

LILCO, March 5, 1984

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY  
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USNRC

Before the Atomic Safety and Licensing Board

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

LILCO'S MOTION TO STRIKE INTERVENORS'  
UNAUTHORIZED MARCH 1, 1985 PLEADING

On March 1, 1985 Suffolk County and the State of New York filed a 15-page pleading, with three attachments, styled "Motion for Leave to File Reply to LILCO's Response to February 19 Prof-fered Testimony on the Designation of Nassau Coliseum as a Moni-toring and Decontamination Center" (hereinafter, "March 1 Reply"). Although styled a motion for leave to file a response, it is a virtually transparent substantive reply, complete with attach-ments, to LILCO's February 26 submission,<sup>1/</sup> which itself was an authorized response to the joint Suffolk County/New York State submittal of February 19. The March 1 Reply is, in fact, the

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<sup>1/</sup> The March 1 Reply is replete with substantive arguments. The prefacing of such detailed substantive material with the phrase "If Intervenor were permitted to reply they would state . . ." or similar language does not change an otherwise unauthorized substantive argument into a request for leave to file them.

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fourth paper in a series which began with LILCO's January 11, 1985 Motion to Reopen Record. Of these, the first three were authorized by the Board's January 28, 1985 Memorandum and Order Granting LILCO's Motion to Reopen Record; the March 1 Reply is not.

The March 1 Reply, whether thought of in the context of a customary motion, or of a summary disposition motion, is simply not authorized under the Commission's rules,<sup>2/</sup> or contemplated by this Board's governing January 28 Memorandum and Order. The Board in this proceeding has been confronted, on at least three previous occasions, with efforts by Intervenor's to take one more bite at the apple than the regulations or its Orders permit, and each time the Board has summarily rejected the attempt.<sup>3/</sup> The Board should similarly strike the unauthorized March 1 Reply and give it no consideration in its ruling on the matters raised in the

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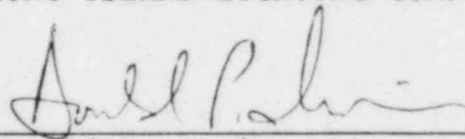
<sup>2/</sup> The rule applicable to motions, § 2.730(c), provides no reply as of right. The regulation governing summary disposition motions, § 2.749(a) -- perhaps the most nearly applicable provision of all to the current pleading framework -- categorically forbids any pleadings after the initial response.

<sup>3/</sup> See "Memorandum and Order Denying Suffolk County's Motion to Change Schedule," February 28, 1984, at 7 (striking "Suffolk County Reply to LILCO's Opposition . . .," dated February 13, 1984 in response to "LILCO's Motion to Strike Unauthorized Pleading . . .," February 14, 1984); "Memorandum and Order Deferring Ruling on LILCO Motion for Summary Disposition . . .," October 22, 1984, at 1-2 (striking October 15, 1984 "Response of Suffolk County and State of New York . . .," in response to LILCO's October 19, 1984 "Motion to Strike Unauthorized Pleading"); "Memorandum and Order Ruling on Suffolk County Motion to Vacate . . .," January 16, 1985, at 1-2 (striking "Suffolk County and State of New York Motion for Leave to File Reply to LILCO's Opposition . . .," January 2, 1985).

substantive submissions attached to LILCO's Motion to Reopen Record (January 11) and in the authorized follow-on pleadings of February 19 and 26. If the Board does not strike the March 1 Reply, LILCO respectfully requests five working days from receipt of the Board's denial to reply to the March 1 Reply (or any follow-on pleading permitted by the Board).

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY



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DATED: March 5, 1985

CERTIFICATE OF SERVICE

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

I certify that copies of LILCO's MOTION TO STRIKE INTERVENORS' UNAUTHORIZED MARCH 1, 1985 PLEADING were served this date upon the following by first-class mail, postage prepaid, or by hand or telecopier (as indicated by an asterisk), or by Federal Express (as indicated by two asterisks).

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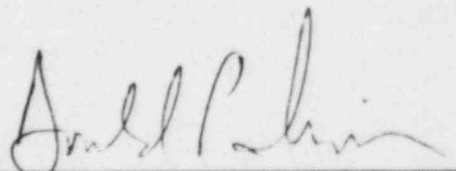
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