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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission



In the Matter of)
LONG ISLAND LIGHTING COMPANY)
(Shoreham Nuclear Power Station,)
Unit 1))
_____)

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

SUFFOLK COUNTY, STATE OF NEW YORK,
AND TOWN OF SOUTHAMPTON SUPPLEMENT TO
MOTION FOR NRC TO ESTABLISH POST-EXERCISE PROCEDURES

On March 7, 1986, Suffolk County, New York State, and the Town of Southampton ("Governments") filed a Motion concerning future proceedings related to the February 13 exercise of LILCO's emergency plan.¹ The NRC has not yet responded to the Governments' Motion. In view of the continued pendency of this matter, the Governments file this supplement to their March 7 Motion in order to seek additional relief:

1 Motion of Suffolk County, the State of New York, and the Town of Southampton for Ruling Concerning Proceedings Related to the Shoreham Exercise, March 7, 1986 ("Governments' Motion"). On March 13, 1986, LILCO also invoked the NRC's jurisdiction, filing a Motion for Establishment of Licensing Board and Institution of Expedited Procedures for Litigation of Shoreham Emergency Planning Exercise Issues, and Response to Intervenor's March 7, 1986 "Motion Concerning Proceedings Relating to the Shoreham Exercise."

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1. The NRC's return to FEMA of FEMA's April 17, 1986, Post Exercise Assessment for reason that FEMA did not, as is that agency's standard practice, hold a post-exercise meeting with the public residing in the vicinity of the Shoreham plant;

2. The NRC's request to FEMA that FEMA hold such a public meeting;

3. The NRC's request to FEMA that FEMA describe the deficiencies identified at such public meeting in a revised Post Exercise Assessment; and

4. The NRC hold in abeyance post-exercise litigation until such a revised Post Exercise Assessment is received.

The Governments submit that FEMA is legally required, under 44 CFR §§ 350.10 and 350.11, to hold a public meeting on Shoreham and to include input from that meeting in the Post Exercise Assessment. The Governments also submit that, even if the law did not require it, FEMA abused its discretion in refusing to hold the public meeting. Indeed, FEMA has made the meeting a part of the agency's standard post-exercise practice. At the Indian Point and Ginna plants in New York, FEMA publicly lauded the benefits of the public meeting. At Shoreham, however, FEMA has absolutely refused to abide by its standard practice.

Recent events give fresh urgency to the Governments' request for the public meeting. This Supplement follows the Chernobyl nuclear disaster. At Chernobyl, there was no public participation in the emergency planning review process. Chernobyl should not be made the model here. Yet, FEMA has done just that by excluding the public from its process. And FEMA, as the NRC's offsite emergency planning consultant, has saddled the NRC with the consequences of FEMA's errors. Unless the NRC corrects FEMA's refusal to hold the public meeting, the NRC's proceeding will be further flawed.

Moreover, this proceeding is not in a vacuum. Respected polls disclose that more than 70 percent of Long Island's residents oppose the operation of Shoreham. The public knows -- from the best evidence of personal experience -- that the configuration of Long Island means they could not be evacuated in a serious accident at Shoreham. The former Director of FEMA's Region II Office, Frank Petrone, knows this also, for he resigned on April 14 when FEMA barred him from writing the truth that LILCO's plan does not provide reasonable assurance of protecting the public. And the White House Chief of Staff, Donald Regan, knows it. On the May 4 television show, "Meet the Press," Mr. Regan stated that there is "no way" Long Island could be evacuated on a Sunday afternoon, let alone in a nuclear accident.

Given these facts and the controlling legal principles, the continuation of this proceeding evades rationality. Yet the case goes on. FEMA's unwarranted exclusion of the public from the post-exercise review process can serve no conceivable public benefit. Nor can FEMA's action be construed by the NRC to serve this agency's duty to the public's safety. Indeed, nothing legitimate could justify FEMA's action or the NRC's eventual consent to it. Therefore, if for no reason other than to foster the NRC's own institutional integrity in this proceeding, the Commission should grant this Motion.

I. Background

On February 13, 1986, an exercise of LILCO's emergency plan for Shoreham was conducted. In accordance with FEMA's standard practice and regulations, 44 CFR Part 350, the Governments expected that FEMA Region II would conduct a meeting with people residing in the vicinity of Shoreham before concluding the Post Exercise Assessment report and transmitting it to FEMA headquarters. To gain assurance of this, on February 21, 1986, the Presiding Officer of the Suffolk County Legislature, Gregory J. Blass, wrote to the Director of Region II. See Attachment 1. On March 27 and April 3, New York Senator Alfonse D'Amato wrote the national Director of FEMA also requesting such a meeting. See Attachments 2 and 3 hereto.²

² Senator D'Amato's March 27 letter followed a FEMA response (see Attachment 4) to a written question Senator D'Amato had

On April 4, the FEMA Region II Director replied to Mr. Blass that Suffolk County's request was being considered by FEMA headquarters. See Attachment 5 hereto. Thereafter, on April 11 and 15, respectively, Fabian Palomino, Esq., for the State of New York, and Mr. Blass requested FEMA headquarters to direct Region II to hold a public meeting. See Attachments 6 and 7.

