

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board



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

Docket No. 50-322 (OL)

SUPPLEMENTAL BRIEF OF SUFFOLK COUNTY IN
SUPPORT OF THE COUNTY'S MOTION TO TERMINATE
THE SHOREHAM OPERATING LICENSE PROCEEDING AND
THE COUNTY'S MOTION FOR CERTIFICATION

March 4, 1983

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I. INTRODUCTION

On February 23, 1983, Suffolk County filed a Motion to Terminate the Shoreham Operating License Proceeding. The Motion was based upon the absence of a radiological emergency response plan ("RERP") of the local government, Suffolk County. This lack of a local government's RERP means that the NRC will not be able to find that the Long Island Lighting Company ("LILCO") satisfies the NRC's requirements for an operating license. Thus, this proceeding should be terminated.

The County also filed on February 23, 1983, a Motion for Certification of this matter to the Commission, since prompt resolution of the important issues of law and policy raised by the County would be in the interest of the public and all of the parties.

On February 24, 1983, the Board requested the County to explain in greater detail the legal issues raised in the County's Motion to Terminate that should "be decided in the abstract in

advance of any litigation or decision on factual issues, the result of which would moot the need for any emergency planning litigation in the County's view." Tr. 20,275. The Board confirmed its request in a Confirmatory Memorandum and Order Directing the Submission of Briefs Addressing Suffolk County's Motion To Terminate This Proceeding, issued on February 28, 1983. This Supplemental Brief is filed in response to the Board's February 24 request and its February 28 Order.

II. SUMMARY AND STATEMENT OF ISSUES TO
BE CERTIFIED FOR COMMISSION DECISION

It is undisputed that Suffolk County has determined that it will not adopt or implement any RERP for the Shoreham Nuclear Power Station ("Shoreham"). Suffolk County submits that this lack of a local government's RERP compels denial of an operating license for Shoreham.

A favorable ruling on the County's Motion to Terminate depends solely upon resolution of two purely legal issues, which the County requests be certified to the Commission for prompt resolution:

Issue 1. Do Sections 50.33(g) and 50.47 of the NRC's regulations require, as a precondition to issuance of an operating license for Shoreham, the RERP of the local government, Suffolk County?

Issue 2. If the answer to Issue 1 is affirmative -- i.e., the local government RERP of Suffolk County is required by the NRC's regulations -- does Section 5 of the NRC Authorization Act for FY 1982-83 permit the NRC to disregard Section 50.47 and Section 50.33(g) of the NRC's regulations?

An affirmative answer to Issue 1 and a negative answer to Issue 2 would, as a matter of law, require this Board to grant Suffolk County's Motion to Terminate, given the uncontroverted fact that the County has not and will not adopt or implement a local RERP. Pursuant to 10 C.F.R. § 2.718(i), the County seeks certification to the Commission of these issues on the grounds that they pose vital questions of law and policy that would be dispositive of this proceeding.

A. The Local Government RERP of Suffolk County
Is a Precondition to Issuance of an Operating
License for Shoreham

As discussed in detail in Parts IV.A and B below, 10 C.F.R. §§ 50.33(g) and 50.47(a) expressly require that the RERP of the local government be submitted by the applicant and that the NRC's findings on emergency preparedness be based, inter alia, on that local government's RERP. The regulatory requirement that there be the RERP of the local government is based upon official government reports, including the "Kemeny Commission Report" and the "Rogovin Report," and upon the NRC's extensive rulemaking record, all of which emphasize the need for the local government's RERP as a precondition to the issuance of an operating license.

Section 50.47(c)(1) does not alter the NRC's requirement for the existence of the local government's RERP. Rather, Section 50.47(c)(1) provides only for the correction of particular deficiencies in the existing RERP of the local government -- that is, the regulation permits the utility's on-site plan to be used to "compensate" for the failure of the local government's RERP to meet the requirements of a particular Planning Standard in Section 50.47(b). This is appropriate, because otherwise a single deficiency in a local government's emergency preparedness capabilities would force shut-down of a nuclear power plant, even though every other feature of the local government's RERP is satisfactory to protect the public health and safety and even though the local government's single deficiency could be readily corrected by adding compensating measures to the utility's on-site plan.

However, this is not the situation in the instant proceeding. Here, there is no RERP of the local government and there is no emergency preparedness for Suffolk County. Accordingly, Section 50.47(c)(1) is immaterial to the instant proceeding, because that regulation cannot, as a matter of law, be used to compensate for the total absence of a RERP of the local government.

B. NRC Regulations Bind the Commission and May Not be Disregarded Because of Section 5 of the Current Authorization Act

The regulations which require the local government's RERP as a precondition to an operating license are binding upon the

Commission. It is black letter law that the NRC must follow its own regulations. As the D.C. Circuit noted in Connecticut Light and Power Co. v. Nuclear Regulatory Commission, 673 F.2d 525, 536 (D.C. Cir. 1982), "[a]n agency is bound by its own regulations and commits procedural error if it fails to abide by them." See also Panhandle Eastern Pipe Line Co. v. FERC, 613 F.2d 1120, 1135 (D.C. Cir. 1979), cert. denied, 449 U.S. 889 (1980); Teleprompter Cable Communications Corp. v. FCC, 565 F.2d 736, 742 (D.C. Cir. 1977) ("[t]he Commission's notion of the public interest cannot justify its failure to abide by its own rules"); Nader v. Nuclear Regulatory Commission, 513 F.2d 1045, 1051 (D.C. Cir. 1975); K. Davis Administrative Law § 7:21, at 98 (1979).

As discussed in detail in Part IV.C below, LILCO and the NRC Staff have suggested that Section 5 of the NRC's current Authorization Act may permit the Commission to disregard its regulations and issue an operating license for Shoreham where there is no RERP of the local government. This argument has no lawful basis. In the rulemaking proceeding for the NRC's emergency planning regulations, the Commission was specifically asked by the nuclear industry to promulgate Section 50.47(c)(1) with language tracking the language of Section 109 of the NRC's 1980 Authorization Act, which is substantively identical to Section 5 of the current Authorization Act. However, the Commission refused to grant that request. Instead, the Commission implemented the discretionary authority granted to it by Congress

in Section 109 of the Authorization Act with the current Section 50.47(c)(1) of the regulations. Thus, through the proper exercise of its rulemaking authority, the Commission has made the existence of the local government's RERP an indispensable requirement for issuance of an operating license for Shoreham.

C. The Instant Legal Issues Should Be Certified
To The Commission For Resolution

The Commission encourages certification where, as in this case, vital legal issues of first impression are raised:

If a significant legal or policy question is presented on which Commission guidance is needed, a board should promptly refer or certify the matter to the Atomic Safety and Licensing Appeal Board or the Commission.

Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 46 Fed. Reg. 28,533, 28,535 (1981). As the Board noted at the February 24, 1983 hearing on this matter, the question whether an operating license may issue in the absence of an "off-site emergency plan approved by local government agencies is one of first impression." Tr. 20,274; see also Board Confirmatory Memorandum (February 28, 1983) at 2.

The public interest would be served by prompt certification. Uncertainty about the future of Shoreham has already engendered widespread interest among the general public and within the financial community. Also, Suffolk County has requested commencement of an expeditious proceeding before the New York State Public Service Commission to determine a just and equitable

resolution of the cost and rate consequences of Shoreham not going on line. Finally, an answer in favor of the County by the Commission to the two legal issues stated above would obviate the need for further proceedings before this Board.

While the NRC's regulations would permit certification to the Appeal Board, this case presents purely legal issues which only the Commission is in a position to resolve with finality. This is because the two certified issues require interpretation of specific regulatory requirements which the Commission, following extensive personal involvement of the Commissioners, itself has promulgated. Moreover, since time is of the essence to eliminating the present state of uncertainty over Shoreham, certification to the Appeal Board and then ultimately appeal to the Commission would simply take too long.

In short, because the rulings sought by Suffolk County would "affect the basic structure of the proceeding in a pervasive or unusual manner," they are appropriate matters for certification to the Commission. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station), ALAB-405, 5 N.R.C. 1190, 1192 (1977); see also Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit No. 1), ALAB-635, 13 N.R.C. 309, 310 (1981). For the foregoing reasons, the Board should certify to the Commission the legal issues raised by Suffolk County and the County's Motion to Terminate.

III. STATEMENT OF FACTS

The undisputed fact of direct relevance to resolution of the two legal issues raised by Suffolk County is that Suffolk County has determined that it will not adopt or implement any RERP for Shoreham. Set forth below is a brief summary of the record upon which Suffolk County's decision was based.

A. Suffolk County Has Made A Major And Comprehensive Effort To Develop A Radiological Emergency Response Plan

The Shoreham Nuclear Power Station, an 820 MWe boiling water reactor, is under construction within Suffolk County at a site on the north shore of Long Island near the village of Wading River. Shoreham is owned by the Long Island Lighting Company, which is seeking through these proceedings to obtain a license to operate the plant.

By State and local law, Suffolk County is responsible for the protection of the health, welfare and safety of its citizens. See, e.g., Section 10 of the New York State Municipal Home Rule Law. Pursuant to this responsibility, on March 23, 1982, the Suffolk County Legislature adopted Resolution No. 262-1982 (Exhibit 1 hereto), which instituted the County's comprehensive program to develop a RERP. This resolution further required approval by the County Legislature of any RERP before being submitted to Federal authorities for review:

RESOLVED, that said plan shall not be operable and shall not be deemed adequate ~~and capable of being implemented until~~ such time as it is approved by the Suffolk County Legislature; and

RESOLVED, that only after said plan is approved by the Suffolk County Legislature, shall it be submitted to the Federal Emergency Management Agency and the Nuclear Regulatory Commission for purposes of any findings, determinations, rulings, reviews, or hearings by such Federal agencies.

