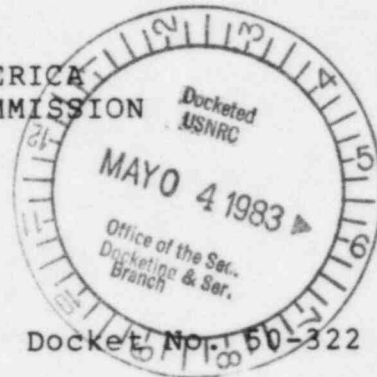


BEFORE THE
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



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

Docket No. 50-322 O.L.

MOTION OF SUFFOLK COUNTY FOR EXPEDITIOUS COMMISSION
RULING ON ISSUES TRANSFERRED FROM THE APPEAL PANEL

I. Introduction

The Commission has before it the decision of the Shoreham Licensing Board (LBP-83-22) that (1) denies Suffolk County's Motion to Terminate the Shoreham operating license proceeding, and (2) orders the participants in this proceeding to litigate the adequacy of an offsite emergency preparedness plan now being developed by the Long Island Lighting Company ("LILCO") without the participation of Suffolk County. For the reasons set forth below, Suffolk County requests that the Commission expeditiously review the decision of the Licensing Board and stay, or otherwise suspend, the Board's ruling during the interim.

By letter dated February 23, 1983, the Suffolk County Executive informed the Commission of the need for prompt action on the County's Motion to Terminate the Shoreham proceeding.

See Attachment A. Events of the past two months have

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underscored that need. In particular, uncertainty over how the Commission will finally rule on the County's Motion continues to complicate the County's efforts at the State level to resolve the economic issues related to Shoreham not going on line. Moreover, the Commission's delay in terminating this proceeding and bringing construction at Shoreham to a halt will permit millions of dollars in further construction expenditures which, if the Commission agrees with the County's legal position, are unnecessary.

Suffolk County's Motion to Terminate is a threshold issue which pervades all aspects of this proceeding. The Licensing Board's decision requires the parties to engage in an unprecedented, large-scale fact-finding hearing to examine the alleged adequacy of a proposed LILCO offsite emergency plan -- a plan which Suffolk County will neither adopt nor implement. On the other hand, if the Commission were to agree with Suffolk County's legal position that a Suffolk County governmental plan is a legal prerequisite to an operating license for Shoreham, no such hearing would be necessary. Therefore, it is important that the parties not be required to undertake preparation for a hearing unless the Commission itself determines that such is required by its emergency planning regulations.

Suffolk County submits that the Licensing Board misapplied the Commission's regulations and misconstrued the meaning of

Section 5 of the NRC Authorization Act. The Commission's emergency planning regulations require the existence of both State and local governmental plans in order for an operating license to be issued. The regulations embody the Commission's exercise of authority under Section 5 of the Authorization Act and permit a utility to propose its own compensating measures only where there are inadequacies in the existing State and local governmental plans. Here, however, there are no existing State and local governmental plans for Shoreham. Therefore, Shoreham is not eligible for an operating license, and this proceeding should be terminated.

II. Procedural Background

On February 17, 1983, following a year-long, extensive \$600,000 effort to develop a local offsite radiological emergency response plan ("RERP") for the Shoreham Nuclear Power Station, the Suffolk County Legislature adopted Resolution No. 111-1983 (Attachment B), which resolved that Suffolk County (the "County") would not adopt or implement a RERP. The Legislature's conclusion was based on its finding that the local conditions existing on Long Island create insurmountable obstacles for timely evacuation and also make it impossible to put into place a workable RERP. Consequently, on February 23, 1983, the County moved the Atomic Safety and Licensing Board to terminate the Shoreham operating license proceeding, citing the

absence of a local governmental RERP for Shoreham as required by 10 C.F.R. Sections 50.33(g) and 50.47(a).

The Licensing Board denied the County's motion by Order issued on April 20, 1983 (LBP-83-22), holding that the absence of a county RERP for Shoreham does not, as a matter of law, require denial of an operating license to LILCO. In addition, the Order set forth a schedule for submission of contentions and further proceedings on offsite emergency preparedness. 1/ LBP-83-22, at 60-65. The further ASLB emergency planning proceeding will focus on an offsite plan, presently under

1/ The schedule established by the Licensing Board allows only three weeks of review of LILCO's plan by the County before the County must file draft contentions, with final contentions due two weeks thereafter. The Licensing Board set this schedule despite the fact that LILCO has not yet released its offsite plan. Therefore, neither the Board nor the parties (other than LILCO) have knowledge of the scope and extent of the legal and factual review that the County will need to perform to become thoroughly familiar with LILCO's plan and to be in a position to file contentions.

