

6/9/83

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

Suffolk County's Status Report Regarding
Need For Additional Time To File Draft
Emergency Planning Contentions

I. Introduction and Summary of Position

In accordance with the Board's May 5, 1983 Order Confirming Adjustment in Schedule to File Contentions, Suffolk County reports its position on the need for an adjustment to the previously established four-week period for preparation of draft contentions on LILCO's offsite emergency response "plan." That LILCO "plan," filed with the Board and parties on Thursday, May 26, 1983, actually consists of five plans:

LILCO Plan 1: The "LILCO-County plan," which calls for Suffolk County to perform most emergency response functions;

LILCO Plan 2: The "LILCO/State plan," which calls for the State of New York to assume command and control and public information duties and for LILCO personnel to perform almost all remaining emergency response functions;

LILCO Plan 3: The "LILCO/FEMA plan," which calls for FEMA to assume command and control and public information duties and for LILCO personnel to perform almost all remaining emergency response functions;

LILCO Plan 4: The "LILCO/NRC plan," which calls for the NRC to assume command and control and public information duties and for LILCO personnel to perform almost all remaining emergency response functions; and

LILCO Plan 5: The "LILCO transition plan," which calls for LILCO personnel to perform almost all emergency response functions, including those involving overall command and control and public information.

Suffolk County already has made clear its view that contentions should not be filed -- indeed, cannot be filed -- on LILCO Plans 1-4. See Suffolk County Response to "LILCO's Memorandum of Service of Supplemental Emergency Planning Information" and Request for Summary Licensing Board Rejection of LILCO Emergency Plans, June 7, 1983. The County will not reiterate those arguments, except to note that the County's estimated time requirements will be significantly affected by the Board's ruling on the County's June 7 filing.

For reasons explained in detail below, the County position is as follows:

(a) If only the LILCO transition plan is the subject of contentions,^{1/} then the County needs until August 18, 1983 to submit draft contentions. This constitutes an addition of eight weeks (beyond the present four week period) for submission of draft contentions due to the following factors:

- The LILCO transition plan is extremely large, involving portions of seven separate volumes, and contains substantial amounts of new information which must be reviewed and analyzed. To develop draft contentions which contain the necessary specificity and bases, an extensive review must be conducted by County experts, their views must be discussed and contentions prepared, and the results must then be coordinated with other intervenors. Even if the other factors listed below were not present, this task would take substantially more than four weeks.
- The LILCO transition plan is unprecedented, since it proposes to provide emergency preparedness without the assistance or support of any governmental entities. To our knowledge, this is the first such "plan" ever submitted

^{1/} The County believes the LILCO transition plan also should be summarily rejected and has asked the Commission to take such action. See Motion for Commission Ruling on LILCO's "Utility Plan" for Emergency Preparedness, filed June 8, 1983.

for NRC review. The lack of precedent will make the County's review more difficult to perform, particularly since the experts must assess how and whether LILCO, in fact, can accomplish the tasks it proposes to perform, many of which are traditionally performed only by governmental entities.

-- The County's experts were not able to begin review of the plan on May 26. Rather, the experts unavoidably did not receive the plan until May 31, a delay of five days. Further, the County Police Department, which is an essential part of the County's expert resources for review of LILCO's plan, was unable to begin review of the plan until June 6, 1983, because the cognizant Police officials needed to devote available time to preparation for the anti-Shoreham demonstration held on June 4-5;

-- The County has been requested by Governor Cuomo's fact-finding commission (the "Cuomo Commission") to present a detailed emergency planning presentation on June 28, 1983. The County's emergency planning experts will need to devote much of their time to this task between now and June 28, thus preventing them from devoting necessary time to review the LILCO plan and prepare contentions. This Board should certainly be sensitive to adjust its

schedule so as not to interfere with the Cuomo Commission work, particularly, since the NRC (and FEMA) have both agreed to have representatives on that Commission.

