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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

BEFORE THE COMMISSION

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In the Matter of)	Docket Nos. 50-322,
)	50-322-OLA and
LONG ISLAND LIGHTING COMPANY)	50-322-OLA-2
)	
(Shoreham Nuclear Power Station,)	
Unit 1))	

PETITIONERS' SECOND EMERGENCY MOTION FOR STAY

Movants Shoreham-Wading River Central School District and Scientists and Engineers for Secure Energy, Inc., movant-intervenors in the above-captioned matters, move the Commission to enjoin the Long Island Lighting Company ("LILCO") from taking any actions (including but not limited to the destruction of records and the disassembly, destruction or disposal of equipment) which would be inconsistent with the U.S. Nuclear Regulatory Commission's ("NRC") representation to the U.S. Court of Appeals for the District of Columbia Circuit that "if on appeal this Court vacates the POL amendment, the license will simply revert to the status quo ante -- i.e., a full power license." U.S. App. D.C. Docket Nos. 91-1301 and 91-1140, Opposition by U.S. Nuclear Regulatory Commission to Petitioners' Motion for Emergency Stay at 19n.11 (filed July 12, 1991).^{1/}

^{1/} Movants' counsel has advised the NRC Secretary, counsel for the NRC staff, and the Long Island Power Authority, as well as the Commission's counsel in the U.S. Court of Appeals, of this motion by telephone on Sunday, July 21, 1991 and has been attempting to so advise LILCO's counsel.

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Having made that representation to the Court, Movants suggest that this Commission is bound to preserve that Court's power to vacate the POL amendment and allow the license to "simply revert to the status quo ante -- i.e., a full power license." Petitioners recognize that, in their Reply before the U.S. Court of Appeals, they argued that the Court might not have the ability to vacate the POL in any meaningful fashion. U.S. App.D.C. Docket Nos. 91-1301 & 91-1140, Petitioners' reply to Oppositions to Their Emergency Motions at 7-8 (filed July 17, 1991). However, given the Court's failure to express its reasons for denying Petitioners' Emergency Motion, neither the Commission nor Petitioners can have any confidence as to the weight the Court gave the Commission's representation that the Court's power to vacate the POL and return a full power license to LILCO for Shoreham would not be mooted. In these circumstances, Petitioners suggest that the Commission must presume that the Court gave that representation great weight. This is especially true in light of the Court's reliance on WMATC v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977), which gives primacy to the consideration of the possibility of irreparable harm in deciding whether to issue stays.

In further support of this motion, Petitioners note that they are not asking this Commission to require LILCO to take affirmative acts which would cause the expenditure of any undetermined amount of funds, but only to prevent LILCO from expending funds


and efforts in destructive acts pending the Court of Appeals' consideration of the merits of the Petitions for Review in that Court.

Given the exigencies of time, Movants suggest that it would be appropriate for the Commission to preliminarily enjoin LILCO, ex parte, from destructive actions pending further later consideration of enjoining LILCO from such actions pending the completion of judicial review of the petitions pending in the U.S. Court of Appeals.

WHEREFORE, Petitioners urge the Commission, ex parte, to enjoin LILCO, at least on a preliminary basis, from any and all acts with respect to Shoreham which would be inconsistent with the Commission's representation to the Court that that Court will, on consideration of the merits, have the power to vacate the POL and return a full power operating license to Shoreham without the interim stay of the POL.

Respectfully submitted,

July 21, 1991


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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

EXHIBIT
USNRC

'91 JUL 22 12:00

BEFORE THE COMMISSION

In the Matter of

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power Station,
Unit 1)

)
) Docket Nos. 50-322,
) 50-322-OLA and
) 50-322-OLA-2
)
)
)
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the Petitioners' First Emergency Motion in the above-captioned proceeding have been served on the following by first-class mail, postage prepaid (except as otherwise indicated below) on this 21st day of July, 1991:

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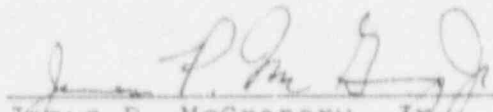
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