

LILCO, July 22, 1991

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSIONDOCKETED  
USNRC

'91 JUL 22 P3:07

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-2LILCO'S RESPONSE TO PETITIONERS' EMERGENCY MOTIONS

This constitutes LILCO's summary response to Petitioners' two emergency motions filed the evening of Sunday July 20.

FIRST EMERGENCY MOTION

This motion requests the NRC to stay LILCO from using the Possession-Only License (POL) granted by the NRC on June 19, pending Petitioners' second try for a stay from the Supreme Court of the United States. The immediate effectiveness of that license has already been approved by the Court of Appeals on July 19, and by the Chief Justice of the United States on July 20.

Petitioners present no new information whatever that might lead the Commission to reconsider its decision to issue the POL. Nor do Petitioners deal with the fact that the NRC's decision not to stay the POL further has been upheld now by two layers of judicial review, including the Chief Justice of the United States. The Commission should deny the motion summarily. In the

323

-2-

meantime, LILCO's plans concerning the Shoreham plant in the immediate future are stated in the attached letter to Francis Lorson, Esq., Deputy Clerk of the Supreme Court.

### SECOND EMERGENCY MOTION

Petitioners' second emergency motion boils down to a request that the Commission stay the effectiveness of the Shoreham POL during the pendency of merits review by the Court of Appeals. The motion suffers from several fatal defects.

First, its depiction of the Court of Appeals' July 19 denial of a stay misses the court's logic. In fact, the court found that Petitioners had failed to meet either the test of likelihood of success on the merits or the severity of interim harm required for a stay. And in the D.C. Circuit, where WMATC v. Holiday Tours, Inc., 559 F.2d 8412 (D.C.Cir. 1977), permits granting a stay when either the two tests has been met, denial of a stay implies clearly that neither one has been. This, in combination with the denial of Petitioners' motion for expedited treatment, indicates that the issue was not a close one in the court's decision.

Second, Petitioners' reference to the Commission's statement that, in the event of ultimate reversal on the merits, the POL would revert to the pre-existing operating license is nothing more than a definitional statement of the obvious. It is not a new ground for staying the effect of a POL. The Staff had this reality in mind when it recommended issuance of the POL, as did the Commission in approving it.

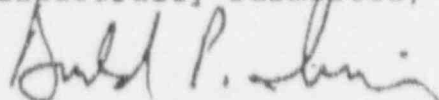
-3-

Finally, this motion has been repeatedly denied before. Petitioners made a virtually identical motion to this Commission, which denied it on June 12, in CLI-91-08.<sup>1/</sup> They then made this motion to the Court of Appeals, which denied it on July 19. Thereafter, they made it to the Chief Justice of the United States, who denied it on July 20. The Licensing Board in this matter has already criticized Petitioners for this kind of repetitive request.<sup>2/</sup> It should not be tolerated.

#### CONCLUSION

For the foregoing reasons, Petitioners' emergency motions of July 20 should be speedily denied. It is time for an end to Petitioners' increasingly frivolous pleadings and the burden they impose on the time and resources of the Commission and other parties.

Respectfully Submitted,



W. Taylor Reveley, III  
Donald P. Irwin  
David S. Harlow  
Counsel for Long Island  
Lighting Company

Hunton & Williams  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, Virginia 23219-4074

DATED: July 22, 1991

---

<sup>1/</sup> Petitioners' argument was in connection with prospective ASLB proceedings and New York State court proceedings, but the merits were are virtually indistinguishable from those at present.

<sup>2/</sup> The Board stated: "Counsel appears to have a penchant for repeating arguments that have been ruled upon and were dismissed. The Licensing Board does not favor such practices and expects it will not continue." LBP-91-26 (June 13, 1991) at 16 note 3.

LILCO, July 22, 1991

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSIONBefore 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 LILCO's RESPONSE TO PETITIONERS' EMERGENCY MOTIONS were served this date upon the following by telecopy, as indicated by an asterisk, or by first-class mail, postage prepaid.

Commissioner Ivan Selin, Chairman\*  
Nuclear Regulatory Commission  
One White Flint North Building  
11555 Rockville Pike  
Rockville, Maryland 20852

The Honorable Samuel J. Chilk\*  
The Secretary of the Commission  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Commissioner Kenneth C. Rogers\*  
Nuclear Regulatory Commission  
One White Flint North Building  
11555 Rockville Pike  
Rockville, Maryland 20852

Morton B. Margulies, Esq., Chairman  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
East-West Towers, Fourth Floor  
4350 East-West Highway  
Bethesda, MD 20814

Commissioner James R. Curtiss\*  
Nuclear Regulatory Commission  
One White Flint North Building  
11555 Rockville Pike  
Rockville, Maryland 20852