(b) If all five of LILCO's plans are the subject of contentions, the time required for submission of draft contentions must be extended well beyond August 18, 1983. The factors mentioned above relating to the LILCO transition plan all apply, except that the quantity of material to be reviewed is expanded greatly and the number of unprecedented issues (particularly relating to the ability and authority of FEMA, the State, and the NRC to perform the tasks unilaterally assigned to them by LILCO) will also increase. The County reemphasizes, however, that it is conceptually difficult to contemplate how one can file contentions on "plans" where there is no agreement for the "plans" ever to be implemented. The NRC rules do not require plans but rather require adequate protective measures that can and will be implemented. In short, the rules require preparedness and Plans 1-4 will never provide preparedness unless the responsible entities agree to assume LILCO's assigned duties. Until that occurs, no contentions should be required.

In sum, the present four week contention schedule is unrealistic. The County suggests an August 18, 1983 filing date

for contentions on the LILCO transition plan in order to have a concrete proposal before the Board.

II. FACTS

A. Background

On April 20, 1983, the Licensing Board denied Suffolk County's Motion To Terminate the Shoreham licensing proceeding and established a tentative schedule for litigation of emergency planning issues.^{2/} The focus of the litigation was to be on an offsite "utility plan" developed by LILCO.

As of April 20, 1983, the only LILCO sponsored offsite plan which had been submitted to the parties relied on Suffolk County for implementation. This was LILCO Plan 1, the two-volume "LILCO-County plan," which LILCO had submitted to the State of New York Disaster Preparedness Commission in October 1982 and to the Licensing Board in early February 1983. LILCO had not asked, however (prior to May 26, 1983), that the LILCO-County plan be the subject of litigation. Rather, in light of the County's determination that it would neither adopt nor implement a radiological emergency response plan for Shoreham and

^{2/} Memorandum And Order Denying Suffolk County's Motion To Terminate The Shoreham Operating License Proceeding, LBP-83-22, at 60 (April 20, 1983) [hereinafter April 20 Memorandum and Order].

in light of the fact that the County had expressly rejected the LILCO-County plan in Legislative Resolution 111-1983, the Board keyed the commencement of the offsite emergency preparedness litigation to LILCO's filing of a supplementary document which would provide "alternative means for implementing the plan without the County's resources." April 20 Memorandum and Order at 60. The understanding by Suffolk County, and we believe by other parties and the Board, was that the two-volume LILCO-County plan was to remain LILCO's basic proposal for offsite preparedness with the supplementary documentation to be incorporated into that plan.

In late April 1983, almost a month prior to receipt of LILCO's revised plan and following a statement by LILCO's counsel that other governmental entities would be substituted for Suffolk County in the new LILCO offsite plan (Tr. 20,990-20,991), counsel for Suffolk County requested counsel for LILCO to identify those governmental entities. The County sought this information so that it could begin review of the LILCO plan in the actual context of the new entities who would be implementing it. LILCO's counsel declined to reveal that information. See attached Letter, dated April 29, 1983, from Lawrence Coe Lanpher to James N. Christman. The lack of information from LILCO about who would substitute for the County

made it impossible for the County to perform any meaningful advance review. LILCO never informed the County that, in fact, it intended to ask the Board to litigate the LILCO-County plan in its original form, without any substitution for the County. If LILCO had so indicated, then the Board back in April could have addressed the question (raised by the County in its June 7 filing) whether the LILCO-County plan was a proper "plan" for litigation.

On May 2, 1983, Suffolk County moved the Board to revise its schedule for the filing of Phase II contentions on the ground that it would require more than three weeks to analyze properly the technical feasibility and legal validity of LILCO's alternative implementation schemes which, at that time, were still unknown to the County.^{3/} The County requested that no schedule be established until the actual format, scope and size of the LILCO "plan" was known. The Board, however, decided that a fixed schedule was needed and ordered that draft contentions on the new LILCO plan would be due four weeks after receipt of the plan, rather than three weeks. The Board also ordered the parties to report to the Board within two weeks of

^{3/} Suffolk County Motion For Revision Of Schedule, dated May 2, 1983.

the filing of LILCO's plan on the issue of whether further adjustments in the emergency planning schedule were required.^{4/}

LILCO commenced preparation of its "utility plan" some time prior to April 7, 1983 (probably well before then), since on that date it advised the Board that the plan was being prepared and would be released in early May (Tr. 20,990-20,991). Counsel for LILCO subsequently informed the Board that the plan would not be available until the week of May 16 "given the size of the task." Letter, dated April 29, 1983, from James N. Christman to the Licensing Board. That date slipped again when, by letter of May 10, 1983, counsel for LILCO advised the Board that LILCO's revised plan would be filed during the week of May 23. Suffolk County, after receipt of LILCO's multivolume revised "plan," can well understand how "the size of the task" caused LILCO to require extra time. Similarly, the size of the task confronting Suffolk County in review of LILCO's "plan" is great and, similarly, requires more time than originally contemplated.

