

Attachment 3

January 18, 1988

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)  
)  
)

AFFIDAVIT OF FRANK R. JONES

Frank R. Jones, being duly sworn, states as follows:

I. Introduction

1. I am currently Supervisor of the Town of Islip, New York, having been appointed to this position in March 1987, and then elected in November 1987. Prior to that, I served as Deputy County Executive of Suffolk County from July 1978 to January 1986, and then as Chief Deputy County Executive from January 1986 to December 1986. From late 1981 through late 1984, I served as the official in the County Executive's Office in charge of matters related to the Shoreham Nuclear Power Station.

During 1985, I still remained involved in matters related to Shoreham. In January 1986, I again became the official in the County Executive's Office in charge of Shoreham-related matters.

2. I have read LILCO's Motion for Summary Disposition dated December 18, 1987. This affidavit addresses whether LILCO has made a "sustained, good faith effort to secure and retain the participation" of Suffolk County in offsite emergency planning for the Shoreham nuclear power plant, as LILCO claims in its Motion. The answer is, no. LILCO has not made such a sustained good faith effort.

3. For a brief period of time in 1981, a working relationship on emergency planning existed between LILCO and the County. As discussed below, that working relationship related to a planning process that was inadequate and did not address practical, important issues of concern for public safety.

4. From February 1982 onward, LILCO made no "good faith" effort toward the County concerning emergency planning, let alone a "sustained" good faith effort. To the contrary, the history of LILCO's efforts toward the County have been marked by hostility, belligerency, falsification, misrepresentation, and coercion. At various times, LILCO's actions have manifested actual bad faith when LILCO has put itself above the law, the County government, and its civic duty as a corporate citizen of

the County. A dramatic example of LILCO's bad faith is shown by the year-and-one-half (January 1984 - May 31, 1985) during which LILCO refused to pay the \$130 million in property taxes the Company owed Suffolk County. LILCO did this with arrogance and bitterness. LILCO had no concern whatsoever for the potentially damaging effects that its actions, as Suffolk County's largest taxpayer, would have on the citizens of the County and the public services upon which they depend. Indeed, LILCO did this with the intention of creating financial pressures on the County's ability to maintain critical public services and of disrupting orderly governmental administration of the County's policies, budget priorities, and programs. LILCO further sought to pressure the County into the unpopular option of having to raise the public's taxes -- that is, the taxes of the law-abiding citizens who, unlike LILCO, responsibly paid their taxes. And, in fact, the County did raise taxes while LILCO hid the money it owed in a private bank account. In short, LILCO cared nothing about who might be hurt by the Company's conduct. It cared only about forcing the County to submit to LILCO's self-interests. LILCO's strategy has been that the end, as LILCO sees it, justifies the means. Such tactics do not evidence good faith.

5. To put LILCO's conduct into context, I will set forth some pertinent background information. In addition, I will present year-by-year examples of how LILCO did not pursue a sustained, good faith effort to secure and retain the partici-

pation of Suffolk County. These are only examples; in fact, during the period since 1981, there are many additional examples as well, each of which further shows that LILCO has not made a sustained, good faith effort to secure or retain the County's participation.

## II. Background

### A. Background: The 1970s

6. A brief comment is first in order regarding the time period prior to 1982, particularly the 1970s. As of that time, it is my understanding that there were no mandatory NRC offsite emergency planning requirements for nuclear plants. In the absence of such requirements, there is no basis for LILCO's statement (Motion at 6) that LILCO during the 1970s made a sustained good faith effort to obtain County cooperation. It is my recollection of LILCO/Suffolk County "cooperation" during the 1970s on emergency planning that, to the extent it existed at all, the planning effort and the scope of "plans" which were considered were extremely limited when compared with the comprehensive type of planning required in 1980 with the NRC's post-TMI adoption of the emergency planning regulations. The earlier LILCO/County efforts had been undertaken in the pre-TMI era when such planning was not given serious consideration. I

thus disagree with LILCO's assertion that activities in the 1970s constituted a sustained good faith effort to obtain Suffolk County's participation in planning for a Shoreham emergency.

7. Data indicate that LILCO made no such sustained effort in the 1970s, having instead chosen to take the hard-line position that such an effort was unnecessary until issuance of an operating license was under consideration by the NRC. Further, the record that LILCO itself made before the AEC in Shoreham construction permit hearings in the early and mid-1970s and LILCO's opposition to County emergency planning contentions in the NRC's operating license hearings in 1977 refute the LILCO assertion that there was a purely cooperative relationship between the County and State in the 1970s. The state of affairs was much more complicated than LILCO admits, and a more candid view of the facts shows that LILCO never -- before TMI or even after -- took emergency planning in Suffolk County as anything other than a mere regulatory inconvenience. LILCO never showed a serious inclination to confront head-on with the County the actual, tough issues of emergency planning on Long Island.

a) In 1970, when intervenors in the Shoreham construction permit proceeding sought to question whether an adequate plan could be developed for Shoreham, LILCO and the NRC Staff persuaded the Licensing Board not to consider the issue

until the operating license review stage. E.g., Staff 9/14/70 Environmental Statement at 9; Tr. 2522 (statement of LILCO counsel); LILCO Proposed Findings, 6/8/71 at 27.

b) LILCO did not take emergency planning seriously in the early 1970s. When intervenors questioned whether LILCO would warn persons on nearby beaches in the event of an accident, the LILCO witness stated:

I am sure in the event such happened, we would send a messenger down and we would suggest they leave. They could swim away if they wished.

