LONG ISLAND LIGHTING COMPANY

EXECUTIVE OFFICES: 175 EAST OLD COUNTRY ROAD • HICKSVILLE, NEW YORK 11801

VICTOR A. STAFFIERI
GENERAL COUNSEL
AND SECRETARY

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U.S. Nuclear Regulatory Commission
Document Control Desk
Washington, D.C. 20555

Attention: Dr. Thomas E. Murley, Director
Office of Nuclear Reactor Regulation

Long Island Lighting Company's Response to the NRC Staff's February 26, 1991 Letter Regarding Decommissioning Funding
Shoreham Nuclear Power Station - Unit 1
Docket No. 50-322

Dear Dr. Murley:

There has been extensive discussion already of how Shoreham is going to meet the NRC's decommissioning funding requirements, primarily set forth in 10 C.F.R. § 50.75.[1/] To the extent necessary, Long Island Lighting Company (LILCO or the Company) hereby requests an exemption from certain of the literal requirements of § 50.75. LILCO believes that its plan for funding Shoreham's decommissioning, described herein, meets the intent of the NRC's funding regulations.

1/ Letter from Victor A. Staffieri, LILCO General Counsel, to Dr. Thomas E. Murley (June 11, 1989)(initial request for approval of decommissioning funding mechanism for Shoreham); Letter from Stewart W. Brown, Project Manager, Non-Power Reactors, Decommissioning and Environmental Projects Directorate, to Victor Staffieri (Dec. 3, 1990)(acknowledging LILCO's June 11 request); Commission vote on SECY-90-386 (Jan. 3, 1991)(establishing "case-by-case" approach for prematurely shut down reactors); Meeting between NRC Staff and LILCO/LIPA/NYPA, Rockville, Maryland (Feb. 13, 1991); Letter from Dennis M. Crutchfield, Director, Division of Advanced Reactors and Special Projects, to John D. Leonard, Jr., LILCO Vice President, Office of Corporate Services and Office of Nuclear (Feb. 26, 1991)(requesting revised decommissioning funding plan by March 28, 1991); Letter from John D. Leonard, Jr., to NRC (March 26, 1991)(requesting extension until April 11 to respond to Staff's February 26 letter).

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LILCO's proposal includes not only the three months' anticipated advance payments provided for in § 3.5 of the Site Cooperation and Reimbursement Agreement, but also a $10 million supplemental cash reserve to cover any unexpected complications in the planned 27-month, $186 million DECON process at Shoreham. In addition, as indicated in the attached letter from William J. Cowan, General Counsel, New York Public Service Commission (PSC), the PSC has reaffirmed its commitment to ensure the availability of the funds necessary to decommission Shoreham in accordance with the Settlement Agreement.

LILCO believes that its funding proposal is consistent with the Commission's action, in its vote on SECY-90-386, adopting a "case-by-case" approach for those plants that have closed prematurely, after the effective date of the decommissioning funding regulations.[2/] The Staff, by contrast, apparently views the Commission's vote on SECY-90-386 as constraining the Staff from issuing an exemption and approving LILCO's funding plan. To the extent that the Staff believes that the Commission's action on SECY-90-386 does inhibit the Staff's discretion to grant exemptions, on a case-by-case basis, from the decommissioning funding regulations, LILCO respectfully suggests that the Staff refer LILCO's request to the Commission, to obtain the Commission's views as to the consistency of LILCO's funding plan with its vote on SECY-90-386.

An Exemption from the Decommissioning Funding Rules
Is Justified, Given Shoreham's Unique Circumstances

LILCO's request meets all of the criteria for a regulatory exemption under 10 C.F.R. § 50.12(a).

2/ For example, Commissioner Rogers stated in his comments on SECY-90-386 that there is "no requirement under current regulations that a licensee have all funds required by the cessation of plant operations, five years thereafter, or by the end of the license term for that matter." Rather, Commissioner Rogers continued, a licensee's "legal and financial obligations are defined by its commitments in the staff-approved Decommissioning Plan . . ., not by operation of [the decommissioning funding] regulations alone." The regulations, Commissioner Rogers concluded, "are goal-oriented and primarily intended to require appropriate planning, both financial and technical."

A. The Request Is Authorized by Law, Will Not Present an Undue Risk to the Public Health and Safety, and Is Consistent with the Common Defense and Security

Applying the criteria of § 50.12(a)(1), LILCO's request is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

1. The Proposed Exemption Is Authorized by Law

Nothing in the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq., or any other statute, specifies the exact method by which a licensee is to provide reasonable assurance that adequate funds will be available to decommission a nuclear facility. Accordingly, the NRC has flexibility in determining whether a licensee's plan for funding decommissioning is adequate to protect the public health and safety from radiological hazards, including hazards that might be associated with inadequate or untimely decommissioning.

