

Case No. Official Exhibit No. 34

50-322-OL-3

A-34

(GC, Board, Party)

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Attachment ^{DOCKETED} ₂

THE MATTER OF:

LILCO

April 13, 1988

88 AUG 11 P5:51

Date: 7-14-88 Witness: Reporter UNITED STATES OF AMERICA
~~NUCLEAR~~ REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING

No. Pages: 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)

DIRECT TESTIMONY OF DAVID AXELROD
ON BEHALF OF THE STATE OF NEW YORK

Q: Please state your name and title.

A: I am David Axelrod, M.D. I am the Chairman of the New York State Disaster Preparedness Commission and the Commissioner of Health of the State of New York. In my capacity as Chairman of the Disaster Preparedness Commission, I am responsible to Governor Cuomo for the actions of the New York State Radiological Emergency Preparedness Group and the New York State Emergency Management Office. In my capacity as Commissioner of Health, I direct the actions of the New York State Department of Health.

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AXELROD
DEPOSITION
EXHIBIT
2

Q: What is the purpose of this testimony?

A: I am authorized and directed by Governor Cuomo to present testimony to address a hypothetical situation: what action would New York State take if the NRC were to license Shoreham to operate at levels above 5% power and there were a serious accident at the plant that required offsite emergency response. I stress that this is a hypothetical situation since it is the State of New York's view that the NRC may not lawfully issue such an operating license for Shoreham. I also stress that the views and statements contained herein represent the views of the State of New York.

Q: Does the State of New York have a plan for responding to such a Shoreham accident?

A: No. The State of New York has no such plan and has conducted no site-specific training or other activities to prepare to respond to a Shoreham accident.

Q: Are you aware that LILCO has prepared an offsite emergency plan for Shoreham and that LILCO asserts that State personnel would follow that plan in responding cooperatively with LILCO personnel to an accident at Shoreham?

A: Yes.

Q: Is LILCO correct that the State of New York would follow LILCO's plan and work cooperatively with LILCO personnel in responding to an accident at Shoreham?

A: No. Governor Cuomo explained in his affidavit of February 3, 1988, why New York State personnel would not follow LILCO's Plan or work cooperatively with LILCO. As the Governor's affidavit states, the position of the State of New York regarding the LILCO Plan is:

I hereby state firmly that officials of the State of New York would not follow LILCO's emergency plan. There is no basis for any suggestion to be made to the contrary. In fact, officials of New York State would neither follow LILCO's emergency plan nor work with LILCO's emergency response personnel. LILCO's plan is unworkable and inadequate, and LILCO's emergency response personnel are incompetent. The State of New York could not effectively exercise its police power obligation to protect the health and safety of its citizens if the State were to rely upon LILCO's plan and personnel in a radiological emergency.

Governor Cuomo's Affidavit is attached to and made a part of this testimony.

Q: Please explain what the State's actions would be in the event of the hypothetical Shoreham accident.

A: I do not believe that Shoreham can be lawfully licensed. The State of New York will hold to this position. If the NRC still licenses Shoreham, the State of New York will pursue legal remedies to prevent the plant from operating. I stress this because the question posed assumes the operation of Shoreham under circumstances I believe to be unlawful.

I cannot speculate what specific actions the State would take, when they would be taken, or what resources might be available in the hypothetical situation that the NRC were to license Shoreham to operate at levels above 5% power, the courts were to uphold that licensing decision, and there were a serious accident at the plant that required an offsite emergency response.

Q: Does that complete your testimony?

A: Yes.

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 MARIO M. CUOMO,
GOVERNOR OF THE STATE OF NEW YORK

Mario M. Cuomo, being under oath, deposes and says as follows:

1. I am the Governor of the State of New York. Under New York law, I, as Governor, would be responsible for directing the State's response to any radiological emergency within the State of New York.

2. On May 6, 1987, I submitted an affidavit in the instant proceeding. Attached to that affidavit was a statement dated June 30, 1986, issued by me concerning misstatements and mischaracterizations made by LILCO concerning the implementation of LILCO's radiological emergency response plan for the Shoreham plant. These LILCO statements related particularly to LILCO's so-called "realism" argument and LILCO's claims as to how the

State would respond to a hypothetical radiological emergency if the Shoreham plant were licensed to operate. A copy of my May 6, 1987 affidavit and the attached June 30, 1986 statement is incorporated as Exhibit 1 hereto.

