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LILCO, March 18, 1985

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Commission

In the Matter of)	
)	
LONG ISLAND LIGHTING COMPANY)	Docket No. 50-322-OL-4
)	(Low Power)
(Shoreham Nuclear Power Station,)	
Unit 1))	

LILCO RESPONSE TO INTERVENORS' RENEWED
REQUEST FOR SUPPLEMENTATION ON SHOREHAM EIS

On March 4, 1985, the State of New York and Suffolk County (Intervenors) again requested the Commission to prepare a supplemental environmental impact statement (EIS) for low-power operation of the Shoreham plant. Intervenors premise their latest request on an alleged change of circumstance resulting from a decision by Judge Geiler of the New York State Supreme Court on Intervenors' petition for a declaratory judgment on the legality of certain aspects of the Shoreham emergency plan. While couched in terms of changed factual circumstances, Intervenors' request also invites the Commission to rethink its earlier decision not to supplement the Shoreham EIS. Such reconsideration is unnecessary; Intervenors' "changed circumstances" do not compel a supplementation of the Shoreham EIS.

Under the doctrine of res judicata, the Commission need not revisit the legal judgments it articulated in response to

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Intervenors' earlier request for a supplemental Shoreham EIS. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-84-9, 19 NRC 1323 (1984).^{1/} There, the Commission found that "uncertainty about the ultimate disposition of contested offsite emergency planning issues is too speculative to be cognizable as a changed circumstance for the purpose of finding that a supplementary environmental evaluation is required by NEPA." 19 NRC at 1327. The Commission recently revisited and reaffirmed this filing in CLI-85-01, at 4-5. Accordingly, the question to be answered with regard to Intervenors' renewed request is simply whether Judge Geiler's decision represents the ultimate disposition of emergency planning issues. Even a cursory review of that decision reveals it is not.

Judge Geiler's decision addresses only whether New York State law permits LILCO to perform certain aspects of the Shoreham emergency plan. It does not judge whether that plan complies with NRC planning requirements -- a decision that rests with the Licensing Board; nor does it address the more comprehensive legal question of whether the Atomic Energy Act

^{1/} Should the Commission decide to revisit the legal judgments it reached in CLI-84-9, LILCO's analysis of those issues can be found in LILCO's Reply to the Answer and Opposition of Suffolk County to LILCO's Motion for a Low-Power Operating License, pp. 10-20 (July 18, 1983), LILCO's Reply Brief in the Appeal of the Licensing Board's Partial Initial Decision, pp. 115-119 (March 2, 1984), and Response of LILCO to Emergency Motion for Stay, D.C. Cir. No. 85-1042, pp. 14-16, 31-35, 74-82 (February 20, 1985).

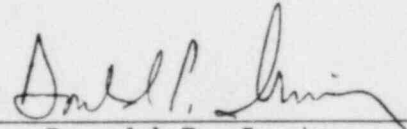
preempts the restrictive operation of New York State law -- a question that is still before the Licensing Board as well as other forums. Indeed, Judge Geiler's decision may not even be a definitive statement on New York State law since that decision will be appealed to higher New York State courts.

Thus, emergency planning issues have not been resolved and nothing relevant has changed since the Commission's earlier decision. Intervenors' continued speculation about the outcome of emergency planning issues does not warrant the preparation of a supplemental EIS for the Shoreham plant.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

By



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DATED March 18, 1985

LILCO, March 18, 1985

CERTIFICATE OF SERVICE

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I hereby certify that copies of LILCO Response to Intervenor's Request for Supplementation on Shoreham EIS were served this date upon the following by U.S. mail, first-class, postage prepaid or by hand (as indicated by one asterisk) or by Federal Express (as indicated by two asterisks).

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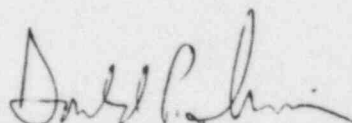
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