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 Nuclear Regulatory Commission
 Official Encl. No. 100
 50-322-02-4
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 In the office of Mr. J. J. ...
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SUPREME COURT OF THE STATE OF NEW YORK
ALBANY COUNTY

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SUMMONS

X
:
MARIO M. CUOMO, Governor
of the State of New York,
:
Plaintiff,
:
-against-
:
LONG ISLAND LIGHTING COMPANY,
:
Defendant.
:

X

TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to serve upon plaintiff's attorney an answer to the complaint in this action within twenty days after the service of this summons, exclusive of the day of service, or within thirty days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of the venue designated is the residence of plaintiff, which is the Executive Mansion, Eagle Street, Albany, New York.

Dated: Albany, New York
March 7, 1984

FABIAN G. PALOMINO
Special Counsel to the Governor
Attorney for the Plaintiff
Executive Chamber
Capitol Building
Albany, New York 12224
(518) 474-1238

NYS LP 3

SUPREME COURT OF THE STATE OF NEW YORK
ALBANY COUNTY

_____ X
MARIO M. CUOMO, Governor :
of the State of NEW YORK, : COMPLAINT
Plaintiff, : FOR
- against - : DECLARATORY JUDGMENT
LONG ISLAND LIGHTING COMPANY : INDEX NO. 25-20
Defendant, :
_____ X

Plaintiff for his complaint against the Defendant respectfully shows this Court and alleges:

FIRST: Plaintiff is the duly elected Governor of the State of New York, a sovereign State of the United States of America.

SECOND: Defendant (LILCO) is a gas and electric corporation organization and operating under and by virtue of the Transportation Corporations Law and the Business Corporation Law of the State of New York, engaged in business as a public utility providing gas and electric service in the counties of Suffolk, Nassau and in a portion of the County of Queens, with its principal office located at 250 Old Country Road, Mineola, New York 11501.

THIRD: Under the Constitution of the State of New York, the executive power is vested in the Governor (Art. IV, Sec. 1), and the Governor is charged with the duty of seeing that the laws are faithfully executed (Art. IV, Sec. 3).

FOURTH: Defendant LILCO is constructing an 820 megawatt nuclear powered electric generating facility on the north shore of Long Island in the Village of Shoreham in Suffolk

County, New York, known as the Shoreham Nuclear Power Station.

FIFTH: Before a utility is allowed to operate a nuclear power facility, it must obtain an operating license from the Nuclear Regulatory Commission (NRC), a federal regulatory agency.

SIXTH: To issue such a license, the NRC must find that an offsite radiological emergency response plan (RERP) provides reasonable assurance that adequate protective measures can and will be implemented in the event of an emergency -- that is, that the RERP is adequate and implementable.

SEVENTH: For such an offsite RERP to be adequate, the NRC must find that, in the event of an accident posing a radiological hazard or threat to human life or health, there is reasonable assurance that adequate measures will be taken to protect the health and safety of persons within the inhalation area of the plume exposure pathway, an area of approximately ten miles radius from the nuclear plant site (called the EPZ); and, that there is reasonable assurance that adequate measures will be taken to protect the health and safety of persons who ingest water, milk, crops, fruit, vegetables, other foods or livestock from within an area of approximately fifty miles in radius from the nuclear plant site, called the ingestion pathway.

Such protective measures include, among others, methods and procedures to promptly notify the public of the nuclear emergency; recommendations to the public to evacuate the EPZ and/or to take protective shelter; methods and procedures to

protect the water supply, crops, livestock, milk, fruits, vegetables and other food supply in the ingestion pathway from radiological contamination or to decontaminate them so they are fit for human consumption or to prevent them from being used for human consumption; and, methods and procedures to make determinations and recommendations to the public as to the time and circumstances for re-entry and recovery of the EPZ.

EIGHTH: To be implementable, such a RERP must also contain the legal authority (by reference to specific acts, codes or statutes) to initiate the protective actions to be taken.