Tr. 2524 (Woffard) (emphasis added).

c) In 1977, Suffolk County intervened in the Shoreham operating license proceeding and attempted to raise emergency planning concerns. For example, in an affidavit accompanying the County's Petition for Leave to Intervene on March 17, 1977, a County representative pointed out:

The feasibility of instituting effective protective measures is a site-related issue which depends on whether evacuation is possible and if so, how long it would take, matters which depend upon the road network, the existence of water barriers to evacuation, weather conditions, the direction of evacuation, the size of the population to be evacuated, etc. Thus, the radiological dosage incurred by the Shoreham population in the event of an accident may pose an unacceptable risk if the evacuation procedure proves infeasible or would take longer to carry out than expected, causing the target population to remain in the radiologically contaminated

area longer than anticipated. Have the applicant and staff adequately planned for such a radiological emergency?

Affidavit of Floyd Linton at 23 (Mar. 17, 1977). LILCO opposed the County's petition to intervene. LILCO's Opposition to Untimely Petition for Intervention (Mar. 25, 1977).

The Licensing Board permitted the County to intervene, but required the County to particularize its contentions. Suffolk's Amended Petition to Intervene contained three contentions relating to emergency planning, including one which stated:

Intervenors contend that the Applicant and Regulatory Staff have not prepared and assessed an adequate evacuation plan for Shoreham as required by 10 CFR, Part 50, Appendix E, Criteria IV-E and 10 CFR, Part 50.34(b)(6)(v) with regard to the timing and feasibility of evacuation including, but not limited to, consideration of road networks, water barriers, weather conditions, and population density.

Amended Petition to Intervene at 20 (Sept. 16, 1977). LILCO opposed this petition as well. LILCO's Reply to SC's Amended Petition (Sept. 27, 1977).

B. Background to Planning in the 1980s

8. In September 1981, Suffolk County entered into a contract with LILCO whereby the County agreed to receive from LILCO \$245,000 to defray the costs of the County preparing an

emergency plan for Shoreham. The plan the County began working on was being prepared primarily by two staff members of the County Planning Department. They were working on their own, without close oversight by persons in the County Executive's Office.

9. As the work of these two staff members progressed in late 1981, one of them began to hold a series of meetings with members of the public in several areas of Long Island. Various citizens raised questions about the content and direction of the emergency planning work being performed. Soon, objections were being made to the County Executive's Office, and particularly to me, by citizens. I and my colleagues in the County Executive's Office took these objections seriously, particularly those which pointed out that the staff members' work did not appear to deal to any significant degree with the needs of persons who reside at the East End of the County -- i.e., people who during a Shoreham nuclear accident would have to drive toward Shoreham and the emanating radioactive plume in order to evacuate from the EPZ. It also became clear that the ongoing work ignored some of the critical local government emergency planning lessons of the Three Mile Island accident.

10. When my colleagues and I in the County Executive's Office examined these and related issues and their implications, we determined that the County's emergency planning effort had to

be upgraded substantially. Accordingly, we decided to terminate the ongoing work of the two staff members and to retain a team of experts to prepare a first-rate radiological emergency plan for the County. For all purposes, we scrapped the inadequate work-product that had been prepared by the two staff members.

11. At the same time, February 1982, we decided it would not be appropriate to accept funds from LILCO for our emergency planning effort. The reason is that in December 1981, the Suffolk County Legislature determined that the County should increase its presence in the NRC's Shoreham licensing proceedings as a neutral intervenor -- i.e., without taking sides for or against the Shoreham plant -- in order to assure that pertinent safety issues were fully addressed. Since the County would be a litigant independent of LILCO before the NRC, and perhaps even opposing LILCO at times, the County decided that taking money from LILCO created the appearance of a conflict of interest. Therefore, we returned to LILCO its initial payment to the County of \$150,000 and informed LILCO that we would fund the emergency planning process entirely with County money. Eventually, the 1982 effort cost the County more than \$600,000 -- not counting costs related to the time spent by County employees or lawyers. Thus, the County spent more than twice the sum of the original LILCO/County contract.

12. The County's upgraded emergency planning process commenced on March 25, 1982, with passage of County Resolution No. 262-1982, which appropriated funds for the effort. On March 29, 1982, the County Executive issued an Executive Order establishing a Steering Committee to oversee preparation of the emergency plan. I was appointed Chairman of the Steering Committee.

13. To prepare the emergency plan, the County retained a team of nationally recognized experts. These experts worked diligently during the spring, summer, and into the fall of 1982, completed their work in November 1982, and submitted their three-volume Draft Suffolk County Radiological Emergency Plan to the County Executive, who in turn transmitted it to the Legislature for legislative review at the beginning of December 1982. In January 1983, the Suffolk County Legislature held eight days of public hearings on the plan in two locations within the County. Scores of experts presented testimony, including LILCO's experts. LILCO officials appeared twice at the hearings. County officials and consultants also appeared. Hundreds of members of the public testified. All told, 1600 pages of transcript were compiled by the Legislature.

14. Following these legislative hearings, members of the County Legislature travelled to Harrisburg and Middletown, Pennsylvania, to meet with local officials and others who had

first hand experience with the practical aspects of emergency planning arising out of the Three Mile Island accident. A public hearing was held by the Legislators in Harrisburg in connection with that TMI visit.

