ADJUDICATORY ISSUE

June 20, 1983 (Affirmation) SECY-83-240

For: The Commission

From: Martin G. Malsch, Deputy General Counsel

Subject: DISPOSITION OF SUFFOLK COUNTY "MOTION FOR COMMISSION RULING ON LILCO'S 'UTILITY PLAN' FOR EMERGENCY PREPAREDNESS"

Discussion: On the basis of the orders of the Atomic Safety and Licensing Board, LBP-83-22, and the Commission, CLI-83-13, indicating that the agency was authorized and obligated to consider a utility offsite emergency plan in the absence of a State- or local government-approved plan, on May 26, 1983, applicant Long Island Lighting Company (LILCO) filed such a plan for its Shoreham facility. The LILCO plan consists of five parts, a basic plan that assigns to Suffolk County the responsibility for implementation of the plan, and four possible interim plans. The latter are based on the assumption that either the State of New York, the Federal Emergency Management Agency (FEMA), NRC, or LILCO will carry out the command and control and public information functions set forth in the plan, with LILCO personnel implementing the decisions made.

Contact:
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Martin G. Malsch
Deputy General Counsel

Attachments:
1. County Motions 6/7/83
2. County Motion 6/13/83
3. LILCO Response 6/15/83
4. Ltr, 11/19/83, Palladino to Cohalan
5. Draft Order

Commissioners' comments should be provided directly to the Office of the Secretary by c.o.b. Tuesday, July 5, 1983.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Monday, June 27, 1983, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of July 4, 1983 unless votes are received in time for an earlier affirmation. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

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ATTACHMENT 1

6/7/83

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. (Emergency Planning)

MOTION FOR COMMISSION RULING ON LILCO'S "UTILITY PLAN" FOR EMERGENCY PREPAREDNESS

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 submission of an offsite "utility plan" designed to compensate for lack of a County plan. 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

ATTACHMENT 2

DOCKETED

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '83 JUN 13 P4:37

Before the Commission

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

MOTION FOR IMMEDIATE COMMISSION DECISION
REJECTING LILCO "TRANSITION PLAN"

On June 10, 1983, the Licensing Board in this proceeding, in response to Suffolk County's Motion filed with the Board on June 7, 1983, limited the scope of the emergency planning proceeding before that Board to the so-called LILCO "Transition Plan." The LILCO "Transition Plan" is the "Utility Plan" for emergency response which uses only LILCO's resources without any participation by the State or County Governments. See ASLB "Order Limiting Scope of Submissions" (copy attached).

On June 7, Suffolk County also filed a separate motion with the Commission requesting the Commission to reject summarily the LILCO "Transition Plan" because that Plan does not involve the participation of the State or County Governments. See County "Motion For Commission Policy On LILCO's 'Utility Plan' For Emergency Preparedness." The County filed that motion with the

provide any such opinion." CLI-83-13, 17 NRC ____, Slip op. at 4 (1983). Now, however, there is evidence before the NRC, and it compels the Commission to summarily reject LILCO's filing of a so-called "utility plan." In fact, what LILCO has filed does not amount to the requisite "utility plan" contemplated by the Commission in its May 12 Order.

DISCUSSION

On May 26, 1983, LILCO filed its "utility plan" for Shoreham offsite preparedness. See LILCO's Memorandum of Service of Supplemental Emergency Planning Information, May 26, 1983. This "utility plan" (in fact, as described below, there are five plans) is now scheduled first for review by FEMA, then by the NRC Staff, and then ultimately for adjudication before the Licensing Board, all sequentially in accordance with the Commission's May 12 Order. See CLI-83-13, 17 NRC ____, Slip op. at 4 (1983).

LILCO's May 26 submission compels rejection of LILCO's "utility plan" and thus termination of the Shoreham operating license proceeding. While the Commission could not on May 12 have foreseen what LILCO would file as its "utility plan," the Commission now must squarely face the fact that LILCO's May 26 submission provides no possibility of meeting "all applicable

regulatory standards" and cannot be the kind of "utility plan" contemplated by the Commission in its May 12 Order. There is no need for a fact-finding ASLB proceeding to reach this straightforward judgment; rather, any examination of the "plans" submitted by LILCO leads to this inescapable conclusion. The Commission, therefore, should promptly examine the LILCO submission and take action to avoid the unnecessary litigation of these "plans" before the Licensing Board. The Commission should rule that LILCO has had its opportunity to present a "utility plan" but that, as a matter of law, LILCO's submission inherently does not constitute the requisite plan.

LILCO's May 26 submission consists, in fact, of five plans, none of which meets regulatory requirements. Each is described below.1/

LILCO "Plan 1."

Plan 1 is a so-called "LILCO-County plan," which assigns the responsibility for implementation to Suffolk County. This precise plan already has been rejected by the County Legislature in County Resolution No. 111-1983 and, thus, never will be implemented by Suffolk County. A so-called "plan" which

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1/ Plans 1-4 are discussed in a pleading dated June 7, 1983 and filed with the Licensing Board. A copy of this pleading is attached as Exhibit 1.

categorically will not be implemented certainly is not the subject for an ASLB proceeding. Indeed, despite the title which LILCO has given the document, it simply is no plan at all. Further, the Commission has made clear that a utility is not permitted to submit a plan on behalf of a local government where, as here, the local government specifically objects to that plan. See Chairman Palladino's May 9, 1983 Letter to Congressman Richard L. Ottinger. LILCO has violated this Commission guidance by submission of a local government plan despite the objection of the local government. Such a plan which never will be implemented can never provide the necessary preparedness required by the NRC's rules. Accordingly, LILCO's "Plan 1" must be rejected.

LILCO "Plan 2."

Plan 2 is a so-called "LILCO/State plan," which assigns to the State of New York the responsibilities for command and control of offsite emergency response, with LILCO personnel implementing State command and control decisions. The State, however, has not agreed to perform the duties unilaterally assigned to it by LILCO and, indeed, to the County's knowledge, was not even previously consulted by LILCO as to whether the State would accept those duties. Clearly, lacking State

agreement to do what LILCO calls upon the State to do, the "LILCO/State plan" is no plan at all and must be rejected.

LILCO "Plan 3."

