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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

ANSWER OF SUFFOLK COUNTY AND THE STATE OF NEW YORK TO LILCO'S MOTION FOR LEAVE TO FILE RESPONSE TO INTERVENORS' AND NRC STAFF'S ANSWERS TO LILCO'S RENEWED MOTION FOR SUMMARY DISPOSITION

INTRODUCTION

On March 26, 1985, LILCO filed a Motion for Leave to File Response to Answers previously filed by Suffolk County and the State of New York and the NRC Staff to LILCO's Renewed Motion for Summary Disposition ("Response"). LILCO's Renewed Motion sought a ruling that state-law prohibitions on LILCO's implementation of its Transition Plan were preempted; that Motion asserted that preemption had been fully briefed by all parties and should be decided forthwith.

In response, Intervenors demonstrated that LILCO's Transition Plan failed to identify any legal authority that could justify granting the Renewed Motion. Intervenors also demonstrated that LILCO has repeatedly asserted preemption as its defense in the cases now consolidated in New York State

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Supreme Court under the caption Cuomo v. LILCO. The NRC Staff's Answer asserted that the preemption question is ripe for decision by this Board; in addition, the Staff's Answer demonstrates that LILCO's preemption arguments have no merit.

LILCO has now reversed fields. Having asserted that everything that could be said has been said, LILCO asks leave to file a 49-page brief in support of its Renewed Motion. Having originally relied upon N.Y. Executive Law, Article 2-B, as the source of its alleged legal authority, LILCO now casts a broad net and claims that virtually all laws relating to nuclear power authorize LILCO to carry out governmental functions and implement its Transition Plan. Having previously argued that preemption had been fully briefed, LILCO attempts to breathe new life into its preemption claim.

Intervenors believe the legal authority issue presented in this case is important. As stated in their Answer to the Renewed Motion, the County and State believe all parties should have a full opportunity to state their positions to this Board as LILCO now seeks to do. Moreover, this Board should have the benefit of the parties' views on the preemption issue in light of the recent Cuomo v. LILCO and Citizens v. County of Suffolk decisions that LILCO's Response addresses. Accordingly, Intervenors respectfully suggest that this Board (i) accept LILCO's Response for what it is -- LILCO's brief in

support of its Renewed Motion; (ii) consider this Answer to LILCO's Motion and Response; and (iii) set oral argument on the legal authority issue.1/

I. LILCO'S RENEWED MOTION FOR SUMMARY DISPOSITION SHOULD BE DENIED

LILCO's Response establishes two facts. First, LILCO cannot identify any authority that grants it the power to declare a public emergency, order an evacuation of 130,000 Suffolk County citizens, manage such an evacuation, direct traffic or otherwise implement its Transition Plan. Second, LILCO cannot recognize that the United States Supreme Court has rejected its preemption argument.

Intervenors wish to establish one point at the outset. LILCO's statements notwithstanding, the County and the State do not contest the statutory right of the Nuclear Regulatory Commission to grant or deny an operating license for Shoreham. They do not contest the NRC's authority to determine whether LILCO's Transition Plan provides "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." 10 C.F.

1/ As noted below, Intervenors believe that, in the interest of orderly proceedings, this Board should defer action on the preemption issue until LILCO has answered the complaints in Cuomo v. LILCO and the N.Y. Supreme Court has ruled upon LILCO's promised Motion to Defer. See infra at p. 43.

§50.47(a)(1)(1984). Intervenors have urged, and will continue to urge, this Board to determine that LILCO has not satisfied, and under the state of the law cannot satisfy, the statutory requirements for an operating license. Moreover, LILCO has not shown that it can and will take adequate protective measures in the event of an emergency at Shoreham. LILCO cannot demonstrate that its Transition Plan can lawfully be implemented; accordingly, the Renewed Motion must be denied.

A. LILCO HAS NO LEGAL AUTHORITY TO CARRY OUT THE TRANSITION PLAN

LILCO's Response makes three basic concessions. First, LILCO does not contest the fact that it has the burden of establishing its legal authority to carry out the Transition Plan. Response, p. 15. LILCO must affirmatively establish that it has met each requirement necessary to obtain an operating license. 10 C.F.R. §2.732.2/

Second, LILCO tacitly concedes that it must find some federal authority for its alleged right to assume State police

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2/ LILCO lamely suggests that the County bears an initial burden of proof with respect to its legal authority contentions. Response, p. 15. Assuming arguendo that the burden of establishing a prima facie case is applicable in the case of legal contentions that do not involve issues of fact, it is inconceivable that LILCO can suggest that a prima facie case of lack of authority has not been established by the New York State Supreme Court's February 20, 1985 decision in Cuomo v. LILCO.

powers. Response, p. 17. LILCO's initial Motion for Summary Disposition and its Renewed Motion both asserted that state statutes were preempted; those Motions rested upon that assertion and went no farther. Even if this Board accepted LILCO's preemption argument, however, LILCO would not have established any basis for its claim of authority. LILCO's Response now recognizes that fact. LILCO acknowledges that the Supremacy Clause in and of itself does not authorize LILCO to implement its Plan. Response, p. 17, n. 9. Thus, preemption is not the answer to LILCO's search for legal authority.

Third, LILCO's Response abandons any pretense that the statement of legal authority contained in LILCO's Transition Plan is adequate. Instead, LILCO asserts that its "briefings before this Board" claim that the Atomic Energy Act, NRC regulations and specifically 10 C.F.R. §50.47(b) and (c) and the 1980, 1982-3 and 1984 NRC Authorization Acts "empower LILCO to perform those acts required by NRC regulations to implement an emergency plan." Response, pp. 17 and 19. The fact that LILCO raises this claim of federal authority at the eleventh hour is proof in and of itself that LILCO's legal authority argument is frivolous. If LILCO really believed that federal law authorized private corporations to assume state police powers and carry out inherently governmental functions, it would have stated that position, clearly and unequivocally,

in July, 1983 when the legal authority contentions were first filed.

LILCO is engaged in a fishing expedition for legal authority. Nonetheless, the sources LILCO now references do not authorize LILCO to usurp governmental powers nor do they permit LILCO to implement the Transition Plan. In each case, the plain language of the laws and regulations in question fails to support LILCO's claims; moreover, the context in which such laws and regulations were adopted refutes LILCO's position.