LILCO's counsel has orally informed counsel for Suffolk County that LILCO's revised plan will contain a number of "alternative means" of implementation. In addition, counsel for LILCO informed the Licensing Board by letter of April 29, 1983, that the release of its revised plan would be delayed to mid-May due to "the size of the task." In light of these facts, the County moved the Licensing Board on May 2, 1983, for a revision of the three week time limitation and, instead, that the parties be directed to meet two weeks after receipt of LILCO's plan for the purpose of reaching agreement on a schedule for the submission of contentions. See Suffolk County Motion For Revision of Schedule (May 2, 1983), (Attachment C).

development by LILCO, which does not rely upon Suffolk County for implementation.^{2/}

Concluding that the public interest would be best served by interlocutory review of the legal issues raised by the County's Motion To Terminate (LBP-83-22, at 2), the Licensing Board also issued LBP-83-21, referring its ruling to the Atomic Safety and Licensing Appeal Board.^{3/} LBP-83-21 further certified to the Commission (through the Appeal Board) the separate question of whether the low power provisions of the Commission's regulations (10 C.F.R. Section 50.47(d)) should be applied in the present circumstances where the Licensing Board cannot find reasonable assurance that the emergency preparedness requirements for Shoreham can and will be met in the future.

LBP-83-21, at 12.

On April 26, 1983, the Licensing Board forwarded to the parties excerpts from prepared testimony (dated April 14, 1983) offered by Chairman Palladino at a hearing before the Senate Subcommittee on Nuclear Regulation on April 15, 1983. One of

^{2/} Suffolk County has requested LILCO's counsel to inform the County as to what entities, governmental or otherwise, will implement its plan, but LILCO's counsel has declined to provide such information. See Attachment C.

^{3/} Memorandum And Order Referring Denial Of Suffolk County's Motion To Terminate To The Appeal Board And Certifying Low-Power License Questions To The Commission (Through The Appeal Board), LBP-83-21 (April 20, 1983).

the excerpts was the Commission's response to a multi-part question (Questions 7a-e) posed to the Commission by the sub-committee staff in advance of the April 15 hearing. The Licensing Board served the Commission's responses to Questions 7a-e on the parties:

because we believe they contain the views of the Commissioners on the merits of some of the legal issues which were decided by us in our "Memorandum and Order Denying Suffolk County's Motion to Terminate the Shoreham Operating License Proceeding", LBP-83-22, issued on April 20, 1983.^{4/}

Judge Rosenthal of the Appeal Panel also issued an Order on April 26, 1983, that referred to the Commission's written response to Questions 7a-e and stated that:

no good reason exists for the expenditure of appeal board time and resources in the examination of issues that have previously received both Commission attention and a response now a matter of public record.

Appeal Panel Order, at 3. Accordingly, the Appeal Panel transferred to the full Commission the Licensing Board's referral of the issues raised by the County's Motion To Terminate.^{5/}

^{4/} ASLB Memorandum Serving Excerpts From Commission Testimony Before Congress, at 1-2 (April 26 1983).

^{5/} The Appeal Panel also transferred to the Commission the low power issue certified by the Licensing Board in its Referral Order of April 20, 1983.

III. Discussion

Contrary to the implication of the Appeal Panel's Order, the Commission's responses to Questions 7a-e are not dispositive of the issues of law raised by the County's Motion to Terminate. Indeed, in Chairman Palladino's testimony before the Senate Subcommittee, the Chairman expressly declined to apply the Commission's responses to the facts of the Shoreham case.

We have completed the responses to your questions and have delivered them for inclusion in the record. We will be pleased to answer any question you may have. However, I should point out that in referring to specific cases, such as Shoreham, TMI-1 restart, Zimmer, Seabrook, etc., we are dealing with matters that are in litigation before the Commission. Hence, we should not be discussing the details of these cases because the Commission will ultimately be called on to judge the issues on the merits, and should not be subject to the charge of have prejudged the merits of the cases. (Emphasis added)

Commission review of the specific issues raised by the County in the instant case is appropriate and necessary at this time. As the Licensing Board recognized, the County's Motion to Terminate has raised fundamental and unprecedented questions regarding interpretation of the Commission's emergency planning regulations. LBP-83-21 at 6. The Commission itself is best suited to resolve those questions. Furthermore, the County's Motion To Terminate raises serious questions about the efficacy of further NRC proceedings and, indeed, the future of the Shoreham plant. Therefore, Commission review of the issues now

before it would remove much of the uncertainty facing the parties and the public over Shoreham's future, and would avoid wasteful litigation if the County's legal position prevails.