Plan 3 is a so-called "LILCO/FEMA plan," which unilaterally assigns to FEMA the responsibilities for command and control of offsite response, with LILCO personnel implementing FEMA command and control decisions. Quite aside from the question whether FEMA has authority to assume such responsibilities, FEMA has not agreed to perform the duties assigned by LILCO. Further, as with the "LILCO/State plan," FEMA does not even appear to have been consulted in advance by LILCO as to whether FEMA would accept these duties. Lacking FEMA's agreement to do what LILCO calls upon FEMA to do, the "LILCO/FEMA plan" is no plan at all and must be rejected.

LILCO "Plan 4."

Plan 4 is a so-called "LILCO/NRC plan," which assigns to the NRC responsibilities for command and control of offsite response, with LILCO personnel implementing NRC command and control decisions. The NRC has not, however, agreed to perform these duties which LILCO has unilaterally assigned to it. Indeed, from prior Commission statements, it appears that the NRC could not agree to LILCO's proposal, even were it so inclined,

since the NRC relies of FEMA for offsite emergency planning assistance and has stated that the NRC "does not have the resources necessary to handle offsite emergency planning and preparedness matters." See May 9, 1983 letter from Chairman Palladino to Congressman Richard L. Ottinger, Answer to Question 7.C. Clearly, the so-called "LILCO/NRC plan" is no plan at all and must be rejected.

LILCO "Plan 5."

Plan 5 is a so-called "LILCO transition plan," which calls for LILCO personnel to perform essentially all offsite emergency preparedness functions. The LILCO transition plan relies on no local or state governmental entities for implementation. Thus, this plan ripens for immediate Commission consideration the issue raised by Commissioner Gilinsky in his Separate Views on CLI-83-13. Responding to the question of whether there can be adequate emergency preparedness where no governmental entities participate, Commissioner Gilinsky stated:

> I have abstained, not because I disagree with the Licensing Board's legal conclusion -- that the Commission can consider the utility's plan even in the absence of any state or local government participation -- but because the Commission has failed to deal with the actual issue in this case. That is: 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. Unfortunately, the Commissioners appear to think that holding out the possibility that they will approve the utility's plan will encourage the parties to this case to settle their disputes. The opposite is true. Whatever the chances of settlement might be, they would be enhanced, rather than diminished, if the parties knew where the Commission actually stands on this ultimate question. CLI-83-13, Separate Views of Commissioner Gilinsky (emphasis supplied).

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, we have LILCO's so-called "transition plan," and its essential ingredient is for LILCO 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 agrees strongly with Commissioner Gilinsky and submits that one of the undisputed lessons of the TMI accident is that there can be no possibility of adequate preparedness without the full support and

participation of the responsible governments. Since LILCO's "transition plan" has neither the support nor participation of any government, the Commission should reject that "plan" as well.

In conclusion, none of LILCO's five "plans" forms the basis for a "utility plan" within the meaning of Section 5 of the current NRC Authorization Act or the "compensating measures" contemplated by Section 50.47(c)(1) of the NRC's regulations. Clearly, none of those "plans" could provide adequate preparedness to respond to a Shoreham accident. Accordingly, the Commission should reject the five LILCO "plans" and bring this operating license proceeding to an immediate conclusion.

Respectfully submitted,

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June 7, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

EXHIBIT 1

Before the Atomic Safety and Licensing Board

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

SUFFOLK COUNTY RESPONSE TO "LILCO'S MEMORANDUM OF SERVICE OF SUPPLEMENTAL EMERGENCY PLANNING INFORMATION" AND REQUEST FOR SUMMARY LICENSING BOARD REJECTION OF LILCO EMERGENCY PLANS

On May 26, 1983, Suffolk County received "LILCO's Memorandum of Service of Supplemental Emergency Planning Information" (the "LILCO Memorandum"). In accordance with LBP-83-22, as amended by the Board's May 5, 1983 Order Confirming Adjustment in Schedule to File Contentions, LILCO's submission of the emergency planning information commences a four week period for preparation and filing of contentions. Further, the parties have been directed to consult and report to the Board "their agreement or disagreement on whether the four week period should be adjusted slightly, in either direction, due to the unexpectedly concise or extensive content of LILCO's revision to its emergency plan." May 5 Order, pp. 1-2. 1/

1/ The County will advise the Board by separate submission on or before June 9 regarding its views on the adequacy of the four week contention preparation period.

Suffolk County hereby responds to those portions of the LILCO Memorandum which seek to require parties to submit contentions on five alternative emergency response "plans" for Shoreham.[2/] The County requests the Board to rule that four of such five so-called "plans" -- all except the LILCO transition plan -- must be summarily rejected.[3/]

Summary

LILCO has submitted five "plans" to the Licensing Board: the so-called LILCO-County Plan, which relies on Suffolk County employees for implementation; and four so-called interim plans,

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2/ The County is not responding to LILCO's discussion of what it intends to attempt to prove in this proceeding or its views on the so-called "core issues." See, e.g., LILCO Memorandum at 7-9, 13-18. Much of this discussion is merely LILCO's speculation about what issues the County and other intervenors may raise. No response at all is required to such speculation. However, the excessive LILCO speculation does highlight the need to determine first what, in fact, is properly before the Board for litigation. By ruling on the County's request for summary rejection of four of LILCO's "plans," the Board will provide necessary guidance and thus permit parties to proceed to identify the issues actually in controversy.

3/ The County believes that the LILCO transition plan also should be rejected because adequate emergency preparedness cannot exist where no governmental entities participate, as is the case in the LILCO transition plan. The County believes, however, that the rejection of the LILCO transition plan is a matter for Commission decision, given that this issue was specifically addressed by Commissioner Gilinsky's statements regarding his view of the full Commission's position. See CLI-83-13, Separate Views of Commissioner Gilinsky. Accordingly, while the County will file a motion with the Commission to reject the LILCO transition plan, the County has no objection to this Board certifying the instant pleading to the Commission should the Board deem that appropriate.

which vary depending upon whether the State of New York ("State"), FEMA, the NRC, or LILCO is assumed to carry-out the important command and control and public information functions. The term "assumed" is underscored because to date neither the State, FEMA, nor the NRC has declared its willingness or intent to carry-out those functions. And, until any of such entities makes such a declaration, there cannot, by definition, be a plan which includes and depends on those entities. Nevertheless, LILCO asks that parties be required to submit contentions on all five such "plans." LILCO Memorandum at 2.