15. On February 16, 1983, based on all of the data compiled, the County Executive recommended that the County not adopt the draft emergency plan because local conditions on Long Island -- such as the existence of only three major east-west roads to handle hundreds of thousands of motorists evacuating to the west -- made it impossible to safely evacuate or otherwise protect the public in the event of a serious nuclear accident at Shoreham. The following day, the Legislature independently voted 16-1 not to adopt or implement an emergency plan for Shoreham. The Legislature's reasoning is explained in County Resolution No. 111-1983.

### III. 1982

16. Shortly after Suffolk County embarked upon its upgraded emergency planning process, LILCO commenced a course of hostile and belligerent actions against the County -- conduct which, in my opinion, was not designed in good faith to secure the County's participation in emergency planning for Shoreham, but instead to create a fight with the County over emergency planning that LILCO calculated it could win. Significantly, LILCO began and

sustained this course throughout 1982, the period during which the County was actually preparing a draft emergency plan for Shoreham and when there was no basis for anyone -- including LILCO -- to believe that such a plan would not emerge. LILCO, for reasons of its own, simply decided to pick a fight with Suffolk County.

17. Also in 1982, Suffolk County requested LILCO to perform a full design review and physical inspection of Shoreham under a protocol which assured the independence of the experts who would perform the work. The reason was that allegations were rampant of poor workmanship and inadequate quality control and quality assurance at Shoreham. The County made clear to LILCO in negotiations attended by me in Spring 1982 that such a design review and inspection was important to Shoreham's safety. I personally made clear to LILCO that the need for a full physical inspection and design review was a matter completely separate from the emergency planning issue. LILCO, however, refused to consider the merits of the design review and inspection as something separate from emergency planning. Thus, LILCO tried to link the review and inspection to the County's production of an emergency plan to LILCO's liking. In essence, LILCO demanded that the County trade its governmental functions over emergency planning for LILCO's agreement to review and inspect the Shoreham plant. This was an early instance of LILCO not acting in good faith toward the County with respect to emergency planning, but

instead treating the County as a political bargaining agent with the stakes being the County's abdication of its sovereign powers.

18. LILCO's next major action toward Suffolk County was particularly objectionable. Over the County's strong and vocal objections, LILCO told both the federal and state governments that the earlier emergency planning materials which had been prepared by the County's two staff members -- and which LILCO knew the County had discarded as inadequate -- actually constituted the County's emergency plan. LILCO made these misrepresentations in written statements to the NRC and to FEMA. LILCO also did this in filings with the State of New York Disaster Preparedness Commission ("DPC").

19. At a prehearing conference before the NRC's Licensing Board held on April 14, 1982, lawyers for Suffolk County clearly advised LILCO and the NRC that Suffolk County had no emergency plan as of then, and that the prior materials had been discarded. See 4/14/82 Tr. 771-72. I was present at that hearing, and I personally advised the Board and parties on the record that the County then had no emergency plan. Tr. 774. At that point, therefore, all parties had actual, official knowledge that there was no County emergency plan for Shoreham, but that the County was working on such a plan. If at that time LILCO had been in

pursuit of a good faith effort to secure the County's participation, it would have allowed the County's planning efforts to proceed without interfering.

20. LILCO's statements in the Summary Disposition Motion that it "was cooperative" with the County after the County began its upgraded planning efforts are belied by LILCO's own words and actions. For example, even though the County was working diligently on a plan, LILCO charged that as of April 1982, the County "was obstructing review of its own emergency plan." LILCO Letter to Howard Pachman, June 23, 1982, at 4. Such a LILCO charge of "obstruction" is telling evidence that LILCO was not making a good faith effort to secure the County's participation, particularly since LILCO knew that the County had no plan. Rather, LILCO was making baseless charges that could only serve to poison relations between the County and LILCO.

21. Further, in May 1982, without the County's knowledge or permission, LILCO gathered the discarded materials which had been prepared by the County's two staff members, supplemented these with materials prepared by LILCO's own consultants, and packaged them in blue binders entitled "Suffolk County Radiological Emergency Response Plan." LILCO knew that these binders did not contain the County's plan -- because the County was then working on its plan -- but nevertheless transmitted the binders to the DPC and asked the DPC to review them as Suffolk County's plan.

In its transmittal letter to the DPC, LILCO knowingly made the following false statement: "LILCO hereby submits the local off-site emergency plan for Shoreham . . . ." Later, LILCO also sent copies of the binders to the NRC and FEMA.

22. Upon learning of LILCO's misrepresentation, Suffolk County objected to the DPC. The County also demanded that LILCO stop its misrepresentation. The Chief Deputy Suffolk County Executive wrote to LILCO on May 17, 1983, as follows:

It is the County's hope that LILCO will promptly terminate its resistance to the County's good faith emergency planning efforts. An increasing amount of the County's time is being consumed by the need to respond to seemingly belligerent actions of LILCO that challenge the County's current effort. I ask that you convey to your colleagues these serious sentiments, and that LILCO refrain from escalating further with rhetoric or deed any difference which exists between LILCO and the County with respect to the critical goal of effective radiological emergency preparedness.

(emphasis added). It is clear, therefore, that in mid-1982, contrary to LILCO's assertions, LILCO's actions were not in pursuit of a sustained good faith effort to obtain the County's cooperation. Instead, LILCO had assumed a hostile, belligerent, and deceitful attitude toward the County and the County's emergency planning efforts.

