

LILCO, October 21, 1988

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NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

) Docket No. 50-322-OL-6
) (25% Power)(Shoreham Nuclear Power Station,
Unit 1))**LILCO'S REQUEST FOR IMMEDIATE
AUTHORIZATION TO OPERATE AT 25% POWER**

LILCO requests that the Licensing Board immediately authorize the operation of the Shoreham Nuclear Power Station at 25% of its rated power.

LILCO's request should be granted summarily for three reasons. First, the OL-3 Licensing Board's finding that Intervenor have engaged in a "sustained and willful strategy of disobedience and disrespect for the Commission's adjudicatory process," and that dismissal of Intervenor as parties to the Shoreham operating license proceeding is the "only appropriate penalty"^{1/} perforce requires Intervenor's concurrent dismissal from the OL-6 subdocket. As a consequence, Intervenor can no longer contest LILCO's 25% power motion.

Second, all of Intervenor's remaining emergency planning contentions have been either resolved in LILCO's favor on the merits or dismissed with prejudice due to Intervenor's default. As these contentions are no longer in controversy, a priori they cannot have any substantive relevance to LILCO's 25% power request.

Third, the NRC Staff's recently-completed technical evaluation (hereinafter

^{1/} LBP-88-24, 28 NRC ____, slip op. at 129, 130 (1988).

"Staff Evaluation") of LILCO's 25% power request confirms LILCO's position that any unresolved issues related to the full participation exercise of the LERO emergency plan conducted on June 7-9, 1988 are not significant for operation of Shoreham restricted to 25% power. Therefore, LILCO has demonstrated compliance with 10 C.F.R. § 50.47(c)(1) and, on this basis, the Licensing Board should make a finding under § 50.57(a)(3) and, in turn, § 50.57(c) that existing emergency planning for Shoreham provides reasonable assurance that the public health and safety will be protected if Shoreham is permitted to operate at 25% power.

I. Background

LILCO's request for authorization to operate Shoreham at 25% power has been pending before the Licensing Board since July 14, 1987. See LILCO's Motion for Authorization to Increase Power to 25% (July 14, 1987).^{2/} On January 7, 1988, the Licensing Board, after considering what it termed an "agglomerate of answers, replies, responses and counter responses" from the parties, issued a Memorandum and Order (ASLBP No. 87-553-04-SP) (the "January 7 Order"). The Board found that (1) LILCO was entitled to proceed with its 25% power request under the provisions of § 50.57(c), (2) Intervenors

^{2/} LILCO had earlier submitted its 25% power request to the full Commission, along with a motion that the request be treated expeditiously. See Request for Authorization to Increase Power to 25% and Motion for Expedited Commission Consideration (April 14, 1987). The Commission rejected LILCO's request for immediate relief but indicated that LILCO could refile its request with the Licensing Board pursuant to 10 C.F.R. § 50.57(c). CLI-87-4, 25 NRC 882 (June 11, 1987). In a follow-on order dated August 12, 1987 (unpublished), the Commission reiterated that the Licensing Board "conducting the Emergency Preparedness (OL-3) proceeding" was the appropriate body to consider LILCO's 25% power request. The OL-3 Board was at that time chaired by Judge Margulies.

In an October 6, 1987 Memorandum to the Parties, the Licensing Board used the "OL-6" subdocket designation for the first time with regard to the 25% power issue, apparently as an administrative convenience. All subsequent pleadings and Board issuances concerning the 25% power issue have been under the OL-6 designation. On November 16, 1987, the "OL-6" Board (as well as the OL-3 Board) were reconstituted through the appointment of Judge Gleason to replace Judge Margulies as Chairman.

were "entitled to be heard" on the issue of the relevance of their existing emergency planning contentions to LILCO's request, and (3) the NRC Staff should proceed with its technical review of LILCO's 25% power application. January 7 Order at 15. The Board also solicited the parties' views on whether a Special Master, Alternate Board Member, Technical Interrogator, or another Board should be employed to consider the 25% power issue. Id. at 14-15.

In a subsequent order dated February 26, 1988, the Board requested further briefing on the "impact of pending emergency [planning] contentions on a reasonable assurance finding authorized by 10 C.F.R. § 50.57(c)." Order (February 26, 1988) (unpublished). The Board directed the parties to file such briefs in order to "develop whether such contentions are substantively relevant to a 25% power operation of the Shoreham Nuclear Facility." Id.