Counsel for the County received one copy of LILCO's revised plan in its Washington, D.C. office on the afternoon of

^{4/} Order Confirming Adjustment In Schedule To File Contentions, dated May 5, 1983.

Thursday, May 26, 1983. The County had hoped that it could have the document reproduced expeditiously and shipped to its expert consultants by express service for delivery on Friday, May 27. Upon receipt of the plan, however, it was immediately apparent that the six-volume, multi-colored document could not be reproduced expeditiously. Indeed, due to the various colors of pages, any reproduction ran a severe risk that the intended LILCO format and color scheme would be disrupted and then no review could be performed. Therefore, counsel for the County on May 26 spoke with counsel for LILCO and arranged to pay LILCO for 25 extra copies of the LILCO plan. Delivery of the extra plans was made to a County representative in Hicksville, Long Island, on the afternoon of Friday, May 27, 1983. The County shipped the plan that day to its consultants, but, because of the Memorial Day weekend, delivery could not be made until Tuesday, May 31, 1983. Therefore, the County's consultants did not receive the plan until five days after it was served on counsel.

B. LILCO's Revised Plan

The original LILCO offsite plan (the "LILCO-County plan"), which, according to LILCO, was to be "supplemented," consisted of two volumes. LILCO's revised plan served on May 26 comprises six new volumes, which must be used in conjunction with

the second volume of the original LILCO-County plan. Thus, the entirety of the "plans" which LILCO submits for litigation involves eight volumes -- the two volumes of the original LILCO-County plan (LILCO Plan 1) and the six volumes of LILCO Plans 2-5, to which the second volume of Plan 1 must be added (albeit with substituted pages). The LILCO transition plan, the only "plan" as to which contentions might arguably be proper, consists of portions of seven volumes. (The LILCO/State, LILCO/FEMA, and LILCO/NRC plans also consist of portions of seven volumes).

As of May 26, the County was previously familiar with the original LILCO-County plan. It is useful, however, in understanding the magnitude of the review task facing the County, to describe the new materials confronting the County on May 26. The seven-volume LILCO plan includes four volumes of white pages (including the second volume of the original LILCO-County plan), two volumes of multi-colored "insert" pages, and one volume of gold "substitute" pages. The multi-colored pages are meant to be inserted into three white page volumes of the plan, with choice of color dependent upon which entity (State, FEMA, NRC, or LILCO) is hypothetically called upon to implement the plan. The gold pages are meant to replace certain pages in one volume of white pages.

The "white pages" of the plan, though based somewhat upon what LILCO now calls the LILCO-County plan,^{5/} have been substantially revised and reorganized. The revisions are far more extensive than the simple substitution of the "Local Emergency Response Organization" ("LERO") for the County. Rather, the revised plan incorporates fundamental changes in the organization and control procedures for implementing the emergency response. As just one example, the communications section of the LILCO-County plan (Section II) has been completely rewritten. It bears no resemblance to the communications section of LILCO's revised plan (Section 3.4), which now relies upon and establishes (on paper) an entirely new communications system and procedures. The new plan is replete with further examples of similar fundamental revisions.

In addition, LILCO's new plan includes three separate volumes of procedures, two with white pages and one of multi-colored insert pages. Except for some health physics and dose assessment procedures, the vast majority of the materials in these volumes did not appear in the original LILCO-County plan. Thus, they are completely new to the County and its experts.

^{5/} LILCO's Memorandum Of Service Of Supplemental Emergency Planning Information (May 26, 1983) at 2.