The County initially appropriated \$375,000 for development of the RERP. In total the County expended approximately \$600,000 in preparing its draft RERP and in performing the necessary analyses, studies, and surveys.

County Executive Peter F. Cohalan signed Resolution No. 262-1982 on March 25, 1982, and four days later, by Executive Order, established a Steering Committee to oversee the development of the RERP. The Committee, chaired by the Deputy County Executive, proceeded to assemble a team of nationally recognized experts including:

Fred Finlayson, Ph.D., of Finlayson and Associates, an expert in the consequences of radiological accidents;

Edward P. Radford, M.D., Professor of Environmental Epidemiology, University of Pittsburgh and former Chairman of the Committee on Biological Effects of Ionizing Radiation of the National Academy of Sciences;

Philip B. Herr, Professor of Planning at MIT;

Kai T. Erikson, Ph.D., Professor of Sociology, Yale University;

James H. Johnson, Ph.D., Assistant Professor of Geography, UCLA;

Donald J. Zeigler, Ph.D., Assistant Professor of Geography, Old Dominion University;

PRC Voorhees of McLean, Virginia, a firm specializing in traffic planning;

Robert J. Budnitz, Ph.D., of Future Resources Associates, Inc., an expert on the assessment of risks and accident probabilities at nuclear power plants;

Stephen Cole, Ph.D., Professor of Sociology, State University of New York at Stony Brook.

These experts started work on the County's RERP in April.

On May 18, 1982, the Suffolk County Legislature, by Resolution No. 456-1982 (Exhibit 2 hereto), reaffirmed its determination to provide for the protection of its residents in the event of a radiological emergency, stating:

. . . Suffolk County takes this responsibility seriously and intends, through good faith and sound planning efforts, to assure that the best possible emergency plan and preparedness are developed to protect the citizens of Suffolk County

This Resolution further provided that the Legislature's review of the County draft RERP would include public hearings and that, until the Legislature approved a plan, "Suffolk County shall not assign funds or personnel to test or implement any radiological emergency response plan for the Shoreham Nuclear Plant."

The County's experts completed their work in November 1982, conducting studies and analyses in the areas of probabilistic risk assessment, consequence analysis, evacuation time estimates, social and behavioral sciences, health effects of radiation, and planning. Their efforts focused particularly on the well-established lessons of the accident at Three Mile Island and on the planning and preparedness problems caused by the special circumstances and conditions present on Long Island, such as the

Island's elongated narrow shape, its severly limited roadway system, its quickly changing wind patterns, and its local demographic features. Their work resulted in the County's Draft RERP, which comprises three large volumes including the underlying analyses, studies, and surveys. County Executive Cohalan submitted the Draft RERP to the County Legislature for review and public hearings on December 2, 1982.^{1/}

B. The Suffolk County Legislature Has Held Hearings and Taken the Testimony of Many Experts and Members of the Public on the County's Draft Radiological Emergency Response Plan

For eight days, from January 17 through January 27, 1983, the Suffolk County Legislature held hearings on the County's Draft RERP, as required by Resolution No. 456-1982, and compiled a record consisting of 1,600 pages of testimony and many supplemental materials. The Legislature heard testimony from the heads and members of County agencies and from expert witnesses, including those presented by LILCO.^{2/} In addition, three days of hearings were devoted to testimony by members of the public and concerned organization, both in favor of and opposed to the operation of Shoreham.

^{1/} Courtesy copies of the Draft County RERP were provided to the Licensing Board and the parties in early December 1982.

^{2/} During LILCO's oral presentation before the County Legislature, its primary witness, Dr. Matthew Cordaro, was accompanied by seven experts who offered their views. LILCO also submitted an 85-page written presentation to the County Legislature, which LILCO forwarded to this Licensing Board via a letter dated February 1, 1983.

In February 1983, the Legislature traveled to Harrisburg, Pennsylvania, to hear testimony from local public officials and residents concerning the accident at Three Mile Island and the emergency planning lessons learned in its aftermath.

C. The County Has Resolved That It Will Not Adopt Or Implement Any Radiological Emergency Response Plan

On February 17, 1983, the Suffolk County Legislature adopted Resolution No. 111-1983, which County Executive Cohalan signed on February 23. (Exhibit 3 hereto). By this Resolution, the Legislature determined not to adopt or implement the Draft County RERP or any other RERP, because such a plan, "if implemented, would not protect the health, welfare and safety of Suffolk County residents." Exhibit 3 at 4-5. The Legislature concluded that:

[S]ince no local radiological emergency response plan for a serious nuclear accident at Shoreham will protect the health, welfare and safety of Suffolk County residents, and since the preparation and implementation of any such plan would be misleading to the public by indicating to County residents that their health, welfare and safety are being protected when, in fact, such is not the case, the County's radiological emergency planning process is hereby terminated, and no local radiological emergency plan for response to an accident at the Shoreham plant shall be adopted or implemented Exhibit 3, p. 5. (emphasis supplied)

D. The So-Called Local Radiological Emergency Response Plan Developed by LILCO Without Suffolk County's Approval or Authorization Is Not and Will Not be Adopted or Implemented by the County

On May 10, 1982, LILCO submitted to the New York State

Disaster Preparedness Commission ("DPC") a document contained in two loose-leaf binders entitled "Suffolk County Radiological Emergency Response Plan." The LILCO plan contains numerous requirements for action by government departments and organizations of Suffolk County in the event of an accident at Shoreham and, in fact, depends upon the County to implement the plan.

LILCO's submission of an alleged Suffolk County plan to the State DPC, as well as a subsequent resubmission in October 1982, was without County approval or authorization. Indeed, the County strongly objected to this act of LILCO as tantamount to the usurpation of the County's inherent right and duty to protect the health, safety and welfare of the County's citizens. See Suffolk County Resolutions 456-1982 and 457-1982 (Exhibits 2 and 4 hereto).

Notwithstanding the fact that LILCO's so-called plan was not the plan of the County developed pursuant to Resolution 262-1982, the Legislature, during its hearings in January 1983, heard testimony from LILCO and others on the adequacy of LILCO's plan, copies of which were submitted to each legislator and accepted into the hearing record. Accordingly, County Resolution No. 111-1983 stated:

WHEREAS, the document submitted by LILCO to the DPC without County approval or authorization is deficient because it does not deal with the actual local conditions, physical and behavioral, on Long Island that would be encountered during a serious nuclear accident at Shoreham; and

WHEREAS, the document submitted by LILCO to the DPC without County approval or authorization does not ensure that effective protective action by persons subject to radiation exposure, in the form of evacuation or sheltering, would be taken in the event of a serious nuclear accident at Shoreham, and thus such document, even if implemented would not protect the health, safety, and welfare of Suffolk County residents,

* * *

RESOLVED, the document submitted by LILCO to the [State of New York Disaster Preparedness Commission] without the County approval or authorization, if implemented, would not protect the health, welfare and safety of Suffolk County residents and thus will not be approved and will not be implemented.

Therefore, the LILCO plan does not constitute the RERP of Suffolk County and will not be adopted or implemented by the County.

On February 18, 1983, the Governor of New York, Mario Cuomo, announced that he would not impose any independently developed radiological emergency response plan on Suffolk County. He therefore directed the DPC to refrain from forwarding to the Federal government "any proposed off-site emergency evacuation plan for the proposed Shoreham Nuclear Power Plant" (Exhibit 5 hereto).

IV. DISCUSSION

- A. Sections 50.33(g) and 50.47 of The NRC's Regulations Require a RERP of the Local Government
- i. The Plain Language of Sections 50.33(g) and 50.47(a) Requires the RERP of the Local Government, Suffolk County.

On August 19, 1980, the NRC adopted 10 C.F.R. §§50.33(g) and 50.47, which establish emergency planning requirements for nuclear power plants. These regulations -- the law which must be applied here -- require the existence of the Suffolk County government's RERP and the County's preparedness before Shoreham can operate.

Section 50.33(g) requires for an operating license that:

. . .the applicant shall submit radiological emergency response plans of State and local governmental entities in the United States that are wholly or partially within the plume exposure pathway Emergency Planning Zone (EPZ).

10 C.F.R. §50.33(g) (emphasis added). Accordingly, it is mandatory that the applicant submit, among other things, the RERP of the local governmental entity. By its plain meaning, the RERP of the local governmental entity means the plan adopted by the local government. It does not mean, as is the case with LILCO's so-called plan, a RERP submitted by a utility without local government authorization, approval, or adoption.

After the applicant submits the State and local government plans, 10 C.F.R. §50.47(a)(1) requires findings on the adequacy of onsite and offsite^{3/} emergency preparedness:

[N]o operating license for a nuclear power reactor will be issued unless a finding is made by NRC that the state of onsite and offsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

The Commission has defined preparedness to mean "the actual state of implementation." Amendments to NRC Emergency Planning Rule, 47 Fed. Reg. 30,232 (1983).

Under 10 C.F.R. §50.47(a)(2), as amended, the NRC's findings on offsite preparedness must be based upon a review of State and local government plans.

The NRC will base its findings on a review of the Federal Emergency Management Agency (FEMA) findings and determinations as to whether State and local emergency plans are adequate and whether there is reasonable assurance that they can be implemented, and on the NRC assessment as to whether the applicant's onsite emergency plans are adequate and whether there is reasonable assurance that they can be implemented. (Emphasis added.)

