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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
)
LONG ISLAND LIGHTING COMPANY)
)
(Shoreham Nuclear Power Station,)
Unit 1))

DOCKETED
USNRC

No. 85-12220-LP3:55
(Low Power)

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

REQUEST OF STATE OF NEW YORK AND SUFFOLK COUNTY
FOR ORAL PRESENTATIONS PRIOR TO
COMMISSION VOTE ON REVIEW OF ALAB-800

By a Federal Register Sunshine Act Notice dated May 22, 1985 (50 F.R. 21164), the Commission announced its intention to conduct a public meeting on June 4, 1985 to discuss and possibly vote on its review of ALAB-800. If the Commission were to deny the State/County Petition for Reconsideration of CLI-85-1 and were to reverse the Appeal Board's ruling that LILCO's substitute emergency onsite power system must be treated as "vital equipment," the Commission would have to consider whether to issue a low power license for Shoreham. New York State and Suffolk County submit that before proceeding to consider that matter, the Commission would have to prepare a Supplemental Environmental Impact Statement ("EIS") which specifically addresses the foreseeable alternative of Shoreham being licensed to operate at low power but not being licensed to operate at full power.

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The State and County have on repeated previous occasions requested the Commission to prepare such a Supplemental EIS. In each instance, the Commission denied these requests.*/
Nevertheless, the State and County believe that events of the past few months underscore the reasonableness of their requests for a Supplemental EIS and believe that the Commission would benefit greatly from brief oral presentations of the views of all parties to the proceeding. We suggest that these oral presentations be scheduled for June 4.

In particular, the recent decisions of the New York State Supreme Court (February 20, 1985: LILCO plan illegal under State law), the United States District Court for the Eastern District of New York (March 18, 1985: Suffolk County emergency planning resolutions are rationally based and not preempted), and the NRC's Shoreham Emergency Planning Licensing Board (April 21, 1985: Federal law does not preempt New York law and thus LILCO has no "implementable, comprehensive and effective emergency response plan for Shoreham") make clear that LILCO's proposed offsite emergency plan is illegal and not implementable. Without such a plan, Shoreham cannot be licensed for full power operation. And, without subsequent full power operation, low power operation would result in great costs that would not be offset by any benefits. This would be demonstrated conclusively by a Supplemental EIS.

*/ For instance, on March 4, 1985, Suffolk County and the State of New York filed a Renewal of Request for NRC Supplementation of its Shoreham FEIS as Required by NEPA. On April 18, 1985, the NRC rejected this request by 4-1 vote, without providing any basis for its ruling.

The usefulness of oral presentations is underscored by the NRC Staff's May 13 Response to the County and State's Petition for Reconsideration of CLI-85-1. In this filing, the Staff agreed that given the decisions of state and federal courts and the Emergency Planning Board, "it would appear that LILCO will be unable to demonstrate compliance with Section 50.47 and thus may not be able to qualify for a license for operation of Shoreham beyond 5% of rated power" Staff Response at 17. The Staff further stated that "there may well be little or no benefit to low power testing at the present time" and that "an exemption at this stage of the Shoreham proceeding would appear to have no real value." Id. at 18. This is a significant change in the Staff's position that should be heard and considered by the Commission and other parties on June 4. It is further reason for the Commission to abandon its standing view that the denial of a full power license for Shoreham is "too speculative" to require an EIS supplement before the Commission considers any licensing action.

In its May 13 Response, the Staff announced that it intended to file an additional pleading with the Commission to address whether the U.S. District Court and ASLB decisions of March 18 and April 21 resulted in the need to prepare an EIS supplement. See Staff Response at 18-19, Note 11. Staff counsel informed Mr. Chilk today, however, that the Staff will not file such a pleading. See letter from Robert G.

Perlis to Samuel J. Chilk, May 28, 1985. The effect of the Staff reversal is to deprive the Commission of the Staff's new view that strongly relates to the need for an EIS Supplement. An oral presentation by all parties addressing this critical matter would permit the Commission not only to hear the Staff's new view, but to gain an understanding of the impact of the recent decisions of the Courts and Licensing Board on the need for a Supplemental EIS.

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May 29, 1985

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NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of _____
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DOCKETED
USNRC
Docket No. 85 MAY 29 P3:56
50-322-OL-4
Low Power
OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of the Request of State of New York and Suffolk County for Oral Presentations Prior to Commission Vote on Review of ALAB-800 have been served on the following this 29th day of May, 1985, by U.S. mail, first class, except as otherwise noted.

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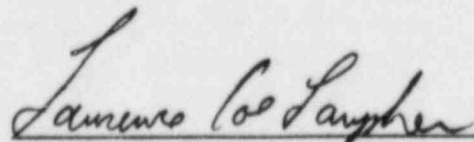
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