On April 21, FEMA's acting General Counsel, Spence W. Perry, Esq., denied the requests for a public meeting. See Attachments 8, and 9. Mr. Perry gave the following reasons:

1) The February 13 exercise was conducted under the NRC-FEMA Memorandum of Understanding ("MOU"), not 44 CFR Part 350, and no public meeting was therefore required.

2) It would be inappropriate and unprecedented for FEMA to discuss its views of the exercise at a public meeting conducted outside the context of the NRC's adjudicatory licensing proceedings; and

3) In the ASLB proceedings concerning the February 13 exercise, there are procedures for appearances by the public "to accommodate the expression of local public interest and the desires of local citizens to be heard"

submitted wherein FEMA stated that 10 CFR Part 350 applied and that the requisite public meeting had already been held. Senator D'Amato's letters of March 27 and April 3 made clear that no such public meeting, as required by 44 CFR § 350.10, had occurred.

II. Discussion

The reasons given by FEMA for not holding a public meeting are at best lame excuses. First, it is specious for FEMA to wield the NRC-FEMA Memorandum of Understanding ("MOU") as a tool with which to wrench the public from the agency's standard practice. The MOU was not written to justify arbitrary manipulations of FEMA's processes, but to establish coordination between the processes of the two agencies. FEMA has regularly lauded public participation following other emergency preparedness exercises. Indeed, upon publishing its regulations in 44 CFR Part 350, FEMA stated:

Despite the deficiencies of public meetings as evidenced by poor attendance in some cases, FEMA believes that it is essential to provide an opportunity to the public living around or near a nuclear power plant to be informed about specific emergency response plans and preparedness as well as to discuss specific concerns with responsible officials. Therefore, the public meeting requirement should be retained. Also, in order to make public meetings more meaningful, the language in the rule has been revised in order to have public meetings held after the initial exercise. Thus, in addition to discussions on the emergency response plans, the opportunity is provided to the public to also discuss the exercise. 48 Fed. Reg. 44335 (September 28, 1983)

Significantly, FEMA made no exceptions to this public meeting requirement.

Second, FEMA's claim that it would be inappropriate and unprecedented to discuss its views of the February 13 exercise outside the NRC's litigation is flat nonsense, belied by FEMA's own regulations and operating procedures. Indeed, FEMA is bound to do just that in every case. Thus, Section 350.10(a) of FEMA's regulations requires that "there is at least one public meeting conducted in the vicinity of the nuclear power plant." The purpose of this meeting is specifically to discuss the exercise with the public outside the NRC litigation.

Third, FEMA's claim that public appearances at the NRC will substitute for FEMA's public meeting mischaracterizes both the NRC's proceedings and the public meeting. The NRC's proceedings are of no avail to the members of the public who would individually and organizationally participate in FEMA's public meeting. These persons are not intervenors in the NRC's proceedings. Nor would limited appearance statements at the NRC be comparable with FEMA's public meeting. The public meeting is intended by 44 CFR § 350.10(a) to have FEMA explain the conduct of the exercise and answer questions about it; limited appearance statements at the NRC serve no such purpose and can have no impact on FEMA's assessment of the exercise. Furthermore, the public meeting under 44 CFR §§ 350.11(a) and (c) is required to be held before FEMA prepares its Post Exercise Assessment and to

include a discussion of the public's input in the Assessment; limited appearance statements at the NRC occur after the Assessment is prepared.

Finally, the NRC has decided to interpret its regulations in 10 CFR Part 50 to cover LILCO's "utility plan," even though the regulations refer to State and local plans and not to a utility's own offsite plan. When FEMA proposed 44 CFR Part 350, FEMA stated, "This rule is intended to be consistent with the NRC emergency planning rule." 47 Fed. Reg. 363987 (August 19, 1982). To be true to those words, FEMA has to interpret 44 CFR § 350 to cover LILCO's utility plan and, thus, the present situation. This means that FEMA has to hold the same public meeting at Shoreham as it is required by § 350.10 to hold at every other nuclear power plant.

Conclusion

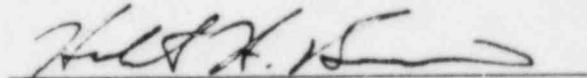
FEMA's exclusion of the public from its post-exercise review process by refusing to hold a public meeting violates both FEMA's regulations and its standard practice. Section 350.10(a) of the regulations requires that FEMA hold a meeting with members of the public in the vicinity of Shoreham. FEMA's failure to hold that meeting invalidates the Post-Exercise Assessment transmitted by FEMA on April 17.

The Commission is obligated to correct FEMA's error. FEMA is before the Commission as the NRC's offsite emergency preparedness consultant. The error of FEMA in pursuit of its consultancy to the NRC is the error of the NRC itself. If the NRC does not correct the error by return of the Post-Exercise Assessment to FEMA with the request that FEMA comply with the public meeting requirements of Section 350.10(a), the NRC's post-exercise proceedings will be further flawed.

Even if the NRC does not believe that FEMA is obligated to hold the public meeting, the Commission should use its discretion and its standing under the NRC-FEMA MOU to request the public meeting. There is no conceivable public benefit to be gained by excluding the public at Shoreham from having the same post-exercise input as people living near every other nuclear power plant.