NINTH: Upon information and belief, the Government of the County of Suffolk, after approximately a year's effort in attempting to develop at its own expense a RERP for Shoreham, which effort included advice from experts, local public hearings and the testimony from public officials and residents of the area involved in the nuclear accident at Three Mile Island, Pennsylvania, in 1979, in a Resolution adopted by the County Legislature (No. 111-1983) declined to adopt a RERP for the Shoreham nuclear power plant site because it concluded that the local conditions (including density of population, land configuration and the limited number of east-west highways) would preclude any RERP from providing adequate protection for the health, welfare and safety of

Suffolk County residents and transients, particularly because the only possible evacuation would have to be in a westerly direction from the EPZ. It further concluded in the said Resolution that "the preparation and implementation of any such plan would be misleading to the public by indicating to County residents that their health, welfare and safety are being protected when, in fact, such is not the case."

TENTH: Notwithstanding the aforesaid determinations by the Government of Suffolk County not to submit a RERP to the NRC because no RERP could provide adequate protection for the health, safety and welfare of Suffolk County residents and transients, Defendant LILCO proceeded to develop and to submit to the NRC its own RERP which sets forth specific emergency measures which LILCO would undertake in the EPZ and the ingestion pathway in the event of a nuclear accident at Shoreham.

ELEVENTH: The Plaintiff, Governor of the State of New York, after appointing a Commission which studied the Shoreham nuclear power plant situation for approximately nine months, determined that the State would not submit a RERP for Shoreham to the NRC on behalf of the State of New York; the State of New York would not participate in implementing the RERP submitted to the NRC by LILCO; and, further, the State of New York would oppose the approval of the RERP submitted by LILCO to the NRC in every possible legal forum because that RERP could not adequately protect

the health, welfare and safety of the residents of Suffolk County and transients in the event of a nuclear accident at Shoreham and is not implementable.

TWELFTH: LILCO continued to seek a license from the NRC for its Shoreham nuclear powered facility. To this end, it submitted a RERP to the NRC for Shoreham which was to be implemented by LILCO with neither New York State nor Suffolk County sanction or participation.

THIRTEENTH: Upon information and belief, all offsite RERPs which have been submitted to the NRC involving nuclear facilities other than Shoreham have been RERPs which have been sanctioned, and would be implemented by the governments of the state and/or localities within the EPZ surrounding the nuclear plant site.

FOURTEENTH: Pursuant to the RERP submitted by LILCO to the NRC, LILCO has created an organization consisting of approximately 2,000 persons, most of whom are LILCO employees entirely under the control of LILCO, designated in said plan as the "Local Emergency Response Organization" (LERO). The senior managers of LERO consists entirely of LILCO employees, and, in one instance, a paid LILCO consultant. The head of LERO is one of LILCO's vice-presidents, designated as the "Director of Local Response." No government official of Suffolk County or of the State is a member of LERO.

FIFTEENTH: In the event of a nuclear accident at Shoreham, the LILCO plan provides for LILCO, through its alter ego LERO, to arrogate to itself sovereign police powers and governmental

functions in an attempt to protect the health, welfare and safety of the residents and transients within the EPZ and the ingestion pathway. The emergency response to an accident for a distance of fifty miles from that facility will be under the total management, direction and control of LILCO. Among other things, LILCO employees will: (a) determine whether a radiological emergency condition exists and evaluate its severity; (b) notify the residents of the EPZ through emergency broadcasts, emergency sirens, telephone and otherwise of the emergency; (c) determine how best to protect the health, welfare and safety of residents and transients in the EPZ and the ingestion pathway; (d) determine whether the in excess of one hundred thousand residents and transients in the EPZ should be evacuated or sheltered and to what extent and where; (e) recommend to the said public in the EPZ to evacuate and/or to take shelter; to prescribe the evacuation routes to be taken by the said public and the possible several hundred thousand persons beyond the EPZ who may seek self evacuation through the EPZ; (f) direct and control the flow of traffic on the County and State roads within Suffolk County through various means including blocking lanes, altering roads to one-way flow, installing traffic signs, having their employees direct traffic contrary to traffic signal lights by arm and hand signals; remove broken down vehicles and other impediments from the said roadways; (g) identify and direct the necessary controls and measures to prevent contamination or use of contaminated water, milk, crops, vegetables, fruits,