These provisions make clear that the NRC's emergency planning evaluation process requires FEMA review of the RERP of the local government (required to be submitted under Section 50.33(g)), as well as State plans, and NRC review of licensee

^{3/} "Onsite" plans are developed by the licensee. "The 'offsite' plans are drawn up and adopted by nearby city and county officials. . . ." Southern California Edison Co. (San Onofre), LBP-82-39, 15 N.R.C. 1163, 1173 (1982).

onsite plans. The findings of each review must be that there is reasonable assurance that the respective plans can be implemented. Thereafter, the NRC makes a decision on the adequacy of onsite and offsite preparedness, which the Commission has defined as a decision as to "the overall and integrated state of preparedness." 45 Fed. Reg. at 55,407. The Commission defines overall preparedness as the "integration of the licensee's emergency preparedness as determined by the NRC and of the State/local governments as determined by FEMA and reviewed by NRC" 45 Fed. Reg. at 55,406. Thus, the existence of adequate State and local government emergency response plans is essential to a finding of overall (onsite and offsite) preparedness under 10 C.F.R. §50.47.

2. The NRC's Administrative Rulemaking Record
Supporting The Emergency Planning Regulations
Confirms The Requirement for the RERP of
the Local Government

The accident at Three Mile Island demonstrated the urgent need for significant improvement in emergency planning and preparedness by governments proximate to nuclear power plants. The Commission recognized that, contrary to its former position, close attention to emergency planning is as important as siting and engineered safety features. 44 Fed. Reg. 75169. Indeed, in 1980, when the NRC adopted new emergency planning requirements, it stated that "onsite and offsite emergency preparedness . . . [is] needed to protect the health and safety of the public." 45 Fed. Reg. 55403 (1980).

Official studies and reports on the Three Mile Island accident emphasized the need for upgraded emergency planning and especially for local government involvement. The NRC relied heavily on these studies and reports in preparing and later in adopting its emergency planning regulations. 44 Fed. Reg. 75169. The NRC's own study, conducted by the Special Inquiry Group headed by Mitchel Rogovin, concluded that the participation of local government is essential to adequate emergency planning:

[T]he ability to carry out an evacuation plan in the area of a nuclear plant depends much more on the existence of adequate county and local emergency plans than on a FEMA-approved or NRC-approved State plan. We believe that too little attention has been devoted to this aspect of emergency planning. Although the State plan must provide for effective notification and communications between the decisionmakers (the Governor and State agencies) and the localities, for back-up support, and often for planning out beyond a 10-mile zone, the county and local levels are where the action is and where the specific details of the plan must be worked out. As Oran Henderson, the Director of Pennsylvania's Emergency Management Agency told us:

I could prepare you the most beautiful State plan that I assure you NRC would approve, but if that plan isn't disseminated and the subordinate county and local municipal plans prepared that dovetail [with the State plan] and take the guidance in the State plan, you still don't have anything. It's the local government and the county government that are going to have the capability to execute any evacuation, if evacuation were necessary.

The local municipalities around Three Mile Island had no emergency plans for an accident at the plant and, as it turned out, elected officials in those communities got little or no accurate information about the accident to assist them in making decisions.

M. Rogovin, Three Mile Island: A Report To The Commissioners 131-132 (1979) (emphasis added). Based on the importance of local participation in emergency planning, the Rogovin report concluded "that workable evacuation plans are a prerequisite to continued operation of existing and future reactors." Id. at 132.

An investigation by the House Committee on Government Operations also focused on the need for vastly improved local emergency planning. The Committee recommended:

3. With regard to state and local planning for nuclear emergencies, the NRC should:

- (e) require, by rule, as a condition for the issuance of an operating license for a nuclear powerplant, in the case of all plants for which construction permits have already been issued, the existence of both a state emergency plan for the state in which the plant is sited and, for that site and each additional nuclear plant site in that state, a local plan that comply with the NRC standards contained in the rule described in 3(b). . . .

Emergency Planning Around U.S. Nuclear Powerplants: Nuclear Regulatory Commission Oversight, H.R. Rep. No. 413, 96th Cong., 1st Sess. 51-52 (1979) (emphasis added).

Similarly, the President's investigatory panel, the Kemeny Commission, recommended that approved State and local government plans be a condition for an operating license. See J. Kemeny, Report of the President's Commission On The Accident

At Three Mile Island 76 (1979); 44 Fed. Reg. at 75,169; see also GAO Report, EMD-78-110, "Areas Around Nuclear Facilities Should Be Better Prepared For Radiological Emergencies" (Mar. 30, 1979).

In light of the demonstrated need for improved emergency preparedness, especially by local governments, the NRC issued proposed emergency planning regulations on December 19, 1979, which the Commission expressly acknowledged were based upon the official reports cited above. 44 Fed. Reg. at 75,169. The regulations proposed by the Commission required state and local government emergency plans to be submitted by the licensee and approved by the NRC "as a condition of operating license issuance." Id. at 75,168 (emphasis added). In discussing the rationale for this new licensing requirement, the NRC explained that it had concluded "that in carrying out its statutory mandate to protect public health and safety, the Commission must be in a position to know that off-site governmental plans have been reviewed and found adequate." Id. at 75,169 (emphasis added).

The Commission's comments on the proposed emergency planning regulations and the content of the official reports on which these regulations were based make clear that the Commission found the need for both adequate State and local government emergency response plans. The Commission's final regulations, promulgated on August 19, 1980, clearly reflect that finding, as discussed in Section IV.A.1, above. This

conclusion is further supported by NUREG 0654, "Criteria for Preparation and Evaluation of Radiological Response Plans and Preparedness in Support of Nuclear Power Plants" (Nov. 1980). The NRC and FEMA jointly developed NUREG 0654 to guide the development and review mandated by 10 C.F.R. §50.47(a)(2) of State, local, and utility plans. The Commission's emergency planning regulations specifically embrace NUREG 0654, which establishes planning criteria to be met for adequate emergency response and defines the emergency planning responsibilities of the affected State and local governments and of the utilities.

NUREG 0654 leaves no doubt that the NRC considers the local government to be responsible for local offsite planning -- a fact that is indisputable under New York State law, which provides in Article 2B §23 of the Executive Law that "[e]ach county . . . is authorized to prepare disaster preparedness plans." In allocating emergency planning responsibilities, NUREG 0654 places onsite duties on the utility. See NUREG 0654 at 25 ("the licensees of nuclear facilities have a primary responsibility for planning and implementing emergency measures within their site boundaries.") The State's role is to respond to less immediate offsite matters. See id. at 11 ("State . . . response organizations will be principally responsible for the planning associated with the ingestion exposure pathway"). The RERP of the local government, however, is by far the most important, and, indeed, is contemplated by NUREG 0654 as being essential to effective offsite response:

Local government plans and response mechanisms are particularly important for the 10-mile EPZ. This is because relatively shorter times may be available to implement immediate protective measures associated with the plume exposure pathway (sheltering, thyroid blocking, evacuation), as opposed to the generally longer times available for implementing protective measures for the ingestion exposure pathway. State government resources may be too far away from the involved local jurisdictions to be of much immediate help for a plume exposure problem in the early hours of an accident. Local government emergency plans should be made a part of the State emergency plan.

Id. at 20-21. Thus, NUREG 0654 confirms the plain meaning of the NRC's regulations that a RERP adopted and implemented by the local governmental entity is required by 10 C.F.R. §50.47.

3. The Commission Has Recognized That The Exercise of a Local Government's Responsibility For Its Citizens Can Affect The Operation of a Nuclear Plant

Resolution No. 111-1983, which resolved that Suffolk County will not adopt or implement a RERP, was enacted by the County pursuant to its municipal duty, under the New York State Constitution to provide for the "government, protection, order, safety, health and well-being of persons" within its jurisdiction. New York State Constitution, Art. 9, §2(10). In short, Suffolk County acted so as to effect the constitutional obligation which it owes to its own citizens.

The NRC has recognized that a local government has obligations to its citizenry and, particularly in the case of local emergency preparedness obligations, the Commission has

dealt with the issue which those obligations raise. Thus, in proposing, considering, and adopting the NRC's emergency planning regulations, the Commission was alerted to, and indeed was specifically conscious of the possibility that the responsibility owed by a local government to its citizens for their welfare could prevent a nuclear power plant from operating. The Commission acknowledged that "State and local governments have the primary responsibility under their constitutional police powers to protect their public." 44 Fed. Reg. at 75,169.

In response to the NRC's proposed emergency planning regulations, many commenters urged revisions because the regulations explicitly recognized that State or local government action might prevent operation of a nuclear plant. See NUREG 0684, "Summary of Public Comments, and NRC Staff Analysis Relating to Rulemaking on Emergency Planning for Nuclear Power Plants" 2-7 (Sept. 1980); NUREG/CP-0011, "Proceedings of Workshops on Proposed Rulemaking on Emergency Planning for Nuclear Power Plants" 33-36, 50 (Apr. 1980); NUREG-0628, "NRC Staff Preliminary Analysis of Public Comments on Advance Notice of Proposed Rulemaking on Emergency Planning" 2-9 (Jan. 1980).

On June 3, 1980, the Staff issued SECY-80-275, in which it presented to the Commissioners a proposed final emergency planning rule. In the SECY, the Staff specifically addressed the possibility that the proposed regulations could result in the shutdown of nuclear plants:

The staff recognizes this potential for a third party defacto veto power. The Commission is also aware of this.