In a separate order of the same date, the Board announced the appointment of Administrative Judge David L. Hetrick as an Alternate Board Member to "assist the Board in resolving whether emergency planning contentions presently before the Board are substantively relevant to LILCO's proposed operation at 25% of full power and whether Applicant's motion should be granted pursuant to the provisions of 10 C.F.R. § 50.57(c)." Order Appointing Alternate Board Member (February 26, 1988)(unpublished) at 1-2. The Board indicated that "[w]ithin 20 days following service of Judge Hetrick's report to the Board, any party may file exceptions to it." Id. at 2.

Following the requested round of briefing by the parties on the "substantive relevance" of Intervenor's remaining emergency planning contentions, the 25% power phase of the Shoreham proceeding essentially remained dormant for approximately six months while the Staff completed its technical review. In the interim, the OL-3 Licensing Board issued, on September 23, 1988, its Concluding Initial Decision on Emergency Planning, LBP-88-24, 28 NRC ____ (1988), in which it found that Intervenor's "sustained

and willful strategy of disobedience and disrespect for the Commission's adjudicatory processes" had "seriously impacted a timely and fair resolution of the realism contentions and other emergency planning issues." LBP-88-24, slip op. at 129. Noting that "[p]revious sanctions for disobedience did not curb the present harm," the Board concluded that the "sanction of dismissal [of Intervenor] as parties to the proceeding is the only appropriate penalty." *Id.* at 130.^{3/}

All matters in controversy thus having been resolved (including any prospective litigation of the June 7-9, 1988 FEMA-graded exercise), the Board authorized the Director of the Office of Nuclear Reactor Regulation to issue to LILCO a full-power operating license for Shoreham. *Id.* at 149. This license authorization was subsequently vacated, however, by an Appeal Board ruling on October 7, 1988 that the OL-3 Board "did not have the authority to dismiss [Intervenor] from those portions of the proceeding that are pending before another Board." ALAB-902, 28 NRC ____, slip op. at 6-7 (1988).^{4/}

^{3/} In addition, the Board ruled in LILCO's favor on all of the remaining emergency planning issues before it. Specifically, with respect to the issue of LILCO's WCBS-based EBS, the Board granted LILCO's summary disposition motion upon its finding that the uncontroverted facts submitted by LILCO were "adequate to establish the adequacy of its plan to comply with NRC regulations and guidance concerning a public emergency warning system." LBP-88-24, slip op. at 32-33. On the issue of "role conflict" of school bus drivers, the Board ruled that LILCO's plan to "supply school bus drivers in the event of an evacuation gives reasonable assurance that the health and safety of the public will be protected." *Id.* at 63. Similarly, the Board concluded that "LILCO's ETEs for hospital evacuation are adequate to meet the standards and criteria of NRC's regulations." *Id.* at 87.

Finally, with respect to the eight remaining "realism" contentions, the Board set forth, in a well-considered, fifteen-page analysis, what, but for its sanctions ruling, would have "constituted [the Board's] resolution of the realism contentions on the merits." *Id.* at 131. Following an examination of LILCO's prima facie case and realism testimony, the Board concluded that the LERO Plan "supplemented by the best efforts responses of the State and County provide reasonable assurance that public health and safety is not endangered by the operation of the Shoreham facility." *Id.* at 147.

^{4/} Three days prior to the issuance of LBP-88-24, the Appeal Board had recreated the OL-5 Licensing Board (chaired by Judge Frye), that originally had been designated

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In ALAB-902, the Appeal Board expressly noted that its holding that a board can dismiss a party from only "the part of the proceeding within that board's purview" in no way "vitiate[s] the ultimate sanction of dismissal from the entire proceeding." ALAB-902, slip op. at 8. That result could still be obtained, the Appeal Board suggested, by "requesting the sanction of dismissal from each of the boards before which different parts of the proceeding are pending." *Id.* The Appeal Board added that while such an approach

may appear to be burdensome, it is an illusory burden: if the conduct allegedly warranting another party's dismissal from the entire proceeding is, in fact, so egregious and pervasive, the party requesting that sanction should have little difficulty in making its case before each board then presiding over different facets of the proceeding. For example, the party seeking sanctions would not be precluded from arguing to "Board B" that an opposing party's conduct--though above reproach before "Board B"--was so contumacious and prejudicial before "Board A" as to warrant dismissal from the "Board B" proceeding as well.

