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WRITER'S DIRECT DIAL NUMBER
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Mr. Thomas M. Novak
Assistant Director for Licensing
Division of Licensing
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Long Island Lighting Co. (Shoreham Nuclear Power Station), Docket No. 50-322-OL-4 (Low Power); Environmental Assessment and Finding of No Significant Impact

Dear Mr. Novak:

We are writing on behalf of our client, Suffolk County, New York. Suffolk County has reviewed the NRC's "Environmental Assessment" and "Finding of No Significant Impact" pertaining to LILCO's request for an exemption from 10 C.F.R. Part 50, GDC 17. See 49 Fed. Reg. 48,121 (1984). For reasons set forth below, the Assessment and No Significant Impact Finding are deficient and not in accordance with regulatory requirements.

1. Under 10 C.F.R. § 51.30(a)(1)(i), an environmental assessment must discuss the "need for the proposed action . . . ." In the instant case, the "proposed action" is an exemption from GDC 17 to permit early operation of Shoreham at low power despite the absence of a fully qualified onsite AC power source.

The Assessment purports to discuss the need for the proposed action. 49 Fed. Reg. at 48,121. This discussion is grossly deficient. The "need" discussion amounts only to a description of the fact that LILCO lacks fully qualified diesels, that without the exemption LILCO cannot operate Shoreham at low power, and that the Miller Board and Staff believe there is adequate technical justification for the exemption.

The Assessment fails even to identify, let alone meaningfully address, the very "need" issue which is central to NEPA and the NEPA issue in this docket, i.e., whether there is any need for or benefit to be derived from the grant of the unprecedented

GDC 17 exemption request in face of the fact that the power from Shoreham is not required by Long Island residents for at least 10 years.1/ Since Shoreham's power is not needed for at least 10 years, there can be no possible basis for the NRC to find that there is a need for the proposed exemption action. The Assessment ignores this critical issue and, thus, is defective and in violation of NEPA and the NRC's regulations.

2. Under 10 C.F.R. §§ 51.30(a)(1)(ii) and (iii), an assessment must consider the "alternatives" to the proposed action and the environmental impacts of the proposed action and such alternative(s). The Assessment purports to address these requirements. See 49 Fed. Reg. at 48,121-22. In fact, however, the Assessment makes only inconsequential and conclusory statements.

First, the Assessment ignores an inescapable critical environmental impact which would result from grant of the exemption: a presently uncontaminated facility which would not likely ever be eligible for a commerical operating license would be contaminated by radiation. Such contamination would create the potential for worker exposure to harmful radiation and require that the facility be decontaminated subsequently. The decontamination process alone will add millions of dollars of cost (and, again, the potential for worker exposure to radiation). Under the NEPA process, the NRC was required to take a hard look at these impacts and costs. By completely ignoring these impacts and costs, the NRC has flagrantly violated NEPA.

Second, the Assessment states that the principal alternative to the grant of the exemption -- the denial of the exemption -- "would not reduce the environmental impacts associated with the onsite emergency power supply system, and would result in delay

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1/ See Suffolk County and State of New York Comments Concerning Commission Review of LILCO's Exemption Request, November 29, 1984, at 16 and Attachments 5 and 6; New York State and Suffolk County Supplementary Affidavit in Support of Comments Filed November 29 and Request for Oral Argument filed November 29, December 5, 1984, and particularly the affidavit of Eugene J. Gleason, Director of the New York State Energy Office Bureau of Planning; New York State and Suffolk County Motion for Leave to Reply to LILCO's Request for the Commission to Ignore State Energy Official's Sworn Statement that Shoreham's Capacity Will Not Be Needed for More Than Ten Years, December 14, 1984.

in the issuance of the Shoreham operating license." Id. at 48,122. This statement is clearly wrong. The denial of the exemption would avoid radioactive contamination of the plant, resulting in less environmental impact. Further, the purported "delay" in issuance of an operating license is of no effect, particularly because: (a) there is no need for Shoreham's power; and (b) the lack of an approved and implementable offsite radiological emergency response plan means that the plant will not be eligible for a full power, commercial operating license.2/

