LILCO

LONG ISLAND LIGHTING COMPANY

SHOREHAM NUCLEAR POWER STATION

P.O. BOX 618, NORTH COUNTRY ROAD • WADING RIVER, N.Y. 11792

WILLIAM E. STEIGER, JR.

ASSISTANT VICE PRESIDENT--NUCLEAR OPERATIONS

SNRC-1658

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U.S. Nuclear Regulatory Commission
Document Control Desk
Washington, D.C. 20555

Attention: Dr. Thomas E. Murley, Director
Office of Nuclear Reactor Regulation

LILCO's Response to the September 15, 1989 Letter
from NRC (T. Murley) to LILCO (W. Steiger, Jr.)
Shoreham Nuclear Power Station - Unit 1
Docket No. 50-322

Ref: (1) NRC (T. Murley) letter to LILCO (W. Steiger, Jr.) dated September 15, 1989
(2) Petition filed pursuant to 10CFR2.206 by J. McGranery, Jr. on behalf of Shoreham-Wading River Central School District and Scientists and Engineers for Secure Energy dated July 14, 1989 (SWR/SE 2 Petition)
(3) Supplement to SWR/SE 2 Petition dated July 19, 1989
(4) Supplement to SWR/SE 2 Petition dated July 21, 1989
(5) Supplement to SWR/SE 2 Petition dated July 31, 1989
(6) Petition filed pursuant to 10CFR2.206 by L. Bickwit, Jr. on behalf of Long Island Association dated August 4, 1989 (LIA Petition)

Dear Dr. Murley:

LILCO hereby presents its written response to your letter of September 15, 1989 to me (Reference (1)).

I. Introduction

In Reference (1), you instructed LILCO to review the petitions filed pursuant to 10CFR2.206 by Mr. James P. McGranery, Jr., on behalf of the Shoreham-Wading River School District and Scientists and Engineers for Secure Energy, and by Leonard Bickwit, Jr., on behalf of the Long Island Association (collectively "Petitioners") and to address each concern raised therein. In Reference (1), you also briefly described the various bases for the two petitions. In this response, LILCO has recharacterized slightly some of the stated bases of the two

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petitions to reflect LILCO's own understanding of what Petitioners are arguing and to address more fully the concerns they are raising. Though several of the arguments being made in the two petitions are similar, for the sake of clarity, LILCO addresses each petition separately.

II. SWR/SE 2 Petition

The SWR/SE 2 Petition consists of an initial request, dated July 14, 1989, and three supplements, dated July 19, July 21, and July 31[1]. Because of the multiple supplements to the petition, LILCO has found it difficult in some instances to distinguish clearly between certain of the bases offered in support of the petition or to identify fully all of the allegations that are being made. In this reponse, LILCO has attempted to characterize fairly the concerns that the petition raises.

A. Basis (1)

The first basis for the petition is that both the defueling of the Shoreham reactor and the storage of the fuel in the spent fuel pool, which the petition assumes to have been "conducted by the licensee pursuant to 10CFR50.59," Reference (2) at 14, involve an unreviewed safety question. Since LILCO has not obtained prior NRC approval to engage in these activities, the petition argues, LILCO has violated 10CFR50.59. The petition advances at least three separate arguments in support of this claim.

First, the petition argues that LILCO has violated 10CFR50.59 because the removal and storage of Shoreham's fuel is "unnecessary," given that the fuel has not reached the end of its useful life, as is typically the case when such activities are conducted. The petition asserts that "(i)t is inherent in the establishment of acceptable risks in (removing the fuel from the reactor), that there is a risk-benefit analysis taking as its premise the need to perform the activity." Reference (2) at 13 (emphasis in original). In the case of Shoreham, the petition argues, this supposed risk-benefit analysis does not apply. The July 31 supplement reiterates that the petition is not arguing that there is great risk in the defueling activity or in the storage of the fuel in the fuel pool per se, but that

> previous reviews of defueling activities have addressed the acceptability of that risk in light

Reference (5) at 3.

