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)	)	

SUFFOLK COUNTY'S REPLY TO LILCO'S AND THE NRC STAFF'S BRIEFS IN OPPOSITION TO SUFFOLK COUNTY'S MOTION TO TERMINATE THE SHOREHAM OPERATING LICENSE PROCEEDING AND THE COUNTY'S MOTION FOR CERTIFICATION

On March 18 and 25, 1983, respectively, the Long Island Lighting Company ("LILCO") and the Nuclear Regulatory Commission Staff ("NRC Staff" or "Staff") responded to the County's motion to terminate this proceeding and the County's motion for immediate certification of the issue to the Commission. The County hereby replies to the LILCO and Staff briefs.

I. Introduction

The LILCO and Staff briefs raise a host of alleged factual issues and assert novel legal arguments concerning the County's emergency planning process. Indeed, LILCO has devoted numerous pages to attacking the Suffolk County Legislature's motives and decision-making processes. However, the Staff and LILCO have in fact overlooked the basic simplicity of the legal issues presented.

D503

This case turns on one undisputed fact: the County, through exercise of its authority to protect the health, safety, and welfare of its residents, has decided it will not adopt or implement any radiological emergency response plan for Shoreham. See County Resolution 111-1983. Based upon this single undisputed fact, the county has asked the Board -- or preferably the Commission -- to resolve two strictly legal issues:

1. Whether 10 C.F.R. §§50.33(g) and 50.47 of the NRC's regulations require a Suffolk County government RERP as a precondition to issuance of an operating license for Shoreham; and
2. If so, whether Section 5 of the 1982-83 NRC Authorization Act permits the NRC to disregard those regulations?

In this reply brief, the County will first address the legal arguments advanced by LILCO and the Staff, demonstrating either that the arguments are irrelevant to the issues presented or are totally without merit. The County then will address certain assertions of fact which, though not relevant to the legal issues at hand, have been so mischaracterized by LILCO as to warrant correction by the County.

II. Discussion of Legal Issues

A. The County's Motion To The NRC Seeking Application Of NRC Regulations Does Not Constitute A County "Veto" Or An Attempt By The County To Regulate A Radiation Hazard

LILCO and the NRC Staff assert that the County's determination not to implement a radiological emergency response plan is an attempt to regulate a radiation hazard, an area that Congress has preempted. LILCO Br. at 84-94; Staff Br. at 9-10. Thus, LILCO asserts that "the County has . . . set itself up as the fact-finder and licensing authority instead of the NRC." LILCO Br. at 92 n. 39. Likewise, the Staff complains that the County is attempting to make its finding on the feasibility of emergency planning for Shoreham binding on the NRC. Staff Br. at 7-8. Both LILCO and the Staff distort the legal issues raised by the County.

It is not the County's position that the NRC is bound by the findings of the Legislature (as set forth in Resolution No. 111-1983) which led the Legislature to resolve never to implement a radiological emergency response plan, and the County is not seeking to have the NRC to accept those findings. The only fact that the County has raised which is properly binding on this Board and all of the parties is the undisputed fact that the County adopted Resolution No. 111-1983 and that as a result it will not adopt or implement a local government RERP for

Shoreham. That fact will not change whether the NRC accepts the County's findings or not.

The County acknowledges that Congress has preempted many aspects of nuclear power regulation and that the County has no power to regulate a radiological hazard or to license nuclear plants. Notwithstanding the Staff's and LILCO's assertions, however, the County has made no attempt to do so.

By Resolution No. 111-1983, the Suffolk County Legislature did what it clearly had a right to do -- determine whether it would adopt and implement a RERP. It resolved that it would not. As a result, the County has moved the NRC to deny an operating license for Shoreham under the NRC's own regulations which the NRC is bound to apply. That is not an attempt by the County to regulate nuclear power. Unlike the cases cited by LILCO (LILCO Br. at 85-89), the County is not in this case withholding a license or permit normally issued under its own law or the laws of the State of New York. Rather, the County has presented the NRC with the immutable fact that it will not adopt or implement a local government plan for Shoreham. Since such a plan is a precondition to issuance of an operating license under NRC regulations, the County has moved the NRC to apply those regulation, as it must, and thus to deny LILCO a license to operate Shoreham.