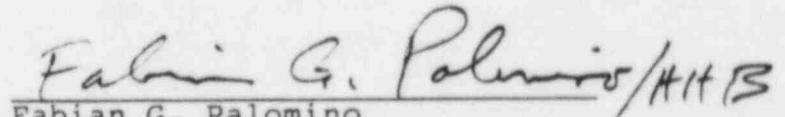
Accordingly, for the reasons set forth herein, the Governments move that the Commission grant the relief requested above.

Respectfully submitted,



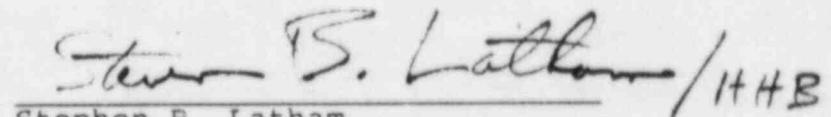
Herbert H. Brown
Lawrence C. Lanpher
Karla J. Letsche
Kirkpatrick & Lockhart
1900 M Street, N.W.
Washington, D.C. 20036

Attorneys for Suffolk County



Fabian G. Palomino
Special Counsel to the Governor
of New York State
Executive Chamber
Two World Trade Center
New York, New York 10047

Attorney for Governor Mario M.
Cuomo and the State of New York



Stephen B. Latham
Twomey, Latham & Shea
P.O. Box 398
33 West Second Street
Riverhead, New York 11901

Attorney for the Town of
Southampton

June 3, 1986

COUNTY OF SUFFOLK



COUNTY LEGISLATURE

LEGISLATOR
FIRST DISTRICT

GREGORY J. BLASS
PRESIDING OFFICER

February 21, 1986

Mr. Frank D. Petrone
Regional Director
Federal Emergency Management Association
26 Federal Plaza, Room 1338
New York, NY 10278

Dear Mr. Petrone.

I am writing on behalf of Suffolk County to seek your agreement that FEMA will hold a meeting concerning the February 13 LERO exercise with interested members of the public. To the best of our knowledge, FEMA has held such a meeting following all other exercises. Whether or not FEMA deems that such a meeting is in this instance mandated by law, the affected public in Suffolk County should not be foreclosed from the same access to post-exercise information and the same opportunity to provide FEMA with relevant data as persons who live within the EPZs of other nuclear power plants. Emergency preparedness is of at least as much concern to the public at Shoreham as to the affected public elsewhere.

To facilitate a meeting of FEMA with the public, the County would be pleased to assist FEMA in securing an appropriate room or aiding in any other necessary arrangements. We would appreciate learning from you as soon as possible whether we should proceed accordingly.

Sincerely,

/s/

Gregory J. Blass
Presiding Officer

GJB/mjh

United States Senate
WASHINGTON, DC 20510

March 27, 1986

The Honorable Julius W. Becton, Jr.
Director
Federal Emergency Management Agency
Washington, D.C. 20472

Dear General Becton:

I am writing as a follow-up to the question I submitted for the record at your fiscal year 1987 appropriations hearing on March 5. Specifically, I asked for your assurance that FEMA will conduct a public meeting concerning LILCO's February 13 exercise before reaching conclusions on the exercise. Your reply was as follows:

FEMA regulation 44 CFR 350 provides for the conduct of a meeting after an exercise, involving the exercise participants, Federal agencies, and the public and media. Such a meeting was held on February 15, 1986, at the Holiday Inn used as the Joint News Center for the Shoreham exercise. Members of the press and public were present. The purpose of the meeting was so that FEMA could share its initial impressions on how the exercise went. After FEMA's presentation, made by the Chairman of the Regional Assistance Committee, members of the press asked questions informally. At least one member of the public also asked questions.

While I appreciate that FEMA held the February 15 meeting, that meeting is not the "public meeting" to which my question refers. The February 15 meeting was required by subsection 9 of the regulation you cite, 44 CFR 350, which provides: "Within 48 hours of the completion of the exercise, a briefing involving the exercise participants and Federal observers shall be conducted by the Regional Director to discuss the preliminary results of the exercise."

The "public meeting" addressed by my question is required by a separate subsection of the same regulation. Section 350.10(a) requires that, prior to the evaluation of the exercise, the FEMA Regional Director "shall assure that there is at least one public meeting conducted in the vicinity of the nuclear power plant." The purpose of the meeting shall be (1) to acquaint the members of the public with the conduct of the exercise; (2) to answer any questions about the exercise; (3) to receive suggestions from the public concerning improvements or changes that may be necessary for emergency preparedness; and (4) to describe to the public the way in which the emergency plan is expected to function in the event of an actual emergency.

Section 350.10(b) underscores the importance of the public meeting:

...This meeting shall be noticed in the local newspaper with the largest circulation in the area, or other media as the Regional Director may select, on at least two occasions, one of which is at least two weeks before the meeting takes place and the other is within a few days of the meeting date...

Public input from the meeting is considered by FEMA to be so important that Section 350.10(b) further states that no FEMA approval of an emergency plan can be made unless such a public meeting is held. And, under Section 350.11(c), the Regional Director must include "a summary of the deficiencies identified during the public meeting" in the evaluation of the exercise he transmits to FEMA Headquarters.