2. The Proposed Exemption Presents No Undue Risk

The potential "risk" at issue here is that funds will not be made available to decommission Shoreham in an adequate or timely manner, and that any delays in decommissioning the plant resulting from this unavailability of funds will present a radiological hazard. LILCO's request does not present such a risk to the public health and safety.

a. The Three Month Cushion of Funds, Coupled with a $10 Million Supplemental Account, Assures that there Will Be No Decommissioning Funding Shortfall

LILCO proposes to fund Shoreham's decommissioning through the mechanism established by the Site Cooperation and Reimbursement Agreement between LILCO and the Long Island Power Authority (LIPA), dated January 24, 1990 (Site Agreement). Of particular pertinence here, under § 3.5 of the Site Agreement, each month LILCO places into LIPA-controlled accounts those funds that LIPA projects it will expend in the third following month, resulting in an average balance in the LIPA-controlled accounts of three months' prospective expenses. Under the Site Agreement, LIPA may at any time submit revised monthly cash flow projections to LILCO, and LILCO is obligated to provide money for the LIPA-

controlled accounts in accordance with the most recently provided cash flow projection. The Site Agreement also provides that LILCO will advance LIPA any additional amount of operating or other funds required by any regulatory authority.[3/]

There is no reason for concern that, under the funding mechanism established by the Site Agreement, there will be any shortfall of funds to decommission Shoreham. Since Shoreham's permanent closure with final approval of the Settlement Agreement in June 1989, LILCO has provided funds to maintain the plant in a condition consistent with the terms of its license and to undertake all regulatorily required activities. LILCO's demonstrated ability to fund past Shoreham operating expenses provides assurance that the Company will be able to provide funds as needed to complete Shoreham's decommissioning in a safe and timely manner, consistent with LIPA's proposed schedule.[4/]

For example, in 1990, LILCO's entire Shoreham-related expenses, excluding property tax payments, totalled over $72.8 million. In contrast, for 1992, the first full year of decommissioning activities, LIPA has projected costs totalling approximately $79.4 million, excluding property tax payments.[5/]

3/ The funding mechanism set forth in the Site Agreement implements the financial arrangements established in more general terms by the Amended and Restated Asset Transfer Agreement between LILCO and LIPA, dated April 14, 1989. The Asset Transfer Agreement was approved by the New York PSC on April 13, 1989. On June 7, 1990, the PSC approved the Site Agreement.

4/ On December 29, 1990, LIPA submitted its proposed decommissioning plan for Shoreham. By letter dated January 2, 1991 (SNRC-1781), LILCO requested that the NRC consider LIPA's plan "as the one which must be submitted prior to or with an application for termination of license (10 C.F.R. § 50.82)."

5/ Under the Settlement Agreement, upon the transfer of Shoreham to LIPA, LILCO will make payments in lieu of property tax payments, with the amount of those payments decreasing over time. Given the short time frame at issue here, property tax

(continued...)

For 1993, at the conclusion of which Shoreham's decommissioning is scheduled be completed, LIPA projects costs of approximately $71.3 million, excluding property tax payments.

Thus, LIPA estimates that, during the final year of the decommissioning project, its Shoreham-related expenses will be less than those which LILCO met during 1990. Even during the first full year of DECON activities, LIPA's estimated expenses will be only slightly (less than 10%) in excess of those which LILCO has recently demonstrated it is capable of meeting.

LILCO's ability to provide fully the funds needed for Shoreham's decommissioning is further assured by the PSC's approval and subsequent support of the Site Agreement. This point was reiterated at the meeting on February 13, 199[illegible] in Rockville between the NRC and representatives from LILC[illegible], LIPA, and the New York Power Authority (NYPA), when Richard King, Assistant Counsel for the PSC, confirmed that PSC approval of the Site Agreement was tantamount to a formal determination that LILCO will receive the revenues necessary to meet its decommissioning expenses.[6/] See Transcript of Meeting between NRC and LILCO/LIPA/NYPA at 73 (Feb. 13, 1991). It is most recently illustrated by the attached letter from William J. Cowan, General Counsel for the PSC, in which, inter alia, Mr. Cowan confirms that the

> Public Service Commission remains committed to the effectuation of the Shoreham Settlement, including taking the steps necessary to ensure LILCO's access to and recovery of funds necessary for decommissioning.

See Letter from William J. Cowan, General Counsel, New York PSC, to Dr. Thomas E. Murley, Director, Office of NRR at 2 (April 11, 1991).

5/ (...continued)
payments (and payments in lieu of tax payments) are excluded from the cost comparison.

6/ Cf. 10 C.F.R. §§ 50.75(e)(2)(iv), 50.75(e)(3)(iv).