1. The Atomic Energy Act Does Not Authorize Private Corporations To Perform Governmental Functions

LILCO cites the Atomic Energy Act ("AEA") as a source of its purported authority. Significantly, however, LILCO does not cite any specific provision of the AEA. LILCO cannot find any section of the AEA that grants a corporation the power to declare a general emergency, direct traffic or manage an evacuation of 130,000 citizens from their homes. No such section exists.

In the period following TMI, Congressional leaders and NRC representatives consistently recognized that offsite emergency planning is an area of state and local authority.3/

3/ See generally Opposition of Suffolk County and the State of New York to LILCO's Motion for Summary Disposition of

Moreover, Congress has refused to require state and local governments to engage in emergency planning, because it is unwilling to intrude upon state and local prerogatives in this area of traditional state sovereignty. See, e.g., Citizens et al. v. County of Suffolk, pp. 29-30. LILCO has never contested that fact. Congressional or NRC spokesmen never even remotely suggested that Congress had already intruded upon state sovereignty by empowering private corporations to exercise governmental functions. That is what LILCO now claims authority to do. Cuomo v. LILCO, pp. 4-5, 10-12. Plainly, the AEA does not authorize LILCO to do so.

2. NRC Regulations Do Not Authorize Private Corporations To Exercise Governmental Functions

LILCO cites NRC regulations, specifically §50.47(b) and (c), as an additional source of its alleged authority. LILCO's claim is specious. NRC regulations do not grant governmental powers to private corporations.

The NRC's general powers, including its authority to promulgate regulations, derive from the AEA itself. 42 U.S.C. §2201. The AEA does not even imply that the NRC has a mandate

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Contentions 1-10 (the "Legal Authority" Issues) dated September 24, 1984, pp. 35-42, 57-61, and Appendix thereto (Attachment A), pp. 3-16.

to promulgate a body of corporate law or to confer powers upon private corporations that exceed those granted by their state corporate charters. NRC spokesmen have repeatedly recognized that the Commission cannot require states to engage in emergency planning.4/ A fortiori, it may not authorize private corporations to assume and exercise state governmental powers; such an act would be unauthorized and constitute a more serious invasion of state prerogatives.5/ In sum, the AEA does not grant the NRC authority to expand the powers of private corporations.

Second, questions of authority aside, the NRC has never attempted to confer supplemental powers upon private corporations. A straightforward reading of §50.47(b) and (c) does not support LILCO's legal authority claims. The plain language of §50.47(b) does not grant private corporations any powers whatever. Subsection (b) establishes standards that "offsite emergency response plans for nuclear power reactors must meet." It enumerates those standards. It does nothing

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4/ See Emergency Planning Around Nuclear Power Plants: Nuclear Regulatory Commission Oversight Hearings Before a Subcommittee of the Committee on Government Operations, 96th Cong., 1st Sess. (May 14, 1979) at 264, 380, 399, 537, 542, 559, 575-6.

5/ The NRC may of course establish requirements that any emergency plan -- whether prepared by states, local governments or utilities -- must satisfy in order to be deemed adequate for the purposes of granting an operating license.

more. Subsection (b) is utterly silent as to whether any particular entity can, in fact and under law, satisfy the standards.

LILCO's argument presupposes that an administrative agency that establishes licensing requirements, by that same act, grants all persons the authority to do all things necessary to meet those requirements and obtain a license. That is an absurd argument. The promulgation of regulatory standards is not the same as conferring legal authority to meet those standards. When the NRC imposes a requirement upon license applicants, it does not guarantee that each applicant will have the legal capacity to satisfy that requirement. Under LILCO's argument, a state that requires citizens to be 16 years old to obtain a driving license thereby guarantees that all license applicants are 16 years old regardless of their date of birth.

Similarly, §50.47(c) does not confer any powers upon state corporations. Subsection (c) recognizes that a licensee may fail to meet the standards set forth in subsection (b).6/ It provides that where such failure has been determined to

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6/ A failure to meet the standards of subsection (b) may arise from many causes including, as here, the applicant's inability to show that it can lawfully carry out an emergency plan.

exist, an applicant has an opportunity to demonstrate that deficiencies in its emergency plan are insignificant, that adequate interim compensating actions will be taken or that compelling reasons permit plant operation. None of these second chance provisions authorizes a utility to carry out governmental functions. Even the most imaginative reading of subsection (c) will not support such a conclusion.7/

Finally, the administrative history of the Commission's emergency planning rules demonstrates that the NRC does not believe the Final Rules confer corporate or governmental powers upon public utilities. The Commission's "Summary of Comments and Major Issues" acknowledged that the regulations had been criticized as "unfair to utilities."

> NRC is seen as in effect giving State and local governments veto over the operation of nuclear plants. It was questioned whether this was an intent of the rule. In addition, it was felt that utilities, their customers, and their shareholders should not be penalized by a shutdown (with a resulting financial burden) because of alleged deficiencies or lack of cooperation by State and local officials. 45 Fed. Reg. 55,405 (Aug. 19, 1980).

7/ LILCO itself has admitted that §50.47(c) "was not intended to be a guarantee that a plant would operate; obviously there might be cases where the applicant could not or would not compensate, on the facts, for the failings of local governments." LILCO's Reply to the Responses to its Motion for Summary Disposition on Contentions 1-10, Oct. 15, 1984 at 28-9.

LILCO's argument that §50.47 authorizes utilities to assume governmental powers is wholly inconsistent with these comments. Moreover, industry criticisms of the emergency planning rules notwithstanding, the NRC adopted the Final Rules and stated its rationale as follows:

> [A]dequate emergency preparedness is an essential aspect in the protection of the public health and safety. The Commission recognizes there is a possibility that the operation of some reactors may be affected by this rule through inaction of State and local governments or an inability to comply with these rules. The Commission believes that the potential restriction of plant operation by State and local officials is not significantly different in kind or effect from the means already available under existing law to prohibit reactor operation, such as zoning, and land-use laws, certification of public convenience and necessity, State financial and rate considerations (10 CFR 50.33(f)), and Federal environmental laws. 45 Fed. Reg. 55,404 (Aug. 19, 1980).

The Commission's acknowledgement of the "potential restriction of plant operation by State and local officials" would be meaningless if the Final Rules had authorized utilities to carry out governmental functions whenever state and local officials do not adopt an NRC-compliant offsite plan.

