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January 17, 1986

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FILE NO.

DIRECT DIAL NO. 804 788

- Nunzio J. Palladino, Chairman
- Commissioner Thomas M. Roberts
- Commissioner James K. Asselstine
- Commissioner Frederick M. Bernthal
- Commissioner Lando W. Zech, Jr.

Long Island Lighting Company
(Shoreham Nuclear Power Station, Unit 1)
NRC Docket 50-322 06-3

Dear Chairman Palladino and Commissioners:

In late December 1985, the Suffolk County legislature passed a bill which would make it a criminal offense in Suffolk County to "conduct" or "participate in" an emergency planning "test" or "exercise" involving potential "performance" or "simulation" of Suffolk County "roles" or "functions" if the Suffolk County Legislature has disapproved the "test" or "exercise." The bill would also make it a criminal violation to conduct any such "test" or "exercise" without having submitted, at least 25 days previously, to the clerk of the Suffolk County Legislature a description of the activities proposed to be undertaken in such "test" or "exercise." The bill also set out a procedure for disposition by the Legislature of any such submission. On January 13, 1986, the County Executive signed the bill into law as Local Law 2-86. LILCO understands that the local law took effect yesterday following its being filed with the New York Secretary of State in Albany. A copy of Local Law 2-86 and its covering resolution comprise Enclosure 1 hereto.

Yesterday, LILCO filed documents with the Clerk of the Suffolk County Legislature to comply with the local law. Those documents demonstrate, LILCO believes, that the emergency planning

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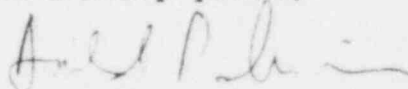
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exercise scheduled for February 13, 1986 will not violate Local Law 2-86 in its own terms. LILCO's submission, with errata sheet, is Enclosure 2 hereto.

Yesterday, LILCO also filed suit in the United States District Court for the Eastern District of New York, seeking, among other relief, to have Local Law 2-86 invalidated on a variety of grounds, including but not limited to the fact that it interferes impermissibly with the effectuation of a federally pre-empted regulatory scheme. LILCO's complaint is Enclosure 3 hereto.

Because of the relevance of this matter to the emergency planning exercise scheduled for February 13, 1986, LILCO will endeavor to keep the Commission promptly informed of material developments.

Sincerely yours,



Donald P. Irwin
One of Counsel to Long Island
Lighting Company

Enclosures:

1. Suffolk County Local Law 2-86
2. Long Island Lighting Company's Description, Pursuant to Suffolk County Local Law 2-86, of Activities in February 13, 1986 Emergency Planning Exercise Sponsored by Federal Emergency Management Agency, plus 4 attachments (with errata sheet) (undated: filed January 16, 1986)
3. LILCO's Complaint, January 16, 1986

cc w/enclosures: Alan S. Rosenthal, Esq.
Gary J. Edles, Esq.
Dr. Howard A. Wilber
Secretary of the Commission
Bernard M. Bordenick, Esq.
Spence W. Perry, Esq.
Fabian G. Palomino, Esq.
Mary Gundrum, Esq.
Stewart M. Glass, Esq.
Stephen B. Latham, Esq.
Johathan D. Feinberg, Esq.
Herbert H. Brown, Esq.
Martin Bradley Ashare, Esq.

Intro. Res. No. 2127-85
Introduced by Legislators Blass, Prospect, Caracappa, Englebright, Mergo,
Nolan, Bachety, Devine, Foley, Allgrove, D'Andre, Rizzo, Mahoney, Glass,
Heaney, LaBua, Rosso

RESOLUTION NO. 1255-1985, ADOPTING LOCAL LAW
NO. YEAR 198 , A LOCAL LAW CONCERNING THE
PROTECTION OF POLICE POWERS HELD BY THE
COUNTY OF SUFFOLK

WHEREAS, the County of Suffolk, pursuant to the Constitution and laws of the State of New York, has been delegated police powers by the State; and

WHEREAS, the County has a duty to ensure that such police powers are not usurped by other entities; and

WHEREAS, County preparations for and responses to natural and man-made emergency situations involve the County's exercise of its police power functions; and

WHEREAS, the Long Island Lighting Company has prepared an off-site emergency plan for the Shoreham Nuclear Power Station in which private persons, including Long Island Lighting Company employees, would carry out governmental functions and otherwise usurp the police powers of Suffolk County; and

WHEREAS, at the initiative of the Long Island Lighting Company there is proposed to be a test of that Company's off-site emergency plan, during which test the roles and governmental functions of Suffolk County officials would be performed and "simulated" by persons who are not officials of Suffolk County and who are not legally authorized to perform or simulate Suffolk County roles or governmental functions; and

WHEREAS, the County of Suffolk has not been informed of what roles and governmental functions of the County would be so performed or "simulated," what actions would be taken by persons carrying out the test, and what public roadways, lands, and other property would be affected during such test; and

WHEREAS, the County of Suffolk finds that it would be inconsistent with its police powers and its duty to prevent such powers from being usurped if it were to remain indifferent to usurpation of its police powers or to allow unauthorized persons to perform or simulate the County's roles or governmental functions; and

WHEREAS, the County of Suffolk finds that it is required to establish a mechanism of general applicability to gain information needed to assess whether persons are proposing to take actions or perform roles or governmental functions, or otherwise usurp the County's police powers in a test or actual emergency situation; and

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on , 1985, a proposed local law entitled, "A LOCAL LAW CONCERNING THE PROTECTION OF POLICE POWERS HELD BY THE COUNTY OF SUFFOLK," and said local law in final form is the same as when presented and introduced; now, therefore, be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. , SUFFOLK COUNTY, NEW YORK

LOCAL LAW CONCERNING THE PROTECTION OF POLICE POWERS HELD BY THE COUNTY OF SUFFOLK

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF SUFFOLK AS FOLLOWS:

Section 1. Definition.

As used herein, "person" shall mean any individual, partnership, corporation, association, or public or private organization of any character, provided, however, that "person" shall not include any governmental entity authorized by law to perform the governmental function of Suffolk County or authorized by law to exercise police powers within the State of New York.

Section 2. Prohibition.

(a) It shall be a crime for any person to conduct or participate in any test or exercise of any response to a natural or man-made emergency situation if that test or exercise includes as part thereof that the roles or governmental functions of any Suffolk County official will be performed or simulated, and if the Suffolk County Legislature, pursuant to the procedures set forth in Sections 3 and 4 of this law, has issued via resolution a notice of disapproval of such performance or simulation of County roles or governmental function.

(b) It shall be a crime for any person to conduct or participate in any test or exercise of any response to a natural or man-made emergency situation if that test or exercise includes as part thereof that the roles or governmental functions of any Suffolk County official will be performed or simulated, and if the person shall have failed to comply with the procedures set forth in Sections 3(a) and 3(b) of this local law.

Section 3. Procedures and Public Hearings,

(a) At least 15 days prior to conducting or participating in a test or exercise covered by this law, a person who intends to conduct or participate in such test or exercise shall submit to the Clerk of the Suffolk County Legislature a description of the proposed activity, specifying how, when, where, by whom, and for what purpose the roles or governmental functions of Suffolk county officials may be performed or simulated.

(b) Upon receipt of the submittal required by Section 3(a) of this Local Law, the Clerk of the Suffolk County Legislature shall within 7 days inform the person of any additional information required for the Legislature's review of such submittal, and such person shall supply the additional information within 7 days.

(c) The Legislature shall review the submittal to assure that the times, places, manner, and purposes of the proposed performance or simulation of County of Suffolk roles or governmental functions do not interfere with the public's use of or access to public property, do not involve the unauthorized performance of governmental functions, and do not usurp or otherwise impair the police powers held by the County.

(d) The Legislature shall hold a public hearing concerning any submittal whenever the Legislature determines via resolution that the proposed performance or simulation of County roles or governmental functions may involve an interference with the public's use of or access to public property, or unauthorized performance of governmental functions, or a usurpation or other impairment of the police powers held by the County.

(e) After such public hearing, the Legislature shall determine via resolution whether the proposed performance or simulation of County roles or governmental functions constitutes an interference with the public's use of or access to public property, or unauthorized performance of governmental functions, or a usurpation or other impairment of the County's police powers, and in the event of a determination to disapprove the proposed performance or simulation, the Clerk shall issue and transmit to such person a notice of disapproval of such proposed performance or simulation.

Section 4. Special Procedures.

(a) If any person making a submission pursuant to Section 3 of this law believes that some or all of the data in the submittal merit confidential treatment, the person shall so inform the Clerk at the time of the submission. If the Legislature then determines that confidential treatment is required, the procedures of Section 3 shall be modified as necessary and appropriate. If the Legislature determines that confidential treatment is not required, the person shall be so advised and shall have the option of withdrawing the submittal or proceeding under the procedures of Section 3.

(b) The Presiding Officer is hereby authorized to convene such special meetings of the Legislature as may be required in order to conduct the reviews and other procedures required by this law in a timely manner.

Section 5. Penalties and Remedies.

(a) A violation of Section 2 of this law shall be a Class A Misdemeanor and shall be punishable by a sentence of not more than one (1) year

in prison or a fine of not more than one thousand dollars, or by both such fine and imprisonment.

(b) A violation or willful violation of any Section of this law, including a failure to submit information as set forth in Sections 3(a) and 3(b), shall give the County the option, among other civil remedies, of seeking injunctive relief against the person who is in violation or threatening violation thereof.

Section 6. Separability.

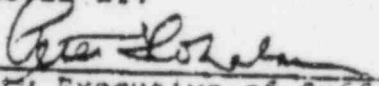
If any part of this Law shall be declared invalid or unconstitutional by any Court, such declaration shall not affect the validity of any other part.

Section 7. Effective date.

This Law shall take effect immediately, and shall apply to any activity conducted after such effective date.

DATED: December 23, 1985

APPROVED BY:


County Executive of Suffolk County

Date of Approval: 1/13/86

LONG ISLAND LIGHTING COMPANY'S DESCRIPTION, PURSUANT TO SUFFOLK COUNTY LOCAL LAW 2-86, OF ACTIVITIES IN FEBRUARY 13, 1986 EMERGENCY PLANNING EXERCISE SPONSORED BY FEDERAL EMERGENCY MANAGEMENT AGENCY

I. INTRODUCTION

On January 13, 1986 Suffolk County Local Law No. 2-86 was signed by the Suffolk County Executive. That Local Law makes it a misdemeanor for any person to "conduct or participate" in any "test or exercise" of any response to a natural or man-made emergency situation if that test or exercise involves "performance or simulation" of "roles or functions" of "any Suffolk County official," if the Suffolk County Legislature has issued a "notice of disapproval" of the test or exercise. Sec. 2(a). The Local Law also makes it a misdemeanor to participate in such a "test or exercise" if "a person who intends to conduct or participate" in it shall not have submitted a "description of the proposed activity" to the Suffolk County Legislature at least 25 days beforehand, specifying "how, when, where, by whom, and for what purpose" such "performance or simulation" is planned. Secs. 2(b), 3(a). Long Island Lighting Company submits this description in compliance with Local Law 2-86. However, as indicated more fully in paragraph 1 immediately below, LILCO believes that Local Law 2-86 would be void if applied to the exercise described in this document, and waives none of its rights with respect thereto by this submission.

On June 20, 1985, the Nuclear Regulatory Commission (NRC) requested the Federal Emergency Management Agency (FEMA) to schedule

a formal graded exercise of the emergency plan for the Shoreham Nuclear Power Station, and on November 12 defined the desired exercise scope.^{1/} The Commission, pursuant to its radiological health and safety responsibilities under the Atomic Energy Act of 1954, as amended, has chosen to make emergency preparedness, both at reactor sites and within the surrounding emergency planning zone, a requirement for issuance or retention of full power operating licenses. Its licensing requirements are set forth in its regulations at 10 CFR § 50.47. As construed by the United States Court of Appeals for the District of Columbia Circuit, Union of Concerned Scientists v. NRC, 735 F.2d 1437 (D.C. Cir. 1984), cert. denied, 105 S. Ct. 815 (1985), those requirements presently include the satisfactory performance by a licensee in an exercise of its emergency preparedness plan. The exercise is conducted under the supervision of FEMA, which is the lead agency within the federal government for emergency planning functions. Executive Order 12148, 44 Fed. Reg. 43,239 (July 20, 1979). Pursuant to the NRC's request, and in discharge of its lawful duties, FEMA has scheduled an exercise of the emergency plan for Shoreham for February 13, 1986.

The purpose of the exercise will be to test the readiness of the onsite and offsite emergency planning organizations for Shoreham Nuclear Power Station, which is owned and operated by

^{1/} Letter, Edward L. Jordan (NRC) to Richard W. Krimm (FEMA), June 20, 1985; letter, William J. Dircks (NRC) to Samuel W. Speck (FEMA), November 12, 1985.

LILCO. Onsite emergency planning is traditionally a licensee function and does not involve the performance or simulation of any local governmental functions. Offsite emergency planning is customarily sponsored by state and local governments, though not all offsite emergency planning functions are inherently governmental in nature or are necessarily carried out by government personnel. Since the governments of New York State and Suffolk County have refused to engage in offsite emergency planning for Shoreham, LILCO has formed a volunteer Local Emergency Response Organization (LERO), consisting of over 2000 LILCO employees plus several hundred other, non-LILCO members.

The emergency planning exercise scheduled for February 13 is simply the final step in the licensing of Shoreham, which is physically finished and which successfully completed its low power (not above 5% of rated power) testing program in November 1985.

This description of activities to be undertaken in the February 13 exercise is being provided by LILCO pursuant to Local Law 2-86 with respect to the following groups or categories:

- A. LERO members;
- B. Members and employees of all support, contractor and other organizations cooperating with LERO;
- C. LILCO employees and members or employees of LILCO contractors who, while not participating in the exercise itself, have been involved in preparation for it;
- D. Federal entities, officials and contractors either conducting, observing, grading, or participating in the exercise.

This description is made subject to the following observations:

1. LILCO believes that Local Law is subject to numerous defects on both federal and state law grounds. A preliminary listing of these defects is contained in LILCO's submission to the Suffolk County Executive's hearing on January 6. By submission of this description LILCO does not waive any of its rights to challenge the Local Law.

2. Included here are descriptions of the various jobs and tasks prescribed in the Shoreham Local Offsite Radiological Emergency Response Plan. The description also includes, to the best of LILCO's expectation, information on the manner in which relevant LERO or other persons' performance of these jobs will be demonstrated in the February 13 exercise, and in preparations for it.

3. The February 13 exercise, while involving a test of the preparedness of LERO, does not involve actual implementation of the Shoreham Offsite Plan. Implementation occurs only pursuant to a full power license issued by the Commission and in response to an actual emergency, and involves the actual performance or fulfillment of roles with the actual intent and effect of guiding public behavior. Rather, the February 13 exercise is simply the final stage in the federally mandated planning process, designed to gather information about organizational and individual readiness and proficiency, and to assist the NRC in its licensing determination. Thus there will be no "performance" of "functions or roles" of Suffolk County officials in the February 13 exercise

since the plan will not be being implemented. No actions will be taken which will have any compulsive effect on the public at large. There will be no holding-out to the public of any legal authority with respect to it, nor any contact with the general public in any governmental capacity, actual or apparent. There will be no usurpation of the police powers of Suffolk County. There will be no violation of any Suffolk County or New York State laws predating the Local Law, nor interference with public use of or access to public property. Nor will there be any conflict with the decision of the New York State Supreme Court in Cuomo v. LILCO, Consol. Index No. 84-4615 (N.Y.Sup.Ct., Feb. 20, 1985), N.Y. Law Journal, April 19, 1985, p.16, col.3, appeal docketed (N.Y. App. Div., April 26, 1985), since that decision concerned issues of LILCO's legal authority under New York State law to implement its plan, not its authority to engage in planning.

To the extent that the exercise may involve any conduct relating to "functions" or "roles" of Suffolk County personnel during an exercise, such conduct will involve only "simulation." In this regard, the Shoreham exercise will be no different from those conducted at other nuclear power plants. Performance of governmental functions there, too, is simulated. Streets are not blocked, for instance, in other exercises; nor are general populations evacuated. Roles can also be "simulated" by such devices as messages and instructions from exercise controllers. What is being tested in each case is not who simulates what, but the ability of the response organization to deal effectively with various

individuals and groups that may need to react in an emergency. As will be shown below, the actions involved in the exercise involve only types of "simulation" which Local Law 2-86 does not purport to prohibit.

4. LILCO has internal drills scheduled for the period prior to February 13. It is impossible to tell from the face of Local Law 2-86 whether such internal drills and tests are intended to be covered by it. LILCO believes that they are not, under any rational interpretation. None of them will involve any conduct intended to have any compulsive effect on the public at large. None of them will involve any holding-out to the public of any legal authority with respect to emergency response or any contact with the public in any governmental capacity. None of them will involve any violation of Suffolk County or New York State law predating the Local Law. Nevertheless, since the functions to be tested in those internal drills and exercises are covered in this description, LILCO files this description to cover them as well as the February 13 exercise.