livestock and other food products in the fifty mile ingestion pathway; (h) make determinations and recommend to the public times and circumstances for recovery of and re-entry to the EPZ and the ingestion pathway after a nuclear accident.

SIXTEENTH: LILCO has asserted that it has the necessary legal authority to implement its RERP and "to effectively protect the safety and health of the public." (LILCO Plan, p. 1.4-1.) LILCO further asserts:

(N)othing in New York State law prevents the utility from performing the necessary functions to protect the public. To the contrary, Article 2-B of New York State Executive Law, Sec. 20.1.e, makes it the policy of the State that State and local plans, organization arrangements, and response capability "be the most effective that current circumstances and existing resources allow." Id.

SEVENTEENTH: Contrary to the foregoing LILCO assertions set forth in paragraph SIXTEENTH above, LILCO's implementation of its RERP is unlawful and illegal. Under the Constitution and laws of the State of New York, the police power is inherent in and can be possessed and exercised only by the State of New York itself or by a political subdivision of the State if there has been a proper delegation of authority from the State to such subdivision. (New York State Constitution, Arts. III, IX; Municipal Home Rule Law, Sec. 10; Executive Law, Art. 2-B). The State of New York has delegated its police powers within the territorial limits of Suffolk County only to the Government of Suffolk County and other governmental entities within the County; and has not delegated its police powers to LILCO.

EIGHTEENTH: New York State and Suffolk County appeared in the proceeding before the Atomic Safety and Licensing Board (ASLB) of the NRC hearing LILCO's application for a license for Shoreham and opposed the granting of the license on the grounds that the RERP submitted by LILCO is inadequate and cannot be implemented. Both the State and County urged that it was not implementable because LILCO lacked the legal authority under the laws of New York State to undertake the necessary actions to implement it.

NINETEENTH: The Federal Emergency Management Agency, which has the responsibility of assisting the NRC in the review and approval of RERPs, also found the RERP submitted by LILCO deficient because LILCO failed to establish its has legal authority necessary to implement it.

TWENTIETH: When legal objection was made to the implementation of the LILCO RERP at the NRC proceeding because LILCO lacked authority to implement it, the Chairman of the Atomic Safety Licensing Board stated on the record that that question is one which should be resolved by the New York State courts and urged the parties to seek such determination in the New York State courts.

TWENTY-FIRST: LILCO has begun implementing its Transition Plan. In addition to creating LERO, it has assigned specific jobs in its LERO organization to specific LILCO employees at the senior management level and throughout the other working levels of the organization. Classroom training sessions for these employees have been held and drills have been conducted.

Moreover, LILCO has entered into letters of intent or agreements with other private companies to provide buses and ambulances to be used to evacuate persons pursuant to LILCO's orders. LILCO has also entered into letters of intent or agreements with radio stations for the broadcasting of emergency messages from LILCO to the public over the Emergency Broadcast System.

TWENTY-SECOND: Plaintiff, in his capacity as Governor and chief executive of the State of New York, commenced this action for declaratory judgment to resolve the question of LILCO's lack of legal authority to implement its RERP and to prevent usurpation of sovereign powers of the State, violation of its laws and to protect the health, welfare and safety of its inhabitants.

