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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE COMMISSION

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of )  
LONG ISLAND LIGHTING COMPANY )  
(Shoreham Nuclear Power Station, )  
Unit 1) )

Docket No. 50-322-OL-4  
(Low Power)

NRC STAFF RESPONSE TO STATE AND COUNTY  
RENEWAL OF REQUEST FOR NRC  
SUPPLEMENTATION OF SHOREHAM FES

On March 4, 1985, Suffolk County and the State of New York filed a motion requesting the Commission to reconsider its Order dated June 5, 1984 (CLI-84-9, 19 NRC 1323) denying Intervenors' request that the NRC issue a supplement to the Shoreham Final Environmental Statement ("FES") analyzing the costs and benefits of operation of Shoreham at 5% power followed by no full power operation. As the basis for this request for reconsideration, the State and County rely on a February 20, 1985 decision by the New York State Supreme Court, Suffolk County, holding that LILCO lacks the legal authority (under New York State law) to implement its emergency plan.

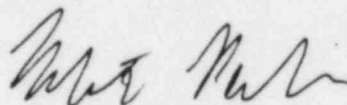
The Staff opposes Intervenors' motion. The Commission's rejection of Intervenors' earlier request for supplementation of the Shoreham FES was predicated on the refusal on the part of the Commission (when considering a low power license request) to engage in speculation as to whether offsite emergency planning issues would be resolved satisfactorily for the purposes of issuance of a full-power license.

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CLI-84-9, supra, 19 NRC at 1327; see also, CLI-83-17, 17 NRC 1032 (1983). While the State trial court's decision passes upon LILCO's authority to implement its offsite emergency plan under state law, that decision does not resolve the question of whether a full-power license will issue in this case. <sup>1/</sup> In addition to possible appeals of the trial court's decision, the question of federal preemption of state law has been raised before (but not yet ruled upon by) the New York State trial-level court and the Commission's Licensing Board. The final resolution of the emergency planning controversy at Shoreham is no more definitive now than it was last June. Consequently, Intervenors' request for reconsideration should be denied.

Respectfully submitted,



Robert G. Perlis  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 19th day of March, 1985

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<sup>1/</sup> It is also noted that on March 18, 1985, a United States District Court determined that Suffolk County resolutions prohibiting County cooperation in an offsite emergency response plan did not violate the supremacy clause of the Constitution by intruding into federally preempted areas involving the regulation of nuclear safety. Citizens for an Orderly Energy Policy v. Suffolk County, No. CV-83-4966 (E.D.N.Y.). The District Court was not called upon to and did not address the issue of whether federal law extends to LILCO the right to implement an offsite emergency response plan where it might not have the power to do so under state law. This issue is presently being addressed before the Licensing Board.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO STATE AND COUNTY RENEWAL OF REQUEST FOR NRC SUPPLEMENTATION OF SHOREHAM FES" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system this 19th day of March, 1985.

Alan S. Rosenthal, Esq., Chairman\*  
Atomic Safety and Licensing Appeal  
Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Howard A. Wilber\*  
Atomic Safety and Licensing Appeal  
Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Judge James L. Kelley, Chairman\*  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Judge Glenn O. Bright\*  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Judge Elizabeth B. Johnson  
Oak Ridge National Laboratory  
P. O. Box X, Building 3500  
Oak Ridge, Tennessee 37830

Eleanor L. Frucci, Esq.\*  
Atomic Safety and Licensing Board  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Gary J. Edles, Esq.\*  
Atomic Safety and Licensing Appeal  
Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Docketing and Service Section\*  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Edward M. Barrett, Esq.  
Long Island Lighting Co.  
250 Old County Road  
Mineola, New York 11501

Honorable Peter Cohalan  
Suffolk County Executive  
County Executive/  
Legislative Building  
Veteran's Memorial Highway  
Hauppauge, New York 11788

Fabian Palomino, Esq.  
Special Counsel to the  
Governor  
Executive Chamber, Room 229  
State Capitol  
Albany, New York 12224

W. Taylor Reveley, III, Esq.  
Anthony F. Earley, Esq.  
Robert M. Rolfe, Esq.  
Hunton & Williams  
707 East Main Street  
P.O. Box 1535  
Richmond, Virginia 23212

Mr. Martin Suubert  
c/o Congressman William Carney  
1113 Longworth House Office Building  
Washington, D. C. 20515

Martin Bradley Ashare, Esq.  
Suffolk County Attorney  
H. Lee Dennison Building  
Veterans Memorial Highway  
Hauppauge, New York 11788

Atomic Safety and Licensing  
Appeal Board Panel\*  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Stephen B. Latham, Esq.  
Twomey, Latham & Shea  
33 West Second Street  
P.O. Box 398  
Riverhead, New York 11901

Robert Abrams, Esq.  
Peter Bienstock, Esq.  
Dept. of Law, State of New York  
Two World Trade Center  
Room 46-14  
New York, NY 10047

Herzel H.E. Plaine, General Counsel\*  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

James Dougherty, Esq.  
3045 Porter Street, N. W.  
Washington, D. C. 20008

Mr. Brian McCaffrey  
Long Island Lighting Company  
Shoreham Nuclear Power Station  
P.O. Box 618  
North Country Road  
Wading River, New York 11792

Jay Dunkleberger, Esq.  
New York State Energy Off.  
Agency Building 2  
Empire State Plaza  
Albany, New York 12223

Atomic Safety and Licensing  
Board Panel\*  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Alan R. Dynner, Esq.  
Herbert H. Brown, Esq.  
Lawrence Coe Lanpher, Esq.  
Kirkpatrick & Lockhart  
1900 M Street, N.W.  
8th Floor  
Washington, D. C. 20036

Samuel J. Chilk\*  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555



Robert G. Perlis  
Counsel for NRC Staff