5. None of the LILCO/LERO persons or their contractors who will participate in the February 13 offsite emergency planning exercise has access to the scenario for that exercise. FEMA considers it important to the integrity of the exercise that the contents of the scenario not be divulged to any person participating in it. Further, in this case FEMA has not divulged the specific exercise objectives to participants. As a result, there are no submissions of confidential material pursuant to section 4 of

Local Law 2-86 with this description. The generic tasks to be performed, and the specific skills to be demonstrated with respect to it by any given individual or organization, do not change, however, with the specifics of exercise scenarios. LILCO is confident that the Legislature should be able to assess the consistency of the exercise with Local Law 2-86 without resort to any of these confidential materials.

II. EXERCISE DESCRIPTION

A. Description of the Proposed Activity: The Shoreham Offsite Emergency Planning Exercise and the Plan to be Exercised

Local Law 2-86, section 3(a), requires that anyone proposing to conduct or participate in an emergency planning exercise submit to the Clerk of the Suffolk County Legislature a "description of the proposed activity" if the roles of Suffolk County officials "may be performed or simulated" in it. The following material is submitted pursuant to that requirement.

LILCO understands that the FEMA graded exercise scheduled for February 13, 1986 will involve activation of the full complement of LERO personnel (approximately 1275 persons per shift) and relevant personnel from support and contractor organizations and cooperating governments. The exercise will involve testing enough of the 35 standard core elements of FEMA exercises^{2/} to permit licensing conclusions to be drawn about the overall adequacy of

^{2/} These are set forth in FEMA, Modular Format for Uniformity of Radiological Emergency Preparedness Exercise Observations and Evaluations (June 1983).

LILCO's emergency planning organization, the proficiency of individuals in it, and the sufficiency of their training and equipment. FEMA does not itself intend to draw a "reasonable assurance" finding itself from the results. Letter, Samuel W. Speck (FEMA) to William J. Dircks (NRC), October 29, 1985. However, the exercise have great value in assessing two vital questions -- the actual capabilities of the LERO organization and its ability to cope with ad hoc governmental participation. This will shed highly useful light on the appropriate ultimate disposition by the NRC of the Shoreham licensing proceeding.

General familiarity with other exercises held under FEMA's auspices suggests that the exercise will be on the order of 24 hours or less in duration; that it will require LERO and support organization personnel to demonstrate proficiency in their skills and in the use of the facilities and equipment available to them, sufficient to support a response to an emergency at Shoreham if one ever occurred. However, as will be discussed more fully below, it will not require them to make use of any Suffolk County facilities (the County having forbidden their use in the plan). Nor will it require interference with public use of or access to public property (see Sections II and III.1 below); involve the unauthorized performance of governmental functions (see Sections II and III.2 below); or involve the usurpation or impairment of Suffolk County police powers (see Sections II and III.3 below).

As summarized above and described more fully below, the vast majority of LERO functions in an exercise are entirely internal to

LERO, conducted on property owned or controlled by LILCO. As to those functions which, in an actual emergency, would be undertaken in public areas and involve contact with the general public, they can be tested in a fashion which permits demonstration of individual and organizational proficiency without requiring any impact on the general public.

The plan to be exercised will be the LILCO-prepared Shoreham Nuclear Power Station Local Offsite Radiological Emergency Response Plan, the most recent version of which to be evaluated thus far by FEMA is Revision 5. A final pre-exercise revision, Revision 6, was filed with FEMA and all other concerned parties on January 10, 1986; it does not change the basic concepts of operation under the plan.^{3/}

The Shoreham Offsite Plan is not, as has sometimes been suggested, an exclusively nongovernmental plan. Various agencies in the federal government -- NRC, FEMA, the Department of Energy, the Coast Guard, and the Federal Aviation Administration, among others -- will play their customary part in implementation. Similarly, the State of Connecticut has agreed to perform its normal role in implementing 50-mile ingestion pathway functions. In addition, the Nassau Veterans Coliseum, which is owned by the government of Nassau County, will be used as a reception center for evacuees and Nassau County will provide necessary related police services.

^{3/} Revision 6 alters the primary area of the Nassau Coliseum to be used as a reception center, revises one bus transfer point, and makes a number of small miscellaneous changes. References in this Description will be to Revision 5 except as otherwise specified.

finally, both Suffolk County and New York State have conceded that they would in fact respond to the best of their ability in the event of an actual emergency involving Shoreham, pursuant to the provisions of Article 2-b of the New York State Executive Law and their general police-power obligations;^{4/} they just refuse to engage in advance planning for such a response for Shoreham.

Further, the Shoreham Offsite Plan and its implementing procedures contemplate the possibility of just such ad hoc participation. See, e.g., Plan, Sec. 1.4 (Legal Authority); Sec. 2.2 (Support Organizations), esp. pages 2.2-4g and 2.2-4h; Sec. 3.1 (Command and Control), esp. page 3.1-1; Sec. 3.6 (Protective Actions), esp. page 3.6-6, 3.6-7; Sec. 3.8 (Public Information),

^{4/} In a press release by Governor Cuomo dated December 20, 1983, he stated that "[o]f course, if the plant were to be operated and a misadventure were to occur, both the State and County would help to the extent possible; no one suggests otherwise." Similarly, Suffolk County Executive Cohalan was quoted in the June 15, 1985 New York Times as stating:

In that event [i.e., Shoreham becomes radioactive], the county has a duty and responsibility to provide for the health and safety of the residents near the plant.

Again, on June 26, 1985 in response to a letter from LILCO counsel, Mr. Reveley, County Executive Cohalan stated:

In the event of a radiological accident, I, as the County Executive will respond to the best of my ability and in accordance with the duties and obligations placed upon me by Article 2-b of the Executive Law.

Copies of Governor Cuomo's press release (Attachment 2), Mr. Reveley's letter to Suffolk County Attorney Ashare (Attachment 3), and County Executive Cohalan's reply (Attachment 4) are attached to this Description.

esp. page 3.8-6; Sec. 4.1 (Facilities and Equipment -- Local EOC), esp. page 4.1-1; Sec. 4.7 (Security at LERO Facilities). See also Procedures, OPIP 3.1.1 (Command of Emergency Operations), page 15, page 80 (para. 14 [Rev. 6]); OPIP 3.6.3 (Traffic Control), pages 3 (paras. 5.1.5, 5.1.6), 4 (para. 5.3.9), 62-64; OPIP 3.6.6 (Ingestion Pathway Protective Actions), page 1ea; OPIP 4.2.3 (Reception Center Activation and Operation), page 9 (para. 2.5); OPIP 5.1.1 (Training), page 5 (para. 5.1.4.4). Thus an exercise which contemplates that State and County officials who refuse to participate in planning would, in fact, respond in an actual emergency on an ad hoc basis is totally consistent with the plan as it now exists.

B. Functions Actually to be Performed During an Exercise

Local Law 2-86 requires, section 3(a), that the description of a proposed exercise include "how, when, where, by whom, and for what purpose the roles or functions of Suffolk County officials will be performed or simulated" in it. The following material is submitted pursuant to that requirement.

The nearly 1300 LERO billets in the Shoreham Local Offsite Emergency Response Plan^{5/} are broken down into 66 job categories. These are reflected in the primary organizational procedure for the Shoreham plan, OPIP 2.1.1. (A complete and updated copy of

^{5/} The exact total in Revision 5 is 1275 persons; in Revision 6 it is 1285. These numbers do not include non-LERO personnel in cooperating extra-LERO organizations, such as ambulance and ambulance drivers.

the Shoreham plan is provided for the easy reference of interested legislators with this submission.) These 66 job categories are further described in the attached document entitled "Shoreham Nuclear Power Station: Local Offsite Radiological Emergency Response Plan, LERO Job Description Summary" (Attachment 1 hereto). For each of the 66 categories, it provides the following information:

1. Job number [an organizational device for convenience]
2. LERO Job Description or title
3. Number of persons per shift in the job
4. Location
5. Whether or not a person in the particular job description may have any contact with governmental agencies, or with nongovernmental support or service organizations, in the performance of that job in a real emergency.^{6/} [Note: the fact of contact does not itself connote the performance of roles or functions of governmental officials.]
6. Whether or not the person in the particular job description may have any contact with the general public in the performance of that job in a real emergency. [Note: the fact of contact does not itself connote the performance of roles or functions of governmental officials.]

^{6/} Support organizations are ones with a defined role in the Shoreham plan; service organizations are ones which could have a role in emergency response but no defined role in the Shoreham Offsite Plan.

7. Whether or not the person in the particular job description would be performing functions in a real emergency which, in Suffolk County's view, might be thought to connote exercise of police powers or legal authority; and if so, whether those functions involve decision-making (D), implementation (I), or communication (C).^{2/}

8. Remarks, describing the general nature of each job, with focus on elements of contact with persons or organizations outside LERO and on functions that might be thought, validly or not, to involve the exercise of legal authority if implemented in an actual emergency, with selected references to the Shoreham Offsite Plan and implementing procedures (OPIPs).

Attachment 1 displays, among other information, the following:

(a) Contact with Support, Service, or Government Organizations

There are 39 job categories, involving slightly over 800 workers, which may involve contact with public or private organizations other than LERO. The vast majority of these positions are concentrated as follows:

1. Radiation Monitoring and Decon (jobs 18, 19)	132
2. DOE Dose Assessment (jobs 20-24)	9
3. Traffic Guides and Lead Traffic Guides (jobs 28, 29)	174
4. Road Crews (job 31)	38

^{2/} LILCO does not agree that any of these roles necessarily involve attributes of police power or legal authority under New York law. Certainly, in a FEMA graded exercise, any performance involving such attributes would be simulated.

5. Bus Drivers (job 45)	390
6. Reception Center Security (job 56)	30
7. Communicators (job 59)	<u>10</u>
	783

Since contact with outside organizations does not involve either the exercise or the holding-out of actual or apparent governmental authority, and since the contact involved varies greatly,^{8/} this information on contact with outside organizations is provided simply for the Legislature's information.

(b) Contact with the General Public

There are 18 job categories, involving about 720 workers, which may involve actual or potential for contact with the general public in a real emergency. Again, these functions are concentrated within a very few job descriptions:

1. Traffic Guides (job 29)	165
2. Road Crews (job 31)	38
3. Route Alert Drivers (job 40)	60
4. Transfer Point Coordinators (job 44)	22
5. Bus Drivers (job 45)	390
6. Reception Center Security (job 56)	<u>30</u>
	705

Once again, since the mere fact of contact with the general public

^{8/} The jobs in a real emergency of the Hospital Coordinator, the Public Services Liaison, the Ambulance Coordinator and the Radiation Health Coordinator (jobs 5-8), for example, involve frequent communication with cognizant hospitals, ambulance companies, and local law enforcements organizations, but only one person each. By contrast, the job of bus driver in a real emergency involves no contact with outside organizations beyond picking up buses from companies under contract with LERO to provide them, but involves 390 positions. Similarly, the only contact of traffic guides (165 positions) and road crews (38 positions) with outside organizations in a real emergency is to cede authority to, and offer to assist, any Suffolk County police arriving on the scene.

does not involve the exercise or holding-out of actual or potential legal authority, and since the nature of the contact varies greatly,^{9/} this material is provided simply for the Legislature's information.

(c) Activities Challenged as Potentially Involving Exercise of Legal Authority (Under Suffolk County's Theory)

There are 15 job categories, involving some 283 LERO personnel, which appear to have the potential to be regarded as involving the exercise of legal authority, as LILCO understands Suffolk County's view of New York State law, if they were performed in an actual emergency. These are the jobs which LILCO understands to be the primary focus of the Suffolk County Legislature's interest. Again, the populations in these job categories are highly concentrated: each has only one occupant, save four: lead traffic guides (9 positions), traffic guides (165 positions), road crews (38 positions), route alert drivers (60 positions).

Detailed descriptions of the actual constituents of each of these positions can be obtained from the information on the attached LERO Job Description Summary (Attachment 1) and in the references listed on it. However, in the interest of providing a shorthand summary, each of these specific jobs is tabulated below,

^{9/} Traffic guides (165 positions) would be in contact with members of the general public at intersections where they were facilitating traffic flow; bus drivers (390 positions) would be in contact with only those members of the general public voluntarily desiring to board their buses; the ambulance coordinator (1 position) could come into contact with the general public only if someone, not pre-identified, called in directly to request an ambulance.

with a further description of whether the nature of the authority potentially being implemented in a real emergency would involve decision-making (D), implementation of decisions made by others, (I), or merely communication of information beyond LERO (C).

<u>Job #</u>	<u>Description</u>	<u>Positions</u>	<u>Type of Function</u>
1	Director of Local Response	1	D, I
2	Manager of Local Response	1	I, C
3	Health Service Coordinator	1	C
8	Radiation Health Coordinator	1	C
25	Evacuation Coordinator	1	I, C
28	Lead Traffic Guides	9	I, C
29	Traffic Guides	165	I
31	Road Crews	38	I
36	Public Schools Coordinator	1	C
37	Private Schools Coordinator	1	C
38	Health Facilities Coordinator	1	C
39	Home Coordinator	1	C
40	Route Alerting Drivers	60	C
60	Coordinator of Public Information	1	C
62	Supervising Service Operator	1	C

The persons fulfilling the LERO job descriptions above will not actually exercise any legal authority not possessed by every ordinary citizen, nor will they perform any role or function of Suffolk County officials, in the February 13 FEMA graded exercise. To the extent that the roles played by them in the graded exercise could be construed to involve attributes of potential roles or functions of Suffolk County officials if actually carried out in a real emergency, those attributes will be simulated in the exercise in a manner sufficient to permit demonstration of proficiency. This will be done without any holding-out to the public of legal authority, without any contact with the public other than that of ordinary citizens (except as approved by Legislature), without any

disruption of public access to or use of public property, and without any violation of pre-existing New York or Suffolk County law.

Probably the best way to illustrate this is to take the list of functions involved in the Shoreham Offsite Plan which Suffolk County has asserted could not be lawfully implemented by LILCO pursuant to its own legal authority under New York law. These matters have been recently summarized on pages 13 and 14 of a December 26, 1985 letter from David A. Brownlee, Esq., one of counsel for Suffolk County in the Shoreham proceeding, to Samuel W. Speck of FEMA, and appear to be the following:^{10/}

1. Exercise of basic command and control functions in the offsite area during an emergency.

Command and control functions are generally thought of as those fundamental attributes of authority needed to implement an emergency plan or similar evolution. There will be no exercise of any command and control functions offsite on February 13. For instance, issuance of instructions to traffic guides to implement traffic control and facilitation strategies on roads in the EPZ, and their actual implementation of those instructions, would be attributes of offsite command and control. However, no such

^{10/} These functions have been expressed in numerous and slightly varying ways over time, beginning with Suffolk County's initial 10 "legal authority" contentions filed with the NRC Atomic Safety and Licensing Board, continuing through the County's complaint in Cuomo v. LILCO and Judge Geiler's decision, and in various papers since. Various of these compilations are recited in Mr. Brownlee's letter, and use of this version is intended simply for convenience.

instruction will be given or implementation effected.^{11/} Traffic guides will not set up their equipment in public roadways to implement traffic control strategies, or enter onto the roadways themselves and assist traffic flow with arm movements, or take any other action which could be seen as a holding-out or exercise of governmental authority. Quite the opposite. Traffic guides will be alerted by established procedures to muster at their staging areas (on LILCO property). If simulated scenario conditions would indicate that an evacuation of all or a portion of the population of the EPZ is recommended to minimize public exposure, they (or a portion of them) will be deployed from the staging areas to travel along public roads like any other citizens, observing all traffic rules and with appropriate equipment in their vehicles, to their predesignated traffic control posts (typically, intersections). They will park their cars in legal spots near their assigned posts; set up their licensed two-way radios in the cars; and report their presence on station. They will then await further instruction. They will not unpack their equipment from their cars or take any other action of a potentially provocative nature. If FEMA wishes to inventory their equipment, or to test their knowledge of their assigned traffic control strategy, or their proficiency in traffic direction, all of these can be demonstrated on

^{11/} The following assertions for this and other job descriptions are LILCO's expectation of what FEMA will require, based entirely on its knowledge of FEMA procedure in other exercises at other nuclear power plants, and on LILCO's strong desire to avoid confrontation in the course of the exercise.

private property. In short, there will be no more exercise of "command and control" functions here than in the dispatch of a cab or a delivery or repair truck by a central office of a private firm. Nor will there be in any other offsite function, as can be seen in the descriptions below.

2. Determination of how to protect the health, safety and welfare of persons living within the EPZ and ingestion pathway.