1/ By letter dated July 26, 1989, Mr. McGranery informed the NRC that Scientists and Engineers for Secure Energy adopted and incorporated by reference as the bases for its petition the bases of the petition filed by the Shoreham-Wading River Central School District.

> of the benefit to be achieved (i.e., either reloading of new fuel for continued operation or, in rare cases, mitigation of an accident) which is totally lacking here.

Second, the July 19 supplement argues that the storage of Shoreham's fuel in the fuel pool may reduce the "margin of safety" because

> the public health and safety would no longer be protected by a combination of barriers provided by (a) the reactor vessel itself, (b) the primary containment and (c) the secondary containment, but would only be protected by the secondary containment once the fuel is in the spent fuel pool.

Reference (3) at 1-2. The July 31 supplement repeats this assertion, arguing that the NRC should order LILCO to return the fuel to the reactor vessel

> where the health and safety of the public will be protected not only by the secondary containment, but also by the primary containment and the reactor vessel itself . . .

Reference (5) at 3.

Third, the July 31 supplement claims that at the meeting between LILCO management and the NRC Staff on July 28, 1989, LILCO itself conceded that it had not completed the allegedly necessary safety analysis regarding transfer and storage of the fuel. Reference (5) at 2-3.

As a threshold matter, the petition has incorrectly assumed that the defueling of Shoreham and subsequent storage of the fuel in the fuel pool are activities that have been conducted pursuant to 10CFR50.59. As a result, the assertion that LILCO has violated 10CFR50.59 is entirely misplaced.

Section 50.59 (a)(1) provides that the

> holder of a license authorizing operation of a production or utilization facility may (i) make changes in the facility as described in the safety analysis report, (ii) make changes in the

> procedures as described in the safety analysis report, and (iii) conduct tests or experiments not described in the safety analysis report, without prior Commission approval, unless the proposed change, test or experiment involves a change in the technical specifications incorporated in the license or an unreviewed safety question.

What the petition overlooks is that the removal of the fuel from Shoreham's reactor is not a "change" in the facility, a "change" in the facility's procedures, or a "test or experiment" at all. To the contrary, the movement of fuel from the reactor vessel to the spent fuel pool, and the subsequent storage of the fuel in the pool, is an activity typically associated with normal nuclear plant operations and one that is permitted by Shoreham's technical specifications (NUREG-1357)[2/]. Accordingly, the provisions of 10CFR50.59 do not apply to LILCO's defueling activities.

Moreover, even if it is assumed, for the sake of argument, that the defueling of Shoreham is a "change" to the facility or to procedures within the meaning of 10CFR50.59, the petition fails to demonstrate that such change involves an "unreviewed safety question." The regulatory test for determining whether an "unreviewed safety question" exists is provided in 10CFR50.59 (a)(2), which states that a

> proposed change, test, or experiment shall be deemed to involve an unreviewed safety question (i) if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased;

2/ In your July 20, 1989, letter to Mr. McGranery, in which you denied the Shoreham-Wading River Central School District's request that the NRC take immediate action to stop LILCO's activities at Shoreham, you stated that the "defueling of the reactor vessel is an activity permissible under the terms of Facility Operating License NPF-82." See Letter from Thomas E. Murley, Director of Nuclear Reactor Regulation, to James P. McGranery, Jr., counsel for Shoreham-Wading River Central School District and Scientists and Engineers for Secure Energy at 2 (July 20, 1989).

> or (ii) if a possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created; or (iii) if the margin of safety as defined in the basis for any technical specification is reduced.

Clearly, in advancing its "risk-benefit analysis" argument, the petition does not even begin to try to assess the defueling of Shoreham against any of the three criteria specified in 10CFR50.59(a)(2). LILCO has identified nothing in either the language of 10CFR50.59, the regulatory history of the provision, or NRC case law to support the assertion that "inherent" in the NRC's definition of "unreviewed safety question" is the "need" to perform the activity at issue.

