



governmental entities participate in the process, the County nevertheless stated its belief that the issue of rejection of the Transition Plan was more appropriately for decision by the Commission. June 7 Response at 2 n.3. Accordingly, also on June 7, 1983, the County filed a motion with the Commission seeking rejection of the LILCO Transition Plan.<sup>2/</sup>

In a ruling issued on June 10, 1983, the Licensing Board limited the scope of the emergency planning proceeding to the "Transition Plan." Order Limiting Scope of Submissions (June 10, 1983). Thereafter, the County promptly moved the Commission, on June 13, 1983, to reject the Transition Plan immediately.<sup>3/</sup>

On July 15, 1983, the Commission ruled that the County's June 7 "Motion For Commission Ruling on LILCO's 'Utility Plan' For Emergency Preparedness" was "precluded by the agency's rules." The Commission explained that the issue of summary rejection of LILCO's Plan should first be brought before the Board with a motion for certification to the Commission. Order at 1 (July 15, 1983) (unpublished). In light of the

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<sup>2/</sup> Motion For Commission Ruling On LILCO's "Utility Plan" For Emergency Preparedness (June 7, 1983).

<sup>3/</sup> Motion For Immediate Commission Decision Rejecting LILCO Transition Plan (June 13, 1983).

Commission's ruling, the County hereby moves the Board to reject the LILCO Transition Plan or, in the alternative, to certify the issue to the Commission pursuant to 10 CFR Sections 2.718(i) and 2.730(f). The issue to be decided or to be certified is:

Whether the LILCO Transition Plan, as a matter of law, can satisfy the requirements of 10 CFR §§ 50.47(a) and (b) where neither the State nor local government has agreed to participate in its implementation.

#### Discussion

A. The LILCO Transition Plan Cannot, As A Matter of Law, Meet NRC Emergency Planning Requirements

On May 12, 1983, the Commission denied Suffolk County's motion to terminate the Shoreham operating license proceeding. See CLI-83-13, 17 NRC \_\_\_\_ (1983). The Commission ruled that LILCO must have an opportunity to show that adequate preparedness under a "utility plan" exists, despite Suffolk County's decision not to adopt or implement any local emergency response plan. The Commission's May 12 decision was issued prior to LILCO's May 26 submission of an offsite "utility plan." Therefore, the Commission did not reach the issue of whether an offsite emergency plan, as a matter of law, can meet NRC regulations without the participation of any governmental entities. Indeed, the Commission stated that it expressed no

opinion whether LILCO could submit a plan which meets "all applicable regulatory standards" because "there is no evidentiary record before us upon which to provide any such opinion." CLI-83-13, 17 NRC \_\_\_\_, Slip op. at 4 (1983). Only Commissioner Gilinsky directly addressed the issue presented by this motion in his Separate Views to the May 12 decision.

Can there be adequate emergency preparedness (as distinct from planning) if neither the State nor the County Governments will participate?

The answer is clearly, No. There cannot be adequate emergency preparedness for the surrounding population without the participation of a responsible government entity. And, however, they may qualify their views now, I do not believe that a single Commissioner would actually approve the operation of the plant without such participation.

CLI-83-13, 17 NRC \_\_\_\_, Commissioner Gilinsky's Separate Views at 1 (1983).

On May 12, one could only speculate what kind of "plan" LILCO might file. At that time, the County, and perhaps the Commission as well, believed that -- as LILCO had publicly stated -- other governmental entities were being substituted for the County. Now, however, LILCO's so-called "Transition Plan" has been submitted to the NRC and the parties. Its essential ingredient is for LILCO itself to do everything with no participation of a responsible governmental entity. Thus,

the issue raised by Commissioner Gilinsky can no longer be avoided.

The County submits that one of the undisputed lessons of the TMI accident is that there can be no adequate preparedness without the full support and participation of the responsible governments. Without reasonable assurance of adequate emergency preparedness, the NRC cannot issue an operating license to LILCO. 10 CFR Section 50.47(a)(1). Since LILCO's "Transition Plan" has neither the support nor participation of any government, that "plan" should be rejected.

B. The Issue Presented Is Appropriate For Certification To The Board

Interlocutory review by way of certification to the Commission is appropriate when:

a failure to address the issue would seriously harm the public interest, result in unusual delay or expense, or affect the basic structure of the proceeding in some pervasive or unusual manner.

Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-634, 13 NRC 96, 99 (1981). Indeed, the Commission encourages certification where, as in this case, vital legal issues of first impression are raised:

If a significant legal or policy question is presented on which Commission guidance is needed, a board should promptly refer or certify the matter to the Atomic Safety and Licensing Appeal Board or the Commission.

Statement Of Policy On Conduct Of Licensing Proceedings,  
CLI-81-8, 46 Fed. Reg. 28,533, 28,535 (1981).

It is clear that the issue presented by the County -- whether there can, as a matter of law, be a finding of adequate preparedness when no governmental entity participates -- is a vital one of first impression which the Commission did not address when it denied the County's motion on May 12, 1983. Now, however, following the filing of LILCO's plan on May 26 and the Board's subsequent ruling limiting litigation to the Transition Plan (in which neither State nor local governments will participate), the issue can be placed squarely before the Commission.

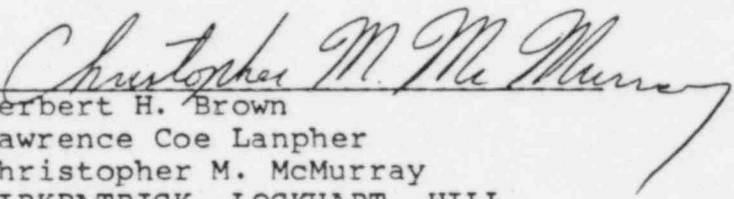
Furthermore, it is evident that a ruling in the County's favor on this issue would effectively terminate the Shoreham operating license proceeding. It would thus certainly affect the proceeding in a pervasive manner. Therefore, the issue is appropriate for certification to the Commission under 10 CFR §§ 2.718(i) and 2.730(f).

#### Conclusion

For the foregoing reasons, the Board should grant the County's motion or, in the alternative, certify the issue raised in this motion to the Commission.

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August 4, 1983



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

\_\_\_\_\_)  
In the Matter of )  
 )  
LONG ISLAND LIGHTING COMPANY ) Docket No. 50-322  
 ) (Emergency Planning)  
(Shoreham Nuclear Power Station, )  
Unit 1) )  
\_\_\_\_\_)

CERTIFICATE OF SERVICE

I hereby certify that copies of the MOTION FOR REJECTION OF LILCO TRANSITION PLAN AND FOR CERTIFICATION TO THE COMMISSION, dated August 3, 1983, were served to the following this 3rd day of August, 1983, except as otherwise noted.

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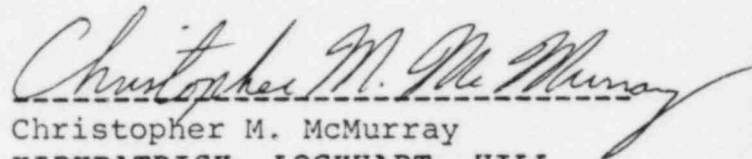
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