3. I hereby affirm that the statements set forth in my May 6, 1987 affidavit and the June 30, 1986 statement continue to be true today. As stated therein, as Governor of the State of New York, in the event of a radiological emergency at Shoreham, New York State personnel would not be authorized to utilize the LILCO emergency plan for Shoreham and, further, New York State personnel would not be authorized to rely upon advice from LILCO personnel or otherwise to work in coordination with LILCO personnel. The reasons for this position are set forth in my June 30, 1986 statement and need not be repeated herein. It is important to bear in mind that experts of New York State have analyzed LILCO's Plan and the capabilities of LILCO's emergency workers as part of the State's participation in the NRC's licensing proceedings. These State officials, including those who presented sworn testimony, have found LILCO's emergency plan to be unworkable and its emergency workers incapable of performing effectively in a radiological emergency. The true "realism" is that LILCO has a paper plan and a paper emergency response organization which are inadequate and unworkable. The State has no confidence in either of these. Therefore, under no circumstance could or would the State rely on LILCO's Plan or emergency workers to protect the safety of New York's citizens.

The State would not put the public's welfare at LILCO's disposal.

4. I am aware that the Nuclear Regulatory Commission's new emergency planning regulation dated November 3, 1987, includes the following sentence:

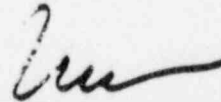
In addressing the circumstances where applicant's inability to comply with the requirements of paragraph (b) of this section is wholly or substantially the result of nonparticipation of state and/or local governments, it may be presumed that in the event of an actual radiological emergency state and local officials would generally follow the utility plan.

I refer specifically to the language, ". . . it may be presumed that in the event of an actual radiological emergency state and local officials would generally follow the utility plan." I hereby state firmly that officials of the State of New York would not follow LILCO's emergency plan. There is no basis for any suggestion to be made to the contrary. In fact, officials of New York State would neither follow LILCO's emergency plan nor work with LILCO's emergency response personnel. LILCO's plan is unworkable and inadequate, and LILCO's emergency response personnel are incompetent. The State of New York could not effectively exercise its police power obligation to protect the health and safety of its citizens if the State were to rely upon LILCO's plan and personnel in a radiological emergency. Moreover, except for a few who have analyzed LILCO's plan solely for the purposes of litigation, New York State's emergency planning and response personnel are not aware of the contents of

LILCO's plan and have not trained or prepared in any way to implement it.

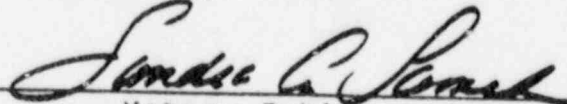
5. I am informed that LILCO in its recent summary disposition motions claims that in a radiological emergency, New York State would give LILCO permission to carry out particular emergency planning functions, such as sounding sirens or disseminating emergency broadcast messages. This is untrue. First, these functions could not be turned over to LILCO because they are inherently within the police powers of the State. Only the State is legally constituted to exercise the functions that LILCO falsely claims the State would authorize LILCO to perform. Second, LILCO's personnel are not capable of performing functions necessary to protect the health and safety of the citizens of New York in a radiological emergency. LILCO's personnel do not possess the competence and skills to confront and respond effectively to the exigencies of a nuclear accident that require such extraordinary actions as evacuating hundreds of thousands of people facing innumerable personal difficulties, and dealing with the pressures and complexities of what would be the most challenging and demanding emergency that any population center in this nation has ever faced. Thus, the State would not use LILCO's resources or turn over to LILCO any State resources, including the State emergency broadcast system. Nor would the State manage or coordinate a response from any LILCO facility.

6. I am informed that LILCO claims that I would be required to exercise my authority under Article 2-B of the Executive Law so as to use LILCO's emergency plan and emergency workers in a radiological emergency. LILCO's claim is untrue. Article 2-B does not require me to use resources offered by LILCO or anyone else that I consider inadequate and incapable of aiding the State and its citizens in responding to the exigencies of a radiological emergency. I consider LILCO's emergency plan and emergency workers to be precisely that -- inadequate and incapable. To use LILCO's resources would be to compound severely the risks and dangers that the public would already be facing from the radiological accident. Article 2-B imposes no duty on me to take action that I believe would harm the welfare of New York's citizens.



Mario M. Cuomo,
Governor of the State of New York

Affirmed this 8th day of February, 1988.



Notary Public

My Commission Expires: 7/31/88

SONDIE A. ROSE
Notary Public, State of New York
Qualified in Sullivan County
No. 2111
Comm. Expires 7/31, 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
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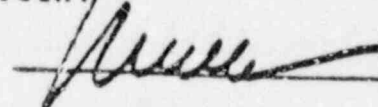
AFFIDAVIT OF MARIO M. CUOMO,
GOVERNOR OF THE STATE OF NEW YORK

Mario M. Cuomo, being under oath, deposes and says as follows:

1. I am the Governor of the State of New York. Under New York law, I, as Governor, would be responsible for directing the State's response to any radiological emergency within the State of New York.