Dr. Jerry R. Kline  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
East-West Towers, Fourth Floor  
4350 East-West Highway  
Bethesda, MD 20814

Commissioner Forrest J. Remick\*  
Nuclear Regulatory Commission  
One White Flint North Building  
11555 Rockville Pike  
Rockville, Maryland 20852

Dr. George A. Ferguson  
Atomic Safety and Licensing Board  
5307 A1 Jones Drive  
Columbia Beach, Maryland 20764

-2-

Thomas S. Moore, Esq.,  
Alternate Chairman  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Rockville, Maryland 20852

James P. McGranery, Jr., Esq.\*  
Dow, Lohnes & Albertson  
1255 23rd Street, N.W., Suite 500  
Washington, D.C. 20037

Mitzi A. Young, Esq.  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Rockville, Maryland 20852

Nicholas S. Reynolds, Esq.  
David A. Repka, Esq.  
Winston & Strawn  
1400 L Street, N.W.  
Washington, D.C. 20005

Stanley B. Klimberg, Esq.  
Executive Director and General  
Counsel  
Long Island Power Authority  
200 Garden City Plaza, Suite 201  
Garden City, New York 11530

Hunton & Williams  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, Virginia 23219-4074

DATED: July 22, 1991

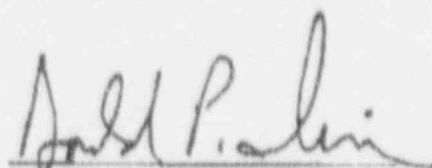
Charles M. Pratt, Esq.  
Senior Vice President and General Counsel  
22nd Floor  
Power Authority of State of New York  
1633 Broadway  
New York, New York 10019

Carl R. Schenker, Jr., Esq.\*  
Counsel, Long Island Power Authority  
O'Melveny & Myers  
555 13th Street, N.W.  
Washington, D.C. 20004

Charles E. Mullins, Esq.\*  
Office of General Counsel  
U.S. Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Rockville, Maryland 20852

Samuel A. Cherniak, Esq.  
New York State Department of Law  
Bureau of Consumer Frauds and Protection  
120 Broadway  
New York, New York 10271

Stephen A. Wakefield, Esquire  
General Counsel  
U. S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585

  
Donald P. Irwin



## HUNTON &amp; WILLIAMS

ATLANTA, GEORGIA  
BRUSSELS, BELGIUM  
FAIRFAX, VIRGINIA  
KNOXVILLE, TENNESSEE

RIVERFRONT PLAZA, EAST TOWER

881 EAST BYRD STREET

RICHMOND, VIRGINIA 23219-4074

TELEPHONE (804) 788-8200

FACSIMILE (804) 788-8218

NEW YORK, NEW YORK  
NORFOLK, VIRGINIA  
RALEIGH, NORTH CAROLINA  
WASHINGTON, D. C.

DONALD P. IRWIN

FILE NO.: 24566.100000  
DIRECT DIAL: (804) 788-8357

July 22, 1991

BY HAND

Francis Lorson, Esq.  
Deputy Clerk  
Supreme Court of the  
United States  
1 First Street, N.E.  
Washington, D. C. 20543

Shoreham-Wading River Central School District v.  
U.S. Nuclear Regulatory Commission, No. A-68

Dear Mr. Lorson:

LILCO understands that the above-captioned petition, which was denied Saturday by the Chief Justice, will be presented by petitioners to Mr. Justice Stevens this afternoon.

Counsel for Petitioners has inquired whether LILCO is willing to make any representation with respect to the circumstances which will prevail at the Shoreham plant during the immediate future, given that the Possession-Only License has been in effect since midnight, July 19. I am authorized to state the following:

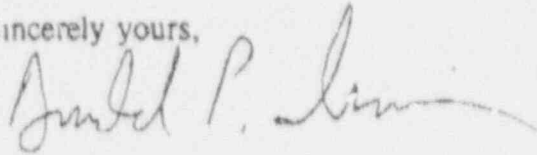
Although the Possession-Only License for the Shoreham Nuclear Power Station has been in effect since midnight July 19, the next several days will be devoted primarily to planning and organization for its effective use. LILCO will take no acts of a destructive nature at the plant, nor will there be any actions or inactions of an irreparable nature taken during this period.

## HUNTON &amp; WILLIAMS

Francis Lorson, Esq.,  
July 22, 1991  
Page 2

I am communicating this to counsel for all parties.

Sincerely yours,



Donald P. Irwin  
Counsel for Long Island Lighting Company

cc: James P. McGranery, Jr., Esq. (Petitioners)  
Lawrence J. Chandler, Esq. (NRC)  
Carl R. Schenker, Jr., Esq. (LIPA)  
Peter R. Steenland, Esq. (DOJ)

t:\us\lilco\polusac\lorsonltr.001