This Board should summarily reject four of LILCO's five plans. The LILCO-County plan must be rejected because its submission squarely violates Commission guidance which prohibits LILCO from submitting a local governmental plan where, as here, the responsible local government objects. The LILCO-County "plan" must be rejected also because the County categorically decided that it will not adopt or implement that plan. LILCO's speculation of what might happen (i.e., the County may change its mind sometime in the future, or Board findings on the LILCO-County plan may help to persuade some government to rescue LILCO) is no basis for litigation. The LILCO-County "plan" is not scheduled for implementation by anyone, and simply put, it is no plan at all. This Board is not in the business of granting advisory opinions or, as LILCO would have it, acting as some kind of LILCO tool to persuade the County to change its mind. Rather, this Board is convened to determine whether preparedness actually exists in Suffolk County. LILCO's

suggested litigation of the LILCO-County plan is meaningless, since without the County's agreement to implement the so-called "plan" and thus establish preparedness, the "plan" can never provide the basis for preparedness.

The Board also should summarily reject the LILCO/State, LILCO/FEMA, and LILCO/NRC "plans." Again, these are not plans at all, because the crucial intent and agreement of, respectively, the State, FEMA, and the NRC to undertake the actions specified in those "plans" does not exist. Indeed, there is not even a suggestion that these entities had been consulted prior to LILCO's May 26 filing as to whether they would assume offsite command and control responsibilities for Shoreham. If the State, FEMA, or the NRC were to indicate that it will provide the resources and take the actions described in LILCO's "plans," then searching litigation of the feasibility and adequacy of those plans may be appropriate.[4/] Until then, however, there is nothing that can be litigated, because it is now but the grandest of speculation whether the State, FEMA, and/or the NRC would in fact agree to the LILCO proposal. Indeed, without those entities being a part of the plans, the force of logic alone proves that there are no such plans at all. There are only words without effect or consequence.

4/ There are serious issues concerning the legal authority of entities like the NRC or FEMA to assume overall command and control of offsite emergency response. Such issues need not be addressed at all, however, if these entities decline to accept LILCO's proposal.

Discussion

A. The LILCO-County Plan

The LILCO-County plan is written to be implemented by Suffolk County. The County Legislature rejected this plan in Legislative Resolution 111-1983. Nevertheless, LILCO asks the Board to make finding that this "plan" is a feasible means to accomplish emergency planning for Long Island, "but for Suffolk County's unwillingness to implement the plan." LILCO Memorandum at 2. For several reasons, the Board must reject this plan.

First, Commission guidance makes clear that LILCO is not permitted to submit this "plan" for NRC review. This guidance is contained in letters between the Commission and members of Congress. In an April 11, 1983 letter to NRC Commissioners, Congressmen Thomas J. Downey and Richard L. Ottinger made the following statement:

> It would be against the law if the NRC were to consider a local government plan which was developed by a utility and not "officially submitted" by the local government. The law is clear, and our colloquy further emphasizes, that a utility, devoid of any manner of enforcing compliance with plans pertaining to actions of non-utility personnel, cannot submit a plan on behalf of a local government against the wishes of that local government. (emphasis supplied).

See Attachment A for complete text of letter as well as the referenced colloquy. In a May 9, 1983 response to this letter, Chairman Palladino stated:

> [W]hile the Commission agrees with your statement that a utility "cannot submit a plan on behalf of a local government against the wishes of that local government," it also believes that, in appropriate circumstances, the utility may submit its own plan, labelled as such, for consideration under 10 CFR § 50.47(c)(1).

See Attachment B for full text of Palladino letter. Thus, the NRC has made clear that LILCO cannot submit a plan on behalf of Suffolk County against the County's wishes. However, that is precisely what LILCO has done since the LILCO-County plan purports to be a plan on behalf of and to be implemented by Suffolk County. This is not a "utility plan" at all, since it relies on County resources for implementation. Therefore, since LILCO cannot submit a plan for Suffolk County over the County's objections (and the Board is keenly aware that the County does object again now as well as through County Resolution 111-1983 to the LILCO-County plan), that plan must be summarily rejected.

Second, this Board is convened to consider and adjudicate facts -- namely, whether there is adequate offsite preparedness in the event of a Shoreham emergency. The Board is not a forum for speculation regarding what might happen in the future (i.e., might the County change its mind about the feasibility of emergency planning on Long Island?) or a forum for attempting to persuade the County to change its mind (would the County be persuaded to change its mind if the Board found the plan "qua plan" to be adequate?). Thus, notwithstanding LILCO's remarkable, even fantasy-like, speculation about what may happen in the

future,[5] the Board and parties to this proceeding must deal with the here and now. And the undisputed fact is that Suffolk County has decided that it will neither approve, adopt, nor implement the LILCO-County plan. Without County agreement to implement the LILCO-County plan, that "plan" is only a parcel of empty words. To expend time and resources to find whether a "plan" might be acceptable if in the future circumstances change -- when there is no basis for change now known to anyone and not a scintilla of evidence that a change of County position is even possible, let alone likely -- is to engage in a meaningless exercise.[6] It would be like holding a hearing

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5/ LILCO speculates that while the County now opposes this plan, it "may not oppose it in the future (LILCO Memorandum at 3, emphasis supplied); a Board decision in favor of the plan "as a plan (questions of who will implement it aside) might very well help to solve the problem of who will implement the plan (id. at 4, second emphasis supplied); "if LILCO is able to show adequate emergency planning without the County's cooperation and as a result Shoreham goes into operation, it may well be that Suffolk County will then decide to resume its participation in planning . . .[which] will be faster and easier if there is an accepted plan for the County already in existence (id. at 4, first and second emphasis supplied); "a finding that the LILCO offsite plan is an adequate plan qua plan may very well be enough to support a low-power license (id. at 4, emphasis supplied); "LILCO may argue at some point that the existence of an adequate offsite plan, coupled with a showing that the County's refusal to implement it is beyond the applicant's control, constitutes other compelling circumstances to allow operation under 10 C.F.R. § 50.47(c)(1) (id. at 5, emphasis supplied).

6/ It is difficult, if not humorous, to imagine what contentions might be filed on the LILCO-County plan. For instance, in response to the LILCO speculation that "the County government may change its mind" about implementing that plan (LILCO Memorandum at 3), a contention would be that "the County government may not change its mind." It is instructive to ponder the absurdity of testimony, evidence, and a hearing on such a contention. The ASLB, and the Commission in affirming LBP-83-22, cannot have intended such a meaningless exercise.

to determine whether the moon is made of cheddar or swiss cheese without first determining it is in fact cheese of which the moon is made.

