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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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 STATE OF NEW YORK MOTION
TO STRIKE LILCO'S UNAUTHORIZED PLEADING

On February 14, 1985, LILCO filed a motion purportedly asking for "clarification" of the Commission's February 12, 1985 low power exemption order, CLI-85-01. The Commission should summarily strike and reject this motion for the following reasons:

1. The point on which LILCO seeks clarification is in no way ambiguous. Indeed, the Commission's Deputy General Counsel, Mr. Malsch, specifically brought this point to the Commission's attention at the February 12 affirmation session, and the Commission decided to let the Appeal Board do its job without being encumbered by the content of the Commission's immediate effectiveness decision.

I wanted to indicate one additional thing to call to your attention. We provided specifically here on page 6 that this is without, everything the Commission says

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here, is without prejudice of pending appeals before the Appeal Board.

This matter was argued orally before the Appeal Board yesterday and the Commission does have a choice as to whether certain of its views expressed in its order should or should not be binding on the Appeal Board during appeal. Now, we have taken the view here, and the order specifically provides, that none of this is binding on the Appeal Board. But that's an issue the Commission should be aware of. And we discuss it in the paper before you. Feb. 12 Tr. at 11.1-12.

The Commission then adopted the language identified by Mr. Malsch.

2. Since November 1984, LILCO has been characterizing the Commission's review as a mere immediate effectiveness review in order to squeak through the NRC's licensing process. Indeed, it so argued to the Appeal Board as recently as February 12, 1984, during a conference call with the Board and parties. Apparently, LILCO now finds that it could better pamper its own interests if the Commission's Order were not a mere immediate effectiveness review, but something of more substantive import. LILCO's pleading has thus put LILCO into the position of speaking inconsistently and contrary to the clear language of the Commission's Order.

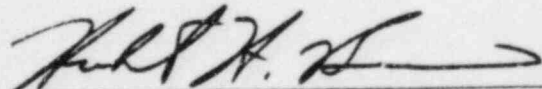
3. The objective of LILCO's pleading is obviously to persuade the Commission to send a message to the Appeal Board. LILCO could have, but did not, write directly to the Appeal Board; presumably because LILCO knew that the Board

could not accept LILCO's argument, which would have required the Board to repudiate the Commission's Order. Nevertheless, LILCO sent a copy of its pleading to the Appeal Board with the obvious intent of having the Board read the content. This was not proper.

For the foregoing reasons, the Commission should promptly strike and reject LILCO's unauthorized Motion for Clarification. If the Commission intends to address the merits of LILCO's Motion, we ask the opportunity to submit our views on those merits.

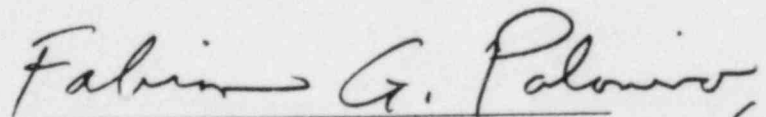
Respectfully submitted,

Martin Bradley Ashare
Suffolk County Department of Law
Veterans Memorial Highway
Hauppauge, New York 11788



Herbert H. Brown
Lawrence Coe Lanpher
Karla J. Letsche
KIRKPATRICK & LOCKHART
1900 M Street, N.W., Suite 800
Washington, D.C. 20036

Attorneys for Suffolk County

 (M)

Fabian G. Palomino
Special Counsel to the Governor
of the State of New York
Executive Chamber, Room 229
Capitol Building
Albany, New York 12224

Attorney for Mario M. Cuomo
Governor of the State of New York

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CERTIFICATE OF SERVICE

I hereby certify that copies of Suffolk County and State
Of New York Motion To Strike LILCO's Unauthorized Pleading
have been served on the following this 19th day of February,
1985 by U.S. mail, first class, except as otherwise noted.

*Alan S. Rosenthal, Chairman
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

*Mr. Howard A. Wilber
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

*Mr. Gary J. Edles
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Edward M. Barrett, Esquire
General Counsel
Long Island Lighting Company
250 Old Country Road
Mineola, New York 11501

**W. Taylor Reveley III, Esquire
Hunton & Williams
P.O. Box 1535
707 East Main Street
Richmond, Virginia 23212

Mr. Jay Dunkleberger
New York State Energy Office
Agency Building 2
Empire State Plaza
Albany, New York 12223

Judge Marshall E. Miller, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Judge Glenn O. Bright
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Judge Elizabeth B. Johnson
Oak Ridge National Laboratory
P.O. Box X, Building 3500
Oak Ridge, Tennessee 37830

Mr. Brian McCaffrey
Long Island Lighting Company
Shoreham Nuclear Power Station
P.O. Box 618
North Country Road
Wading River, New York 11792

MHB Technical Associates
1723 Hamilton Avenue
Suite K
San Jose, California 95125

** Fabian Palomino, Esquire
Special Counsel to the Governor
Executive Chamber
Room 229
State Capitol
Albany, New York 12224

Spence Perry, Esquire
Associate General Counsel
Federal Emergency Management Agency
Washington, D.C. 20471

James B. Dougherty, Esquire
3045 Porter Street, N.W.
Washington, D.C. 20008

Nora Bredes
Executive Director
Shoreham Opponents Coalition
195 East Main Street
Smithtown, New York 11787

Stuart Diamond
Business/Financial
New York Times
229 W. 43rd Street
New York, New York 10036

Stephen B. Latham, Esquire
Twomey, Latham & Shea
P.O. Box 398
33 West Second Street
Riverhead, New York 11901

Hon. Peter F. Cohalan
Suffolk County Executive
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

Martin Bradley Ashare, Esquire
Suffolk County Attorney
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

Jonathan D. Feinberg, Esquire
Staff Counsel, New York State
Public Service Commission
3 Rockefeller Plaza
Albany, New York 12223

Stewart M. Glass, Esquire
Regional Counsel
Federal Emergency Management
Agency
26 Federal Plaza
New York, New York 10278

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory
Commission
1717 H Street, N.W.
Washington, D.C. 20555

*Edwin J. Reis, Esquire
Bernard M. Bordenick, Esquire
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Martin Suubert
c/o Congressman William Carney
1113 Longworth House Office Bldg.
Washington, D.C. 20515

Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Joel Blau, Esquire
New York Public Service Commission
The Governor Nelson A. Rockefeller
Building
Empire State Plaza
Albany, New York 12223

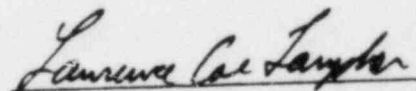
* Nunzio J. Palladino, Chairman
U.S. Nuclear Regulatory
Commission
1717 H Street, N.W., Room 1114
Washington, D.C. 20555

* Commissioner Thomas M. Roberts
U.S. Nuclear Regulatory
Commission
1717 H Street, N.W., Room 1113
Washington, D.C. 20555

* Commissioner Frederick M.
Bernthal
U.S. Nuclear Regulatory
Commission
1717 H Street, N.W., Room 1156
Washington, D.C. 20555

* Commissioner Lando W. Zech, Jr.
U.S. Nuclear Regulatory
Commission
1717 H Street, N.W., Room 1103
Washington, D.C. 20555

* Commissioner James K.
Asselstine
U.S. Nuclear Regulatory
Commission
1717 H Street, N.W., Room 1149
Washington, D.C. 20555



Lawrence Coe Lanpher
KIRKPATRICK & LOCKHART
1900 M Street, N.W., Suite 80
Washington, D.C. 20036

Date: February 19, 1985

*By Hand

**Telecopy