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Board's partial initial decisions should not be vacated. Moreover, vacating the challenged decisions at this time would be premature. These views are discussed below.

## II. Background

The issues identified by the Board arise out of the lengthy litigation concerning the adequacy and results of the February 13, 1986 Exercise of the LILCO Emergency Plan (the "Plan") for the Shoreham plant. Upon consideration of the entire record, consisting of over 12,000 pages of transcript and prefiled testimony, exclusive of exhibits, the OL-5 Licensing Board issued two partial initial decisions regarding the Exercise. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-87-32, 26 NRC 479 (1987) (hereafter, "LBP-87-32"); Long Island Lighting Co. (Shorenam Nuclear Power Station, Unit 1), LBP-88-2, 27 NRC 85 (1988) (hereafter, "LBP-88-2").

Both LBP-87-32 and LBP-88-2 substantially held for the Governments. The first decision, LBP-87-32, concluded that because the Shoreham Exercise failed to test certain portions of the LILCO Plan, the Exercise did not satisfy the criteria for a "full participation" exercise for a near term operating license ("NTOL") plant, as set forth in 10 CFR Part 50, Appendix E, § IV.F.1. 26 NRC at 480-81.

LBP-87-32, therefore, essentially sustained the Governments' position on Contentions EX 15/16. Those contentions had alleged that there was no basis upon which reliable conclusions could be drawn about the implementability of the LILCO Plan, because during the Exercise neither major portions of the Plan and LILCO's ability to implement it, nor the response capabilities of personnel and entities essential to Plan implementation, were demonstrated or evaluated. Taken together, Contentions EX 15/16 alleged that given the inadequate and deficient scope of the February 13 Exercise, there was no basis for the requisite "reasonable assurance" finding required by 10 CFR § 50.47(a)(1).

In deciding Contentions EX 15/16 in favor of the Governments, the Licensing Board rejected LILCO's argument that the Exercise met the Appendix E requirements for a "full participation" exercise, which tests as much of the licensee's emergency plan as is reasonably achievable without mandatory public participation. See 10 CFR Part 50, Appendix E, § IV.F.1. Simply put, the Board determined that Appendix E clearly requires that the initial exercise at an NTOL site must be more comprehensive in scope than is the case (under Section IV.F.3 of Appendix E) for subsequent biennial exercises at sites with operating plants. See 26 NRC at 488-89.

The Licensing Board identified four material defects or omissions which necessitated the finding that the Exercise was

inadequate in its scope. First, the Board determined that the Exercise should have included participation by WALK Radio, LILCO's lead emergency broadcast system ("EBS") station under the then-existing Plan, as well as authentication by WALK of the LILCO-drafted EBS messages. See 26 NRC at 492. Second, the Board found that LILCO, despite a specific FEMA request to seek the participation of more school districts, asked only one school district to participate in the Exercise, and failed to demonstrate that greater participation was not possible. See id. at 497. Third, the Board found that LILCO had failed to test the ingestion exposure pathway capabilities during the Exercise. Id. at 499. Fourth, the Board determined that the LILCO Plan provisions pertaining to special facilities had been inadequately tested during the Exercise. Id. at 501.

In sum, LBP-87-32 sustained the Governments' primary argument in Contentions EX 15/16 that the inadequate scope of the February 13 Exercise itself constituted a fundamental flaw in LILCO's emergency planning, since the results of the Exercise were necessarily too limited to provide a basis for a "reasonable assurance" finding. See 26 NRC at 502.

On February 1, 1988, the OL-5 Licensing Board issued LBP-88-2, the second partial initial decision challenged by LILCO. In this second decision on the Exercise, the OL-5 Licensing Board essentially disregarded the holdings in LBP-87-32 and critically

examined the implementation capabilities which were tested during the Exercise. The Licensing Board determined that even if the Exercise had met the Appendix E scope requirements for an NTOL exercise, the Exercise revealed fundamental flaws in LILCO's Plan and LILCO's capability to implement that Plan. The chief flaws identified involved communications, prompt staffing of traffic control points, and training. See 27 NRC at 89.

Either LBP-87-32 or LBP-88-2 is sufficient to resolve conclusively that the February 13 Shoreham Exercise revealed fundamental flaws in LILCO's planning and capabilities sufficient to deny LILCO's application for an operating license. LILCO timely noticed appeals from both decisions and has briefed both appeals. The Governments, while expressing disagreement with certain adverse rulings contained in LBP-87-32 and LBP-88-2, have filed briefs opposing LILCO's appeals of both decisions.

At the request of LILCO and the NRC, a new exercise of the LILCO Plan was conducted on June 7-9, 1988. In its June 27 Order, this Board noted that the June exercise had been conducted, and requested the parties to brief the issue of the disposition of LILCO's two appeals from the OL-5 Licensing Board's partial initial decisions. In particular, the Board requested that the parties address whether the appeals should be

dismissed and the two challenged partial initial decisions vacated on the ground of mootness. June 27 Order, at 3.1/

III. LILCO's Appeals Should Not Be Dismissed  
Nor the Challenged Decisions  
Vacated on the Ground of Mootness

This Board has already determined that LILCO's appeal of LBP-87-32 is "technically moot,"2/ and the Governments do not dispute this finding. Nonetheless, under the circumstances of this case, NRC precedent establishes that LILCO's appeals should not be dismissed. Nor should the OL-5 Licensing Board's decisions challenged by LILCO be vacated on the ground of mootness. Rather, the Board should, at a minimum, render

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1/ In responding to the Board's June 27 Order, the Governments do not address the merits of LILCO's two appeals from the OL-5 Licensing Board's decisions, since the Governments' views on the merits of LILCO's two appeals have already been briefed. See Governments' Brief in Opposition to Appeal of LILCO from LBP-87-32 (February 26, 1988); Governments' Brief in Opposition to LILCO Appeal from LBP-88-2 (April 18, 1988).

2/ See Memorandum, dated May 25, 1988 (hereafter, "May 25 Memorandum"), at 1. Although the Board did not identify its rationale for the finding of mootness, it appears that it relied upon the fact that more than two years had passed since the conduct of the February 13, 1986 Exercise, in contravention of 10 CFR Part 50, Appendix E, § IV.F.1. Indeed, the Board questioned counsel for LILCO and Suffolk County at the oral argument before it on the appeal of LBP-87-32 as to whether the passing of two years since the February 13 Exercise had rendered the appeal moot. See Transcript of the Oral Argument Concerning the Appeal of LBP-87-32 (hereafter, "Tr."), at 12 (Judge Kohl); Tr. 78-80 (Judge Rosenthal).

The Board's June 27 Order appears to suggest a second basis for mootness; that is, that the mere fact that a new exercise was held in June of this year may render the February 13 Exercise a nullity, thereby mooting LILCO's appeals. See June 27 Order, at 2-3.

advisory opinions addressing the adequacy and results of the February 13 Shoreham Exercise.

A. "Compelling Circumstances" Warrant the Board's Issuance of Advisory Opinions in this Case

NRC precedent establishes that advisory opinions may be rendered whenever "compelling circumstances" suggest that such opinions are warranted. See United States Department of Energy Project Management Corporation Tennessee Valley Authority (Clinch River Breeder Reactor Plant), LBP-84-4, 19 NRC 288 (1984); Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), ALAB-714, 17 NRC 86, 93 (1983). See also Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 54 (1978) ("no insuperable barrier to our rendition of an advisory opinion on issues which have been indisputably mooted by events occurring subsequent to licensing board decision"). Here, the facts of the unprecedented Shoreham Exercise litigation more than sufficiently document the compelling circumstances necessary to the issuance of advisory opinions on LILCO's appeals from the OL-5 Licensing Board's partial initial decisions regarding the February 13, 1986 Exercise.

First, this Board has previously determined that the circumstances of the Shoreham Exercise litigation require the rendering of an advisory opinion on the question of LILCO's

appeal of LBP-87-32. See May 25 Memorandum, at 1. That determination is even more true with respect to LILCO's challenge to the comprehensive legal and factual determinations rendered in LBP-88-2. For example, the definition of "fundamental flaw" adopted by the OL-5 Licensing Board in LBP-88-2 resolves a seminal matter of first impression which will likely figure prominently in all future exercise litigation. It would make no sense to vacate LBP-88-2 and thereby require relitigation of the fundamental flaw legal issue in future Shoreham or other plant litigation. Rather, it makes far more sense to have Appeal Board guidance issued now in the context of a carefully developed record and appeal briefs that present the issue for decision.

Moreover, even in the absence of the Board's prior determination that an advisory opinion is warranted in this case, the unique circumstances of the Shoreham Exercise litigation themselves speak to the compelling need for resolution of LILCO's appeals. That litigation represents the only fully litigated exercise in the history of NRC licensing proceedings. There is simply no other guidance in the body of NRC case law addressing the standards for litigating a completed exercise. As this Board has already recognized, resolution of LILCO's appeals is essential, if only in order to provide guidance by which the June 1988 exercise can be evaluated. See May 25 Memorandum, at 1; Tr. at 78-80 (Judge Rosenthal).<sup>3/</sup> In addition, however, there is the

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<sup>3/</sup> The discussion at pages 78 through 80 of the transcript of the oral argument is reproduced here as Attachment 1.

matter of guidance for future litigants who may contest or have to defend the adequacy and results of FEMA-graded exercises. The recently-completed Seabrook exercise is one such example.

