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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges
James A. Laurenson, Chairman
Dr. Jerry R. Kline
Mr. Frederick J. Shon

DOCKETED
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In the Matter of)	
)	
LONG ISLAND LIGHTING COMPANY)	Docket No. 50-322-OL-3
)	(Emergency Planning
(Shoreham Nuclear Power Station,)	Proceeding)
Unit 1))	June 4, 1984

RESPONSE OF GOVERNOR MARIO M. CUOMO, REPRESENTING
THE STATE OF NEW YORK, IN OPPOSITION TO "LILCO's
Motion to Submit Supplemental Exhibit or to Strike
New York Exhibit 3"

The State of New York hereby opposes LILCO's motion to submit a supplemental exhibit, and LILCO's alternative motion to strike New York State's exhibit 3. The joint motions are dated May 22, 1984.

This controversy revolves around Contention 24.R. The essence of Contention 24.R is: "LILCO has no agreement with the State of Connecticut under which the State agrees to plan for, recommend or implement protective actions for the portions of the ingestion exposure pathway EPZ that are in Connecticut." (Emphasis added.) LILCO's proposed exhibit EP 38 does not add any new "context," "clarification" or "additional information" concerning Contention 24.R, contrary to LILCO's bald assertion on lines 10, 11, 24 and 25 on page 3 of its motion. Thus, LILCO's motion should be denied.

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add: J. GORN
OCA

Chronologically, the first letter that was created in response to Contention 24.R was a letter dated December 15, 1983. The letter was sent by Mr. Mancuso of the State of Connecticut to Mr. DeVito of the New York State Division of Military and Naval Affairs. This New York State agency is only one of several New York State agencies involved in disaster planning. A copy of this letter is attached hereto and is marked "A." LILCO attached this letter to its prefiled, written testimony concerning Contention 24.R (Attachment 28).

LILCO's motion to submit a supplemental exhibit, on the last two lines of page 1 and on the first line of page 2, characterizes this letter as a "discussion" of the State of Connecticut's willingness to provide support and assistance in the event of an emergency at Shoreham. However, the letter does more than purport to be a discussion or negotiation. The letter actually states: "[T]his letter serves as a letter of agreement between the State of Connecticut and the State of New York" and "The Connecticut Department of Environmental Protection (DEP) will exchange information with the New York Department of Health" (Emphasis added). On page 28, line 4, of LILCO's prefiled, written testimony concerning Contention 24.R, LILCO also represented that this letter constituted a "letter of agreement" with the State of New York.

The State of New York refuted these unilateral assertions of LILCO and the State of Connecticut when it introduced

New York State's exhibit EP 3 into evidence. The express denial of an agreement between the states of Connecticut and New York was in the form of a letter from Dr. Axelrod (Chairman of the New York State Disaster Preparedness Commission and Commissioner of Health of the State of New York) to Mr. Mancuso, dated March 30, 1984. Dr. Axelrod emphatically stated: "I am advising you that the State of New York has not entered into any agreement to exchange information with the State of Connecticut for the purpose of implementing the LILCO plan." (Emphasis added.) A copy of this letter is attached hereto and is marked "B."

LILCO's proposed exhibit EP 38 does nothing to counter Dr. Axelrod's statement in his letter of March 30, 1984 concerning the intentional absence of any agreement. LILCO's proposed exhibit EP 38 does nothing to counter the allegation in Contention 24.R either. In fact, LILCO's proposed exhibit EP 38 adds credence to Dr. Axelrod's statement and the essence of Contention 24.R by stating: "My letter to Director DeVito does not purport to serve as a letter of agreement between the State of Connecticut and the State of New York concerning the Shoreham Nuclear Power Station." Mr. Mancuso's incidental statement pertaining to NUREG-0654 also has nothing to do with a "letter of agreement," which is the essence of Contention 24.R and Dr. Axelrod's letter of March 30, 1984. LILCO's proposed exhibit EP 38 does not add any new "context," "clarification"

or "additional information" concerning Contention 24.R, contrary to LILCO's bald assertion on lines 10, 11, 24 and 25 on page 3 of its motion. LILCO's motion should be denied.

Incidentally, LILCO's claim that Dr. Axelrod should have copied LILCO on his letter of March 30, 1984, is totally without basis. When a person writes a letter in reference to an earlier letter, that person is under no obligation to provide all of the recipients of the earlier letter with a copy of the later letter. A person always is free to correspond with whom he wishes. In addition, the carbon copy recipients of Mr. Mancuso's first letter of December 15, 1983, are nothing but unintelligible alphabet letters, none of which even resemble "L", "I", "L", "C", "O". See attachment "A" to this pleading for the actual carbon copy list. LILCO's footnote one on page 2 of its motion is so irrational, it should be disregarded.