In sum, the NRC has no authority to grant governmental powers to private corporations, and the Commission has not attempted to confer such powers on public utilities. The plain language of the Final Rules offers no support

whatever for LILCO's claim of authority under §50.47(b) or (c). The Commission's rationale for the Final Rules contains no suggestion that the NRC has conferred, or believes that it has conferred, governmental powers on license applicants. In fact, the NRC has not done so.

3. NRC Authorization Acts Do Not Authorize Private Corporations To Exercise Governmental Functions

Finally, LILCO references the three most recent NRC Authorization Acts as potential sources of its purported authority. An act that authorizes an instrumentality of the federal government to expend funds for certain purposes and subject to specified conditions is a strange place to look for corporate authority. That point aside, it is clear that neither the language nor the legislative history of the Authorization Acts supports LILCO's position. Congress has not authorized LILCO or any other private corporation to perform functions that "are inherently governmental in nature and fall clearly within the ambit of the STATE's police power." Cuomo v. LILCO, p. 12.

a. The 1980 NRC Authorization Act Does Not Grant LILCO Governmental Powers

Section 109 of the 1980 NRC Authorization Act provides as follows:

> Funds authorized to be appropriated pursuant to this Act may be used by the Nuclear Regulatory Commission to conduct proceedings, and take other actions, with respect to the issuance of an operating license for a utilization facility only if the Commission determines that
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> (1) there exists a State or local emergency preparedness plan which
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> (A) provides for responding to accidents at the facility concerned, and
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> (B) as it applies to the facility concerned only, complies with the Commission's guidelines for such plans, or
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> (2) in the absence of a plan which satisfies the requirements of paragraph (1), 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. Pub. L. 96-295, Section 109 (1980).

Section 109 permits the NRC to grant an operating license if it determines that there is an emergency preparedness plan that meets certain standards. Section 109 permits the Commission to make a "reasonable assurance" finding with respect to a utility plan. It also requires the Commission to determine that an emergency plan proferred by a utility satisfies applicable

regulatory standards. Section 109 is absolutely silent concerning a utility's legal authority to implement any particular plan. LILCO does not explain how it derives a grant of corporate authority from the language of Section 109. LILCO likes to say that the Authorization Act "authorizes" LILCO to submit a plan to the NRC. Even if one assumes arguendo that Section 109 authorizes a utility to submit an emergency plan, Section 109 does not guarantee that any plan a utility submits will satisfy applicable regulatory standards; moreover, it does not authorize a utility to perform inherently governmental functions in carrying out its plan.

It is equally clear that the legislative history of Section 109 does not support LILCO's claim. Section 109 is a legislative compromise crafted in conference. The Senate's version of the 1980 Authorization Act required each state to submit to NRC an emergency response plan and required NRC to find that adequate state or local offsite emergency plans existed as a condition of licensure. 125 Cong. Rec. S. 9463-84 (July 16, 1979). The House, on the other hand, did not impose a mandatory planning duty upon states nor did it require the NRC to make an adequacy finding. 125 Cong. Rec. H. 11507 (Dec. 14, 1979). As a compromise, the conferees and ultimately Congress decided (i) to require every utility to submit an adequate offsite emergency plan as a condition of plant

licensing; (ii) to require the NRC to establish emergency planning standards for all emergency plans; and (iii) in those cases where state or local government emergency plans did not exist or did not comply with NRC standards, to permit the NRC to examine an emergency plan developed by a utility and to determine whether that plan met NRC standards.8/ The transcript of the Conference Committee contains absolutely no evidence that the conferees believed they were taking the extraordinary step of delegating state governmental powers to private corporations.

LILCO's entire focus upon the 1980 NRC Authorization Act is based on two sentences from the Conference Committee report:

> The conferees sought to avoid penalizing an applicant for an operating license if a State or locality does not submit an emergency response plan to the NRC for review or if the submitted plan does not satisfy all the guidelines or rules. In the absence of a State or local plan that complies with the guidelines of rules, the compromise permits NRC to issue an operating license if it determines that a State, local, or utility plan, such as the emergency preparedness plan submitted by the applicant, provides reasonable assurance that the public health and safety is not endangered by operation of the facility. Joint Explanatory Statement of the

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8/ P.L. 96-295, §109 (1980) and Stenographic Transcript of Hearings Before the Senate Subcommittee on Environment and Public Works and the House Committee on Interior and Insular Affairs Joint Conference on the Nuclear Regulatory Commission (February 21 and April 22, 1980).

Committee on Conferences, H. Conf. Rep. 96-1070, 96th Cong., 1st Sess. (June 4, 1980) at 27-28, reprinted in 1980 U.S. Code Cong. & Ad. News at 2270-2271.

Again, the Conference report merely underscores the fact that the NRC is permitted "to issue an operating license if it determines that a ... utility plan ... provides reasonable assurance." In short, the Conference report confirms that the NRC is permitted to decide the issue now before it, that is, whether the Transition Plan provides reasonable assurance and can and will be implemented. Obviously, if LILCO does not have the legal authority to carry out its plan, there can be no finding that the plan will be implemented nor can there be a finding that there is reasonable assurance that the public health and safety will be protected. Again, the Conference Committee report contains no suggestion that Section 109 was intended to authorize a public utility to perform governmental functions.

b. The 1982-3 NRC Authorization Act Does Not Grant LILCO Governmental Powers

Section 5 of the 1982-3 NRC Authorization Act provides as follows:

> The Nuclear Regulatory Commission may use such [appropriated] sums as may be necessary, in the absence of a State or local emergency preparedness plan which has been approved by the Federal Emergency Management Agency, to issue an

> operating license ... for a nuclear power reactor, if it determines 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. P.L. 97-415, sec. 5 (1983).

Section 5 simply re-enacts Section 109 of the 1980 Act in somewhat different language. Section 5 speaks to the NRC's authority to grant a license. It does not authorize a utility to declare a public emergency, manage an evacuation, direct traffic or perform other basic governmental functions.

The legislative history of Section 5 is not as extensive as the legislative history of Section 109. Nonetheless, it provides absolutely no support for LILCO's contention that Congress intended to permit private corporations to perform governmental functions nor does it provide any evidence that Congress intended to confer extra-charter powers upon private corporations existing under state law.