B. Dismissal of the LILCO Appeals Would Not Compel Vacating the Licensing Board's Partial Initial Decisions

In its June 27 Order, the Board requested the parties to address whether LILCO's appeals should be dismissed and the challenged decisions vacated in light of the authority of Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), CLI 85-16, 22 NRC 459 (1985) and Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), ALAB-874, 26 NRC 156 (1987). See June 27 Order, at 3. Presumably, the Board's request reflects its concern that the cited authority may require dismissal of LILCO's appeals. That is not the case, however. In fact, the decisions cited by the Board, as well as the line of decisions upon which they rest, see Puget Sound Power and Light Co. (Skagit Nuclear Power Project, Units 1 and 2), CLI-80-34, 12 NRC 407 (1980); Boston Edison Co. (Pilgrim Nuclear Power Station, Unit 2), ALAB-656, 14 NRC 965 (1981) (order granting construction permit vacated after project cancelled); Rochester Gas and Electric Corp. (Sterling Power Project, Nuclear Unit No. 1), ALAB-596, 11 NRC 867 (1980) (order authorizing construction permit vacated and permit revoked after applicants moved to abandon project), support the Governments' view that the

challenged partial initial decisions should not be vacated; nor should LILCO's appeals be dismissed.

Unlike the cases cited above, the Shoreham litigation presents compelling circumstances warranting the rendering of advisory opinions on the adequacy and results of the February 13 Exercise.<sup>4/</sup> Specifically, the 1986 Shoreham Exercise is the only fully litigated exercise in the history of NRC licensing proceedings. The comprehensive legal and factual findings of the OL-5 Licensing Board are the only precedents in NRC case law for measuring the adequacy of future NTOL plant exercises at Shoreham -- or elsewhere. Thus, the challenged decisions are the law of

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<sup>4/</sup> No such compelling circumstances were present in the cases cited in the June 27 Order. In the Braidwood decision, the vacated order was one affirming the denial of the intervenors' motion to file a late contention regarding the licensee's application for a licensing amendment. The Braidwood Board vacated the order after the licensee's withdrawal of the amendment application mooted the controversy. See ALAB-874, 26 NRC at 157-58.

Similarly, in the Limerick decision, the vacated order in question was one granting the licensee an exemption from certain requirements of 10 CFR §§ 50.47(a) and (b) challenged by prison inmates. The Commission vacated the order in question only after the Licensing Board's completion of consideration of emergency planning issues related to the contentions raised by these prisoners mooted the need for the exemption. See CLI-85-16, 22 NRC at 460. As the Board stated, the decision to vacate was appropriate on the facts of the case because "issuance of the full-power license does not depend in any way on the grant of the exemption at issue in these decisions." Id.

The same cannot be said on the facts of the case at hand. The ultimate resolution of litigation concerning the adequacy and results of whatever exercise LILCO seeks to rely upon in fulfillment of Appendix E's requirements depends upon conclusive determination of the questions raised by LILCO's appeals of the OL-5 Licensing Board's partial initial decisions.

the case and the only NRC precedent by which the June 1988 Shoreham exercise can be judged.

Moreover, in applying the general principle that the dismissal of an appeal for mootness typically requires the vacating of the underlying order or decision from which the appeal is taken, the Commission has recognized that where the matters in question appear likely of repetition between the parties and proceedings in question, then the general rule should be suspended. See Puget Sound Power and Light Co., CLI-80-34, 12 NRC at 408 (administrative orders vacated solely "[b]ecause the underlying administrative proceeding has been terminated and because the matter appears unlikely of repetition as it affects these parties and these proceedings") (emphasis added).

On the facts at hand, the very conduct of the June 1988 exercise demonstrates the necessity of resolution of the substantial questions raised concerning the adequacy and results of the February 13, 1986 Exercise, as well as the standards by which the June 1988 exercise is to be judged. This Board has itself recognized the need to render an advisory opinion as to the Licensing Board's review of the February 13, 1986 Exercise, if only to make effective review of the June 1988 exercise possible. See, e.g., May 25 Memorandum, at 1; Tr. at 78-80 (Judge Rosenthal).

The issues at the core of LILCO's appeals -- particularly, the matters of the requisite scope of a "full participation" exercise, the propriety of the Licensing Board's examination into the implementability of LILCO's Plan (rather than simply the adequacy of the Plan), and the Licensing Board's construction and interpretation of what constitutes a "fundamental flaw" -- are very much live controversies between the Shoreham parties and must be resolved in order to determine the appropriate manner of review of the June 1988 Shoreham exercise. In fact, this Board has expressed concerns that the failure to resolve LILCO's appeals may render the Commission incapable of completing review of the June 1988 Shoreham exercise -- or, for that matter, any other litigated exercise -- within the two-year period specified in 10 CFR Part 50, Appendix E, § IV.F.1. See Tr. 78-80 (Judge Rosenthal).

C. The Licensing Board's Decisions Should Not Be Vacated Because They Were Relied Upon in the June 1988 Exercise

There is a further practical -- and compelling -- reason why the Licensing Board's partial initial decisions on the February 13 Exercise must not be vacated: the June 1988 exercise was designed to respond to the OL-5 Board's decisions. If those decisions are vacated, the bases for judging the scope of the June 1988 exercise will no longer exist.

The Governments are not yet in possession of all documents relating to preparation for the June 1988 Shoreham exercise. However, documents which have been obtained thus far indicate that FEMA and the NRC appear to have attempted to structure the 1988 exercise to comply with Appendix E's requirements as construed by the OL-5 Licensing Board. Some documents reflecting such consideration are attached to this brief. See Attachments 2-9. While the Governments do not concede that the NRC and FEMA succeeded in structuring the June 1988 exercise to comply with Appendix E, their efforts focus the fact that the OL-5 Licensing Board's prior decisions will be a critical factor in assessing the adequacy of the June 1988 exercise. If those prior decisions are vacated, then an important decisional standard by which to test the adequacy of the June 1988 exercise will have been eliminated. That would make no sense.

Further, it is again the Governments' understanding that the June 1988 exercise was evaluated to test fixes for deficiencies which were identified in the February 1986 Exercise. Without conceding whether LILCO has either corrected those deficiencies or whether FEMA has correctly evaluated the "fixes," the fact nevertheless remains that the OL-5 Licensing Board's prior decisions remain an important standard in evaluating the results of the June 1988 exercise.

D. Dismissal of the LILCO Appeals and  
Vacating the Challenged Partial  
Initial Decisions Would Be Premature

In any event, it would be premature for the Board to vacate the challenged partial initial decisions as moot solely on the basis of the mere conduct of the June 1988 exercise. The February 13, 1986 Exercise results stand as an important fact in this proceeding: even though the Exercise was deficient in scope, LILCO's performance was still so deficient that a "no-reasonable-assurance" finding was required. This fact cannot -- and should not -- be "eliminated" by vacating the OL-5 Licensing Board's decisions. Rather, those are the realities -- the litigated results -- by which the June 1988 exercise must be evaluated.

Thus far, there have been no findings of any kind with respect to the adequacy of the June 1988 exercise. In fact, FEMA has not yet completed its review of this exercise; nor have the Governments had an opportunity to determine whether contentions challenging the exercise results should be filed. Thus, the only definitive results regarding the adequacy of LILCO's Plan and LILCO's capability to implement that Plan are the results from the February, 1986 Exercise: LILCO failed. These results cannot be eliminated by the legal "device" of vacating the OL-5 Licensing Board's decisions. Rather, as long as LILCO seeks to pursue a license for Shoreham -- and unless the OL-5 Licensing

Board's results are reversed or a new exercise provides a basis to disregard the 1986 Exercise's results -- the facts remain as before, and LILCO's Plan and its capabilities to implement that Plan must be judged to be inadequate.

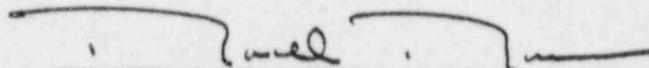
Thus, while no considerations counsel in favor of vacating the OL-5 Licensing Board's partial initial decisions at this stage of the proceeding, compelling circumstances dictate the need to leave in place the only NRC precedents in existence concerning the litigation of a FEMA-graded exercise.

#### IV. Conclusion

Based on the foregoing, the Governments submit that LILCO's appeals should either be decided on the merits or advisory opinions rendered, and accordingly, the challenged partial initial decisions should not be vacated.

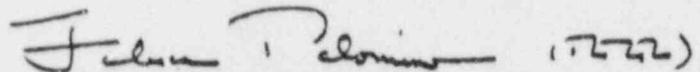
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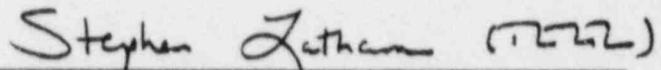
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# UNITED STATES NUCLEAR REGULATORY COMMISSION

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In the Matter of:

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power Station, Unit 1 )

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Docket No. 50-322-OL-5  
(EP Exercise)

LOCATION: Bethesda, Maryland

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1           MR. LANPHER: I want to get back to a couple of  
2 other items that were mentioned this morning, or questioned  
3 this morning. And one is really one of the fundamental  
4 questions, I guess, of Judge Kohl, as to why are we here, is  
5 this moot.

6           Mr. Irwin said that he does not believe that it is  
7 moot. I think that it clearly is calling for an advisory  
8 opinion, because the two year period has expired. I can  
9 understand why LILCO would want guidance, because another  
10 exercise apparently has been or is being scheduled.

