

Attachment 6

January 18, 1988

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,)
Unit 1))

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

AFFIDAVIT OF FABIAN G. PALOMINO

Fabian G. Palomino, being duly sworn, does state under oath
as follows:

1. I am Special Counsel to the Governor of New York. I
have held this position since 1983. In this position, one of my
duties has been to advise the Governor on matters relating to the
Shoreham Nuclear Power Station and to serve as principal counsel
representing the State of New York in these matters.

2. With respect to LILCO's Motion for Summary Disposition
dated December 18, 1987, related to 10 CFR § 50.47(c)(1)(i) and
(ii), LILCO asserts that it has made a "sustained, good faith

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effort to secure and retain the participation" of the New York State government in emergency planning for Shoreham. I disagree. In my opinion, LILCO's actions do not represent a good faith effort, and certainly not a "sustained, good faith effort," to obtain the participation of the State government.

3. With respect to the State of New York, I stress at the outset that LILCO's "evidence" of an alleged sustained good faith effort during the Cuomo administration is so limited in both quality and quantity as to be inadequate on its face. LILCO cites three events that are alleged by LILCO to show a sustained good faith effort to secure and retain the State's participation during the Cuomo administration: representations LILCO made in 1983 before a special fact-finding panel appointed by the Governor to investigate emergency planning, safety, and economic matters related to Shoreham; LILCO's transmittal of a letter to the Governor in 1983 largely seeking relief from economic concerns; and an effort of LILCO in 1987 to attend one meeting convened by the utilities constituting the New York Power Pool.^{1/}

^{1/} In 1982, Governor Cuomo was not Governor and I had no direct or official involvement in matters related to Shoreham. In early 1983, I became actively involved in Shoreham-related matters, particularly related to Suffolk County's planning efforts in 1982 and LILCO's response thereto. I became aware that during 1982, contrary to the wishes of Suffolk County -- and without the County's knowledge or authorization -- LILCO transmitted to the New York State Disaster Preparedness Commission a document which LILCO purported to be the emergency plan of Suffolk County. In fact, the document was not the emergency plan of Suffolk County and parts of the document had actually been discarded by Suffolk County as inadequate materials. LILCO's actions during 1982 did not represent any effort by LILCO to secure the participation of

(Footnote continued)

I submit that even if LILCO's assertions about the meaning of these matters were accurate (and they are not), the paucity of LILCO's efforts related to the State, as shown on the face of the Motion, requires the conclusion that LILCO's efforts did not manifest "good faith," and surely not "sustained, good faith," in the context of the remainder of LILCO's conduct during the period that LILCO's Motion covers.

4. During 1983, after the commencement of the Cuomo administration, the major New York State involvement relating to Shoreham was the work of the Special Fact Finding Commission empaneled by Governor Cuomo (the so-called "Marburger Commission" named after Dr. John Marburger, the President of the State University of New York at Stony Brook). The purpose of the Marburger Commission was to address particular questions related to emergency planning, safety, and economics at Shoreham.

5. On several occasions, LILCO made presentations to the Marburger Commission concerning emergency planning for Shoreham. Those presentations were attempts to persuade that Commission --

(footnote continued from previous page)
the New York State government in offsite emergency planning for Shoreham. Rather, the actions sought to prompt the New York State government to override the decisions which had been made by the Suffolk County government in its capacity as a local municipality. Accordingly, the actions described by LILCO in its Motion (see p. 8) related to the New York State government in 1982 were not actions designed to secure or retain the New York State government's participation in emergency planning for Shoreham.

and Governor Cuomo through that Commission -- that the analyses of Suffolk County were unsound.

6. I am aware that LILCO has attached to its Summary Disposition Motion (Attachment 4) a December 14, 1983, letter from LILCO's Board Chairman to Governor Cuomo. It was written a few days before the Marburger Commission Report was submitted to Governor Cuomo and seeks to persuade the Governor that Shoreham should be permitted to operate. Read in its totality, the letter is not an effort to persuade New York State to participate in emergency planning for Shoreham. Rather, a full reading of the letter shows that it is devoted almost totally to the allegedly adverse economic consequences to Long Island ratepayers, businesses, and, most importantly, to LILCO, if Shoreham were not permitted to operate. It thus represents a continuation of LILCO's actions to attempt to get Shoreham on-line because of LILCO's own self-interests, not because a safe evacuation of Long Island citizens would be possible in a nuclear accident.

7. Following that LILCO letter in late 1983, I recall no instance when LILCO made any effort to secure New York State's participation in emergency planning for Shoreham.^{2/} To the

^{2/} It is absurd for LILCO to suggest (Motion at 13) that its attempted attendance at a New York Power Pool meeting in May 1987 was part of an effort to secure New York participation in planning for Shoreham. The New York Power Pool is an organization of utilities in New York. That meeting was unrelated to Shoreham, and thus even if the LILCO person had attended, it would not have been pertinent to securing New York
(footnote continued)

contrary, in early 1984, LILCO's Board Chairman held discussions with the Governor for the purpose of discussing the abandonment of Shoreham in return for requested tax benefits. Thus, the focus of seeking any State help was not on securing participation in emergency planning. These discussions did not succeed, however.

8. Beginning shortly thereafter, LILCO began a continuous effort in opposition to New York State's interests. There was not any effort by LILCO to secure the State's participation in emergency planning for Shoreham. Accordingly, there is no basis upon which this Board could base a determination that LILCO has made a sustained good faith effort to secure New York State's participation in emergency planning. LILCO has made no such effort at all.

9. To the contrary, LILCO has made repeated misrepresentations about the policy and position of New York State. In late December 1983, in a four-page press statement in which Governor Cuomo called for abandonment of the Shoreham plant, he commented that if there were a serious accident at Shoreham, the State would do its best to assist. LILCO took that statement -- which was issued to explain why the Governor opposed the opera-

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State's participation in emergency planning for Shoreham. The LILCO representative was denied admittance to the meeting because the meeting was for persons involved in operating plants. Shoreham is not operating for offsite planning purposes and thus it was inappropriate for any LILCO representative to be present.

tion of Shoreham -- and for several years misrepresented it before the NRC and other federal agencies. Governor Cuomo repeatedly called upon LILCO to stop these misrepresentations, but nonetheless LILCO continued, forcing the Governor to take the extraordinary step in late June 1986 of rescinding the press statement.

10. I am also aware that during 1984 and 1985, LILCO made repeated endeavors, particularly in Washington, D.C., to persuade the federal government to intercede in the Shoreham proceeding and in some way to supercede State and local government authorities for emergency planning around the Shoreham plant. In fact, documents released from the federal government indicate that at least at one time, there was consideration of a Presidential Executive Order which would have directed (albeit illegally in my opinion) that federal government authorities be utilized in lieu of State and local government authorities for emergency planning around commercial nuclear plants. Upon information and belief, I believe that LILCO, acting through its agents and counsel, had a material role in such activities before the federal government. These were activities designed not to secure the participation of New York State in emergency planning for Shoreham, but were designed to obviate the need to secure such participation.

11. In conclusion, it is my opinion that LILCO has made no sustained good faith effort to secure the participation of New York State in emergency planning for Shoreham.

Subscribed to before me this 17th day of January 1988.

Fabian G. Palomino
Fabian G. Palomino

My Commission expires: 11/30/88
(date)

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Notary Public, State of New York
Qualified in ~~Yerkes~~ Saratoga County
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Nov. 30, 1988

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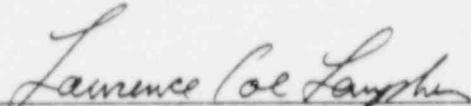
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