There will be no determinations, in fact, of how to protect the health, safety and welfare of persons within the EPZ and the ingestion pathway. What will happen, roughly, is this: exercise controllers (federal employees) operating on LILCO property will communicate to various members of the LERO organization, directly or indirectly, certain assumed information about plant conditions, atmospheric and weather conditions, and the like at various times. Those persons in the LERO organization responsible for communicating that information to decision-makers within LERO will do so by established channels over internal or licensed or commercial means. Those persons who are charged with responsibility in a real emergency for making decisions (principally, the Director of Local Response, the Manager of Local Response, the Health Services Coordinator), in consultation with those responsible for evaluating information, will attempt to determine what, in the event of a real emergency, would be the most appropriate course of action to minimize harm to the general public. They will not implement the results of this analysis in any fashion impacting on the general public, though they will communicate it to appropriate

arms of LERO with the intent of having LERO react internally and simulate those functions which, if actually undertaken in a genuine emergency, would be calculated to minimize harm to the public. For instance, if the scenario described conditions which, upon analysis and in conformity with established procedures, would warrant the sounding of the sirens in the EPZ during a real emergency, the Director of Local Response would instruct LERO internally to take all steps right up to the point of, but not including, actuating the sirens. The determination whether to actually sound the sirens on February 13 is one on which LILCO will request this Legislature's views (see pages 21-22, below).^{12/}

3. Determination of whether EPZ residents should be evacuated or sheltered and, if so, where and how.

There will be no determinations in fact as to whether EPZ residents should be evacuated or sheltered, or where or how. As a point of information, the manner of evacuation or sheltering, once those decisions have been made (actually or hypothetically) is a standard matter under the Shoreham Offsite Plan: evacuation routes are prescribed, and guidelines for sheltering in the home or other buildings are a standard part of the protective action recommendations procedure. What will be conducted on February 13 is an entirely internal exercise, totally without involvement of the general public, to test the analytical skills and knowledge of

^{12/} The same will apply to the actual broadcasting of EBS messages and distribution of the emergency planning brochure to the general population within the EPZ.

the LERO management team and the effectiveness of the LERO information transmission and analysis organization. The effectiveness of any of the results of this process will be purely simulated, purely hypothetical.

4. Notification of the public concerning the emergency and communication of recommendations concerning evacuation or sheltering.

In a real emergency the general public would be notified of its onset via the Prompt Notification System, consisting of 89 sirens throughout the EPZ. In the event of siren failure of any magnitude (determined by a prompt, statistically based telephone survey throughout the EPZ to predesignated phone numbers), Route Alert drivers would drive throughout any area or areas not previously covered, in cars equipped with loudspeakers, and would also make special trips to notify preregistered deaf persons. Messages conveying information concerning the emergency and protective action recommendations would be broadcast over the Emergency Broadcast System (EBS). In addition, the public will have been prepared for this information by advance circulation to every household in the EPZ of an emergency planning brochure.

None of these actions, at least so far as they impact the general public, need be carried out on February 13, and LILCO seeks the Suffolk County Legislature's guidance on its preference with respect to them. Taking them in order:

a. Sirens: FEMA will surely want LILCO to demonstrate that its procedures for determining when to activate the sirens, and for actually activating them, are understood. LILCO will, it

expects, be required to follow them right to the point of actuation. However, actuation itself need not be accomplished to determine the LERO organization's capabilities. LILCO believes that it would be far preferable to actuate the sirens in place on February 13, but requests the Legislature's specific guidance on this point.^{13/}

b. EBS Messages: The appropriateness and effectiveness of LERO's reaction to events in the scenario and their communication to the public can be tested in a manner similar to that of the sirens: namely, by requiring the preparation of EBS messages, and their transmission to and receipt by participating stations. Thus the LERO-specific aspect of EBS message testing in an exercise is a totally internal matter with no impact on the public at all. Nor need the capabilities of the stations' transmitters be demonstrated by broadcast of potentially alarming messages; if the stations in the system do broadcast a message, it can be a very neutral one which merely demonstrates their transmitters' operability on that day. Such operability can be established by means other than requiring broadcast of a Shoreham-specific EBS message on February 13, however. As with sounding of the sirens, LILCO believes that it would be preferable for the EBS stations to broadcast a message relative to Shoreham on February 13, but that it is not absolutely necessary as long as the remaining functions are

^{13/} At some point FEMA will require LILCO to perform an acceptance test, known as a "FEMA-43" test, involving siren activation. It can be conducted on February 13 or at another time.

accomplished. LILCO again asks the Suffolk County Legislature for its specific guidance on this matter.

c. Public Information Brochure: The public information brochure for Shoreham has been prepared in final form, following litigation before the NRC Licensing board on its contents. LILCO is prepared to send it out, but is also prepared to refrain from doing so. LILCO believes that the necessary ability to distribute the brochure can be demonstrated by means short of actually mailing it out. Similarly, no one has ever asserted that the general public of Suffolk County is any less capable than the population of any other area of understanding the contents of an emergency planning brochure, and no other brochure approved in litigation has ever been found to have been unusable once distributed. Thus LILCO is prepared to forgo, for the time being, distribution of the brochure approved by the Licensing board, but here also seeks the specific preference of the Suffolk County Legislature.

5. Direction of any evacuation effort and control and management of evacuation traffic

In a real emergency the evacuation effort is accomplished by the teamwork of three groups: (1) traffic guides; (2) road crews and route spotters, who look for areas of congestion, clear obstructions off roads, and dispense fuel to cars needing it; and (3) bus, ambulance and ambulette drivers to care for the evacuation of those not able to leave in their own or neighbors' automobiles. Each of these groups, in turn, is supported by an organizational chain of command, operating entirely on LILCO property, which mobilizes, equips and dispatches them.

In an exercise, the internal organizational effort would proceed exactly as in a real emergency: traffic guides, road crews, bus drivers and ambulance/ambulette drivers would be mobilized and equipped as in a real emergency. All of these processes occur on LILCO property. None of them involves any contact with the public. None of them involves any holding out of legal authority or any violation of New York or Suffolk County law predating Local Law 2-86.

From the point of mobilization on, the functions of each of these categories of workers will be modified as necessary to avoid any violation of law, while still permitting demonstration of actual proficiency. The manner in which traffic guides will perform in an exercise is outlined above in Paragraph II.B.(c)(1), pages 17-19 above. Road crews will mobilize to pick up their equipment (trucks of various descriptions), then proceed to their stations, where they will report their presence and either park in a legal spot or continue to travel on the highway in accordance with their instructions in the Shoreham Offsite Plan and all highway laws. They will not clear obstructions off any highway. Any need for any demonstration of proficiency in this task can be accomplished on private property. Similarly, fuel truck drivers will pick up their trucks and drive, following all highway laws, to their deployment stations, where they will report their presence by radio, park in a legal parking spot, and await instructions. They will not dispense any fuel while on station. Any need to demonstrate proficiency in distribution of fuel can be satisfied on private

property. Similarly, the route spotters will drive their automobiles along their assigned routes in accordance with all applicable highway laws. Since their cars need no markings in any event, they should be able to perform their assigned tasks (recognizing, of course, that there will be no steps actually effected as part of the exercise to alleviate any highway congestion reported by the route spotters). One or more route spotters may also observe and report on highway congestion from helicopters under contract to LILCO.

Finally, bus drivers can be expected to be mobilized, and dispatched to bus companies. There, some of them may be expected to be instructed to pick up buses and drive their routes in them in conformity with all applicable highway laws. Other bus drivers may be expected to drive their routes, again in conformity with all applicable highway laws, in their automobiles.

Execution of duties on February 13 by LERO members involved in implementing an evacuation, if a real emergency were to occur, is thus modified to eliminate any need for actual or apparent exercise of legal authority; to avoid performance in fact of any functions normally performed by Suffolk county officials; and to avoid violation of pre-existing state and local laws. Demonstration of those individual and organizational skills which, if performed for effect on public property would violate existing law, can be accomplished on private property or simulated.

6. Determination of protective measures throughout the ingestion pathway concerning food, produce and other health and safety issues and notification of the public concerning such measures.

Measures involving the ingestion pathway are longer-term than those in the EPZ. They involve control of potentially contaminated foodstuffs, water supplies, and the like, for populations at a distance beyond potentially health-threatening dose levels. It is LILCO's understanding that these functions are typically simulated internally in other exercises. In a real emergency the Shoreham Offsite Plan calls for such measures as keeping contaminated produce and milk off the market by contacting extensive, predetermined lists of produce vendors and dairies and offering to buy up all contaminated produce and milk at market (i.e., uncontaminated) prices. It also provides for notifying the public by EBS message of potential areas of contamination, and of measures to avoid it. In this exercise, however, LILCO will take no steps that would involve any holding-out or exercise of police power authority or any exercise of Suffolk County or State officials' roles or functions, nor any EBS messages to the public on ingestion pathway measures. LERO personnel will evaluate information presented to them in the unfolding of the scenario. Any decisions made internally by LERO on the basis of that information could be implemented in the event of a real emergency, but any such effectuation will only be simulated in the exercise.

7. Determination of decisions concerning recovery and re-entry steps after a nuclear accident and notification of the public concerning such decisions.

Recovery and re-entry decisions are the last ones to be taken in emergency response, and presuppose the reduction of radiation in evacuated portions of the EPZ to levels that no longer pose

unreasonable risks of contamination. In a real emergency a Recovery Action Committee consisting of LERO personnel, in conjunction with participating governments, would evaluate information on radioactivity levels in the EPZ, formulate recommendations to the general public, institute measures respecting restoration of affected areas to pre-emergency condition, and communicate information on these matters to the general public via the EBS and by press briefings. In the February 13 graded exercise, the analytical portion of the process will be replicated, with all required communications beyond LERO and all first-hand information gathering simulated. There will be no exercise of actual or apparent police power, no holding-out or communication to the public, no performance of Suffolk County or State officials' duties, no violation of pre-existing Suffolk County or State law.

The net result of all of this is that the LERO organization, and individuals in it, will demonstrate the capacity to respond successfully to a radiological emergency at Shoreham, but will do so in a way that does not require them to engage in any performance in fact of Suffolk County officials' roles or functions, nor any holding out to the general public of governmental authority, nor any violation of pre-existing New York State or Suffolk County law. Those aspects of organizational response which, if actually performed by LILCO or LERO would violate New York State law as construed the trial court in Cuomo v. LILCO, will be simulated. Where FEMA deems it necessary to test individuals' proficiency in skills which cannot presently be performed for effect without

violating New York law, such skills demonstrations can be accomplished on private property.

III. IMPLICATIONS FOR COMPLIANCE WITH LOCAL LAW 2-86

From the above, the following can be seen:

1. There will be no interference with the public's right of use of or access to public property. The public effect of the exercise, such as it is, will be limited to traffic and parking. The traffic "load" will involve mobilization travel on public highways of LERO members' cars and then, later, some fraction of available buses (standard school buses), ambulance/ambulettes, and route spotters and route alert drivers. Many of these exercise-related vehicles would be on the road in any event in the normal course of business. This additional traffic is distributed throughout the 175 or so square miles of EPZ. This is a negligible, probably undetectable traffic effect against the background of an EPZ which has within it between 140,000 and 150,000 residents and on the order of 40,000 jobs to which people commute by car daily. Similarly, the parking "load" will consist of the traffic guides' cars, parked in legal places near intersections scattered around the EPZ, plus another dozen or so fuel and tow trucks similarly parked. There are thousands of cars parked daily in legal spots along roads within the EPZ, and unused space for thousands more. There will be no other presence whatever on public property associated with LILCO's participation in the exercise. Thus the provision of Local Law 2-86 (Section 2(c)) prohibiting interference with public use of or access to public property will not be violated.

2. There will be no performance at all by LERO of Suffolk County governmental functions on February 13. There will be no protective action recommendations made to the public. There will be no obstruction of streets or rerouting of traffic. There will be no evacuation of any members of the public. There will not even be, if the Suffolk County Legislature refuses to permit it, any notice to the public of the exercise by siren, EBS message or brochure. A decision-making process will be activated on private property on the basis of hypothetical, assumed facts. All that will be tested are the organizational competence and individual proficiency necessary to inform that process and bring it to the point where, if actions impacting the public -- e.g., communicating and implementing a protective action recommendation -- had to be taken, they could be. Any actions which, if taken, would potentially affect the public will be totally simulated. Thus the provision of Local Law 2-86 (Section 3(c)) against unauthorized performance of Suffolk County government functions is not violated.

3. There will be no usurpation of Suffolk County police powers. Though Local Law 2-86 does not define the term "usurp," its common dictionary meaning is "to seize or hold (as office, place or powers) in possession by force or without right"; or, "to take the place of by or as if by force; supplant; seize or exercise authority or possession wrongfully." (Webster's Ninth New Collegiate Dictionary, 1983). Unless the Suffolk County Legislature had in mind something considerably different than the

ordinary definition of "usurp," there is simply no way the February 13 exercise can be thought of as involving usurpation of Suffolk County's governmental or police powers by LERO. There will be no exercise of Suffolk County governmental powers whatever by LERO, much less any forcible or otherwise wrongful seizure of them. The exercise will not violate this provision (Section 3(c)) of the local law.

IV. SIMULATION OF ROLES OF SUFFOLK COUNTY OFFICIALS

Simulation of Suffolk County governmental roles or functions in a test or exercise of an emergency response plan is not itself made unlawful per se by Local Law 2-86. A person planning to conduct or participate in a test or exercise in which such roles or functions will be performed or simulated is required to file a description of the proposed test or exercise with the clerk of the Suffolk County Legislature at least 25 days in advance. (Section 2(b)). And Local Law 2-86 makes it made a crime to conduct or participate in a test or exercise of an emergency response plan involving performance or simulation of such roles if the Suffolk County Legislature has previously issued a notice of disapproval. (Section 2(a)).

The criteria by which the Suffolk County Legislature will judge performance or simulation, however, are set out in section 3(c). That section outlaws simulation of governmental roles or functions only if it possesses any of three additional characteristics:

1. It interferes with the public's use of or access to public property; or
2. It involves the unauthorized performance of governmental functions; or
3. It usurps or otherwise impairs the police powers held by the County.

The Shoreham Offsite Plan does not contemplate the simulation of any specific Suffolk County governmental position or function. The positions set forth in the Plan and filled by LERO are those necessary to fulfill federal licensing requirements, without heed to any specific Suffolk County positions or functions. This is not to say that Suffolk County governmental personnel could not fill those places; indeed they could (and the Plan goes to considerable lengths, see Item II.A, especially pages 10-11 above, to provide for the insertion of Suffolk County personnel if they should appear and desire to participate). It is merely to say that the ultimate LERO roster was developed with reference to fulfillment of functional federal requirements rather than Suffolk County positions or roles.^{14/}

LILCO understands that the federal component of the February 13 exercise may involve ad hoc participation by federal officials or contractors simulating the performance of various roles of the Suffolk County and, perhaps, New York State governments. LILCO

^{14/} Indeed, counsel for Suffolk County, Mr. Brownlee, conceded in his December 26, 1985 letter to Mr. Speck of FEMA that Suffolk County officials have no specific "identifiable role" in the Shoreham Offsite Plan. Id. at 22.

has no specific knowledge of what roles may be contemplated for simulation or how they would be fulfilled in the course of the exercise. However, unless that simulation itself involves, in fact, the impairment of public access to or use of public property, the performance in fact of governmental functions, or the usurpation of Suffolk County police powers, it is not prohibited under Local Law 2-86, even in its own terms.

Advocates for the County's position frequently point to two judicial decisions as support for the County's refusal to engage in emergency planning for Shoreham and its resistance to any other organization's taking its place.^{15/} It is well to place those decisions in context. The first of them, Citizens for an Orderly Energy Policy v. County of Suffolk, 604 F. Supp. 1084 (E.D.N.Y. 1985), stands for at least the District Court's support for the proposition that the County cannot be compelled, under the Atomic Energy Act of 1954, to engage in emergency planning for nuclear power plants. However, Judge Altimari did not concede to the county carte blanche authority to frustrate federally required emergency planning or the federal licensing process:

Certainly the County may not require LILCO to comply with the County's requirement for a satisfactory RERP [Radiological Emergency Response Plan]; whether LILCO's RERP is sufficient is a question for the NRC, and the County may not override the NRC's judgment. Here however, the County has not passed a moratorium on nuclear plant construction and operation based on the county's opinion that no satisfactory RERP can be devised. Rather the County has adopted the position that a satisfactory RERP is not obtainable. The County has not and cannot supersede

^{15/} See, e.g., Mr. Brownlee's December 26 letter to Mr. Speck, at 24.

the judgment of the NRC on whether or not a license should issue for Shoreham. Once the NRC makes that decision the County's opinion on LILCO's RERP will become academic.

Similarly, while the Prospect v. Cohalan litigation, 493 NYS 2d 293 (1985) includes the proposition that the County Executive cannot implement emergency response in defiance of the County Legislature's wishes, the Court of Appeals also upheld the Appellate Division's refusal to bar the County Executive from engaging in emergency planning, as distinguished from implementation, by gathering information. The conduct of a graded FEMA exercise is simply the final stage in gathering information on emergency planning at Shoreham. To the extent that the simulated ad hoc participation of Suffolk County assists in that process it is not only of value to the federal regulators who will make the ultimate licensing decision on Shoreham; it is also consistent with the decisions of the New York State courts in Prospect v. Cohalan.