LILCO seeks to find authority to implement its Transition Plan in the comments of a single legislator, Congressman Lujan, rather than in the text of the Authorization Act. Response, p. 34. Rep. Lujan's conclusion, quoted by LILCO, is as follows:

> The clear language of the statute and our intent throughout the legislative process was to insure that a plant could operate if there existed some plan -- State, local or utility sponsored -- providing reasonable assurance of the public health and safety. 128 Cong. Rec. H 5061 (Dec. 10, 1982).

Rep. Lujan does not assert that Congress intended to grant governmental powers to public utilities. This Board must find that LILCO has authority to perform governmental functions before it can determine that the Transition Plan provides "reasonable assurance." The 1982-3 Authorization does not grant LILCO such authority nor does any other federal or state statute.

c. The 1984-5 NRC Authorization Act Does Not Grant LILCO Governmental Powers

Section 108 of the 1984-5 NRC Authorization Act re-enacts Section 5 of the 1982-3 Authorization Act in identical language. P.L. 98-553, sec. 108 (1984). Again, Section 108 speaks to the NRC's authority to grant a license. It does not, expressly or impliedly, grant state police powers to private corporations or enlarge any public utility's corporate powers.

Moreover, the legislative history of Section 108 establishes beyond any question that Congress did not believe that it had ever conferred authority upon private corporations

to carry out governmental powers. The Senate report on Section 108 stating the views of the Committee on Environment and Public Works states that the provision is "identical" to Section 5 of the 1982-3 Authorization Act and "is intended to reconfirm the authority of the NRC and FEMA to evaluate an emergency preparedness plan submitted by an applicant or licensee pursuant to this section". Authorizing Appropriations to the Nuclear Regulatory Commission, S.Rep. 98-456, 98th Cong., 2d Sess. (June 14, 1984) at 13-15. The Senate Report does not indicate that Section 108 was intended to grant utilities governmental powers. Moreover, the Report does not remotely suggest that Section 108 grants utilities federal authority to undertake activities beyond their legal powers under state law.

LILCO's contention that Congress has authorized it to assume governmental functions is even more frivolous when considered in the context of the Commission's presentations to the Senate during the course of the hearings on the 1984-5 NRC Authorization bill. At a 1984 NRC budget hearing, the NRC advised the Subcommittee on Nuclear Regulation of the Senate Committee on Environment and Public Works that certain states and localities had refused to participate in offsite emergency preparedness.9/ The testimony regarding offsite emergency

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9/ Fiscal Year 1985 Budget Review Hearings Before the Committee on Environment and Public Works, S. Rep. 98-758, 98th Cong., 2d Sess. (Feb. 23, 1984) at 13-19, 97.

preparedness focused on two issues raised by Chairman Palladino in his opening remarks:

> Two important new questions are whether State or local governments may have an obligation to participate in emergency planning and, in the absence of State or local government participation, whether a licensee has the legal authority to carry out proposed actions that normally would be handled by State or local governments in an actual emergency ...
>
> I think the situation as it now exists, as pointed out in my testimony, raises two questions, one the extent to which State and local governments have an obligation to participate in emergency preparedness and the other is the question of legal authority of utilities to develop a plan and want to implement it and exercise it and I think addressing those issues, particularly the second one, would be something that I think the subcommittee might want to consider.10/

10/ Id. at 4-5, 13-14. Chairman Palladino did not suggest that the Subcommittee grant governmental powers to private utilities to cure their lack of legal authority:

> It is also important for the subcommittee to work with FEMA and NRC to come up with a solution to the problem of legal authority in the absence of State or local government participation. A possible approach would be to make available Federal resources if a Governor required them. Id. at 5.

Thus, Chairman Palladino's recommendation was that Congress authorize federal participation to cure a utility's conceded lack of legal authority.

Chairman Palladino's statement that the legal obligation issue is a "new question" is erroneous since Congress had expressly addressed that issue in 1980 and decided not to impose an affirmative emergency planning obligation on state and local governments. The legal obligation question is not germane to this proceeding and has, in any event, been decided adversely to LILCO's position by the U.S. District Court (E.D.N.Y.). See Citizens et al. v. County of Suffolk, pp. 23-31.

Chairman Palladino's comment is important for two reasons. First, although not determinative of the legal authority issue presented by LILCO's Renewed Motion, his statement contradicts LILCO's assertion that existing federal law authorizes LILCO to carry out its Transition Plan. Chairman Palladino would not have presented this issue to Congress as a "new question" and invited the Subcommittee to consider the question if he had believed that the AEA or any other existing body of law conferred upon a license applicant "the legal authority to carry out proposed actions that normally would be handled by State or local governments in an actual emergency."

Second, the Subcommittee's version of the 1984-5 Authorization bill did not address the "new question" of a utility's legal authority to develop, implement or exercise an offsite emergency plan. Chairman Palladino's testimony notwithstanding, the Committee did not confer governmental powers upon public utilities. Instead, Congress merely re-enacted Section 5 of the 1982-3 Authorization Act permitting the NRC to decide whether a utility plan met applicable regulatory standards. Thus, the Senate considered the issue LILCO now confronts, but it took no action to confer the authority that LILCO fervently seeks.

More dramatically, the relevant House Committee, in re-enacting Section 5 of the 1982-3 Act, made it clear that the NRC is not authorized to license a plant where a utility cannot lawfully implement an offsite emergency plan because of a lack of local government participation. The report of the House Committee on Interior and Insular Affairs on the House version of the 1984-5 NRC Authorization bill states as follows:

> [S]ection 6 allows the Commission to look at a utility plan (as it pertains to offsite emergency preparedness) in making its determination about the adequacy of offsite emergency planning. The provision, however, in no way implies that it is the intent of the Committee that the NRC cite the existence of a utility plan as the basis for licensing a plant when State, county, or local governments believe that emergency planning issues are unresolved. Moreover, section 6 does not authorize the Commission to license a plant when lack of participation in emergency planning by State, county, or local governments means it is unlikely that a utility plan could be successfully carried out. (Emphasis supplied).11/

Congressman Broyhill, the ranking minority member of the House Committee on Energy and Commerce, sought clarification of this statement in identical letters to Reps. Udall and Lujan, respectively, the Chairman and ranking