11          JUDGE KOHL: Is there anything to prevent us from  
12 providing that guidance?

13          MR. LANPHER: My understanding is that you are not  
14 limited to a strict case or controversy type of limitation in  
15 terms of your jurisdiction.

16          JUDGE ROSENTHAL: That is what we have said on  
17 several prior occasions.

18          MR. LANPHER: That is right. But in terms of whether  
19 this past exercise is going to form the basis for anything, I  
20 think that it is passe right now.

21          JUDGE ROSENTHAL: Does it not trouble you that an  
22 exercise takes place and some two years and several months  
23 thereafter that the question of the scope of that exercise is  
24 still in litigation. There must be some better way of handling  
25 matters such as this than the course that was followed in this

1 instance.

2           It seems to me that if an exercise is good for two  
3 years, to have that exercise still a litigated matter some two  
4 years and two months, or whatever it is, after the exercise  
5 took place does not speak very well for the process.

6           MR. LANPHER: Well, you know, your question is just  
7 too broad to be capable of being answered, Judge Rosenthal.

8           JUDGE ROSENTHAL: Well, I guess that my question is  
9 broad. But if they are broad, they are capable I think of some  
10 answer.

11           JUDGE KOHL: He wants a specific answer to his broad  
12 question.

13           JUDGE ROSENTHAL: You talk about this as all being  
14 sort of water over the dam at this point because another  
15 exercise is scheduled, and I guess that that is right. But it  
16 sort of troubles me. This is the first opportunity that this  
17 Applicant has to had to obtain at least an appellate review on  
18 the question of whether contrary to the view of the Licensing  
19 Board that the scope of this exercise was adequate.

20           MR. LANPHER: And Judge Rosenthal, that is why we did  
21 not move to dismiss the appeal as moot, knowing your prior case  
22 and controversy type of decisions. However, I think that it is  
23 clear that there has to be another exercise before there can be  
24 any licensing. And that is my only point. If you want to go  
25 ahead and decide the case, that is your prerogative.

1           JUDGE ROSENTHAL:  If we did not decide the case and  
2 went forward, then two years from now perhaps the same  
3 questions would be up again, on whether the scope of the coming  
4 exercise was adequate.

5           MR. LANPHER:  Well, you are asking me to speculate.  
6 I cannot say.  My understanding is what whatever FEMA is doing  
7 now in terms of structuring an exercises is somewhat different  
8 in what they did before.

9           JUDGE JOHNSON:  Would you like to estimate the  
10 likelihood that your client will find that the scope of that  
11 second exercise is sufficient?

12          MR. LANPHER:  Not at this point, I certainly would  
13 not.

14          A frequent refrain in both the NRC and LILCO's  
15 pleadings and their arguments here has been that there has been  
16 a consistent practice by FEMA and the NRC staff in conducting  
17 exercises of particular scope.  And that for that reason, that  
18 the OL-5 Licensing Board should have shown great deference to  
19 that scope.

20          Now as a general proposition, we do not argue with  
21 the idea that FEMA's determination as to a scope of an exercise  
22 in the abstract might be due substantial deference.  And I  
23 believe that a footnote in ALAB A-61 where this was touched on  
24 by at least you, Judge Rosenthal, and two other members of the  
25 Board as then constituted goes to that point.



## Federal Emergency Management Agency

Washington, D.C. 20472

MAY 19 1988

MEMORANDUM FOR: Edward A. Thomas, Chief  
Natural and Technological Hazards  
FEMA Region I

FROM: *Richard W. Krimm*  
Richard W. Krimm  
Assistant Associate Director  
Office of Natural and Technological  
Hazards Programs

SUBJECT: Guidance for the Qualifying, Full-Participation  
Exercise at Seabrook (Also Addresses the  
Shoreham Exercise)

This responds to your request of March 15, 1988, on guidance for use in the upcoming Seabrook qualifying, full-participation exercise. This confirms the guidance provided to you in a conference call with Joan Hock, Marshall Sanders and Craig Wingo for the four issues raised. Because of the relevance of this guidance to the Shoreham exercise, our response is applied to both the Seabrook and Shoreham exercises.

Issue 1. With respect to the participating State and local governments (i.e., New Hampshire and Maine), guidance should be developed along the lines of that distributed by memorandum dated March 7, 1988, from Grant Peterson to the Regional Directors for evaluating exercises where State and/or local governments decline to participate.

Response. The same scope of exercise objectives delineated for utility offsite response organizations in the referenced March 7, 1988, memorandum applies to participating State and local governments. As set forth in this memorandum, 35 of the 36 exercise objectives of Guidance Memorandum (GM) EX-3 apply, the only exception being objective 36. Of course, the new objective contained in the "Guidance Memorandum (GM) EX-3 Amendment" does not apply as it pertains only to utility offsite response organizations.

We understand that the State of New Hampshire has agreed to this extent of play in order to be consistent with the extent of play on the Massachusetts side. You should secure this understanding in writing, if you do not have it already. The specific objectives of the 35 that would need to be demonstrated by participating State and local governments are, of course, dependent upon their emergency functions as documented in their emergency response plans and procedures for their respective plume and ingestion exposure pathway roles and responsibilities. The use of the exercise objectives in conjunction with the testing of plume and ingestion measures should be implemented in accordance with the guidance on pages 14, 15 and 16 of GM IN-1 for the Seabrook and Shoreham exercises.

Issue 2. With respect to qualifying exercises involving either participating or non-participating governments, guidance should be developed on how to properly evaluate the availability and training of bus drivers and the availability of buses.

Response. The focus of this issue is pre-exercise evaluation of the availability of buses and training of bus drivers. Such an evaluation can be accomplished by examining the training component of the organization's emergency plans, examining letters of agreements (LOA) for buses and bus drivers and by making telephone calls to LOA providers to confirm capability to provide specified resources. Guidance for determining the extent of exercise demonstration and evaluation for bus drivers and buses (and route guides) is provided in the attachment.

Issue 3. With respect to the evaluation of decontamination and relocation facilities, we believe that procedures for properly choosing the number of decontamination teams and registrars should be developed.

Response. Functions associated with relocation facilities include reception centers for registration and monitoring, decontamination centers and congregate care facilities. These functions may be integrated into the operations of a single facility or may be carried out in physically separate facilities and locations. Guidance for determining the extent of demonstration and evaluation of these functions is provided in the attachment.

Issue 4. Finally, with respect to the New Hampshire portion of the exercise, a decision must be made as to whether correction of the deficiencies and ARCA's identified in the February 1986 exercise should be an objective of the next Seabrook exercise.

Response. All identified deficiencies from previous Seabrook and Shoreham exercises should have already been corrected prior to the upcoming exercises. If they have not, they should be demonstrated during these exercises. Likewise, any ARCA's from the 1986 exercises that have not been corrected should be redemonstrated, and if plan corrections are required, they too should be demonstrated at the upcoming exercises.

Any questions about this memorandum should be referred to Vern Wingert at 646-2872.

Attachment

cc: All Regional ONTH Chiefs

May 9, 1988

GUIDANCE FOR DETERMINING THE EXTENT OF DEMONSTRATION AND EVALUATION  
REQUIRED FOR QUALIFYING, FULL-PARTICIPATION EXERCISES

The following guidance is provided for determining the extent of demonstration and evaluation required for all organizations, facilities and field activities in exercises. An objective of this guidance is to provide a framework for ascertaining the level of exercise demonstration that is "reasonably achievable" in order to assure an adequate demonstration of organizational planning and preparedness. This guidance is applicable to only qualifying, full-participation exercises. Guidelines are provided below for making the determination of the extent of exercise demonstration and evaluation.

1. Because of the site-specific nature of organizational planning and preparedness, decisions on the extent of offsite demonstration and evaluation of exercise functions and activities should be made by FEMA Regional staff in consultation with FEMA Headquarters.
2. For exercise demonstration and evaluation purposes, the extent of activation and staffing for all types of facilities, field teams (e.g., radiological monitoring) and field activities (e.g., traffic control) should be determined on the basis of a representative number of facilities, staff and functions. A representative number may vary from 100% to a portion of the total activity. The basis for determining a representative number is the documentation of organizational planning and preparedness, the type and level of participation required by scenario events and other relevant factors such as Federal evaluator resources.
3. The type and extent of additional documentation required to support limited demonstrations of exercise activities and functions may be addressed through such means as providing rosters of trained personnel and inventories of available equipment and instruments.

This guidance supersedes that contained in one part of section 3 of the attached January 5, 1988, guidance on "Radiological Monitoring" as follows: "At least one monitor with a survey instrument should be present at each activated reception center to demonstrate his/her monitoring capability."



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

ATTACHMENT 3

May 20, 1988

MEMORANDUM FOR: Richard W. Kriem  
Assistant Associate Director  
Office of Natural and Technological  
Hazards Programs  
Federal Emergency Management Agency

FROM: Frank J. Congel, Director  
Division of Radiation Protection  
and Emergency Preparedness  
Office of Nuclear Reactor Regulation

SUBJECT: OBJECTIVES FOR THE SHOREHAM EXERCISE

This responds to your May 13, 1988 memo requesting guidance concerning the proposed objectives for the upcoming Shoreham emergency preparedness exercise. We agree that the proposed objectives are sufficient to demonstrate the capabilities of the Long Island Lighting Company Local Emergency Response Organization (LERO) in a full-participation exercise. Specifically, we believe that these objectives are sufficient to constitute a "qualifying" exercise under 10 CFR Part 50, Appendix E, Section IV.F.1 in that it should test as much of the emergency plans as is reasonably achievable without mandatory public participation.