Id. at 8-9.

While the Intervenor's right to participate further in the Shoreham proceeding was being determined, the Staff (under cover of a letter dated October 6, 1988 from Steven A. Varga, Director, Division of Reactor Projects to John D. Leonard, Jr., LILCO Vice President-Nuclear Operations) released its technical evaluation of LILCO's 25% power request. The results of the Staff's evaluation are discussed in Part IV below. In general, the Staff concluded inter alia that there are "no new unresolved safety

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to conduct a hearing solely on issues pertaining to the February 13, 1986 Shoreham exercise, and had given that Board jurisdiction over the 1988 exercise. *See* ALAB-901, 28 NRC ____ (1988). The Appeal Board took this action despite the OL-5 Board's determination, nearly seven months earlier, that it lacked the authority to retain jurisdiction over future exercise issues. *See* LPB-88-7, 27 NRC 289 (1988). No party had taken an appeal from LPB-88-7. LILCO's petition for review of ALAB-901 is pending before the Commission.

questions associated with 25 percent power operation that have not been analyzed during the full-power licensing review process;" that "operation at 25 percent power would reduce core-melt frequency;" that there are "significant delays in the time of progression for all the postulated accident sequences [at 25% power] when compared with those during 100 percent power operation;" and that the "distances from the [Shoreham] site within which injury-threatening radioactive doses could occur without evacuation have been significantly reduced" at the 25% power level. Staff Evaluation at 6-7.

With the issuance of the Staff's report, this Board now has before it the necessary confirmation to make a finding of reasonable assurance pursuant to § 50.57(a)(3). LILCO believes that that finding can and should be made expeditiously, for the reasons given below.

II. Intervenor's Are Precluded from Contesting LILCO's 25% Power Request

Except for the Appeal Board's determination in ALAB-902 that the OL-3 Board lacked the "jurisdictional" authority to dismiss Intervenor's from the exercise proceeding pending before the OL-5 Board (and the Appeal Board's concomitant vacation of the OL-3 Board's authorization of a full power license), LILCO's request to operate Shoreham at 25% power would, for all practical purposes, be superseded by the full power license authorization. The renewed prospect of extended litigation of the 1988 exercise, however, redirects attention to LILCO's 25% power request.

Summary approval of LILCO's request to operate Shoreham at 25% power is appropriate because Intervenor's have forfeited any right they may have once had to contest LILCO's request in the OL-6 subdocket.^{5/} The Licensing Board's imposition in

^{5/} Intervenor's had no absolute right to a hearing on LILCO's request in any event. As the Licensing Board noted in its January 7 Order, the requirement of a hearing on this matter turns on the "circumstances of a particular case." January 7 Order at 7.

LBP-88-24 of the ultimate sanction of dismissal for Intervenor's years-long strategy of obstruction and delay dictates that Intervenor not be allowed an opportunity to pursue that same strategy in the 25% power phase of this proceeding.

Under the "logic" of ALAB-902, however, it might be argued that because the issues related to LILCO's 25% power request are pending before the "OL-6" rather than the OL-3 Board, the OL-3 Board's determination in LBP-88-24 to dismiss Intervenor as parties does not result in their automatic dismissal from the 25% power phase of the Shoreham proceeding.^{6/} Instead, the argument goes, what LILCO must do in order to effect Intervenor's dismissal from the 25% power phase is to go to the "OL-6" Board and "make its case" that Intervenor should be dismissed from the OL-6 subdocket as well. ALAB-902, slip op. at 9. The problem with this argument, however, is that the Board hearing the 25% power issue is not a separate Board from that which issued LBP-88-24. This is made plain by the fact that the Commission, in its order of August 12, 1987, authorized the OL-3 Board to "take appropriate action under the Commission's rules concerning the [25% power] Motion." See footnote 2, supra. In light of this, it is evident that the subsequent use of the "OL-6" designation with respect to 25% power pleadings

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The Board said that it was "bound to consider . . . whether due process requires such a hearing and upon which of the unresolved contentions it should be based." *Id.* (emphasis added). The Board concluded that Intervenor had the "right to be heard to the extent that their contentions are relevant" to operation at 25% power. *Id.* at 14 (emphasis added). Intervenor's contentions, of course, are no longer in controversy. Moreover, as shown in Part IV below, even if Intervenor were allowed to proceed in the OL-6 subdocket, the Staff's evaluation clearly demonstrates that any potential issues arising out of LERO's performance in the 1988 exercise cannot be viewed as being substantively "relevant" to 25% power operation.