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11/ Authorizing Appropriations to the Nuclear Regulatory Commission in Accordance with Section 261 of the Atomic Energy Act of 1954 and Section 305 of the Energy Reorganization Act of 1974 and for other Purposes, H. Rep. 98-103, Part 1, 98th Cong., 1st Sess. (May 11, 1983) at 8-9.

minority member of the House Committee on Interior and Insular Affairs. Referring to the second sentence above, Congressman Broyhill stated:

> Accordingly, the sentence quoted above is appropriately understood to mean that the mere existence of a utility plan is not a sufficient basis for issuing an operating license, but that if the NRC can make the statutory determination set out in Section 6, a state, county or local government's belief that planning issues are unresolved would not in itself stand as a bar to such a determination. Such an interpretation appears to be necessary in order to effectuate the intent of Congress when this provision was originally enacted as part of the FY 1980 NRC Authorization Act and subsequently in the FY 1982-83 NRC Authorization Act.

130 Cong. Rec. H. 12195 (Oct. 11, 1984). Referring to the last sentence above, he stated:

> [I]t would appear that this sentence is appropriately understood to require NRC to make a determination pursuant to Section 6 as to whether the plan is adequate to protect the public health and safety and that the use of the word "unlikely" is not intended to provide any different threshold for that determination.

Congressman Udall responded as follows:

> First, you are correct in your interpretation of the Interior Committee's intent that the mere existence of a utility plan is not a sufficient basis for issuing an operating license, but if the NRC can make the statutory determination set out in Section 6, a state, country, or local government's belief that planning issues are unresolved would not in itself stand as a bar to such a determination. Second, the word "unlikely" in the last sentence of the first paragraph on page 9 of the Interior Committee's

> report on H.R. 2510 is not intended to create a new threshold for the NRC's determination under Section 6.

Ibid. Congressman Lujan's response did not express any different interpretation.12/ This exchange of letters makes no reference to an intention to grant utilities the authority to exercise governmental police powers.

Given this background, it is literally impossible to understand how LILCO can seriously suggest that Congress has authorized a public utility to assume and exercise basic state powers that the New York State Supreme Court has expressly held are delegated only to State and local governments. Cuomo v. LILCO, p. 10. In the face of this record in the Senate, the House of Representatives and their relevant committees, LILCO offers only the isolated comments of one of its principal Congressional advocates.13/ Clearly, the statements of a

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12/ These letters, set forth in full, are reprinted at 130 Cong. Rec. H. 12195-6 (Oct. 11, 1984).

13/ LILCO quotes Rep. Pashayan, but even Rep. Pashayan does not state that the 1984-5 Act grants LILCO governmental powers. Response, pp. 36-7. His answer to a local government's refusal to implement a plan is not corporate authority but rather federal implementation:

> I also view existing law as providing authority for the Federal Government to implement any utility plan submitted under this provision. I think that both concepts -- that of utility submission, and that of Federal implementation,

(Footnote continued)

single Congressman do not constitute legislative intent; such statements do not confer authority that the relevant statutes withhold.

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In sum, LILCO must demonstrate that it has legal authority to implement its Transition Plan. It invokes a grabbag of federal authorities as the basis for its alleged authority. None of these authorities supports LILCO's position. The statutes and regulations LILCO relies on do not authorize LILCO to usurp governmental functions reserved to the State of New York and its lawfully delegated political subdivisions. Those laws do not enlarge LILCO's charter powers under the Business Corporation Law of New York State. LILCO's Transition Plan has no legal predicate, and LILCO's Renewed Motion has no legal foundation whatever.

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of emergency plans -- are important .... 130 Cong. Rec. H. 12,196 (Oct. 11, 1984).

Rep. Pashayan's concept of federal authority is not shared by Congress as a whole; nonetheless, even the one spokesman LILCO identifies in connection with the 1984-5 Authorization Act does not support LILCO's position that the 1984-5 Act grants governmental powers to private utilities.

B. LILCO'S PREEMPTION ARGUMENT HAS NO BASIS

LILCO's preemption argument is characterized by red herrings and an adamant refusal to recognize the state of the law as pronounced by the U.S. Supreme Court. First, with respect to red herrings, LILCO asserts that Intervenors claim that the NRC can consider utility plans only if the state "approves or is indifferent;" LILCO claims that Intervenors' position is that the State, not the NRC, "must decide whether a utility plan is adequate." Response, pp. 38, 48. That is nonsense. The NRC must decide whether LILCO's plan is adequate. LILCO must show that its Plan is adequate and authorized. Conversely, Intervenors may demonstrate that LILCO's Plan is unlawful, unauthorized and therefore inadequate. Intervenors have done so.

Second, Intervenors' opposition to the Renewed Motion does not reargue their Motion to Terminate. Response, pp. 40, 47. That Motion asserted that LILCO could not meet its burden of proof concerning the Transition Plan given the County's decision not to adopt its own RERP. The Brenner Board decided that LILCO could submit its Plan and attempt to make a "reasonable assurance" showing. The NRC agreed. LILCO has submitted its Plan, and Intervenors have shown that LILCO has no authority to implement that Plan.14/

14/ The Brenner Board's finding of "reverse preemption" was not adopted by the NRC. To the extent that it was grounded on

Third, LILCO's statements to the contrary notwithstanding, the issue in this proceeding is not whether the County and the State oppose the grant of an operating license to LILCO. They do. Their opposition to Shoreham is legal. 10 C.F.R. §2.715(c) (1984).15/ Moreover, it is not germane to the preemption issue. The real focus of the preemption question is whether federal law preempts specific state laws that fail to authorize LILCO to exercise governmental powers. The laws in question are the New York State Constitution, Article IX, section 2, the Municipal Home Rule Law, New York Executive Law, Article 2-B, the Business Corporation Law and other statutes referenced in the February 20, 1985 opinion in Cuomo v. LILCO. LILCO must show that Congress intended to invalidate each of these state statutes.

Intervenors' opposition to Shoreham, the Board's decision has been reversed by the U.S. District Court in Citizens et al. v. County of Suffolk.