Regarding the deletion of Objective 22 (FEMA Guidance Memorandum EX-3) because of the non-participation of the American Red Cross, we believe that this is appropriate. In a May 11, 1988 letter from Edwin Reis, Deputy Assistant General Counsel, NRC to William R. Cuming, Esq., Office of General Counsel, FEMA, we stated that the Commission had previously found that the American Red Cross charter from Congress and its national policy require it to provide aid in "any radiological or natural disaster," whether or not there are letters of agreement in connection with a particular emergency plan. We will support the position that the American Red Cross responds to natural and technological disasters as a routine and that it is not necessary to demonstrate this capability in a radiological emergency preparedness exercise if they decline to participate. In this case we believe it is not reasonably achievable to gain their participation in the Shoreham exercise.

CONTACT:  
Edward M. Podolak, Jr., RRR  
462-3167

If you have any questions or comments, please call me at 492-1088. We appreciate the intensive efforts of FEMA Region II, the Regional Assistance Committee, and FEMA Headquarters in preparing for the Shoreham exercise.

*Frank J. Congel*

Frank J. Congel, Director  
Division of Radiation Protection  
and Emergency Preparedness  
Office of Nuclear Reactor Regulation



## Federal Emergency Management Agency

Washington, D.C. 20472

MAY 23 1990

MEMORANDUM FOR: Ihor W. Husar, Chairman,  
Regional Assistance Committee  
FEMA Region II

FROM: *Richard W. Krimm*  
Richard W. Krimm  
Assistant Associate Director  
Office of Natural and Technological Hazards Programs

SUBJECT: Objectives For The Shoreham Exercise

On May 5, 1988, you forwarded to me a set of objectives for the upcoming Shoreham exercise. You also requested that they be submitted to the Nuclear Regulatory Commission (NRC) for a determination on whether these objectives are sufficient to constitute a qualifying exercise under NRC regulations. We submitted the objectives to NRC on May 13, 1988.

Attached is NRC's May 20, 1988 response to our memorandum. NRC staff believes that the objectives are sufficient to constitute a qualifying exercise under 10 CFR Part 50, Appendix E, Section IV.F.1 in that it should test as much of the emergency plans as is reasonably achievable without mandatory public participation.

We also consulted with the NRC staff on an acceptable approach to demonstrations under Objective 2C, in light of the fact that the American Red Cross will not participate in the Shoreham exercise. The NRC staff believes that it would be acceptable to delete the objective, for the reasons set forth in their memorandum. We also accept NRC's position on that issue.

If you have any additional questions, please feel free to call me at 646-2871.

Attachment  
As Stated



## Federal Emergency Management Agency

Washington, D.C. 20472

May 25, 1988

MEMORANDUM FOR: Richard S. Krimm  
Assistant Associate Director  
Office of Natural and Technological  
Hazards Division

FROM: *for* George Watson *like this*  
Acting General Counsel

SUBJECT: New York School Districts

Your memorandum of May 2, 1988, asked whether school districts in New York are governmental entities, units of local government, or units of State government.

We conclude that school districts in New York are governmental entities, but are not units of the State government. The primary basis for this conclusion is a December 30, 1980, Opinion of the New York Attorney General, 1980 Op. Atty. Gen. N.Y. 19 (copy of relevant pages attached). That opinion stated in pertinent part that "Although Article 2-B (of the New York Executive Law) does not define a political subdivision, we believe that a school district is a political subdivision (of New York)...." By definition, if a school district in New York is a political subdivision of the State, it is not a unit of the State government.

In addition, the attached May 11, 1988, letter to Bill Cumming from Edwin J. Reis, the NRC's Deputy Assistant General Counsel, indicates that the NRC believes the school districts are governmental organizations.

Enclosures

cc: Bill Cumming

4TH CASE of Level 1 printed in FULL format.

OFFICE OF THE ATTORNEY GENERAL OF NEW YORK

1980 Op. Atty Gen. N.Y. 19

December 30, 1980

SYLLABUS:

EXECUTIVE LAW, Art 2-B, §§ 20-29-b; PUBLIC HEALTH LAW, § 201(1).

The chief executive of a local government may declare a state of emergency with respect to state-owned property in his locality. He is also authorized to use school buses to cope with a disaster as long as the school district agrees.

Section 201(1) of the Public Health Law gives neither the State Health Commissioner nor the County Health Commissioner sole legal responsibility to initiate action at the county level during a nuclear disaster.

OPINION:

Hon. Vito J. Castellano  
Major General  
Chief of Staff to the Governor  
State of New York  
Division of Military and Naval Affairs

You have asked whether the chief executive of a county, city, town or village may, pursuant to section 24 of the Executive Law, "State and Local Natural and Man-Made Disaster Preparedness", proclaim a local state of emergency in the event of disaster, rioting, catastrophe or similar public emergency in regard to a State university facility or other State-owned property that is within the territorial limits of the local government.

Section 24(1) of the Executive Law provides in pertinent part:

"[I]n the event of a disaster, rioting catastrophe, or similar public emergency within the territorial limits of any county, city, town or village, or in the event of reasonable apprehension of immediate danger thereof, and upon a finding by the chief executive thereof that the public safety is imperiled thereby, such chief executive may proclaim a local state of emergency within any part or all of the territorial limits of such local government." (Emphasis added.)

The section makes no distinction with regard to the ownership of property. As long as the property is within the territorial limits of the locality and the other requirements of section 24(1) are met, the local chief executive may declare a state of emergency with respect to State-owned property, including a State university facility in his locality.

You also ask whether and under what circumstances the chief executive of a political subdivision is authorized, pursuant to section 25 of Article 2-B, to utilize school buses in order to cope with a disaster or resulting emergency.

Section 25 (3) provides that a chief executive may request and accept assistance from any other political subdivision and may utilize any real or

**LEXIS NEXIS LEXIS NEXIS**

December 30, 1980

personal property or personnel on such terms and conditions as may be mutually agreed to by the chief executives of the requesting and assisting political subdivisions. Section 25(4) provides that upon receipt of a request for assistance, the chief executive of any political subdivision may give, lend or lease any services, equipment, facilities, supplies or other resources of his political subdivision on such terms as he may deem necessary to promote the public welfare and protect the interests of his political subdivision. The chief executive may lease or lend property or transfer personnel only for the purpose of assisting a political subdivision in emergency relief, reconstruction or rehabilitation made necessary by the disaster.

Although Article 2-B does not define a political subdivisions, we believe that a school district is a political subdivision entitled to offer assistance pursuant to section 25. There is no uniform definition of a political subdivision in New York State (1977 Op Atty Gen 233, 234). The term is not defined in the General Construction Law (id. ). However, a school district is often considered to be a political subdivision. (See, e.g., section 100(1) of the General Municipal Law.) Moreover, prior provisions which were repealed by Article 2-B defined a political subdivision to include a school district. Section 10 of the Executive Law and sections 60 and 209-o of the General Municipal Law, which were repealed by Article 2-B, included school districts within the definition of a political subdivision. It is unlikely that the Legislature, by omitting a definition of political subdivision from Article 2-B, intended to exclude school districts from participating in disaster planning and relief.

If a school district is a political subdivision within the meaning of section 25(3), a chief executive may request and accept property or personnel on such terms and conditions as may be mutually agreed to by the chief executive and the school district. Therefore, a chief executive may, in order to cope with a disaster or a resulting emergency, utilize school buses owned by a school district if the school district agrees.

Finally, you have asked whether the Public Health Law, § 201(1) gives either the County or State Health Commissioner legal responsibility and authority to initiate action at a county and/or multicounty level in case of a nuclear incident that results in a disaster covered by sections 24 and 28 of the Executive Law.

Section 201(1) of the Public Health Law enumerates the functions, powers and duties of the New York State Department of Health. Under section 201, the State Department of Health is responsible for the public health aspects of ionizing radiation. In the event of a nuclear disaster, the State Department of Health is required to respond appropriately. However, section 201 does not give the State exclusive jurisdiction to respond to nuclear disasters.

Article 2-B is predicated on the principle that local governments are the first line of defense in the event of a disaster. It is permissible, under Article 2-B, for either the County or the State Health Commissioner to initiate action at a county level in the event of a nuclear disaster. It is quite possible that local health departments would be the first to respond to a nuclear incident in the affected locality. This is permissible under Article 2-B of the Executive Law and section 201 of the Public Health Law.

**LEXIS NEXIS LEXIS NEXIS**



# Federal Emergency Management Agency

Washington, D.C. 20472

MAY 2 - 1988

MEMORANDUM FOR: George W. Watson  
Associate General Counsel  
Office of General Counsel

FROM: *Richard W. Krimm*  
Richard W. Krimm  
Assistant Associate Director  
Office of Natural and Technological  
Hazards Division

SUBJECT: Legal Question

The question has been raised by FEMA Region II on the "governmental status" of school districts in the State of New York. Are school districts independent governmental entities, units of local government or units of the State government? Because of the possible impact of this issue to the Shoreham exercise, your immediate attention to this is greatly appreciated.

