

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

Before the Atomic Safety and Licensing Board

'85 JUN 25 A10 :41

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

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

MOTION OF THE STATE OF NEW YORK  
FOR A CONTINUANCE OF THE HEARING  
SCHEDULED TO COMMENCE ON JUNE 25, 1985

The State of New York hereby moves for a continuance of the hearing scheduled to commence on June 25, 1985 regarding the reopening of the evidentiary record on Contention 24.0. There are two bases for this motion:

- 1) this Board concluded in its partial initial decision on emergency planning that, regardless of the outcome of the June 25, 1985 hearing, LILCO's plan cannot and will not be implemented as required by regulation; and
- 2) the confusion over the legal representation of the State of New York's co-intervenor pervades and disrupts this proceeding to the point that a meaningful record on Contention 24.0 cannot be compiled.

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POINT I

THE BOARD'S PARTIAL INITIAL DECISION  
ON EMERGENCY PLANNING RENDERS THE  
JUNE 25, 1985 HEARING MOOT UNTIL, IF  
EVER, THE DECISION IS REVERSED

LILCO has the burden of showing in this proceeding that its Plan can meet all applicable regulatory standards. Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI-83-13, 17 NRC 741 (1983). Since this Board has already decided in its partial initial decision on emergency planning, dated April 17, 1985, that the LILCO Plan "cannot and will not be implemented as required by regulation," the factual record to be developed at the June 25, 1985 hearing will be of no consequence. As this Board stated on page 426 of its decision, LILCO's failure to meet its burden of proof on the legal authority contentions (Contention 1-10) leaves LILCO "without an implementable, comprehensive and effective emergency response plan for Shoreham."

No findings on the relocation center issues presented by Contention 24.0 can possibly provide LILCO with the legal authority it lacks. In fact, no modifications of the substantive portion of the LILCO Plan can provide LILCO with the legal authority it lacks.

LILCO has pursued its right to appeal this Board's April 17, 1985 decision. However, this Board's decision will stand until, if ever, it is reversed. Clearly, no appellate body has

made such a reversal. The Board should issue a continuance of the hearing scheduled for June 25, 1985, until, if ever, such a reversal materializes.

POINT II

CONFUSION OVER THE LEGAL REPRESENTATION  
OF THE COUNTY OF SUFFOLK PRECLUDES THE  
COMPILATION OF A MEANINGFUL RECORD ON  
CONTENTION 24.0

In a letter to Chairman Palladino, dated June 20, 1985, the Suffolk County Attorney stated:

The County Attorney is, therefore, bound by Judge Doyle's order enjoining us and all County personnel from modifying the policy and legal position of Suffolk County with regard to Shoreham. It is our view, that the force of this judgment is to require the County Attorney to oppose the licensing of Shoreham based on the inadequacy of the [LILCO's] local emergency response plans ... However, it should be noted that the operative effect of said judgment is in dispute and requires clarification from the Appellate Division.  
[Emphasis added]

This position represents a marked divergence from the Suffolk County Attorney's position propounded in the telephone conference call just the day before, June 19, 1985. This chaotic vacillation in the position of the Suffolk County Attorney pervades and disrupts this proceeding to the point that a meaningful record on Contention 24.0 cannot be compiled. Furthermore, this confusion over the legal representation of the State of New York's co-intervenor places

the interests of the citizens of the County of Suffolk, who are also citizens of the State of New York, in serious jeopardy.

If this Board chooses to deny a continuance for the reasons stated under Point I, the State of New York moves in the alternative for a continuance of the June 25, 1985 hearing until the question of the legal representation of the citizens of the County of Suffolk is resolved by the New York courts.

POINT III

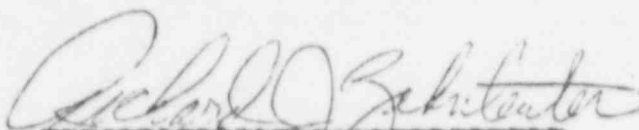
ALTERNATIVELY, THE STATE OF NEW YORK MAY OBJECT TO THE SUFFOLK COUNTY ATTORNEY'S PARTICIPATION IN THE JUNE 25, 1985 HEARING

Counsel for LILCO stated in the telephone conference call on June 19, 1985, that "He [the Suffolk County Attorney] did not wish himself to be relegated to the role simply of an observer" in the June 25, 1985 hearing. Tr. 15,830. The State of New York reserves its right to object to any such participation in the June 25, 1985 hearing by the Suffolk County Attorney.

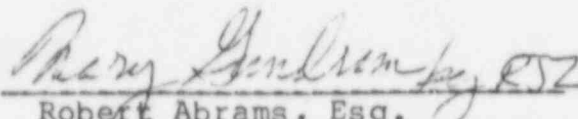
POINT IV

URGENCY

The State of New York requests that the Board give this motion expedited consideration.



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DATED: June 21, 1985  
Albany, New York

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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In the Matter of )  
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LONG ISLAND LIGHTING COMPANY )  
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Docket No. 50-322-OL-900  
(Emergency Planning)

OFFICE OF SECRETARY  
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CERTIFICATE OF SERVICE

I hereby certify that one copy of MOTION OF THE STATE OF NEW YORK FOR A CONTINUANCE OF THE HEARING SCHEDULED TO COMMENCE ON JUNE 25, 1985, has 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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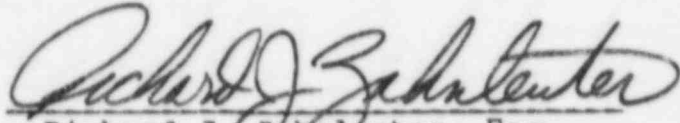
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\*The State of New York  
does not recognize the  
Suffolk County Attorney  
as a legal representative  
of the County of Suffolk.

\*\*By telecopier, June 21, 1985

Dated: June 21, 1985  
Albany, New York