15/ LILCO's wide-ranging Complaint in Citizens v. County of Suffolk challenged, as preempted, the County's opposition to Shoreham. LILCO's Complaint specifically alleged that the County's intervention in these proceedings, its participation in state and federal litigation and its refusal to adopt an emergency plan are preempted, void and illegal. The District Court's decision in the Citizens case holds that the County's opposition to Shoreham is lawful and not preempted. Citizens v. County of Suffolk, p. 25.

1. The Atomic Energy Act Does Not Support LILCO's Preemption Claim

LILCO's preemption claim must ultimately rest upon the Atomic Energy Act.16/ Nonetheless, LILCO has never referenced any provision of the AEA other than its statutory preamble stating Congress' intent to encourage the development of nuclear power. That preamble provides little assistance to any preemption analysis. The Supreme Court has held that Congress has not sought to encourage the development of nuclear power "at all costs" or to override traditional areas of state action; rather, Congress has recognized and accepted the tension between the promotion of nuclear power and legitimate state interests. See Pacific Gas and Electric Company v. State Energy Resources Conservation & Development Commission, 461 U.S. 190, 75 L.Ed. 2d 752, 777 (1983); Silkwood v. Kerr-McGee Corp.., __ U.S. __, 78 L.Ed. 2d 443, 458 (1984).

Courts assessing the scope of AEA preemption have focused upon Section 274 of the Act, 42 U.S.C. §2021. See Pacific Gas, 75 L.Ed. 2d at 766-70. Section 274(c) provides that "the Commission shall retain authority and responsibility with respect to regulation of -- (1) the construction and

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16/ See LILCO's Reply to the Responses to its Motion for Summary Disposition on Contentions 1-10, p. 37, n. 23: "Finally, it is not the Authorization Acts that preempt state law. The Atomic Energy Act preempts state law."

operation of any production or utilization facility;" Section 274(k) provides that the Act shall not be construed "to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards." 42 U.S.C. §2021(c) and (k) (1984).

The U.S. Supreme Court has held that the AEA does not intrude upon the states' authority over the need for muclear facilities, zoning, rate-making, land-use planning and other traditional state concerns. Pacific Gas, 75 L.Ed. 2d at 766-70. The Court has squarely held that the AEA does not preempt "the historic police powers of the States ... unless that was the clear and manifest purpose of Congress." Pacific Gas, 75 L.Ed. 2d at 766; Silkwood, 78 L.Ed. 2d at 457.

Clearly, offsite emergency planning involves the historic police powers of state and local governments. Cuomo v. LILCO, pp. 4-5, 10-12. LILCO accepts that fact. LILCO accepts the Cuomo decision for the purposes of its Renewed Motion.17/ Congress accepts that fact. Congressional spokesmen have consistently stated that offsite emergency planning is within the province of local governments. See supra at pp. 6, 14-16; Citizens v. County of Suffolk, pp.

17/ LILCO's whole realism defense presupposes that state and local governments may act in the area of offsite emergency response.

29-31. The NRC accepts this fact. The NRC has expressly stated that offsite emergency planning is a traditional area of state activity, and it has determined that emergency planning is analogous to proper state functions such as zoning, land-use planning and the regulation of public utility rates. See 45 Fed. Reg. 55,404 (Aug. 19, 1980); NUREG-0654; FEMA-REP-1 (Jan. 1980).

It is even more clear that the statutes LILCO now seeks to invalidate involve traditional state concerns. Indeed, those statutes involve the basic conduct of state and local government. The State Constitution reserves to the state and its duly-delegated municipal subdivisions fundamental governmental powers. The Municipal Home Rule Law implements that basic constitutional premise. The Vehicle and Traffic Law, pursuant to the Municipal Home Rule Law, specifies which governmental entities hold traffic powers and delineates how such powers may be exercised. The New York Executive Law allocates the state's executive authority and divides emergency powers as between state and local governments. The New York Business Corporation Law establishes the purposes for which business corporations may be formed and defines the powers that such corporations, as creatures of state law, may exercise. The New York State Constitution, the Municipal Home Rule Law, the Vehicle and Traffic Law, the Executive Law and the Business

Corporation Law are not concerned with the commercial development of nuclear power. Those statutes have nothing to do with nuclear power regulation. Those statutes are relevant to this proceeding only because LILCO, in an act of corporate hubris, has assumed that it may act as though it were the state and usurp the powers of duly-elected governments.

LILCO hopes to persuade some judicial or administrative body somewhere, somehow, that Congress actually intended to preempt all such statutes to the extent that they restrict LILCO's ability to usurp governmental powers. LILCO must show that Congress' "clear and manifest purpose" was to preempt the organic statutes of New York State government and its basic corporate law to boot. LILCO has not done so. It cannot do so.

LILCO's preemption claim is ambitious. It has no basis in the AEA or in the actions of Congress. Moreover, LILCO's position has absolutely no support in the decided cases.

2. The U.S. Supreme Court Has Squarely Rejected LILCO's Preemption Argument

LILCO recognizes that there are two basic tests for preemption. First, Congress may evidence an intent to occupy a given field by adopting a pervasive scheme of federal regulation; in that case, any state law falling within that field is preempted (the field or zone preemption test). Second, even if Congress does not entirely displace state regulation in a particular zone, state laws may be preempted if they actually conflict with federal law and render compliance with both state and federal law impossible or stand as an obstacle to the accomplishment of Congressional objectives (the actual conflict preemption test). See Pacific Gas, 75 L.Ed. 2d at 765; Silkwood, 78 L.Ed. 2d at 452.

a. LILCO Cannot Establish That State Laws Intrude Upon A Preempted Zone

LILCO's Response makes no effort to show that the zone preemption test has been met. First, offsite emergency planning is not a preempted zone. As previously noted, Congressional and NRC spokesmen have repeatedly recognized that offsite planning is a traditional area of state and local action. Moreover, LILCO's basic grievance is that Intervenors are not acting in this allegedly preempted zone.

Second, the allocation of state governmental powers is not a preempted zone. No one could seriously contend that Congress has evidenced an intent to preempt all state laws allocating governmental powers as among state and local governments.

Third, general corporate law is not a preempted zone. The federal government has not enacted a pervasive scheme of regulation governing the creation and authorization of corporations.18/ LILCO does not remotely suggest that such actions intrude upon a preempted zone.

