beyond licensees' control, and offering § 50.47(c)(1) as a possible solution). The solution was in fact § 50.47(c)(1), which provides that an operating license may be granted, notwithstanding failure to meet some of the regulatory standards of 50.47(b), if the "deficiencies in the plans are not significant for the plan in question," if "adequate interim compensating actions have been or will be taken promptly," or if "there are other compelling reasons to permit plant operation." One or more of the three criteria apply to each of the deficiencies found in the LILCO Plan for Shoreham, yet the Appeal Board gave no recognition to (c)(1) at all in ALAB-832. Rather, its entire discussion of the emergency planning regulatory framework, ALAB-832, slip op. at 9-11, is simply a boilerplate recitation of the conventional, nondispositive provisions of 10 CFR § 50.47(b), 40 CFR Part 350, and NUREG-0654.

Moreover, in the Indian Point case the Commission recognized that 50.47(c)(1) might justify a lower-than-optimal level of assurance for a time. Consolidated Edison Co. of New York (Indian Point, Units 2 & 3), CLI-83-16, 17 NRC 1006, 1010-11 (1983). But the Appeal Board's decision in ALAB-832 tends, if anything, in the opposite direction, as though the noncooperation of state and local governments imposes higher-than-usual standards on the utility: its only recognition of the difference between the utility plan here and the conventional government-sponsored plan is the holding that lack of state and local government participation is a "local condition" that may require expanding the emergency planning zone beyond the usual distance. ALAB-832, slip op. 20 n.37. This view is fundamentally wrong, because it ignores § 50.47(c)(1). Application of the correct standard would result in a finding that the LILCO Plan is adequate to support the issuance of a full-power license.

II. The Appeal Board Abused the Record in This Proceeding

ALAB-832 heaps Pelion upon Ossa. In a proceeding that is unprecedented in length, complexity, and detail, the Appeal Board has required what will amount to extraordinarily burdensome additional litigation to address questions that are simply not important to the protection of the public health and safety. As the discussion below demonstrates, this reflexive resort to remand involves substantive premises that are contrary to facts found by the trier of fact and are clearly erroneous, ignores relevant material in the record, and inflicts an unjustifiably cumbersome remedy on parties already burdened by nearly four years of continuous litigation.

A. EPZ Boundaries

The Appeal Board would remand the case for litigation over whether "minor adjustments (such as a mile or two)" should be made in the plume EPZ radius. ALAB-832, slip op. 22 n.41, id. at 20 n.37. The Intervenors' theory, on which the Appeal Board has ordered further litigation, is essentially that people beyond ten miles (particularly on the East End of Long Island) may evacuate and encounter various difficulties in doing so.[5/]

This remand is a clear case of regulatory excess. The EPZ has already been adjusted to beyond ten miles. A look at the map (Fig. 3.5.1 of the Plan, for example) shows that on land the EPZ boundary is outside the ten-mile radius for almost its entire

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5/ Contentions 22.B and 22.C are alike, in that they both allege there are people outside the ten-mile distance who will evacuate and need to be protected in a radiological emergency. They differ in two respects. First, 22.B deals primarily with the East End of Long Island while 22.C addresses both east and west. Second, 22.B assumes that people outside the ten-mile distance will need to evacuate because of one of those rare, very severe accidents that would require an ad hoc expansion of efforts beyond the EPZ; 22.C assumes that people outside ten miles need protection because they will evacuate voluntarily without really needing to.

length, some places as much as a mile and a half. And the Licensing Board expanded it still further to include several schools.[6/] The EPZ was originally defined by the Suffolk County Planning Department, expanded by the State of New York, adopted by LILCO, reviewed by FEMA, and expanded again (to include the schools) by the Licensing Board. See Cordaro, et al., ff. Tr. 8536, at 9-10; LBP-85-12, 21 NRC at 701-07. The FEMA witnesses agreed with LILCO that the boundary conforms to the regulations and guidelines. Baldwin, et al., ff. Tr. 12,174, at 11; Tr. 12,943, 12,948-49 (Baldwin, McIntire).

Moreover, the remand on the EPZ issue for consideration of "minor adjustments" is simply unresponsive to the contentions, which have nothing to do with minor adjustments but rather advocate a wholesale revision of the EPZ. Ever since Intervenor Suffolk County decided emergency planning was "impossible" based on its own choice of a 20-mile emergency planning zone, it has argued vigorously that the Shoreham EPZ should be larger than the ten miles prescribed by NRC regulations. The County's 20-mile zone was based on a probabilistic risk assessment rejected for litigation, so as the litigation progressed the County developed a new theory for expanding the EPZ.