V. CONCLUSION

This demonstration has provided, in compliance with section 3(a) of Local Law 2-86, a description of the activity proposed, namely, a February 13 FEMA graded exercise. It has also provided a description of the LERO organization and the functions which each of the major job categories performs under the Shoreham Offsite Plan. It has also described, also in compliance with section 3(a) of the Local Law, what will be done, how, when, where, by whom, and for what purpose, with

particular reference to stated areas of County concern with respect to preservation of its police powers.

LILCO believes that the February 13 exercise will not involve any interference in fact with public use of or access to public property. Nor will it involve performance whatever of the functions or roles of Suffolk County officials. To the extent that implementation in a real emergency could involve such performance, the pertinent areas have been simulated in the exercise. Since there is no performance of Suffolk County governmental roles, perforce there can be no usurpation of them.

LILCO submits three particular areas whose actual performance on February 13 it does not believe to be absolutely essential, but which are nevertheless highly useful in conducting as realistic and complete an exercise as possible, to the Suffolk County Legislature for its specific review: sounding of sirens, broadcast of EBS messages, and distribution of the emergency planning brochure.

LILCO believes that this demonstration, along with the parallel demonstration which it understands the federal government to be submitting, shows that the graded FEMA exercise planned for February 13 will not violate Local Law 2-86 or other, pre-existing law in any respect and that the Suffolk County Legislature therefore cannot issue a notice of disapproval of it consistent with Local Law 2-86.

SHOREHAM NUCLEAR POWER STATION: LOCAL OFFSITE RADIOLOGICAL EMERGENCY RESPONSE PLAN
 LOCAL EMERGENCY RESPONSE ORGANIZATION (LERO) JOB DESCRIPTION SUMMARY (REV. 5)

ATTACHMENT 1

1.	2.	3.	4.	5.	6.	7.	8.
Job #	LERO Job Description	No. of Persons Per Shift	Location*	Contact With Service, Support or Government Organizations**	Contact With General Public	Activities Challenged as to Legal Authority***	Description of Response in Actual Emergency****
1.	Director of Local Response	1	EOC	X	X	D, I	Contact with support, service and governmental organizations is basic to Director of Local Response. Contact with public possible (but not necessary) via press conferences. Exercise of challenged functions intrinsic to DLR decisions on public notification and protective action recommendations. In February 13 exercise, public notification of emergency and if protective action recommendations will be simulated. See OPIP 2.1.1 p. 5; OPIP 3.1.1, Attachments 1, 8, 9, 10; OPIP 3.3.1 & Attachment 1, OPIP 3.3.2, para. 5; OPIP 3.3.3 & Attachment 1; OPIP 3.3.4; OPIP 3.6.1; OPIP 3.8.2; OPIP 4.1.1 & Attachment 2.
2.	Manager of Local Response	1	EOC	X	X	I, C	In charge of implementing DLR decisions, see comments applicable to Director of Local Response. See also OPIP 2.1.1, p. 6; OPIP 3.3.2

* All locations other than some traffic control posts are on LILCO property or property that will be controlled by LILCO during an exercise.

** Support organizations have defined roles in the Shoreham Offsite Plan. Government organizations are tax funded organizations on any level. Service organizations are non-governmental organizations not having a defined role in the Shoreham Offsite Plan.

*** Suffolk County and New York State claim that certain activities contemplated by the LILCO Plan cannot be legally implemented by LILCO. None of those challenged activities will be done during an exercise (e.g., no communications to the public of protective action recommendations, and no direction of traffic). Some of the activities (e.g., decision-making) will be simulated during the exercise.

**** This is not a complete listing of duties; it focuses on those relevant to contact with organizations or persons outside LERO or activities challenged by Suffolk County and New York State on the grounds that LILCO lacks legal authority to do them in an emergency. References to Emergency Plan are not necessarily complete; they are intended to illustrate representative duties. Letter designations refer to the following activities: C, Communication; D, Decision-making; I, Implementation. Important Note: This listing of duties pertains to an actual emergency. In an exercise, potentially governmental aspects will be simulated, and various other aspects may be.

1.	2.	3.	4.	5.	6.	7.	8.
Job #	LERO Job Description	No. of Persons Per Shift	Location	Contact With Service, Support or Government Organizations	Contact With General Public	Activities Challenged as to Legal Authority	Description of Response in Actual Emergency
							para. 5; OPIP 3.3.3 & Attachment 1; OPIP 3.3.4, para. 5.2.2.
3.	Health Services Coordinator	1	EOC	X		C	In charge of LERO operations relative to public health, local public services, radiological accident assessment, and radiological exposure control; assists DLR in formulating basis for protective action recommendations; recommends use of potassium iodide as thyroid blocking agent for emergency workers; contacts outside agencies for logistic support. Duties of Recovery/Re-entry Committee include various recommendations about contaminated foodstuffs, etc. See OPIP 2.1.1, p. 7; OPIP 3.1.1 & Attachment 3; OPIP 4.1.1 Attachment 4.
4.	Emergency Medical/Public Service Coordinator	1	EOC	X			Oversees activities of Hospital Coordinator, Public Services Coordinator, Ambulance Coordinator. May call ambulance companies. Provides information to law enforcement, fire and rescue organizations. See OPIP 2.1.1, p. 8, OPIP 3.6.5, OPIP 4.2.2.
5.	Hospital Coordinator	1	EOC	X			Communicates with hospitals to ascertain available capacity and resources, with respect to contaminated/injured persons. See OPIP 2.1.1, p. 9; OPIP 3.6.5, OPIP 4.2.2.
6.	Public Services Liaison	1	EOC	X			Communicates with local fire, rescue and law enforcement agencies,

1.	2.	3.	4.	5.	6.	7.	8.
<u>Job #</u>	<u>LERO Job Description</u>	<u>No. of Persons Per Shift</u>	<u>Location</u>	<u>Contact With Service, Support or Government Organizations</u>	<u>Contact With General Public</u>	<u>Activities Challenged as to Legal Authority</u>	<u>Description of Response in Actual Emergency</u>
							relaying LERO response information at their request. See OPIP 2.1.1, p. 10; OPIP 3.6.5, OPIP 4.2.2.
7.	Ambulance Coordinator	1	EOC	X	X (possible)		Dispatches ambulances for requested evacuation of persons from houses and institutions, and for contaminated/injured persons; potential contact with individuals calling to request ambulance evacuation. See OPIP 2.1.1, p. 11; OPIP 3.6.5; OPIP 4.2.2.
8.	Radiation Health Coordinator	1	EOC	X		C	Responsible for determining potential for and extent of offsite releases, and providing basis for protective action recommendations for DLR; Communicates with governmental agencies providing radiological assistance; coordinates with DOE RAP teams. See OPIP 2.1.1, p. 12; OPIP 3.5.2; OPIP 3.6.1; OPIP 3.6.2; OPIP 3.6.6; OPIP 3.9.1; OPIP 3.9.2.
9.	Nuclear Engineer	1	EOC	X			Evaluates plant conditions for LERO; non-LILCO person. See OPIP 2.1.1, p. 12b.
10.	Dosimetry Coordinator	1	EOC				Oversees LERO radiation exposure record keeping, see OPIP 2.1.1, p. 13.
11.	Record Keepers - EOC	1	EOC, EWDH, Staging Areas.				Keep LERO radiation exposure records, see OPIP 2.1.1, p. 14.

1.	2.	3.	4.	5.	6.	7.	8.	Description of Response in Actual Emergency
Job #	LERO Job Description	No. of Persons Per Shift	Location	Contact With Service, Support or Government Organizations	Contact With General Public	Activities Challenged as to Legal Authority		
			Reception Center					
12.	Record Keepers - Emergency Worker Decontamination Facility	2	" "					Keep LERO radiation exposure records, see OPIP 2.1.1, p. 14.
13.	Record Keepers - Staging Areas	9	" "					Keep LERO radiation exposure records, see OPIP 2.1.1, p. 14.
14.	Record Keepers - Reception Center	6	" "		X			Keep LERO radiation records; potential contact with general public at Reception Center. See OPIP 2.1.1, p. 14.
15.	Decontamination Coordinator	1	EDC	X				Potential contact with American Red Cross (ARC) at Reception Center; see OPIP 2.1.1, p. 16.
16.	Decontamination Leader - Emergency Worker Decontamination Facility	1	EWDF					Directs radiological monitoring and decontamination at EWDF, see OPIP 2.1.1, p. 17.
17.	Decontamination Leader - Reception Center	4	Reception Center	X	X			Directs radiological monitoring and decontamination, in coordination with ARC, at Reception Center; contact with ARC at Reception Center; see OPIP 2.1.1, p. 17.

1.	2.	3.	4.	5.	6.	7.	8.
Job #	LERO Job Description	No. of Persons Per Shift	Location	Contact With Service, Support or Government Organizations	Contact With General Public	Activities Challenged as to Legal Authority	Description of Response in Actual Emergency
18.	Radiation Monitoring and Decontamination Personnel - Emergency Worker Decontamination Facility	12	EWDF	X			Conduct radiological monitoring of personnel and vehicles; potential contact with ambulance services; see OPIP 2.1.1, p. 18.
19.	Radiation Monitoring and Decontamination Personnel - Reception Center	120	Reception Center	X	X		Conduct radiological monitoring of personnel and vehicles; contact with ARC, general public at reception center; see OPIP 2.1.1, p. 18.
20.	RAP Team Liaison*	1	EDC	X			Contact with DOE-RAP team organization; DOE officials; see OPIP 2.1.1, p. 20; OPIP 3.5.2; OPIP 3.6.6.
21.	RAP Team Captain*	1	Brookhaven Area Office	X			Contact with DOE-RAP team organization; DOE officials; see OPIP 2.1.1, p. 21.
22.	Dose Assessment Function*	2	Brookhaven Area Office	X			Contact with DOE-RAP team organization; DOE officials; see OPIP 2.1.1, p. 22.
23.	Environmental Survey Function*	1	Brookhaven Area Office	X			Contact with DOE-RAP team organization; DOE officials; see OPIP 2.1.1, p. 23.

* These personnel have contact with government agencies definitionally, since they are from DOE.

1.	2.	3.	4.	5.	6.	7.	8.
Job #	LERO Job Description	No. of Persons Per Shift	Location	Contact With Service, Support or Government Organizations	Contact With General Public	Activities Challenged as to Legal Authority	Description of Response in Actual Emergency
24.	Survey Team Members*	4	Brookhaven Area Office field locations as directed by the Environmental Survey Functions	X	X(7)		Contact with DOE-RAP team organization; potential coincidental contact with general public in field monitoring; DOE officials; see OPIP 2.1.1, p. 24.
25.	Evacuation Coordinator	1	EOC	X		I, C	Direct communication with public agencies (U.S. Coast Guard, FAA, DOE-BNL, Suffolk County, New York State) re initiation of recommended protective action measures; member of Recovery Action Committee for longer-term recovery and re-entry; does not make decisions on protective actions, merely coordinates communication of them; see OPIP 2.1.1, p. 16; OPIP 3.6.3, para. 5.1.
26.	Traffic Control Coordinator	1	EOC	X (potential)			Contact only within LERO; see OPIP 2.1.1, p. 27; OPIP 3.6.3, para. 5.2.
27.	Traffic Control Point Coordinator	1	EOC	X			Coordinates overall field activities of traffic guides; likely communication with and briefing of SCPD. See OPIP 2.1.1, p. 28; OPIP 3.6.3 para. 5.3 and Attachment 15, p. 62.
28.	Lead Traffic Guides	9	Staging Areas	X		I, C	Coordinates preparation of traffic guides, road crews, route spotters, route alert drivers; potential contact with and briefing of SCPD; see

1.	2.	3.	4.	5.	6.	7.	8.
Job #	LERO Job Description	No. of Persons Per Shift	Location	Contact With Service, Support of Government Organizations	Contact With General Public	Activities Challenged as to Legal Authority	Description of Response in Actual Emergency
							OPIP 2.1.1, p. 29; OPIP 3.6.3, para. 5.4.
29.	Traffic Guides	165	Staging Areas/ intersections within the 10-mile EPZ	X	X	I	Facilitate traffic flow at intersections in evacuation per predetermined traffic control strategy; take direction from SCPD members if they arrive on scene; see OPIP 2.1.1, p. 30; OPIP 3.6.3, para. 5.8 and Attachments 1, 15.
30.	Road Logistics Coordinator	1	EOC				Coordinates field activities of Road Crews; communication only within LERO; see OPIP 2.1.1, P. 34; OPIP 3.6.3, para. 5.5.
31.	Road Crews	38	Staging Areas/field locations as directed by the Road Logistics Coordinator	X	X	I	Clear disabled vehicles or other obstacles from roads; dispense fuel to vehicles needing it; establish one-way traffic flow treatment; take direction from SCPD members if they arrive on scene; see OPIP 2.1.1, p. 35; OPIP 3.6.3, para. 5.9 and Attachments 2, 8, 12.
32.	Evacuation Route Coordinator	1	EOC				Coordinates activities of Evacuation Route Spotters; communicates only within LERO; see OPIP 2.1.1, p. 36; OPIP 3.6.3.
33.	Evacuation Route Spotters	9	Staging Areas/ roadways within the 10-mile EPZ		X(?)		Drive roadways in unmarked vehicles or fly over in helicopters to observe traffic conditions, communicate them to LERO; possible coincidental contact with general public; see OPIP 2.1.1 p. 37; OPIP 3.6.3, Attachments 3, 6.

1.	2.	3.	4.	5.	6.	7.	8.
<u>Job #</u>	<u>LERO Job Description</u>	<u>No. of Persons Per Shift</u>	<u>Location</u>	<u>Contact With Service, Support or Government Organizations</u>	<u>Contact With General Public</u>	<u>Activities Challenged as to Legal Authority</u>	<u>Description of Response in Actual Emergency</u>
34.	Staging Area Coordinators	3	Staging Areas				Set up and manage staging areas; communicate only within LERO; OPIP 2.1.1, p. 38.
35.	Special Facilities Evacuation Coordinator	2	EOC				Oversees activities of Schools, Health Facilities and Home Coordinators, and Route Alert drivers; communicates only within LERO; makes no decisions involving protective action recommendations; see OPIP 2.1.1, p. 39.
36.	Public Schools Coordinator	1	EOC	X		C	Communicates with public schools, assists in transportation coordination; makes no decisions regarding public action recommendations, only communicates them; see OPIP 2.1.1, p. 40; OPIP 3.6.5, para. 5.10.
37.	Private Schools Coordinator	1	EOC	X		C	Communicates with private schools, assists in transportation coordination; makes no decisions regarding private action recommendations, only communicates them; see OPIP 2.1.1, p. 41; OPIP 3.6.5, para. 5.10.
38.	Health Facilities Coordinator	1	EOC	X		C	Communicates with hospitals, nursing homes, other in-patient health facilities; assists in transportation coordination; makes no decisions regarding public action recommendations, only communicates them; see OPIP 2.1.1, p. 42; OPIP 3.6.5, para. 5.9.

<u>1.</u>	<u>2.</u>	<u>3.</u>	<u>4.</u>	<u>5.</u>	<u>6.</u>	<u>7.</u>	<u>8.</u>
<u>Job #</u>	<u>LERO Job Description</u>	<u>No. of Persons Per Shift</u>	<u>Location</u>	<u>Contact With Service, Support or Government Organizations</u>	<u>Contact With General Public</u>	<u>Activities Challenged as to Legal Authority</u>	<u>Description of Response in Actual Emergency</u>
39.	Home Coordinator	1	EOC		X	C	Notifies previously identified individuals in private homes of protective action recommendations, arranges transportation, see OPIP 2.1.1, p. 43; OPIP 3.6.3, <u>para.</u> 5.4.
40.	Route Alerting Drivers	60	Staging Areas/ field locations as directed by the Special Facilities Evacuation Coordinator		X	C	Notify general public in areas, if any, of siren failure; notify deaf persons; assist in helicopter notification of boaters; see OPIP 2.1.1, p. 44; OPIP 3.3.4.
41.	Transportation Support Coordinator	1	EOC	X(?)			Coordinates bus evacuation; communicates within LERO and perhaps to bus companies; see OPIP 2.1.1, p. 46; OPIP 3.6.4, <u>para.</u> 5.2.2
42.	Bus Coordinators	2	EOC	X			Communicate with LERO, bus companies; determine bus evacuation requirements and coordinate information with bus dispatches; see OPIP 2.1.1, OPIP 3.6.4, <u>para.</u> 5.3.
43.	Bus Dispatchers	4	Staging Areas				Dispatch LERO bus drivers to bus companies to pick up buses and coordinate bus Transfer Point operations; see OPIP 2.1.1, p. 48; OPIP 3.6.4, <u>para.</u> 5.5; OPIP 3.6.5, <u>para.</u> 5.7.