LILCO characterizes the County's position as being premised on the theory that the County may assert a "veto" over

the operation of Shoreham and makes much of the argument that the County's alleged veto is "de jure" not "de facto." LILCO Br. at 84. LILCO again misstates the County's position. The County claims no veto at all over the issuance of operating licenses for nuclear power plants, which is the exclusive domain of the NRC. The County has simply done what it has a right to do: determine that, for reasons of public health and safety, it will not adopt or implement an emergency response plan. Whatever consequences flow from that decision are the result of the NRC's regulations, not the County's alleged veto power.

The fact that the County's lawful action results in denial of an operating license for Shoreham should come as no surprise. Indeed, when the NRC adopted its emergency planning regulations, it was fully aware of those consequences -- i.e., that a local government's determination not to implement an emergency plan could affect the operation of a nuclear power plant. NRC Emergency Planning Final Rule, 45 Fed. Reg. 55,402, 55,404 (1980); SECY 80-275, Enclosure L, "Analysis of ACRS Comments at 9 (June 3, 1980). Despite its recognition of those consequences, the Commission did not alter its regulations to permit operation without a local government's plan. 1/

1/ The County reiterates that the Legislature's decision was not made arbitrarily but was based upon the County's year-long effort, costing over $600,000, to develop a workable plan. The Legislature held more than eight days of hear-

(Footnote cont'd next page)

B. The NRC's Emergency Planning Regulations Cannot Be Met Without The Local Government's Plan

1. Section 50.33(g) Requires The Existence of a Local Governmental Plan.

10 C.F.R. §50.33(g) states that an applicant for an operating license "shall submit radiological emergency response plans of State and local governmental entities" in the EPZ. (Emphasis added). Nevertheless, LILCO urges that, despite the mandatory language of section 50.33(g), a "fairer reading" of that provision is that an applicant must submit the local governmental plan only "if it exists." LILCO Br. at 67. The NRC Staff, on the other hand, argues that "the words of [section 50.33(g)] do not require that the local emergency plan be prepared and endorsed by each local government." Staff Br. at 13. These interpretations of section 50.33(g) are contrary to the plain meaning of the regulation and the clear intent of the NRC when it established the emergency planning rules in August 1980.

The section 50.33(g) requirement for an applicant to submit the local governments' emergency response plan is a mandatory licensing precondition drawn directly from one of the

---

(Footnote cont'd from previous page)

ings on the County's Draft Plan and LILCO's plan before adopting Resolution 111-1983.

primary lessons learned at Three Mile Island -- that the absence of the local governments' emergency response plans was a prime contributor to the lack of emergency preparedness that existed at the time of that accident. Thus, the official studies and reports on the TMI accident recommended that State and local government plans be a condition to issuance of an operating license. 2/ See SC Br. at 17-21. The very purpose of section 50.33(g) and the rest of the emergency planning regulations was to implement the lessons learned from TMI that local government plans and preparedness are essential to emergency preparedness. 45 Fed. Reg. at 55,402. Thus, the section 50.33(g) requirement for the submission of the RERP of the local government constitutes an integral part of the regulatory framework created as a consequence of TMI.3/

2/ M. Rogovin, Three Mile Island: A Report To The Commissioners, 131-132 (1979); J. Kemeny, Report of the President's Commission On The Accident At Three Mile Island, 76 (1979); Emergency Planning Around U.S. Nuclear Powerplants: Nuclear Regulatory Commission Oversight, H.R. Rep. No. 413, 96th Cong., 1st Sess. 51-52 (1979); GAO Report, EMD-78-110, Areas Around Nuclear Facilities Should Be Better Prepared For Radiological Emergencies (1979). The Commission made these reports part of the record of its emergency planning rulemaking. See 45 Fed. Reg. at 55,403.

3/ Chairman Hendrie thus stated after the NRC's adoption of its emergency planning rules:

> We have no statutory authority over these State and local jurisdictions and cannot force them to develop such plans, but we can and do make this a condition of licensing.

