

APR 22 1983

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Docket No. 50-322

MEMORANDUM FOR: H. R. Denton, NRR  
E. G. Case, NRR  
J. Carter, NRR  
D. G. Eisenhut, DL  
H. Thompson, DHFS  
R. Vollmer, DE  
R. Mattson, DSI  
T. Speis, DST  
J. Sniezek, IE  
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T. Novak, DL  
G. Lainas, DL  
F. Miraglia, DL

THRU: A. Schwencer, Chief  
Licensing Branch No. 2  
Division of Licensing

FROM: R. Caruso, Project Manager  
Licensing Branch No. 2, DL

SUBJECT: DAILY HIGHLIGHT - SHOREHAM

On April 20, 1983, the Atomic Safety and Licensing Board (ASLB) presiding over the Shoreham operating license proceeding issued a memorandum and Order denying Suffolk County's motion to terminate the proceeding. The County's February 23, 1983 motion had been predicated upon a County determination that adequate emergency planning for Shoreham is not possible and a resolution that the County therefore would not develop or implement any off-site plan.

The ASLB ruled that the County's refusal to prepare or implement an off-site emergency response plan does not preclude issuance of a license. Instead, the Commission's regulations provide that in the absence of a state or local plan, the Long Island Lighting Company should be given an opportunity to attempt to show that adequate compensatory actions will be taken by the utility.

The ASLB also ruled that the NRC is not bound by Suffolk County's conclusion that adequate off-site emergency planning is not possible for the Shoreham plant. Local determinations in the area of health and safety effects of nuclear power plants are preempted by the Atomic Energy Act and vested in the NRC. The question of whether or not LILCo's off-site emergency plan is adequate is reserved to the NRC and must be made by reference to the Commission's own regulations. The Board directed that LILCo submit its off-site plan for review by the staff and FEMA.

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Finally, in a separate order, also issued April 20, 1983, the ASLB referred its ruling on the County motion to terminate the proceeding to the Appeal Board for interlocutory review. The ASLB also certified to the Appeal Board for guidance the question of whether 10 CFR 50.47(d) - allowing issuance of a low power operating license prior to an initial decision on off-site emergency planning - was intended to be applied in a case such as Shoreham where substantial question exists of whether off-site planning may ever be adequate.

R. Caruso, Project Manager  
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