But this theory, that there are people beyond ten miles who might evacuate, has nothing to do with the sort of "minor adjustments" contemplated by the regulation or the Appeal Board's remand. For example, two of the "local conditions" cited in Contention 22.B are Shelter Island and East Hampton, each of them over 25 miles from the

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6/ All sorts of "minor adjustments" were considered by the Licensing Board under Contention 22.D. For example, the evidence addressed such things as using "wide separaters," avoiding the use of narrow streets, avoiding the dividing of "functional systems," locating the boundary in low-density areas, providing easy boundary recognition, and minimizing unwarranted entry into the EPZ. See Herr, ff. Tr. 8666, at 5-11; Cordaro et al., ff. Tr. 8536, at 11-24. The Licensing Board looked in detail at these features in three areas, Riverhead (on the east) and Port Jefferson and Terryville (on the west). Moreover, LILCO's planning has gone still further outside the zone in several respects: for example, LILCO has included surrounding school districts in its planning process, if they have no schools inside the EPZ but do have students who live there. See, e.g., Tr. 9390 (Robinson).

Shoreham plant. See Plan, App. A, Fig. 1. A contention that 15 miles beyond the EPZ boundary there exists a "local condition" that might justify a minor adjustment of 1-2 miles lacks basis and should not be admitted; and after-the-fact construction of contentions oriented toward a 20-mile EPZ so as to fit them to a "minor adjustment" rubric is simply unjustifiable. Moreover, the theory that the EPZ should be expanded because of the rare emergency in which an ad hoc expansion might be necessary is directly contrary to the Commission's judgment that underlies the ten-mile generic distance prescribed by the regulation.[7/]

Finally, in determining that the noncooperation of state and local governments is a "local condition" that requires litigation of the utility's ability to carry out its plan, ALAB-832, slip op. 20 n.37, the Appeal Board continued the process of piling obstacle upon obstacle in the way of utility-only emergency plans so as to frustrate the intent of Congress in the 1980 NRC Authorization Act and successor legislation as well as that of § 50.47(c)(1).

B. "Role Conflict" of School Bus Drivers

The Appeal Board clearly erred in ordering the Licensing Board to admit evidence about a 1982 telephone survey of volunteer firemen. The firemen were asked whether they would report immediately for duty if there were a Shoreham accident and

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7/ The Commission has decided that planning for a ten-mile zone provides a sufficient planning base and "sufficient flexibility" to allow ad hoc protection beyond that distance if necessary. NUREG-0654 at 12; 45 Fed. Reg. 55,406 col. 2 (Aug. 19, 1980). As the Commission said in the San Onofre case, "[t]he concept of the [emergency planning] regulation is that there should be core planning with sufficient planning flexibility to develop a reasonable ad hoc response to those very serious low probability accidents which could affect the general public." Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-83-10, 17 NRC 528, 533 (1983), vacated and remanded on other grounds, GUARD v. NRC, 753 F.2d 1144 (D.C. Cir. 1985).

they were expected to help with an evacuation. The Appeal Board thought that the survey would "provide insight into the likely course of conduct of school bus drivers." ALAB-832, slip op. 31.

Again, the Appeal Board would require litigation on a minor piece of evidence that can have no effect on the outcome of the proceeding and no real bearing on any alleged defect in the LILCO Plan. The 1982 survey was of volunteer firemen, who are not relied on in the LILCO Plan at all. School bus drivers, who do have a role, were addressed at length in testimony and, more important, testimony was admitted on at least two opinion polls taken of these very people. See Tr. 3128 (Rossi); Cole, ff. Tr. 1216, at 2-10. Moreover, the FEMA witness, on whom the Appeal Board relied for a determination that exclusion of school teachers' testimony was not reversible error, testified that role conflict of teachers, if any, would be "similar to that of bus drivers." McIntire, ff. Tr. 2086, at 5.

More important still, the opinion poll could not have affected the Licensing Board's ultimate decision. LILCO's testimony showed that opinion surveys should not be used as an emergency planning tool because they are not a reliable guide to what people will do in a real emergency. Indeed, the use of such polls can actually be harmful, because they may cause plans to be based on incorrect assumptions about behavior. See, e.g., Cordaro, et al., ff. Tr. 831, at 87. The Licensing Board, considering the record, concluded that opinion polls would not be useful because behavior would depend on a complex of factors at the time of the accident. LBP-85-12, 21 NRC at 667, 676. The Appeal Board did not reverse this important finding. Other boards have also recognized the futility of relying predictively on opinion polls.[8/] Thus the 1982 poll is simply not

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8/ Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), LBP-82-70, 16 NRC 756, 768, 778-79, 805 (1982), made effective, CLI-84-13, 20 NRC

(footnote continued)

material, and further protracted litigation over it would be an unproductive exercise.