The County urges the Commission to call for briefing by the parties of the issues referred to the Commission. In particular, the County seeks to address the following errors made by the Licensing Board in its April 20 Order which denied the County's Motion to Terminate:

1. The Licensing Board denied the County's Motion to Terminate in part based upon its finding that the County's decision not to adopt or implement a RERP constituted "an impermissible regulation by the County of radiological health and safety in violation of the preemptive federal authority over such matters. . . ." LBP-83-22, at 49; see generally id. at 43-59. The Board's ruling, however, proceeds from a mischaracterization of what Suffolk County did. When characterized properly and in accordance with fact, the County's action is lawful and raises no preemption issue at all.

Federal law does not require Suffolk County to adopt or implement a RERP. By determining through County Resolution No. 111-1983 that it would not adopt or implement a plan, the County did what it clearly had a right-- and duty -- to do. For example, since timely evacuation is not possible, the County government's only responsible choice was to tell that fact to

its citizens. In short, the County government decided not to mislead its citizens into believing they can be evacuated when they really cannot. Surely, such action is not preempted conduct, and indeed does not even raise the preemption issue. The Board, however, finds that "it is difficult to imagine a clearer attempt" at preempted conduct. LBP-83-22, at 48.

County Resolution No. 111-1983 governs only the conduct of the County itself -- i.e., the County will not adopt or implement a RERP. Nowhere does Resolution No. 111-1983 impose obligations or restrictions on LILCO. Nor has the County attempted to bind the NRC to accept the factual findings of Resolution No. 111-1983. Indeed, the County explicitly noted in its Reply Brief to the Licensing Board that the NRC is not bound by the County's findings.^{6/} The only fact binding on all parties is that the County will not adopt or implement a local RERP -- a decision which the County clearly has the right to make.

The Board has reacted to the County's position on this matter with the improper characterization that the County's position is "sophistic" and "disingenuous." LBP-83-22, at 46-47. In support, the Board has cited a long list of irrelevant cases where states and local governments have been precluded from

^{6/} 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, at 3 (March 29, 1983).

regulating the conduct of industries or other entities in areas in which the federal government has preemptive authority. LBP-83-22, at 49-54. In the present case, however, Suffolk County has only determined that it will not adopt or implement a RERP. Consequently, the County is merely asking the NRC to recognize the fact that there is no County plan and to apply the NRC's own regulations regarding the issuance of an operating license. If the NRC's regulations are applied in light of the undisputed fact that the County will not adopt or implement any RERP, the operating license sought by LILCO must be denied.^{7/}

2. The Licensing Board also concluded that the Commission's emergency planning regulations, in particular Section 50.47(c), were intended to codify the maximum extent possible the authority granted by Congress in Section 109 of the 1980 NRC Authorization Act. LBP-83-22, at 39. Section 109 granted the Commission authority to review a utility plan in

^{7/} The Licensing Board also makes much of its perception of the County Legislature's intent to "preclude implementation of any plan, presumably even one which might otherwise be found by the NRC to satisfy the applicable NRC regulations." LBP-83-22, at 56; see also id at 46-47. By doing so, however, the Licensing Board has wandered into an exploration of the subjective intent behind the County Legislature's actions, which the Supreme Court has stated is an inappropriate area for review. Pacific Gas & Electric Co. v. State Energy Resources Conservation And Development Commission, ____ U.S. ____, slip op. at 23 (1983).

the absence of a State or local government's RERP, for the purpose of determining whether there exists reasonable assurance of offsite emergency preparedness for a particular site. Thus, the Licensing Board held that the absence of a local governmental RERP does not act as a legal bar to the issuance of an operating license and concluded that LILCO is entitled under 10 C.F.R. Section 50.47(c) to a factual hearing to try to prove that its own plan can provide reasonable assurance of adequate protection to the public in the event of an accident at Shoreham. Again, the Licensing Board erred in its holding.

