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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

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

SUFFOLK COUNTY AND STATE OF NEW YORK
MOTION FOR LEAVE TO FILE REPLY TO
LILCO'S OPPOSITION AND NRC STAFF RESPONSE
TO DECEMBER 7 MOTION TO VACATE AND TO STRIKE

LILCO's December 20, 1984 Opposition to Intervenors' Motion to Vacate Summary Disposition Order and to Strike Portions of LILCO's and Staff's Proposed Findings (hereinafter, "Opposition"), and the NRC Staff Response to Suffolk County and New York State Motion to Vacate Order Granting LILCO's Motion for Summary Disposition on Contention 24.B and to Strike Portions of LILCO's and the Staff's Proposed Findings (hereinafter, "Response") contain certain statements and arguments which require a response. Accordingly, pursuant to 10 CFR §2.730(c), Suffolk County and New York hereby request leave to file a reply to the LILCO Opposition and the Staff Response. The reply is necessary to address the following matters:

1. The County and State seek leave to demonstrate that LILCO's characterization of statements by the President of the

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United States and the Secretary of Energy as "reelection campaign letters," written "in the heat of an electoral race" containing "rhetorical generalities" (Opposition at 1 n.1, 6, 8) must be rejected. First, the County and State reply would assert that LILCO does not speak for the President or the Administration; LILCO, we submit, could not show otherwise. Second, the County and State reply would assert that there is no basis for LILCO's arrogant suggestion that a statement of Administration policy by President Reagan is "political rhetoric" that should be disregarded here.

2. LILCO's Opposition is itself baseless, because it opposes a red herring Motion created by LILCO -- a nonexistent "Motion to Reopen the Record after Decision." Opposition at 2 and throughout. The County and State seek leave to demonstrate not only that LILCO's Opposition is non-responsive and inapposite, but that contrary to LILCO's and the Staff's suggestion (id. and Response at 4-7), a motion to reopen would not even be appropriate. No evidence was received by the Board on Contention 24.B. Therefore, the so-called "evidentiary record" on that subject was never "open" or "closed." It simply does not exist.

The motion filed by the County and State seeks to have the Board vacate a legal ruling that was made by the Board. See 10 CFR §2.749(d) (summary disposition to be rendered if the moving party is entitled to a decision as a matter of law). In a reply, the County and State would show that they do not seek by their

motion to create or to challenge any evidence;^{1/} rather, they seek to inform the Board of the existence of clear statements of policy by the President and the Secretary of Energy which directly contradict the Board's ruling "as a matter of law" concerning the availability of Federal authority to implement the LILCO Plan. The reply would demonstrate, further, that since neither LILCO nor the Staff had seen fit to inform the Board of these statements by the individuals who make and implement the policies which govern the performance of tasks assigned by the LILCO Plan to Federal agencies, Suffolk County and the State of New York believed it was incumbent upon them to provide such information to this Board so that the Board could properly and realistically correct its "legal" ruling to reflect actual facts. See Duke Power Company (McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 AEC 623, 625 (1973).

3. The County and State seek leave to demonstrate that the suggestion that Intervenors are under some kind of obligation to make an offer of proof, to file affidavits, or otherwise to satisfy a "heavy burden of proof" (see Opposition at 2, 6-7); Response at 4), is completely without basis. The County and State reply would demonstrate that there is no such requirement in connection with the filing of a motion to vacate a legal ruling or a motion

^{1/} As noted in the County/State Motion, however, for the reasons set forth in the March 5, 1984 Suffolk County Memorandum in Opposition to LILCO's Summary Disposition Motions on Contentions 24.B, 33, 45, 46 and 49, the County and State believe the Board's April 20 ruling was incorrect, including the Board's finding that "the degree of response to be furnished by DOE [was] not in dispute." (Order at 9-10). Motion at 2.

to strike portions of another party's proposed findings of fact. A reply would show, further, that the burden of proof on admitted contentions in this proceeding rests squarely on the shoulders of LILCO. Accordingly, it is absurd to suggest that Intervenors are somehow deficient in fulfilling their obligations when, as a result of the failure of LILCO and the NRC Staff to do so, Intervenors have been forced to bring important information concerning the proposed implementation of LILCO's Plan to the attention of this Board.

4. The County and State seek leave to demonstrate that the substance of the Opposition and the Response belie the LILCO and Staff assertions that the County/State motions should be denied. As noted in the County/State motion, one basis for the motion to vacate is that the Board's finding that there is no factual dispute concerning Contention 24.B is incorrect. The County and State reply would show that the efforts by LILCO and the Staff to speak for or otherwise "interpret" the plain words of President Reagan and Secretary Hodel by concluding that those words do not mean what they say, itself demonstrates the existence of a dispute both as to facts and also as to their significance. See, for example, LILCO's assertion that despite the policy statements by the President and Secretary Hodel "the federal government intends" to implement LILCO's proposed emergency plan (Opposition at 6), and the Staff's assertion that the letters "do not suggest that the Administration would oppose or preclude DOE and the Coast Guard from performing their respective emergency roles" under the

LILCO Plan (Response at 5). The County and State seek leave to demonstrate that such LILCO and Staff arguments directly contradict President Reagan's statement that "this Administration does not favor the imposition of Federal Government authority over the objections of state and local governments in matters regarding the adequacy of an emergency evacuation plan for a nuclear plant such as Shoreham," and that this Board must address that contradiction.

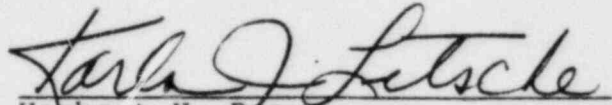
5. LILCO argues that the Board's prior ruling on Contention 24.B should not be vacated because any error in that ruling "would likely surface during an exercise." Opposition at 7. In a reply, the County and State would demonstrate that LILCO's argument should be rejected because (a) it is based on an unsupported assumption that an exercise would or could take place over the objections of the State and County governments, and (b) there is no basis in the regulations or NRC case law for the suggestion that dispositive rulings on contentions admitted for litigation could or should properly be delayed until after an exercise has occurred, particularly in light of statements by the highest government officials which clearly indicate that prior legal rulings are incorrect.

6. Finally, the Staff of the NRC surely is in no position to say what the President of the United States meant by his own words. The Staff's effort to erase the impact of the President's statement is not only based on result-oriented speculation, but it is also a contradiction of Federal policy that is purely within

the province of Executive Branch authority. Indeed, it is for the President -- not the NRC Staff -- to state with authority how the resources of the President's Administration will be used.

Respectfully submitted,

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Dated: January 2, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before The Atomic Safety And Licensing Board

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In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,)
Unit 1))

) Docket No. 50-322-OL-3
) (Emergency Planning)
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CERTIFICATE OF SERVICE

I hereby certify that copies of Suffolk County and State of New York Motion for Leave to File Reply to LILCO's Opposition and NRC Staff Response to December 7 Motion to Vacate and to Strike have been served to the following this 2nd day of January, 1985, by U.S. mail, first class, except as otherwise noted.

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