SECY-80-275, June 3, 1980, Enclosure L, Analysis of ACRS Comments, at 9.

However, rather than recommending that the NRC attempt to circumvent or in any way invalidate the exercise of State or local government police powers, the Staff concluded that the decision of how best to protect the public, including the possibility of plant shutdowns, should be left to the State and local governmental authorities:

The decision of how the public should be protected has been made, i.e., either emergency planning and preparedness is adequate or a plant must be placed in a condition of safe shutdown. The State and local authorities have the responsibility to determine which option is in the best interest of their citizens.

NRC Staff, "Environmental Assessment for Effective Changes to 10 CFR Part 50" 27 (June 3, 1980), Enclosure I to SECY-80-275 (emphasis added).

In promulgating the NRC's emergency planning regulations on August 19, 1980, the Commission agreed with the Staff that State and local governments are the proper entities to determine whether and, if so, how the public can be protected in the event of a radiological emergency. The Commission accepted the possibility that State or local government action could foreclose operation of a plant.

The Commission recognizes there is a possibility that the operation of some reactors may be affected by this rule through inaction of State and local governments or

an inability to comply with these rules. The Commission believes that the potential restriction of plant operation by State and local officials is not significantly different in kind or effect from the means already available under existing law to prohibit reactor operation, such as zoning and land-use laws, certification of public convenience and necessity, State financial and rate considerations (10 CFR 50.33(f)) and Federal environmental laws.

45 Fed. Reg. at 55,404. Thus, in adopting Sections 50.33(g) and 50.47(a), the Commission took at face value the possibility of a local government's action affecting the operation of a nuclear plant.

- B. Section 50.47(c)(1) Is Immaterial To The Present Situation Where There Is Not And Will Not Be A County RERP Or Preparedness For Shoreham.

10 C.F.R. §50.47(c)(1) provides that:

Failure to meet the applicable standards set forth in paragraph [50.47](b)^{4/} of this subsection may result in the Commission declining to issue an Operating License; however, the applicant will have an opportunity to demonstrate to the satisfaction of the Commission that deficiencies in the plans are not significant for the plant in question, that adequate interim compensating actions have been or will be taken promptly, or that there are other compelling reasons to permit plant operation.

By its plain meaning, Section 50.47(c)(1) provides the means for an applicant to show that the failure of a required RERP to meet some of the planning standards of Section 50.47(b) need not lead to denial of an operating license. However,

^{4/} Section 50.47(b) sets forth 16 detailed planning standards which all plans must meet.

Section 50.47(c)(1) does not exempt an applicant from the requirement of Section 50.33(g), that it submit the emergency response plans of both the State and local governments. Nor does it exempt an applicant from the requirements of Section 50.47(a), that the State and local governments' plans be reviewed and that they form the basis for the Commission's determination that there is "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency."

What Section 50.47(c)(1) does is to permit a deficiency in one of the three required emergency plans to be cured -- or "compensated" for -- by a provision in another of the required plans. The essential predicate for Section 50.47(c)(1), however, is that all three of the required emergency plans be in existence and be operational. That is, Section 50.47(c)(1) is a means through which the NRC can, if necessary, permit States, local governments, and utilities to bolster emergency preparedness capabilities in one plan to compensate for the shortcomings of another, with the ultimate requirement being to assure the requisite level of integrated onsite and offsite preparedness. Section 50.47(c)(1), however, is immaterial to the present proceeding, because here there is no local government plan in existence and none will be forthcoming and operational. Therefore, there is no predicate for the application of Section 50.47(c)(1).

The Commission's own explanation of its emergency planning regulations demonstrates that Section 50.47(c)(1) is intended only to cure deficiencies in existing plans and not to attempt the hopeless task of divining the creation of a local government's RERP where none in fact exists. Thus, with respect to Section 50.47(c)(1), the Commission has stated that it:

will examine State plans, local plans, and licensee plans to determine whether features of one plan can compensate for deficiencies in another plan so that the level of protection for the public health and safety is adequate.

Preamble to NRC Emergency Planning Final Rule, 45 Fed. Reg. 55,402, 55,403 (1980) (emphasis added).

Indeed, Commissioner Hendrie made clear that Section 50.47(c)(1) could not compensate for a situation where there was no plan at all:

I can't see looking at a plant in which there is effectively nothing out there in the way of emergency planning, you know, above the present level and up to the new guidelines and saying, well, they really need this plant. It is going to cost them a mint on the one hand and a reserve margin below on the other. If they don't have it, never mind. We are not going to have that situation and, you know, the Governor calling up and saying, don't shut it down, for God sakes, Murtle Beach will go dark and I can't stand it. I just don't think we are going to have those things.

I think what you are going to be looking for are ways in which the licensee can carry out some actions that help to compensate for deficiencies in the local plans, in the state plans.

NRC July 23, 1980 Tr. at 88. This interpretation, that Section 50.47(c)(1) is immaterial where a required plan does not exist at all, is also confirmed by NRC caselaw interpreting Section 50.47(c)(1). Thus, the Licensing Board's have held that a utility's onsite plan might compensate for deficiencies in an existing State or local plan in a specific area such as radio communication, Cincinnati Gas & Electric Co. (Zimmer), LBP-82-48, 15 N.R.C. 1549, 1573 (1982), or offsite radiation monitoring, Southern California Edison Co. (San Onofre), LBP-82-39, 15 N.R.C. 1163, 1249 (1982).

The Commission's recent decision in Consolidated Edison Co. of New York and the Power Authority of New York (Indian Point, Units 2 and 3), Nos. 50-247 and 50-286, CLI-82-38 (Dec. 23, 1982), further supports this conclusion. The issue in that case was whether the Commission should revoke the operating licenses for Indian Point Units 2 and 3. FEMA had found that there were significant deficiencies in offsite emergency planning for the plants due mainly to the incomplete status of a local government plan for Rockland County and the inability of Westchester County to obtain sufficient bus drivers for evacuation of persons who do not own automobiles. Rockland County, which is one of four counties within the Indian Point EPZ, was in the process of developing an acceptable plan, with completion expected in early 1983. In the meantime, a State plan existed which provided compensating measures on an interim basis until the local plan was completed. In addition, another

State plan provided that the National Guard would drive buses in Westchester County. Slip op. at 8.

By a 3-2 vote, the Commission decided that continued operation at Indian Point was permissible, pending reconsideration of its decision following an exercise in March of this year. The Commission's decision was based on the provisions of Section 50.54(s)(2)(ii), a parallel provision to Section 50.47(c)(1), which provides that in determining whether a plant should be shut down, the Commission will take into account:

. . . among other factors, whether the licensee can demonstrate to the Commission's satisfaction that the deficiencies in the plan are not significant for the plant in question, or that adequate interim compensating actions have been or will be taken promptly, or that there are other compelling reasons for continued operation.

The Commission's decision relied upon the existence of the compensatory State plans and Rockland County's imminent development of its own plan as mitigating circumstances which, under Section 50.54(s), did not compel shutdown.

By contrast, in the present proceeding Suffolk County is the only county within the Shoreham EPZ and, under Resolution No. 111-1983, the County has resolved that it will implement no emergency response plan. In addition, the State has determined that it "will not be a party to any effort to impose an independently developed State plan upon Suffolk County" (See Exhibit 5). These distinctions are particularly significant in light of Commissioner Ahearne's statement in his concurring

opinion in Indian Point that if by the end of April no approved Rockland County plan exists, "I do not believe I would support continued operation of the plants." Id., Additional Views of Commissioner Ahearne at 4. Similarly, Chairman Palladino, as well, was strongly influenced to vote with the majority by the progress being made in the development of Rockland County's plan, a factor not present here. Id., Chairman's Statement on Indian Point at 3-4. Thus, in the total absence of a Suffolk County RERP, and with the Resolution of the County not to adopt or implement a RERP, the strong indication of record is that a majority of the Commission would not permit operation of Shoreham.

C. Section 5 of the Current NRC Authorization Act Does Not Provide a Basis For Licensing Shoreham

The foregoing demonstrates that the NRC's regulations require an operational Suffolk County RERP that will be implemented by Suffolk County for Shoreham as a precondition to NRC issuance of an operating license. No provision of the NRC's regulations exempts Shoreham from this requirement. Since such a plan does not and will not exist for Shoreham and since the NRC's emergency preparedness requirements are thus not satisfied, an operating license cannot be granted.

LILCO and the NRC Staff refuse to accept that the NRC is required by law to abide by its own regulations. Instead, those parties have suggested that Congress, in enacting Section 5 of the NRC's Fiscal Year 1982-83 Authorization Act, Pub. L.

415, 96 Stat. 2068,2069 (1983), provided a basis for the NRC to disregard the requirements of 10 C.F.R. §§ 50.33(g) and 50.47. See Tr. 20,249-51. Thus, despite the regulatory requirement for a local government's emergency response plan which will be implemented, these parties argue that Section 5 constitutes a basis on which to grant an operating license to LILCO if "there exists a state, local or utility plan which provides reasonable assurance that the public health and safety is not endangered by the operation of the facility" Tr. 20,251 (Staff counsel) (emphasis supplied).

The argument of LILCO and the Staff must be rejected. Section 5 does not authorize, let alone mandate, the NRC to disregard its regulations. Section 5 states:

Of the amounts authorized to be appropriated under section 1, the Nuclear Regulatory Commission may use such sums as may be necessary, in the absence of a State or local emergency preparedness plan which has been approved by the Federal Emergency Management Agency, to issue an operating license . . . for a nuclear power reactor, if it determines that there exists a State, local, or utility plan which provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned. (Emphasis supplied).