(Footnote cont'd next page)

The Staff's argument (Staff Br. at 13) that there can be planning and preparedness by a local government without the plan being endorsed by the local government is, as a matter of law, a pure contradiction of terms. How can there possibly be planning and preparedness when the local government refuses to adopt or implement any RERP? Further, the Staff argument is irrelevant. The NRC's regulations require the plan of the local government. There is no such plan in this case. Accordingly, the express requirement of the regulations is not satisfied.

Similarly, LILCO's argument (LILCO Br. at 67) that local governmental plans are required only "if they exist" would make a mockery of the Federal government's post-TMI purpose of prohibiting operation of a nuclear power plant where the local government had not implemented a plan. Indeed, LILCO's argument would return the NRC, utilities, and local governments to the unsatisfactory pre-TMI standard of non-preparedness.4/

(Footnote cont'd from previous page)

Radiological Emergency Planning and Preparedness: Hearing Before The Subcommittee On Nuclear Regulation of The Senate Committee On Environment And Public Works, 97th Cong., 1st Sess. 3 (April 27, 1981).

4/ LILCO's interpretation of section 50.33(g), if applied consistently to the NRC's regulations, would eliminate virtually all licensing requirements. For instance, the provisions of sections 50.34(a) and (b) that the applicant "shall include" in its application a preliminary safety analysis report and a final safety analysis report would

(Footnote cont'd next page)

LILCO further asserts that the County's adherence to the plain meaning of section 50.33(g) "proves too much" because it would require, as a licensing condition, plans from every "town, village or other municipality, as well as a county" within the EPZ. LILCO Br. at 67. That is not the County's position. Section 50.33(g) calls for RERPs from local governmental entities within the EPZ. In so doing, it seeks plans from the governmental entities having lawful authority to develop them. In the State of New York, Executive Law §23 authorizes each county and city to develop local emergency response plans. Since Suffolk County is the only county within the Shoreham EPZ and since there are no cities within the EPZ, Suffolk County is therefore the only local governmental entity authorized to develop a radiological emergency response plan for Shoreham.5/

(Footnote cont'd from previous page)

mean that they shall be included only "if they exist." Such an interpretation of its regulations could not have been contemplated by the NRC.

5/ LILCO also argues, LILCO Br. at 66 n. 18, that its own offsite plan, based in part on work that the County previously rejected as inadequate and unacceptable, is in fact the County's local governmental plan. This argument is mythological; it has no basis in reality and ignores the fact, known to LILCO, that the County has rejected and disavowed as substantively deficient LILCO's plan and the work it was based upon. See County Resolution Nos. 262-1982; 456-1982; 457-1982; and 111-1983.

2. Section 50.47(a) Requires The Existence Of a Local Governmental Plan

LILCO claims that although section 50.47(a)(2) requires findings on the adequacy of State and local radiological emergency response plans, the local plan need not be the plan of the local government. Rather, LILCO advances the theory that "private volunteers" are permitted by NRC regulations to prepare (and the NRC is permitted to review and approve) a document which purports to be the governmental plan for the very government which has not authorized that document and has resolved not to adopt or implement that document. LILCO Br. at 69-71.

LILCO's notion of the "private volunteer" has no basis in the NRC's emergency planning regulations or in the administrative record on which those regulations were developed. "Private volunteers," under LILCO's notion, could presumably be anyone who seriously feels capable of contributing to the NRC's hearing process -- including the parties to this proceeding, such as the Shoreham Opponents Coalition and the North Shore Committee, the nuclear reactor vendor or equipment suppliers at Shoreham, or indeed any knowledgeable organization of good samaritans. Each of these could, just has LILCO has done, package a "plan" for Suffolk County, bind it in an official wrapper, and fill it with organization charts and official directives for actions by employees of the local government.

The problem here, however, is that the local government (Suffolk County) will not adopt or implement that so-called "plan," which means that the whole exercise would lead to nothing more than the pursuit of futility. Indeed, futility is precisely what LILCO is offering the NRC with its notion of "private volunteers."