LILCO has only identified two conceivable zones of preemption: radiological health and safety and regulation of the construction or operation of a nuclear facility. The laws here in question do not intrude upon either zone of activity. The State Constitution and the Municipal Home Rule Law do not concern radiological health and safety; just as state zoning restrictions do not intrude upon radiological safety (although they may preclude the construction of a nuclear plant),

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18/ The Supreme Court has recognized that corporations are the creatures of state law. Federal law will not be held to interfere with state corporation laws without "a clear indication of Congressional intent," and state law will govern the internal affairs of corporations "except where federal law expressly requires" a contrary result. See Santa Fe Industries, Inc. v. Green, 430 U.S. 462, 479 (1977) and Cort v. Ash, 422 U.S. 66, 84 (1975).

statutes that delegate governmental powers to political subdivisions do not regulate radiological safety (although they may withhold governmental powers from private corporations). Similarly, the Constitution and the Municipal Home Rule Law do not regulate the construction or operation of a nuclear facility; they do not prescribe how or under what conditions or in what manner a utility may construct or operate a nuclear facility. These New York statutes do not regulate the construction or operation of a plant unless any law that has any potential to impede a license applicant constitutes "regulation." The Supreme Court has rejected that theory. Pacific Gas squarely holds that a moratorium statute that absolutely precludes the construction and operation of a nuclear plant does not regulate plant operation and is not preempted. Pacific Gas, 75 L.Ed. 2d at 777. By definition, a law that does not prohibit plant operation but may indirectly jeopardize a licensee's efforts to meet its statutory burden of proof does not constitute "regulation" of plant operation and is not preempted.

b. LILCO Cannot Establish That New York State Laws Impermissibly Conflict With Congressional Purposes

LILCO's principal argument rests upon the actual conflict standard. The gist of LILCO's argument is as follows: First, Congress has authorized the commercial development of atomic power. Second, LILCO seeks to operate the Shoreham nuclear plant. Third, LILCO cannot operate the Shoreham plant unless it can meet NRC licensing requirements. Fourth, LILCO cannot satisfy the standards applicable to the issuance of an operating license unless it can exercise governmental powers. Fifth, state law withholds governmental powers from LILCO. Sixth, LILCO's legal disabilities threaten its ability to satisfy NRC regulatory requirements. Seventh, LILCO's inability to meet NRC licensing standards will jeopardize Congressional purposes. Therefore, Congress must have preempted any state law that would restrict a license applicant's ability to obtain an operating license for a nuclear power plant.

LILCO's reasoning was utterly disavowed by the U.S. Supreme Court in Pacific Gas, supra. Pacific Gas involved a California statute that imposed a blanket moratorium on the construction of any nuclear power plant. Appellants in Pacific Gas attacked the statute on the ground that it would preclude

any nuclear plant from being constructed and therefore "regulated" the construction and operation of such plants. Citing Perez v. Campbell, 402 U.S. 637 (1971), appellants contended that a statute that frustrated the operation of federal law was invalid even if the state law in question had been enacted for some purpose other than frustration of federal purposes. They reasoned that the moratorium statute would, in practice, frustrate the Congressional purpose of promoting atomic energy and was preempted.19/ The U.S. Supreme Court rejected these arguments in Pacific Gas. Undaunted, however, LILCO makes the same arguments here.

First, Pacific Gas holds that a construction moratorium statute does not regulate the construction or operation of a nuclear power plant merely because it would render such construction impossible. In a statement quoted by LILCO in its Response at p. 42, the Court expressly noted that the moratorium statute "does not seek to regulate the construction or operation of a nuclear power plant" and that, if it had attempted to do so, it would have been invalid.

Second, Pacific Gas holds that a statute that has a direct impact upon construction or operation of nuclear facilities is valid and not preempted if it has a rationale

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19/ See Petitioners' Brief before the U.S. Supreme Court in Pacific Gas (No. 81-1945) esp. pp. 33 and 48-9.

unrelated to radiological safety. The stated purpose of the California nuclear moratorium statute was the state's concern over the economic viability of nuclear plants. Given that rationale, the Court determined that the statute was a legitimate exercise of governmental power.

Third, Pacific Gas holds that a moratorium statute does not frustrate Congressional purposes or represent an obstacle to Congressional objectives. Congress has accepted "the continued preservation of state regulation in traditional areas." Pacific Gas, 75 L.Ed. 2d at 777.

The Pacific Gas holding controls this case. This proceeding involves statutes that do not prohibit the construction and operation of nuclear power plants. They are based upon considerations unrelated to radiological safety. If a moratorium statute does not "regulate" the construction or operation of a nuclear plant, a home rule statute does not "regulate" plant operation merely because it withholds governmental powers from a private corporation and thereby indirectly impairs that corporation's ability to satisfy NRC licensing requirements. Moreover, there is absolutely no suggestion that New York State was motivated by radiological safety concerns when it adopted the State Constitution, Article IX, Section 2 governing the distribution of governmental functions. Radiological safety concerns have nothing whatever

to do with the State's Municipal Home Rule Law, its Traffic Law or its Business Corporation Law. Even the New York Executive Law, which allocates emergency response powers among particular governments, is concerned with the assignment of governmental functions rather than with radiological safety per se. Given Pacific Gas, these statutes in traditional areas of state responsibility unrelated to radiological safety do not frustrate Congress' purposes.

In sum, Pacific Gas holds that a state statute does not "regulate" a nuclear plant or frustrate Congressional purposes merely because its application would prohibit the construction or operation of such a plant. A fortiori, a statute that has an indirect impact on a license applicant's ability to meet regulatory standards does not regulate the operation of a nuclear plant nor does it frustrate Congressional purposes. The New York Constitution, the Municipal Home Rule Law, the Executive Law and the Business Corporation Law are grounded upon traditional state government concerns unrelated to radiological safety or nuclear power. Accordingly, they do not frustrate Congressional purposes. This case is so clearly governed by the Court's holding in Pacific Gas that LILCO's claim of preemption is wholly frivolous.