1.	2.	3.	4.	5.	6.	7.	8.
Job #	LERO Job Description	No. of Persons Per Shift	Location	Contact With Service, Support or Government Organizations	Contact With General Public	Activities Challenged as to Legal Authority	Description of Response in Actual Emergency
44.	Transfer Point Coordinators	22	Staging Areas/field locations at Bus Transfer Points		X		Instruct bus drivers at transfer points, dispatch them to routes; may assist in loading and unloading buses at transfer points; only coincidental contact with general public; OPIP 2.1.1, p. 49; OPIP 3.6.4, para. 5.6.
45.	Bus Drivers	330	Staging Areas/bus routes curbside pickup or special facilities pickup within the 10-mile EPZ	X	X		Obtain buses from cooperating bus companies, drive bus routes; transport persons from special facilities, see OPIP 2.1.1, p. 50, OPIP 3.6.4, para. 5.7 and Attachment 2.
46.	Support Services Coordinator	1	EOC	X			Coordinates overall activities of that portion of LERO responsible for setting up Reception Center; carrying out logistic support, LERO Family Tracking and Relocation, and security; participates in longer-term Recovery Action committee. Communicates with support organizations, e.g., ARC and Island Helicopter; See OPIP 2.1.1, p. 51; OPIP 3.7.1, Attachment 5.
47.	American Red Cross Coordinator	1	EOC	X			American Red Cross official; in charge of ARC activities, coordinates with LERO, OPIP 2.1.1, p. 52.
48.	Industrial Relations Coordinator	1	EOC				LERO internal activities only; see OPIP 2.1.1, p. 53.

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<u>Job #</u>	<u>LERO Job Description</u>	<u>No. of Persons Per Shift</u>	<u>Location</u>	<u>Contact With Service, Support or Government Organizations</u>	<u>Contact With General Public</u>	<u>Activities Challenged as to Legal Authority</u>	<u>Description of Response in Actual Emergency</u>
49.	Logistics Support Coordinator	1	EOC	X			Assists with EOC setup; communicates with vendors of goods and services (supplies, travel, accommodations, etc.) for LERO and support personnel activities; see OPIP 2.1.1, p. 54.
50.	EOC Administration Support	15	EOC				Internal activities for LERO; secretarial, clerical support and mobilization, etc.; see OPIP 2.1.1, p. 55.
51.	Staging Area Support Staff	24	Staging Areas at Port Jefferson, Riverhead, and Patchogue				Assist Staging Area Coordinator in telephone and radio communications; activities are internal to LERO; see OPIP 2.1.1, p. 57.
52.	Material Purchasing	3	EOC	X			Place orders with vendors for materials and supplies needed by LERO staff; aid in EOC activation. See OPIP 2.1.1, p. 58.
53.	Maintenance	1	EOC				EOC start up, equipment repair, maintenance. See OPIP 2.1.1, p. 58.
54.	Security Coordinator	1	EOC	X			Coordinates physical security of all LERO facilities (EOC, Staging Area, EWDF) and Reception Center with contract organizations (e.g., Wells Fargo) and requests assistance of law enforcement organizations (Suffolk and Nassau County

<u>1.</u>	<u>2.</u>	<u>3.</u>	<u>4.</u>	<u>5.</u>	<u>6.</u>	<u>7.</u>	<u>8.</u>
Job #	LERO Job Description	No. of Persons Per Shift	Location	Contact With Service, Support or Government Organizations	Contact With General Public	Activities Challenged as to Legal Authority	Description of Response in Actual Emergency
							Police Departments) in accordance with applicable law. See OPIP 2.1.1, p. 58; OPIP 4.7.1, item 10.
55.	Security Personnel - EOC	3	EOC/Staging Areas				Access control at LILCO facilities. See OPIP 2.1.1, p. 61.
56.	Security Personnel - Reception Center	30	Reception Center	X	X		Personnel access control and personnel traffic and vehicular parking at Reception Center (Nassau Coliseum) in cooperation with Nassau County Police Department.
57.	Lead Communicator	1	EOC				Responsible for necessary work of LERO Communicators. Does not communicate outside LERO himself. See OPIP 2.1.1, p. 65, OPIP 3.1.1, p. 67.
58.	Communication Repair Technician	2	EOC				Repairs LERO communications equipment on-site. See OPIP 2.1.1, p. 65.
59.	Communicators	10	EOC	X			Conduct communications for various segments of LERO, to internal and external organizations.
60.	Coordinator of Public Information	1	EOC	X	X (Via press)	C	Primarily responsible for public information. Activates EBS system and verifies activation of EBS and sirens, oversees EBS message and news release development; implements rumor control procedures.

<u>1.</u>	<u>2.</u>	<u>3.</u>	<u>4.</u>	<u>5.</u>	<u>6.</u>	<u>7.</u>	<u>8.</u>
<u>Job #</u>	<u>LERO Job Description</u>	<u>No. of Persons Per Shift</u>	<u>Location</u>	<u>Contact With Service, Support or Government Organizations</u>	<u>Contact With General Public</u>	<u>Activities Challenged as to Legal Authority</u>	<u>Description of Response in Actual Emergency</u>
							See OPIP 2.1.1 p. 69; OPIP 3.1.1, p. 58; OPIP 3.3.4.
61.	Public Information Staff	6	Emergency News Center and Local EOC	X	X (Via press)		Develop EBS and public information releases, make public announcements, provide support at EWC; see OPIP 2.1.1, p.79.
62.	Supervising Service Operator	2	Electric Service Section, Hicksville	X (contingent)	X (contingent)	C (contingent)	Conducts internal LERO notification; in immediate General Emergency, may initiate activation of Prompt Notification System (sirens) and EBS in absence of LERO Director; see OPIP 2.1.1, p. 79, OPIP 3.3.5.
63.	LERO Family Tracking Center Coordinator	1	Hicksville Operation Center				Director of family tracking operations for LERO workers. See OPIP 2.1.1, p. 72.
64.	LERO Family Tracking Center Staff	9	Hicksville Operation Center				Conduct family tracking operations for LERO workers. See OPIP 2.1.1, p. 73.
65.	LERO Relocation Center Manager	1	Hicksville Operation Center				Activates and oversees operation of Relocation Center in Hicksville for LERO and LILCO/Shoreham families. See OPIP 2.1.1, p. 74.
66.	LERO Relocation Center Staff	8	Hicksville Operation Center				Operates Relocation Center in Hicksville for LERO and LILCO/Shoreham families. See OPIP 2.1.1, p. 75.

STATE OF NEW YORK
EXECUTIVE CHAMBER
MARIO M. CUOMO, GOVERNOR

ATTACHMENT 2

Press Office
212-587-2126
518-474-8418

FOR RELEASE:
IMMEDIATE, TUESDAY
DECEMBER 20, 1983

STATEMENT BY GOVERNOR MARIO M. CUOMO

Tomorrow, the State will submit the attached brief to the Atomic Safety and Licensing Appeal Board to contest the conclusion that permission to load low power fuel may be granted, even without an adequate and implementable evacuation plan and despite the view of the Licensing Board, that there is no "reasonable assurance" that an emergency off-site preparedness plan will ever be approved.

In the near future the State will also participate in the Atomic Safety and Licensing Board hearing on off-site emergency planning issues. The State will oppose any grant of a license to operate the plant predicated solely and entirely on the LILCO developed and LILCO implemented plan for evacuation. I have said repeatedly I believe the LILCO plan does not reasonably assure safe evacuation.

A brief review of some of the underlying circumstances makes the significance of these positions clear.

The Federal government has exclusive jurisdiction over the question whether Shoreham is safe to operate and can therefore be licensed to open. The applicable regulations require an evacuation plan that is implementable and that will assure the quick and effective movement of the population out of the zone of danger in the event of an accident that threatens to increase substantially the radiation normally emitted by a nuclear power plant.

The adoption of the Federal evacuation regulations was based on the reality that even under ideal circumstances, the operation of a nuclear power plant poses a clear and always present danger of a radiological accident. Nowhere do they suggest that the efficacy of evacuation preparations should be a relative requirement, affected by economic or fiscal factors. The law -- as it should -- puts safety first and does not allow financial considerations to compromise what is irreplaceable -- life and health.

No evacuation plan has yet been certified as adequate and implementable.

The County of Suffolk has said evacuation is impossible and therefore it has submitted no plan. The State does not have the resources, by itself, to supply the wherewithall that would be required. LILCO has offered a plan, which would be implemented by its employees, by which it would attend to evacuation by itself. The State opposes the notion that this LILCO plan is approvable. Its employees lack the capability and the legal power to implement it. Indeed, even in conjunction with the County's active participation, the State might not be able to give reasonable assurance of evacuation.

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.

Despite all of this, the Nuclear Regulatory Commission has ruled that its ASLB can approve a request for low power loading without any certified evacuation plan being in existence. The brief to be submitted by New York tomorrow is part of the appeal from that decision.

If the State is successful in its opposition, the Shoreham plant will not be allowed to open because it has not met the basic safety requirements set out in the Federal law and regulations. Because the health and safety of our people must come first, we will persist in these objections until we have succeeded or exhausted our legal opportunities.

It should be noted that my strong feeling as to the inadequacy of the evacuation plans and forces now available prompted me to ask Congress for legislation that would supply us with the resources to make evacuation at all the State's nuclear facilities more reasonably achievable. For reasons I do not fully understand, that legislation has not been vigorously supported by the editorial boards and business interests that advocate LILCO's desire to open Shoreham despite all its obvious dangers.

Whatever occurs with the two pending proceedings involving the evacuation plans, it is clear that Shoreham is a long way from opening. Moreover, it is increasingly clear that LILCO lacked the experience and skill required to build a plant like this one. LILCO's construction problems may never be solved. It is also possible -- some say likely -- that even if Shoreham is licensed, its operations will be interrupted frequently with increasing costs to rate payers. That would mean that the people would have to pay the price for LILCO's deficiencies repeatedly and extensively for years to come.

Notwithstanding the complexity surrounding this situation and the "inhomogeneous" quality of its report, some things were not substantially disputed by the Marburger panel. Among them were the following:

1. The Shoreham project is a mistake which was made years ago and for which we are now being asked to pay. It is probable that Shoreham would not be acceptable as a licensable site under current federal siting practices. Free to choose, no one would build it again.

2. Lilco's lack of training, preparation, and credibility with respect to the construction and management of the plant is amply established. Lilco must be held responsible for all costs associated with these inadequacies.

3. The decisions already made by the Governor are reasonable ones. These actions are specifically: my decision not to impose a State plan upon Suffolk County; my decision to oppose the Lilco plan; my decision to oppose low power loading and my commitment to deal with the economic impact that results from this 10 year old debacle, whether it goes on line or not.

No one can reasonably dispute the primacy of the issue of safety here. The only substantial reason being offered for opening the plant in disregard of strict application of the evacuation requirements is the desire to avoid the potential increase in rates that might result from the plant's not going on line.

I believe that although the plant was not the idea or the error of this administration, we have the obligation now to do everything we can to minimize any negative economic consequences that result from the Shoreham mistake. Accordingly, several months ago I assembled a special cabinet level working group headed by my Secretary, Michael

DelGiudice, with instructions to develop a series of short term, intermediate and long term actions to mitigate the impact on rate payers and the Long Island community whether the plant opens or not. They have already consulted with some of the best minds available on ideas to deal with the financial, economic, energy supply and other implications deriving from this project. They have talked with investment bankers; special legal counsel; financial market analysts; SEO and NYSERDA; the Power Authority, Hydro Quebec, and others, and are now in the process of formulating a series of options for my consideration. At an appropriate point, I will discuss my conclusions with the legislative leaders as well.

My preliminary view of the work being done satisfies me that we will be able to mitigate substantially the financial impacts created by what has been termed by one newspaper as an "epic miscalculation."

Some who are eager to see the plant open have expressed their dissatisfaction with my refusal to put aside my reservations and work aggressively to open the plant. My decisions have been deliberate ones.

I will not permit the uncertainty about relative economic impact to override what appears to me to be the certain responsibility I have to protect the safety and health of the people. That must be our first concern and that has been the predicate of all my decisions to date.

HUNTON & WILLIAMS

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June 17, 1985

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FILE NO

DIRECT DIAL NO 804-788-

Martin Bradley Ashare, Esq.
Suffolk County Attorney
H. Lee Dennison Building
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Long Island Lighting Company
(Shoreham Nuclear Power Station, Unit 1)

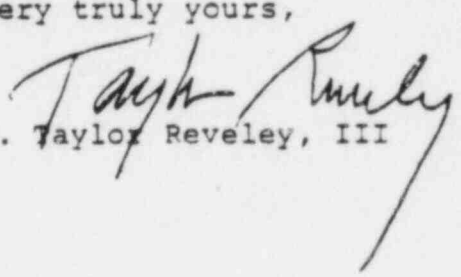
Dear Mr. Ashare:

Suffolk County Executive Cohalan was quoted in the June 15, 1985 New York Times to this effect:

In that event [i.e., Shoreham becomes radioactive], the county has a duty and responsibility to provide for the health and safety of the residents near the plant.

I write to ask if, in fact, the County Executive will respond fully, in cooperation with LERO, to protect the public health and safety in the event a radiological accident occurs at Shoreham.

Very truly yours,


W. Taylor Reveley, III

126/586

COUNTY OF SUFFOLK



OFFICE OF THE COUNTY EXECUTIVE

PETER F. COHALAN
SUFFOLK COUNTY EXECUTIVE

JOHN C. GALLAGHER
CHIEF DEPUTY

June 26, 1985

Hunton & Williams
707 E. Main St.
P.O. Box 1535
Richmond, VA 23212
Att: W. Taylor Reveley, III, Esq.

RE: Long Island Lighting Company
(Shoreham Nuclear Power Station, Unit I)

Dear Mr. Reveley:

This is in response to your letter of June 17, 1985. In the event of a radiological accident, I, as the County Executive will respond to the best of my ability and in accordance with the duties and obligations placed upon me by Article 2-b of the Executive Law.

Sincerely,

PETER F. COHALAN
SUFFOLK COUNTY EXECUTIVE

PFC: sm

ERRATA SHEET FOR LONG ISLAND LIGHTING COMPANY'S DESCRIPTION,
PURSUANT TO LOCAL LAW 2-86, OF ACTIVITIES IN FEBRUARY 13,
1986 EMERGENCY PLANNING EXERCISE SPONSORED BY FEDERAL
EMERGENCY MANAGEMENT AGENCY (undated; filed January 16, 1987)

<u>Page/Line</u>	<u>Correction</u>
7 / 3	Change "it" to "them"
8 / 4	Delete "itself"
8 / 6	Insert "will" after "exercise"
8 / 8	Change " <u>ad hoc</u> " to " <u>ad hoc</u> "
11 / 7	Change "Page 9" to "Page 1"
11 / 8	Change "Page 5" to "Page 7"
11 / 25-26	Delete "such as ambulance and ambulette drivers"
13 / 12	Change "implementing procedures" to "Implementing Procedures"
13 / 29	Change "woul" to "would"
23 / 19	Insert "." after "traffic"
27 / 24	Insert "by" after "construed"
29 / 12	Change "e.g." to " <u>e.q.</u> "
30 / 16	Delete "made"
32 / 31	Change " <u>e. q.</u> " to " <u>e.q.</u> "
34 / 5	Insert "any" after "involve"

ERRATA SHEET FOR ATTACHMENT 1 TO LONG ISLAND LIGHTING COMPANY'S
DESCRIPTION . . . (undated; filed January 16, 1986)

<u>Page/column/line</u>	<u>Correction</u>
1 / Fn / 36	Change "publi" to "public"
1 / Fn / 39	Change "outsid" to "outside"
6 / 8 / 22	Change "p. 16" to "p. 26"
8 / 8 / 12	Change "Route Alert drivers" to "Route Alerting Drivers"
9 / 8 / 11	Change "OPIP 3.6.3" to "OPIP 3.6.5."
9 / 8 / 21	Change " <u>para.</u> 5.2.2." to " <u>para.</u> 5.2."
9 / 8 / 26	Change "OPIP 2.1.1." to "OPIP 2.1.1., p. 47;"
10 / 8 / 27	Change "e.g." to " <u>e.g.</u> "
11 / 8 / 27	Change "58" to "59"
11 / 8 / 30	Change "e.g." to " <u>e.g.</u> "
12 / 8 / 9	Change "p. 58" to "p. 60"
12 / 8 / 9	Change "OPIP 4.7.1, item 10" to "OPIP 4.7.1., p. 19, <u>para.</u> 10"
12 / 8 / 17	Insert "OPIP 4.2.3., <u>para.</u> 2.5., 5.8.2.-5.8.5."
12 / 8 / 24-25	Change "p. 65" to "p. 65a"
12 / 8 / 30	Change "Acitivates" to "Activates"
13 / 8 / 12	Change "p. 79" to "p. 70"
13 / 8 / 18	Change "p. 79" to "p. 71"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LONG ISLAND LIGHTING COMPANY, :
 :
 Plaintiff, :
 :
 -against- :
 :
 THE COUNTY OF SUFFOLK, NEW YORK, : COMPLAINT
 a New York municipal corporation, and : Civil Action No.
 :
 PETER F. COHALAN, in his official :
 capacity as Suffolk County Executive, :
 :
 Defendants. :
 :
-----x

Plaintiff Long Island Lighting Company (LILCO), by its attorneys Hunton & Williams, for its Complaint alleges as follows:

(1) This is an action for declaratory and injunctive relief, or in the alternative for damages, plus attorneys' fees and such other relief as the Court may deem appropriate, because of the defendants' unlawful attempt under color of state law (a) to prohibit and impede federal regulatory processes, (b) to prevent LILCO from participating in a test or exercise of its emergency plan for its Shoreham Nuclear Power Station (Shoreham) under the auspices of the United States Nuclear Regulatory Commission (NRC) and the Federal Emergency Management Agency (FEMA) and (c) to prohibit LILCO from operating Shoreham.