The facts are as follows:

- o FEMA has complied with only a part of the regulation cited in your letter by conducting on February 15 the briefing required by Section 350.9;
- o FEMA has not complied with a more important requirement of the regulation you cite: the public meeting mandated by Section 350.10. Indeed, FEMA has still not even issued the advance notice of such a public meeting required by Section 350.10(b);
- o Before the Regional Director can conclude his evaluation of the February 13 exercise, he must consider input from the public meeting required by Section 350.10. (See Section 350.11(a)); and
- o In the evaluation of the February 13 exercise that the Regional Director will transmit to FEMA Headquarters, he must summarize the deficiencies identified during the public meeting. (See Section 350.11(c)).

There is no justification for FEMA to ignore or discriminate against the people who live near Shoreham or to deny them the same treatment that FEMA gives to people living near other nuclear power plants. The reason FEMA has held a public meeting after every other exercise is to gather information from the public that can improve emergency preparedness. The people of Long Island have just as much to offer FEMA as people living elsewhere; and FEMA should seek them out as it has done with local residents in every other case. A refusal by FEMA to do this here would be a slap at Long Island's citizens and a violation of the regulation you have cited in your reply to me.

In the case of Shoreham, where a utility is attempting to supplant the emergency response function of State and County governments which have in good faith determined to adopt emergency

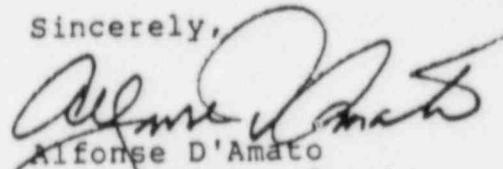
The Honorable Julius W. Becton, Jr.
March 27, 1986
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plans, it is even more compelling for FEMA to reach out for the public's views and insights. It is significant that you cite and acknowledge the control of 44 CFR 350, but what is even more important is that you be willing to acknowledge the vulnerability of the public at Shoreham and not shortchange them on procedures which have become standard for FEMA everywhere else. Indeed, this is a case where FEMA should take every reasonable measure to gather practical information and insights from the public so as to assure that it is not imperiling the safety of the people who live near the Shoreham plant.

Therefore, I ask that you instruct your Regional Director to hold a public meeting with the people of Long Island in accordance with FEMA's standard practice and regulations. Until that meeting is held and FEMA receives and meaningfully considers the public's input, the Regional Director should withhold judgments concerning the February 13 exercise.

Thank you for your attention to this matter.

Sincerely,



Alfonse D'Amato
United States Senator

AD:enr
cc: Frank Petrone

United States Senate
WASHINGTON, DC 20510

April 3, 1986

The Honorable Julius W. Becton, Jr.
Director
Federal Emergency Management Agency
Washington, D.C. 20472

Dear General Becton:

This is a follow-up to my letter to you dated March 27, 1986. In that letter, I requested that you direct FEMA's Region I Director to conform to FEMA's standard practice by holding the normal post-exercise public meeting regarding Shoreham, and to withhold judgment on LILCO's February 13 exercise until the public's input is received and meaningfully considered.

I am writing today in reference to statements of FEMA's spokesman, William McAda, quoted in Newsday of April 2. Mr. McAda said that FEMA's regulations (i.e., 10 CFR 350) requiring a post-exercise public meeting do not apply at Shoreham because this situation is "unique." I am outraged by that statement.

First, your own response to the Senate Appropriations Subcommittee on HUD and Independent Agencies to my March 5 question for the record applied 10 CFR 350 to the Shoreham situation. You not only cited this regulation, but went so far as to contend that FEMA dutifully complied with it on February 15. It is inappropriate for your spokesman now to try to back away from what you told me in a considered written response. I trust that you will back up your own words.

Second, Mr. McAda's position that the "uniqueness" of the Shoreham situation justifies cutting the citizens of Suffolk County out of FEMA's normal public meeting process is insulting. Congress has funded FEMA to help protect the public, not to use the Agency's resources to run roughshod over them. Unfortunately, it is becoming clear that the major "uniqueness" at Shoreham is FEMA's unwillingness to treat the people who live near Shoreham the same way FEMA treats people living near every other nuclear power plant. I remind you that at both Indian Point and Ginna in New York, FEMA's Regional Office held public meetings following the emergency preparedness exercises and prior to concluding the evaluations. Suffolk's residents have the same concerns for the safety of their families as the people near Indian Point and Ginna. FEMA cannot treat them as second-class citizens.

The Honorable Julius W. Becton, Jr.
April 3, 1986
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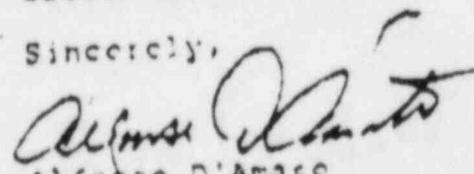
Mr. McAda's effort to undo your written response to me is particularly disturbing in light of the importance FEMA has placed on having a public meeting following the exercise at every other plant. For example, after the Indian Point exercise, FEMA's spokeswoman told the press that public meetings are held, not only because they are required, but also because "Frequently, people have offered valid criticism and good suggestions. Then the plan is modified accordingly." This is precisely what happened at Ginna, where the plan was adjusted to accommodate public input concerning the need to sound sirens earlier than was done in the exercise.

