

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

DOCKETED
JUN 21 1985

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

Docket No. 50-322-OL⁸⁵ JUN 21 P3:56

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SUPPLEMENT TO SUFFOLK COUNTY AND
STATE OF NEW YORK STAY MOTION

By this filing, Suffolk County and the State of New York briefly supplement the stay motion we filed yesterday to address CLI-85-12, which was not received until late yesterday afternoon. The State and County agree with Commissioner Asselstine's dissenting views and add the following:

1. There is no ambiguity in the County's position in this case, as asserted in CLI-85-12, at 2. Rather, the State Supreme Court has enjoined the County Executive's purported change of County position and that injunction is in full force and effect.

2. The Commission states that "we are confident if the Commission upholds the Licensing Board's finding that an adequate emergency plan is feasible with state and local participation, the State and County will accede to that judgment and will provide the participation needed to make the plan successful." CLI-85-12 at 4. On this basis, the Commission purports to find

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that uncertainty about whether LILCO will ever receive a full power license is not sufficient in this instance to require EIS supplementation. This Commission ruling is plainly wrong:

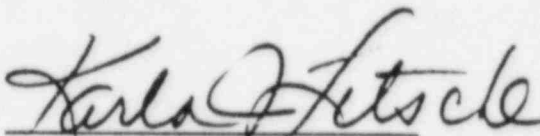
a) The Licensing Board did not find that an adequate emergency plan is achievable if the State and County were to participate. In fact, the Board expressly did not so find. Rather, it stated: "[t]he Board does not consider the emergency plan proposed as a totality to determine whether it provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at Shoreham...." LBP-85-12, at 4.

b) The Commission has no basis at all to speculate that the State or County would help to implement a LILCO plan if the NRC were to rule it "adequate," and the Commission's citation to Pacific Gas (page 3) offers no basis for any such belief. The State and County have no obligation under Federal law to help LILCO implement its plan, whether the NRC blesses it or not. See generally, Citizens for an Orderly Energy Policy, Inc. v. County of Suffolk, 605 F. Supp. 1084 (E.D.N.Y. 1985). Furthermore, County law prohibits any County implementation of LILCO's plan and there is not the slightest hint that the State intends to change its firm position in support of the County.

3. There is no conceivable argument that CLI-85-12 is itself a supplemental EIS for Shoreham. CLI-85-12 itself states at page 1 that it is "deny[ing] the request" for supplementation. In addition, it does not comply with any of the supplementation requirements, including appropriate notice in the Federal

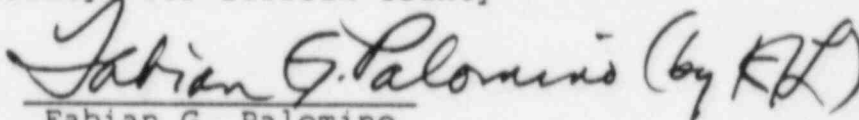
Register and solicitation of comments, as set forth in the Commission's own regulations. 10 CFR §51.92. Thus, despite its purported "enumeration" of so-called "benefits" of low power operation (all premised on the occurrence of full-power operation), CLI-85-12 could not constitute a supplemental EIS.

Respectfully submitted,



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June 21, 1985

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OFFICE OF THE
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of SUPPLEMENT TO SUFFOLK COUNTY AND STATE OF NEW YORK STAY MOTION have been served on the following this 21st day of June 1985 by U.S. mail, first class, except as otherwise noted.

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