^{6/} LILCO disagrees strongly with the Appeal Board's reasoning and result and is seeking Commission review of the decision. See Long Island Lighting Company's Petition for Review of ALAB-902 (October 21, 1988). In LILCO's view, the OL-3 Board clearly had the authority to dismiss Intervenor from all phases of the Shoreham proceeding, including the 25% power phase.

and issuances, apparently instituted as an administrative convenience only, does not mean that some "jurisdictional" distinction exists between the 25% power issue and the emergency planning issues that (until the issuance of LBP-88-24) were being heard by the OL-3 Board.

However, even if the fiction were accepted that the 25% power issue is pending before a separate and distinct "OL-6" Board, it is still the case that Intervenor can and should be precluded from participating in this phase of the Shoreham proceeding. As ALAB-902 indicates, if Intervenor's conduct has been "so egregious and pervasive" as to warrant sanctions before the OL-3 Board, then LILCO should have "little difficulty" in making a case for dismissal before the "OL-6" Board. ALAB-902, slip op. at 9. Given that the members of the "OL-6" Board are the same as those on the OL-3 Board (excepting Judge Hetrick, who serves in a limited technical advisory capacity), the arguments that LILCO has already made to the OL-3 Board for imposing the ultimate sanction are sufficient to establish the appropriateness of extending that sanction to the 25% power phase of this proceeding. If a specific request is necessary, then LILCO hereby requests that Intervenor be dismissed from the OL-6 subdocket.^{7/} The reasons, in light of LBP-88-24, are self-evident and are set forth immediately below.

In LBP-88-24, the OL-3 Licensing Board recognized that Intervenor's conduct in the Shoreham proceeding over the past several years represents a "pattern of substantial and continual actions to undermine LILCO's efforts to develop an adequate emergency plan and frustrate federal review." LBP-88-24, slip op. at 111. Such conduct, the Board said, comes "perilously close to constituting interference with the federal government's exclusive power to regulate matters of radiological safety." *Id.* at 112. The

^{7/} In making this request, LILCO does not concede that such a request is necessary as a matter of law or fact or that ALAB-902 is correct in its limitation on the scope of sanctions which a Licensing Board may impose. See footnote 6, supra. Nevertheless, ALAB-902 remains the law of the case until it is reversed.

Board further recognized, perceptively, that throughout the "protracted period of this proceeding, Intervenor's have provided little evidence of a motivation to have this controversy . . . resolved on the merits, and in a timely manner." *Id.* at 109 (emphasis added). Instead, a hallmark of Intervenor's approach to the Shoreham case has been to seek delay at every possible opportunity:

Not only have the Intervenor's refused to provide any information on State and County emergency resources so that the feasibility of emergency plans could be appraised . . . but procedural mechanisms have been consistently utilized in delaying the Board and Commission in carrying out its licensing responsibilities.

Id. at 110 (emphasis added).

It must be taken for granted now that if Intervenor's are allowed to continue to participate in any phase of the Shoreham proceeding, they will again resort to these same obstructionist, delay-oriented tactics. Simply put, Intervenor's are recidivists, as the Board has noted:

This is not the first occasion where Intervenor's actions have precipitated the imposition of a sanction. Onsite emergency planning contentions were dismissed by the Licensing Board, after Intervenor's refused to participate in Board ordered public prehearing examinations.