The Commission's rulemaking record refers repeatedly to the need for local governmental plans as a prerequisite for an operating license. See SC Br. at 17-22 for discussion of rulemaking record. Then, in adopting its final emergency planning rules, the Commission specifically directed that "in order to continue operation or receive an operating license" a utility would be required to submit State and local governmental emergency response plans to the NRC for review and approval. 45 Fed. Reg. 55,402 (emphasis added). The reason for the requirement that local governmental plans be submitted was "that in carrying out its statutory mandate to protect the public health and safety, the Commission must be in a position to know that off-site governmental plans have been reviewed and found adequate." NRC Emergency Planning Proposed Rule, 44 Fed. Reg. 75,167, 75,169 (1979) (emphasis added).

Thus, it is clear from the rulemaking record that the local governmental plans which the Commission required to be submitted in Section 50.33(g) are the same ones it contemplated should be reviewed for adequacy under section 50.47(a).6/

6/ This need for plans of the local government is emphasized further in the guidance of NUREG 0654, "Criteria for Prep-

(Footnote cont'd next page)

This, of course, was because the Commission was intent on promulgating regulations to enhance emergency preparedness, not to foster unproductive semantic argument such as LILCO's. The rulemaking record thus leaves no doubt that the local government's plan is the only local plan to be reviewed under section 50.47(a)(2).

To permit a "private volunteer" to plan for a government, and thus to attempt to make fundamental policy choices on how to use that government's manpower and resources, would be meaningless. Only the local government itself knows its policies, programs, budgets, and administrative capabilities well enough to discharge the functions of formulating and implementing its own emergency plan. A "private volunteer," whether it be LILCO or any other, cannot pretend to be the government and assert through its "privately volunteered" plan the official authority which belongs to the government alone.7/

(Footnote cont'd from previous page)

aration and Evaluation of Radiological Response Plans and Preparedness in Support of Nuclear Power Plants" (Nov. 1980). NUREG 0654 at pp. 20-21 provides that local offsite emergency response preparedness is the job of local governments. The Commission's regulations specifically embrace this guidance. See 45 Fed. Reg. at 55,409, n.1.

7/ While LILCO characterizes its plan as one of a "private volunteer", the plan explicitly requires the Suffolk County government for its implementation. For instance, the plan calls for the Suffolk County Police Department to have primary responsibility for communications during

(Footnote cont'd next page)

C. LILCO Is Not Entitled To A Hearing Under Section 50.47(c)(1)

Recurring throughout LILCO's brief is the theme, supported by the NRC Staff (Staff Br. at 12-13), that it is entitled to an opportunity to try to prove that it should receive an operating license despite its failure to meet the requirement under sections 50.33(g) and 50.47(a) that local governmental plans be in place for Shoreham. LILCO Br. at 5, 10, 70-73,

---

(Footnote cont'd from previous page)

a radiological emergency (LILCO Plan at II-1) and, in the event of an evacuation, Police Department personnel must control the traffic flow and provide security. LILCO's Evacuation Plan at IV-4 states that the Suffolk County Police Department's response to a radiological emergency is "essential."

LILCO's plan also requires the response of other Suffolk County agencies. It is the responsibility of the Department of Fire Safety to dispatch emergency vehicles. LILCO Plan at II-2. The Department of Health Services must provide accident assessment, protective action recommendations, and monitoring and decontamination of the public. LILCO Plan at III-C1. The Department of Public Works is responsible for keeping roads cleared of obstructions during an evacuation. LILCO Plan at III-J1. The Department of Social Services must feed and establish shelters for evacuees. LILCO Plan at III-L1. The Department of Emergency Preparedness houses the Emergency Operations Center and coordinates radiological emergency response training. LILCO Plan II-1 and V-1. The Planning Department is given the duty to keep LILCO's plan updated. LILCO Plan at III-B1. Finally, LILCO's plan calls upon the Suffolk County Executive to assume command and to provide all necessary personnel and equipment. None of these resources, however, are available under County Resolution Nos. 111-1983 and 456-1982. Thus, LILCO's plan is an empty document of no substantive effect.

79-80 n. 26, 103-04 ("[A]ll LILCO is asking at this point is a chance to present evidence that its own offsite plan will work." LILCO Br. at 10 (emphasis added).) Central to LILCO's argument is the view that LILCO's purported offsite emergency plan would somehow provide adequate "compensation" for the absence of a plan adopted and implemented by Suffolk County and thus permit licensing of Shoreham under section 50.47(c)(1).