In asserting that storage of the fuel in the fuel pool may reduce the "margin of safety," the July 19 and July 31 supplements come closer to putting forth an arguement that attempts to assess defueling against the standards in 10CFR50.59(a)(2). But the petition still fails to demonstrate that an "unreviewed safety question" is involved. The risks associated with the movement of fuel from the reactor vessel and the subsequent storage of the fuel in the fuel pool, outside the primary containment, have previously been analyzed in Section 15.1.36 of Shoreham's Updated Safety Analysis Report.

Finally, it is simply not true that LILCO itself has conceded that at the time of defueling it had not completed the allegedly necessary 10CFR50.59 safety analysis. The then-uncompleted safety analysis to which LILCO personnel referred at the July 28 meeting with the Staff is an analysis that was being developed by LILCO's Nuclear Engineering Department to support certain license amendment and regulatory exemption requests that LILCO intends to submit to the NRC in the future. See Transcript of Management Level Meeting between the Nuclear Regulatory Commission and Long Island Lighting Company at 14 (July 28, 1989). LILCO was not required to complete and submit this analysis to the NRC prior to defueling Shoreham.

B. Basis (2)

The petition's second basis is an assertion that LILCO's reduction of staffing at Shoreham constitutes a "willful violation of the bases of the issuance of the license and the licensee's prior commitments to the Commission." Reference (2) at 14. In particular, the petition refers to the staffing information contained in the Operational Readiness Assessment Team (ORAT) report as evidence of LILCO's supposed "commitments" to the NRC with respect to staffing at Shoreham. The July 31

supplement to the petition cites the then-pending transfer of Mr. John D. Leonard, Jr. from the Office of Nuclear Operations as further evidence of a need for the NRC to issue an immediately effective order to halt LILCO's staffing actions. Reference (5) at 3-4.

LILCO does not know what the SWR/SE 2 Petition means when it claims that LILCO's destaffing activities constitute a "violation" of the "bases of the issuance of" Shoreham's operating license. The ORAT Report did not create any commitments on LILCO's part to maintain a given level of staffing at Shoreham in all circumstances. As a licensee, LILCO must meet the requirements imposed by applicable NRC regulations and Shoreham's operating license. The Company is committed to meeting these requirements and has, in its view, done so. The Company is under no regulatory or licensing obligation, however, to maintain staffing at Shoreham at a level suitable to support power operations when, in fact, the plant is not being and will not be operated by LILCO.

Similarly, LILCO is under no obligation to keep Mr. Leonard as the head of Nuclear Operations. Mr. Leonard's successor is fully qualified to assume that position, a fact that the petition cannot and does not dispute.

C. Basis (3)

The third basis for the petition is the claim that the alleged lack of certain maintenance activities at Shoreham "appear(s) to be contrary" to the ORAT report. Reference (2) at 14-15. The July 31 supplement amplifies on this complaint by stating that (1) there is no "Operational Condition 6 in LILCO's Technical Specifications," and that (2) the Technical Specifications contain no definition of the terms "functional," "secured," and "preserved," as used by LILCO to classify the level of maintenance of the various plant systems. Reference (5) at 4-5.[3/]

Basis (3) is flawed in two principal respects. First, the petition has again misconstrued the significance of the ORAT report. The ORAT report described the state of operational readiness at Shoreham at the time the inspection was conducted,

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3/ LILCO has since modified its classification program to use terms "operable," "functional," and "protected." LILCO has the previously described to the NRC Staff its plans for implementing its lay-up program. See letter from Anthony F. Earley, Jr., LILCO President, to Thomas E. Murley, Director of Nuclear Reactor Regulation (September 19, 1989).

and served to aid the Commission in determining whether to issue LILCO an operating license. The findings made by the NRC Staff in the ORAT report did not themselves, however, impose on LILCO any requirement to perform some specified level of maintenance above that which is required by NRC regulations and the terms and conditions of LILCO's operating license. LILCO believes that it has met these requirements. Nothing in the petition demonstrates otherwise.

Second, as explained below, in complaining that LILCO is in violation of its license because neither "Operational Condition 6" nor the terms "functional," "secured," or "preserved" are defined in Shoreham's technical specifications, the petition misunderstands what the technical specifications require and tries to elevate form over substance.