Id. at 108 (citation omitted). In choosing the ultimate sanction of dismissal, Intervenor's congenital bad faith was clearly an important consideration for the Board, which pointed out that "a prior finding of default and dismissal of contentions as a sanction did not have the intended effect of curbing the harm or deterring reproachable conduct." *Id.* at 115.D

LBP-88-24 thus brands Intervenor's as repeat offenders. If given an opportunity to delay and obstruct the Board's inquiry into the 25% power issue, Intervenor's will surely take it. LILCO believes that the finding made by the Board that the "sanction of dismissal as parties to the proceeding is the only appropriate penalty" for Intervenor's conduct, *id.* at 130, in and of itself justifies (if indeed it does not, as a matter of law, compel) Intervenor's dismissal from the OL-6 subdocket.

Should the Board require any further proof that Intervenor's participation would delay rather than illuminate the 25% power issues, evidence can be seen in Intervenor's approach so far in evaluating the technical materials which underlie LILCO's 25% power request. Intervenor's have had all technical documents supporting the request for over a year-and-a-half. These are the same documents that the Staff has reviewed in preparing its report. By all indications, however, Intervenor's have devoted little, if any effort to review of these materials.^{8/} See LILCO's Reply to Intervenor's Brief on 25% Power (April 21, 1988) at 10.

Despite their own apparent failure to have conducted any review of LILCO's original submittal, it is all but inevitable that Intervenor's will now claim that they need substantial time to analyze the Staff's report. Indeed, Intervenor's have foreshadowed that position in their pleadings to date. See, e.g., Government's Brief in Response to February 26, 1988 Board Order (April 1, 1988) at 5 (Intervenor's "will require at least [as] much time [as the Staff took to prepare the technical evaluation] to review and analyze both the LILCO Request and the Staff's analyses, if not more"). Obviously, Intervenor's, if given the chance, intend to hold the 25% power phase of this proceeding in thrall while they purport to complete their technical review. Such calculated footdragging was found to be sanctionable by the OL-3 Board; it cannot be tolerated in the OL-6 subdocket. Intervenor's should be dismissed.

III. All Remaining Contentions Have Been Resolved in LILCO's Favor

Even if Intervenor's are not dismissed as parties in the OL-6 subdocket, their

^{8/} For instance, in depositions conducted on April 21, 1988, two technical experts for Intervenor's, Gregory Minor and Steven Sholly, acknowledged that while each had had the technical materials provided by LILCO in support of its 25% power motion for over a year, neither had undertaken a substantive review. Mr. Sholly stated that he had spent "perhaps a day or two" reviewing LILCO's PRA, but his testimony disclosed an absence of review of the material in recent months. Mr. Minor said that he had "read through" the 25% motion in preparation for a meeting between LILCO and the NRC Staff in the summer of 1987 but gave no indications of any substantive review since.

participation in the 25% power phase of this proceeding must nevertheless be found to be at an end. The reason is that in LBP-88-24, the OL-3 Board not only dismissed Intervenor from the Shoreham proceeding, but ruled in LILCO's favor on the merits on all remaining emergency planning contentions as well. ALAB-902's partial reversal on "narrow jurisdictional grounds" of the OL-3 Board's decision does not disturb that ruling whatsoever.^{9/} Since the underlying issue scheduled for examination in this proceeding is whether Intervenor's existing contentions in the full power proceeding are "substantively relevant" to 25% power operation, now that they have lost those contentions, Intervenor simply have no further stake in the 25% power litigation.

This is made plain by the applicable regulation, § 50.57(c), which states that action taken by the presiding officer under paragraph (c)

shall be taken with due regard to the rights of the parties to the proceedings, including the right of any party to be heard to the extent that his contentions are relevant to the activity to be authorized.

10 C.F.R. § 50.57(c)(emphasis added). The Board reflects this in its January 7 Order, making it clear that the

question of which contentions currently in litigation are relevant ¹⁰ a substantive way to the activity to be authorized is a question that stands at the core of any litigation concerning the request for 25% power.