Jurisdiction and Venue

(2) This action arises under the Supremacy Clause and the First, Fifth and Fourteenth Amendments of the United States Constitution; the Atomic Energy Act, 42 U.S.C. §§ 2011-2296; and Section 1 of the Civil Rights Act of 1871, 42 U.S.C. § 1983. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3), and principles of pendent jurisdiction.

(3) Venue is appropriate in this district under 28 U.S.C. § 1391(b) because the claim arose in the Eastern District of New York.

Parties

(4) LILCO is a public service corporation incorporated under the laws of the State of New York and engaged in the production, distribution, and sale of electricity, and the distribution and sale of natural gas, on Long Island, New York. LILCO owns the Shoreham Nuclear Power Station, which is an 809-megawatt nuclear powered electric generating facility located on Long Island's north shore in the County of Suffolk.

(5) Defendant County of Suffolk (Suffolk County or the County) is a municipal corporation incorporated under the laws of the State of New York and having governmental jurisdiction over the area known as the County of Suffolk, which comprises the eastern portion of Long Island.

(6) Defendant Peter F. Cohalan (Cohalan) is and since January 1980 has been the Suffolk County Executive. Cohalan is the County's chief executive officer with policy-making and administrative authority in the County.

Background and General Allegations

(7) In 1968, LILCO applied to the United States Atomic Energy Commission (AEC), which is now the NRC, for a construction permit to build Shoreham. The permit was issued on April 12, 1973.

(8) Over 100 State and local permits were required for the Shoreham project to get underway. All were granted.

(9) Intended to meet Long Island's need for additional electric generating capacity and to reduce Long Island's dependence on foreign oil, Shoreham has provided employment even during its construction to thousands and has generated substantial local property tax revenue. Construction is now complete, at a total cost approaching \$4.5 billion.

(10) The NRC issued a low-power operating license for testing Shoreham at up to 5% power on July 3, 1985. Low-power testing at up to 5% power pursuant to the license has been successfully completed.

(11) Until approximately February 1982, the defendants did not oppose, and in many respects they encouraged, the construction and operation of Shoreham.

(12) Commencing in 1982, however, and continuing to the present, the defendants, acting under color of state law, entered into a plan to prevent Shoreham's operation.

(13) Defendants' actions constitute regulation of the radiological health and safety aspects of a nuclear power plant -- a field reserved exclusively to the federal government. Defendants' actions have been purposely designed either to prohibit federally required emergency planning for Shoreham or, failing that, to make that emergency planning less safe and less effective, contrary to defendants' duties and avowed intent to protect public health and safety.

(14) Litigation over Shoreham has proceeded for years. It has been waged to date before four separate Atomic Safety and Licensing Boards, the NRC Appeal Board, the NRC itself, three federal district judges, the United States Courts of Appeals for the Second and the District of Columbia Circuits, three New York State trial judges, the Appellate Division of the New York Supreme Court and the New York Court of Appeals.

(15) Excluding litigation regarding emergency planning issues, the defendants have not prevailed on any of the numerous and extensive safety issues they raised before the NRC in 185 days of health and safety hearings, including litigation of (a) the equipment used to build the plant, the construction process, and the quality assurance program used in constructing and maintaining the plant; (b) plant security, which was

settled on the eve of hearings; (c) emergency diesel generators for back-up power at the plant; and (d) issues regarding low power operation.

(16) The defendants have sought to prohibit or frustrate a federally required offsite radiological emergency response plan (RERP) for Shoreham. The defendants have refused to provide or assist with emergency planning and have taken actions to prevent LILCO from preparing or testing a RERP pursuant to federal and state law.

(17) The Governor of New York, the New York Disaster Preparedness Commission (DPC), and State officials acting at their direction, contrary to law, have also refused to provide or assist with emergency planning for Shoreham.

(18) Absent NRC approval of a RERP, a utility cannot obtain a license from the NRC to operate a nuclear plant at full power.

(19) In the absence of County or State participation, federal law authorizes LILCO to proceed with emergency planning and to submit a "utility" emergency plan to the NRC for approval. Both the NRC and this Court, in previous litigation between these parties, have so ruled.

(20) LILCO has submitted its radiological emergency response plan (the LILCO Plan) to the NRC for approval.

(21) The NRC has exclusive jurisdiction, conferred by federal law, to decide radiological health and safety issues

relating to emergency plans for nuclear power plants. Both the NRC and this Court, in previous litigation between these parties, have so ruled.

(22) There are three fundamental radiological emergency planning issues for Shoreham:

(a) Is emergency planning feasible for Shoreham, considering the population, road network, meteorology, and other factual conditions on Long Island?

(b) If so, are LILCO's emergency plan and organization adequate, assuming that they are allowed to function? and

(c) Will the LILCO Plan be allowed by law to function in all necessary respects?

After lengthy and detailed proceedings before the NRC's Atomic Safety and Licensing Board (ASLB), LILCO prevailed on (a) and (b) and lost solely on (c), which has come to be referred to as the "legal authority" issue. All three issues are now on appeal within the NRC.

(23) The defendants assert that they will not participate in emergency planning for Shoreham and contend that it is illegal under New York law for LILCO to respond to an actual emergency.

(24) The New York State Supreme Court for Suffolk County has ruled that certain of the activities in the LILCO Plan, if actually performed in an emergency, would be "governmental" and therefore could not be performed by LILCO under New York law. LILCO has appealed that decision to the Appellate Division.

(25) The NRC's Licensing and Appeal Boards have ruled, in light of the Suffolk County Supreme Court decision, that federal law does not preempt New York law prohibiting LILCO from responding in an emergency. The NRC has accepted LILCO's request for review of that federal preemption issue.

(26) Thus, LILCO's "legal authority" to implement key portions of its Plan in an actual emergency is the only dispositive obstacle to both emergency planning and a federal operating license for Shoreham. New York law aspects of the issue are on appeal in the New York courts and federal law aspects of the issue are on appeal before the NRC.

(27) Before the NRC, LILCO has pointed out that New York law requires County and State officials to respond effectively in the event of a radiological emergency, and that both Cohalan and Governor Cuomo have stated that the County and State would respond to the best of their abilities. LILCO has contended that this governmental response, coupled with LILCO's pre-emergency planning and response organization, demonstrates compliance with NRC regulations for protecting public health and safety. This has come to be known as the "realism" issue. The NRC has accepted review of this issue as well, and has requested that FEMA go forward with a federal exercise (which is a drill or test) of the LILCO Plan that will, among other things, test LILCO's "realism" argument.

(28) FEMA has scheduled the federal exercise of the LILCO Plan for February 13, 1986.

(29) In response, the County, on December 23, 1985, enacted a Local Law that is designed to prohibit the federal exercise, thereby (a) thwarting the federal regulatory and information-gathering processes of the NRC and FEMA and (b) prohibiting LILCO's lawful participation in those processes.

(30) In sum, the defendants, having lost decisively on the facts after extensive litigation, have interposed their last remaining roadblock: arbitrary legal fiat to prohibit emergency planning and thereby prohibit Shoreham's operation.

(31) The defendants' refusal to plan for a radiological emergency, and their affirmative acts to prevent emergency planning and Shoreham's operation, are unlawful under federal and state law, as more fully set forth herein.

(32) Defendants' actions have injured, and continue on a daily basis to injure, LILCO, LILCO's customers and federal energy policy. For example:

(a) LILCO recently was fined \$1 million by the New York Power Pool for failing to have adequate generating capacity on line. LILCO's lack of generating capacity caused by LILCO's inability to operate Shoreham threatens LILCO's ability to meet its customers' needs now and in the future.

(b) LILCO's reliance upon foreign oil for electric generation continues to impair federal energy policy. The

electricity that Shoreham could provide is now generated by plants largely consuming foreign oil or, to a minor extent, natural gas.

(c) Every day that Shoreham does not operate causes LILCO substantial economic injury. Capital carrying and other charges for the now completed Shoreham facility currently exceed \$45 million per month.

(33) The uncertainty regarding Shoreham's future caused by defendants' actions has injured LILCO by, among other things, substantially increasing its financing costs, seriously limiting LILCO's ability to obtain added financing, causing an austerity program that has resulted in significant hardships on LILCO employees, and bringing LILCO to the brink of bankruptcy.

(34) If the defendants succeed in preventing Shoreham's operation, LILCO will suffer substantial, and potentially ruinous, financial damage.

Summary of Complaint

(35) NRC regulations require an emergency plan for Shoreham as a prerequisite for a federal license to operate Shoreham at full power. Defendants are obligated by law to engage in effective emergency planning for Shoreham, and contracted with LILCO to do so. They have refused and continue to refuse to fulfill these obligations. LILCO has therefore prepared an emergency plan for Shoreham in accordance with federal regulations, in order to obtain an operating license for

Shoreham. Defendants have undertaken a campaign to prohibit LILCO's emergency planning; to interdict and frustrate the federal regulatory process; to delay the operation of Shoreham; to prohibit the operation of Shoreham; to deprive LILCO of the sole intended purpose and value of Shoreham (the production of electric power for sale to the public); and to deprive LILCO of its property, all in violation of federal and New York law.

(36) The defendants' actions have included:

(a) A Local Law enacted by the County which is designed to interdict a federal exercise of the emergency plan for Shoreham at the direction of the NRC and under the auspices of FEMA, and thus to prohibit a federal operating license for Shoreham (hereinafter the Local Law) (Exhibit A to this Complaint).

(b) County Resolutions that (i) prohibit County emergency planning for Shoreham; (ii) state that Shoreham shall not operate; and (iii) have been interpreted by County officials and their agents to prohibit the implementation, in an actual radiological emergency, of an emergency plan that the NRC's Licensing Board has found adequate to protect public health and safety if the plan were implemented by persons having legal authority to do so.

(c) Refusals to provide any emergency planning for Shoreham, despite New York law and a contract requiring them to do so.

(d) Deliberate actions, both in fact and by force of law, to prohibit, hinder, and destroy LILCO's attempts to formulate and demonstrate the effectiveness of an emergency plan for Shoreham pursuant to federal and state law.

(e) Other actions to deprive LILCO of its \$4.5 billion investment in Shoreham without just compensation and without due process.

(37) Defendants (a) have frustrated and taken steps to prohibit LILCO from proceeding with a utility emergency plan as authorized by Congress and NRC regulations; (b) have prohibited and intimidated by criminal sanctions the federal regulatory processes of the NRC and FEMA; (c) have violated federal and state constitutional guarantees; and (d) have violated the law of New York by attempting to regulate disaster preparedness planning, which is beyond the authority of a local government, and by deliberately thwarting LILCO's emergency planning. Counts I, II, III, IV, VI, VII, VIII, IX and X of this Complaint seek a declaration that this conduct is unlawful, injunctive relief restraining such conduct, and other relief.

(38) Defendants are required by New York law to provide effective emergency planning for a radiological accident at Shoreham, but they have categorically refused to do so. Counts XI, XII and XIII of this Complaint seek a declaration that this refusal is unlawful, an injunction requiring the County to fulfill its duties and obligations, and damages.

(39) If defendants' actions in thwarting LILCO's emergency planning for Shoreham and in refusing to provide emergency planning for Shoreham are sustained, defendants will thereby deprive LILCO of its \$4.5 billion investment in Shoreham, by preventing the commercial operation of Shoreham, without just compensation. If defendants' actions are found to be within their powers, Counts V and XIV seek a declaration and a judgment against defendants requiring them to compensate LILCO for this taking.

(40) LILCO therefore asks this court to (a) enjoin the defendants from frustrating LILCO's emergency planning for Shoreham, (b) require the defendants to fulfill their contractual and statutory obligations to provide emergency planning and response capability for Shoreham or, in the alternative, (c) require the defendants to compensate LILCO for Shoreham.

Specific Allegations

A. Governmental Support for Shoreham and Emergency Planning

(41) The federal government and various federal agencies historically have supported, and today continue to support, the construction and operation of Shoreham. For example, the Secretary of Energy has stated that Shoreham is an important element in this nation's energy policy to reduce dependence on foreign oil.

(42) Prior to February 1983, Suffolk County officially supported emergency planning for Shoreham. For example:

(a) H. Lee Dennison, then the Suffolk County Executive, appeared before the Atomic Energy Commission's Licensing Board in 1970 and urged the AEC to grant a construction permit for Shoreham immediately.

(b) The County contracted with LILCO to provide emergency planning for Shoreham in accordance with federal regulations, and repeatedly assured LILCO that the County would provide effective emergency planning.

(c) For many years, the County has appraised Shoreham for real estate tax purposes at its enhanced value as a nuclear power plant. As a result, LILCO has paid in excess of \$300 million in local property taxes for the tax years 1977 through 1984.

(43) New York State, prior to Governor Mario Cuomo's inauguration, consistently supported Shoreham and emergency planning for Shoreham. For example:

(a) Governors who preceded Governor Cuomo openly and officially supported Shoreham.

(b) The New York State Department of Environmental Conservation approved the Shoreham project on June 22, 1972.

(c) The New York Public Service Commission (PSC), beginning in 1975, reviewed and approved the need for and the continued construction of Shoreham, and in 1981 adopted its

Administrative Law Judge's recommendation that "Shoreham be completed 'as soon as possible' to reduce LILCO's total dependency on oil-fired electric generation and its attendant vulnerability to interruption of foreign oil supplies."

(d) Shoreham has been included in various New York State energy master plans.

(e) On April 29, 1980, the State of New York and five utilities, including LILCO, entered into an agreement respecting emergency planning at the utilities' nuclear power plants. Under the contract, the DPC committed to plan for radiological emergencies in cooperation with each utility.

(f) In litigation brought by the County in 1981, the New York Attorney General took the position, on behalf of the State and DPC, that the DPC was obligated by law to review an emergency plan for Shoreham submitted by LILCO. In addition, the staff of the DPC indicated that emergency planning for Shoreham is feasible and that the plan submitted by LILCO could be made acceptable.

(44) The federal construction permit for Shoreham was granted by the AEC on April 12, 1973, following protracted hearings before the AEC that included challenges to the choice of the site and the feasibility of emergency planning. The AEC Staff found that Shoreham satisfied regulatory requirements including emergency planning. The AEC Licensing Board found that LILCO had outlined its plan for coping with emergencies

and had conferred with New York State and local authorities with respect to emergencies.

(45) In February 1973, the Suffolk County Department of Emergency Preparedness was directed by Executive Order to develop a "Response Plan -- Specific Operating Procedures For Major Radiation Incidents." In early 1975, representatives of the State, the County, and LILCO met to define their respective emergency planning responsibilities. This was the first of many such sessions to support the development of the Suffolk County emergency response plan.

(46) The County's "General Radiation Emergency Plan" was approved by County Executive John Klein on August 30, 1978. That plan was reviewed and later accepted by the New York State Office of Disaster Preparedness.

(47) In late 1978, the United States Environmental Protection Agency and the NRC issued a new guidance document recommending that emergency planning be expanded. As a result, LILCO and State and County officials began updating Shoreham's emergency plan.

(48) In 1979, the NRC promulgated new emergency planning regulations, which remain in effect. As a result, LILCO and County Executive Klein signed a "Memorandum of Understanding" on December 28, 1979 outlining the revised responsibilities of LILCO and the County in emergency planning. Defendant Cohalan (then County Executive-elect) approved the terms of the agreement.

(49) Throughout 1980, consistent with the Memorandum of Understanding, the County and LILCO proceeded with emergency planning activities.