Finally, it is unconscionable that Mr. McAda would even attempt to justify denying Suffolk's citizens the public meeting that FEMA routinely offers people everywhere else. I remind you that, when FEMA adopted 10 CRF 350, FEMA specifically rejected a proposal to eliminate public meetings. FEMA stated at page 44335 of the September 28, 1983, Federal Register:

Despite the deficiencies of public meetings as evidenced by poor attendance in some cases, FEMA believes that it is essential to provide an opportunity to the public living around or near a nuclear power plant to be informed about specific emergency response plans and preparedness as well as to discuss specific concerns with responsible officials. Therefore, the public meeting requirement should be retained. Also, in order to make public meeting more meaningful, the language in the rule has been revised in order to have public meetings held after the initial exercise. Thus, in addition to discussions on the emergency response plans, the opportunity is provided to the public to also discuss the exercise.

Suffolk County residents are concerned with safety issues surrounding Shoreham. Given this fact, and given the intense commitment by FEMA to the concept of post-exercise public meetings and, indeed, FEMA's practice of holding such public meetings everywhere else, I ask for your prompt assurance that FEMA will hold the standard public meeting in Suffolk County, and that you will instruct your Region II Director in accordance with the request set forth in my letter dated March 27, 1986.

Sincerely,


Alfonse D'Amato
United States Senator

AD:ent

QUESTIONS SUBMITTED FOR THE RECORD BY SENATOR D'AMATO

FEMA

RESPONSE TO SHOREHAM EXERCISE

Question: General Becton, I'm curious about the precedents in this area. Has FEMA ever made a reasonable assurance of safety based on an evacuation drill without local cooperation?

Answer: The Federal Emergency Management Agency (FEMA) normally does not issue a finding of reasonable assurance of offsite safety based on an evaluation of a radiological emergency preparedness exercise without local cooperation. The exception to this practice has been where another jurisdiction (usually the State) performs compensatory preparedness functions for the non-participating local entity. Examples include the Indian Point site where, in 1983, New York State exercised its compensatory plan for Rockland County which was not then participating in offsite emergency planning and preparedness. Although some inadequacies existed, FEMA was eventually able to give the Nuclear Regulatory Commission (NRC) a report of adequate progress on correction of these errors. On the basis of that report, the NRC did not shut down the Indian Point site. Rockland County has rejoined the planning effort since that time.

Question: When do you expect you will make your recommendation to the NRC?

Answer: We expect to give the NRC a report in about 45 days on the February 13, 1986 exercise at Shoreham.

Question: What are FEMA's options? In other words, what possible recommendations could you make?

Answer: As we explained in our October 29, 1985 letter to the NRC, we will not be able to give a finding of reasonable assurance on offsite preparedness, due to the lack of participation of the State and/or local government in the emergency planning process. This is based on legal decisions about LILCO's lack of authority to perform certain civil emergency functions in its plans. Our report will simply be an account of the exercise scenario and LILCO's performance against that scenario. It is up to NRC to utilize that information in its licensing process as appropriate.

Question: Following each radiological emergency planning exercise, FEMA has held an open meeting at which the public was invited to submit information concerning emergency preparedness and to discuss this general issue. These meetings were held prior to FEMA issuing its evaluation of the exercise so that the public's input could be considered fully. I am not aware of FEMA having scheduled such a meeting concerning the February 13 exercise of LILCO's emergency plan, even though the Presiding Officer of the Suffolk County Legislature, on February 21, wrote FEMA's Regional Director to confirm that such a meeting would be scheduled. Do I have your assurance that FEMA will invite the public to a meeting

concerning LILCO's February 13 exercise before FEMA reaches conclusions on the exercise or issues its evaluation?

Answer: FEMA regulation 44 CFR 350 provides for the conduct of a meeting after an exercise, involving the exercise participants, Federal agencies, and the public and media. Such a meeting was held on February 15, 1986, at the Holiday Inn used as the Joint News Center for the Shoreham exercise. Members of the press and public were present. The purpose of the meeting was so that FEMA could share its initial impressions on how the exercise went. After FEMA's presentation, made by the Chairman of the Regional Assistance Committee, members of the press asked questions informally. At least one member of the public also asked questions.



Federal Emergency Management Agency

Region II 26 Federal Plaza New York, New York 10278

The Honorable Gregory J. Blass
Presiding Officer
Suffolk County Legislature
Legislature Building
Veterans Memorial Highway
Hauppauge, NY 11788

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SUFFOLK COUNTY, NY
LEGISLATURE

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Dear Mr. Blass:

I enjoyed the opportunity to meet with you on March 21, 1986 and share your concerns for FEMA to a public hearing in order to obtain public views relative to the February 13, 1986 LILCO exercise of Shoreham.

As we discussed, this exercise is not part of the FEMA 350 process, but rather pursuant to the NRC FEMA Memorandum of Understanding. Therefore, your request as a result of our meeting has been forwarded to the FEMA Office of General Counsel for review.

I was in Washington last week and briefed senior management staff of the Suffolk County Legislature's request. I am currently awaiting a response and determination and will forward this to you immediately upon receipt.

Thank you again for working so closely and cooperatively with me during this very difficult time.