That fact is even clearer in light of the Court's decision in Silkwood. In Silkwood, the Court upheld state punitive damages remedies. Kerr-McGee had argued that punitive damages are, by definition, intended to influence the alleged tort feasor's conduct and, therefore, in every practical sense constitute second-level, state regulation of such conduct. The Court held that Kerr-McGee was required to show an express Congressional intent to preempt traditional state tort remedies. In Silkwood, the Court determined that Congress had assumed the existence of traditional state tort remedies and had not considered prohibiting any such remedies; the continued existence of such remedies did not frustrate federal purposes even though tort law imposed a regulatory regime on plant operation. In the present case, Congress has clearly recognized that emergency planning is an area of traditional state responsibility. Citizens v. County of Suffolk, pp. 26-31. Moreover, Congress never considered acting to restrict state powers to allocate government responsibilities or to establish private corporations. In light of Silkwood, the existence of state home rule laws and corporate laws does not frustrate Congressional purposes even though such statutes may affect a utility's power to perform governmental functions.

In sum, under Silkwood, LILCO must show that Congress intended to preempt the state laws here in question. LILCO has

made no such showing. Moreover, LILCO must show a frustration of federal purposes arising from these statutes. It cannot do so.

Finally, lacking any legal support for its position, LILCO resorts to hyperbole and warns of "the end of federal control of nuclear energy" if its Renewed Motion is not granted. Response, p. 48. LILCO's claim misses the point. Dire predictions aside, under Pacific Gas and Silkwood, if state statutes are permissible, their impact on the construction and operation of a nuclear power plant is irrelevant. Somewhat more modestly, LILCO asks for sympathy because the construction of Shoreham is nearly complete. The Supreme Court has ruled that the NRC "is absolutely denied any authority to consider [a utility's] investment when acting upon an application for a license for operation." Power Reactor Development Corp. v. International Union of Electrical, Radio and Machine Workers, 367 U.S. 396, 415 (1961) (cited with approval in Pacific Gas). LILCO's pleas have no more merit than its legal arguments.

In sum, the Commission has issued emergency planning regulations because "adequate emergency preparedness is an essential aspect in the protection of the public health and safety." 45 Fed. Reg. 55,404 (Aug. 19, 1980). LILCO cannot satisfy those regulations. The Commission has recognized that

its emergency planning rules may jeopardize the operation of nuclear power plants in those cases where the utility does not submit a satisfactory emergency plan. This is such a case.

II. PROCEDURAL POSTURE OF THIS MATTER

Intervenors' Answer to the Renewed Motion and the attached Affidavit set forth facts concerning LILCO's invocation of preemption in the consolidated cases now pending in the N.Y. State Supreme Court as Cuomo v. LILCO. LILCO's Response unleashes an adjectival rejoinder to Intervenors' statements of fact. Certain basic points should be made with respect to the procedural history of these matters contained in LILCO's Response.

First, LILCO asserts that LILCO has "never asked the state court to address the federal preemption issue on the merits." LILCO's statement notwithstanding, two facts are beyond dispute. First, at the very outset of the Cuomo v. LILCO actions, LILCO raised the preemption issue on its own motion. Second, LILCO has filed seven separate pleadings in Cuomo v. LILCO which raise the preemption issue. See Brownlee Affidavit, ¶ 5(a), (b), (c), (e), (i) and (j).

Second, LILCO asserts that the Intervenors, not LILCO, have "repeatedly urged the state court to reach federal preemption." Response, pp. 11, 25 and 26. Intervenors first

raised the preemption issue in the Cuomo action on September 11, 1984 by a Cross Motion for Summary Judgment. The purpose of that Cross Motion was to obtain an expeditious decision of all claims and defenses in the Cuomo action. Intervenors' Motion was not filed until after LILCO had, by Motions to Dismiss, by Petitions for Removal and by arguments made by its counsel in open court, repeatedly stated that federal preemption was an integral part of the Cuomo v. LILCO actions. See Brownlee Affidavit, ¶¶ 5 and 7.

Third, LILCO states that it withdrew its Motion to Dismiss based on preemption, because the District Court remanded the Cuomo actions to state court and determined that preemption was a defense that could be heard in state court. Response, pp. 4, 10. Quite apart from the illogic of withdrawing a defense previously asserted in state court because the District Court had held that the issue was a defense that could be asserted in state court, the fact of the matter is that LILCO filed its Motion to Dismiss the Southampton case based on preemption on June 29, 1984, two weeks after the District Court's remand decision. LILCO did not withdraw its preemption defense in the consolidated state court actions until after LILCO had obtained an extension of time within which to refile its Motion to Dismiss the state court actions. LILCO then used the extension so granted to

prepare and file its Motion for Summary Disposition before this Board on August 7, 1984. One week later, LILCO appeared in state court asserting that the preemption issue should not be decided in state court, because it was pending before this Board.

Fourth, this Board should be aware that on March 28, 1985 the New York Supreme Court ordered LILCO to file its Answer to the Complaints in Cuomo v. LILCO. LILCO has advised the Supreme Court that it will raise preemption in its answer but will request the Supreme Court to defer its consideration of that defense. Given LILCO's expressed intention to reassert preemption as a defense in Cuomo v. LILCO, Intervenors submit that this Board should defer action upon the preemption issue, at least until the State Supreme Court has addressed LILCO's anticipated Answer and Motion.

LILCO's concept of preemption is insupportable. LILCO's preemption claim is frivolous whether it is presented to this Board, to the New York State Supreme Court or to the U.S. District Court. Intervenors believe, however, that some concept of orderly process should be adhered to in these various proceedings. Intervenors have sought to resolve the issues presented by the legal authority contentions in state court, acting at the invitation or direction of this Board. LILCO has interposed preemption as a defense in those actions.

LILCO has represented that it will reassert that defense. The District Court has held that LILCO's preemption defense is properly before the Supreme Court. Accordingly, the Cuomo v. LILCO cases should be permitted to proceed to decision.

CONCLUSION

LILCO has no legal authority, under federal law, to exercise governmental functions or to implement its Transition Plan. LILCO's preemption argument has no support in the Atomic Energy Act or in the decided cases. LILCO's Renewed Motion, therefore, should be denied.

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April 8, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'85 APR 11 P2:59

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of ANSWER OF SUFFOLK COUNTY AND THE STATE OF NEW YORK TO LILCO'S MOTION FOR LEAVE TO FILE RESPONSE TO INTERVENORS' AND NRC STAFF'S ANSWERS TO LILCO'S RENEWED MOTION FOR SUMMARY DISPOSITION dated April 8, 1985, have been served on the following this 8th day of April, 1985 by U.S. mail, first class, except as otherwise noted.

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