Under Shoreham's operating license, maintenance activities for various plant components and systems are described in the "surveillance requirements" set forth in the plant's technical specifications. Failure to meet a given surveillance requirement is not, with few exceptions, a violation of the technical specifications per se. Shoreham's technical specifications provide that

> (f)ailure to perform a Surveillance Requirement within the specified time interval shall consitute a failure to meet the OPERABILITY requirements for a Limiting Condition for Operation. Exceptions to these requirements are stated in the individual Specifications. Surveillance requirements do not have to be performed on inoperable equipment.

NUREG-1357 at 3/4 0-2.

In other words, except for those specific surveillance requirements that must be performed at all times, failure to perform maintenance on a given system as required by the applicable surveillance requirement merely renders that system "inoperable" for purposes of plant operation. Once a system is rendered "inoperable," within a specified time period, either the system's "operability" must be restored or the specified "action" requirements must be met, up to and including plant shutdown. In order to resume operation after shutdown, the applicable surveillance must be performed and the sytem's "operability" reestablished. As long as the plant remains shut down, however, the technical specifications do not require that surveillance be performed on the "inoperable" system. LILCO's plans to cease surveillance of certain systems do not violate Shoreham's

technical specifications because Shoreham is, and will remain, shut down.

It is true that the definitions in Table 1.2 of the plant's technical specifications do not precisely describe Shoreham's present defueled configuration. LILCO however, continues to maintain (1) all systems that must be "operable" when moving irradiated fuel in the reactor building, and (2) all systems required by the technical specifications to be "operable" at "all times." The requirements for these categories of systems define, in sum, the surveillance activities that must be conducted with Shoreham in its defueled condition. It therefore follows that, contrary to what the petition alleges, LILCO has not created for itself a new "Operational Condition 6."

Similarly, the program that LILCO has developed for Classifying Shoreham's systems as "operable," "functional," or "protected" to reflect the extent of surveillance and maintenance activities that LILCO will perform for those systems is entirely consistent with the technical specifications. Of course, the terms "functional" and "protected" are not themselves defined in Shoreham's technical specifications or in NRC regulations. But this does not establish that LILCO is acting in violation of its license. The classification of systems as "operable," "functional," or "protected" is simply a shorthand means of expressing that which the technical specifications already allow, i.e., when the plant is shutdown, certain systems are not required to be maintained as "operable".

D. Basis (4)

As its fourth basis, the petition alleges that LILCO's plans not to operate Shoreham and substitute fossil fuel burning units involve an "unreviewed environmental question" that would "significantly affect the environment." Based on this assumption, the petition asserts that, under Appendix B of NPF-82 (the Non-Radiological Environmental Protection Plan), LILCO must obtain "prior to NRC approval" before taking any actions with respect to defueling, destaffing, transferring Shoreham's license, or decommissioning the plant. Since LILCO has taken some of these actions without first obtaining NRC approval, the petition concludes, LILCO is in violation of its license. Reference (2) at 15-16.

Basis (4) is predicated on a misreading of Appendix B. Appendix B, 3.1 provides, in relevant part, that

> (b)efore engaging in additional construction or operational activities which may significantly affect the environment, the licensee shall prepare and record

> an environmental evaluation of each such activity. Activities are excluded from this requirement if all measurable nonradiological effects are confined to the on-site areas previously disturbed during site preparation and facility construction. When the evaluation indicates that such activity involves an unreviewed environmental question, the licensee shall provide a written evaluation of such activity and obtain prior NRC approval.

NPF-82, Appendix B, 3.1 (emphasis added). As the highlighted portion above makes evident, prior NRC approval must be obtained only if the activity to be undertaken itself has some "measurable" environmental consequences offsite. Indeed, absent this threshold consideration, the licensee need not even prepare a written evaluation of the activity.