Finally, LILCO's request that the parties litigate the LILCO-County plan is contrary to the scope of this proceeding, as enunciated by the ASLB in LBP-83-22.

> Lest this decision be misinterpreted, we emphasize at the outset that our ruling is limited to the narrow legal issue of whether a county's refusal to prepare or implement a radiological emergency response plan operates as a veto, precluding as a matter of law the issuance of a full power operating license for a nuclear power plant. In holding that it does not, we do not reach the factual question of whether the Long Island Lighting Company (LILCO) is capable of providing that degree of offsite emergency preparedness necessary to entitle it to a full power license without the cooperation of Suffolk County (the County). That factual question will now be litigated before this Board. We decide at this time only that LILCO is entitled to the opportunity to attempt to make such a factual showing.

LBP-83-22 at 1-2 (emphasis supplied). Thus, the Board has made clear that the issue to be litigated is whether adequate preparedness can be demonstrated assuming the lack of participation of Suffolk County. Since the LILCO-County plan assumes that the County does participate with LILCO (and we reiterate the County's position that it will not adopt or implement the LILCO-County plan and hence will not participate with LILCO), it is outside the scope of this proceeding.

In sum, the LILCO-County "plan" is no plan at all. It is at best merely LILCO's speculation of what it wishes existed

in Suffolk County. However, the facts are that the LILCO-County plan has been rejected by the County; that the Commission has clearly indicated that LILCO may not submit such a rejected plan for ASLB consideration; and that this Board itself has ruled that the litigation is to focus on whether there can and will be preparedness in Suffolk County given the fact that the County will neither approve, adopt, nor implement any plan. Accordingly, the Board should summarily reject the LILCO-County plan and rule that it is not to be litigated in this proceeding.

B. The LILCO/State, LILCO/FEMA, and LILCO/NRC Plans Should be Rejected

Three of LILCO's alternative interim "plans" call for the State, FEMA, or the NRC to perform certain functions in the event of a serious Shoreham emergency. The most important function to be assumed by these entities is that of overall command and control of the offsite emergency response. In addition, the State, FEMA, or the NRC would have important public information duties. See LILCO Memorandum, Attachment 3. LILCO requests that contentions be submitted on each of these so-called "plans." Id. at 2.

The ASLB should summarily reject these so-called LILCO "plans" as entirely speculative and unresponsive to legal requirements.

In fact, these are not plans at all, because there is no intent or agreement of the State, FEMA, or the NRC to carry-out the functions assigned to these entities in LILCO's "plans." Rather, given the actual status of events which today exists, these "plans" are at best the mere product of LILCO's imagination and perhaps wishful thinking. Absent a statement from the State, FEMA, or the NRC that they agree to carry-out the functions assigned by LILCO and will in fact achieve the preparedness level and training required, these "plans" cannot be considered the proper subject of litigation.

The LILCO Memorandum does not indicate that the State, FEMA or the NRC has agreed to perform the responsibilities unilaterally assigned to them by LILCO. Indeed, the Memorandum does not even suggest that these entities were consulted in advance regarding the responsibilities which LILCO was dreaming up for them. The County's informal understanding is that FEMA, in fact, was not consulted prior to the LILCO May 26 filing. [The County has no knowledge regarding whether the State or NRC had any prior knowledge of the LILCO proposal, although on June 2 Staff Counsel stated that the NRC has not agreed to LILCO's ideas.[7/]] The County has sought data from LILCO counsel concerning the status of agreement or lack thereof

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7/ The County does not believe the NRC could agree to assume the responsibilities LILCO proposes since the NRC has already stated that the agency "does not have the resources necessary to handle offsite emergency planning and preparedness matters." See ASLB Memorandum Serving Exerpts From Commission Testimony Before Congress, April 26, 1983, Answer to Question 7.C.

on the part of these other entities to accept LILCO's proposal. LILCO counsel stated on June 2 only that LILCO presently is talking with "lots" of people.

Thus, no one knows at this time whether the State, FEMA or the NRC will agree to perform the functions which LILCO has unilaterally assigned to these entities. Similarly, even if one or more of these entities is inclined to agree, or in fact does agree, no one knows whether the entity would want to make changes in the nature of the responsibilities or how they are to be implemented by those governmental entities. Similarly, no one knows whether these entities would insist on changes in other portions of these plans, portions designed to be carried out by LILCO but which would be subject to overall direction of the State, FEMA, or the NRC. In sum, no one knows whether these speculative "plans" ever will ripen into concrete implementation programs for offsite governmental protective action and, if so, in what format, or whether instead they will forever be LILCO's abortive trial balloons. However, there is one fact that everyone knows: those "interim plans" are not plans at all at this time. None can be considered a genuine plan until an entity in fact agrees to perform the functions unilaterally assigned to it by LILCO.

Accordingly, the Board should summarily reject the LILCO/State, LILCO/FEMA and LILCO/NRC "plans" and direct LILCO not to submit any such plan until it has agreement from an

entity or entities to perform the duties which LILCO assigns in its "plan."

Respectfully submitted,

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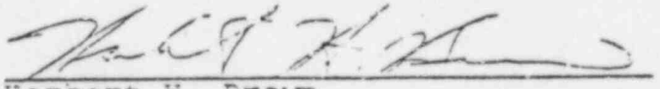

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Congress of the United States

House of Representatives

Washington, D.C. 20515

Subcommittee on Trade
Committee on the Budget
Select Committee on Aging

(ATTACHMENT A)

April 11, 1983

COPY SENT TO ALL 5 NRC COMMISSIONERS

Mr. Thomas M. Roberts
Commissioner
Nuclear Regulatory Commission
Matomic Building
1717 H Street, N.W.
Washington, D.C. 20555

Dear Mr. Commissioner:

We are aware of the pending controversy in the Shoreham nuclear power plant proceeding concerning offsite emergency preparedness. Following an exhaustive nine-month emergency planning study, Suffolk County on February 17 determined that it would not adopt or implement a local radiological emergency response plan. The county, acting under its constitutional mandate to assure the well-being of its citizens, resolved that the public health, safety and welfare could not be protected if there were a serious nuclear accident at Shoreham.