January 7 Order at 9 (emphasis added). The Board further indicated that any opportunity Intervenor might have to comment on the validity of LILCO's 25% power request or the Staff's evaluation was necessarily contingent on Intervenor having pendent emergency planning contentions. In describing the prospective course of the 25% power litigation, the Board stated that it

^{9/} Specifically, the Appeal Board ruled that "[i]nsofar as it purports to dismiss the Governments from the proceeding now before the OL-5 Licensing Board, LBP-88-24, 28 NRC _____, is reversed. . . ." ALAB-902, slip op. at 20.

appears certain to us now that the examination of this question [of the substantive relevance of Intervenor's existing contentions] cannot be accomplished without some opportunity for the Governments to review both LILCO's original request and the Staff's analysis thereof. . . . Further, in order to focus the inquiry, we believe that the Governments must be given further opportunity to state with basis and specificity the ways in which any of their present contentions are relevant to the proposed operation [at 25% power]. These statements, of course, would necessarily await the publication of the Staff Safety Evaluation and a reasonable period for review, by the Governments' experts.

Id. at 11 (emphasis added). Similarly, the Board said that no matter whether a separate Board was appointed to preside over the 25% power litigation or whether an Alternate Board Member was assigned to the existing Board, "such Board would be empowered to grant LILCO's [25% power] request upon a finding that no [relevant] contentions existed or, if relevance is found, to deny LILCO's motion." Id. at 15 (emphasis added).

It necessarily follows that since none of Intervenor's contentions (whether "substantively relevant" or not) remain in controversy, whatever opportunity Intervenor may have previously had to contest LILCO's 25% power request is now foreclosed. In such circumstances, summary resolution of LILCO's request is appropriate.

IV. The Staff's Technical Evaluation Provides Ample Evidence that a Reasonable Assurance Finding Is Appropriate

Finally, the Staff's recently-completed technical evaluation confirms LILCO's position that it has complied with § 50.47(c)(1) by demonstrating that at 25% power the risk and consequences of accidents at Shoreham are so reduced that any remaining unresolved emergency planning issues are not significant and therefore not relevant to reaching the reasonable assurance finding of § 50.57(a)(3). The last issue left to be resolved for a full-power license, now that all remaining emergency planning contentions have been decided in LILCO's favor, is whether LERO's performance in the June 7-9, 1988 FEMA-graded exercise was so deficient as to reveal any "fundamental flaws" in the Shoreham emergency plan. For the reasons given below, the Staff Evaluation

makes it clear that, as LILCO has argued, that issue is not material to the Board's decision on whether to grant LILCO's 25% power request.

The Staff Evaluation addresses in detail three aspects of LILCO's technical filing related to operation at the 25% power level:

- (1) Systems and procedures for accident mitigation
- (2) Accident evaluation
- (3) Safety of prolonged operation at 25% power

Of these, the portion of the Staff report dealing with accident evaluation is most directly pertinent to the matters before the Board.^{10/} This key portion of the Staff's review of LILCO's PRA-based accident analysis for 25% operation concentrates on a comparison with accidents at 100% operation.

Specifically, the Staff's comparison focuses on (1) the timing for key events in the accident progression, (2) the offsite radiological consequences of accidents, and (3) overall plant vulnerability to core damage accidents. In all significant respects, the Staff's findings on each of these issues serve to confirm the validity of the factual underpinnings of LILCO's original 25% power request. The Staff's findings on the issue of accident timing are particularly useful in assessing the materiality of LERO's 1988 exercise performance and are discussed in detail below.^{11/}

^{10/} As for the various physical and procedural improvements that LILCO has made at Shoreham to enhance accident mitigation, the Staff finds, in short, that these improvements are "acceptable for taking credit in the PRA." Staff Evaluation, Enclosure 1 at 8. With respect to the safety of prolonged operation at 25% power, the Staff concludes that LILCO's "evaluation of the low-power operation and proposal of inspecting certain components must be augmented" in certain respects, including: (1) a commitment to disassemble and inspect feedwater check valves every two years, (2) a 90-day reporting requirement following the inspection, and (3) extension of the investigation and compensatory action to all affected components should any anomalies be detected. Staff Evaluation, enclosure 3 at 4.