THIRTY-THIRD: For LILCO to implement its RERP as contemplated and as required would involve a violation of the following laws of the State of New York:

Sec. 28(2)(a), 22(3)(b) and 23(7)(b) of the Executive Law, which solely vest in state and local officials, including the Governor, the authority and power to notify the public that an emergency exists;

Sec. 195.05 of the Penal Law, which prohibits LILCO from obstructing governmental administration (LILCO's RERP states that LILCO intends to activate sirens and to direct the broadcast and contents of emergency messages to the public, thereby obstructing and usurping the governmental function set forth in Sec. 28(2)(a), 22(3)(b) and 23(7)(b) of the Executive Law);

Sec. 28(1), 28(2)(b), 22(3)(b), 23(7)(b) of the Executive Law and Sec. 206(1)(a) and 201(1)(r) of the Public Health Law, which solely vest in state and local officials,

including the Governor and the Commissioner of Health, the authority and power to assess dangers associated with nuclear accidents and to direct the public to take protective actions such as evacuating and/or sheltering;

Sec. 195.05 of the Penal Law, which prohibits LILCO from obstructing governmental administration (LILCO's RERP states that LILCO intends to plan, order, control and implement protective actions, such as evacuating and/or sheltering, thereby obstructing and usurping the governmental functions set forth in Sec. 28(1), 28(2)(b), 22(3)(b), 23(7)(b) of the Executive Law and Sec. 206(1)(a) and 201(1)(r) of the Public Health Law);

Sec. 1602 of the Vehicle and Traffic Law and Section 30 of the Transportation Corporations Law, which solely vest in state and local police officers the authority and power to direct traffic during emergencies;

Sec. 195.05 of the Penal Law, which prohibits LILCO from obstructing governmental administration (LILCO's RERP states that LILCO intends to direct traffic to ensure that evacuees follow the evacuation routes identified and prescribed by LILCO, thereby obstructing and usurping the governmental functions set forth in Sec. 1602 of the Vehicle and Traffic Law and Sec. 30 of the Transportation Corporations Law);

Sec. 1110 of the Vehicle and Traffic Law, which solely vests in state and local police officers the authority and power to direct traffic in a manner inconsistent with official traffic control devices;

Sec. 1114 of the Vehicle and Traffic Law and Sec. 195.05 of the Penal Law, which prohibit LILCO from placing unauthorized signs, signals, markings or devices on highways, and from obstructing governmental administration (LILCO's RERP states that LILCO intends to block roadways, set up cones and barriers, channel traffic, post traffic control signs and control road traffic, thereby obstructing and usurping the governmental functions set forth in

Sec. 1110 of the Vehicle and Traffic Law and violating Sec. 1114 of the Vehicle and Traffic Law);

Sec. 201(1)(l), 1110, 201(1)(r) and 206(1)(a) of the Public Health Law, which solely vest in the New York State Department of Health the authority and power to supervise and regulate the sanitary aspects of potable water supplies, including the promulgation of rules and regulations to protect potable water supplies from contamination;

Sec. 195.05 of the Penal Law, which prohibits LILCO from obstructing governmental administration (LILCO's RERP states that LILCO intends to make decisions and recommendations to the public concerning protective actions for the ingestion pathway, thereby obstructing and usurping the governmental functions set forth in Sec. 201(1)(l), 1110, 201(1)(r) and 206(1)(a) of the Public Health Law);

Sec. 16(35) and 71-l of the Agriculture and Markets Law and Sec. 206(1)(k), 206(1)(a) of the Public Health Law, which solely vest in the Commissioner of Agriculture and Markets and the Commissioner of Health the authority and power to supervise, inspect and regulate the sanitary quality of milk and cream produced in the State of New York;

Sec. 195.05 of the Penal Law, which prohibits LILCO from obstructing governmental administration (LILCO's RERP states that LILCO intends to make decisions and recommendations to the public concerning protective actions for the ingestion pathway, thereby obstructing and usurping the governmental functions set forth in Sec. 16(35) and 71-l of the Agriculture and Markets Law, and Sec. 206(1)(k) and 206(1)(a) of the Public Health Law);