We are writing to emphasize that the NRC not take undue liberties with the authority granted by Congress in Section 5 of the NRC's 1982 Authorization Act. In particular, we refer you to our colloquy during the final consideration of Section 5. The colloquy provides:

> The reference to a State or local plan is clearly intended to apply only to a plan which has been officially submitted by a State or local government. A utility, therefore, cannot submit a local government plan. NRC consideration of a utility plan is a last resort and is not intended to preempt a State or local plan. This legislation does not in any way affect the authority of the Federal Emergency Management Administration with respect to authority and requirements regarding emergency management plans. (Congressional Record, Page H 8023, December 2, 1982, enclosed.)

In light of this, we wish to bring your attention to the following:

1. It would be against the law if the NRC were to consider a local government plan which was developed by a utility and not "officially submitted" by the local government. The law is clear, and our colloquy further emphasizes, that a utility, devoid of any manner of enforcing compliance with plans pertaining to actions of non-utility personnel, cannot submit a plan on behalf of a local government against the wishes of that local government.

2. Section 5 specifically was "not intended to preempt" a local plan. Therefore, where a local government has made determination that the public well-being cannot be protected through a local emergency plan, a utility plan cannot be considered under Section 5. Otherwise, the utility plan would "preempt" the local plan, which is contrary to the legislative intent of Section 5.

3. We wish to stress the importance of the NRC's adhering to its own regulations. The NRC's regulation in section 50.47, which in subsection (a) requires both State and local government emergency plans, was promulgated after a thorough NRC rulemaking proceeding in which the public, states, local governments, and utilities participated. That rulemaking process established the regulations to which the NRC is bound in all cases, including Shoreham, and the NRC now has no discretion to ignore those regulations. If the Commission wishes to reconsider section 50.47, it may do so through another rulemaking proceeding where the public and others affected are given fair opportunity to assert their views. Short of that, however, we can perceive no basis on which the NRC could depart from the clear force of its own properly promulgated regulation in section 50.47.

4. Section 5 "does not in any way" affect the authority and responsiblility or FEMA with respect to offsite emergency preparedness. The NRC therefore may not ignore or shortcut FEMA's involvement in the Shoreham case.

Finally, we request your assurances that Congress's intent in Section 5, quoted above, is not being treated casually by the NRC, particularly in the Shoreham case where a first-of-its-kind issue is pending. If the NRC views any of the four points addressed above differently from how we presented them, we would appreciate your providing us with a most expeditious explanation.

Very truly yours,

THOMAS J. DOWNEY
Member of Congress

original signed by Congressman Ottinger
RICHARD L. OTTINGER
Member of Congress

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

CHAIRMAN

(ATTACHMENT B)

May 9, 1983

The Honorable Richard L. Ottinger
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Ottinger:

Thank you for your letter of April 11, 1983 giving your views on section 5 of the NRC's Fiscal Year 1982-83 Authorization Act, Public Law 97-415, 96 Stat. 2067, with respect to the current offsite emergency planning controversy regarding the Shoreham Nuclear Power Station.

I am enclosing a copy of the Commission's answer to Question 7 of a list of questions submitted to NRC by the Subcommittee on Nuclear Regulation of the Senate Committee on Environment and Public Works. These answers were provided for the record at a Subcommittee hearing in Washington on April 15, 1983.

The answers to Question 7 address generally the issues raised in your letter. It should be added that while the Commission agrees with your statement that a utility "cannot submit a plan on behalf of a local government against the wishes of that local government," it also believes that, in appropriate circumstances, the utility may submit its own plan, labelled as such, for consideration under 10 CFR § 50.47(c)(1). Further, the Commission does not believe that the submission of such a utility plan would result in any illegal "preemption" of a local government plan.

Because the Shoreham case is the subject of adjudication before an Atomic Safety and Licensing Board, it would be inappropriate for the Commission to comment upon the specifics of that proceeding in relation to the matters discussed in your letter. Be assured, however, that the issues you have raised will be given serious consideration.

Sincerely,

Nunzio J. Palladino

Nunzio J. Palladino

Enclosure:
NRC responses to Senate
Subcommittee Question 7

QUESTION 7. In the absence of a FEMA-approved state or local emergency preparedness plan, section five of Public Law 97-415 authorizes the Commission to issue an operating license for a nuclear power reactor if the Commission determines that there exists, as one option, a utility plan which provides reasonable assurance that public health and safety is not endangered by operation of the facility.

(a) What additional implementing procedures, if any, must first be adopted by the Commission as a prerequisite to the Commission's exercise of this authority in a given case, or do the Commission's existing regulations provide sufficient flexibility for the Commission to avail itself of this authority?

ANSWER.

Use of Section 5 authority does not require implementing procedures as a prerequisite. Our emergency planning rule (10 CFR 50.47(c)(1), includes provisions which are consistent with the authority of Section 5. Of course, as the subsequent answers indicate, the availability of the authority of Section 5 may not be adequate for all forseeable circumstances.

QUESTION 7. b. In the event that a utility should submit a plan to the Commission under section five, what steps does the Commission intend to take in its consideration of such a plan?

ANSWER.

First we would send the plan to FEMA for review under the general procedures which NRC and FEMA have agreed to in a memorandum of understanding between the two agencies. We would request FEMA to provide its findings in as timely a fashion as the circumstances premitted.

After receiving FEMA's findings, the staff would review them and decide whether it would make the reasonable assurance determination called for by Section 5. In this regard, FEMA is the lead agency at the federal level which has the responsibility and the expertise to assess the adequacy of offsite emergency planning and preparedness. Although the NRC has the authority and the responsibility to make the ultimate reasonable assurance finding on the overall adequacy of emergency planning and preparedness, we rely heavily on FEMA's input for the offsite component of that finding.

QUESTION 7 c. In those cases where FEMA findings on the adequacy of State and local emergency plans for a reactor under construction are not available on a schedule that is compatible with the NRC licensing schedule, does the authority to approve a utility plan under section five consitute a workable, effective solution to such problems?

ANSWER.

We believe that the cooperative working arrangements between NRC and FEMA under the memorandum of understnading between the two agencies will assure that the situation which the question presumes is unlikely to occur. If, however, for whatever reason, there are no FEMA findings, our task becomes a very difficult one because of our heavy reliance on FEMA's responsibility and expertise in assessing the adequacy of offsite emergency planning and preparedness. (See the answer to Question 7b). Although Section 5 gives the NRC the authority to act under such circumstances, for operations beyond 5% of rated power it must first determine "that there exists a State, local, or utility plan which provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned." This agency simply does not have the resources necessary to handle offsite emergency planning and preparedness matters. For the reasons stated, a rational basis for making this finding in the absence of any input from FEMA is fraught with very practical, if not insurmountable, difficulties.