The petition does not contend, nor can it, that the actual activities being addressed by the petition, e.g., the defueling and destaffing of Shoreham, have any measurable offsite environmental consequences. Instead, the petition speculates that LILCO's decision not to operate Shoreham will lead to a greater reliance on fossil fuel plants, and that this reliance will, in turn, result in a "significant increase" in a previously evaluated "adverse environmental impact." Yet the petition's speculation about the environmental consequences of the substitution of fossil fuel plants for Shoreham is directed solely towards some possible future action. Such speculation does not demonstrate that LILCO's current activities in defueling the plant and transferring staff have any measurable offsite environmental consequences. Absent such a demonstration, the petition fails to establish that LILCO is in violation of NPF-82, Appendix B.

E. Bases (5) and (6)[4/]

As best LILCO can determine, as its fifth basis, the petition appears to be arguing that, under the National Environmental Policy Act (NEPA), a full environmental review must be conducted before the NRC may permit LILCO to take any actions that may be directed towards (1) the transfer of Shoreham to the Long Island Power Authority (LIPA) or (2) the plant's eventual

4/ LILCO does not perceive a clear distinction between bases (5) and (6) as the petition has characterized them. Accordingly, LILCO discusses both bases at the same time.

decommissioning. Reference (2) at 16. For its sixth basis, the petition asserts that, by giving tacit approval to LILCO's defueling and destaffing activities at Shoreham, the NRC is violating its own NEPA-implementing regulations, which require that the NRC perform an environmental review before authorizing the decommissioning of a nuclear power facility. Reference (2) at 16-18.[5/]

The July 19 and July 21 supplements cite various newspaper articles that purport to describe the defueling and destaffing of Shoreham as being part of a "continuum of actions" leading towards decommissioning. The petition argues that this lends credence to its position that the NRC's tacit approval of LILCO's activities violates NEPA. Reference (3) at 2; Reference (4) at 2-5. The July 31 supplement goes so far as to suggest that LILCO is engaging in a "stalling tactic" so as to allow the plant to "decommission itself" and thereby presumably avoid prior environmental review. Reference (5) at 5-6.

Bases (5) and (6) of the SWR/SE 2 Petition are a challenge to NRC regulations. In implementing the responsibilities imposed on it by NEPA, the NRC has determined through generic rulemaking that the appropriate time to begin the environmental review process for decommissioning is when the licensee submits, pursuant to 10CFR50.82, an application for a license amendment to terminate its license and decommission its facility. The NRC's NEPA-implementing regulations, as amended when the NRC revised its decommissioning regulations on June 27, 1988, establish that once such an application is made, the licensee is to begin the environmental review process by submitting a supplement to its prior environmental report. Specifically, these regulations provide that

> (e)ach applicant for a <u>license amendment authorizing the decommissioning of a production or utilization facility covered by</u>

5/ The July 14 petition, citing 10CFR 51.20(b)(5), states that the decommissioning of a nuclear power plant necessarily requires the preparation of a site-specific environmental impact statement (EIS). Reference (1) at 16-17. This, of course, is incorrect. When the NRC amended its decommissioning regulations last year, it removed subparagraph (b)(5) from 51.20 and eliminated the requirement for a mandatory site-specific EIS for decommissioning. Under the NRC's current regulations, a site-specific EIS need be prepared only if the Staff's initial environmental assessment identifies impacts for a particular plant that are significantly different from those studied generically in the NRC's Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (May 1988) (NUREG-0586). See Fed. Reg. 24039, 24052 (June 27, 1988).

> 51.20 . . . shall submit with its application . . . a separate document, entitled "Supplement to Applicant's Environmental Report - Post Operating License Stage," which will update "Applicant's Environmental Report - Operating License Stage," as appropriate, to reflect any new information or significant environmental change associated with the applicant's proposed decommissioning activities . . . .

10CFR51.53(b)(emphasis added).

Once the applicant has submitted its supplement to the environmental report, the responsibility for conducting the environmental review shifts to the NRC Staff. Again, the NRC's regulations make it clear that the Staff need not begin its review until the licensee's decommissioning amendment and environmental report supplement have been submitted. Specifically, the regulations, as amended, state that

> (i)n connection with the amendment of an operating license to authorize the decommissioning of a production or utilization facility covered by 51.20 . . . the NRC Staff will prepare a supplemental environmental impact statement for the post operating license stage or an environmental assessment, as appropriate, which will update the prior environmental review.