Section 5 adopts and continues in effect a provision which originated in Section 109 of the NRC Authorization Act for Fiscal Year 1980, Pub. L. 285, 94 Stat. 780 (1980). A copy of Section 109 is attached as Exhibit 6. Indeed, the Conference Report for the 1982-83 Act specified that Section 5

"reiterat(es) the intent of Congress in enacting Section 109 of P.L. 96-295." H.R. Rep. No. 884, 97th Cong., 2d Sess. 27 (1982). Thus, Section 5 and 109 are identical in purpose and intent. The County demonstrates below that the NRC has specifically considered Section 109 (and thus Section 5) and has adopted in Section 50.47(c)(1) a standard which does not permit licensing where no local government's plan is submitted and implemented.

The NRC proposed adoption of 10 C.F.R. §§ 50.33(g) and 50.47 in December 1979. 44 Fed. Reg. 75,167 (1979). After extensive public comments, regional workshops and ACRS meetings, the NRC Staff prepared SECY 80-275, dated June 3, 1980. Enclosure B of this SECY contained a proposed Final Rule on emergency planning. With one immaterial exception,^{5/} the Staff's proposed Final Rule contains the exact same words as were finally promulgated by the NRC as Section 50.47(c)(1). See SECY 80-275, Enclosure B, at 34.

On June 25, 1980, the Commission met with nuclear industry spokesmen and other interested parties to receive written and oral comments on the Staff's proposed Final Rule. Section 109 had not yet been enacted by the Congress, but had already been approved by the Congressional Conference Committee. The nuclear industry representative, anticipating passage of Section

^{5/} In the first line of the Staff's proposed Section 50.47(c), the word "objectives" is used, while Section 50.47(c)(1), as finally adopted, uses the word "standards."

109, argued that the NRC's final emergency planning regulations would be illegal unless the following language were added to Section 50.47(c)(1):

The NRC will issue an operating license for a nuclear power reactor if there exists a state, local or utility plan which provides reasonable assurance that public health and safety is not endangered by operation of the facility.^{6/}

At the June 25 meeting, the NRC's General Counsel, Mr. Bickwit, rejected the nuclear industry's assertion that the Staff's proposed Final Rule was inconsistent with Section 109. He stated that Section 109 specified minimum requirements for the NRC's emergency preparedness rule and that the proposed Final Rule met those requirements. NRC June 25, 1980 Tr. at 49. Mr. Bickwit reiterated this view during Staff briefings of the Commission on July 3 and July 23, 1980. See NRC July 3, 1980 Tr. at 41-42; NRC July 23, 1980 Tr. at 5. Indeed, during the July 25 briefing, which occurred after Congressional enactment of Section 109, Mr. Bickwit stated that Section 109 specifies minimum requirements and "therefore the Commission is free from a legal standpoint to be as stringent as it chooses to be under the law." NRC July 23, 1980 Tr. at 5.

^{6/} See Statement of Warren H. Owen, Senior Vice President, Duke Power Co., for presentation before the NRC on Behalf of the Nuclear Industry, p. 11, June 25, 1980, attached to NRC June 25 Transcript (Emphasis supplied). See also NRC June 25 Tr. at 21, 41, 48 (other nuclear industry comments arguing that Section 50.47(c)(1) needed to be changed to track the language of Section 109).

On August 19, 1980, the NRC adopted Sections 50.33(g) and 50.47. The Commission did not alter Section 50.47(c)(1) as specifically requested by the nuclear industry. Rather, the Commission relied upon Mr. Bickwit's opinion that the proposed rule, including Section 50.47(c)(1), was consistent with the provisions of Section 109 and adopted Section 50.47(c)(1) in its present form. See 45 Fed. Reg. 55,402, 55,403 (1980) (preamble to Final Rule).

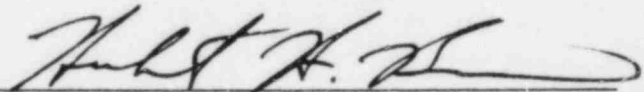
The foregoing discussion makes clear that the Commission, in adopting its emergency planning regulations, knew what Section 109 said and what its implementing regulation, Section 50.47(c)(1), did. The record is clear that the Commission squarely considered whether to permit the operation of a plant in the absence of an emergency response plan of the local government. The Commission determined: (a) that the NRC would not permit operation of a plant in the absence of the local government's emergency response plan; and (b) that Section 109 did not require adoption of the nuclear industry's request that Section 50.47(c)(1) track the language of Section 109. Section 5 of the 1982-83 Authorization Act, which only continues the authority granted to the NRC by Section 109, does not alter either the Commission's existing statutory authority or the Commission's obligation to abide by its own regulations. The Commission fully implemented its statutory authority with Section 50.33(g) and 50.47, and those regulations now prevent issuance of an operating license for Shoreham.

V. CONCLUSION

For the foregoing reasons, Suffolk County requests the NRC (1) to rule that it must deny LILCO an operating license for the Shoreham plant and, accordingly, (2) to grant the County's pending Motion To Terminate this proceeding. In view of the vital legal issues of first impression presented herein, and the need for an expeditious and final NRC ruling, the County respectfully requests this Board to certify the matter to the Commission.

Respectfully submitted,

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Attorneys for Suffolk County

March 4, 1983

Intro. Res. No. 1266-82

Laid on Table 3/9/82

Introduced by the Presiding at the request of the County Executive

RESOLUTION NO. 262- 1982, DIRECTING THE
COMPTROLLER AND COUNTY TREASURER TO REFUND
\$150,000 RECEIVED FROM LILCO AND TRANSFERRING
FUNDS IN CONNECTION WITH RADIOLOGICAL RESPONSE PLAN.

WHEREAS, Resolution No. 694-1981 authorized an agreement between LILCO and the Suffolk County Department of Planning for the preparation of a County radiological emergency response plan; and

WHEREAS, under the terms of the agreement, LILCO has paid the County of Suffolk \$150,000 with an additional \$95,000 due upon completion of the contract; and

WHEREAS, special counsel for the County in the Shoreham operating licensing proceedings has advised the County that it is in the best interest of the County to avoid any appearance of a conflict of interest by returning the \$150,000 received from LILCO for the radiological response plan; and

WHEREAS, it is the intention of the County to complete the radiological response plan at its own expense; now, therefore, be it

RESOLVED, that the County Comptroller and County Treasurer are directed to return \$150,000 to LILCO; and be it further:

RESOLVED, that the County Comptroller and County Treasurer are directed to cancel the unexpended balance in the following encumbrances;

01-8026-992

01-8026-993

01-8026-994

and be it further

RESOLVED, that the County Comptroller and County Treasurer be, and they hereby are authorized to transfer the following funds and authorization:

FROM

Employee Benefits Health Insurance
01-9060-836

\$375,000

TO

Planning
Radiological Response Plan (Office Supplies)
01-8026-301

10,000

Planning
Radiological Response Plan (Printing)
01-8026-304

19,000

Planning
Radiological Response Plan (Misc.)
01-8026-350

40,000

Planning Radiological Response Plan (Adv.) 01-8026-377	1,000
Planning Radiological Response Plan (Mileage) 01-8026-433	5,000
Planning Radiological Response Plan (Fees for services for non-Employees 01-8026-456	300,000

and be it further

RESOLVED, that the County Planning Department shall prepare a County Radiological Emergency Response Plan to serve the interest of safety, health and welfare of the residents of Suffolk County; and be it further

RESOLVED, that said plan shall not be operable and shall not be deemed adequate and capable of being implemented until such time as it is approved by the Suffolk County Legislature; and

RESOLVED, that only after said plan is approved by the Suffolk County Legislature, shall it be submitted to the Federal Emergency Management Agency and the Nuclear Regulatory Commission for purposes of any findings, determinations, rulings, reviews, or hearings by such Federal agencies.

DATED March 23, 1982

APPROVED BY:

John Lohman
County Executive of Suffolk County

Date of Approval: 3/25/82

SUFFOLK COUNTY
County Legislature
RIVERHEAD, N. Y.

This is to Certify That J. William H. Rogers, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County on *March 23, 1982* and that the same is a true and correct transcript of said resolution and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk

William H. Rogers
Clerk of the County Legislature

Intro. Res. No. 1516-82

Introduced by Legislators Blass, Rosso, Foley, Caracappa, Giese, Allgrove, Richards, Wehrenberg, Rizzo, Nolan, Hariton, Noto, Howard, Prospect, LaBua, Davine, Mrazek

RESOLUTION NO. 456 -1982, ESTABLISHING THE
RADIOLOGICAL EMERGENCY RESPONSE PLANNING
POLICY OF THE COUNTY OF SUFFOLK

WHEREAS, County of Suffolk has the primary responsibility for the protection of its residents in the event of a radiological emergency at the Long Island Lighting Company's Shoreham Nuclear Power Station; and

WHEREAS, Suffolk County takes this responsibility seriously and intends, through good faith and sound planning efforts, to assure that the best possible emergency plan and preparedness are developed to protect the citizens of Suffolk County; and

WHEREAS, Suffolk County's Emergency Planning Task Force, composed of nationally recognized experts drawn from a range of pertinent disciplines, is now conducting a detailed planning effort in order to attempt to develop a viable radiological emergency plan for Suffolk County; and

WHEREAS, The Long Island Lighting Company, in an unwarranted and arrogant act, has gone beyond its powers as a private corporation in an attempt to usurp the rightful powers of Suffolk County by submitting county planning resource material to the New York State Disaster Preparedness Commission for its approval as the official radiological emergency response plan for Suffolk County; and

WHEREAS, said planning resource material developed in part by county personnel, is preliminary data which in no way constitutes the Suffolk County-approved RADIOLOGICAL EMERGENCY RESPONSE PLAN and will not in the future constitute such County plan; and

WHEREAS, Suffolk County will submit its RADIOLOGICAL EMERGENCY RESPONSE PLAN to the New York State Disaster Preparedness Commission only when that plan has been fully prepared and approved by Suffolk County and is thereby integrated with the planning efforts of both LILCO and New York State; therefore, be it

RESOLVED, that Suffolk County hereby established the following Radiological Emergency Response Planning Policy:

Suffolk County shall not assign funds or personnel to test or implement any radiological emergency response plan for the Shoreham Nuclear Plant unless that plan has been fully developed to the best of the County's ability.

