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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE COMMISSION

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of	)	
	)	
LONG ISLAND LIGHTING COMPANY	)	Docket No. 50-322-CL-3
	)	(Emergency Planning)
(Shoreham Nuclear Power Station,	)	
Unit 1)	)	

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NRC STAFF RESPONSE TO SUFFOLK COUNTY, STATE OF NEW YORK, AND  
TOWN OF SOUTHAMPTON MOTION FOR RECONSIDERATION OF CLI 86-11

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Bernard M. Bordenick  
Counsel for NRC Staff

August 5, 1986

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PDR ADOCK 05000322  
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BEFORE THE COMMISSION

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NRC STAFF RESPONSE TO SUFFOLK COUNTY,  
STATE OF NEW YORK, AND TOWN OF SOUTHAMPTON  
MOTION FOR RECONSIDERATION OF CLI 86-11

I. INTRODUCTION

On July 21, 1986, Suffolk County, the State of New York and the Town of Southampton (Intervenors) moved the Commission to reconsider its Memorandum and Order, CLI-86-11 issued on June 6, 1986. CLI-86-11 directed that a Licensing Board be appointed to conduct hearings on the February 13, 1986, Shoreham off-site emergency planning exercise. Subsequent to June 6, two events occurred which, according to Intervenors, require the Commission to reconsider its direction that post-exercise litigation be held:

1. On June 16, 1986 the Nassau County Board of Supervisors enacted a resolution which bars LILCO's use of the Nassau County Coliseum or any other Nassau County owned facility as a relocation center; <sup>1/</sup> and,

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<sup>1/</sup> The Commission was served with a copy of the Nassau County Board of Supervisors resolution on June 23, 1986.

2. On July 3, 1986 the State of New York enacted legislation which created a municipal power authority (the Long Island Power Authority ("LIPA")) for purposes of acquiring LILCO. Under the legislation LIPA is apparently prohibited from operating the Shoreham Nuclear Power Plant. <sup>2/</sup>

In view of these events, Intervenor ask the Commission: (a) to reconsider CLI-86-11; and (b) on reconsideration, to rule that the post-exercise litigation should proceed no further. <sup>3/</sup> LILCO responded to Intervenor's Motion on July 23, 1986 and opposed<sup>1</sup> the motion. The NRC staff (Staff), for the reasons set out below, also opposes the motion.

## II. DISCUSSION

### A. The Nassau Coliseum

Subsequent to receipt of Intervenor's motion for reconsideration of CLI-86-11 on July 21, 1986 and LILCO's response thereto on July 23,

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<sup>2/</sup> A copy of the New York State LIPA legislation is attached to Intervenor's July 21, 1986, motion.

<sup>3/</sup> At footnote 3 of its motion Intervenor state that the Licensing Board ruled at a prehearing conference held on July 8, 1986, that it did not have jurisdiction to consider the impact of these events on the post-exercise litigation, although it did indicate that contentions on the Coliseum matter might be considered. See Licensing Board Memorandum and Order (Prehearing Conference, July 8, 1986), dated July 11, 1986, pp. 2-3. Intervenor also state that the Licensing Board indicated that it believed the Commission was the proper entity to consider the matters in question. See July 8, 1986 Transcript, 16,100, 16,104. On the latter point, a reading of the transcript in question shows that the



1986, LILCO advised the Commission that it is designating replacement relocation centers. <sup>4/</sup> Specifically, LILCO states that it will designate other relocation facilities in lieu of the Nassau Coliseum in Revision 8 to the Shoreham emergency plan, which it expects to publish in about two weeks. At 3. It further states that this alternative will ensure that the Nassau Coliseum need not be relied upon. Id. Accordingly, the resolutions enacted by the Nassau County Board of Supervisors as regards the Nassau Coliseum cannot form a basis for reconsidering CLI-86-11 since the Nassau Coliseum is no longer relied on by the LILCO plan as a relocation center.

In any event as noted by LILCO in its response to the motion (page 1), the principal purpose of the exercise was to test the LILCO Local Emergency Response Organization (LERO) plan; the suitability of the Nassau Coliseum as a relocation center comprised only a small part of the overall exercise. Thus, the designation of a particular relocation center in the plan did not have the overriding importance Intervenor give it in their motion for reconsideration.

Intervenors have argued in their motion that the entire February 13 off-site emergency planning exercise was contingent on having the Nassau

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(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

Licensing Board simply indicated that "there may be other avenues before the Commission to bring [these events] before the Commission . . . ." Tr. 16,100. The avenue chosen by Intervenor is the motion for reconsideration of CLI 86-11.

<sup>4/</sup> See, LILCO's Response to Intervenor's Supplemental Answer to LILCO's Petition for Review of ALAB-832 and Their Motion for Leave To File The Same, dated August 4, 1986.