If the Assessment had properly considered these matters as required by NEPA, the NRC would have understood that the environmental costs associated with the grant of an exemption far exceed any benefits which possibly might accrue from operation of the plant at low power when the plant likely may then need to be abandoned. Indeed, there clearly are no benefits that might be derived from low power operation of an unneeded plant when there are substantial uncertainties (such as presently exist) regarding whether the plant ever could be granted a commercial license. Accordingly, the Assessment is deficient and violates NEPA and the NRC's regulations.

Third, the Assessment is deficient because all reasonable alternatives to the proposed action are not discussed. The Assessment considers only the alternative of outright denial of the exemption. The Assessment ignores the alternative of delaying action on the exemption until there has been resolution of critical issues which could eliminate any possible basis for grant of the exemption. Thus, if the Appeal Board reverses the Miller Board's October 29 Initial Decision which has been appealed by the State and County,3/ if the Laurenson Board finds

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2/ The Assessment implies that there would be some harm from denial of an exemption to allow low power operation. But the Assessment never even purports to identify what that harm might be. Surely, in terms of the public interest, there is no harm in holding back an operating license until critical safety requirements are satisfied. Again, the Assessment is woefully inadequate for failing to take the requisite hard look at the environmental costs and benefits of the proposed action and the alternatives thereto.

3/ The Joint State and County Brief in appeal of the Miller Board Decision was filed December 11, 1984 and demonstrates multiple bases to reverse the Miller Board.

deficiencies in LILCO's emergency plan, or if the New York State Supreme Court rules in Cuomo et al. v. LILCO, Consolidated Index No. 84-4615, that LILCO lacks legal authority to implement its plan, then plainly there would be no possible justification for the NRC to permit LILCO to contaminate Shoreham at low power by means of an exemption to GDC 17. Decisions on all these matters are expected in coming months. A deferral of a decision on the LILCO exemption until these decisions are rendered would result in no delay in ultimate full power operation of the plant (assuming, arguendo, that such operation could ever be authorized), because under no schedule could such operation occur until late in 1985. Thus, even after these decisions there would be time for the brief low power program proposed by LILCO (2-3 months) prior to any potential commercial operating license. Accordingly, delay in action on the exemption request until decisions are reached in these other matters would serve to maintain the status quo, would avoid unnecessary environmental impacts, would result in no harm to LILCO, and would not have an adverse impact on the 10-year timespan before Shoreham is needed.

3. The "Finding of No Significant Impact" was never issued in draft for public comment. This violates 10 C.F.R. § 51.33, because the criteria of Section 51.33(b) for circulation of draft findings for public comment clearly are here satisfied: this exemption request is "without precedent" (§ 51.33(b)(1)(ii)); and the purposes of NEPA clearly would be furthered (§ 51.33(b)(2)) in this case by a full public comment period since, as this submission makes clear, there is no basis under NEPA to justify the exemption from GDC 17.

4. The "Finding of No Significant Impact" was issued in violation of Section 51.34. In a contested proceeding such as the instant case, the Staff director can only prepare a proposed finding of no significant impact. The final finding can be issued only by the presiding officer, the Appeal Board, or the Commission as a collegial body. See 10 C.F.R. § 51.34(b).

In view of the Part 51 violations documented above, the Assessment and Finding of No Significant Impact must be rescinded. The NRC has only two options: (1) prepare an Environmental Assessment in full compliance with the regulations, which we submit will reveal the need to prepare a full environmental impact statement ("EIS"); or (2) dispense with the Assessment and immediately commence preparation of an EIS in accordance with

Part 51 procedures. Until such steps are taken, any licensing action on the LILCO exemption request would be illegal.

Respectfully submitted,

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LCL/dk

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