*Rec'd  
OBC  
4/3/88  
WRC*



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

May 26, 1988

MEMORANDUM FOR: Richard W. Krimm  
Assistant Associate Director  
Office of Natural and Technological  
Hazards Programs  
Federal Emergency Management Agency

FROM: Frank J. Congel, Director  
Division of Radiation Protection  
and Emergency Preparedness  
Office of Nuclear Reactor Regulation

SUBJECT: OBJECTIVES FOR THE SHOREHAM EXERCISE

This documents a telephone conversation with your staff on May 25, 1988:

1. We have reviewed the May 25, 1988 memorandum from the Appeal Board regarding the scope of the February 1986 emergency preparedness exercise at Shoreham.
2. The view expressed in my May 20, 1988 memorandum to you regarding the completeness of the present objectives for the June 1988 Shoreham exercise has not changed; i.e., we believe that these objectives constitute a "qualifying" exercise under 10 CFR Part 50, Appendix E, Section IV.F.1.
3. The view expressed by NRC in the May 3, 1988 meeting in your office regarding the handling of the State of Connecticut's non-participation has not changed; i.e., their participation is not reasonably achievable and the use of a control cell is appropriate.

I believe that the Licensing Board's memorandum supports the NRC and FEMA judgement that the Shoreham exercise test as much of the emergency plans as is reasonably achievable. If you have any questions please call me at 492-1088.

A handwritten signature in dark ink, appearing to read "Frank J. Congel".

Frank J. Congel, Director  
Division of Radiation Protection  
and Emergency Preparedness  
Office of Nuclear Reactor Regulation

CONTACT:  
Edward M. Podolak, Jr., NRR  
492-3167

January 14, 1988

SHOREHAM STATUS

RECEIVED  
FEDERAL REGION II  
19 JAN 15 1988

I. Current NRC Posture of Licensing (Note that plant currently has Low-Power license (1984)):

A. Federal Courts:

1. Challenge to NRC utility rule (Certification of the record due by January 25, 1988. Briefing schedule to follow as established by United States Court of Appeals for the First Circuit (normally 30 days for appellant (Intervenors) followed by 30 days for appellee (NRC)).

B. State Courts:

1. Lilco's appeal to the highest court in New York State of adverse decision on whether corporations can exercise, even on a delegated basis, state police power authority.

2. State Court challenge as to whether Lilco's designation of three of its own facilities as reception centers violates state and local zoning laws.

C. Full Commission:

1. Whether doctrine of federal preemption empowers Lilco to surmount absence of state and local participation. This issue was specifically reserved for decision by the Commission in CLI-86-13, July 1986. (In my judgement, the Commission will not reach a decision on this issue unless the new rule is struck down by the federal courts.)

D. Appeal Board:

1. Appeal of December 7, 1986, Order of the OL-5 Board ruling that the February 13, 1986, exercise evaluated by FEMA did not qualify under NRC regulations as the full power prerequisite exercise.

E. OL-5 Board:

1. Awaiting Concluding Initial Decision on February 13, 1986, exercise. (Essentially, this decision will define what "reasonable assurance" means to NRC and whether the exercise demonstrated that the Lilco emergency plan is "fundamentally flawed." The hearing closed on June 19, 1987, and the decision could appear at any time.

F. OL-3 Board:

1. Awaiting Initial Decision on whether Lilco's three reception centers are adequate for planning purposes. the hearing on this issue closed on July 29, 1987, but entry of an opinion was delayed by appointment of a new NRC Chief Judge in December due to the resignation from the Board for health reasons of the former Chief Judge.

2. Lilco on December 18, 1987, filed eight separate motions for summary disposition with the OL-3 Board. The filing exceeded over 550 pages. Unless extended, the Intervenor's response is due January 11, 1988. The NRC staff response is due ten days later.

3. On December 21, 1987, the OL-3 Board ruled adversely to Lilco on its motion for summary disposition of the so-called WALK radio contention. In doing so the Board gave Intervenor's 20 days to file new contentions on this issue which concerns the EBS systems integration into Lilco's emergency response plan.

4. The Board still has before it the Lilco request to go to 25% power filed originally with the full Commission in February 1987 and remanded to the Board. On January 7, 1988, the ASLB ordered staff to proceed with review of the 25% power request, but also allowed Intervenor's to be given a hearing on the relationship of all open Shoreham contentions to the 25% power request.

5. The Board on December 30, 1987 denied a motion by Lilco to dispose on summary disposition the remanded issue of whether the bus drivers utilized in Lilco's newly submitted (to NRC) plan for a single wave evacuation are subject to "Role Conflict". The Board allowed 30 days for discovery prior to a formal hearing on the issue.

II. Current FEMA posture on Licensing:

A. Plan Review. FEMA has reviewed eight versions of the Lilco plan. Revision 9 is expected to be sent to NRC and non to FEMA within the next 30 days. In the most recent plan review FEMA found fifteen (15) Inadequacies, not including any related to the EBS system. These were reserved for future review.

B. Exercise evaluation: FEMA found a total of five "deficiencies" in the Lilco plan based on the February 13, 1986, exercise. Later one of these deficiencies was corrected to the satisfaction of FEMA based on a Lilco post-exercise submission. FEMA has stated that a new exercise or other appropriate remediation will be required prior to giving reasonable assurance.

C. Federal and State Courts: FEMA is not currently involved in any litigation in federal or state courts on the Shoreham Nuclear Power Station.

D. NRC Appeal Board: FEMA has been given the opportunity if it so wishes to file an amicus brief by the Appeal Board in its December 23, 1987, order denying expedited consideration or certification to the Commission of the December 7, 1987, OL-5 order on the exercise. (Note that under NRC regulations and the FEMA/NRC MOU FEMA has no rights in the NRC adjudicatory process except by leave of the Boards.)

## SEABROOK STATUS

I. Current NRC Posture of Licensing (Note that Seabrook does not presently have a low-power license):

A. Federal Courts:

1. Challenge to NRC utility rule (Certification of the record due by January 25, 1988. Briefing schedule to follow as established by United States Court of Appeals for the First Circuit (normally 30 days for appellant (Intervenors) followed by 30 days for appellee (NRC)).

2. Intervenors are considering filing suit to prevent licensing based on NRC noncompliance with National Environmental Policy Act. (This suit is in the wings awaiting the granting of a low power license in my judgment).

B. State Courts:

1. The applicants have sought review by the the highest court in New Hampshire of the decision upholding the right of several New Hampshire towns to remove sirens, thereby disabling the ANS. (As noted below, the applicant has already submitted to NRC for approval an airborne alerting system.)

C. Full Commission:

1. Intervenors have appealed ALAB-879 to the Commission. The Appeal Board order concerned the principle issue of a failed siren test and the impact of that failure on a low-power license.

2. The time for the full Commission to review ALAB-875 expired on January 11, 1988 making the decision effective as final agency action for purposes of judicial review on December 30, 1987.

1. The Appeal Board has requested briefs (Briefs to be completed by January 8, 1988) on the issue of whether the removal of sirens in Newburyport, Massachusetts, should cause the record to reopened, including the filing of new contentions by the Commonwealth of Massachusetts. This is labeled an onsite issue.

2. For a second time, on January 8, 1988, the Appeal Board in ALAB-882 has remanded to the Licensing Board for decision the issue of whether certain coaxial cables meet NRC standards. The Appeal Board overturned a prior Licensing Board decision on this issue once before (ALAB-875), and the Appeal Board has prohibited the Licensing Board from granting a Low-Power license without first allowing a ten-day period for appeals back to the Appeal Board on this issue.

3. The Appeal Board heard oral argument on December 8, 1987, as to whether despite the NRC's rule restricting their authority to review financial responsibility of applicants (Based on other state or federal regulation), the stated potential insolvency of the applicant before the SEC should prohibit NRC from conducting further licensing activities on Seabrook.

4. The Commonwealth of Massachusetts moved the Appeal Board on January 7, 1988, to admit a late-filed contention and reopen the record in light of the fact that all sirens in the Massachusetts portion of the EPZ have been ordered removed by the Towns of Amesbury, Meerimac, Newbury and Salisbury, and PSMH has lost its attempt to stay that removal in both the Federal District Court and the United States Court of Appeals for the First Circuit (Public Service Co. of New Hampshire v. Town of West Newbury, \_\_\_\_\_ F. 2d \_\_\_\_\_ (No. 87-1395) (1st Cir. December 16, 1987)).

E. Licensing Board:

1. The Licensing Board presently is awaiting briefs on the Coaxial Cable issue. This is an onsite issue.

2. The Licensing Board is presently conducting hearings on the New Hampshire emergency plan. The Hearings resume January 11, 1988.

II. Current FEMA posture on Licensing:

A. Exercise Evaluation: FEMA evaluated an exercise in February 1986 and found 58 deficiencies. The plan exercised has been substantially superceded. FEMA has taken no position on the need for a further exercise except to state in the FEMA/NRC/Applicant public meeting on December 22, 1987, that scheduling of an exercise must await further plan review.

B. Plan Evaluation: FEMA has evaluated the New Hampshire plan and did not give a finding of "reasonable assurance". That plan is currently in hearing. The Massachusetts Utility plan will undergo plan review beginning January 4, 1988, per statement of Richard Krimm in FEMA/NRC/Applicant public meeting on December 22, 1987.

(It should be noted that FEMA in internal documents has adopted the policy that the next exercise must include both the New Hampshire and Massachusetts portions of the EPZ. The December 7, 1987, ruling of the Shoreham OL-5 Board requires implementation of Ingestion Pathway protective actions by the plume exposure states which would include Maine and Massachusetts.)