Commissioner Ahearne adds that the Commission is answering a different question. This question asks — if FEMA findings on state & local plans are not available, ... We answered: if no FEMA findings are available, ... The answer should have been cast to discuss our reliance on FEMA findings on utility plan to the extent it deals with offsite preparedness.

QUESTION 7. d. In those cases where inadequate State and local plans for a reactor under construction threaten to delay the issuance of an operating license for the facility, does the authority to approve a utility plan under section five constitute a workable, effective solution to such problems.

ANSWER.

Section 5 could be of assistance assuming that there are FEMA findings which indicate that there are measures, such as from a utility's plan, which will compensate for inadequacies in State and local plans. On the other hand if FEMA is unable to find adequate compensating measures, we would rely heavily on that input in determining whether or not a reasonable assurance finding required by Section 5 could be made.

QUESTION 7. e. In those cases where a State or local government or both, simply refuse to implement an emergency preparedness plan, does the authority to approve a utility plan under section five constitute a workable, effective solution to such problems.

ANSWER.

In the event that no State and local emergency preparedness plans are available, the issue in making the overall reasonable assurance assessment will ultimately turn on the adequacy of compensating measures in the utility's plan. Although an assessment of adequacy will depend on the circumstances in a particular case, the refusal of both the State and local government to cooperate on emergency preparedness matters greatly complicates the task of assessing the overall adequacy of emergency planning and preparedness.

Commissioners Asselstine and Gilinsky believe that if both the State and local government refuse to cooperate on emergency preparedness matters, a utility plan does not provide a workable and effective alternative to provide adequate emergency planning and preparedness capability.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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

CERTIFICATE OF SERVICE

I hereby certify that copies of MOTION FOR COMMISSION RULING ON LILCO'S "UTILITY PLAN" FOR EMERGENCY PREPAREDNESS," dated June 7, 1983, have been served to the following this 8th day of June 1983 by U.S. Mail, postage prepaid, except as otherwise noted.

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ATTACHMENT 3

LILCO, June 15, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

DOCKETED

In the Matter of	)	
	)	
LONG ISLAND LIGHTING COMPANY	)	Docket No. 50-322 (OL)-3
	)	(Emergency Planning)
(Shoreham Nuclear Power Station, Unit 1)	)	

'83 JUN 15 P3:09

APPLICANT'S ANSWER TO SUFFOLK COUNTY'S "MOTION FOR COMMISSION RULING ON LILCO'S 'UTILITY PLAN' FOR EMERGENCY PREPAREDNESS" AND "MOTION FOR IMMEDIATE COMMISSION DECISION REJECTING LILCO 'TRANSITION PLAN'"

Suffolk County, an intervenor in this proceeding, has recently filed two more motions asking the Commission to end the proceeding without giving the applicant a hearing. For the reasons below, the applicant, Long Island Lighting Company (LILCO), opposes the County's motions.

I. BACKGROUND

The Commissioners are already familiar with events in this docket, and so a brief recital of recent pleadings will be sufficient for background. On June 7, 1983, Suffolk County filed a "Motion for Commission Ruling on LILCO's 'Utility Plan' for Emergency Preparedness." This motion essentially seeks re-consideration of the County's prior motion to terminate this

proceeding on emergency planning grounds, which the Commission denied on May 12, 1983. CLI-83-13, 17 NRC __ (1983). It also resembles a motion for summary disposition of the issue of offsite emergency preparedness, though it does not meet the requirements for summary disposition in 10 C.F.R. § 2.749 or include such affidavits as would be necessary to sustain such a motion. Also on June 7 the Suffolk County Executive addressed a letter to the Commissioners reiterating the arguments in the County's motion.1/ Then, on June 13, Suffolk County filed a "Motion for Immediate Commission Decision Rejecting LILCO 'Transition Plan.'" (Apparently "immediate" here means "before LILCO has had a chance to be heard.") The June 13 motion asks for the same relief as the June 7 motion but is aimed at only one of the offsite emergency plans now before the Licensing Board.

1/ On the same date the County filed a "Suffolk County Response to 'LILCO's Memorandum of Service of Supplemental Emergency Planning Information' and Request for Summary Disposition of LILCO Emergency Plans" (June 7, 1983). This pleading, like the others, asked for an end to NRC consideration of emergency planning. The Licensing Board responded with three orders on June 10, discussed below.

II. THE COUNTY IS SEEKING A FACTUAL DECISION ON THE MERITS WITHOUT A HEARING

The reason the County gives for revisiting the Commission's May 12 decision on the motion to terminate is that LILCO has now filed a comprehensive set of interim plans[2] for emergency preparedness, plus detailed implementing procedures, some six volumes in size. The County wishes the NRC to decide that these plans and procedures are inadequate without even looking at them.[3]

2/ In addition to the interim plans, LILCO has submitted a "LILCO-County plan" that could be implemented by Suffolk County if it chose to do so.

3/ In passing, the County characterizes the Commission's May 12 order in a way that seems designed to lay the groundwork for delay. On page 2 of its June 7 motion the County says this:

> This "utility plan" (in fact, as described below, there are five plans) is now scheduled first for review by FEMA, then by the NRC Staff, and then ultimately for adjudication before the Licensing Board, all sequentially in accordance with the Commission's May 12 Order.

The County is evidently trying to suggest that various pieces of the licensing process, such as reviews by different agencies, must proceed in series, not in parallel, thus lengthening the proceeding. Needless to say, LILCO disagrees with the County's interpretation of the May 12 order on this point, as, we believe, does the Licensing Board.

positions will be filled by licensee personnel. Suffolk County believes this calls for summary disposition.

The County is not entirely clear about whether it is arguing this point as an issue of law or an issue of fact. In places it appears to say that an emergency plan without a government in the command-and-control position is not litigable as a matter of law. But the Commission decided the contrary in its May 12 decision on the County's motion to terminate.6/

6/ Although the County does not say so, it may be attempting to distinguish the May 12 decision by arguing that there the Commission decided only that the Suffolk County government need not participate, whereas now it must decide that other governments need not participate.