23. On May 18, 1982, the County Executive addressed the Legislature in Special Session to inform the Legislators of LILCO's action. The Legislature enacted Legislative Resolution No. 455-1982, which provided funds for retaining Special Counsel to investigate LILCO's act of sending to the DPC a document which LILCO falsely claimed to be the County's emergency plan. In September 1982, the Special Counsel found that LILCO had submitted a false document to the DPC. He also found that LILCO had sent it to FEMA and the NRC, and had even supplemented the false document with a further filing with the NRC on September 1, 1982 -- a full 3-1/2 months after the County demanded that LILCO stop its misrepresentations. The Special Counsel stated in his Report to the Legislature:

This latest submission to another agency of government shows a total disregard of the County's position and a calculated course of conduct to peddle the plan to both state and federal agencies in contravention of the wishes of Suffolk County. (p. 10)

These acts of unauthorized submission and conscious disregard of the County's wishes and, indeed, its governmental sovereignty were not the conduct of a company making a good faith effort to secure the County's cooperation. In large measure, they were simply acts of bad faith.

24. LILCO's hostile course of conduct in 1982 culminated when LILCO urged the DPC to continue to review the document it falsely claimed to be the County's emergency plan. This forced

the County to obtain an injunction against the DPC in December 1982. LILCO suggests in its Motion (p. 8) that LILCO's agreement to enter into a Stipulation after the injunction was entered is somehow an indication that LILCO had been or was pursuing a good faith effort. That is not accurate. The fact that the County was forced to litigation due to LILCO's hostile conduct is in fact evidence of LILCO's disregard for cooperative relations with the County. The Stipulation was made in a litigation context after LILCO had lost the critical rounds in the lawsuit. For LILCO to twist the facts which show its hostility to any other characterization is unfounded.

25. LILCO's calculated course of hostile actions toward Suffolk County was underscored by the Company's total disrespect for the process of democratic government in Suffolk County and for the interests of the public. At no time did LILCO evidence good faith efforts toward Suffolk County, its citizens, or the democratic process. Even at this early stage of the Shoreham controversy -- when Suffolk County had taken no position except to express the intent to prepare the best possible emergency plan to protect its citizens -- LILCO was demonstrating a course of conduct that revealed elements of actual bad faith.

26. For example, LILCO publicly demonstrated that it held itself to be above the law and above the County government. Thus, in trying after-the-fact to rationalize its misrepresen-

tation of the document LILCO pretended to be Suffolk County's emergency plan, LILCO's Vice President stated, as reported in the May 20, 1982 Suffolk Times (p. 2): "[W]hen government refuses to act responsibly, as a government, then we must do so for the government." Shortly thereafter, in a public address before the County Legislature, the County Executive asked LILCO to "outgrow its persistent gunslinger attitude" and to accept the County's good faith efforts to prepare an emergency plan. LILCO did not heed the County's request, but continued through 1982 on a course of sustained hostility toward the County.

27. I emphasize that LILCO's hostility during 1982 was a great distraction to County officials. We considered LILCO's actions to be a threat to our sovereign powers. The fact that LILCO -- a private corporation -- put the County's name on a document that was not the County's, then tried to pass that document off as the County's to both the state and federal governments, and then refused to cease after the County repeatedly objected, was shocking and intolerable. We could not at that time square such conduct of LILCO with good faith efforts, and I cannot do so now. In my view, when people knowingly and deliberately misrepresent another person -- and even continue to do so after the other person objects -- there is no room for any finding of good faith efforts.

28. I have read LILCO's Motion for Summary Disposition, dated December 18, 1987, and particularly LILCO's claim that its efforts were in good faith during 1982 and beyond. I absolutely disagree with LILCO's characterizations. In fact, LILCO's statements artificially ignore the context in which events actually took place, and they are selective in the extreme. Even if one takes everything LILCO says at face value -- and that cannot factually be done -- LILCO's own statements are dwarfed by the reality and implications of the matters set forth in this affidavit. It is hard to imagine a private corporation exercising as much arrogance and hostility toward any level of government as LILCO did toward Suffolk County in 1982 and thereafter. In my judgment, LILCO's conduct toward Suffolk County from February 1982 onward was never predicated on good faith of any sort. LILCO simply wanted a license for Shoreham at any cost, and it treated good faith as a dispensable inconvenience -- which it in fact dispensed with.

IV. 1983

29. 1983 began with LILCO's Board Chairman making a revealing statement about the Company's attitude toward Suffolk County. At the public hearing held by the County Legislature on January 27, 1983, the Suffolk County Executive asked LILCO's Board Chairman whether, if the County Legislature determined that adequate emergency preparedness was not possible due to the

limited local roadways and other constraints, LILCO would agree to drop Shoreham and work cooperatively with Suffolk County to resolve the resulting economic issues. The Board Chairman said no, because he could not agree with such a determination.

1/27/83, Tr. 1487. LILCO thus put itself above the government of Suffolk County, announcing that it -- not the County -- had the ultimate authority to determine what serves the public's welfare.

30. Shortly thereafter, LILCO took a step -- a crass step -- that further revealed its arrogance and mortally wounded its credibility. When the Legislature held public hearings in Pennsylvania concerning the TMI accident, LILCO attempted to ensure that witnesses who signed up to speak would be favorable to LILCO. (See Attachment 1) LILCO counseled these witnesses not to state that LILCO had persuaded them to speak. Id. LILCO's attempt to create such a biased record was an act of deceit, a travesty of what good faith conduct toward the County would be.

