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April 12, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

Docket No. 50-322-0L-3
(Emergency Planning)

NRC STAFF'S REPLY TO LILCO'S MOTION
FOR LEAVE TO RESPOND TO ANSWERS TO LILCO'S
RENEWED MOTION FOR SUMMARY DISPOSITION AND
REQUEST FOR PERMISSION TO REPLY TO LILCO'S RESPONSE

By Motion of March 26, 1985, LILCO requested permission to respond to the Intervenor's' and the NRC Staff's answers to its renewed motion for summary disposition, and attached its proposed response to those answers to its motion. The NRC Staff does not oppose the motion, but seeks to file the attached reply ^{1/} dealing with matters raised in the response LILCO attached to its motion if LILCO is given permission to file its response.

1/ In an unpublished Atomic Safety and Licensing Appeal Board Order in Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), Docket No. 50-382 OL (February 13, 1985), it was indicated that a motion for leave to file a pleading should be accompanied by that pleading. We follow that practice here, and attach the Staff's proposed reply.

LILCO's proposed response deals with the Intervenor's' arguments that the legal authority issues were not properly before the Licensing Board and that these issues should not be decided by this Board as they are before other forums, as well as the question of preemption. The Staff's proposed Reply treats only those LILCO arguments dealing with preemption, as the Staff believes that the issue of preemption is ripe for determination by this Board.

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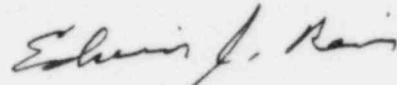
LILCO in its Renewed Motion for Summary Disposition of Legal Authority Issues on Federal Law Grounds, February 27, 1985, indicated that it believed the issues touching on that motion had been fully briefed and, except for a brief discussion of Garcia v. San Antonio Metropolitan Transit Authority, 105 L.Ed 2d 1005 (1985), no further discussion of preemption was needed. (LILCO Renewed Motion for Summary Disposition, at 5, 10-11). The NRC Staff generally agreed with this conclusion. See "NRC Staff Response to LILCO's Renewed Motion for Summary Disposition of Legal Authority Issues on Federal Law Grounds," March 19, 1985, at 5-6. The NRC Staff pointed out that it had replied to the LILCO's original motion to dismiss the legal authority issues in pleadings of October 10, 1984, and December 7, 1984. Id. at 4. The NRC Staff set out an extensive footnote (n.9, p.6) dealing with the effect of Perez v. Campbell, 402 U.S. 637 (1971), the effect of which had been left open in footnote 23 of the Staff's October 3, 1984 pleading.

On the basis of the footnote 6 in the Staff's March 19, 1985, response, LILCO has submitted twenty-one pages of argument largely dealing with preemption and the intent of Congress in the NRC Authorization Acts in the period 1980-1984. This material was not in LILCO's Renewed Motion for Summary Disposition of February 27, 1985, and the NRC Staff has not had an opportunity to deal with it.

For this reason the NRC Staff, while not opposing LILCO's Motion for Leave to File Response to Answers to LILCO's Renewed Motion for Summary Disposition of March 26, 1985, asks leave to file the attached reply of

the Staff dealing with extensive legal argument which LILCO did not include in its Renewed Motion for Summary Disposition if LILCO is granted permission to file its response.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Edwin J. Reis".

Edwin J. Reis
Assistant Chief Hearing Counsel

Dated at Bethesda, Maryland
this day of April, 1985