(50) LILCO Vice President Dr. Matthew C. Cordaro, Suffolk County Planning Department Director Dr. Lee E. Koppelman, and Deputy County Executive John C. Gallagher signed a contract on March 15, 1981 calling for the County to produce within six months a revised radiological emergency response plan at a cost of \$245,000, to be paid by LILCO. In September 1981 an amended contract with substantially the same terms was approved by the County Legislature. LILCO paid the Suffolk County Planning Department \$150,000 as the first installment on the contract. The County agreed in the contract to complete the plan by March 18, 1982, at which time the balance of the contract amount (\$95,000) would become payable.

(51) The County represented in the September 1981 contract that it was familiar with the applicable federal regulations and that the County could and would develop an emergency plan that complied with them.

(52) LILCO cooperated with and assisted the County in emergency planning. Most of the sections of the County plan were completed by February 1982.

B. Shift in County Position on Emergency Planning

(53) In mid-February 1982, the County announced it had retained a Washington, D.C., law firm to represent the County in the NRC hearings on LILCO's application for an operating license for Shoreham, and that emergency planning would be the "centerpiece" of what subsequent events have shown to be the defendants' new position of inflexible opposition to emergency planning and Shoreham.

(54) Soon thereafter, the County sent a letter dated February 19, 1982 to LILCO claiming "an apparent conflict of interest" in its acceptance of payment from LILCO as required by the September 1981 contract, but still promising that:

The County will continue, as required by law, to develop a plan consistent with the requirements of law and its obligation to protect the health, safety and welfare of the people.

(55) In a letter dated March 17, 1982, LILCO reaffirmed its obligations under the contract and its intention to comply with its terms. LILCO expressly informed the County that LILCO had relied and was relying on the County to perform its obligations under the contract and that severe damages would flow from any breach by the County.

(56) On March 23, 1982, the County Legislature adopted Resolution 262-1982 authorizing the County Planning Department to prepare yet another emergency plan, and declaring that no plan would become operable or be deemed adequate until "approved" by the Legislature. Defendant Cohalan approved this resolution on March 25, 1982.

(57) Soon after the adoption of Resolution 262-1982, the two principal planners within the County government, who had prepared most of the plan pursuant to the contract, were discharged from their emergency planning duties.

(58) One of these County planners stated in a deposition in August 1982 that, but for the County's Resolution and the County's directive that she stop work, the County plan "definitely" would have been completed by May 1982.

(59) On May 17, 1982, the County represented to LILCO that:

The County is preparing a radiological response plan which will satisfy all local, State and federal criteria and regulations, as contemplated by the September 18, 1981 agreement between the County and LILCO. Pursuant to Legislative Resolution 262 and Executive Order, such plan will be transmitted to the County Legislature by October 1, 1982.

(60) On May 18, 1982, the County Legislature adopted Resolution 456-1982. That resolution stated that the County intended, "through good faith and sound planning efforts, to assure that the best possible emergency plan and preparedness are developed."

C. County and State Opposition to Shoreham and Emergency Planning

(61) Notwithstanding the County's repeated representations to LILCO that it would provide emergency planning for Shoreham, in early 1982 the defendants embarked upon a plan calculated to delay and prevent the operation of Shoreham under color of state law, while inducing LILCO to believe -- as long as possible -- that the County was seriously working toward the creation of a RERP. In

fact, the defendants' objective was to prevent the creation and adoption of any RERP by any entity.

(62) In June 1982 the County sought to circumvent the federal administrative processes before the NRC by filing a lawsuit in State court seeking, inter alia, (a) to compel a "physical inspection" of Shoreham by the County, in addition to the numerous inspections that already had occurred and would occur thereafter pursuant to federal regulation, all of which confirmed the safety and adequacy of the plant's design and construction, and (b) an injunction pending completion of the inspection. Following removal, this Court dismissed the action. The dismissal was upheld on appeal by the United States Court of Appeals for the Second Circuit, which held that federal law preempts any County health or safety regulation of Shoreham and that "the only avenue open for appellant [Suffolk County] is to continue its proceedings in the administrative forum -- the NRC for safety-related concerns. . . ."

(63) The County continued to obstruct federal regulatory processes in licensing proceedings before the NRC in 1982 regarding "Phase I" emergency planning issues. Throughout much of 1982, the County pressed numerous contentions, initiated extensive discovery and made it necessary for LILCO to file hundreds of pages of testimony responding to the contentions. Virtually on the eve of hearings on the County's contentions, the County defaulted and declined to litigate them before the NRC.

(64) After abandoning the almost-completed LILCO-Suffolk County emergency plan, the County delayed consideration of emergency planning for Shoreham for almost a year, extending repeatedly the promised completion date of its alleged planning efforts.

(65) During the first week of December 1982, the County issued a "Draft Suffolk County Radiological Emergency Response Plan" (the draft County plan). The County Legislature announced that it would hold public hearings on the draft County plan.

(66) The draft County plan did not, and was not intended to, comply with a number of federal emergency planning requirements. The plan was based on key criteria that were contrary to NRC regulations; the plan did not include essential items; and the plan contained little necessary site-specific information for Shoreham.

(67) In January 1983, the County Legislature held public hearings on the draft County plan. These hearings were not intended to evaluate seriously the feasibility of emergency planning for Shoreham. Instead, the hearings were intended solely to "legitimize" a predetermined result -- the rejection of any emergency plan -- and to provide a basis to thwart LILCO's legitimate and lawful business ends.

(68) A letter dated January 19, 1983 from a Suffolk County legislator to the President of the People's Action Coalition of Suffolk County stated that "the reasoning behind the [County Legislature's] hearings for a so-called plan, at the present time, is to use the facts presented as a basis for a future lawsuit" to prevent Shoreham from operating.

(69) On February 16, 1983, defendant Cohalan, contrary to the County's prior representations, issued a report and a separate statement declaring that inherent local conditions on Long Island made it "impossible" to devise an emergency plan and that there could "never" be adequate emergency preparedness to protect public health and safety.

(70) On February 17, 1983, the County Legislature adopted Resolution 111-1983 (Exhibit B to this Complaint). The Resolution stated that emergency planning for a radiological accident at Shoreham was not feasible, and included findings that local conditions, such as the road network surrounding the plant, public fear and overreaction, and other alleged facts, would render an emergency response "impossible" under any circumstances.

(71) The NRC has exclusive jurisdiction to rule definitively on the feasibility of radiological emergency planning to protect public health and safety.

(72) Contrary to Cohalan's Report and the alleged factual findings in Resolution 111-1983, the Atomic Safety and Licensing Board (ASLB) of the NRC, on April 17, 1985, rejected all of the County's alleged factual findings on the merits after months of detailed hearings.

(73) In its Concluding Initial Decision on August 28, 1985, the ASLB stated that "the record fails to reveal any basis to conclude that it would be impossible to fashion and implement an effective offsite emergency plan for the Shoreham plant." The ASLB,

however, declined to approve the LILCO Plan because the County and State had refused to give the emergency plan, which otherwise would have been found adequate, their legal blessing.

(74) In breach of the County's contractual obligations and contrary to the County's prior representations, Resolution 111-1983 terminated all County emergency planning for Shoreham, mandated that no plan for Shoreham would be adopted or implemented, and directed the County Executive "to assure that actions taken by any other governmental agency, be it State or Federal, are consistent with the decision mandated by this Resolution."

(75) On April 10, 1984, the County adopted Resolution 1398-84, which stated that the effect of the County's Resolutions concerning emergency planning for Shoreham is that "the Shoreham facility shall not operate and must be abandoned."

D. Initial Challenge to the County's Resolutions

(76) The Resolutions were challenged by LILCO, Citizens for an Orderly Energy Policy, Inc. and the Shoreham-Wading River School District in this Court. LILCO and the other plaintiffs argued, inter alia, that the Resolutions were preempted by federal law.

(77) The County responded by representing to this Court that its Resolutions did not inhibit LILCO's ability to go forward with a utility emergency plan sponsored by LILCO under NRC regulations; that LILCO had the right under federal law to present a utility plan to the NRC for approval; and that the findings in the

Resolutions concerning the feasibility of emergency planning for Shoreham were intended solely as a basis for attempting to persuade the NRC that those findings were correct. The County conceded that the NRC has the exclusive authority to rule ultimately on the feasibility of the LILCO Plan under NRC requirements.

(78) Based on the County's representations, this Court, on March 18, 1985, held that the Resolutions were not preempted by federal law expressly because the Resolutions had no effect on LILCO's ability to go forward with a utility emergency plan under NRC regulations. This Court held that the findings in the County's Resolutions would become "academic" once the NRC issued a decision on LILCO's emergency plan. Citizens for Orderly Energy Policy, Inc. v. Suffolk County, 604 F. Supp. 1084, 1094-95 (E.D.N.Y. 1984). This decision is pending on appeal before the United States Court of Appeals for the Second Circuit.

(79) The ASLB, on April 17, 1985, approved the LILCO Plan on its factual merits, with a few correctable exceptions, and ruled that the LILCO Plan, if it were implemented by persons legally authorized to do so, could meet NRC regulatory requirements for the protection of public health and safety. In its decision, the ASLB rejected the findings in the County's Resolutions concerning the feasibility of an emergency plan for Shoreham.

(80) After this Court's ruling and the ASLB's decision, the County and a majority of County Legislators represented to the courts of the State of New York and to the NRC that the

Resolutions have a different, and inconsistent, meaning and effect than the County previously represented to this Court. The County, as well as attorneys representing a majority of the County Legislators, have stated to these tribunals that:

(a) The Resolutions "prohibit [the County Executive] and all other County employees from implementing the LILCO Plan," and prohibit any County Executive response in any actual emergency in accordance with the LILCO Plan, despite the ASLB's ruling that a response in accordance with the LILCO Plan could meet NRC requirements for the protection of public health and safety and despite a New York statute requiring the County Executive to respond effectively in the event of any actual radiological emergency.

(b) The Resolutions make it the law of the County that "no Suffolk County personnel could ever participate in the implementation . . . of the LILCO plan."

(c) The Resolutions prohibit any test or exercise of the LILCO Plan by the County Executive or any other County employees.

(81) As interpreted in these representations by the County to the New York courts and the NRC, the Resolutions are designed to prohibit any test, exercise or implementation of the LILCO Plan.

(82) The Resolutions, therefore, according to the County's recent representations, (a) do prohibit and obstruct the LILCO Plan, contrary to the County's previous representations to this

Court, and (b) do in fact supplant the NRC's exclusive authority to decide whether the LILCO Plan is feasible and will adequately protect public health and safety.

E. NRC Proceedings in Response to County
Opposition to Shoreham

(83) Based on Resolution 111-1983, on February 23, 1983, the County unsuccessfully moved the ASLB to terminate the Shoreham operating license proceeding on the ground that, absent County participation in emergency planning, there could be no plan and no operating license.

(84) The ASLB denied the County's motion. The NRC upheld the ASLB's ruling and held that the proceeding on LILCO's application for an operating license should continue under NRC regulations.

(85) In its opinion, the ASLB held that the County's actions were preempted by federal law and constituted an impermissible attempt by a local government to regulate matters of nuclear safety.

(86) The County mounted a companion effort in the NRC licensing hearings for Shoreham on countless safety issues unrelated to emergency planning. Beginning in 1982, the County expanded and delayed the proceedings, making them the longest and most involved licensing process in the history of commercial nuclear power in this country.

(87) In September 1983, the ASLB issued its partial initial decision on most of the safety issues. The ASLB found in favor of LILCO on virtually all litigated issues.

(88) The ASLB decision confirms the improper motives and tactics that the County has employed to prevent Shoreham's operation. The ASLB found that, as to the quality assurance issues raised by the County:

[T]he difficulty of [the Board's] task, trying to be objective in consideration of each of the parties' submissions, is further compounded by the County's misrepresentation of the complete record -- by omission, selective citations and distortion of recorded testimony.

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1)
LBP-83-57, 18 NRC 445, 579 (1983).

F. New York DPC Proceedings

(89) Following the County's breach of its September 1981 emergency planning contract with LILCO, and during the NRC hearings on safety issues, LILCO continued to develop the offsite emergency plan for Shoreham that had been almost completed by the County.

(90) On April 29, 1982, LILCO met with the New York State Commissioner of Health and the Chairman of the DPC and agreed that the plan, which was nearly complete before being abandoned by the County, would be submitted to the DPC for its review. LILCO submitted this plan to the DPC on May 10, 1982.

(91) In June 1982, the DPC Chairman described the plan that LILCO had submitted as the "best we have received from any county in the state, and there is no fundamental reason why the plan cannot be corrected fairly easily."

(92) The DPC reviewed the plan submitted by LILCO as amended to respond to comments. The DPC Staff found no difficulties with the plan that would have precluded it from meeting all state and federal requirements.

(93) A hearing on the LILCO-submitted emergency plan was scheduled for December 8, 1982, before the DPC. The County sued the DPC in the New York Supreme Court in Albany County seeking a temporary restraining order to prevent the DPC hearing. LILCO intervened in the suit.

(94) Robert Abrams, Attorney General of the State of New York, along with LILCO, moved to dismiss the County's suit.

(95) In the State's motion papers filed in the Supreme Court, the Attorney General stated that, under New York law, LILCO was entitled to submit the emergency plan to the DPC and that the DPC was obligated to review that plan. The State expressly rejected the County's position that under state law only the County, and not LILCO, had the power to develop and submit an emergency plan for Shoreham.

(96) On December 15, 1982, the County, the DPC, and LILCO stipulated that the DPC would refrain from further action on the LILCO-submitted plan until February 23, 1983. The stipulation provided that if the County did not file its own emergency plan with the DPC for formal consideration on or before February 22, 1983, the DPC would (a) meet promptly to take action on the LILCO-submitted plan, or any other plan the DPC deemed properly before

it, and (b) if a plan were approved, forward it to FEMA to begin the federal review of the plan.

(97) Although the County's suit against the DPC was dismissed following the County legislature's passage of Resolution 111-1983, the DPC has not fulfilled its statutory and contractual obligations, and its commitment in the stipulation, to complete its review and approval of the LILCO-submitted plan.

(98) In 1983, despite the State's previous representations, Governor Cuomo issued a news release that he had directed State officials not to act on the emergency plan submitted to the DPC by LILCO until the cooperation and participation of the County was assured.

G. Lack of State Emergency Planning

(99) The New York State Emergency Plan for radiological emergencies contains site-specific plans for Monroe, Orange, Oswego, Putnam, Rockland, Wayne, and Westchester Counties. The New York State Plan contains no site-specific plan for Suffolk County.

(100) The New York State Plan contains site-specific plans for every nuclear power plant in New York State except Shoreham.

H. NRC Emergency Planning Proceedings

(101) In light of the County's and the State's unlawful refusals to provide emergency planning, on May 26, 1983, LILCO filed with the NRC, pursuant to federal regulations, its emergency plan

(the LILCO Plan). The LILCO Plan provides for LILCO personnel, federal agencies, and other organizations such as the American Red Cross to perform various emergency functions, organized under the umbrella of the Local Emergency Response Organization (LERO).

(102) In July 1983, the County filed with the ASLB numerous detailed contentions challenging the LILCO Plan. The County's contentions had their genesis in the alleged findings in Resolution 111-1983.

(103) The NRC proceedings on the LILCO Plan were extensive and the hearings were lengthy and detailed.

I. State Court Ruling on LILCO's Emergency Plan

(104) On March 8, 1984, in the middle of the NRC hearings on the LILCO Plan, the Governor, the County, and various Towns in eastern Long Island filed suit against LILCO in New York Supreme Court seeking declaratory judgments that LILCO's implementation of the LILCO Plan in an actual emergency would be unlawful under New York law. The State and the County, having unlawfully refused to provide emergency planning for Shoreham, alleged that LILCO could not implement the plan because LILCO was not a government. On February 21, 1985, the court issued an opinion holding that various functions provided in the LILCO Plan could not, under state law, be performed by LILCO in an actual emergency. Cuomo v. LILCO, Consol. Index No. 84-461 (N.Y. Sup. Ct., Feb. 20, 1985). LILCO has appealed that ruling to the Appellate Division.

J. NRC Rulings on LILCO's Emergency Plan

(105) Before the ASLB, LILCO argued that any state law restrictions on LILCO's ability to perform various required functions in response to an actual radiological emergency were preempted by federal law.

(106) In April 1985, the ASLB issued a partial initial decision and in August 1985, the ASLB issued its concluding partial initial decision on emergency planning.

(107) In its decisions, the ASLB rejected virtually all of the myriad factual contentions and arguments put forth by the County and the State, and thereby rejected the "findings" in County Resolution 111-1983. In sum, the ASLB found that (a) emergency planning for Shoreham, in accordance with federal requirements for protection of public health and safety, in fact is feasible and there are no insurmountable obstacles to such planning; (b) the LILCO Plan and LILCO's emergency response organization are adequate; but (c) LILCO lacks the legal authority, acting without the legal approval of the County or State, to implement various functions in its plan in responding to an actual radiological emergency. Thus the only dispositive defect in LILCO's Plan, according to the ASLB, was not a factual defect but instead was the lack of legal blessing by the County or the State.