Sincerely,

Frank P. Patrone
Regional Director



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

FABIAN PALOMINO
Special Counsel to the Governor

April 11, 1986

The Honorable Julius W. Becton, Jr.
Director
Federal Emergency Management Agency
Washington, D.C. 20472

Dear General Becton:

On behalf of New York State, I am writing to underscore the letters written to you by Gregory J. Blass, Presiding Officer of the Suffolk County Legislature, respectfully requesting that in compliance with the regulations and your customary practice FEMA hold a meeting with the public residing near the Shoreham nuclear power plant prior to FEMA's completion of its evaluation of LILCO's February 13 exercise.

The affected public on Long Island is entitled to participate in FEMA's post-exercise evaluation process just as people living near other nuclear power plants have participated. At both the Indian Point and Ginna plants in New York, meetings were held by FEMA with the public before Region II completed its post-exercise evaluation. There is no basis in the present circumstances for FEMA to discriminate against the people of Long Island by denying them that same opportunity. I accordingly ask that you direct Region II to provide an opportunity for the public to meet with FEMA prior to the conclusion of the Region II evaluation.

Sincerely,

A handwritten signature in cursive script that reads "Fabian G. Palomino".

Fabian Palomino
Special Counsel
to the Governor

COUNTY OF SUFFOLK



COUNTY LEGISLATURE

GREGORY J. BLASS
PRESIDING OFFICER

April 15, 1986

The Honorable Julius W. Becton, Jr.
Director
Federal Emergency Management Agency
Washington, D.C. 20472

Dear Mr. Becton:

I believe I speak for all concerned citizens of Suffolk County in expressing shock that you have attempted to manipulate FEMA Region II's emergency preparedness responsibilities against the safety interests of the people of Suffolk County. Your conduct and the persistent hostility of FEMA headquarters toward Suffolk's citizens require some blunt and straight talk. That is the purpose of this letter.

Your attempt to contrive Region II's conclusion with respect to LILCO's February 13 drill is the third major impropriety at FEMA concerning Shoreham since you took office late last year. It comes after FEMA secretly executed an illegal sole source contract to hire "simulators" to pretend they were State and local officials in the drill of LILCO's emergency plan. And it follows your refusal to permit Region II to hold a post-exercise meeting with the public near Shoreham as FEMA has done with people living near every other nuclear power plant. Both of these events demonstrate FEMA's indifference to the safety of the people of Suffolk County.

Not forgotten are documents published by the press more than a year ago that prove FEMA's collusion with the Department of Energy and other federal officials to license Shoreham at any cost to the safety interests of the public. These, and the April 11 statement of Frank Petrone upon resigning as FEMA's Region II Director, provide compelling evidence that you and your colleagues have betrayed the respect and trust of the people of this County.

In my view, there is only one honorable course for you and FEMA at this point: to tell the whole truth. The truth about "pressure," as Mr. Petrone put it, from the NRC and other federal agencies and officials. The truth about any commitments FEMA made to support the licensing of Shoreham despite legitimate

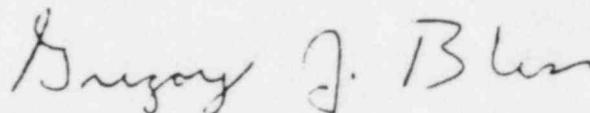
The Honorable Julius W. Becton, Jr.
April 15, 1986
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public concerns. And the truth about any representations you made before, during, or after confirmation to speed a license for Shoreham.

Moreover, the loss of public confidence in FEMA requires that you act forthrightly to end the taint to FEMA's review of LILCO's February 13 drill. As a start, this means conducting the normal public meeting with persons living near Shoreham and making full and candid findings as to the status of emergency preparedness in Suffolk County. There is no basis for FEMA to discriminate against the citizens of Suffolk County. And there certainly is no basis to delete from the report Region II's statement -- the actuality -- that LILCO's plan does not permit a reasonable assurance finding.

Finally, Mr. Petrone's resignation has raised countless questions about the integrity of FEMA's activities concerning Shoreham. Accordingly, I shall ask Congress to commence a full-scale investigation into the circumstances surrounding Mr. Petrone's resignation and the conduct of FEMA, alone and with other federal officials, concerning emergency preparedness issues at Shoreham. The public must learn what has gone on behind closed doors.

Very truly yours,



Gregory J. Blass
Presiding Officer



Federal Emergency Management Agency

Washington, D.C. 20472

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PRESIDING OFFICER
COUNTY LEGISLATURE
SUFFOLK COUNTY, N.Y.

The Honorable Gregory J. Blass
Presiding Officer
Suffolk County Legislature
Legislature Building
Veterans Memorial Highway
Hauppauge NY 11788

Dear Mr. Blass:

The Director has asked me to respond to your letter of April 15, 1986.

As to your request that the Federal Emergency Management Agency (FEMA) conduct a public hearing on the February 13th exercise at the Shoreham Plant, I believe my letter to Fabian Palomino, Special Counsel to the Governor of the State of New York, sets forth FEMA's position. A copy is enclosed for your information. I believe this also answers the issues raised in your letter of March 6, 1986, to Frank Petrone on the same subject.

