

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Commission



In the Matter of )

LONG ISLAND LIGHTING COMPANY )

(Shoreham Nuclear Power Station, )  
Unit 1) )

Docket No. 50-322 O.L.

MOTION TO DEFER COMMISSION  
ACTION AND FOR COMMISSION TO HEAR VIEWS  
OF THE PARTIES BEFORE DECIDING CERTIFIED QUESTION  
REGARDING LOW POWER LICENSE FOR SHOREHAM

On April 20, 1983, the Licensing Board certified to the Commission the question whether 10 C.F.R. § 50.47(d) should apply to Shoreham "in circumstances which raise preliminary doubts that emergency preparedness requirements for full power operation can and will be met in the future." Memorandum and Order Referring Denial of Suffolk County's Motion to Terminate to the Appeal Board and Certifying Low-Power License Question to the Commission (through the Appeal Board), LBP-83-21, 17 NRC \_\_\_\_, slip op. 12 (April 20, 1983) (the "Certification Order"). The Board determined that Section 50.47(d) should not be so applied. The Board found that without a Suffolk County offsite emergency plan and County resource assistance to implement any other plan, there could be no finding at this time of reasonable assurance that "offsite emergency preparedness sufficient to permit issuance of a full-power operating license for Shoreham can and will be developed." Id. at 9. The Board concluded that the Commission should not permit

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fuel loading "unless and until the impending factual inquiry [before a Licensing Board] can support . . ." such a finding. Id. at 10 (emphasis added).

The Board certified the question regarding the application of Section 50.47(d) on its own volition. None of the parties requested that the Board at that time address the issue of low power operation for Shoreham<sup>1/</sup> or certify the issue to the Commission. More importantly, neither Suffolk County, LILCO, the NRC Staff, nor other parties were given an opportunity to brief the matter and thereby present their views to the Board.

At an Affirmation/ Discussion Session of the Commission held on Tuesday, June 28, 1983, it was indicated that the Commission, by a 3 to 2 vote, may on June 30, 1983, both accept the certified question and resolve it by ruling that under the circumstances in Shoreham, Section 50.47(d) should nevertheless apply.

Suffolk County hereby moves that the Commission should defer action to resolve the certified question until it has heard the views of the parties by the filing of briefs, on the issue of whether 10 C.F.R. § 50.47(d) should be applicable to Shoreham under the extraordinary circumstances there, and especially in light of new developments of which the Commission

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<sup>1/</sup> The Board stated that LILCO made "passing mention of its view that it could qualify for a low-power operating license notwithstanding the absence of a County emergency plan . . ." in a pleading before the Board. Certification Order at 7-8.

may not be aware. The County's motion should be granted for the following reasons:

1. The Commission Should Give the County and the Other Parties an Opportunity to be Heard on this Issue. As noted above, the question certified to the Commission was not briefed or argued before the Board. Accordingly, unlike the usual situation, in which the Commission has available to it the briefs and pleadings of the parties from Licensing Board proceedings as to questions certified to it, here the Commission has never heard, directly or indirectly, the parties' views on whether or not 10 C.F.R. § 50.47(d) should be applicable to Shoreham.

Elementary fairness requires that the Commission at least give the parties an opportunity to be heard before deciding upon a crucial matter. This is perhaps particularly so where the matter is one of first impression. As the Board stated,

[W]e are about to embark on a first-time litigation of an applicant's offsite emergency plan in substitution of one sponsored by the local government.

Certification Order at 9-10 (emphasis in original).

On June 8, 1983, LILCO filed a motion for a low power license with the Licensing Board, sending a copy to the Commission. Suffolk County filed its opposition to the motion on June 27, 1983, also sending a copy to the Commission. However, these documents do not address the issue of whether

10 C.F.R. § 50.47(d) should be applied to Shoreham.<sup>2/</sup> The County urges that it and the other parties be permitted to file a brief on that issue with the Commission, and that the Commission consider the views of the parties before resolving this critical matter of first impression.

2. Recent Developments Indicate that Offsite Emergency Preparedness Will Never be Sufficient to Support a Full Power Operating License for Shoreham. In addition to receiving and considering briefs of the parties before ruling on the certified question, the Commission should also consider the following recent developments which demonstrate that there will never be adequate offsite emergency preparedness at Shoreham.

a. On May 26, 1983, LILCO filed with the Licensing Board five alternative offsite emergency plans. The Board ruled on June 10, 1983, that four of these plans -- those which envision the participation of governmental entities -- are not within the scope of the emergency planning proceeding because none of the governmental entities has agreed to participate. Order Limiting Scope of Submissions (June 10, 1983). The only remaining plan, the so-called "LILCO Transition Plan," is to be implemented solely by LILCO, without the participation of any governmental entity.