31. In February 1983, after extensive public hearings and deliberations, the Legislature voted not to adopt or implement an emergency plan for Shoreham. LILCO responded to the County's action with further hostility and name-calling, suggesting that the County had ulterior motives, such as trying to find an excuse to kill Shoreham or to foster the political ambitions of local politicians. LILCO then adopted a practice of sustained fear-

mongering to scare the County and public into supporting the operation of Shoreham even though they believed effective emergency preparedness was impossible. That is, fearmongering -- not a good faith effort -- to exact emergency planning concessions from the County. The Company thus claimed that Shoreham was needed immediately, or else there would be serious electricity shortages on Long Island with resulting brownouts and blackouts. LILCO also claimed that if Shoreham did not operate, the ratepayers would have to pay the entire multi-billion dollar cost of the plant and electricity rates would skyrocket. And, LILCO portrayed the County as being run by anti-nuclear activists and obstructionists bent on killing nuclear power. Such repeated statements by LILCO did not constitute in any respect a sustained, good faith effort to obtain County cooperation. To the contrary, they represented further evidence of LILCO hostility and even bad faith toward to the County.

32. LILCO based its fearmongering on serious distortions. First, the capacity of electricity represented by Shoreham was not needed in the short term, and the State Energy Office's official findings supported this fact. Second, the ratepayers would not necessarily have to pay all of Shoreham's costs, because the decision of allocating costs belongs exclusively to the State Public Service Commission, and the Commission had not decided the issue. Significantly, in 1985, the PSC disallowed more than \$1.3 billion of Shoreham's costs and ruled that this

amount could not be included in LILCO's rate base because it was the product of LILCO's mismanagement of Shoreham. And, third, the County's decision not to adopt or implement an emergency plan for Shoreham was not made by anti-nuclear or any other kind of ideological activists. The decision was made by responsible government officials who took their public duties seriously and made a tough decision the way they were required to do in order to serve their oaths of office and the public trust. The decision was non-partisan, made and supported by Republicans, Democrats, and Conservatives. It was made purely on the merits. When LILCO later challenged the County's actions in federal and state court, LILCO's suits were rebuffed and the County's actions in deciding not to adopt or implement a plan for Shoreham were found to be rational and lawful under state and federal law.

33. From May through December 1983, Governor Cuomo's blue ribbon commission on Shoreham (the "Marburger Commission," headed by Dr. John Marburger, President of the State University of New York at Stony Brook) held hearings and considered various aspects of the Shoreham issue, including matters related to emergency planning, safety, and economics. Representatives of the NRC and FEMA served on the Commission. A major consensus conclusion of the Commission was that the emergency planning analyses performed by Suffolk County's consultants were reasonable and that there was no basis for the State to second-guess Suffolk County's determination not to adopt or implement an

emergency plan. The Commission also concluded that Shoreham's power was not needed since feasible alternatives could be developed.

34. LILCO has suggested (Motion at 10-11) that its activities before the Marburger Commission reflected good faith actions by LILCO to obtain Suffolk County and/or New York State cooperation. That is not accurate. I attended virtually all of the Marburger Commission meetings. At hearings before the Commission, LILCO misrepresented the actions and motives of Suffolk County. LILCO refused to accept at face value the County's action. And LILCO continually exhibited hostility toward the County and the County's emergency planning efforts. Again, LILCO's conduct did not constitute a good faith effort to secure the County's participation in emergency planning.

35. LILCO also has suggested (Motion at 9-10) that its preparation and submittal to the NRC on May 26, 1983, of plans for Suffolk County and New York State was "part of its continuing efforts to secure the participation of the authorities." I disagree. LILCO's unilateral submission of such plans, without the authorization of the governments, was another example of LILCO's arrogance toward the governments. Suffolk County had implored LILCO in 1982 not to submit unauthorized plans on the County's behalf. LILCO's action in 1983 doing the same thing was a continuation of LILCO's hostile conduct. It was in no way

calculated to secure the County's cooperation. Indeed, it led shortly thereafter to a June 1983 Licensing Board ruling that the plans submitted by LILCO purportedly for New York State and Suffolk County would not be considered since they had been submitted with no evidence of support from either of the governments.

36. LILCO finally has suggested that two extracts from depositions in 1983 which contain conciliatory statements from LILCO counsel (Motion at 11-12) constitute evidence of a good faith effort by LILCO to secure the County's cooperation. I cannot help but observe that LILCO's claim of good faith is in a most sorry state if all it can find to support the claim are some disjointed comments of counsel during obscure depositions. Where is the Company speaking and acting aptly and officially on the public record to demonstrate its good faith? The fact is that there are no such words and actions, because what LILCO actually said and did was not in good faith.

V. 1984-85

37. In 1984, LILCO began an intensified course of politically toned pressure tactics against Suffolk County -- particularly on Long Island and in Washington. On Long Island, LILCO in April 1984, sued Suffolk County alleging that the County's emergency planning position was unlawful under federal

law. Significantly, in 1985, the Court rejected LILCO's suit, finding the County's actions to be lawful and rational. The U.S. Court of Appeals later affirmed the rejection of LILCO's suit.