If any further assurance is needed that there will be no shortfall of funds to decommission Shoreham, with the approval of the NRC, LILCO commits to establishing a $10 million supplemental account. Consistent with 10 C.F.R. § 50.75(e)(1)(ii), this supplemental account will be segregated from other Company assets and will be an immediately accessible source of funds to ensure that Shoreham's decommissioning is completed in a safe and timely manner consistent with LIPA's decommissioning plan. This fund will also be available to mitigate the effects of any unanticipated costs or unforeseen developments that might otherwise threaten to interrupt the decommissioning funding process.

b. Shoreham's Mildly Contaminated Condition Ensures that the Public Health and Safety Would Not Be Threatened by any Delays in Shoreham's Decommissioning

Shoreham's extremely limited operating history and subsequent low level of radioactive contamination provides confidence that the public health and safety will not be threatened by the plant's decommissioning. In its proposed decommissioning plan, LIPA estimates that, apart from the radioactive fuel, the "total radioactive inventory at Shoreham is about 602 curies, almost all of which is located in the [reactor pressure vessel] and its internals." LIPA Decommissioning Plan at 1-6. Outside the reactor pressure vessel, LIPA states, the "radioactive inventory of the remaining structures and systems is about 3 millicuries." Id.

The negligible radioactive contamination at Shoreham is particularly significant, given that the NRC's critical concern in proposing that licensees develop specific decommissioning funding plans was to ensure that "decommissioning can be accomplished in a safe manner and that lack of funds does not result in delays that may cause potential health and safety problems." 50 Fed. Reg. 5602 (Feb. 11, 1985)(emphasis added). At Shoreham, the level of radioactivity is so extremely low, compared to that of plants with any significant operating history (such as Rancho Seco and Fort St. Vrain), that even if the provision of funds were temporarily disrupted, any consequent delays in completing the plant's decommissioning would pose no public health and safety concerns. While there is no cause to worry that the mechanism set forth in the Site Agreement, as supplemented by an immediately accessible $10 million external account, will fail to provide for adequate decommissioning

funding, the inconsequential degree of contamination at Shoreham provides ample assurance that there is simply no public health and safety issue here.

Relatedly, the assurance provided by the absence of any true public health and safety issue is amplified by the probable conservatisms inherent in LIPA's proposed decommissioning plan, and the unlikelihood (given the plant's mildly radioactive condition) that LIPA has underestimated the scope or expense of the task confronting it. For one thing, LIPA's decommissioning plan and resulting cost estimate are based on existing technologies which are routinely used throughout the nuclear industry. Further, as the NYPA's Les Hill explained at the February 13, 1991 meeting in Rockville, LIPA's decommissioning cost estimate contains a large measure of conservatism with respect to such matters as the effectiveness of "soft" decontamination techniques, the volume of radioactive waste that will be produced by DECON activities, and the use of underwater dismantlement of reactors internals (when less costly and time-consuming "hands on" methods may be feasible). See Transcript of Meeting between NRC and LILCO/LIPA/NYPA at 166-67 (Feb. 13, 1991).

3. The Proposed Exemption Is Consistent with the Common Defense and Security

The exemption request is consistent with the common defense and security. The phrase "common defense and security," as used in § 50.12(a), refers principally to "the safeguarding of special nuclear material; the absence of foreign control over the applicant; the protection of Restricted Data; and the availability of special nuclear material for defense needs." Florida Power & Light Co. (Turkey Point Nuclear Generating Station, Units 3 and 4), 4 AEC 9, 12 (1967). Such considerations are not at issue here.

B. Special Circumstances Are Present that Further Support LILCO's Request

Applying the criteria of § 50.12(a)(2), at least two special circumstances are present that further support LILCO's request.

1. Application of the Decommissioning Funding Regulations Is Not Necessary to Achieve the Underlying Purpose of the Rule

When the NRC first proposed its decommissioning rules, it said that the "objective of the proposed rule on financing the decommissioning of nuclear facilities" was to

> require [the] licensee to provide reasonable assurance that adequate funds are available to ensure that decommissioning can be accomplished in a safe manner and that lack of funds does not result in delays that may cause potential health and safety problems.

50 Fed. Reg. 5602 (Feb. 11, 1985). Elsewhere, the NRC noted that the purpose in requiring a licensee to have accumulated, at the time of permanent cessation of operations, the money needed for decommissioning was to provide assurance that "adequate funds are available so that decommissioning can be carried out in a safe and timely manner." Id. at 5606. The NRC stated that "[w]ithout this assurance, there could be uncertainties concerning the availability of funds at the time of decommissioning." Id.