If the County is making this argument, it is unfounded. Neither the Licensing Board's April 20 decision nor the Commission's May 23 affirmance offers any support for the distinction suggested above. Clearly the decisions covered nonparticipation by state and local governments. The Commission's view on May 12 was this:

> [T]he agency is obligated to consider a utility plan submitted in the absence of State and local government-approved plans . . . .

CLI-83-13, 17 NRC __, slip op. 3 (1983). And Commissioner Gilinsky characterized the Licensing Board's legal conclusion, which the Commission was affirming, as "that the Commission can consider the utility's plan even in the absence of any state or local government participation." Id., Commissioner Gilinsky's Separate Views, 17 NRC __, slip op. 6 (1983). Similarly, there is no indication in the Board's or Commission's decision that the only litigable plan, in the absence of state or local government participation, is one run by a federal agency.

Each of the four interim plans (really only a single plan with four sets of inserts) provides for 8 or 9 people to perform "command and control" and public information functions.4/ The LILCO Transition Plan, which is the only plan that the Commission need consider at present in light of the Licensing Board's June 10 order,5/ provides that these

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4/ See Attachment 3 to "LILCO's Memorandum of Service of Supplemental Emergency Planning Information" (May 26, 1983).

5/ On June 10 the Licensing Board ruled that only the LILCO Transition Plan will be the subject of litigation for the present, and so the County's argument that the other interim plans and the LILCO-County plan are inadequate is moot, at least for now. Consequently, only pages 6-8 of the County's June 7 motion, the ones dealing with the Transition Plan, are presently ripe.

The Licensing Board did not strike the other plans; all it said was that the intervenors need not submit contentions on other than the Transition Plan "(u)ntil such time as LILCO can establish that one or more of the governmental entities designated in its emergency plan consent to participate in such a venture." Order Limiting Scope of Submissions, slip op. 3 (June 10, 1983).

Although LILCO does not agree with the Licensing Board's decision to litigate only the Transition Plan at present, that is certainly one reasonable way of getting on with this litigation; thus, LILCO is more than willing to proceed under the Board's order. This is particularly so since all LILCO's interim plans (the LILCO Transition Plan and the three governmental interim plans) are essentially the same. Indeed, since the LILCO Transition Plan is probably the most difficult to implement, if it is shown to be adequate, then all the plans will have been shown to be adequate. And, since the functions under the LILCO-County plan are the same as those under the interim plans, the major issues raised by the County with regard to the interim plans will also be pertinent to the LILCO-County plan.

In the main, moreover, the County appears to be arguing facts, though without any factual basis. It asserts, without proof, that adequate emergency preparedness is impossible, the same thing it has argued for some time. For example:

> The County agrees strongly with Commissioner Gilinsky and submits that one of the undisputed lessons of the TMI accident is that there can be no possibility of adequate preparedness without the full support and participation of the responsible governments.

Motion for Commission Ruling on LILCO's "Utility Plan" for Emergency Preparedness 7-8 (June 7, 1983).

> Clearly, none of those "plans" could provide adequate preparedness to respond to a Shoreham accident.

Id. 8.

> "[T]here cannot be adequate emergency preparedness" for the population surrounding the Shoreham plant under the LILCO "Transition Plan."

Motion for Immediate Commission Decision Rejecting LILCO "Transition Plan" 2 (June 13, 1983).7/

7/ The County relies here and elsewhere on a statement of Commissioner Gilinsky that there cannot be adequate emergency preparedness if neither the state nor the county governments will participate. But this is a question that needs to be decided by looking at the evidence. Moreover, it remains to be seen whether New York State will participate.

> If the Commission directs a hearing on LILCO's so-called "utility plan," the Commission will actually create a regulatory monster in which millions of dollars will be squandered in reaching the inevitable conclusion that offsite emergency preparedness is impossible on Long Island.

Letter from Peter F. Conalan to the NRC Commissioners 2 (June 7, 1983) (emphasis in original).

These are allegations of fact. LILCO asserts they are incorrect as a matter of fact and will prove it, as soon as the County produces contentions that state in precisely which ways the County believes the LILCO Transition Plan fails to live up to federal standards. But the issue cannot be decided without first having contentions and then looking at the evidence.

If the Commission accepts the County's argument that it is impossible for the LILCO Transition Plan to meet NRC standards, then it will simply be deferring to the County's own "factfinding" process. The County first voiced its opinion that adequate emergency planning for Shoreham is "impossible" after hearings held by the County Legislature which, in the opinion of at least one County Legislator, were convened only to provide a basis for subsequent litigation. See LILCO's Brief in Opposition to Suffolk County's Motion to Terminate this Proceeding and for Certification, Vol. One, at 57-58 (Mar.

18, 1983); see generally id. 53-58. These hearings were without cross-examination and without a technically qualified decisionmaker, and the standard by which the County judged the emergency plans was not articulated.

Having made a finding of "impossibility" under these favorable circumstances, the County has then trumpeted that conclusion in the press and also attempted to use it as a tool to convince the Licensing Board and Commission to deny LILCO a hearing and indeed to abandon consideration of emergency planning for Shoreham. Although the County has disclaimed any intent to make its own findings binding on the NRC,8/ that would be precisely the effect if the Commission were to accept the County's unsupported allegation that the LILCO Transition Plan cannot possibly be adequate.

One further thought: it is appropriate in these cases to ask where the greater harm lies if the wrong side wins the argument. In this case, if LILCO is right but the County wins the argument, then a $3.2 billion electric power generating facility will be rendered useless, even though it is safe and

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8/ Suffolk County's Reply to LILCO's and the NRC Staff's Briefs in Opposition to Suffolk County's Motion to Terminate the Shoreham Operating Licensing Proceeding and the County's Motion for Certification 3 (Mar. 29, 1983).

could be proved safe if a hearing were held. On the other hand, if the County is right but LILCO wins the argument, the harm is merely that the County will have to engage in litigation to prove its point. Since LILCO has the burden of proof and since the County alleges that it has already exhaustively considered emergency planning, this should be no great burden; certainly it is no great burden in comparison to the litigation in which the County has now engaged for years before the NRC, not to mention numerous special investigations, lawsuits, and other efforts to delay or kill the Shoreham plant.

III. THE COUNTY'S HABIT OF FILING MOTIONS WITH THE COMMISSIONERS IS NOT IN ACCORDANCE WITH THE NRC'S RULES OF PRACTICE

Suffolk County continues to follow the practice of addressing both pleadings and correspondence to the Commissioners, even though a Licensing Board has been appointed to decide emergency planning issues. This practice is contrary to usual NRC practice and tends to confuse the proceeding and divert attention from the main business of deciding where the truth lies. The Commission should not condone this practice.