10CFR51.95(b)(emphasis added).

The assertion that the NRC should begin its environmental review of Shoreham's decommissioning before an application to terminate and decommission has been submitted is a challenge to the NRC's generic determination that the process need not start until such an application has been filed. One cannot use the 2.206 petition process as a vehicle to challenge NRC regulations. See, e.g, General Electric Co. (Vallecitos Nuclear Center, License No. SNM-960), DD-79-9, 9 NRC 744, 753 (1979). For this reason alone, the allegations raised in bases (5) and (6) of the SWR/SE 2 Petition should be disregarded.

Nevertheless, in an effort to give fair treatment to the petition's concerns, bases (5) and (6) might be alternatively characterized as truly being not a challenge to the NRC's NEPA-

implementing regulations, but as a complaint that LILCO is avoiding the formal requirements of the NRC's decommissioning regulations by engaging in a pattern of activities constituting "de facto" decommissioning. Even when characterized in this fashion, however, bases (5) and (6) lack merit.

LILCO is not engaging in de facto decommissioning because, while LILCO cannot and will never operate Shoreham, none of the actions that LILCO has taken so far with respect to Shoreham are inconsistent with the future operation of the plant by some entity other than LILCO. As LILCO has already explained to the NRC Staff, those systems at Shoreham that are not required for safety in the plant's present defueled mode will be kept in a "protected" or layed-up mode. Thus, the steps that LILCO is currently taking with respect to Shoreham ensure that the plant will not "decommission itself" pending transfer of the plant to some entity of New York State.

III. LIA Petition

The LIA Petition consists of a single document, dated August 4, 1989. As best LILCO can discern, four separate bases for the LIA Petition have been advanced. LILCO addresses each in turn.

A. Basis (1)

The first basis of the petition is an argument that certain actions taken by LILCO with respect to Shoreham are in violation of 10CFR50.59. The petition asserts that

> (c)utting staff, disregarding Commission upgrade orders, reducing maintenance and surveillance, and deactivating procedures -- all of which are part of the "minimum posture condition" at Shoreham -- will undoubtedly increase the risks of accident or malfunction that would be associated with operating the plant as contemplated by the license and raise safety issues that have not been "previously evaluated."

Reference (6) at 6-7. Arguing that LILCO cannot "elude the requirements of 50.59 on the ground that no violation of the licensee's technical specifications has yet occurred," the petition asserts that "a violation (of 50.59) has occurred" and that LILCO "should be made to comply with the requirements of 50.59." Reference (6) at 8. The petition goes on to argue that "even if the Commission is not prepared to make such a finding, it should institute an investigation into the issue." Reference (6) at 8.

The argument that LILCO has violated 10CFR50.59 does not differ in any material way from similar allegations made in the SWR/SE 2 Petition. LILCO has already explained why its approach to Shoreham is permissible under the terms of its license and why the requirements of 10CFR50.59 do not apply to movement of fuel from the reactor to the spent fuel storage pool and the fuel's storage therein.

As for the petition's alternative suggestion that the NRC should institute an investigation, it is important to remember that the NRC Staff has met with LILCO on three occasions, each publicly noticed, to discuss Shoreham's status. In addition, through correspondence, LILCO has sought to keep the NRC fully apprised of every significant action the Company has taken with respect to the plant since the Settlement Agreement went into effect. The NRC Resident Inspector at Shoreham has also been kept informed of LILCO's activities. Finally, the NRC Staff conducted a one-week inspection of LILCO's activities at Shoreham on September 18-22, 1989. At the conclusion of that inspection LILCO was told by the Staff that the Company's actions with respect to Shoreham appeared to be reasonable. In short, the Staff has already conducted the sort of investigation that the petition has requested.