LILCO's alternative motion to strike New York State's exhibit EP 3 is without basis for the reasons set forth above. Dr. Axelrod's letter of March 30, 1984 is not "misleading" as LILCO incorrectly asserts on the last line of page 3. Dr. Axelrod's letter, which denies the existence of any agreement between the states of Connecticut and New York, could not be any more direct and accurate or relevant to Contention 24.F.2 and LILCO's related testimony. In addition, LILCO's motion is untimely. LILCO had an ample opportunity to move to strike


New York State's exhibit EP 3 before it was admitted into evidence. LILCO should not be permitted to contemplate indefinitely whether it should oppose the admission into evidence of a New York State exhibit. LILCO's alternative motion to strike should be denied.

The State respectfully urges that LILCO's motion to submit a supplemental exhibit, and LILCO's alternative motion to strike New York State's exhibit EP 3, be denied.

Respectfully submitted,

MARIO CUOMO
Governor of the State of New York

FABIAN PALOMINO, ESQ.
Special Counsel to the Governor
of the State of New York

BY: 
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Assistant to the Special Counsel
to the Governor of the State
of New York

Albany, New York



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC SAFETY OFFICE OF CIVIL PREPAREDNESS

December 15, 1983

Mr. Donald A. DeVito, Director
Office of Disaster Preparedness
State of New York
Division of Military and Naval Affairs
Public Security Building, State Campus
Albany, New York 12226

Dear Mr. DeVito:

Subject: Letter of Agreement, Interstate Radiological Assistance,
Shoreham Nuclear Power Plant

In accordance with NUREG-0654, FEMA-REP-1, Rev. 1, Section II. A. 3, this letter serves as a letter of agreement between the State of Connecticut and the State of New York.

The 50-mile Ingestion Pathway Emergency Planning Zone (EPZ) of the Shoreham Nuclear Power Station, New York, extends into Connecticut. Therefore, the Connecticut Office of Civil Preparedness agrees to support and provide radiological assistance in Connecticut in the event of a radiological related emergency and will respond in Connecticut to requests for radiological assistance from licensees, federal, state and local (county) agencies.

The State of Connecticut will collect samples and interdict food, water, and milk within potentially affected areas of the Shoreham 50-mile EPZ, as required, within the boundaries of the State of Connecticut. The Connecticut Department of Environmental Protection (DEP) will exchange information with the New York Department of Health; Connecticut DEP point of contact is Mr. Arthur Heubner, telephone number (203) 566-5668.

For information or questions, please contact Mr. Frank Grandone, Chief of Plans and Operations, of this office, at (203) 566-2074.

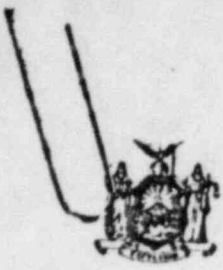
Sincerely,
Frank Mancuso

Frank Mancuso
State Director

FM/abd
Opns. file-RERP-1tr. of Agreement
DEP-RCU
DHS-OEMS
Dept. Agri.
Dept. Consumer Prot.
CF

Phone:
360 Broad Street -- Hartford Connecticut 06115

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STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY

DAVID AXELROD, M.D.
COMMISSIONER

March 30, 1984

Dear Mr. Mancuso:

I have recently become aware of your letter of December 15, 1983 to Mr. Donald DeVito. Your letter purports to serve as a "letter of agreement between the State of Connecticut and the State of New York" concerning the Shoreham Nuclear Power Station. Specifically, your letter purports to be an agreement to exchange information with the New York State Department of Health in the event of a nuclear accident at Shoreham.

Neither the New York State Department of Health nor the New York State Disaster Preparedness Commission have ever entered into any agreement with the State of Connecticut to exchange information in the event of a nuclear accident at Shoreham.

In addition, the Governor of the State of New York has determined that the State of New York will not participate in the implementation of any radiological emergency response plan for Shoreham unless it has been endorsed by the affected communities. The LILCO radiological emergency response plan has been prepared without the assistance of the State of New York and submitted by LILCO to the Nuclear Regulatory Commission without the approval or endorsement of the State of New York. The State of New York is opposing the approval of this LILCO plan in ongoing Nuclear Regulatory Commission licensing proceedings for Shoreham.

Consequently, as Commissioner of Health of the State of New York and in my role as Chairman of the New York State Disaster Preparedness Commission, I am advising you that the State of New York has not entered into any agreement to exchange information with the State of Connecticut for the purpose of implementing the LILCO plan.

Sincerely,

David Axelrod, M.D.
Commissioner of Health
Chairman, NYS Disaster
Preparedness Commission

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State Director
Office of Civil Preparedness
Department of Public Safety
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*By Hand
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****By U.S. Express Mail

Albany, New York