On top of the extensive textual revisions and additions, the major new feature in LILCO's revised plan (i.e., LILCO Plans 2-5) is LILCO's proposal that it will provide almost all of the offsite emergency response resources and personnel that may be required in the event of an accident at Shoreham. To this end, it has established (on paper) LERO, under which 1,300 LILCO personnel are designated to perform such tasks as directing traffic at over 140 intersections, driving buses for those without cars and for evacuation of schools and health facilities, providing all necessary communications, providing security at relocation centers, patrolling evacuation routes to remove obstacles in the roads, and a host of other related services. LERO, on paper, has its own internal lines of command and managerial control. Overall, it represents a fundamental departure from the concept of operations as originally proposed on the LILCO-County plan. LERO is also one of the four alternative entities to which LILCO has assigned the command and control function, including the task of ordering the public to take protective actions.

C. Discussion With LILCO and The NRC Staff

On June 2, 1983, counsel for Suffolk County conferred with those of its experts who could be contacted in order to obtain their opinions on the amount of time they would require to

analyze the LILCO "plan." In addition to the County police, counsel spoke with three other experts. Those contacted unanimously replied that given the sheer volume of new material and the many issues raised by LILCO's unprecedented concepts for implementing its plan, they would need from one to two additional months to conduct any meaningful review of the LILCO materials in preparation of draft contentions.

The Suffolk County Police Department, upon whom the County will be relying heavily for analysis and testimony on many issues, particularly those relating to evacuation, communications and training, indicated that it was in particular need of additional time. This is because the officers primarily assigned to analyze the "plan" were engaged essentially fulltime in planning for the protection of LILCO's property during demonstrations that were held outside the Shoreham plant on June 4-5. Thus, Police Department officers were unable to begin reviewing the plan until June 6, 1983.

On June 2, 1983, after the above discussions between County counsel and County experts, a conference call was convened involving counsel for the County, the Town of Southampton, LILCO and the NRC Staff to discuss the schedule for filing contentions.^{6/} With respect to the emergency planning schedule,

^{6/} Counsel for NSC and SOC were unable to participate but had no objection to the conference call going forward.

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counsel for the County informed the other parties that in the opinions of the County's experts, including the Suffolk County Police Department, an additional one to two months were required to review the plan. Counsel for Suffolk County therefore at that time proposed a six-week extension for filing draft contentions, a compromise between the one to two months variously urged by County experts. Counsel for Suffolk County also expressed the view that Plans 1-4 were not appropriate for litigation since key entities (the County, State, FEMA, and NRC) had not agreed to participate.^{7/} Counsel for LILCO and the NRC rejected the County's proposed extension of time and

(Footnote cont'd from previous page)

Counsel for the County apprised counsel for NSC and SOC of the results of the call.

- ^{7/} As a preliminary matter during the June 2 conference call, the parties discussed which plans were ripe for litigation. It was the stated position of all Intervenorors that since neither NRC, nor FEMA, nor the State of New York, nor the County had agreed to implement LILCO's plan, the only plan that could possibly be considered for litigation was the LILCO Transition plan under which LILCO assumes command and control of the emergency response. Counsel for LILCO and the NRC rejected this argument, however, explaining that since the plans "exist" on paper, they can be litigated. The County's position that such litigation would be a meaningless exercise has been put before the Board in its Response to "LILCO's Memorandum Of Service Of Supplemental Emergency Planning Information" And Request For Summary Licensing Board Rejection Of LILCO Emergency Plans, dated June 7, 1983.

offered no compromise. LILCO and the Staff also asserted that all plans should be litigated.

D. Request for Emergency Planning Presentation
by Governor Cuomo's Fact-Finding Commission

As the Board is surely aware, the Governor of New York, Mario Cuomo, has recently appointed a fact-finding Commission to review issues related to Shoreham. At the request of Governor Cuomo, both the NRC and FEMA, as well as Suffolk County, have designated persons to serve on the Cuomo Commission. One task within the purview of this Commission is to advise the Governor on issues related to radiological emergency preparedness on Long Island.

Governor Cuomo has requested his Commission to report its recommendations by August 31, 1983. It held its first meeting last week and has tentatively scheduled for the County and LILCO to make detailed presentations (both orally and in writing) on the emergency planning issue on June 28.

