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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Before the Commission

and

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY  
DOCKETING & RECORDS  
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In the Matter of )

LONG ISLAND LIGHTING COMPANY )

(Shoreham Nuclear Power Station, )  
Unit 1) )

Docket No. 50-322-OL-4  
(Low Power)

JOINT MOTION OF SUFFOLK COUNTY AND THE STATE OF NEW YORK  
FOR THE COMMISSION'S PROMPT ATTENTION TO AND RULING ON  
PENDING COUNTY AND STATE MOTIONS AND FOR  
STAY OF INCONSISTENT ASLB ORDERS IN THE INTERIM

The Shoreham low power proceeding runs the risk of becoming a deep procedural mess if the Commission and Licensing Board fail to take prompt action to straighten things out -- namely, to confront squarely and rule on the pending motions of the County and State.

The State of New York and Suffolk County filed Motions on May 22 and 23 for NRC clarification of the May 16 Order, a Supplement to that Motion on May 30, a Motion to Strike LILCO's Phase I and II Summary Disposition Motions, dated May 24, and a further Request for the NRC to promptly clarify the posture of this proceeding, dated May 31. Among the major points raised by these filings are the following:

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1) There needs to be an opportunity for the Commission to consider the threshold question of factual and legal adequacy of LILCO's Application for Exemption;

2) LILCO's Phase I and II summary disposition motions are not authorized under the NRC's May 16 Order and further seek unlawful "no power" licenses. Thus, LILCO's motions must be stricken; and

3) Preliminary discovery requests of LILCO (requests for 10 depositions of County consultants, with each deposition taking as much as two days) makes it clear that the Commission's scheduling "guidance" of 30 days for discovery is inadequate; other parties will also require discovery.<sup>\*/</sup>

Today, we received two orders of the Licensing Board, one setting a schedule for a hearing on LILCO's Application for Exemption and the other ruling that responses to LILCO's Phase I and II summary disposition motions should be filed according to the 10 CFR §2.749 time requirements. See attached orders.

The Licensing Board rulings are in direct conflict with the positions which the County and State have taken in their pending motions before the Commission. And it is only there -- before the Commission -- that these motions can be dealt with, because they address matters central to the rulings and reasoning of the Commission's own May 16 Order. Thus, there should be no

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<sup>\*/</sup> In addition to these three points, other central issues which pervade the very structure of the low power proceeding are addressed in the County's and State's pending motions.

schedule, at least until the threshold question of the adequacy of LILCO's Application is decided; there should be no summary disposition responses until the Commission decides if such motions are even lawful and authorized; and the Licensing Board's schedule, adopted without seeking the views of the County or State (and failing to take into account the extent of discovery already planned or the frequently repeated requests of the County and State for the establishment of safeguards and security procedures under Part 73), is clearly not realistic or in keeping with the actual needs of the parties in order to make sense of the present posture of this proceeding.

The situation desperately needs to be resolved by the Commission. There simply is no public interest in any further delay by the Commission in confronting the pending County and State motions. Therefore, the County and State move:

- 1) That the Commission promptly rule on the pending motions and requests of the County and State as described above;
- 2) That the Licensing Board stay its two orders of May 31 until the Commission acts; and
- 3) That if the Licensing Board fails to stay its Orders, the Commission itself should promptly order such a stay.

Respectfully submitted,

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June 1, 1984



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Commission

and

Before the Atomic Safety and Licensing Board

In the Matter of )

LONG ISLAND LIGHTING COMPANY )

(Shoreham Nuclear Power Station,  
Unit 1) )

Docket No. 50-322-OL-4  
(Low Power)

CERTIFICATE OF SERVICE

I hereby certify that copies of the JOINT MOTION OF SUFFOLK COUNTY AND THE STATE OF NEW YORK FOR THE COMMISSION'S PROMPT ATTENTION TO AND RULING ON PENDING COUNTY AND STATE MOTIONS AND FOR STAY OF INCONSISTENT ASLB ORDERS IN THE INTERIM, dated June 1, 1984, have been served to the following this 1st day of June 1984 by U.S. mail, first class, by hand when indicated by one asterisk, and by telecopier when indicated by two asterisks.

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DATE: June 1, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges  
Marshall E. Miller, Chairman  
Glenn O. Bright  
Elizabeth B. Johnson

In the Matter

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Generating Plant,  
Unit 1)

Docket No. 50-322-OL-4  
(Low Power)

May 31, 1984

ORDER ESTABLISHING SCHEDULE FOR RESUMED HEARING

On May 22, 1984, LILCO filed its "Application for Exemption" (under the provisions of 10 CFR §50.12(a)<sup>1</sup> from the requirements of that portion of General Design Criterion 17 and from any other applicable regulations, which require the complete adjudication of LILCO's TDI diesel generators prior to the commence of low-power testing.