It is also objectionable that the County, though represented by counsel, persists in having its Executive argue the

issues in correspondence to the Commissioners. This has the effect of giving the County two opportunities to argue each issue -- one in a pleading and one in a letter from the County Executive. This practice, too, the Commission should not condone.

IV. CONCLUSION

Suffolk County is arguing one of two things, both of which are untenable. On the one hand, it occasionally appears to argue that the LILCO Transition Plan is inadequate as a matter of law. But this issue was decided against the County already in the Commission's May 12 decision. On the other hand, the County argues that the LILCO Transition Plan is inadequate as a matter of fact, but says that it does not want to write contentions specifying how the plan is inadequate or to participate in an evidentiary hearing on the subject. Either way, the County fails to make a case for terminating this proceeding.

The Commission has already given the County its answer: LILCO is entitled to an opportunity for an evidentiary hearing; the County is entitled to submit contentions and try to prove its case. That is where the matter stands and where it ought

to stand. The County's motions of June 7 and June 13 should be denied.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

By James N. Christman for
J. Taylor Reveley, III
James N. Christman

Hunton & Williams
P.O. Box 1535
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DATED: June 15, 1983

LILCO, June 15, 1983

CERTIFICATE OF SERVICE

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

DOCKETED

'83 JUN 15 P3:09

I hereby certify that copies of Applicant's Answer to Suffolk County's "Motion for Commission Ruling on LILCO's 'Utility Plan' for Emergency Preparedness" and "Motion for Immediate Commission Decision Rejecting LILCO 'Transition Plan'" were served this date upon the following by first-class mail, postage prepaid, or (as indicated by one asterisk) by hand, or (as indicated by two asterisks) by Federal Express.

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DATED: June 15, 1983

ATTACHMENT 4

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

CHAIRMAN

November 19, 1982

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OFFICE OF SECRETARY
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SERVED NOV 22 1982

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Hauppauge, NY 11788

Dear Mr. Cohalan:

In your November 8, 1982 letter to the Commission you requested that we intervene to prevent the implementation of a procedure for "evidentiary depositions" proposed by the Atomic Safety and Licensing Board presiding at the ongoing Shoreham operating license hearings. I understand your concern that Suffolk County, as an intervenor to that proceeding, will have a fair opportunity to present its concerns at this agency hearing. While the Commission does have inherent supervisory authority over the Shoreham proceeding, your request that the Commission exercise this authority is one that is precluded by the agency's rules, 10 CFR §§ 2.730(f), 2.786(b)(9), and thus must be denied.

In accordance with agency rules, 10 CFR §§ 2.718(i), 2.730, 2.785(b), if the Licensing Board decides to follow its proposed procedures, your objections, in the form of a request for certification, should be addressed in the first instance to the Licensing Board and, if you are unsuccessful in that forum, then to the Atomic Safety and Licensing Appeal Board.

I hope you will understand that our insistence on compliance with our rules does not indicate either a lack of interest in the Shoreham proceeding or any judgment on the merits of the Board's proposal. We have been following the proceeding closely and the option of exercising our supervisory authority will always be available to us.

Sincerely,

Nunzio Palladino

Nunzio J. Palladino

cc: All Parties in Docket No. 50-322

DS02

OFFICE OF THE COUNTY EXECUTIVE

PETER F. COHALAN
SUFFOLK COUNTY EXECUTIVE

JOHN C. GALLAGHER
CHIEF DEPUTY

November 8, 1982

The Honorable Nunzio J. [illegible]adino
The Honorable Victor Gilinsky
The Honorable James K. Asselstine
The Honorable John F. Ahearne
The Honorable Thomas Roberts
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Messrs. Chairman and Commissioners:

On behalf of the citizens of Suffolk County, I am writing to inform you that the hearing on the safety of the Shoreham nuclear power plant is being marred by the procedural irregularity of your Licensing Board. I ask that you promptly intercede to exercise the Commission's supervisory authority over the conduct of the hearing.

Last week, the Licensing Board tentatively decided to discard normal hearing procedures on certain critical issues of emergency preparedness and quality assurance. The Board stated its intention not to preside over the cross-examination of expert witnesses and, thus, in effect not to exercise its important role of helping to shape the development of probative evidence in the adversarial framework established by law.

Instead, the Board directed the parties to schedule questioning among themselves by the invention of so-called "evidentiary depositions," outside the public hearing room and in the absence of the Board Members. The Board indicated that it would later rule on the admissibility of portions of the parties' question-and-answer transcripts at a brief public session and ask the witnesses any questions the Board might then have.

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The Board's proposal displays either ignorance of or indifferance to the meaning and importance of a public hearing. The proposal is a gross departure from the norm and is unacceptable to Suffolk County. Accordingly, I am instructing the County's counsel and expert consultants not to participate in the Board's proposed procedures.

By joining the NRC's Shoreham hearing, Suffolk County assumed and accepted the applicability of established rules and customary procedures. We now insist that your Licensing Board apply those rules and procedures. In Suffolk County, a "public hearing" means just that, nothing more and nothing less. A hearing is a forum of right and privilege in which to develop facts. The personal involvement of attentive adjudicators is indispensable. Your Licensing Board's invention of so-called "evidentiary depositions" as a substitute for the normal hearing procedures not only does violence to the settled adjudicatory framework of the NRC, but it cheapens the roles of both the Board and the parties to the proceeding.

To the residents of this County who are affected by Shoreham's safety, the issues being heard by the Licensing Board are serious matters. We hold the Board accountable to perform its judicial functions with care, temperament, and maturity befitting the high public responsibility with which it has been entrusted. The Board's proposal to discard normal hearing procedures in this case is an insult -- a suggestion that the NRC does not consider the public's safety concerns at Shoreham to be important enough to justify following the ordinary course.

I ask that you promptly act to terminate this potentially divisive controversy by instructing the Licensing Board to use normal public hearing procedures in the Shoreham proceeding. Suffolk County is not willing to permit the Shoreham safety hearing to become a laboratory for experiments in regulatory procedure.

Sincerely yours,

PETER F. COHALAN
SUFFOLK COUNTY EXECUTIVE

cc: Lawrence Brenner, Esq.
Dr. Peter A. Morris
Dr. James L. Carpenter