(108) LILCO appealed the ASLB's ruling on the federal legal issue decided adversely to LILCO. The NRC Appeal Board affirmed the ASLB. LILCO has appealed that ruling to the NRC itself, which

has accepted review over the objections of the County and the State.

K. The County's Reversals of Position on Emergency Planning in 1985

(109) The County's position of steadfast opposition to emergency planning and Shoreham buckled in 1985, after the ASLB's decision that emergency planning in fact is feasible for Shoreham. On May 30, 1985, the County Executive Cohalan issued Executive Order No. 1-1985, which directed a County review, evaluation, test and exercise of the LILCO Plan.

(110) The test and exercise directed by the Executive Order was to be evaluated by FEMA in accordance with NRC regulations.

(111) The County Executive stated publicly that if the evaluation, test and exercise of the LILCO Plan called for by the Executive Order was successful, he would withdraw his office's opposition to emergency planning for Shoreham.

(112) In reliance upon the Executive Order, LILCO released to the County approximately \$131 million in taxes. LILCO had lawfully withheld these taxes because the County had assessed Shoreham as a nuclear power plant while the County was simultaneously trying to prohibit the plant from operating as such.

(113) County Legislators and individual Towns filed suit challenging the Executive Order in the New York Supreme Court for Suffolk County on June 5, 1985, alleging that the County's Resolutions prohibited the Executive Order.

(114) On June 10, 1985, the Suffolk County Supreme Court held Executive Order 1-1985 null and void. The Appellate Division, on June 19, 1985, affirmed. The Court of Appeals, on July 9, 1985, affirmed on the narrow ground that (a) the County Executive has a statutory duty to respond in an actual radiological emergency and to participate in the preparation of plans, and (b) the County Executive may gather information and advise the legislature in fulfilling his planning duties, but (c) the County Executive may not unilaterally take steps that amount to the adoption of an emergency plan, in advance of an emergency, without obtaining the approval of the legislature. Three of the seven judges of the Court of Appeals dissented from this ruling and voted to uphold the Executive Order. Prospect v. Cohalan, 65 N.Y.2d 867 (1985).

(115) Numerous allegations and representations by counsel for the County Legislators during the litigation revealed that the County's Resolutions were intended to block the evaluation, test and exercise of the LILCO Plan; to regulate radiological health and safety issues reserved exclusively to the NRC; and to supplant the lawful jurisdiction of the NRC to determine the adequacy of the LILCO Plan during an exercise.

(116) On July 15, 1985, Cohalan issued Executive Order 2-1985 instructing County employees to gather information and study the LILCO Plan in pursuit of his statutory responsibilities. This Executive Order remains in force.

(117) The result of the review by the County pursuant to Executive Order 2-1985, which was reported to have been favorable to the LILCO Plan, has been withheld by the County Executive.

(118) On November 7, 1985, in another about-face, Cohalan wrote to the Chairman of the NRC stating that the County opposes an exercise of the LILCO Plan, and on November 12, 1985, the County Attorney wrote to the Associate Director of FEMA stating that "Suffolk County is opposed to FEMA taking any action to hold an exercise of, or otherwise aid an exercise of the Long Island Lighting Company's emergency plan for Shoreham. . . ."

L. The Federal Government's Proposed
Emergency Planning Exercise

(119) A federal exercise of an emergency plan for a nuclear power plant is required under federal regulations.

(120) FEMA observes and grades such an exercise. Results of the exercise are part of FEMA's determination, on the adequacy of the emergency plan. FEMA's determination, in turn, is a rebuttable presumption in NRC licensing proceedings.

(121) The NRC makes a final determination as to the plan's adequacy to protect public health and safety. A full power operating license cannot issue for a plant absent an exercise. The results of the exercise can be litigated before the NRC.

(122) A FEMA exercise tests the capability of the emergency response organization to respond, in accordance with the planning documents, to an actual emergency. It involves a simulated

emergency. Emergency workers are mobilized and sent to emergency response centers, and simulate responding to a hypothetical emergency pursuant to exercise objectives. No members of the public are evacuated. An exercise scenario is drafted prior to the exercise and kept confidential from persons who may be asked to respond during the exercise.

(123) On November 14, 1984, LILCO requested a federal exercise of its plan and outlined specific objectives for the exercise.

(124) Federal officials have stated that the LILCO Plan should be exercised in order to determine whether a license should issue for Shoreham, that an exercise is the best indicator of whether the LILCO Plan could operate effectively in an actual emergency, and that a federal exercise is a fair and objective means to test whether the County's and State's position -- that no plan would work -- has any merit.

(125) On June 4, 1985, a majority of the NRC ruled that FEMA and LILCO should go forward with an exercise. By letter dated June 20, 1985, the NRC requested "that FEMA schedule as full an exercise of the LILCO local emergency response organization ("LERO") plan as is feasible at the present time."

(126) On October 29, 1985, FEMA advised the NRC that two basic options existed for a LILCO Plan exercise. Under "option two":

Exercise controllers would simulate the roles of key state or local officials unable or unwilling to participate. It would be desirable that state and local government personnel actually play. However, such a simulation mechanism would at least test the utility's ability to respond to ad hoc participation on the part of state and local governments.

(Emphasis added).

(127) By letter dated November 12, 1985, an NRC official stated the Commission's conclusion that an exercise should be conducted using "option two," and that "option two would include all functions and normal exercise objectives, recognizing that some offsite response roles may be simulated."

(128) FEMA has initiated plans for a federal exercise consistent with option two of FEMA's October 29 letter.

(129) The federal exercise has been scheduled for February 13, 1986. A 120-day schedule that must be fulfilled prior to the exercise is underway within FEMA. Extensive planning and drilling is being conducted by both FEMA and LILCO; exercise objectives have been identified; the exercise scenario has been developed and approved by FEMA; and both FEMA and LILCO are prepared to go forward on February 13 with an exercise of the LILCO Plan.

M. The County's Local Law

(130) In response to the planned federal exercise, on December 23, 1985 the County Legislature passed a resolution which adopts the Local Law (Exhibit A hereto). The resolution makes explicit reference to LILCO and Shoreham. Defendant Cohalan approved and signed the resolution and Local Law on January 13, 1986.

(131) The Local Law makes it a crime for any person to "conduct or participate in any test or exercise of any response to a natural or man-made emergency situation if that test or exercise includes as part thereof that the roles or functions of any Suffolk County official will be performed or simulated."

(132) The Local Law sets up requirements and procedures for submitting to the Legislature a description of the proposed test or exercise for review and approval by the Legislature. The Local Law gives the County Legislature the authority to disapprove any federal exercise for Shoreham.

N. Conclusion

(133) Having refused to provide any County emergency planning; having obtained a declaration that LILCO was prohibited from performing certain functions in the LILCO Plan in an actual emergency; having taken deliberate steps to prevent any test or exercise of the LILCO Plan; and having failed in their attempts to persuade the federal government not to conduct an exercise of the LILCO Plan, the defendants have resorted to a Local Law containing criminal sanctions to deny LILCO the opportunity to show that, in an actual emergency, a State and County response (which is required by New York law), plus LILCO's planning, results in a plan that meets NRC regulations. Defendants' actions are designed to prohibit by fiat any opportunity for LILCO to show that its emergency plan is viable and that LILCO is entitled to an operating license for Shoreham.

COUNT I

(134) LILCO repeats and realleges paragraphs (1) through (133).

(135) The Local Law arrogates to the County the authority to prohibit, by criminal sanctions, the federal regulatory processes of the United States Nuclear Regulatory Commission and the Federal Emergency Management Agency, and to destroy LILCO's rights under federal law.

(136) The Local Law regulates federal governmental and private activity in the field of radiological health and safety relating to the construction and operation of a nuclear power plant, a field reserved exclusively to the federal government under the Atomic Energy Act.

(137) The Local Law conflicts with and obstructs the objectives and purposes of federal law.

(138) The Local Law is preempted by the federal Atomic Energy Act, various NRC Authorization Acts, and federal regulations and is therefore void under the Supremacy Clause of the Constitution of the United States and also violates 42 U.S.C. § 1983.

COUNT II

(139) LILCO repeats and realleges paragraphs (1) through (133).

(140) The Local Law unlawfully and unreasonably prohibits, obstructs and interferes with LILCO's rights under NRC regulations, the Atomic Energy Act, and the Due Process Clause, to be heard in

accordance with lawful procedures, to participate in federal regulatory litigation involving LILCO's substantive rights and interests, and to present its case supporting an operating license to the NRC.

(141) The Local Law is overbroad and vague. Key terms are nebulous and undefined. Persons are subjected to criminal liability based not on their own conduct but on the conduct of other persons.

(142) The provisions of the Local Law lack any rational relationship to a legitimate County governmental interest as required by the Due Process Clause.

(143) The Local Law is lacking in fundamental fairness as required by the Due Process Clause.

(144) The Local Law therefore violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

COUNT III

(145) LILCO repeats and realleges paragraphs (1) through (133).

(146) The Local Law subjects to a criminal penalty all persons who "participate in any test or exercise of any response to a natural or man-made emergency situation if that test includes as part thereof that the roles or functions of any Suffolk County official will be performed or simulated."

(147) The Local Law interferes with LILCO's right and ability to advocate the licensing of Shoreham before the courts and the administrative and regulatory bodies of the United States, and with LILCO's right and ability to persuade the public that Shoreham can be operated safely with a tested and approved emergency plan.

(148) The Local Law impermissibly infringes, and operates as a prior restraint upon, LILCO's right to petition the government and LILCO's and LILCO's employees' rights of free speech, free political discourse, free association, and free assembly guaranteed to all persons by the First and Fourteenth Amendments to the United States Constitution and thus violates 42 U.S.C. § 1983.

COUNT IV

(149) LILCO repeats and realleges paragraphs (1) through (133).

(150) The County's Resolutions regulate in the field of radiological health and safety relating to the construction and operation of a nuclear power plant, a field reserved exclusively to the federal government under the Atomic Energy Act.

(151) The Resolutions conflict with and obstruct the objectives and purposes of federal law.

(152) The Resolutions are preempted by the Atomic Energy Act, various NRC Authorization Acts, and federal regulations and are therefore void under the Supremacy Clause of the Constitution of the United States and also violates 42 U.S.C. § 1983.

COUNT V

(153) LILCO repeats and realleges paragraphs (1) through (133).

(154) The actions of the County, including the Resolutions, the Local Law, and other actions described in this Complaint are designed to prohibit any emergency plan for Shoreham, to prevent LILCO from bringing Shoreham into commercial operation and thus to deprive LILCO of its property without just compensation.

(155) The defendants caused LILCO reasonably to believe that the County would support, and certainly would not categorically oppose, an emergency plan for Shoreham.

(156) The actions of the County as described in this Complaint have thwarted LILCO's reasonable investment-backed expectations and, if permitted to stand or to continue, will constitute a taking of LILCO's property without just compensation, in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983.

COUNT VI

(157) LILCO repeats and realleges paragraphs (1) through (133).

(158) The Local Law is beyond the police powers of the County under the law of the State of New York, is arbitrary, capricious, and without rational relationship to any legitimate purpose under the County's police power, and is therefore void under the Constitution and laws of the State of New York.

COUNT VII

(159) LILCO repeats and realleges paragraphs (1) through (133).

(160) The Local Law regulates activities and governmental functions in the field of disaster preparedness and emergency planning.

(161) The authority to regulate activities and governmental functions in the field of disaster preparedness and emergency planning under New York law is reserved exclusively to the State under Article 2, § 11 of the Statute of Local Governments, Article 2-B of the Executive Law and other laws, and is beyond the power and authority of local governments such as the County.

(162) The County has no authority under New York law to prohibit or impede emergency planning or exercises of emergency plans.

(163) Article 2-B of the New York Executive Law makes it the policy of the State that emergency planning for, and responses to, radiological emergencies shall at all times be the most effective that current circumstances and existing resources allow.

(164) The Local Law prohibits essential aspects of effective emergency planning for Shoreham.

(165) The Local Law is inconsistent with and preempted by the law of the State of New York, including Article 2-B of the Executive Law.

(166) The Local Law is void under the Statute of Local Governments, Article 2-B of the Executive Law, and the Constitution of the State of New York.

COUNT VIII

(167) LILCO repeats and realleges paragraphs (1) through (133).

(168) The Local Law impermissibly infringes the rights of free speech, free political discourse, free association and free assembly guaranteed to all citizens of the State of New York by Article One, §§ 8 and 9 of the Constitution of the State of New York.

COUNT IX

(169) LILCO repeats and realleges paragraphs (1) through (133).

(170) The Local Law assigns to the County Legislature the role of adjudicating specific cases based upon specific facts and circumstances and rendering decisions in those cases which subject persons to criminal penalties. The Local Law, in addition, provides no means of judicial appeal of these adjudicatory decisions.

(171) The Local Law violates the separation of powers between the legislative and judicial branches of government under New York law by usurping judicial functions to the County Legislature, and is therefore void under the Constitution and the laws of the State of New York.

COUNT X

(172) LILCO repeats and realleges paragraphs (1) through (133).

(173) Article 2-B of the New York Executive Law authorizes and requires the County Executive to respond effectively, with all necessary County facilities and personnel, in the event of an actual radiological emergency at Shoreham.

(174) The ASLB of the NRC has found that the LILCO Plan, if implemented by persons such as the County Executive having legal authority to do so, could adequately protect public health and safety.

(175) The County has represented to the NRC that the Resolutions prohibit the County Executive from implementing or responding in accordance with the LILCO Plan in any actual radiological emergency.

(176) As interpreted by the County, the Resolutions prohibit an effective response by the County Executive in any actual radiological emergency and violate Article 2-B of the New York Executive Law.

(177) As interpreted by the County, the Resolutions unlawfully interfere with the powers, duties and responsibilities of the County Executive and contravene the separation of legislative and executive powers under New York law.

(178) The Resolutions prohibit and impede emergency planning, contrary to Article 2-B of the New York Executive Law.

(179) The Resolutions, all actions pursuant to the Resolutions, and the County's actions to prohibit and obstruct emergency planning for Shoreham, are inconsistent with and preempted by the law of the State of New York, including Article 2-B of the New York Executive Law, and are therefore void under the Constitution of the State of New York.

COUNT XI

(180) LILCO repeats and realleges paragraphs (1) through (133).

(181) The County's failure to provide or support the most effective emergency plan for a radiological accident at Shoreham that current circumstances and existing resources allow violates Article 2-B of the New York Executive Law.

COUNT XII

(182) LILCO repeats and realleges paragraphs (1) through (133).

(183) The County knowingly and intentionally breached its contract with LILCO to provide an emergency plan for Shoreham satisfying federal regulations.

(184) The County's breach of contract has caused LILCO to suffer severe and foreseeable damage, including delay in the commercial operation of Shoreham which results in capital carrying and

other costs in an amount exceeding \$45 million per month, and may prevent the commercial operation of Shoreham, thereby causing LILCO to suffer damage in excess of \$4.5 billion.

COUNT XIII

(185) LILCO repeats and realleges paragraphs (1) through (133).

(186) The defendants clearly and unambiguously promised LILCO that the County would develop a radiological emergency response plan consistent with the requirements of state and federal law and regulations.

(187) LILCO relied to its detriment upon the promises and statements of the defendants regarding the preparation of a radiological emergency response plan by continuing the construction and maintenance of Shoreham and by proceeding with efforts to secure an operating license for Shoreham.

(188) LILCO's reliance on the promises of the defendants was reasonable and foreseeable.

(189) The defendants are liable in damages for refusing to prepare a radiological emergency response plan that is consistent with state and federal law and regulations.

COUNT XIV

(190) LILCO repeats and realleges paragraphs (1) through (133).

(191) If permitted to stand or to continue, the County's actions as described in this Complaint will constitute a taking of LILCO's \$4.5 billion investment in Shoreham without just compensation, in violation of Article One, § 7 of the Constitution of the State of New York.

WHEREFORE, LILCO respectfully requests judgment against the defendants as follows:

(1) Under Counts I, II, III, VI, VII, VIII and IX a declaration that the Local Law is void and injunctive relief restraining the enforcement of the Local Law in any manner.

(2) Under Counts IV and X, a declaration that the Resolutions are void and injunctive relief restraining any action pursuant to the Resolutions.

(3) Under Counts V and XIV, a declaration that the defendants' actions constitute a taking of Shoreham for which just compensation must be made, and a judgment against the County in an amount to be determined in excess of \$4.5 billion.

(4) Under Counts XII and XIII, a judgment against the County in an amount to be determined in excess of \$4.5 billion or, in the alternative, an injunction mandating specific performance by the County of its obligations to provide effective emergency planning for Shoreham in accordance with federal criteria and regulations.

(5) Under Counts X and XI, a declaration that the actions of the County are unlawful and void, and an injunction requiring the defendants to fulfill their obligations and duties.

(6) LILCO's costs and reasonable actual attorneys' fees.

(7) Such other relief as the Court may deem just and proper.

DATED: January 15, 1986
New York, New York

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