B. Basis (2)

As its second basis, the petition argues that "New York State authorities, through the settlement agreement, have assumed unauthorized control over the Shoreham license" in violation of the Atomic Energy Act and NRC regulations. Reference (6) at 9. Given this alleged State control over LILCO's conduct of activities at Shoreham, the petition suggests that "even if LILCO were to determine that public safety or plant maintenance considerations require an expenditure of funds, that determination may be effectively overruled by the state." Reference (6) at 12.[6/]

6/ While not advanced as a separate basis, the July 19 supplement to the SWR/SE 2 Petition also appears to allege that New York State is exercising impermissible control over LILCO's activities with respect to Shoreham. The July 19 supplement argues that the NRC Staff should order LILCO to cease and desist and return to the status quo ante so that the NRC may determine

> whether the economic objectives of the New York State Public Service Commission and the Licensee are consistent with the responsibilities accepted pursuant to the full power operating license, or whether the New York State Public Service Commission is subjecting the Licensee to unlawful economic pressures that would cause violations of the commitments the Licensee has made in obtaining its license.

Reference (3) at 4.

LILCO has not surrendered control over Shoreham to New York State. As LILCO has repeatedly stated to the NRC, as long as LILCO is the licensee of Shoreham, LILCO fully intends to abide by all of the terms and conditions of that license and all pertinent NRC regulations. It is true that under the Settlement Agreement, LILCO is obligated not to operate Shoreham and to cooperate with New York State in obtaining NRC permission to transfer the plant to an entity of the State. In all matters concerning regulatory compliance and conduct of plant activities under the license, however, LILCO continues to exercise its own independent judgment. While LILCO foresees no conflict between its obligations under the Settlement Agreement and its duty as an NRC licensee to protect the public health and safety and otherwise comply with NRC regulations and the terms of its license, should any such conflict arise, LILCO intends to do whatever is required of it to meet its NRC obligations.

C. Basis (3)

The third basis of the LIA petition is an assertion that a "de facto decommissioning" of Shoreham is taking place. Reference (6) at 12-13.

As has been explained above, LILCO is not engaging in de facto decommissioning. Those systems at Shoreham that, under the plant's technical specifications, need not be kept in an "operable" status with Shoreham in its defueled condition will be protected from degradation through a lay-up program. Those systems will be maintained in this "protected" condition pending Shoreham's transfer to an entity of New York State.

D. Basis (4)

Finally, as its fourth basis, the petition argues that to prevent a "frustration" of NEPA's purposes, the NRC must halt LILCO's activities at Shoreham, pending an environmental review. Reference (6) at 16. The petition adds that the NRC

> cannot escape its NEPA responsibilities by claiming that its environmental obligations are not triggered until the filing of a formal decommissioning application.

Reference (6) at 13

As with the SRW/SE 2 Petition, the argument that the NRC must undertake an environmental review now, prior to the filing of an application to terminate Shoreham's license and decommission the plant, is a challenge to NRC regulations that may not be brought in the guise of a 10CFR2.206 enforcement proceeding.

IV. Conclusion

The requests made in the SWR/SE 2 and LIA Petitions that the NRC issue an order to LILCO to cease and desist its activities at Shoreham and return to the status quo ante should be denied. As the information presented above demonstrates, the actions that LILCO has taken with respect to Shoreham are consistent with both the plant's operating license and NRC regulations.

Very truly yours,

W. E. Steiger, Jr.
Assistant Vice President
Nuclear Operations

DRH/ap

cc: S. Brown
W. T. Russell
F. Crescenzo

AFFIDAVIT

STATE OF NEW YORK)

: SS:

COUNTY OF SUFFOLK)

I, WILLIAM E. STEIGER, JR., being duly sworn, depose and say that I am the Assistant Vice President - Nuclear Operations for the Long Island Lighting Company. I am authorized on the part of said Company to sign and file with the U.S. Nuclear Regulatory Commission the enclosed letter (SNRC-1658) for the Shoreham Nuclear Power Station. This response was prepared under my supervision and direction; and the statements contained therein are true and correct to the best of my knowledge, information and belief.

William E. Steiger

William E. Steiger, Jr.

Sworn to before me this

10TH day of NOVEMBER 1989

William J. Haggerty

WILLIAM J. HAGGERTY
Notary Public, State of New York
No. 4712115
Qualified in Suffolk County
Commission Expires July 31, 1990