

April 5, 1983



SECY-83-124A

ADJUDICATORY ISSUE

(Commission Meeting)

For: The Commission

From: Herzel H. E. Plaine, General Counsel

Subject: LEGAL ISSUES AND CURRENT OPTIONS IN
SHOREHAM EMERGENCY PLANNING CONTROVERSY

Discussion: As was indicated in SECY-83-124, we are
providing the attached discussion of
legal issues and options to facilitate
Commission discussion of what, if any,
action should be taken regarding the
Shoreham emergency planning controversy.
As is discussed more fully herein, at
present we recommend that

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I. Discussion of Legal Issues Raised By Pleadings

(A) Requirement of a County Plan.

Suffolk County and its supporters argue that NRC regulations expressly require the submission of a County plan as a precondition of any license at Shoreham, citing 10 CFR §§ 50.33(g) and 50.47(a). In the absence of a County plan, they argue, NRC is prohibited by its own

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SECY NOTE: This is identical to advance copies distributed to Commissioner Offices on Monday evening, April 4, 1983.

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regulations from considering the
Shoreham application and must terminate
the proceeding. It is our view that

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(B) Effect of the 1982-83
Authorization Act

The County argues that section 5 of the
1982-83 Authorization Act does not
supersede the NRC requirement that there
be a County plan.

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(C) Preemption

Both the applicant and the NRC staff urge the Board to find the actions of Suffolk County are preempted because the County is attempting to "second-guess" the agency on a question of the acceptability of the radiological risks associated with operation.

It appears the County's consultants prepared a plan with a twenty-mile zone and, in turn, the County concluded that because a twenty-mile zone is needed, no plan is workable to protect the public, given the County's population, demography, traffic patterns, etc. This view, may amount to

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II. Options



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²See, e.g., Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361 (1981); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503 (1977).

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Recommendation:

Gv.

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H HEP / *nmcm*

Herzel H. E. Plaine
General Counsel

This paper is scheduled for discussion at a Closed Meeting
on Tuesday, April 5, 1983.

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