38. LILCO also attempted to secure the federal government's participation in Shoreham emergency planning, thus again confirming LILCO's early 1982 decision to cease any genuine effort -- much less a sustained good faith effort -- to obtain the County's participation in emergency planning for Shoreham. For example, in early 1984, I recall a news report of the Chairman of LILCO's Board stating that he was engaged in "guerilla warfare" against Suffolk County. It is at about this time that LILCO admitted publicly that it had retained Lyn Nofziger, President Reagan's former assistant, as its "political consultant" in Washington. It has since been disclosed that Mr. Nofziger met on LILCO's behalf with White House, DOE, and FEMA officials, all in connection with LILCO's attempts to license Shoreham.

39. Also during this period, LILCO was trying to evade having to deal with Suffolk County by making arrangements with the federal government to help push the County out of LILCO's way in licensing Shoreham. LILCO's representatives met secretly with federal officials to devise means to force Suffolk County to adopt an emergency plan for Shoreham or means to override the effect of the County's actions. These meetings became known when

they were reported in the press, and when government documents were released. It became clear that LILCO wanted the federal government to intercede and imbue LILCO's emergency plan with some sort of legal authority. Thus, LILCO's efforts were devoted to attempting to secure federal government participation, not participation of Suffolk County.

40. The actions of LILCO -- and particularly LILCO's misrepresentations that the Company had legal authority to exercise New York's and Suffolk County's police powers -- caused the County, New York State, and the Town of Southampton in early 1984 to file suit against LILCO in State Supreme Court. In early 1985, the court ruled for the County and State, finding LILCO's claim to amount to a usurpation of the State and County's inherent police powers.

41. In my judgment, the most significant action of LILCO in 1984-85 that evidenced not only the absence of the Company's good faith, but the presence of actual bad faith, was LILCO's calculated refusal to pay the property taxes it owed Suffolk County. LILCO's refusal to pay taxes continued for a year and one-half, until the Company owed \$130 million. LILCO linked its refusal specifically to the emergency planning issue. The Company's action was particularly reprehensible because LILCO was a corporate citizen of Suffolk County and the County's largest taxpayer. LILCO expected the County to continue to provide the

public services that LILCO wanted just like every other taxpayer in the County, but it decided that it was above the rest of Suffolk County's citizens; it somehow did not feel the same civic duty to pay taxes as the rest of the people.

42. LILCO unabashedly and repeatedly claimed that it was refusing to pay its taxes in order to squeeze the County's finances so tightly that the County would have to cave in and support LILCO's emergency plan. Over the one and one-half years, through May 31, 1985, that LILCO refused to pay a total of \$130 million in taxes, the County came under severe financial pressure. This caused turmoil in the County government and the consideration of budget reductions in government services; it threatened decreases in the County's bond ratings; and it had a generally debilitating effect on the County's financial climate and foreshadowed increased taxes for the public. For example, to offset the loss of LILCO's tax payments in 1985, Suffolk County had to borrow money, raise property taxes, and establish other unprogrammed efficiencies. LILCO's strategy was simply to create problems for the County and to destroy the County's ability to remain true to its convictions and thus resist LILCO's demands. This not only evidences a lack of LILCO's good faith toward the County on the emergency planning issue, it also shows bad faith toward both the administration of law by the County government and toward the citizens who depend on the County for critical public services.

43. LILCO's pressure tactics in refusing to pay the taxes it rightfully owed amounted to coercion against the County. On May 30, 1985, the Suffolk County Executive gave in to LILCO's tactics, and agreed to a test of LILCO's emergency plan. In return, LILCO immediately paid its \$130 million in back taxes, with LILCO's Board Chairman stating that "[t]he reason for withholding the taxes no longer exists." Newsday, June 1, 1985, p. 4. Later, the County Executive publicly stated that he had no choice but "to fall on the sword" because of the financial difficulties LILCO had caused for the County. The result was that the County Executive agreed to support a FEMA-graded exercise of LILCO's emergency plan, which ultimately was held on February 13, 1986.

44. Immediately after the County Executive approved support for the exercise, members of the Suffolk County Legislature sued him in State Court. LILCO intervened in the suit against the County Legislature in an effort to protect the test of its plan that had been secured through its refusal to be a law-abiding citizen and pay its taxes. Three New York State courts, including the New York Court of Appeals, ruled that the County Executive had acted unlawfully under the provisions of the Suffolk County Charter by supporting the LILCO exercise. Subsequently, the Executive opposed the exercise of LILCO's plan.

45. Thus, LILCO's refusal to pay taxes had been successful in forcing the County Executive to take actions which the courts found to be unlawful. It surely cannot be said that it was a good faith action (as LILCO seems to suggest at page 12 of the Motion) for LILCO to have forced the County Executive into a position of having to violate the law. By no stretch of the imagination can any facet of good faith efforts be gleaned from LILCO's brazen repudiation of its civic duty to pay its property taxes.

VI. 1986

46. LILCO's Motion cites no purported fact whatsoever during 1986 which is alleged to constitute a good faith effort by LILCO to secure the County's participation in planning for Shoreham. During 1986, I know of no instance where LILCO's actions or words could be construed to be an effort by LILCO to secure the County's participation. Rather, 1986, like the prior three years, was characterized by LILCO's hostility toward the County.