LILCO's desperate plea for a hearing should be summarily denied. First, as a matter of undisputed fact, LILCO's plan relies upon Suffolk County for implementation (see note 7, supra), but the County will never approve or implement that plan. See Resolution 111-1983. As a matter of law, a plan that will never the implemented can never provide "compensation" for the absence of a local government RERP. Furthermore, while LILCO's brief refers repeatedly to the existence of its offsite plan, it never once proffers how a hearing would be useful to determine in which respects that plan could provide compensation for the absence of a local government plan or, indeed, how the plan would be implemented.8/

8/ This fact was recognized by the State of New York Disaster Preparedness Commission whose Chairman recently stated in a letter to the Board that "the LILCO plan assumes implementation by Suffolk County which has specifically rejected the possibility of implementing any plan. . . ." Based on this fact, he informed the Board that "the State of New York has declined to further review the LILCO plan." Letter (undated) from David Axelrod, M.D., Chairman of the New York State Disaster Preparedness Commission to this Board.

Finally, LILCO's interpretation of section 50.47(c)(1) is incorrect. As set forth in Suffolk County's supplemental brief at 25-30, section 50.47(c)(1) can be used only in situations where there are existing offsite plans. Thus, the Commission explained that under section 50.47(c)(1), 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.

45 Fed. Reg. at 55,403 (emphasis added).9/ The concept that deficiencies in one plan may be cured by features of another plan necessarily contemplates that both plans exist. But in a case such as is present here, where a local government RERP is not deficient but is nonexistent, section 50.47(c)(1) is not operative and provides no relief for LILCO.

LILCO's brief never discusses the fact that its plan relies on County implementation. Nor does it even once acknowledge that the County will not perform the functions which LILCO -- through its "privately volunteered" notion of what Suffolk County should do and how the County should make decisions and discharge official actions -- has attempted to impose on the County.

9/ This is substantially the text of Enclosure 1, cited by the Staff (Staff Br. at 19), which the NRC General Counsel suggested (NRC July 23, 1980 Tr. at 7-8) be inserted into the statement of consideration to explain that section 50.47(c)(1) permits features of a utility plan to compensate for inadequate features in an existing offsite plan.

In essence, LILCO is seeking a hearing under section 50.47(c)(1) on the unsupportable assertion that its plan -- the product of the new-found "private volunteer" theory -- could meet NRC regulatory requirements. LILCO Br. at 64 n. 17. However, LILCO is entitled to no such hearing, because it has failed to raise a material dispute over the central fact that Suffolk County will not adopt or implement LILCO's plan or any other. In the absence of an issue of material fact, no hearing should be held. Kerr-McGee Corp. (West Chicago Rare Earth Facility), CLI-82-2, 15 N.R.C. 232, 256 n.29 (1982).

D. LILCO Has Not Petitioned For Exemption From The Commission's Rules

LILCO has "assured" the Board that if it is not entitled to a hearing under section 50.47(c)(1), it will seek the opportunity to petition for exemption from the Commission's regulations under 10 C.F.R. §§2.758(b) and 50.12(a). See LILCO Br. at 95. Of course, the proper time to consider the issues raised in a petition for exemption would be after it is properly filed and accompanied by all required affidavits.10/ However, no such petition of LILCO is before the Board, and LILCO's mere "assurance" of something it may do in the future is no basis for Board jurisdiction or action. Until such time as

---

10/ The County submits that the proper time to have filed for any exemptions under sections 2.758(b) or 50.12(a) would have been in response to the County's Motion To Terminate.

LILCO makes the required filing, if it does, sections 2.758(b) and 50.12(a) have no bearing on the County's Motion To Terminate and should play no part in any decision on the issues before the Board.

E. Section 5 Of The 1982-83 NRC Authorization Act Does Not Permit Departure From The NRC's Requirement For The Local Government's Plan

LILCO agrees with the County that section 50.47(c)(1) is "consistent" with section 5 of the 1982-83 NRC Authorization Act and its predecessor, section 109 of the 1980 NRC Authorization Act. LILCO Br. at 97-98. However, LILCO appears to view this consistency as meaning that section 5 causes the words of section 50.47(c)(1) to say something other than what they obviously say. LILCO's view is not supported by the rulemaking record. Indeed, LILCO has actually ignored the most relevant portion of the rulemaking record which clearly refutes LILCO's interpretation.