The June 28 Cuomo Commission presentations will require extensive work by the County's emergency planning experts and counsel. This work will have to be undertaken at the same time (under the present schedule) that contentions are to be prepared and filed. It must be anticipated also that after June 28, there will be further need to respond to Cuomo

Commission inquiries on emergency preparedness. While the work for the Cuomo Commission will of course be related to emergency planning, it will not be of direct benefit in preparation of contentions, since it will focus on the overall issue of the feasibility of emergency preparedness on Long Island, rather than the narrow issues that must be addressed in NRC contentions.

III. DISCUSSION

A. LILCO's Proposed Plan Has Been Substantially Revised And Contains Volumes Of New Material

It is clear that if counsel and the experts for the Intervenor are to conduct a meaningful review of LILCO's new plans, there must be a substantial extension of the filing deadline for draft contentions which is now only two weeks away. The County's experts, before learning of the necessity to prepare for a presentation to the Cuomo Commission, indicated that they needed an additional 1-2 months to analyze the plans. The County now believes that all factors, when considered together, necessitate a 1 1/2 - 2 1/2 month extension of time for filing of contentions. The County thus proposes the August 18 filing date, an eight week extension. Without such an extension, the County cannot exercise its right to participate fully and knowledgeably in the emergency planning proceeding.

LILCO has filed four alternative interim plans and proposes that the Intervenor review and submit contentions on all four plans, as well as on the "LILCO-County" plan. In the County's view, only the LILCO Transition plan, under which LERO will perform essentially all emergency planning functions, is arguably ripe for litigation. The others are predicated only on speculation. However, even if the Intervenor focus their efforts on only the LILCO Transition plan, the sheer volume of new material in that plan requires extensive and detailed review which cannot be conducted in the four weeks allotted by the Board. Discussions with counsel for LILCO prior to May 26 led the County to expect an addendum to the LILCO-County plan, which would provide how that plan would be implemented without the County. Instead, the parties and the Board received a free-standing set of four new plans consisting of six volumes of material. The six volumes contain largely new material never before seen by counsel or experts for the Intervenor.

As discussed above, the "white pages" of the plan have been substantially reorganized and revised and the implementing procedures are, with some exceptions, completely new. Appendix A, the evacuation volume of the plans which contains the fewest textual revisions, has been altered substantially by the proposal that private individuals will carry out police functions

such as directing traffic, establishing roadblocks, and patrolling roads. The legal and factual issues raised by this novel concept alone will require much analysis by the County's experts.

During the June 2 conference call, counsel for LILCO disputed that the plans contained much new material, stating that the "functions" in the revised plans remain the same as those in the LILCO-County plan. The County does not dispute that the "functions" described in the "LILCO-County" plan (i.e., communications, traffic control, transportation of those with special needs, etc.) are also described in the revised plans. Indeed, any plan must account for performance of these functions. Nevertheless, even a cursory review of LILCO's transition plan reveals that the organization, methods, personnel, procedures and equipment for carrying out these broad functional areas have been completely revised. Indeed, it could not be otherwise given LILCO's drastic proposal to assume all emergency planning responsibilities itself.

It must be emphasized that the preparation of draft contentions as called for by the Board is not a simple or casual exercise. In ASLB proceedings, there is (and in this proceeding particularly there has been) heavy emphasis on the requirements of adequate specificity and basis to support contentions. If the County and other Intervenor are to prepare detailed

contentions and coordinate their submission and then be in a position to submit final contentions in just two additional weeks, the draft contentions must themselves be very complete. Given the volume of material presented by LILCO in just the LILCO transition plan, it is evident that detailed expert review, consultation between experts and counsel, drafting of contentions, and coordination with other intervenors cannot be accomplished by June 23.

It should be noted that if the Board rules that the County must litigate not only the LILCO transition plan, but the speculative plans based on County, NRC, FEMA or State of New York participation and direction, then there are many more issues that will require even more than eight additional weeks for review by Intervenor's counsel and experts. These issues will include the authority, capabilities, resources, personnel, training, and command and control structures of the alternative implementing agencies. The County also will require guidance from the Board regarding how to frame contentions regarding "plans" which entities do not agree to implement.