47. In addition, 1986 again involved LILCO misrepresenting Suffolk County. Particularly, LILCO repeatedly stated -- to the NRC and elsewhere -- that if Shoreham were operated and there were an accident at the plant, the County would act in partnership with LILCO and would aid LILCO in the implementation of

LILCO's emergency plan. LILCO mischaracterized words of the County Executive in fashioning its claims, despite repeated attempts by the County to cause LILCO to cease its unauthorized representations. These misrepresentations became so intense that the County Executive had to issue a formal statement in June 1986 declaring the falsity of LILCO's statements and clarifying the County's position for the record.

VII. Conclusion

In summary, the facts show that LILCO has not made even an isolated good faith effort, let alone a sustained good faith effort, to secure and retain the participation of Suffolk County. Ever since February 1982, LILCO has acted without good faith toward Suffolk County and, in several major instances, has demonstrated actual bad faith. LILCO's conduct has included:

(1) repeated misrepresentations and falsifications of the County's position; (2) fearmongering to scare the County and public into supporting LILCO; (3) political strategies to force the County to act against its will; (4) efforts to circumvent the County's lawful police powers over emergency planning issues; (5) pressure tactics, including the refusal to pay taxes, to weaken the County's ability to exist financially without giving in to LILCO's self-serving wishes; and (6) sustained hostility

and belligerency against the County. LILCO's conduct not only lacks good faith toward the County, it is marked by repeated acts of bad faith.

January 19, 1988  
(date)

Frank R. Jones  
Frank R. Jones

Sworn before me this 19<sup>th</sup> day of January 1988, in the State of New York.

SHIRLEY P. ECCLESTON  
NOTARY PUBLIC, State of New York  
No. 488 | 504  
Qualified in Suffolk County  
SA  
(My Commission Expires)

Shirley P. Eccleston  
(Notary Public)

# Legislators Visit Three Mile Island To See and Ask

By Alan Finder

Newsday Staff Correspondent

Middletown, Pa. — Up and down South Union Street, this small borough's major downtown thoroughfare, clusters of TV cameramen, photographers and reporters huddled around Suffolk County legislators interrupting residents during their lunchtime chores yesterday.

"How do you feel about having Three Mile Island just down the river?" Lou Howard (R-Amityville), the presiding officer of the Suffolk County Legislature, asked Donald Wolf, a retired chauffeur who has lived here all of his 68 years.

"Most people here don't say too much about it," said Wolf, a short, stocky man who seemed indifferent to all the fuss. "I don't think it scared people."

Up the street, another local resident, Rhoda Carr, explained her thoughts to three other legislators. "I have very strong feelings about being so close to Three Mile Island," she said. "I handle it the way I think most people handle it. I trust it to God."

After eight days of hearings last month on Suffolk's draft emergency plan for the nearly completed Shoreham Nuclear Power Plant, eight of the county's 18 legislators came here

yesterday to Three Mile Island, site of the nation's most serious commercial nuclear accident. They wanted to talk to residents and local officials about the impact the accident had and whether the emergency plan there worked. The legislature must decide by Feb. 22 whether to approve its draft plan.

Long Island Lighting Co., which is building Shoreham, has submitted a rival plan to the state for approval. State and federal approval of an emergency plan is required to obtain a license to operate Shoreham commercially.

Accompanied by a phalanx of reporters, the legislators took their own one-day crash course on Three Mile Island and its consequences. They toured TMI's Unit 1 reactor, which was undamaged in the March, 1979, accident that crippled TMI Unit 2. They strolled the streets, soliciting residents' thoughts on the feasibility of emergency plans and on the impact of living so near the crippled nuclear plant.

They lunched at Kuppy's Diner, and they held three hours of hearings at Harrisburg City Hall, 10 miles north of here. They heard from three local fire chiefs who said their volunteer fire fighters have never been reluc-

—Continued on Page 32



Newsday/Audrey C. Tierman

Legislators Alico Beck and Lou Howard at plant's visitors' center

## Suffolk Legislators Visit Three Mile Island Area

—Continued from Page 6

tant to respond to emergencies at the nuclear plant.

They also heard from local citizens who insisted that people and animals had been harmed from radioactivity released during and after the accident. And they heard from others who contended that no one was harmed. Numerous state and federal studies have said the only significant public harm was psychological.

But there has been a perverse boon. In the four years since the accident gave TMI international notoriety, the mammoth plant has become a bit of a tourist hot spot. More than 250,000 people have visited the information center opposite the plant since 1979, said John Fidler, a TMI spokesman. And this April, a five-mile race will be run around TMI.

Yesterday's whirlwind rhythm was broken only after the final witness, a local dairy farmer named Ronald Kopp, told the legislators that his cows and crops have remained healthy. Under questioning, Kopp said that a Long Island Lighting Co. official asked him to come testify before the legislators. Kopp also said that the LILCO official, Darrell Lankford, asked him not to say that he had requested Kopp's participation.

"We were only trying to get a balanced presentation," said Lankford, LILCO's associate director of nuclear information. Lankford later conceded that he had also asked the three fire chiefs to participate.

County officials were angered at what they called LILCO's subterfuge. "If I were LILCO, I would not have done what they did today," said Howard. "It looks like they brought people in. That to me is unconscionable."

full legislative board next Thursday urging that the county file a plan of its own with the State Disaster Preparedness Commission rather than be forced to accept a plan submitted by Lilco or the State.

**HOWARD SAID WHETHER** the county submits a 10 mile or a 20 mile evacuation plan doesn't matter to him. He said he believes a 10 mile plan would be sufficient, but would support a 20 mile plan if the majority of the lawmakers prefer it.