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<sup>1</sup> 10 CFR 50.12(a) specific exemptions:

(a) The Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

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LILCO's Application For Exemption was filed pursuant to the Commission's discussion of a proposed modified application in its Order of May 16, 1984 (CLI-84-8, 19 NRC \_\_\_\_). That Order stated that the modified application of LILCO should be submitted to this Board, and further provided:

In addressing the determinations to be made under 10 CFR 50.12(a), the applicant should include a discussion of the following:

1. The "exigent circumstances" that favor the granting of an exemption under 10 CFR 50.12(a) should it be able to demonstrate that, in spite of its noncompliance with GDC 17, the health and safety of the public would be protected.<sup>3</sup>
2. Its basis for concluding that, at the power levels for which it seeks authorization to operate, operation would be as safe under the conditions proposed by it, as operation would have been with a fully qualified onsite A/C power source.

The Licensing Board shall conduct the proceeding on the modified application in accordance with the Commission's rules. The Licensing Board shall make findings and issue an initial decision. Any initial decision authorizing the grant of an exemption shall not become effective until the Commission has conducted an immediate effectiveness review.

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<sup>3</sup>The Commission regards the use of the exemption authority under 10 CFR 50.12 as extraordinary. This method of relief has previously been made available by the Commission only in the presence of exceptional circumstances. See, United States Department of Energy, et al. (Clinch River Breeder Reactor Plant), CLI-83-1, 17 NRC 1, 4-6 and cases cited therein (1983). A finding of exceptional circumstances is a discretionary administrative finding which governs the availability of an exemption. A reasoned exercise of such discretion should take into account the equities of each situation. These equities include the stage of the facility's life, any financial or economic hardships, any internal inconsistencies in the



regulation, the applicant's good-faith effort to comply with the regulation from which an exemption is sought, the public interest in adherence to the Commission's regulations, and the safety significance of the issues involved.

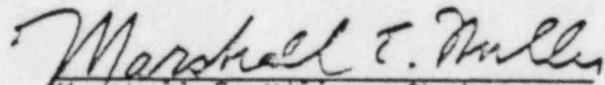
Of course, these equities do not apply to the requisite findings on public health and safety and common defense and security.

Pursuant to guidance provided to this Board by the Commission Order, the schedule for the resumed hearing on LILCO's modified application is established as follows:

|               |   |
|---------------|---|
| May 22, 1984  | LILCO's Application for Exemption filed with same-day service to all parties. |
| May 23, 1984  | Discovery commences   |
| June 29, 1984 | Discovery ends  |
| July 16, 1984 | Testimony filed   |
| July 30, 1984 | Hearing begins  |

It is so ORDERED.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

  
Marshall E. Miller, Chairman  
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland  
this 31st day of May, 1984.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges  
Marshall E. Miller, Chairman  
Glenn O. Bright  
Elizabeth B. Johnson

In the Matter

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Generating Plant,  
Unit 1)

Docket No. 50-322 OL-4  
(Low Power)

May 31, 1984

ORDER DENYING LILCO'S MOTION FOR EXPEDITED  
RESPONSES TO SUMMARY DISPOSITION MOTIONS

On May 22, 1984, LILCO filed a motion to compel prompt responses (by May 30) to two summary disposition motions it had filed on the same date. One such LILCO motion sought summary disposition on Phase I low power testing, and the other motion sought the same relief on Phase II low power testing.<sup>1</sup> No replies to LILCO's motion for prompt responses have been filed with this Licensing Board.

Although we have the power under 10 CFR §2.711 to extend or shorten the time for the performance of certain acts, the exercise of such

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<sup>1</sup> Phase I : fuel load and precriticality testing.  
Phase II: cold criticality testing.

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discretionary power requires a showing of good cause. No such showing has been made by LILCO's motion. It is true that the subject of summary disposition of Phases I and II has been discussed and argued in various forms for several months. However, there is no persuasive reason shown to deprive the other parties of their right to serve an answer supporting or opposing the motion within 20 days of its filing, under the provisions of 10 CFR §2.749.

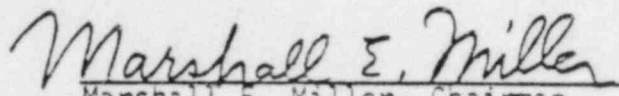
We call the attention of the parties to the provisions of the Commission's Order entered May 16, 1984 in this proceeding (CLI-84-8). That Order permitted the Applicant to seek an exemption under the provisions of 10 CFR 50.12(a). Such an Application For Exemption was filed by LILCO on May 22, 1984, with this Licensing Board. The Commission's Order directed this Board to conduct proceedings on the exemption application in accordance with the Commission's Rules, and it provided a schedule to the Board as guidance in resuming the hearing. We intend of course to follow such guidance in scheduling the resumed hearings. Accordingly, discovery should have commenced promptly on Day 2 (May 24) following the filing and same-day service of LILCO's Application For Exemption filed May 22, 1984. The parties are further put on notice that such recommended schedule will not be suspended or delayed by the mere act of filing a motion before this or any other tribunal.

For the foregoing reasons, LILCO's motion for shortened time for responses to its summary disposition motions is denied, and the parties

are directed to file answers thereto within the time limits prescribed by 10 CFR §2.749.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

  
Marshall E. Miller, Chairman  
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland  
this 31st day of May, 1984.