C. Agreements for Hospitals

The Appeal Board would also remand the case to require (1) that there be agreements with outside institutions to accept patients evacuated from the EPZ and (2) that the emergency plan set forth the number of vehicles required and the arrangements made for securing them in a timely fashion, should the need arise.

Both of these holdings are erroneous, particularly the one about agreements from receiving hospitals.[9/] The record shows without contradiction that the administrators of hospitals outside the EPZ have engaged in detailed planning discussions with LILCO, Cordaro et al., Tr. 5/10/84 Vol. II, at 7-9, and have concluded that they cannot commit in advance to receiving evacuees. Id. at 14-15; see id. at 16. They have, however, said that they will do the best they can in an emergency, id. at 15-17; Tr. 9065-66 (Yedvab), and New York State law requires them to have emergency plans, including plans for

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(footnote continued)

267 (1984), aff'd as to Unit 1, ALAB-781, 20 NRC 819 (1984) ("We are not convinced that a scientific sociological survey of emergency workers to assess role conflict would be of value for emergency planning"). The unreliability of interviews with school superintendents and others was discussed in Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), LBP-81-59, 14 NRC 1211, 1632-35 (1981), review of emergency planning completed, CLI-83-22, 18 NRC 299 (1983). See also Consolidated Edison Co. of New York (Indian Point, Units 2 & 3), LBP-83-68, 18 NRC 811, 958 (1983) (testimony of Dr. Sidney Lecker), reviewed, CLI-85-6, 21 NRC 1043 (1985).

9/ The Appeal Board's conclusion that the emergency plan should set forth the arrangements for vehicles seems to be a misunderstanding of the LILCO Plan. The same ambulances and ambulettes used for nursing homes are also used for hospitals. The vehicles are used to evacuate the nursing homes first, then the hospitals; hospitals can be evacuated later because all three are on the very edge of the EPZ (two of them more than ten miles from the plant and one right at ten miles) and all are institutional buildings that provide good shelter from radiation. Moreover it is unlikely that hospitals would be evacuated at all, both because of these two factors and because it is not advisable as a general matter to move hospital patients.

receiving patients from other hospitals. Cordaro et al., Tr. 5/10/84 Vol. II, at 16-17; Tr. 9074 (Glaser); see N.Y.S. Hosp. Code Chap. 5 (10 NYCRR § 702.7). Finally, the record shows without contradiction that sheltering rather than evacuation is to be used at the hospitals except under the most extreme circumstances. See Tr. 8778, 8780 (Daverio), 9067-68 (Weismantle). In light of this evidence, which is nowhere contradicted, the Appeal Board was incorrect in reversing the Licensing Board.

D. Adequacy of the Nassau Coliseum

The Appeal Board held that the Licensing Board should have broadened the record on the adequacy of the Nassau Coliseum as a reception center to consider a whole host of issues that the Intervenors wish to litigate:

1. Whether the Coliseum complies with state law requirements for water discharge permits and environmental impact statements.

2. Whether more people than planned would seek a relocation center because of the "shadow phenomenon."

3. Whether contaminated people would suffer too much radiation exposure because of the distance of the Coliseum.

4. Whether traffic congestion and the absence of traffic guides, fuel trucks, and tow trucks outside the EPZ would delay people.

5. Whether the Coliseum's parking capacity is inadequate.

6. Whether wash water from decontamination of people would contaminate the groundwater.

The Appeal Board admitted these issues with only a cursory discussion of the relevance of the issues. The Appeal Board was wrong for a variety of different reasons, depending on which issue is addressed. Overall, there are two generic errors in the Appeal Board's reasoning. First, these issues once again would require protracted[10/]

10/ It took the Licensing Board about eight months to reopen the record, hold a hearing, and reach a conclusion even on the narrower set of Coliseum issues it heard.

litigation over events outside the EPZ that have little or no effect on the radiological health and safety of the public. For example, the Intervenors wish to litigate the impact of releasing washwater from the decontamination process.[11/] But both the Director of the New York State Radiological Emergency Preparedness Group and the U.S. EPA have concluded that dilution would eliminate any radioactivity problems with decontamination washwater. Tr. 15,906 (Robinson), 16,010-11 (Keller); LILCO's Response to Intervenors' Proffered Testimony on the Designation of Nassau Coliseum as a Reception Center, Feb. 26, 1985, Att. 3 & 4.[12/] Second, all of the issues were untimely raised; the Appeal Board did not address this point.

On each of these issues, the Appeal Board's remand essentially involves an implicit, unacknowledged reversal of findings reached by the trier of fact; on each it is clearly erroneous. Equally important, none of these issues is pivotal to the outcome of this proceeding, but the history of this case demonstrates pellucidly that remand would occasion protracted litigation. Thus even if there were gaps in the record on these issues, the Appeal Board's reflexive resort to remand, given their significance and the costs of further litigation, was clearly incorrect.