"What is important is that we have a plan," said Howard. "We learned on the Three Mile Island trip that they did not have a plan and that in itself was a disaster."

Howard released a draft of a motion he intends to

under a stipulation reached in Supreme Court with the Long Island Lighting Co. in December.

Under that agreement, the Legislature has until Feb. 22 to submit a plan.

Howard contended there would be "a ripple effect" of not having a plan. He noted that Suffolk has a responsibility to Nassau County residents as well in its dealings with Lilco. He said that Suffolk must take care not to bankrupt Lilco by undue delay in fighting Shoreham.

**"WE CLAIM WE ARE** anxious to attract new industry to the bi-county area," said Howard. "We can't tell a businessman that we just bankrupted the biggest corporation on the Island, but don't worry,

Howard said he had informed Cohalan's office of his intended announcement, but he did not speak to the county executive directly.

Cohalan has been an outspoken critic of Lilco, charging the utility with mismanagement and claiming it is derelict in not allowing the county to conduct its own safety and design review of the Shoreham plant.

However, Cohalan has not sought to prevent the plant from opening. Several legislators questioned yesterday said they had not made a firm decision on the adoption of an evacuation plan, but contended that any plan would require extensive review and updating.

## Pols blast Lilco for 'coaching' witnesses

By **MICHAEL HANRAHAN**  
Staff correspondent



Presiding officer Lou Howard chaired session.

Harrisburg, Pa.—The Suffolk County Legislature traveled here 200 miles on a fact-finding mission and conducted a special public hearing in the Pennsylvania State Capital Wednesday afternoon only to find out that the Long Island Lighting Co. had attempted to stack the deck by sending in pre-screened witnesses to testify to the lawmakers about public reaction to the accident at the nearby Three Mile Island nuclear plant.

A Lilco public relations man and chief spokesman on nuclear energy matters at the Shoreham plant solicited a young Middletown, Pa., farmer to give testimony at the hearing and instructed the farmer to not let on to the legislators that he was recruited by Lilco.

The farmer, Ronald Kopp, 28, who with his father and brother operates a

400-acre farm four miles northeast of the plant, spoke in rebuttal of an earlier witness who contended that the presence of the nuclear plant had resulted in an increase in the number of stillborns and deformed births of local livestock. Lilco's involvement was disclosed when Legislator Sondra Bachety (D-Deer Park) thanked Kopp for volunteering his service and asked how he had come to learn of the Suffolk Legislature's hearing being conducted in the chambers of the Harrisburg City Council.

**"DOES IT MATTER?"** asked Kopp. Then he declared: "He asked me not to say this, but I was contacted by Darrell Lankford from your place at Shoreham."

Lankford, who was present at the hearings, admitted during questioning by reporters that he contacted Kopp and three volunteer firefighters and urged them to testify at the session.

Lou Howard (R-Amityville), the

presiding officer of the Legislature who chaired the session, said that Lilco's attempt to hide its actions in sending select witnesses "is something that to me is unconscionable."

The panel of legislators that participated in the fact-finding visit to Pennsylvania to hear the witnesses also included John Wehrenberg (R-Holbrook), the deputy presiding officer; John Foley (D-Blue Point); Rose Caracappa (R-Selden); Alice Beck (R-Babylon); Michael D'Andre (St. James), and Gregory Blass (R-Jamesport).

**FOLLOWING HIS** candor in telling the legislators that he was instructed by the Lilco representative not to reveal the utility's role in getting him to testify, the legislators assured him that they considered his testimony to be valid.

Kopp testified that he and his family had experienced no unusual effects to

(Continued on following page.)

## th defects

he validity of our arguments before any are issued."

**TTA ADDED.** "THE town will continue to lead in battling giant authorities and

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# Say Lilco 'stacked' the deck

(Continued from page 1.)

their livestock or crops of soy bean, alfalfa and corn following the accident at TMI in 1979. The three firefighters, all chiefs of local departments, testified that they were participants in a local emergency response plan and were prepared to participate in the event of an emergency at the nuclear plant. They said, however, that they were not called upon to respond during the nuclear emergency at the plant four years ago.

After it was disclosed that Lilco had surreptitiously sent the witnesses forward, Lankford said: "I think what we (Lilco) were looking for was a balanced presentation." When pressed as to why Lilco thought it was necessary to attempt to hide its role in recruiting



Legislator Sondra Bachety questioned farmer.

the witnesses, Lankford replied: "They would be somewhat tainted in their testimony by being considered ploys of the nuclear industry."

The Lilco representative said that by a look at the list of people coming forward to speak he determined the legislators would get a distorted impression. Jeff Butzke, a legislative aide to the presiding officer, said, however, that he arranged the list of speakers by dealing through the Harrisburg City Clerk's office. "This was an open hearing and anyone was permitted to testify without having to hide their motivations," said Butzke.

**THE PRESENCE** of two Lilco public relations people had some of the Suffolk legislators miffed from the outset of their tour of the TMI facility. While members of the New York press were excluded from a tour of the nuclear plant with the legislators, the Lilco public relations staffers were scheduled to accompany the lawmakers. Caracappa objected to the LILCO PR people accompanying them while reporters who were invited by the legislators were excluded.

Lankford, at that point, agreed not to go.

Before spinning the dial...

Early News, Friday, February 11, 1983

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