Suffolk County shall not assign funds or personnel to test or implement any radiological emergency response plan for the Shoreham Nuclear Plant unless that plan has been the subject of at least two public hearings, one to be held in Riverhead, and one to be held in Hauppauge.

Suffolk County shall not assign funds or personnel to test or implement any radiological emergency response plan for the Shoreham Nuclear Plant unless that plan has been approved, after public hearings, by the Suffolk County Legislature and the County Executive

and, be it further

RESOLVED, that copies of this resolution be sent to the Governor, the Speaker of the Assembly, the Majority Leader of the Senate and the Legislature of the State of New York.

DATED: May 18, 1982

APPROVED BY:

John J. Holley
County Executive of Suffolk County

Date of Approval: 5/19/82

SUFFOLK COUNTY
County Legislature
RIVERHEAD, N. Y.

This is to Certify That I, William H. Rogers, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County on May 18, 1982 and that the same is a true and correct transcript of said resolution and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk.

William H. Rogers
Clerk of the County Legislature

Intro. Res. No. 1196-83

Introduced by Legislators Wehrenberg, Caracappa, D'Andre, Geise, Allgrove, Bacht Prospect, Foley, Nolan, Blass, Rizzo, LaBua, Devine, Hariton, Beck

RESOLUTION NO. 111 - 1983, CONSTITUTING THE FINDINGS
AND DETERMINATIONS OF SUFFOLK COUNTY ON WHETHER
A LEVEL OF EMERGENCY PREPAREDNESS TO RESPOND
TO A RADIOLOGICAL ACCIDENT AT THE SHOREHAM
NUCLEAR POWER STATION CAN PROTECT THE HEALTH,
WELFARE AND SAFETY OF THE RESIDENTS OF
SUFFOLK COUNTY

WHEREAS, Suffolk County has a duty under the Constitution of the State of New York, the New York State Municipal Home Rule Law, and the Suffolk County Charter to protect the health, safety, and welfare of the residents of Suffolk County; and

WHEREAS, the Long Island Lighting Company ("LILCO") is constructing and desires to operate the Shoreham Nuclear Power Station ("Shoreham"), located on the north shore of Long Island near the town of Wading River, a location which is within the boundaries of Suffolk County; and

WHEREAS, a serious nuclear accident at Shoreham could result in the release of significant quantities of radioactive fission products; and

WHEREAS, the release of such radiation would pose a severe hazard to the health, safety, and welfare of Suffolk County residents; and

WHEREAS, in recognition of the effects of such potential hazard posed by Shoreham on the duty of Suffolk County to protect the health, safety, and welfare of its citizens, this Legislature on March 23, 1982, adopted Resolution No. 262-1982, which directed that Suffolk County prepare a "County Radiological Emergency Response Plan to serve the interest of the safety, health, and welfare of the citizens of Suffolk County .."; and

WHEREAS, in Resolution 262-1982, the Legislature determined that the plan developed by the County "shall not be operable and shall not be deemed adequate and capable of being implemented until such time as it is approved by the Suffolk County Legislature"; and

WHEREAS, in adopting Resolution 262-1982, the Legislature found that earlier planning efforts by LILCO and County planners (the "original planning data") were inadequate because they failed to address the particular problems posed by conditions on Long Island and further failed to account for human behavior during a radiological emergency and the lessons of the accident at Three Mile Island; and

WHEREAS, on March 29, 1982, Peter F. Cohalan, Suffolk County Executive, acting to implement Resolution 262-1982, by Executive Order established the Suffolk County Radiological Emergency Response Plan Steering Committee ("Steering Committee") and directed it to prepare a County plan for submittal to the County Executive and County Legislature; and

WHEREAS, the Steering Committee assembled a group of highly qualified and nationally recognized experts from diverse disciplines to prepare such County plan; and

WHEREAS, such highly qualified experts worked in a diligent and conscientious effort at a cost in excess of \$500,000 to prepare the best possible plan for Suffolk County, and particularly to ensure that such plan took into account all particular physical and behavioral conditions on Long Island that affect the adequacy of the emergency response plan; and

WHEREAS, the analyses, studies, and surveys of such experts included:

- (a) Detailed analyses of the possible releases of radiation from Shoreham;
- (b) Detailed analyses of the radiological health consequences of such radiation release on the population of Suffolk County, given the meteorological, demographic, topographical, and other specific local conditions on Long Island;
- (c) A detailed social survey of Long Island residents to determine and assess their intended behavior in the event of a serious accident at Shoreham;
- (d) A detailed survey of school bus drivers, volunteer firemen, and certain other emergency response personnel to determine whether emergency personnel intend to report promptly for emergency duties, or instead to unite with their own families, in the event of a serious accident at Shoreham;
- (e) Detailed estimates of the number of persons who would be ordered to evacuate in the event of a serious accident at Shoreham, as well as the number of persons who intend to evacuate voluntarily even if not ordered to do so;
- (f) Detailed analyses of the road network in Long Island and the time required to evacuate persons from areas affected by radiation releases;
- (g) Detailed analyses of the protective actions available to Suffolk County residents to evacuate or take shelter from such radiation releases; and
- (h) Analysis of the lessons learned from the accident at Three Mile Island on local government responsibilities to prepare for a radiological emergency; and

WHEREAS, on May 10, 1982, LILCO, without the approval or authorization of the Suffolk County Government, submitted to the New York State Disaster Preparedness Commission ("DPC") two volumes entitled "Suffolk County Radiological Emergency Response Plan" and containing the original planning data, as further revised and supplemented by LILCO, and requested the DPC to review and approve such LILCO submittal as the local radiological emergency response plan for Suffolk County; and

WHEREAS, in Resolutions 456-1982 and 457-1982, the County further addressed the matter of preparing for a radiological emergency at Shoreham and emphasized that:

- (a) The LILCO-submitted document was not and will not be the County's Radiological Emergency Response Plan; and

- (b) The County's Radiological Emergency Response Planning Policy, as enunciated in Resolution 456-1982, is as follows:

Suffolk County shall not assign funds or personnel to test or implement any radiological emergency response plan for the Shoreham Nuclear Plant unless that plan has been fully developed to the best of the County's ability.

Suffolk County shall not assign funds or personnel to test or implement any radiological emergency response plan for the Shoreham Nuclear Plant unless that plan has been subject of at least two public hearings, one to be held in Riverhead, and one to be held in Hauppauge.

Suffolk County shall not assign funds or personnel to test or implement any radiological emergency response plan for the Shoreham Nuclear Plant unless that plan has been approved, after public hearings, by the Suffolk County Legislature and the County Executive; and

WHEREAS, on June 9, 1982, the DPC rejected the LILCO-submitted document for the reason that it was deficient; and

WHEREAS, on October 6, 1982, LILCO, again without the approval or authorization of the Suffolk County Government, submitted to the DPC an amended version of the previously submitted LILCO document which had been rejected by the DPC; and

WHEREAS, on December 2, 1982, the Draft County Radiological Emergency Response Plan authorized by Resolution 262-1982 was submitted to the County Legislature for review and public hearings as specified in Resolutions 262-1982, 456-1982, and 457-1982; and

WHEREAS, in January 1983, the Legislature held hearings on the Draft County plan, which hearings included:

- (a) More than 1,590 pages of transcripts;
- (b) Detailed written statements and oral testimony of County expert consultants who prepared the Draft County plan;
- (c) Detailed written statements and oral testimony of LILCO officials and expert consultants retained by LILCO;
- (d) Detailed written statements and oral testimony of the Suffolk County Police Department, the County Health Department, the County Social Services department, and the County Public Works Department, all of which would have indispensable roles in responding to a radiological emergency at Shoreham;
- (e) Detailed written statements and oral testimony of organizations in Suffolk County concerned with radiological emergency preparedness; and
- (f) Extensive presentations by hundreds of members of the general public; and

WHEREAS, members of the Legislature also travelled to and held public hearings in the vicinity of the Three Mile Island Nuclear Power Plant to gain information on the lessons to be learned by local governments from the accident at Three Mile Island; and

WHEREAS, the Draft County plan identifies evacuation and protective sheltering as the two primary protective actions which would need to be implemented in the event of a serious accident at Shoreham; and

WHEREAS, evacuation of Suffolk County residents in the event of a radiological emergency could take as much time as 14-30 hours because of various factors, including: the limited number of appropriate evacuation routes in Suffolk County; difficulties in mobilizing police and other emergency personnel; difficulties ensuing from spontaneous evacuation of large numbers of County residents, thus creating severe traffic congestion; and unavailability of alternate evacuation routes for persons residing east of Shoreham and thus the necessity for such persons during an evacuation to pass by the plant and possibly through the radioactive plume; and