As discussed in detail in the County's supplemental brief at 32-34, nuclear industry representatives urged the Commission to amend draft section 50.47(c)(1) to follow the language of section 109, thus offering the possibility of operation of a nuclear plant without the local government's plan. The Commission deliberately rejected that position. Instead, it adopted the more stringent language of the present section 50.47(c)(1). The NRC's General Counsel explained to the

Commission that its adoption of a rule that was more restrictive than the language of section 109 was still consistent with section 109, which extablished only minimum emergency planning requirements for the NRC to implement by rule. The General Counsel concluded that "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 5.11/ Thus, NRC General Counsel Bickwit stated:

> As I read the legislation and the supporting legislative history, the Commission is free to go beyond the minimum requirement set by Congress. I believe this to be true despite the fact that Congressional staff representations are to the contrary.

NRC July 23, 1980 Tr. at 7. The Commission thereafter adopted the current language of section 50.47(c)(1) which does not exempt a utility from the requirements of sections 50.33(g) and 50.47(a) mandating local governmental plans.

Thus, it is clear that when the Commission declared, upon adopting its emergency planning rules, that section 50.47(b)(1) was consistent with section 109 (45 Fed. Reg. at 55,403), it

---

11/ It is clearly this freedom for the Commission to adopt a more stringent regulation than called for under the minimum requirements of section 109 that the Shoreham Opponents Coalition and the North Shore Committee refer to when describing section 109 as "permissive." Memorandum of Shoreham Opponents Coalition and North Shore Committee In Support Of Suffolk County's Motion To Terminate The Shoreham Operating License Proceeding at 6, dated March 18, 1983.

was not saying that the two provisions were identical in scope. Rather, the Commission took cognizance of its ability under section 109 to enact a regulation more stringent than the "minimum requirements" of section 109. The exercise of its authority to adopt more stringent language was therefore not inconsistent with section 109.

F. Further Proceedings

Finally, LILCO urges that if the Board decides the legal issues in LILCO's favor, or if it certifies the issues to the Commission, litigation of issues related to offsite emergency planning should proceed immediately. LILCO Br. at 109-111. The Staff appears to agree. Staff Br. at 23. In light of its Motion To Terminate, the County naturally opposes any further proceedings in this case. Furthermore, it is at a loss to understand what factual issues could be litigated in such a hearing, nor has LILCO proposed any specifics. The only guidance offered by LILCO is that litigation should go forward on "the LILCO offsite plan." LILCO Br. at 110. But the overriding fact is that the County will not implement LILCO's plan and thus that "plan" cannot possibly satisfy any of the substantive requirements of Section 50.47. The Commissions regulations require preparedness, not pieces of paper having no substantive effect. By the same token, LILCO's proposal that the "plan" be litigated separately from its implementation (LILCO Br. at 111-112) is pure fantasy and an attempt to avoid the inevitable fact that its plan will never be implemented.

Finally, LILCO's proposal that the intervenors go forward first with contentions and testimony is unrealistic. The County cannot determine from LILCO's brief what facts about LILCO's plan could possibly be worth litigating since the County will never implement the plan. It is LILCO that is demanding the right to be heard and, in that position, it should have the burden of going forward. This is true, if for no other reason than to require LILCO to demonstrate that there are facts to be litigated, a point it has so far failed to show.

III. Response To Irrelevant And Erroneous Assertions Made By LILCO

In two instances, LILCO has made lengthy arguments which, though irrelevant to the legal issues before this Board, misrepresent the facts and wrongly attack the capability and integrity of the Suffolk County government. The County is compelled to offer these brief comments in response.12/

A constant theme running through LILCO's brief is the unfitting allegation that the County Legislature lacked the knowledge and integrity to render a fair decision on whether to adopt an emergency response plan. LILCO Br. at 40-58. Coupled with that are improper suggestions that the County's decision not to implement a radiological emergency response plan was predicated upon reasons other than its duty to protect the public health and safety. LILCO Br. at 8, 82.

12/ This is not to say that the County agrees with the other facts asserted in LILCO's brief.