Sincerely,

Spence W. Perry
Acting General Counsel

Enclosure

cc: file

COUNTY OF SUFFOLK



COUNTY LEGISLATURE

GREGORY J. BLASS
PRESIDING OFFICER

April 15, 1986

The Honorable Julius W. Becton, Jr.
Director
Federal Emergency Management Agency
Washington, D.C. 20472

Dear Mr. Becton:

I believe I speak for all concerned citizens of Suffolk County in expressing shock that you have attempted to manipulate FEMA Region II's emergency preparedness responsibilities against the safety interests of the people of Suffolk County. Your conduct and the persistent hostility of FEMA headquarters toward Suffolk's citizens require some blunt and straight talk. That is the purpose of this letter.

Your attempt to contrive Region II's conclusion with respect to LILCO's February 13 drill is the third major impropriety at FEMA concerning Shoreham since you took office late last year. It comes after FEMA secretly executed an illegal sole source contract to hire "simulators" to pretend they were State and local officials in the drill of LILCO's emergency plan. And it follows your refusal to permit Region II to hold a post-exercise meeting with the public near Shoreham as FEMA has done with people living near every other nuclear power plant. Both of these events demonstrate FEMA's indifference to the safety of the people of Suffolk County.

Not forgotten are documents published by the press more than a year ago that prove FEMA's collusion with the Department of Energy and other federal officials to license Shoreham at any cost to the safety interests of the public. These, and the April 11 statement of Frank Petrone upon resigning as FEMA's Region II Director, provide compelling evidence that you and your colleagues have betrayed the respect and trust of the people of this County.

In my view, there is only one honorable course for you and FEMA at this point: to tell the whole truth. The truth about "pressure," as Mr. Petrone put it, from the NRC and other federal agencies and officials. The truth about any commitments FEMA made to support the licensing of Shoreham despite legitimate

The Honorable Julius W. Becton, Jr.

April 15, 1986

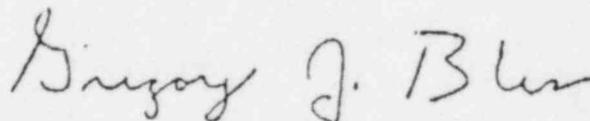
Page 2

public concerns. And the truth about any representations you made before, during, or after confirmation to speed a license for Shoreham.

Moreover, the loss of public confidence in FEMA requires that you act forthrightly to end the taint to FEMA's review of LILCO's February 13 drill. As a start, this means conducting the normal public meeting with persons living near Shoreham and making full and candid findings as to the status of emergency preparedness in Suffolk County. There is no basis for FEMA to discriminate against the citizens of Suffolk County. And there certainly is no basis to delete from the report Region II's statement -- the actuality -- that LILCO's plan does not permit a reasonable assurance finding.

Finally, Mr. Petrone's resignation has raised countless questions about the integrity of FEMA's activities concerning Shoreham. Accordingly, I shall ask Congress to commence a full-scale investigation into the circumstances surrounding Mr. Petrone's resignation and the conduct of FEMA, alone and with other federal officials, concerning emergency preparedness issues at Shoreham. The public must learn what has gone on behind closed doors.

Very truly yours,



Gregory J. Blass
Presiding Officer.



Federal Emergency Management Agency

Washington, D.C. 20472

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PRESIDING OFFICER
COUNTY LEGISLATURE
SUFFOLK COUNTY, N.Y.

Fabian Palomino, Esq.
Special Counsel to the Governor
State of New York
Albany, NY 12224

Dear Mr. Palomino:

The Director has asked me to respond to your letter of April 11, 1986, in which you support the requests made by Gregory J. Blass, Presiding Officer of the Suffolk County legislature that the Federal Emergency Management Agency (FEMA) hold a public meeting in connection with its evaluation of LILCO's February 13 exercise at the Shoreham nuclear power plant.

At the outset it should be emphasized that the requirements of Part 350 of 44 CFR, Review and Approval of State and Local Radiological Emergency Plans and Preparedness, are not applicable to this case.

Under FEMA rule 44 CFR 350.10 the only provision for a public meeting on offsite planning and preparedness relates to a meeting, (in practice normally sponsored by a participating State) held to explain State and local government emergency plans to the public and to receive public comments on those plans. In the case at hand, State and local governments have no plans to explain and have opted not to participate in a 44 CFR 350 process.

The exercise evaluation conducted by FEMA for the Shoreham fixed nuclear generating facility has been conducted pursuant to the Memorandum of Understanding (MOU) between FEMA and the Nuclear Regulatory Commission (NRC) which governs such activities.

A "public meeting" on the exercise conducted by FEMA would not be consistent with FEMA's role in the licensing process in this case. FEMA's evaluation and report have been prepared at the NRC's request for use in that Agency's licensing proceedings. In light of the pending litigation, it would be inappropriate for FEMA to discuss its report outside the context of the NRC licensing process. Indeed, to do so would be an unprecedented act.

It is anticipated that the hearings before the ASLB will be extensive. Every legitimate issue will be open to litigation by the parties. Hearings normally are preceded by extensive discovery. Under NRC rules, the right of the parties to explore the basis for the evaluation and report is extensive. Key FEMA staff involved in the evaluation will be made available for cross-examination under oath. There will thus be ample opportunity for the State, Suffolk County, and Long Island Lighting Company (LILCO) to examine the basis for the FEMA evaluation.

