

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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)

SUFFOLK COUNTY AND NEW YORK STATE OPPOSITION TO
LILCO'S MOTION FOR REFERRAL OF ORDER GRANTING IN
PART AND DENYING IN PART LILCO'S MOTIONS FOR SUMMARY
DISPOSITION OF PHASE I AND PHASE II LOW POWER TESTING

On August 2, 1984, LILCO filed a Motion for Referral of the Licensing Board's July 24 Order which granted in part and denied in part LILCO's motions for summary disposition of Phases I and II of LILCO's low power license request. For the reasons discussed below, the County and State submit that the Board should deny LILCO's Motion.

In essence, LILCO's Motion for Referral is an attempt to reargue for the third time the exemption issue which LILCO has already argued -- and lost -- first before the Commission, and then before the Licensing Board, as evidenced by the July 24 Order. Phase I and Phase II represent the first two stages of LILCO's proposed four stage low power testing program, which is the subject of LILCO's application for a low power operating license. As the Board noted in its July 24 Order, the Commission

has already ruled in its May 16, 1984 Order (CLI-84-8) that because Shoreham admittedly does not have a qualified source of onsite emergency power, LILCO must demonstrate its entitlement to an exemption from GDC 17 and other applicable regulations before it may obtain a low power license. In requesting summary disposition with respect to the first half of its low power test program, without even addressing the determinations which the Commission ruled must be made in order to obtain an exemption under 10 CFR § 50.12(a), LILCO simply ignores the Commission's May 16 Order. Thus, the Board was correct in stating in the July 24 Order that in light of the Commission's May 16 Order the Board "does not have the power or jurisdiction to grant LILCO's motion for summary disposition of Phases I and II of its low-power testing program" because:

In its motion LILCO did not seek summary disposition of its exemption request, nor did it even address the factual issues involved therein. Accordingly, the ultimate issues involved in Phase I and II activities cannot be disposed of summarily, and that portion of the summary disposition motion is denied.

July 24 Order at 9, 10 (emphasis added).

Furthermore, contrary to LILCO's assertion that the Commission's May 16 Order is ambiguous (see Motion for Referral at 5-6), the Order is clear on its face, and its meaning was applied in the Board's July 24 Order. Indeed, for the reasons set forth in the Suffolk County and State of New York Memorandum in Opposition to LILCO's May 22, 1984 Motions for Summary Disposition on Phase I and Phase II of LILCO's Proposed "Low Power Testing," dated June

13, 1984 at 1'-21, there can be no doubt that the Commission's May 16 Order requires that LILCO must first obtain an exemption from applicable General Design Criteria, including expressly GDC 17, before its low power operation proposal, or any portion of it, may be granted. The Commission did not indicate any intent to limit its ruling on the requirement for an exemption to only portions of LILCO's low power license application.

Thus, the Commission's May 16 Order is clear in requiring LILCO to seek a Section 50.12 exemption from the requirements of GDC 17, and the Board properly read the Commission's Order in its July 24 Order denying summary disposition on the ultimate issues with respect to the portion of LILCO's low power license application represented by Phases I and II.

In addition, the Board convened -- and has since completed -- an evidentiary hearing on the non-security aspects of LILCO's exemption request.^{1/} Thus, events have in effect overtaken the LILCO request -- the facts at issue have already been presented to the Board during the evidentiary hearing. No useful purpose would be served by referral at this time of a summary disposition ruling on a portion of the exemption issue, since the legal issue has already been ruled on by both the Commission and the Board, and the factual issues have been heard by the Board in an evidentiary hearing. The only sensible and reasonable procedure at this time is for the Board to make findings and issue an initial decision on

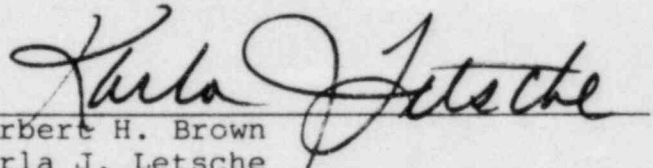
^{1/} Closing arguments have not yet taken place but have been scheduled.

LILCO's exemption request, and then the Commission will exercise the review function which the Commission established in its May 16 Order.

Accordingly, Suffolk County and New York State submit that LILCO's request for referral should be denied.

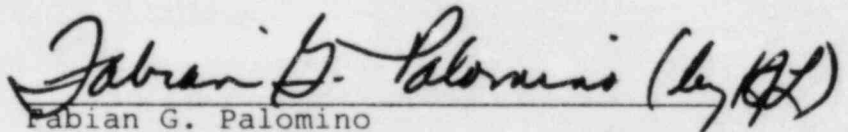
Respectfully submitted,

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Dated: August 13, 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY AND NEW YORK STATE OPPOSITION TO LILCO'S MOTION FOR DIRECTED CERTIFICATION OF THE LICENSING BOARD'S JULY 24, 1984 ORDER GRANTING IN PART AND DENYING IN PART LILCO'S MOTIONS FOR SUMMARY DISPOSITION OF PHASE I AND PHASE II LOW POWER TESTING and SUFFOLK COUNTY AND NEW YORK STATE OPPOSITION TO LILCO'S MOTION FOR REFERRAL OF ORDER GRANTING IN PART AND DENYING IN PART LILCO'S MOTIONS FOR SUMMARY DISPOSITION OF PHASE I AND PHASE II LOW POWER TESTING, dated August 13, 1984, have been served on the following this 13th day of August, 1984 by U.S. mail, first class, except as otherwise indicated.

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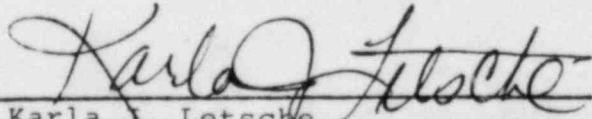
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DATE: August 13, 1984

* By Hand
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