Such attacks have no place in this proceeding, which is a forum for the purpose of determining only whether Shoreham can be licensed under NRC regulations. By now, everyone knows that LILCO does not like the County's decision on emergency planning. If LILCO objects to the decision of the government of Suffolk County, LILCO has two choices: (1) it can seek to change the New York State Constitution and Municipal Home Rule Law, which bind the County Executive and Legislature to protect the health, safety, and welfare of Suffolk County's citizens; or (2) it can make its views known at the ballot-box.

The fact is that the government of Suffolk County made a decision following careful and thorough consideration of emergency planning studies, analyses, and surveys and extensive public hearings. This Licensing Board has not been convened to overturn the County government's decision. Any such inquiry would be improper and beyond the jurisdiction of the NRC. Therefore, those portions of LILCO's brief which resort to attacks on the County government and its Legislature should be disregarded as improper and irrelevant to this proceeding.

Second, according to LILCO, "the record" supposedly shows that for twelve years "the County agreed that emergency planning was possible for Shoreham." LILCO Br. at 20-21. LILCO's brief proceeds to devote more than 20 pages to painting a picture of seemingly unbroken harmony between the County and LILCO in the mutual development of offsite emergency planning

for Shoreham, only to be abruptly terminated by the County in early 1982. In so doing, LILCO has grossly distorted the facts which are indeed in the true record.

Suffolk County petitioned to intervene in the Shoreham licensing proceeding in 1977,13/ and the Licensing Board permitted the County to intervene over LILCO's opposition. The County subsequently filed an Amended Petition to Intervene on September 16, 1977 which contained three separate contentions relating to the adequacy and feasibility of emergency planning for Shoreham.14/ County of Suffolk's Amended Petition To Intervene at 19-21 (Sept. 16, 1977).

13/ The County's petition was accompanied by the affidavit of a County representative, who pointed out:

> [T]he radiological dosage incurred by the Shoreham population in the event of an accident may pose an unacceptable risk if the evacuation procedure proves infeasible or would take longer to carry out than expected. . . .

Affidavit of Floyd Linton at 23 (Mar. 17, 1977).

14/ County Contention 16a stated:

> Intervenors contend that the Applicant and Regulatory Staff have not prepared and assessed an adequate evacuation plan for Shoreham . . . with regard to the timing and feasibility of evacuation including, but not limited to, consideration of road networks, water barriers, weather conditions, and population density.

Likewise County contention 17(a)(iii) asserted that LILCO and the Staff failed to review the Shoreham site for compliance with NRC regulations regarding the "[f]easibility of implementing an evacuation plan for plant employees and the public."

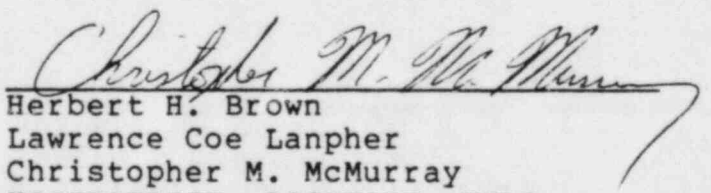
It is true that the County nevertheless made efforts and even assigned personnel to the task of developing a local government plan for Shoreham. However, those efforts should not be mischaracterized, as LILCO seeks to do, by implying that the County thereby embraced without reservation the feasibility of offsite emergency planning for Shoreham. Rather, it is clear from the record that the County had grave concerns about the feasibility of planning for an emergency at Shoreham well in advance of 1982 and that LILCO was on notice of those concerns as early as 1977.

IV. Conclusion

For the foregoing reasons, Suffolk County submits that LILCO and the Staff have presented no persuasive arguments against the County's Motion To Terminate and requests the NRC to grant the County's Motion. Furthermore, for the reasons stated in the County's Supplemental Brief, this matter should be certified to the Commission for expedited consideration.

Respectfully submitted,
David J. Gilmartin
Patricia A. Dempsey
Suffolk County Department of Law
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

March 29, 1983



Herbert H. Brown
Lawrence Coe Lanpher
Christopher M. McMurray
KIRKPATRICK, LOCKHART, HILL,
CHRISTOPHER & PHILLIPS
1900 M Street, NW
Washington, DC 20036

Attorneys for Suffolk County