

LILCO, January 5, 1984

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Appeal Board

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

LILCO'S MOTION TO STRIKE CERTAIN REFERENCES  
IN SUFFOLK COUNTY'S BRIEF

I. Impermissible Incorporation by Reference

By Appeal Board Order of October 26, 1983, the page limit for Suffolk County's brief of December 23, 1983, was set at 140 pages. The County filed 131 pages of text. The County also, however, incorporated by reference almost 90 pages from its proposed findings of fact of January, April and May 1983, in order to develop certain of its appellate arguments and provide record references for them. See Attachment 1 to this motion for a list of the pages so incorporated.<sup>1/</sup> It is well

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<sup>1/</sup> Not all references in the County's brief to its proposed findings are included in Attachment 1. The list is limited to references that, in LILCO's judgment, constitute an attempt by the County to use its proposed findings to develop arguments in its brief and/or provide record references for them.

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established that such incorporation by reference is impermissible, both because it circumvents the pertinent page limit and because "[i]t is inappropriate to furnish record references in this fashion."2/

## II. Remedy

By this motion, LILCO asks that the references set out in Attachment 1 below be stricken from the County's brief. The remedy is appropriate because the County's lawyers are

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2/ Kansas City Gas and Elec. Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-424, 6 NRC 122, 127 (1977). As the Appeal Board said:

Insofar as the matter of citations to the record is concerned, the Coalition seeks to incorporate into its brief by reference a document which it filed with the Licensing Board last January. Although not expressly stated, it would seem that the Coalition considers that that document furnishes the requisite citations.

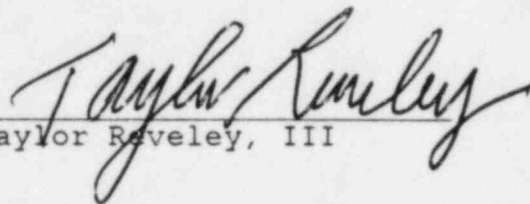
It is inappropriate to furnish record references in this fashion; the plain contemplation of 10 CFR §2.762(a) is that all such references appear in the brief itself--thus making resort to other documents unnecessary.

Id. at 126-27. See also, e.g., Long Island Lighting Co. (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831, 832-33 (1973); Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-367, 5 NRC 92, 104 n.59 (1977); Public Serv. Elec. and Gas Co. (Hope Creek Generating Station, Units 1 and 2), ALAB-394, 5 NRC 769, 770 (1977); Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-463, 7 NRC 341, 370 (1978); Toledo Edison Co., ALAB-560, 10 NRC 265, 371 (1979).

experienced at the NRC bar; they know the rules governing  
briefs filed with this Board. People who know the rules and  
decline to follow them assume the risk of their enforcement.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

  
W. Taylor Reveley, III

DATED: January 5, 1984

Attachment 1

<u>Page in</u> <u>SC Brief</u>	<u>SC Findings</u> <u>Incorporated by Reference</u>
6	County Findings, 5/9/83, at 37-49
14	<u>Id.</u> at 79-82
14	<u>Id.</u> at 80-82
17	County Findings, 1/31/83, Vol. I, at 121-26
26	<u>Id.</u> at 215-40
27	<u>Id.</u> at 245-49
50	County Findings, 4/7/83, Vol. I, at 33-39
56	<u>Id.</u> at 59-71
58	<u>Id.</u> at 28-33
63	<u>Id.</u> at 67-68
103	<u>Id.</u> at 166
103	<u>Id.</u> at 168
104	<u>Id.</u> at 168-69
104	<u>Id.</u> at 167-68
111	County Findings, 1/31/83, Vol. II, at 21-24, 26-27
112	<u>Id.</u> at 22
112	<u>Id.</u> at 26
113	<u>Id.</u> at 23
115	<u>Id.</u> at 34-36
116	<u>Id.</u> at 34

CERTIFICATE OF SERVICE

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

I hereby certify that copies of LILCO's Motion to Strike Certain References in Suffolk County's Brief were served today upon the following by Federal Express (as indicated by an asterisk) or by first-class mail, postage prepaid:

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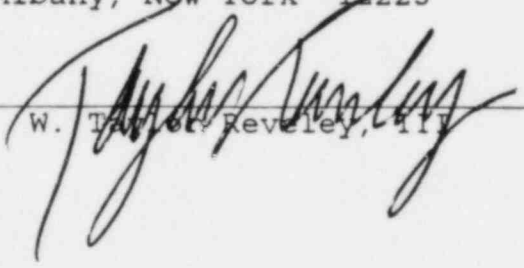
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