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DOCKET NUMBER 58-322-01-3
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March 4, 1988

Lando W. Zech, Jr., Chairman
U.S. Nuclear Regulatory Commission
1717 H Street, N.W., Room 1114
Washington, D. C. 20555

Dear Mr. Chairman:

We are writing on behalf of our client, Suffolk County, and with authorization of the State of New York, to object to a portion of the Commission's February 24, 1988 briefing on the status of the Shoreham nuclear power plant. In particular, we object to the discussion by the Commission and Staff of a proposal for "the review of the revised [LILCO] utility plan, a full scale exercise of that plan and litigation of all outstanding issues to result in a licensing board decision in Spring 1989." This proposal is predicated upon myriad assumptions and hypotheses which treat as dispensable the rights and interests of the County and State.

First, the question that the Commission should be now addressing is whether an exercise of LILCO's plan should even be held, not a projected schedule for post-exercise litigation. There is no legitimate reason to hold an exercise of LILCO's plan: for example, the Licensing Board recently held LILCO's plan to be fundamentally and pervasively flawed and unless these flaws are corrected and found to be adequate -- following the Governments' opportunity to challenge LILCO's purported corrections -- an exercise would be baseless. At this time, therefore, the appropriate action for the Commission is to inform LILCO that its request for an exercise is premature.

Second, there is no reason to speculate about a post-exercise litigation schedule now, even if an exercise could be held on the basis of LILCO's flawed plan. Experience shows that even with the expedited schedule following LILCO's February 1986 exercise, the litigation took substantially longer than that which the Staff is by intuition supposing. If ever an exercise were to be held of the LILCO plan, there is no basis for the

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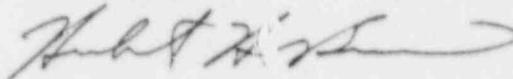
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Commission to think in terms different from what this earlier experience teaches, particularly since such a new exercise would be of a plan the NRC itself has found to be fundamentally flawed.

Third, the establishment of any schedule without the Commission first having knowledge of the substance of the issues that must be scheduled for litigation, and the actual needs of the parties related to the litigation of those issues, would be arbitrary and prejudicial to the County and State. In March 1984, the Commission set a schedule for a Shoreham proceeding without respecting the litigation needs and constitutional rights of the County and State. The County and State obtained from the U.S. District Court an injunction against the Commission's schedule.

Finally, the County and State request that if the Commission entertains any further Staff comments or proposals concerning an exercise of LILCO's plan or any schedules or procedures for Shoreham proceedings, it simultaneously solicit the comments or proposals of the County, State, and other parties. The Staff is not entitled to the Commission's ear on matters that affect the rights of others without affording the other parties equal treatment.

Sincerely,



Herbert H. Brown

cc: Fabian G. Palomino, Esq.
Special Counsel to the
Governor of New York

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