

893, LILCO, March 26, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

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

LILCO'S MOTION FOR
LEAVE TO FILE RESPONSE TO
INTERVENORS' AND NRC STAFF'S ANSWERS TO
LILCO'S RENEWED MOTION FOR SUMMARY DISPOSITION

On February 27, 1985, LILCO renewed its motion for summary disposition of legal authority issues on federal law grounds. The NRC Staff and the Intervenor each filed answers to LILCO's renewed motion on March 19, 1985. The Staff argues that (1) the Board should go forward on the legal authority issues now pending before it but (2) should deny LILCO's summary disposition motion on the legal authority contentions because it does not appear to the Staff that the conflicts are pre-empted. The Intervenor argues that (1) there is no legal authority issue pending before the Board that could be the basis for summary disposition and (2) the issue of federal preemption has been raised in other forums and therefore cannot be litigated before this Board. LILCO requests that the Board allow it to respond to these arguments. LILCO's response is attached to this motion.

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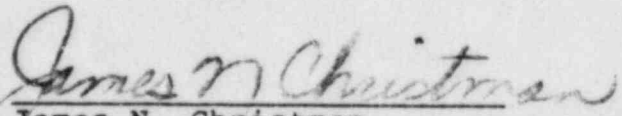
LILCO is mindful that 10 C.F.R. § 2.749 does not provide for responses to answers to motions for summary disposition, that § 2.730(c), governing motions generally, allows replies only with leave of the presiding officer, and that unauthorized pleadings filed during the course of this proceeding in the past have been looked upon with disfavor by this Board. Nonetheless, LILCO seeks to respond to the Intervenor's and NRC Staff's latest filings regarding Contentions 1-10, in order to address additional substantive arguments made by the Staff in footnote 9 of its answer, and to refute inaccurate representations made in the Intervenor's answer regarding the status of the federal preemption issues before the New York State Court, including the assertions that those issues are now pending before the state court and that the state court decision disposes of the contentions in their entirety.

The issues raised by Contentions 1-10 are novel and obviously of importance to the outcome of this licensing proceeding. The Intervenor's and the NRC Staff have raised arguments not previously addressed in LILCO's papers on Contentions 1-10. The novelty and importance of these issues, coupled with the arguments raised in the Intervenor's and Staff's filings that were not previously addressed by LILCO, warrant the opportunity for a response.

For these reasons, LILCO requests that the Board accept LILCO's response to the Intervenor's and the NRC Staff's

answers to LILCO's Renewed Motion for Summary Disposition,
which is attached to this motion for leave to file it.

Respectfully submitted,
LONG ISLAND LIGHTING COMPANY

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