^{11/} As for the other issues, with respect to offsite radiological consequences, the Staff Evaluation finds that LILCO's "claim that offsite consequences are reduced by op-

The amount of time that is available for accident mitigation and offsite response is indisputably one of the most critical factors in assessing the importance of emergency planning to protecting public health and safety. For instance, the call-out of LERO personnel is tied directly to emergency classification levels, and therefore, with a slowly developing accident, it is more likely that offsite emergency mobilization will take place in an effective manner. Accordingly, the most significant findings in the technical evaluation are those having to do with the speed at which accidents at 25% power would develop from the time of the initiating event to a release of radiation to the offsite environment.^{12/}

(footnote continued)

eration at 25 percent power is valid," confirming that the "power reduction translates approximately into a factor of four reduction in initial fission product inventory." Staff Evaluation, Enclosure 2, at 46. Based on its analysis, the Staff finds that by restricting operation to 25% power, the distances over which injury-threatening radiation doses (i.e., those above 200 rem) would occur are reduced by approximately a factor of three. *Id.* The Staff does note that the absolute distances at which major reductions occur in the probability of exceeding a particular dose are dependent on various modelling and input assumptions and as such remain an area of uncertainty. *Id.*

As for vulnerability to core damage accidents, the Staff's report confirms that at 25% operation, decay heat levels are so reduced that certain additional plant features are capable of mitigating accidents prior to core melt. Moreover, at 25% power, accidents will typically evolve more slowly, providing a considerably greater amount of time for recovery actions. As for overall core melt frequency, the Staff concludes that this is not significantly reduced because accident sequences not changed by 25% operation. *Id.* at 7. The technical evaluation does find that at 25% power, the frequency of accident sequences leading to core damage is reduced by a factor of two but notes that such reduction is within the band of uncertainty associated with estimating core melt. *Id.*

^{12/} An "initiating event" is a individual incident or series of incidents that lead to challenges to the plant's capability to reach a safe and stable shutdown condition. The initiating events from the Shoreham 25% power PRA would very quickly lead an operator in the control room to classify the plant's condition as a "Site Area Emergency" or a "General Emergency." As a result, offsite emergency response actions would begin within at most 15 minutes of the initiating event. (Under NUREG-0654, Appendix 1, the onsite organization is required to notify offsite authorities within 15 minutes of the operator's recognition of plant events that warrant the declaration of an emergency class. The LILCO onsite emergency response plan has been found by the NRC to comply with this requirement.) See LILCO's Brief on the "Substantive Relevance" of Remaining Emergency Planning Contentions to LILCO's Motion to Operate at 25% Power (April 1, 1988) (hereinafter "LILCO's Brief") at 3 n.6.

The Staff's report validates LILCO's position that for the vast majority of core melt accidents at 25% power, the time that would elapse before offsite radiological release would occur is considerable. The results of the Staff's analyses in this regard are virtually identical to the original estimates from the Shoreham 25% PRA. They indicate that for approximately 80% of postulated core melt accidents, an offsite release would not occur for at least two've hours or more from the time of the initiating event. For another 17% of accidents, offsite releases would not result for at least six to twelve hours. Staff Evaluation, Enclosure 2, Table 10. By comparison, the great bulk of offsite releases at 100% power -- approximately 75% -- occur between two and six hours. Id. It is towards this group of rapidly-developing accidents that most offsite emergency preparedness efforts are directed, yet at 25% power operation the likelihood of such accidents is negligible.^{13/}

The technical evaluation's verification of the lengthy time period that would be available to respond to the vast majority of radiological accidents occurring at 25% power makes it plain that the June 1988 exercise results are simply not a material consideration in the Board's decision on LILCO's 25% request. The 1988 Shoreham exercise was designed and conducted to judge offsite emergency response against the level of preparedness required to make a reasonable assurance finding for operation at 100% power. The level of preparedness necessary to support a reasonable assurance finding

^{13/} The technical evaluation identifies, as had LILCO, a small remaining group of core melt accidents (approximately 3%) which at 25% power lead to offsite releases in about one hour. For this small group of extremely-rapid accidents, most aspects of emergency planning are of little aid, however, since sheltering rather than evacuation would be the recommended protective action. Moreover, as noted previously, this group of accidents is attributable almost exclusively to seismic events of extreme severity which induce simultaneous reactor pressure vessel and containment failure. Staff Evaluation, Enclosure 2 at 24. As LILCO has noted, not only are such accidents extremely rare, but earthquakes of this severity are likely to cause such extensive damage in surrounding areas that, apart from such functions as public alerting and notification, emergency planning would simply be of little practical benefit in these circumstances. See LILCO's Brief at 10.