Coliseum available as a relocation center. This is not so. The purpose of the exercise was to test the overall capability of the LERO organization to perform a broad range of tasks including the ability to mobilize, to inform the public of actions to be taken, to analyze an accident, to make recommendations to the public concerning protective action recommendations, and to render assistance in effectuating those recommendations. In addition the exercise tested the training of LERO personnel and the LERO communications facilities. <sup>5/</sup> As LILCO has noted, response at page 2, by misunderstanding the role of the Coliseum, or any other similar facility, Intervenors reach the erroneous conclusion that the inability to have the Coliseum available as a relocation center voids all the results of an exercise of the LERO plan. However, as the designation of the Coliseum, or any other relocation center, constitutes merely one portion of a complex plan, the fact that the Coliseum may not be available to LILCO as a relocation center should not form a basis for obviating the Commission's decision in CLI-86-11 to hold a hearing on the conduct of the exercise.

Indeed, there are many activities conducted at a relocation center which are not site specific and could be litigated even in the absence of a designated relocation center. These include the mobilization and staffing of workers for a relocation center, demonstration of a 24 hour staffing capability, procedures for and the conduct of monitoring, and the availability of knowledge of how to use required equipment. See FEMA

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<sup>5/</sup> See the Federal Emergency Management Agency's Post Exercise Assessment (FEMA Post Exercise Assessment) dated April 17, 1986, at pages xi to xii.

Post Exercise Assessment at pages xviii-xix. The purported lack of availability of the Nassau Coliseum provides no basis for not going forward with the hearings on the emergency planning exercise.

B. The LIPA Legislation

The passage of the LIPA bills does not provide a basis for the Commission to conclude that the legal fate of LILCO has been determined or that the company can no longer obtain an operating license for Shoreham.

One of the bills permits the establishment of a Long Island Power Authority to assume, if specified conditions can be met, the property and obligations of LILCO. N.Y. Public Authorities Laws, Article 5 (McKinney), as added by "Long Island Power Authority Act", July 3, 1986, Senate Bill No. 7784-B, Assembly Bill No. 9715-B. The other bill could exclude future costs attributable to Shoreham from the rate base unless the plant has received a full power operating license and becomes "used and useful" in the generation of commercial electricity by a future date certain. N.Y. Public Service Law § 66, subdivision 24 (McKinney), as amended July 3, 1986 by Assembly Bill No. 11666.

Neither bill has immediate effect. The "LIPA" bill does not become effective until January 15, 1987, and the prospects for acquisition of LILCO thereafter, with or without Shoreham, cannot now be determined or predicted. The "used and useful" bill appears to exclude Shoreham expenses from the LILCO rate base only if the plant has not entered commercial service by December 1988. Significantly, neither of these bills, on their face, prohibit further efforts by LILCO to license

Shoreham. Plainly this legislation provides no basis for delaying the hearing on the emergency planning exercise.

C. CLI-86-13

In addition, reconsideration (reversal) of the Commission's ruling in CLI-86-11 would be inconsistent with the Commission's Decision of July 25, 1986 in this proceeding, CLI-86-13. This Commission decision directs further proceedings so that "LILCO's plan [may] be measured against a standard that would require protective measures that are generally comparable to what might be accomplished with state or local governmental cooperation." At 16. Further, the Licensing Board has been directed by the Commission to "assume that the State and Suffolk County would in fact respond to an accident at Shoreham on a best efforts basis that would use the LILCO plan as the only available comprehensive compendium of emergency planning information and options." Id. Therefore, hearings should go forward on the exercise to provide a basis to determine if the LILCO plan provides a basis for emergency action in the event of an accident. Such litigation would aid in providing the Commission with the more complete record it desires on which to base future decisions regarding Shoreham. See, e.g. unpublished "Memorandum and Order" issued by the Commission in this proceeding on January 30, 1986 at pages 6-7. <sup>6/</sup>

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<sup>6/</sup> In the past the Commission has indicated that litigation of all matters available for hearing move forward, even where questions exist as to whether the plan could be executed. See CLI-83-13, 17 NRC 741, 742 (1983); see also CLI-83-17, 17 NRC 1032, 1034-35 (1983).



III. CONCLUSION

For the reasons set out above, Intervenor's motion for reconsideration of CLI-86-11 should be denied.

Respectfully submitted,

*Bernard M Bordenick*

Bernard M. Bordenick  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 5th day of August, 1986.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO SUFFOLK COUNTY, STATES OF NEW YORK, AND TOWN OF SOUTHAMPTON MOTION FOR RECONSIDERATION CLI 86-11" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 5th day of August, 1986.

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