These "uncertainties" are of "two general types," the NRC continued, explaining that the first uncertainty

> is that the financial condition of a particular organization is difficult to predict years into the future when decommissioning is likely to occur. As a result it is possible that there may be priority or competing claims to these assets.

50 Fed. Reg. 5606. The "second type of uncertainty," the NRC said, is the "possibility that the nuclear facility could be forced to shut down prematurely, thus reducing the time for collecting funds." Id.

Neither of the uncertainties identified by the NRC in its proposed rule is of concern here. Indeed, as for the latter uncertainty, the very fact that Shoreham was shut down prematurely, before LILCO had any opportunity to begin accumulating decommissioning funds, means that literal adherence to the NRC's funding rules is not possible in Shoreham's

situation. It also helps to define the time frame for decommissioning and its funding.

As for the first uncertainty noted by the NRC -- the "difficulty" of predicting, "years into the future," the financial condition of the utility providing the funds -- this also is of no practical concern here. LIPA will decommission Shoreham immediately, using the DECON method, following a brisk 27 month timetable that is scheduled to conclude by the end of 1993. Therefore, the NRC does not have to worry about looking "years into the future" to estimate LILCO's continuing financial stability. Rather, as a practical matter, the NRC need only be satisfied that LILCO will continue to generate sufficient funds to finance decommissioning through the end of 1993. And for this, it has the assurance of the New York State Public Service Commission.

Similarly, when the NRC promulgated its final decommissioning rule, it stated that its funding requirements have the

> narrow focus of protecting public health and safety by having in place basic minimum standards for funding methods which provide reasonable assurance of funding for decommissioning in a safe and timely manner.

53 Fed. Reg. 24,038 (June 27, 1988). In itself, even without the $10 million supplemental account, the funding method developed by LILCO and LIPA and approved by the PSC provides "reasonable assurance of funding for decommissioning in a safe and timely manner," in light of Shoreham's unique circumstances: (1) slight irradiation; (2) ease of decontamination; (3) near-term, highly certain schedule and decommissioning process; and (4) state-level regulatory commitment to promote decommissioning and ensure funding. Accordingly, LILCO believes its proposal meets the intent of 10 C.F.R. § 50.75 and, thus, to the extent deemed necessary, an exemption from the literal requirements of that provision is justified. See 10 C.F.R. § 50.12(a)(2)(ii).

2. Compliance with the Letter of the Decommissioning Funding Rules Would Impose an Undue Burden on LILCO and its Ratepayers

Pursuant to LIPA's proposed decommissioning plan, Shoreham will be decommissioned using the DECON method, over a span of 27 months, beginning in October 1991 and concluding by the end of 1993. LIPA conservatively estimates that the total cost of decommissioning, including a $7,127,000 contingency, will be $186,292,000. Thus, the regulatory burden on LILCO -- if the Company were required to come up with entire $186,292,000 before DECON activities are begun -- would be the cost of raising the entire amount up front, as compared with allowing LILCO to provide the $186,292,000 over the scheduled 27 month DECON period. Alternatively, if a letter of credit for the $186,292,000 or an equivalent surety bond were to be obtained by October 1991, the regulatory burden on LILCO would be the cost associated with securing such a letter of credit or bond.

LILCO has determined that obtaining a letter of credit for the $186,292,000 -- the least expensive option[2/] -- would cost the Company at least one percent per year for the amount guaranteed at the start. Thus, if the letter of credit were for the entire projected term of the decommissioning period, 27 months, the total cost would be approximately $4.2 million, above amounts actually needed to complete the plant's decommissioning. Even if the letter could be drawn down annually as money was expended, the total cost would be approximately $3.09 million. As explained above, protection of the public health and safety by no means require such expenditures. LILCO submits that the marginal assurance -- if any -- that might be conferred by requiring the Company to fund Shoreham's decommissioning entirely in advance does not justify such costs. This additional burden placed upon the residents of Long Island, particularly during the present economic climate, would be unwarranted. See 10 C.F.R. § 50.12(a)(2)(iii).

2/ While LILCO has not precisely quantified the cost associated with (1) acquiring all at once $186,292,000 and placing that sum in an external account or (2) obtaining a surety bond of equivalent value, the Company believes either option would cost more than obtaining a letter of credit.

Conclusion

For the reasons given above, LILCO respectfully requests that, as necessary, the NRC issue an exemption from the decommissioning funding regulations in 10 C.F.R. § 50.75 and approve the decommissioning funding mechanism established by the LILCO-LIPA Site Agreement, with its three month funding cushion, and as supplemented by the $10 million supplemental account described herein.

Very truly yours,

Victor A. Staffieri /dsh

Victor A. Staffieri
General Counsel
Long Island Lighting Company

Of Counsel:

Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219

Attachment

cc: S. Brown
R. Wood
T. Martin