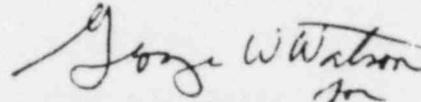
R. J. [Signature]

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Further, under NRC procedures, the ASLB has considerable discretion to accommodate the expression of local public interest and the desires of local citizens to be heard within the context of its licensing proceedings.

In view of the above, FEMA has no plans to conduct a public meeting as has been suggested. If I can be of further assistance, please advise.,

Sincerely,

A handwritten signature in cursive script that reads "Spence W. Perry".

Spence W. Perry
Acting General Counsel

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of)
)

LONG ISLAND LIGHTING COMPANY)
)

(Shoreham Nuclear Power Station,)
Unit 1))
)
)
)

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

Certificate of Service

I hereby certify that copies of SUFFOLK COUNTY, STATE OF NEW YORK, AND TOWN OF SOUTHAMPTON SUPPLEMENT TO MOTION FOR NRC TO ESTABLISH POST-EXERCISE PROCEDURES have been served on the following this 3rd day of June 1986 by U.S. mail, first class, except as otherwise noted.

*Nunzio J. Palladino, Chairman
U.S. Nuclear Regulatory Comm.
Room 1114
1717 H Street, N.W.
Washington, D.C. 20555

*Comm. Lando W. Zech, Jr.
U.S. Nuclear Regulatory Comm.
Room 1113
1717 H Street, N.W.
Washington, D.C. 20555

*Comm. James K. Asselstine
U.S. Nuclear Regulatory Comm.
Room 1136
1717 H Street, N.W.
Washington, D.C. 20555

*Herzal Plaine, Esq.
U.S. Nuclear Regulatory Comm.
10th Floor
1717 H Street, N.W.
Washington, D.C. 20555

*Comm. Frederick M. Bernthal
U.S. Nuclear Regulatory Comm.
Room 1156
1717 H Street, N.W.
Washington, D.C. 20555

*Comm. Thomas M. Roberts
U.S. Nuclear Regulatory Comm.
Room 1103
1717 H Street, N.W.
Washington, D.C. 20555

Alan S. Rosenthal, Chairman
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Howard A. Wilber
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Gary J. Edles
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. William Rogers
Clerk
Suffolk County Legislature
Suffolk County Legislature
Office Building
Veterans Memorial Highway
Hauppauge, New York 11788

* Bernard M. Bordenick, Esq.
U.S. Nuclear Regulatory Comm.
Washington, D.C. 20555

Spence Perry, Esq.
Associate General Counsel
Federal Emergency Management
Agency
Washington, D.C. 20471

Mr. L. F. Britt
Long Island Lighting Company
Shoreham Nuclear Power Station
North Country Road
Wading River, New York 11792

Ms. Nora Bredes
Executive Director
Shoreham Opponents Coalition
195 East Main Street
Smithtown, New York 11787

Stuart Diamond
Business/Financial
NEW YORK TIMES
229 W. 43rd Street
New York, New York 10036

Joel Blau, Esq.
New York Public Service Comm.
The Governor Nelson A.
Rockefeller Building
Empire State Plaza
Albany, New York 12223

** Stewart M. Glass, Esq.
Regional Counsel
Federal Emergency Management
Agency
26 Federal Plaza
New York, New York 10278

Anthony F. Earley, Esq.
General Counsel
Long Island Lighting Company
250 Old Country Road
Mineola, New York 11501

** W. Taylor Reveley, III, Esq.
Hunton & Williams
P.O. Box 1535
707 East Main Street
Richmond, Virginia 23212

Mr. Jay Dunkleberger
New York State Energy Office
Agency Building 2
Empire State Plaza
Albany, New York 12223

Stephen B. Latham, Esq.
Twomey, Latham & Shea
33 West Second Street
Riverhead, New York 11901

* Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Comm.
1717 H Street, N.W.
Washington, D.C. 20555

Mary Gundrum, Esq.
New York State Department
of Law
2 World Trade Center, Rm. 4614
New York, New York 10047

MHB Technical Associates
1723 Hamilton Avenue
Suite K
San Jose, California 95125

Martin Bradley Ashare, Esq.
Suffolk County Attorney
Bldg. 158 North County Complex
Veterans Memorial Highway
Hauppauge, New York 11788

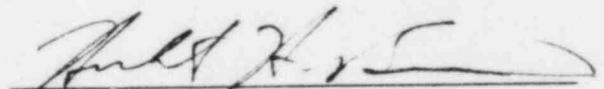
David A. Brownlee, Esq.
Kirkpatrick & Lockhart
1500 Oliver Building
Pittsburgh, PA 15222

Hon. Peter Cohalan
Suffolk County Executive
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

Dr. Monroe Schneider
North Shore Committee
P.O. Box 231
Wading River, New York 11792

Fabian G. Palomino, Esq.
Special Counsel to the Governor
Executive Chamber, Rm. 229
State Capitol
Albany, New York 12224

Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Comm.
Washington, D.C. 20555



Herbert H. Brown
KIRKPATRICK & LOCKHART
1900 M Street, N.W., Suite 800
Washington, D.C. 20036

Date:

June 3, 1986

- * By Hand
- ** By Federal Express