WHEREAS, evacuation times in excess of 10 hours -- and certainly evacuation times in the range of 14-30 hours -- will result in virtual immobilization of evacuation and high exposure of evacuees to radiation such that evacuees' health, safety, and welfare would not be protected; and

WHEREAS, protective sheltering is designed to protect persons from excessive radiation exposure by such persons staying indoors until radiation with the greatest danger to health has passed; and

WHEREAS, if protective sheltering were ordered for Suffolk County residents, unacceptable radiation exposure would still be experienced by substantial portions of the Suffolk County population, thus making it impossible to provide for the health, welfare, and safety of these residents; and

WHEREAS, the document submitted by LILCO to the DPC without County approval or authorization is deficient because it does not deal with the actual local conditions, physical and behavioral, on Long Island that would be encountered during a serious nuclear accident at Shoreham; and

WHEREAS, the document submitted by LILCO to the DPC without County approval or authorization does not ensure that effective protective action by persons subject to radiation exposure, in the form of evacuation or sheltering, would be taken in event of a serious nuclear accident at Shoreham, and thus such document, even if implemented, would not protect the health, safety, and welfare of Suffolk County residents; and

WHEREAS, the extensive data which the Legislature has considered make clear that the site-specific circumstances and actual local conditions existing on Long Island, particularly its elongated east/west configuration which requires all evacuation routes from locations east of the plant to pass within a zone of predicted high radiation, the ineffectiveness of protective sheltering, the severe traffic congestion likely to be experienced if a partial or complete evacuation were ordered, and the difficulties in ensuring that emergency personnel will promptly report for emergency duties, preclude any emergency response plan, if implemented, from providing adequate preparedness to protect the health, welfare, and safety of Suffolk County residents; now, therefore, be it

RESOLVED, that the Draft County plan submitted to the County Legislature on December 2, 1982, if implemented, would not protect the health, welfare, and safety of Suffolk County residents and thus is not approved and will not be implemented; and be it further

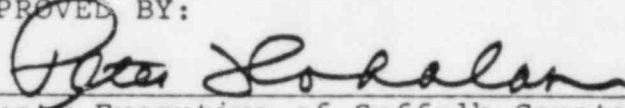
RESOLVED, that the document submitted by LILCO to the DPC without the County approval or authorization, if implemented, would not protect the health, welfare, and safety of Suffolk residents and thus will not be approved and will not be implemented; and be it further

RESOLVED, that since no local radiological emergency response plan for a serious nuclear accident at Shoreham will protect the health, welfare, and safety of Suffolk County residents, and since the preparation and implementation of any such plan would be misleading to the public by indicating to County residents that their health, welfare, and safety are being protected when, in fact, such is not the case, the County's radiological emergency planning process is hereby terminated, and no local radiological emergency plan for response to an accident at the Shoreham plant shall be adopted or implemented; and be it further

RESOLVED, that since no radiological emergency plan can protect the health, welfare, safety of Suffolk County residents and, since no radiological emergency plan shall be adopted or implemented by Suffolk County, the County Executive is hereby directed to take all actions necessary to assure that actions taken by any other governmental agency, be it State or Federal, are consistent with the decisions mandated by this Resolution.

DATED: February 17, 1983

APPROVED BY:


County Executive of Suffolk County

Date of Approval: 2/23/83

Intro. Re: No. 1517-82

Introduced by Legislators Prospect, Blass, Foley, Rosso, Caracappa, Giese, Allgrove, Richards, Wehrenberg, Rizzo, Nolan, Hariton, Noto, Howard, LaBua, Devine, Mrazek

RESOLUTION NO. 457 - 1982, AUTHORIZING THE CLERK OF THE LEGISLATURE TO SEND A HOME RULE MESSAGE FROM THE COUNTY OF SUFFOLK TO THE GOVERNOR AND THE LEGISLATURE OF THE STATE OF NEW YORK IN FORMAL PROTEST OF THE NEW YORK STATE DISASTER PREPAREDNESS COMMISSION'S USURPATION OF SUFFOLK COUNTY'S AUTHORITY TO RESPONSIBLY DEVELOP ITS RADIOLOGICAL EMERGENCY RESPONSE PLAN

WHEREAS, Suffolk County adopted resolution 262-82 which directed the Suffolk County Planning Department to prepare a county-wide Radiological Emergency Response Plan and appropriated funds for said purpose; and

WHEREAS, Suffolk County, to further its sworn duty to protect the health and safety of the people of Suffolk County, has commissioned studies to determine all planning facets that are essential in developing a viable Radiological Emergency Response Plan; and

WHEREAS, Suffolk County resolution 262-82 declared, as official county policy, that any Radiological Emergency Response proposal developed by the Suffolk County Planning Department, shall not be deemed adequate and shall not be implemented unless and until it has been approved by the County Legislature and the County Executive; and

WHEREAS, the Long Island Lighting Company has, in a direct affront to the government and the people of Suffolk County, submitted emergency planning resource material, developed, in part, by county personnel, to the New York State Disaster Preparedness Commission and has characterized that material as the complete, draft Suffolk County Radiological Emergency Response Plan; now, therefore, be it

RESOLVED, that the County of Suffolk officially again confirms and declares that the planning resource material submitted to the New York State Disaster Preparedness Commission by the Long Island Lighting Company in no way constitutes the County's Radiological Emergency Response Plan; and be it further

RESOLVED, that the County of Suffolk hereby notifies the Governor of the State of New York, the New York State Disaster Preparedness Commission, and the New York State Legislature, that is vehemently opposed to any action by New York State that would treat in any way, the documents submitted by LILCO as the County's radiological emergency response plan or any other official County document; and be it further

RESOLVED, that any action of agencies or departments of New York State to review, evaluate, approve, or in any other way consider the documents submitted by LILCO will be an insult to the people of Suffolk County and an affront to the current good faith program of Suffolk County to prepare a radiological emergency plan which protects the health and safety of the citizens of Suffolk County.

DATED: May 18, 1982

APPROVED BY:

[Signature]
County Executive of Suffolk County

Date of Approval: 5/19/82

SUFFOLK COUNTY
County Legislature
RIVERHEAD, N. Y.

This is to Certify that J. William H. Rogers, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County on *May 18, 1982* and that the same is a true and correct transcript of said resolution and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk

[Signature]
Clerk of the County Legislature

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

Press Office
518-474-8416
212-587-2726

FOR RELEASE:
IMMEDIATE THURSDAY
FEBRUARY 17, 1983

STATEMENT BY GOVERNOR MARIO M. CUOMO

Suffolk County Executive Peter Cohalan and the Suffolk County Legislature have announced that they have concluded that a workable emergency evacuation plan cannot be developed for Shoreham.

After discussions today with members of my senior staff and officials of the State Disaster Preparedness Commission, I am directing the Commission to refrain from forwarding to Washington any proposed off-site emergency evacuation plan for the proposed Shoreham nuclear power plant.

Federal law requires that before a license to operate a nuclear power plant can be issued, an acceptable emergency evacuation plan must be in place. In order for an off-site evacuation plan to be acceptable to the federal government, it must be both adequate and implementable. The participation and cooperation of local government is essential if a workable plan is to be developed.

I have stated that I would not support the opening of any new nuclear plant for which an acceptable emergency evacuation plan does not exist. While recognizing that the ultimate determination of acceptability rests with the federal government, I stand by my previous statements.

As Governor, I will not be a party to any effort to impose an independently developed State plan upon Suffolk County.

The State stands ready and willing to cooperate in any way possible with both Suffolk County and the Long Island Lighting Company to develop an adequate and implementable evacuation plan for Shoreham.

1980 Authorization Act

260 7-14-80

Nuclear Safety

EXHIBIT 6

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such transfer and that it is in the national interest to make such transfer and the President notified the Speaker of the House of Representatives and the President of the Senate as soon as possible of such transfer. The provisions of this section shall not apply to the cleanup and rehabilitation of Bikini and Eniwetok Atolls.

[§ 3130]

[Accidents]

Sec. 106. Of the amounts authorized to be appropriated pursuant to this Act, the Nuclear Regulatory Commission is authorized and directed to use such sums as may be necessary to develop a plan for agency response to accidents at a utilization facility licensed under section 103 or section 104(b) of the Atomic Energy Act of 1954. The plan required to be developed by this section shall be forwarded to the Congress on or before September 30, 1980.

[§ 3131]

[Disposal of Wastes]

Sec. 107. No funds appropriated pursuant to this Act may be used for the purpose of providing for the licensing or approval of any disposal of nuclear wastes in the oceans.

[§ 3132]

[Siting Requirements]

Sec. 108. (a) Of the amounts authorized to be appropriated pursuant to this Act, the Nuclear Regulatory Commission is authorized and directed to use such sums as may be necessary to develop and promulgate regulations establishing demographic requirements for the siting of utilization facilities. Such regulations shall be promulgated by the Commission after notice and opportunity for hearing in accordance with section 553 of title 5 of the United States Code. For purposes of this section, the term "utilization facility" means a facility licensed under section 103 or 104(b) of the Atomic Energy Act of 1954.

(b) The regulations promulgated pursuant to this section shall provide that no construction permit may be issued for a utilization facility to which this section applies after the date of such promulgation unless the facility complies with the requirements set forth in such regulations, except that regulations promulgated under this section shall not apply to any facility for which an application for a construction permit was filed on or before October 1, 1979.

(c) The regulations promulgated pursuant to this section shall specify demographic

criteria for facility siting, including maximum population density and population distribution for zones surrounding the facility without regard to any design, engineering, or other differences among such facilities.