11/ This refers to decontaminating people, not vehicles. Vehicles are wiped down with disposable wipes and a common cleaner, creating solid, not liquid, waste.

12/ Also, the Appeal Board remand would require relitigation of the "shadow phenomenon" in the context of the Nassau Coliseum, as well as relitigation of the same alleged phenomenon in the context of making "minor adjustments" to the EPZ. The shadow phenomenon has already been litigated extensively, and the record shows that the key to emergency planning is to provide for good information, so that people on the whole will follow official instructions. Changing the contention under which the "shadow phenomenon" is argued is not going to change this basic proposition, which has been litigated in exhaustive detail, not only in this proceeding but in others.

III. The Appeal Board, by Failing to Decide Issues Properly Before It and by Fragmenting Jurisdiction Over Issues Decided By It, Has Disordered the Proceeding

The three-plus years of offsite emergency planning litigation in this case before this Agency have produced a vast edifice built on tens of thousands of pages of documents produced for discovery, some 97 discovery depositions, 7500 pages of prefiled testimony, 201 exhibits, 16,000 pages of hearing transcript in 82 days of proceedings, 1600 pages of post-hearing submissions, 400 pages of appellate submissions, approximately 650 pages of reported decisions and literally hundreds of pleadings. The Appeal Board has finally had its opportunity to review the entire emergency planning proceeding and focus the results to date for ultimate review by the Commission.

But that is not what has happened. Rather than deciding the issues before it and channeling them for ultimate Commission disposition of a license application, the Appeal Board has wrongly withheld judgment on issues presented to it and has incorrectly and unnecessarily remanded others for further litigation. As a result, unless the Commission intervenes actively, it will not be able to conduct the consolidated review contemplated by its December 19, 1985 Order. Even piecemeal, unless the Commission intervenes, it will not be able to review all issues presented to the Appeal Board until at least four sets of issues have been retried before the Licensing Board. While there is no way of predicting the exact duration or cost of such a remand, grim experience suggests that it would be severe.[13/]

13/ It is also important to remember that the results of the February 13 exercise are potentially available for litigation upon FEMA's issuance of its exercise report, which is expected soon. The Intervenors have given every indication that they will attempt to litigate every matter as tendentiously as they are allowed. If the Commission wishes the same Licensing Board to take jurisdiction over the exercise litigation as well as over any remand, so as to lessen the likelihood of inconsistency and conflict, the trials of remanded and exercise-related issues will have to be sequential, and the aggregate duration lengthened substantially. It is essential that the Commission act to bring discipline and structure to the process.

In short, out of literally hundreds of emergency planning issues that have been litigated in this proceeding, a few remain. Rather than focusing them for ultimate Commission resolution at the end of a complex and exhausting case, the Appeal Board has dispersed them. Rather than deciding them, it has sat on them, notwithstanding the Commission's December 19 instructions. Rather than assisting the resolution of the final sets of issues in this marathon proceeding, it has simply created a perpetual litigation machine in which any who have the resources and the will can try, appeal, remand and reopen indefinitely.

If the questions at hand presented substantial safety issues, there would be little basis for complaint: there are few legal obligations clearer than that of this Commission to protect the public health and safety. However, the issues here are simply not substantial, except in their propensity for mischief.

In the meantime, during the entirety of any remand, Shorenam, which has been physically complete for over a year and which completed required low power testing nearly six months ago, will have to sit in enforced idleness, producing nothing but carrying costs of over a million dollars per day.

This prospect is sufficiently wasteful that unless the Commission acts to interdict it, any basis for confidence in the integrity and efficacy of the Commission's licensing process will be subject to serious question.

ALAB-832 thus presents not only significant issues in terms of the substance of the Shoreham record; it presents fundamental issues of the Commission's control over its own process, of its ability to bring on for decision within a human time scale those things that need to be decided in order for it to make licensing decisions. The Commission should grant review of ALAB-832 not just to redress errors made in the Appeal Board's disposition of factual emergency planning issues at Shoreham, but also to police its own process.

CONCLUSION

The Commission should take review of ALAB-832 and should reverse the Appeal Board as to the issues remanded by it. With respect to the three issues which the Appeal Board failed to decide, it should take and decide those issues directly since they raise primarily legal questions and are capable of being resolved on the existing evidentiary record.

Respectfully submitted,

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DATED: April 10, 1986

CERTIFICATE OF SERVICE

In the Matter of
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(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322-OL-3

I hereby certify that copies of LILCO's Petition for Review of ALAB-832 and Motion for Page Limit Extension on Petition for Review of ALAB-832 were served this date upon the following by Federal Express as indicated by an asterisk, or by first-class mail, postage prepaid.

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