B. LILCO's Novel Approach To Emergency Preparedness Is Without Precedent

Another factor weighing in favor of the County's request for an extension of time is LILCO's proposal to provide almost all of the necessary response personnel and resources. This

unprecedented concept mandates an exhaustive review of the entire plan to determine whether LILCO can in fact provide the personnel, equipment, training, experience and authority to implement the plan. It also raises serious questions of LILCO's legal authority to act as it proposes. LILCO has proposed an entirely novel organization and command and control structure, not only at the top, but at all levels of the response organization, which must be reviewed for feasibility. An adequate review and analysis of the issues raised by the LERO organization cannot be conducted in only four weeks.

C. Unavoidable Events Have Reduced the Time Available For Expert Review of LILCO's Plans

The Board's Order of May 5 established that the Intervenor would have four weeks to file contentions from the date LILCO filed its plan with the parties. However, the County's experts did not receive the plan until Tuesday, May 31, 1983, thus losing five days of review time. This delay was not due to any lack of diligence on the part of the County, but rather resulted from the logistical problems presented by obtaining extra copies of the plan from LILCO and shipping them to the County's experts over the Memorial Day weekend.

In addition, the Board should take into account that the Suffolk County police officers in charge of reviewing the plan could not begin to do so until Monday, June 6, 1983. This is

because those officers were engaged in planning for the anti-Shoreham demonstrations which occurred just outside the Shoreham site on June 4-5, 1983.

Finally, the Board should also take notice of the County's responsibility to make a meaningful presentation to Governor Cuomo's Commission on June 28. Especially where, as here, the federal government (FEMA and the NRC) has joined in a cooperative effort with State government, this Board should ensure that its schedule does not impinge on the effectiveness of that cooperative endeavor. If an adjustment is not made in the ASLB schedule, then the County's ability to contribute to the Governor's effort will be seriously hampered.

IV. CONCLUSION

For the foregoing reasons, the Board should revise the filing date for draft contentions to August 18, 1983.

Respectfully submitted,

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Dear Jim:

This is to confirm the telephone conversation on April 28, 1983 involving you, me, and Chris McMurray. This conversation concerned the offsite radiological emergency response plan that LILCO is now developing for submission to the ASLB in the Shoreham proceeding.

We pursued this conversation in an attempt to understand what the LILCO plan will entail. Based upon this conversation, we understand as follows:

1. The LILCO plan previously submitted to the State of New York Disaster Preparedness Commission and to the ASLB will be utilized as the basic LILCO plan. That previous plan presently contains many references to actions to be taken by Suffolk County personnel. The plan will not be altered to delete these references. Instead, there will be an additional document or supplement to the LILCO plan which will suggest a number of alternate means for implementation of the LILCO plan without County involvement. The revisions/changes contained in the additional document or supplement will be more extensive than merely substituting other entities wherever the County's name appears in the plan. However, you indicated that the evacuation portion of the existing LILCO plan will remain essentially unchanged (except, of course, the County Police will not implement such evacuation portion).

2. In response to a Board inquiry, LILCO previously indicated that other governmental entities would be substituted for the County for implementation of the LILCO plan. Tr. 20,990. In letters from Herb Brown to Taylor Reveley dated April 15 and 25, 1983, to which no response has been received, we asked for identification of such governmental entities. In our conversation yesterday, we reiterated this request. You declined to identify

James N. Christman, Esq.
April 29, 1983
Page Two

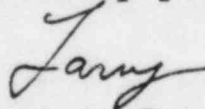
any governmental entity which LILCO will suggest for implementing the LILCO plan. You indicated that such identification will not be provided before LILCO files the plan. Further, you indicated that in addition to governmental entities, there may also be other entities involved in implementation of the LILCO plan. These entities presumably will be identified in the additional or supplemental material to be filed as part of the LILCO plan. Again, you declined to identify any such entities.

3. You mentioned that LILCO now expects to serve its plan on the ASLB and parties in mid-May (around May 16 or 17).

Thank you for the foregoing information.

Best regards.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Larry".

Lawrence Coe Lanpher

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
)
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LONG ISLAND LIGHTING COMPANY)

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

Docket No. 50-322

CERTIFICATE OF SERVICE

I hereby certify that copies of "Suffolk County's Status Report Regarding Need For Additional Time To File Draft Emergency Planning Contentions" were sent on June 9, 1983 by first class mail, except where otherwise noted, to the following:

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June 9, 1983