C. Federal and State Courts: FEMA is not currently involved in any litigation in federal or state courts on the Seabrook Nuclear Station.

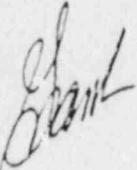


## Federal Emergency Management Agency

Washington, D.C. 20472

MAR 7 1988

MEMORANDUM FOR: Regional Directors  
Acting Regional Director

FROM:  Grant C. Peterson  
Associate Director  
State and Local Programs and Support

SUBJECT: Guidelines for Regions to Use In Implementing  
NUREG-0654/FEMA-REP-1, Rev. 1, Supplement 1  
With Qualifying Exercises

The attached guidelines are provided for comment and interim use in preparing for and evaluating qualifying exercises where State and/or local governments decline to participate in emergency planning and exercises. They are in the form of an Amendment to Guidance Memorandum EX-3, issued February 26, 1988. This guidance should be used in conjunction with NUREG-0654/FEMA-REP-1, Revision 1, Supplement 1.

The existing modular format should continue to be used in conjunction with the evaluation criteria of Supplement 1 until the modular format is revised by Headquarters to incorporate the use of Supplement 1 and this amendment.

This guidance has been developed jointly with Nuclear Regulatory Commission staff and has been approved by Mr. Thomas E. Murley, Director, Office of Nuclear Reactor Regulation.

Comments should be provided to FEMA Headquarters, attention Technological Hazards Division, by March 31, 1988. Any questions concerning this matter should be addressed to Vern Wingert at 646-2872.

Attachment

cc: Thomas E. Murley, Director, Office of Nuclear Reactor Regulation,  
Nuclear Regulatory Commission



# Federal Emergency Management Agency

Washington, D.C. 20472

MAR 7 1988

Attachment

## Guidance Memorandum (GM) EX-3 Amendment

### Purpose

1. This document amends the guidance in GM EX-3 to accommodate the testing of utility offsite plans in qualifying exercises. This amendment addresses the application of exercise objectives of GM EX-3 to exercises in which State and/or local governments decline to participate with the utility. It also specifically delineates what constitutes an adequate demonstration of those exercise objectives pertaining to functions for which utilities are dependent upon State and/or local governments for legal authority to carry out their emergency responsibilities.
2. This amendment will assist evaluators in determining the knowledge and capability of the utility offsite response organization personnel to advise and assist State and local officials in implementing those portions of the offsite plan where State and local response is identified.
3. This amendment is intended to facilitate the implementation of the Nuclear Regulatory Commission (NRC) regulation, 10 CFR Part 50.47(c)(1) and 10 CFR Part 50, Appendix E, Section IV.F., dated November 3, 1987, (52 FR 42078) and the planning standards and evaluation criteria in NUREG-0654/FEMA-REP-1, Revision 1, Supplement 1.\*

### Guidance

1. The nature of the qualifying exercise is stated in 10 CFR 50, App.E.IV. F.(1): "A full participation exercise which tests as much of the licensee, State and local emergency plans as is reasonably achievable without mandatory public participation shall be conducted for each site at which a power reactor is located for which the first operating license for that site is issued after July 13, 1982. This exercise shall be conducted within two years before the issuance of the first operating license for full power (one authorizing operation above 5% of rated power) of the first reactor, and shall include participation by each State and local government within the plume exposure pathway EPZ and each State within the ingestion exposure pathway EPZ..."
2. The amended NRC regulation in 10 CFR Part 50, Appendix E, Section IV.F.6. provides that: "The participation of State and local governments in an emergency planning exercise is not required to the extent that the

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\* The guidance herein may be amended as the law develops and requirements or the evaluation criteria are changed or modified.

applicant has identified those governments as refusing to participate further in emergency planning activities pursuant to 10 CFR 50.47(c)(1). In such cases, an exercise shall be held with the applicant or licensee and such governmental entities as elect to participate in the emergency planning process."

- All qualifying exercises should have ingestion pathway demonstration including the activation and operation of emergency operation facilities, field team functions (e.g., sampling and laboratory analysis) and the dissemination of agriculturally-related information and instructions. It may be necessary to have a separate scenario to drive sufficient ingestion pathway exercise play.
  - "The offsite response organization shall attempt to involve the non-participating State and local government in the exercises and drills, but their participation is not required." (Supplement 1, evaluation criterion N.6.) This provision also applies to ingestion-only exposure pathway states.
3. Since the purpose of this qualifying exercise is to test as much of the emergency plans and preparedness as is reasonably achievable, without State and/or local participation, under Supplement 1, the utility should demonstrate a total of 36 exercise objectives. This consists of 35 of the 36 existing exercise objectives in GM EX-3, plus an additional objective that incorporates evaluation criteria of Supplement 1.
- Objective 36, unannounced and off-hours exercises and drills, does not apply to a qualifying exercise.
  - While implementation guidance in GM EX-3 permits State and local governments to delay demonstration of exercise objective 9 until calendar year 1989, it is necessary for utility offsite response organizations to test this objective for qualifying exercises held in calendar year 1988. Objective 9 states, "Demonstrate the ability to obtain samples of particulate activity in the airborne plume and promptly perform laboratory analyses." (I.10.)
  - The following is a new exercise objective that parallels the Supplement 1 guidance. This objective is as follows: "Demonstrate the capability of utility offsite response organization personnel to interface with non-participating State and local governments through their mobilization and provision of advice and assistance." (N.1.b., E.6. and C.5.)
4. The following is a subset of the 36 exercise objectives in GM EX-3 that may be legal authority-sensitive and which should be demonstrated in qualifying exercises. They may be authority-sensitive because some aspect of their implementation in an actual radiological emergency

may be dependent upon the authority of the non-participating State and local governments. Thus, the demonstration of these objectives in an exercise could be dependent upon how authority-related issues are addressed in the utility offsite response organization plan. (See item 6 below.) Depending upon the provisions of the plan, demonstration of these objectives might be limited to the offsite response organization providing advice and assistance to controllers and evaluators who will afford appropriate opportunities for the players to demonstrate their knowledge and interface capabilities.

- a. Objective 11. Plume Protective Action Decisionmaking (J.10.m.);
  - b. Objectives 12, 13, 14 and 15. Alert, Notification and Emergency Information (E.5., E.6. and J.10.c.);
  - c. Objectives 16, 17. Use of KI (J.10.e.f.);
  - d. Objectives 18, 19. Implementation of Protective Actions (J.9., J.10.d.g.);
  - e. Objective 20. Traffic Control (J.10.j.k.);
  - f. Objectives 21, 22. Registration, Monitoring, Decontamination and Congregate Care (J.10.h., J.12.);
  - i. Objectives 23, 24. Medical Services (Transportation and Facilities) (L.1, L.4.);
  - j. Objective 25. Decontamination (K.5.a.b.);
  - k. Objective 26. Supplementary Assistance (Federal/Other) (C.1.a.b.);
  - l. Objective 30. Ingestion Exposure Pathway (J.9., J.11) and
  - m. Objectives 32, 33. Recovery, Reentry and Relocation (M.1.).
5. The scope of the demonstration of the exercise objectives should include emergency personnel, facilities and resources required by the scenario and exercise play, keeping in mind that the purpose of the qualifying exercise is to test as much of the emergency plans and preparedness as is reasonably achievable, without State and/or local participation. The degree of demonstration of individual exercise objectives should test the workability of that aspect of the plan. For example, it will be only necessary to activate those relocation centers that are dictated by the scenario and exercise play and, therefore, not necessarily all other relocation centers.

6. The demonstration and evaluation of the objectives should follow the specific provisions of the plan being tested. For example, the activation and deployment of utility offsite response organization personnel should be performed at the emergency classification level designated in the plan. If the plan requires the utility offsite response organization to secure legal authority to carry out necessary functions, they should follow the procedures contained in the plan that would be used in the event of an emergency. Actions in an exercise simulating the securing of appropriate legal authority may include the following: A simulation of the general deputization of utility offsite response organization personnel, a simulation of the ad hoc securing of authority on a case-by-case basis or a simulation of the direct assumption of responsibility by State and local governments.
7. Consistent with the guidance in Supp. 1, evaluation criteria N.1.b., "An exercise shall include mobilization of offsite response organization resources adequate to verify the capability to respond to an accident scenario requiring response. This includes the demonstration of offsite response organization capabilities to interface with non-participating State and local government, but does not include the use of stand-ins for the anticipated State and local response."
8. FEMA will evaluate the timeliness, completeness and effectiveness of interfaces between utility offsite response organization personnel through interactive communications and exchanges with controllers and evaluators. While the controllers will not function as stand-ins, they will provide appropriate opportunities for the players to demonstrate the knowledge and interface capabilities of utility offsite response organization personnel. The utility offsite response organization personnel in facilities will be expected to make telephone calls and forward information to control cells. For utility offsite response organization personnel in the field, evaluators will use directed questions to determine their ability to carry out their interface capabilities. Thus, FEMA will use information secured by both exercise controllers and evaluators to assess the utility offsite response organization's interface and liaison capabilities.
9. This guidance has been jointly developed by the Nuclear Regulatory Commission (NRC) and the Federal Emergency Management Agency staff and has been approved by the Director of the NRC Office of Nuclear Reactor Regulation.