Sec. 16(24), 16(27) and 202-b of the Agriculture and Markets Law and Sec. 206(1)(k) and 206(1)(a) of the Public Health Law, which

solely vest in the Commissioner of Agriculture and Markets and the Commissioner of Health the authority and power to investigate whether food products are unfit for consumption and to supervise, carry out and regulate the seizure, destruction or quarantine of any unwholesome food or food products;

Sec. 195.05 of the Penal Law, which prohibits LILCO from obstructing governmental administration (LILCO's RERP states that LILCO intends to make decisions and recommendations to the public concerning protective actions for the ingestion pathway, thereby obstructing and usurping the governmental functions set forth in Sec. 16(24), 16(27) and 202-b of the Agriculture and Markets Law and Sec. 206(1)(k) and 206(1)(a) of the Public Health Law);

Sec. 28-a, 23(7)(c) and 22(3) of the Executive Law and Sec. 206(1)(a) and 201(1)(r) of the Public Health Law, which solely vest in state and local officials, including the Governor and the Commissioner of Health, the authority and power to plan, supervise and regulate post disaster recovery;

Sec. 195.05 of the Penal Law, which prohibits LILCO from obstructing governmental administration (LILCO's RERP states that LILCO intends to make decisions and recommendations to the public concerning the initiation and implementation of short-term and long-term recovery and reentry processes and operations, thereby obstructing and usurping the governmental functions set forth in Sec. 28-a, 23(7)(c) and 22(3)(c) of the Executive Law and Sec. 201(1)(r) and 206(1)(a) of the Public Health Law).

TWENTY-FOURTH: The action for declaratory judgment is commenced pursuant to CPLR Sec. 3001.

TWENTY-FIFTH: Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff requests judgment against the Defendant declaring that implementation by Defendant of its RERP would be in violation of the laws set forth in paragraph TWENTY-THIRD hereof and further declaring that therefore Defendant lacks the legal authority to undertake such actions.

Dated: Albany, New York
March , 1984

Fabian G. Palomino
Special Counsel to the Governor
Attorney for the Plaintiff
Executive Chamber
Capitol Building
Albany, New York 12224
(518) 474-1238

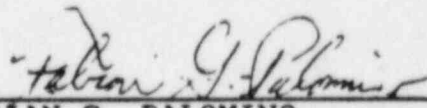
SUPREME COURT OF THE STATE OF NEW YORK
ALBANY COUNTY

_____	X
MARIO M. CUOMO, Governor	:
of the State of New York,	:
	:
Plaintiff,	:
	:
-against-	:
	:
LONG ISLAND LIGHTING COMPANY,	:
	:
Defendant.	:
_____	X

VERIFICATION

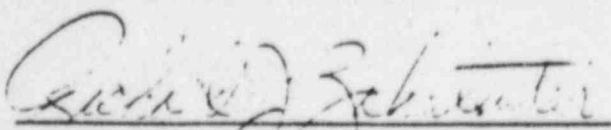
State of New York)
: ss.
County of Albany)

FABIAN G. PALOMINO, being duly sworn, deposes and says:
That he is Special Counsel to Governor and is acquainted
with the facts and circumstances of the above entitled
action; that he has read the foregoing complaint and knows
the contents thereof; that the same is true to his knowledge
except as to the matters therein stated to be alleged upon
information and belief, and that as to those matters he
believes it to be true.



FABIAN G. PALOMINO
Special Counsel to the
Governor of New York State

Sworn to before me this
seventh day of March, 1984.



Notary Public

RICHARD J. ZAHNLEUTER
Notary Public, State of New York
No. 4760918
Qualified in Albany County

Index No. 3456-84

SUPREME COURT OF THE STATE OF NEW YORK
ALBANY COUNTY

MARIO M. CUOMO, Governor of
the State of New York,

Plaintiff,

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SUMMONS AND COMPLAINT

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