(d) The regulations promulgated pursuant to this section shall take into account the feasibility of all actions outside the facility which may be necessary to protect public health and safety in the event of any accidental release of radioactive material from the facility which may endanger public health or safety. For purposes of this subsection, the term "accidental release" includes, but is not limited to, each potential accidental release of radioactive material which is required by the Commission to be taken into account for purposes of facility design.

(e) The Commission shall provide information and recommendations to State and local land use planning authorities having jurisdiction over the zones established under the regulations promulgated pursuant to this section and over areas beyond the zones which may be affected by a radiological emergency. The information and recommendations provided under this subsection shall be designed to assist such authorities in making State and local land use decisions which may affect emergency planning in relation to utilization facilities.

(f) Nothing in this section shall be construed to provide that the Commission shall have any authority to preempt any State requirement relating to land use or respecting the siting of any utilization facility, except that no State or local land use or facility siting requirement relating to the same aspect of facility siting as a requirement established pursuant to this section shall have any force and effect unless such State or local requirement is identical to, or more stringent than the requirement promulgated pursuant to this section.

[§ 3133]

[Issuance of Operating Licenses]

Sec. 109. (a) Funds authorized to be appropriated pursuant to this Act may be used by the Nuclear Regulatory Commission to conduct proceedings and take other actions, with respect to the issuance of an operating license for a utilization facility only if the Commission determines that—

(1) there exists a State or local emergency preparedness plan which—

(A) provides for responding to accidents at the facility concerned, and

(B) as it applies to the facility concerned only, complies with the Commission's guidelines for such plans, or

(2) in the absence of a plan which satisfies the requirements of paragraph (1), there exists a State, local, or utility plan which provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned.

A determination by the Commission under paragraph (1) may be made only in consultation with the Director of the Federal Emergency Management Agency. If, in any proceeding for the issuance of an operating license for a utilization facility to which this subsection applies, the Commission determines that there exists a reasonable assurance that public health and safety is endangered by operation of the facility, the Commission shall identify the risk to public health and safety and provide the applicant with a detailed statement of the reasons for such determination. For purposes of this section, the term "utilization facility" means a facility required to be licensed under section 103 or 104(b) of the Atomic Energy Act of 1954.

(b) Of the amounts authorized to be appropriated under section 101(a), such sums as may be necessary shall be used by the Nuclear Regulatory Commission—

(1) establish by rule—

(A) standards for State radiological emergency response plans, developed in consultation with the Director of the Federal Emergency Management Agency, and other appropriate agencies, which provide for the response to a radiological emergency involving any utilization facility.

(B) a requirement that—

(i) the Commission will issue operating licenses for utilization facilities only if the Commission determines that—

(I) there exists a State or local radiological emergency response plan which provides for responding to any radiological emergency at the facility concerned and which complies with the Commission's standards for such plans under subparagraph (A), or

(II) in the absence of a plan which satisfies the requirements of subclause (I), there exists a State, local, or utility plan which provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned, and

(ii) any determination by the Commission under subclause (I) may be made only in consultation with the Director of the Federal Emergency Management Agency and other appropriate agencies, and

(C) a mechanism to encourage and assist States to comply as expeditiously as practicable with the standards promulgated under subparagraph (A) of this paragraph,

(2) review all plans and other preparations respecting such an emergency which have been made by each State in which there is located a utilization facility or in which construction of such a facility has been commenced and by each State which may be affected (as determined by the Commission) by any such emergency,

(3) assess the adequacy of the plans and other preparations reviewed under paragraph (2) and the ability of the States involved to carry out emergency evacuations during an emergency referred to in paragraph (1) and submit a report of such assessment to the appropriate committees of the Congress within 6 months of the date of the enactment of this Act,

(4) identify which, if any, of the States described in paragraph (2) do not have adequate plans and preparations for such an emergency and notify the Governor and other appropriate authorities in each such State of the respects in which such plans and preparations, if any, do not conform to the guidelines promulgated under paragraph (1), and

(5) submit a report to Congress containing (A) the results of its actions under the preceding paragraphs and (B) its recommendations respecting any additional Federal statutory authority which the Commission deems necessary to provide that adequate plans and preparations for such radiological emergencies are in effect for each State described in paragraph (2).

(c) In carrying out its review and assessment under subsection (b)(2) and (3) and in submitting its report under subsection (a)(5), the Commission shall include a review and assessment, with respect to each utilization facility and each site for which a construction permit has been issued for such a facility, of the emergency response capability of State and local authorities and of the owner or operator (or proposed owner or operator) of such facility. Such review and assessment shall include a determination by the Commission of the maximum zone in the vicinity of each such facility for which evacuation of individuals

is feasible at various different times corresponding to the representative warning times for various different types of accidents.

[§ 3134]

[Safety Evaluation]

Sec. 110. (a) Of the amounts authorized to be appropriated pursuant to section 101 (a), such sums as may be necessary shall be used by the Nuclear Regulatory Commission to develop, submit to the Congress, and implement, as soon as practicable after notice and opportunity for public comment, a comprehensive plan for the systematic safety evaluation of all currently operating utilization facilities required to be licensed under section 103 or section 104(b) of the Atomic Energy Act of 1954.

(b) The plan referred to in subsection (a) shall include—

(1) the identification of each current rule and regulation compliance with which the Commission specifically determines to be of particular significance to the protection of the public health and safety;

(2) a determination by the Commission of the extent to which each operating facility complies with each rule and regulation identified under paragraph (1) of this subsection, including an indication of where such compliance was achieved by use of Division 1 regulatory guides and staff technical positions and where compliance was achieved by equivalent means;

(3) a list of the generic safety issues set forth in NUREG 0410 (including categories A, B, C, and D) for which technical solutions have been developed;

(4) a determination by the Commission of which technical solutions for generic safety issues identified in paragraph (3) of this subsection should be incorporated into the Commission's rules and regulations; and

(5) a schedule for developing a technical solution to those generic safety issues listed in NUREG 0410 which have not yet been technically resolved.

(c) Not later than 90 days from the date of enactment of this Act, the Commission shall report to the Congress the status of efforts to carry out subsection (a).

TITLE II—AMENDMENTS TO THE ATOMIC ENERGY ACT OF 1954

[§ 3135]

[Sec. 201(a) of the Act amended sec. 103 of the Atomic Energy Act (§ 2073). Sec. 202(a) of the Act added a new sec. 235 to the Atomic Energy Act (§ 2148a). Sec.

Nuclear Regulation Reports

203 of the Act amended sec. 223 of the Atomic Energy Act (§ 2137). Sec. 204(a) of the Act added a new sec. 236 to the Atomic Energy Act (§ 2148b). Sec. 205 of the Act amended sec. 274 of the Atomic Energy Act (§ 2155). Sec. 206 of the Act amended sec. 234 of the Atomic Energy Act (§ 2148). Sec. 207(a)(1) of the Act added a new sec. 147 to the Atomic Energy Act. Sec. 207(b) of the Act amended sec. 181 of the Atomic Energy Act (§ 2116).—CCH.]

TITLE III—OTHER PROVISIONS

[§ 3136]

[Transportation of Waste]

Sec. 301. (a) The Nuclear Regulatory Commission, within 90 days of enactment of this Act, shall promulgate regulations providing for timely notification to the Governor of any State prior to the transport of nuclear waste, including spent nuclear fuel, to, through, or across the boundaries of such State. Such notification requirement shall not apply to nuclear waste in such quantities and of such types as the Commission specifically determines do not pose a potentially significant hazard to the health and safety of the public.

(b) As used in this section, the term "State" includes the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

[§ 3137]

[Review of NRC's Management Structure]

Sec. 302. The Nuclear Regulatory Commission is authorized and directed to enter into a contract for an independent review of the Commission's management structure, processes, procedures, and operations. The review shall include an assessment of the effectiveness of all levels of agency management in carrying out the Commission's statutory responsibilities, in developing and implementing policies and programs, and in using the personnel and funding available to it. The contract shall provide for submission of a report of the findings and recommendations of the review to the Commission not later than one year from the date of enactment of this Act, and the Commission shall promptly transmit such report to the Congress.

[§ 3138]

[Licenses—Permits—Costs—Fees]

Sec. 303. The Nuclear Regulatory Commission shall include in its annual report

§ 303 § 3138

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 (OL)
)

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Supplemental Brief of Suffolk County in Support of the County's Motion to Terminate the Shoreham Operating License Proceeding and the County's Motion for Certification" were sent on March 7, 1983 by first class mail, except where otherwise noted, to the following:

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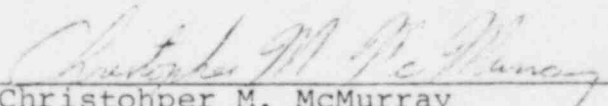
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

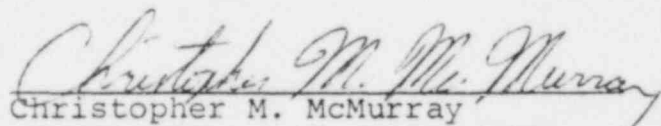
(Shoreham Nuclear Power Station,
Unit 1))

) Docket No. 50-322 (OL)

SUPPLEMENTARY
CERTIFICATE OF SERVICE

I hereby certify that copies of "Supplemental Brief of Suffolk County in Support of the County's Motion to Terminate the Shoreham Operating License Proceeding and the County's Motion for Certification" were sent on March 7, 1983 by hand delivery to the following:

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Commissioner James K. Asselstine
Commissioner John F. Ahearne
Commissioner Thomas M. Roberts
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