# Federal Emergency Management Agency

Washington, D.C. 20472

MAY 13 1988

MEMORANDUM FOR: Frank J. Congel  
Director, Division of Radiation Protection and  
Emergency Preparedness  
Office of Nuclear Reactor Regulation  
Nuclear Regulatory Commission

FROM: *Richard W. Krimm*  
Richard W. Krimm  
Assistant Associate Director  
Office of Natural and Technological Hazards Programs

SUBJECT: Objectives For The Shoreham Exercise

On February 8, 1988, the Nuclear Regulatory Commission (NRC) requested that the Federal Emergency Management Agency (FEMA) conduct a full-participation exercise of Long Island Lighting Company's (LILCO) offsite preparedness plan for the Shoreham Nuclear Power Station.

Attached are the proposed objectives for the Shoreham exercise now scheduled for June 7-9, 1988. They have been reviewed by FEMA Region II, the Regional Assistance Committee, and FEMA Headquarters. Of the objectives identified in FEMA Guidance Memorandum EX-3 and its March 7, 1988 Amendment, all objectives, except as noted below are proposed for demonstration, as shown in the attachment to this memorandum. The exceptions are:

Objective 17 - This is consistent with New York State Public Health Law, New York State Radiological Emergency Preparedness practices and the Shoreham Radiological Emergency Response Plan, in that the distribution and administration of potassium iodide to the general public is not a protective action option in the State of New York.

Objective 36 - This is consistent with the Amendment to Guidance Memorandum EX-3 which states that an off-hours unannounced exercise is not a requirement for a qualifying exercise.

Objective 22 - The approach to demonstrations associated with this objective is now under discussion between FEMA and NRC staff, due to the non-participation of the American Red Cross in the upcoming Shoreham exercise. We request your written advice as soon as possible on how the utility should handle these demonstrations so that we can make appropriate arrangements for their evaluation.

It is our position that the proposed objectives are sufficient to demonstrate the capabilities of the Long Island Lighting Company Local Emergency Response Organization in a full-participation exercise. We hereby request NRC to inform us as soon as possible whether these objectives are sufficient to constitute a qualifying exercise under NRC's regulations and give us specific advice on Objective 22.

If you have any questions or comments, please feel free to call me at 646-2871.

Attachment  
As Stated



# Federal Emergency Management Agency

Region II      26 Federal Plaza      New York, New York 10278

May 5, 1988

MEMORANDUM FOR: Richard W. Krimm  
Assistant Associate Director  
Natural and Technological Hazards Programs

*Ihor W. Husar*

FROM: Ihor W. Husar, Chairman  
Regional Assistance Committee

SUBJECT: Objectives for Shoreham Exercise

The proposed exercise objectives for the June 7-9, 1988 Shoreham exercise have been reviewed by FEMA Region II, and the RAC members. Of the 36 objectives identified within EX-3, and the required objective for qualifying exercises described in NUREG 0654/FEMA-REP-1, Rev. 1, Supplement 1, the Long Island Lighting Company has submitted its intent to test 34 objectives during the June exercise. The only three objectives which will not be demonstrated are:

Objective 17 - This is consistent with New York State Public Health Law, New York State Radiological Emergency Preparedness practices and the Shoreham Radiological Emergency Response Plan, that the distribution and administration of potassium iodide to the general public is not an acceptable protective action.

Objective 22 - This objective will not be demonstrated due to the refusal of the American Red Cross refusal to participate in the upcoming Shoreham exercise.

Objective 36 - This is consistent with Guidance Memorandum EX-3 which states that an off-hours unannounced exercise is not a requirement for a qualifying exercise.

Our review indicates that the 34 objectives submitted are sufficient to amply demonstrate the capabilities of LILCO. It is our request that these off-site objectives be submitted to the Nuclear Regulatory Commission for determination for "qualifying exercise" under NRC rules.

Attachment



# Federal Emergency Management Agency

Region II

26 Federal Plaza

New York, New York 10278

May 4, 1988

Mr. Douglas M. Crocker, Manager  
Nuclear Emergency Preparedness  
Long Island Lighting Company  
Central Islip, N.Y. 11722

Dear Mr. Crocker:

As a result of your April 29th meeting with Gary Seidenfeld and your concurrence, we have reformatted your revised objectives which you submitted in your correspondence of April 19, 1988 to coincide with the language of the objectives specified within EX-3, dated February 26, 1988. The attached objectives have been divided into two components (plume pathway, and ingestion pathway) for the scheduled June 7-9, 1988 exercise. Objectives have been further identified within each location which will be activated for the exercise.

Per your request, the following changes have been incorporated into the attached objectives:

The demonstration of objective 7 has been added to the Brookhaven Area Office location.

The demonstration of objective 22 is being removed. This is the result of the American Red Cross refusal to participate in the upcoming Shoreham exercise.

FEMA objectives 17 and 36 are the only objectives which will not be demonstrated during the exercise. The justification for this is as follows:

Objective 17 - This is consistent with New York State Public Health Law, New York State Radiological Emergency Preparedness practices and the Shoreham Radiological Emergency Response Plan, that the distribution and administration of potassium iodide to the general public is not an acceptable protective action.

Objective 36 - This is consistent with Guidance Memorandum EX-3 which states that an off-hours unannounced exercise is not a requirement for a qualifying exercise.

I wish to confirm your intent to incorporate all of the sub-objectives identified within your revised submission into the exercise "extent of play" and they will be evaluated by FEMA during the upcoming exercise. Additionally, I wish to assure you that FEMA evaluators will verify the status of all previous deficiencies, and areas requiring corrective action during the Shoreham exercise.

I will be requesting to FEMA Headquarters that the attached objectives be forward to the Nuclear Regulatory Commission for determination for "qualifying exercise" under NRC rules.

Your cooperation throughout the plan review and exercise process has been greatly appreciated

Sincerely,

*Gary Seidenfeld*  
for Thor W. Husar  
Chairman, Regional  
Assistance Committee

I. PLUME PATHWAY OBJECTIVES

A. LERO EMERGENCY OPERATIONS CENTER (EOC)

1. OBJECTIVE 1: Demonstrate the ability to monitor, understand and use emergency classification levels (ECL) through the appropriate implementation of emergency functions and activities corresponding to ECL's as required by the scenario. The four ECL's are Notification of unusual event, alert, site area emergency and general emergency.
2. OBJECTIVE 2: Demonstrate the ability to fully alert, mobilize and activate personnel for both facility and field-based emergency functions.
3. OBJECTIVE 3: Demonstrate the ability to direct, coordinate and control emergency activities.
4. OBJECTIVE 4: Demonstrate the ability to communicate with all appropriate locations, organizations and field personnel.
5. OBJECTIVE 5: Demonstrate the adequacy of facilities, equipment, displays and other materials to support emergency operations.
6. OBJECTIVE 7: Demonstrate the appropriate equipment and procedures for determining field radiation measurements.
7. OBJECTIVE 9: Demonstrate the ability to obtain samples of particulate activity in the airborne plume and promptly perform laboratory analyses.
8. OBJECTIVE 10: Demonstrate the ability, within the plume exposure pathway, to project dosage to the public via plume exposure, based on plant and field data.
9. OBJECTIVE 11: Demonstrate the ability to make appropriate protective actions decisions, based on projected or actual dosage, EPA PAC's, availability of adequate shelter, evacuation time estimates and other relevant factors.
10. OBJECTIVE 12: Demonstrate the ability to initially alert the public within the 10-mile EPZ and begin dissemination of an instructional message within 15 minutes of a decision by appropriate State and/or local officials.

11. OBJECTIVE 13: Demonstrate the ability to coordinate the formulation and dissemination of accurate information and instructions to the public in a timely fashion after the initial alert and notification has occurred.
12. OBJECTIVE 16: Demonstrate the ability to make the decision to recommend the use of KI to emergency workers and institutionalized persons, based on predetermined criteria, as well as to distribute and administer it once the decision is made, if necessitated by radiiodine releases.
13. OBJECTIVE 18: Demonstrate the ability and resources necessary to implement appropriate protective actions for the impacted permanent and transient plume EPZ population (including transit-dependent persons, special needs population, handicapped persons and institutionalized persons).
14. OBJECTIVE 19: Demonstrate the ability and resources necessary to implement appropriate protective actions for school children within the plume EPZ.
15. OBJECTIVE 20: Demonstrate the organizational ability and resources necessary to control access to evacuated and sheltered area.
16. OBJECTIVE 26: Demonstrate the ability to identify the need for and call upon Federal and other outside support agencies' assistance.
17. OBJECTIVE 34: Demonstrate the ability to maintain staffing on a continuous 24-hour basis by an actual shift change.
18. OBJECTIVE 35: Demonstrate the ability to coordinate the evacuation of onsite personnel.
- \*19. OBJECTIVE 37: Demonstrate the capability of utility offsite response organization personnel to interface with non-participating State and local governments through their mobilization and provision of advice and assistance.

\* FEMA HQ (SLPS) memorandum, subject: Guidelines for Regions to Use in Implementing NUREG 0654/FEMA-REP-1, Rev. 1, Supplement 1 with Qualifying Exercises, dated March 7, 1988.