at 25% power, however, is considerably lower.^{14/}

As has been shown, the amount of time available in which to decide upon and implement protective measures is much greater at 25% power. Indeed, for 97% of the postulated accidents the time available would be on the order of at least six hours or more. This extended time period lends assurance that during an emergency the considerable resources of New York State and Suffolk County could easily be coordinated with LERO in implementing protective measures, thus providing additional assurance that the public health and safety would be protected. In addition, the offsite radiological consequences of operation at 25% power are so reduced that LILCO's 10-mile planning basis for Shoreham provides a large margin over the planning basis that would be adequate for the low risks of 25% power operation. This margin is made all the more substantial when New York State's and Suffolk County's vast resources are taken into account.

Moreover, LERO's deficiency-free performance in the 1988 exercise, and FEMA's overall finding of "reasonable assurance" based on its evaluation of that exercise and of Revision 10 of the LERO Plan, make it clear that the possibility that Intervenor will be

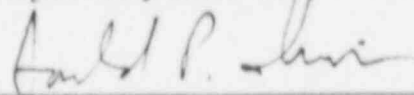
^{14/} Indeed, with operation restricted to 25% power, the vast majority of accidents would develop so slowly that even if the emergency response were undertaken ad hoc (i.e., without reliance on existing Shoreham planning or LERO's resources) the public health and safety could and almost certainly would be protected. This is demonstrated concretely by the fact that ad hoc disaster evacuations occur frequently all over the U.S. with generally good results. Moreover, with respect to Shoreham specifically, the evacuation time estimates for an "uncontrolled" evacuation (i.e., without LERO Traffic Guides or the police being in place to facilitate traffic flow) for the entire EPZ under normal summer weather conditions is only six-and-a-half hours. In other words, if an accident occurring at 25% power necessitated the evacuation of the entire 10-mile EPZ (which itself is unlikely; see footnote 11, supra) such an evacuation could be accomplished in the vast majority of cases before an offsite release would occur, even without traffic assistance by LERO. Of course, this is not to say that at 25% power operation, LILCO would in fact reduce the level of offsite emergency preparedness for Shoreham that it has provided through LERO. As LILCO has repeatedly stressed, it would continue to devote resources, training, and planning for the full 10-mile zone. See, e.g., LILCO's Brief at 3 n.4.

successful in demonstrating (through litigation of the exercise results) any "fundamental flaws" is vanishingly small.^{15/} When FEMA's determination that the public health and safety will be protected in the event of a radiological emergency at 100% power is considered in the context of the considerably greater amount of time that would be available to respond to emergencies occurring at 25% power, it becomes overwhelmingly evident that LILCO has demonstrated compliance with § 50.47(c)(1) and that therefore a finding of reasonable assurance under § 50.57(a)(3) is justified for operation of Shoreham at 25% power.

V. Conclusion

For the reasons stated above, LILCO respectfully requests that it be immediately authorized to operate the Shoreham Nuclear Power Station at 25% of its rated power.

Respectfully submitted,



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DATED: October 21, 1988

^{15/} In this regard, it is significant that the OL-5 Board's determination in LBP-88-2, 27 NRC 85 (1988) that the February 13, 1986 exercise revealed "fundamental flaws" merely confirmed the findings of the FEMA Post-Exercise Assessment (April 21, 1986) (the "PEA"), which identified four deficiencies in LERO's performance. All of the significant facts and conclusions underlying the OL-5 Board's decision, arrived at nearly two years after the exercise was conducted, had already been set forth in the FEMA PEA. Intervenors have themselves conceded this point. Recently, in oral argument before the Appeal Board regarding LILCO's appeal of LBP-88-2, counsel for Suffolk County pointed out that the OL-5 Board "essentially followed . . . the FEMA findings as to what had been noted and observed as demonstrated deficiencies during the day of the exercise, and the Board essentially went down the line with FEMA on this." Oral Argument Transcript (September 14, 1988) at 49.

LILCO, October 21, 1988

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In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322-OL-6

I hereby certify that copies of LILCO'S REQUEST FOR IMMEDIATE AUTHORIZATION TO OPERATE AT 25% POWER were served this date upon the following by telecopier as indicated by one asterisk, by Federal Express as indicated by two asterisks, or by first-class mail, postage prepaid.

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