2. On June 30, 1986, I issued a Statement, the purpose of which was to correct misstatements and mischaracterizations by LILCO concerning the implementation of LILCO's radiological emergency response plan for the Shoreham plant, LILCO's so-called "realism" argument, and the State's response to a Shoreham emergency were the plant to be licensed to operate. A copy of my June 30, 1986 Statement is attached hereto as Exhibit "A."

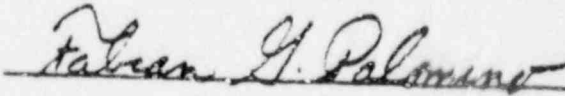
3. I hereby affirm that my June 30, 1986 Statement is truthful and accurate, and that it continues to reflect my position as Governor, and the position of the State of New York, on the subjects discussed therein.



Mario M. Cuomo
Governor of the State of New York

Subscribed to and sworn before me this 6th day of May, 1987.

Notary Public # 4882/25
State of New York
Qualified in Kings County
My commission expires: 12/2/88



Statement by Governor Mario M. Cuomo

I have reviewed the statement issued on June 23, 1986, by Suffolk County Executive Peter F. Cohalan concerning misstatements by LILCO of his position on the licensing of the Shoreham Nuclear Power Station. I support the County Executive's statement. I am issuing this statement for the similar purpose of correcting misstatements and mischaracterizations of my position that LILCO is continuing to make.

1. There is no basis for LILCO to suggest that the State would respond to a Shoreham emergency in accordance with LILCO's emergency plan or in concert with LILCO. The State would do neither. Suffolk County has resolved not to implement LILCO's emergency plan or to respond in concert with LILCO; the State would not in an emergency act inconsistently or in conflict with the County. Where a local government of the State judges that it would not rely in an emergency upon a particular entity, such as LILCO -- and provides reasonable bases such as those contained in the Suffolk County Executive's statement -- the State could not responsibly second-guess the local government's judgment.

2. Even setting aside Suffolk County's determination, New York State could not responsibly act in concert with LILCO during a radiological emergency. Indeed, the established position of the State is that LILCO's emergency plan is unworkable. The State, therefore, could not in an emergency choose to rely upon the very plan that it has found to lack merit.

Moreover, throughout the Shoreham project, LILCO has demonstrated poor judgment with respect to matters involving the plant. The decision to press ahead with licensing Shoreham in the face of the determinations of Suffolk County and New York State that they would not adopt or implement emergency plans is itself an example. Similarly, the finding of the State Public Service Commission that LILCO's management of the Shoreham project was "imprudent" in the amount of at least \$1.3 billion is more evidence of the LILCO's poor judgment. Also, LILCO's emergency response to Hurricane Gloria last autumn shows that in the one recent test LILCO faced in a real emergency, the Company's actions were inadequate. In short, there is no basis for the State, or indeed the public, to have confidence in LILCO's judgment or capabilities in an emergency. Given this, the State could not and would not rely upon LILCO, its emergency plan, or its advice in the event of a radiological emergency at Shoreham.

3. LILCO has repeatedly suggested that during an emergency I would suspend New York laws to permit LILCO to implement its emergency plan. I could not lawfully delegate to LILCO police power to implement its emergency plan. But, even if I could, I cannot conceive of taking the extraordinary measure of suspending the laws of this State in order to permit LILCO, a company in which the State does not have confidence, to implement a plan which the State believes to have no merit. Whatever I would do at the moment of an emergency would be for the public good. LILCO's plan does not serve the public good, and I would not facilitate the implementation of it.

4. LILCO is seeking a license to operate Shoreham on the basis of a fiction, which LILCO euphemistically calls "realism." It has created this fiction in part by misrepresenting a statement I issued on December 20, 1983. Significantly, however, the purpose and thrust of that statement was to explain why New York State opposes the licensing of Shoreham. Included in the four pages of my December 20, 1983, statement is the following paragraph:

Of course, if the plant were to be operated and a misadventure were to occur, both the State and the County would help to the extent possible; no one suggests otherwise. However, government's obligation to respond to a catastrophe should not be used as an excuse for inviting the peril.

This paragraph is being misused by LILCO to create false impressions in support of the licensing of Shoreham. This is contrary to my opposition to the licensing of Shoreham and a mischaracterization of my intent on December 20, 1983, and now. Because LILCO is misusing these words for an end to which I strongly object, I hereby take the extraordinary measure of withdrawing these words so that they not be cited, quoted, or otherwise relied upon.

I have directed my special counsel to transmit copies of this statement to LILCO, the Nuclear Regulatory Commission, and the Federal Emergency Management Agency.