C. EMERGENCY NEWS CENTER (ENC)

1. OBJECTIVE 2: Demonstrate the ability to fully alert, mobilize and activate personnel for both facility and field-based emergency functions.
2. OBJECTIVE 4: Demonstrate the ability to communicate with all appropriate locations, organizations and field personnel.
3. OBJECTIVE 5: Demonstrate the adequacy of facilities, equipment, displays and other materials to support emergency operations.
4. OBJECTIVE 13: Demonstrate the ability to coordinate the formulation and dissemination of accurate information and instructions to the public in a timely fashion after the initial alert and notification has occurred.
5. OBJECTIVE 14: Demonstrate the ability to brief the media in an accurate, coordinated and timely manner.
6. OBJECTIVE 15: Demonstrate the ability to establish and operate rumor control in a coordinated and timely fashion.
7. OBJECTIVE 34: Demonstrate the ability to maintain staffing on a continuous 24-hour basis by an actual shift change.

D. STAGING AREAS (SA)

1. OBJECTIVE 1: Demonstrate the ability to monitor, understand and use emergency classification levels (ECL) through the appropriate implementation of emergency functions and activities corresponding to ECL's as required by the scenario. The four ECL's are Notification of unusual event, alert, site area emergency and general emergency.
2. OBJECTIVE 2: Demonstrate the ability to fully alert, mobilize and activate personnel for both facility and field-based emergency functions.
3. OBJECTIVE 3: Demonstrate the ability to direct, coordinate and control emergency activities.

4. OBJECTIVE 4: Demonstrate the ability to communicate with all appropriate locations, organizations and field personnel.
5. OBJECTIVE 5: Demonstrate the adequacy of facilities, equipment, displays and other materials to support emergency operations.
6. OBJECTIVE 6: Demonstrate the ability to continuously monitor and control emergency worker exposure.
7. OBJECTIVE 34: Demonstrate the ability to maintain staffing on a continuous 24-hour basis by an actual shift change.

E. EMERGENCY WORKER DECONTAMINATION FACILITY (EWDF)

1. OBJECTIVE 2: Demonstrate the ability to fully alert, mobilize and activate personnel for both facility and field-based emergency functions.
2. OBJECTIVE 6: Demonstrate the ability to continuously monitor and control emergency worker exposure.
3. OBJECTIVE 25: Demonstrate the adequacy of facilities, equipment, supplies, procedures and personnel for decontamination of emergency workers, equipment and vehicles and for waste disposal.
4. OBJECTIVE 34: Demonstrate the ability to maintain staffing on a continuous 24-hour basis by an actual shift change.

F. FIELD ACTIVITIES (FA)

1. OBJECTIVE 2: Demonstrate the ability to fully alert, mobilize and activate personnel for both facility and field-based emergency functions.
2. OBJECTIVE 6: Demonstrate the ability to continuously monitor and control emergency worker exposure.
3. OBJECTIVE 7: Demonstrate the appropriate equipment and procedures for determining field radiation measurements.
4. OBJECTIVE 8: Demonstrate the appropriate equipment and procedures for the measurement of airborne radiiodine concentrations as low as  $10^{-7}$  microcurie per cc in the presence of noble gases.

5. OBJECTIVE 9: Demonstrate the ability to obtain samples of particulate activity in the airborne plume and promptly perform laboratory analyses.
6. OBJECTIVE 12: Demonstrate the ability to initially alert the public within the 10-mile EPZ and begin dissemination of an instructional message within 15 minutes of a decision by appropriate State and/or local officials.
7. OBJECTIVE 13: Demonstrate the ability to coordinate the formulation and dissemination of accurate information and instructions to the public in a timely fashion after the initial alert and notification has occurred.
8. OBJECTIVE 16: Demonstrate the ability to make the decision to recommend the use of KI to emergency workers and institutionalized persons, based on predetermined criteria, as well as to distribute and administer it once the decision is made, if necessitated by radioiodine releases.
9. OBJECTIVE 18: Demonstrate the ability and resources necessary to implement appropriate protective actions for the impacted permanent and transient plume EPZ population (including transit-dependent persons, special needs population, handicapped persons and institutionalized persons).
10. OBJECTIVE 19: Demonstrate the ability and resources necessary to implement appropriate protective actions for school children within the plume EPZ.
11. OBJECTIVE 20: Demonstrate the organizational ability and resources necessary to control access to evacuated and sheltered area.
12. OBJECTIVE 21: Demonstrate the adequacy of procedures, facilities, equipment and personnel for the registration, radiological monitoring and decontamination of evacuees.
13. OBJECTIVE 23: Demonstrate the adequacy of vehicles, equipment, procedures and personnel for transporting contaminated, injured or exposed individuals.
14. OBJECTIVE 24: Demonstrate the adequacy of medical facilities equipment, procedures and personnel for handling contaminated, injured or exposed individuals.
15. OBJECTIVE 34: Demonstrate the ability to maintain staffing on a continuous 24-hour basis by an actual shift change.

G. DISTRICT OFFICES (DO)

1. OBJECTIVE 15: Demonstrate the ability to establish and operate rumor control in a coordinated and timely fashion.

II. INGESTION PATHWAY/RECOVERY RE-ENTRY OBJECTIVES

A. LOCAL EMERGENCY RESPONSE ORGANIZATION (LERO)

1. OBJECTIVE 3: Demonstrate the ability to direct, coordinate and control emergency activities.
2. OBJECTIVE 4: Demonstrate the ability to communicate with all appropriate locations, organizations and field personnel.
3. OBJECTIVE 6: Demonstrate the ability to continuously monitor and control emergency worker exposure.
4. OBJECTIVE 8: Demonstrate the appropriate equipment and procedures for the measurement of airborne radioiodine concentrations as low as  $10^{-7}$  microcurie per cc in the presence of noble gases.
5. OBJECTIVE 13: Demonstrate the ability to coordinate the formulation and dissemination of accurate information and instructions to the public in a timely fashion after the initial alert and notification has occurred.
6. OBJECTIVE 25: Demonstrate the adequacy of facilities, equipment, supplies, procedures and personnel for decontamination of emergency workers, equipment and vehicles and for waste disposal.
7. OBJECTIVE 26: Demonstrate the ability to identify the need for and call upon Federal and other outside support agencies' assistance.
8. OBJECTIVE 27: Demonstrate the appropriate use of equipment and procedures for collection and transport of samples of vegetation, food crops, milk, meat, poultry, water and animal feeds (indigenous to the area and stored).
9. OBJECTIVE 28: Demonstrate the appropriate lab operations and procedures for measuring and analyzing samples of vegetation, food crops, milk, meat, poultry, water and animal feeds (indigenous to the area and stored).
10. OBJECTIVE 29: Demonstrate the ability to project dosage to the public for ingestion pathway exposure and determine appropriate protective measures based on field data, FDA PAG's and other relevant factors.

11. OBJECTIVE 30: Demonstrate the ability to implement both preventive and emergency protective actions for ingestion pathway hazards.
12. OBJECTIVE 31: Demonstrate the ability to estimate total population exposure.
13. OBJECTIVE 32: Demonstrate the ability to determine appropriate measures for controlled reentry and recovery based on estimated total population exposure, available EPA PAG's and other relevant factors.
14. OBJECTIVE 33: Demonstrate the ability to implement appropriate measures for controlled reentry and recovery.

B. DOE-RAP BROOKHAVEN AREA OFFICE (BHO)

1. OBJECTIVE 2: Demonstrate the ability to fully alert, mobilize and activate personnel for both facility and field-based emergency functions.
2. OBJECTIVE 3: Demonstrate the ability to direct, coordinate and control emergency activities.
3. OBJECTIVE 4: Demonstrate the ability to communicate with all appropriate locations, organizations and field personnel.
4. OBJECTIVE 9: Demonstrate the ability to obtain samples of particulate activity in the airborne plume and promptly perform laboratory analyses.
5. OBJECTIVE 27: Demonstrate the appropriate use of equipment and procedures for collection and transport of samples of vegetation, food crops, milk, meat, poultry, water and animal feeds (indigenous to the area and stored).
6. OBJECTIVE 29: Demonstrate the ability to project dosage to the public for ingestion pathway exposure and determine appropriate protective measures based on field data, FDA PAG's and other relevant factors.

C. EMERGENCY NEWS CENTER (ENC)

1. OBJECTIVE 4: Demonstrate the ability to communicate with all appropriate locations, organizations and field personnel.
2. OBJECTIVE 13: Demonstrate the ability to coordinate the formulation and dissemination of accurate information and instructions to the public in a timely fashion after the initial alert and notification has occurred.
3. OBJECTIVE 14: Demonstrate the ability to brief the media in an accurate, coordinated and timely manner.
4. OBJECTIVE 15: Demonstrate the ability to establish and operate rumor control in a coordinated and timely fashion.

July 11, 1988

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Appeal Board



In the Matter of )  
)

LONG ISLAND LIGHTING COMPANY )  
)

(Shoreham Nuclear Power Station, )  
Unit 1) )

Docket No. 50-322-OL-5  
(EP Exercise)

CERTIFICATE OF SERVICE

I hereby certify that copies of BRIEF OF SUFFOLK COUNTY, THE STATE OF NEW YORK AND THE TOWN OF SOUTHAMPTON CONCERNING THE DISPOSITION OF LILCO'S APPEALS OF THE PARTIAL INITIAL DECISIONS REGARDING THE FEBRUARY 13, 1986 EXERCISE have been served on the following this 11th day of July, 1988 by U.S. mail, first class.

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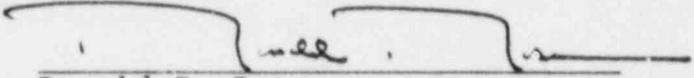
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Adjudicatory File  
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Panel Docket (ASLBPD)  
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\* / Additional copy served by hand on July 12, 1988.