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<sup>2/</sup> The County's opposition does discuss recent factual developments which it believes should have a bearing upon any Commission decision. It does not discuss legal matters concerning the application of Section 50.47(d).

b. At the Commission's request, FEMA reviewed the LILCO Transition Plan. On June 23, 1983, FEMA submitted to the Commission its findings on the LILCO Transition Plan, detailing thirty-four (34) "inadequacies" in terms of NUREG-0654/FEMA-REP-1, Rev. 1 (the "FEMA Report").<sup>3/</sup>

Some of the inadequacies identified in the FEMA Report appear to be of critical significance to the LILCO Transition Plan. For example, as to the fundamental matter of the legal authority of LILCO's "local emergency response organization" to implement its plan (Sec. 1.4, Attachment 1.4-1 of the LILCO Transition Plan), the FEMA Report's evaluation and comments stated:

Inadequate; first, the legal authority cited in Attachment 1.4.1 to the plan (10 C.F.R. 50.47) does not specifically grant the necessary police powers to a licensee to implement those aspects of an off-site emergency response requiring the exercise of governmental authority. Second, the underlying assumption of both FEMA and NRC off-site emergency preparedness regulations is that the responsibility for responding to a radiological emergency at a commercial nuclear reactor rests cooperatively with State, local, and federal governments. Part I.F. of NUREG 0654/FEMA-Rep-1, Rev. 1, states at p. 22-23 that "NRC and FEMA recognize that plans of licensees, State and local governments should not be developed in a vacuum or in isolation from one another. Should an accident occur, the public can be best protected when the response by all parties is fully integrated." Part I.H. emphasizes at p. 25 that "NRC and FEMA agree that the licensees of nuclear

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<sup>3/</sup> The FEMA Report did not consider the further issue of LILCO's inability to implement the LILCO Transition Plan.

facilities have a primary responsibility for planning and implementing emergency measures within their site boundaries" (emphasis in original). In designating an emergency response organization relying exclusively on LILCO employees, this plan contravenes these standards.

FEMA Report at 2-3 (emphasis added).

Again, in the critical area of the organization of LILCO's local emergency response organization (Sec. 2.1, Fig. 2.1.2, Procedure 2.1.1 of the LILCO Transition Plan), the FEMA Report found:

Inadequate; first, the organizational matrix (Fig. 2.1.2) does not include a designation of responsibility for taking protective actions, although Procedure 2.1.1 states that this is the responsibility of the Director of Local Response. The matrix should be changed to reflect this responsibility. Second, responsibility for emergency law enforcement activities is not assigned (Reference A.2.b). No provision is made for the likely need for large numbers of police officers. For example, the assignment of traffic control responsibilities to persons who are not police officers is inadequate given the necessity of blocking public thoroughfares, ordering motorists to follow specified routes, and other extraordinary changes in legal driving patterns.

FEMA Report at 2 (emphasis added).

These and other deficiencies identified by FEMA appear to be fatal to the LILCO Transition Plan.

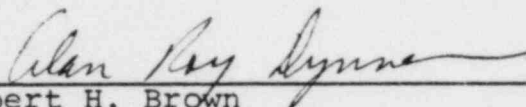
c. On June 23, 1983, the County filed with the Board a 169-page document entitled "Consolidated Draft Emergency Planning Contentions," containing draft contentions of the County and other Intervenors regarding the LILCO Transition Plan. These draft contentions identify dozens of serious deficiencies, many of which cannot be rectified because LILCO has illegally taken upon itself such governmental functions as declaring an offsite emergency and blockading public streets and highways to control traffic. These contentions demonstrate that offsite emergency preparedness is impossible without the participation of the County.

Accordingly, Suffolk County maintains that in light of these new developments, there can and will be no adequate offsite emergency preparedness for Shoreham. Under these facts, the application of 10 C.F.R. § 50.47(d) to permit the low power operation of Shoreham would be a futile act, entailing enormous costs, with no attendant benefits.

Suffolk County respectfully requests that, for the reasons stated herein, the Commission grant this motion and permit the parties to brief the Commission before it rules upon the certified question as to the application of 10 C.F.R. 50.47(d) to Shoreham.

Respectfully submitted,

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June 29, 1983



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LONG ISLAND LIGHTING COMPANY )

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) Docket No. 50-322 (O.L.)

CERTIFICATE OF SERVICE

I hereby certify that copies of MOTION TO DEFER COMMISSION ACTION AND FOR COMMISSION TO HEAR VIEWS OF THE PARTIES BEFORE DECIDING CERTIFIED QUESTION REGARDING LOW POWER LICENSE FOR SHOREHAM, dated June 29, 1983, and Letter from Peter F. Cohalan to the NRC Commissioners, dated June 29, 1983, have been served to the following this 29th day of June 1983, by first class mail, except as otherwise noted.

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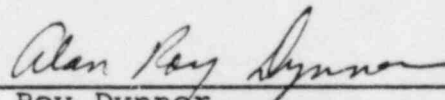
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