The NRC is required to follow its own regulations. The plain meaning of 10 C.F.R. Sections 50.33(g) and 50.47(a), and the administrative rulemaking record supporting those regulations, demonstrate that State and local governmental RERPs are a precondition to issuance of an operating license.^{8/} See

^{8/} The Licensing Board concluded that the Kemeny Commission Report, the Rogovin Report, House Report No. 96-413 and GAO Report, EMD-78-110 (for full citations see LBP-83-22, at 10) should not be relied upon in interpreting the Commission's emergency planning regulations:

[W]e can only speculate which concerns raised in these reports the Commission believed to be addressed by the proposed rules.

LBP-83-22, at 11. The Licensing Board's conclusion, however, is contradicted directly by the Statement of Considerations accompanying the Commission's proposed rules which stated that the "views [of the above reports] are included as part of the basis for these regulations." 44 Fed. Reg. 75167, 75169 (1979).

(Footnote cont'd next page)

County Supplemental Brief at 15-25.^{9/} Section 50.47(c) does not alter that requirement.

While considering 10 C.F.R. Section 50.47(c), the Commission was presented with an amendment proposed by the nuclear industry to adopt language which would track that of Section 109 of the 1980 Authorization Act and would implement to the maximum extent possible the authority granted by Congress to the NRC in that law. See County Supplemental Brief at 32-34. The Commission, however, explicitly rejected the industry's amendment and instead adopted the more restrictive language which is now embodied in 10 C.F.R. Section 50.47(c). This language clearly contemplates that a utility plan may be used only to compensate for deficiencies in an existing local

(Footnote cont'd from previous page)

Furthermore, the Commission's Statement of Consideration recognized specifically that the Kemeny Commission Report recommended approved State and local plans as a precondition to an operating license, concluding that:

This Commission's Report . . . [is] indicative of many of the problems which the NRC would address in this rule.

Id. Thus, the Licensing Board is clearly in error in stating that it can only speculate on which concerns raised by the above reports are addressed in the Commission's rules.

^{9/} 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).

RERP. If there is no local government RERP -- as is the case in Suffolk County -- then Section 50.47(c)(1) does not come into play. Significantly, the Board's Order does not deal with the Commission's rejection of the very language which the Board now claims represents the meaning of Section 50.47(c)(1).

Furthermore, during consideration of the final emergency planning rules, the NRC's General Counsel rejected the industry's assertion that Section 50.47(c), as it is now written, is inconsistent with Section 109 of the 1980 Authorization Act. The General Counsel correctly explained that Section 109 specified minimum requirements for emergency preparedness. He stated that if the Commission chose to do so, it was free to adopt more stringent requirements. The Commission did just that in Section 50.47(c)(1).

3. The County also wishes to correct the Licensing Board's misleading characterization of some facts which are contained in Appendix A to LBP-83-22. In the first paragraph of Appendix A, the Licensing Board states that:

Prior to its recent decision to neither approve nor implement an offsite radiological emergency response plan for Shoreham, Suffolk County for a number of years had either supported the construction of the Shoreham facility, or had at least indicated its willingness to participate in offsite emergency planning matters, while litigating various health and safety issues, including emergency planning, as an intervenor.

The fact is that for 13 years, the NRC and LILCO have been on notice that it might be impossible to evacuate the public if there were an accident at Shoreham. As early as 1970, an intervenor group -- the Lloyd Harbor Study Group -- contended that evacuation was not feasible. In 1977, when Suffolk County intervened, the County also questioned the feasibility of evacuation. Indeed, at that time the County offered three emergency planning contentions. County of Suffolk's Amended Petition To Intervene at 19-21 (September 16, 1977); see also, Affidavit of Floyd Linton at 23 (March 17, 1977).

Also, the Licensing Board felt compelled in LBP-83-22 to make findings of fact on matters not before it. For instance, the Licensing Board stated that:

It appears that the County's assumption of the necessity for evacuation planning for a 20-mile radius is based largely on its own ad hoc assessment of radiological risk.

LBP-83-22, at 45 n. 27. The manner in which the County developed its EPZ was not properly at issue before the Board and, therefore, was not briefed by the County. Had it been briefed, the Board would have learned that factors other than radiological effects provided substantial bases for the County's 20-mile EPZ.

Finally, the Board was incorrect in its assertion that the County's plan was developed independently of NRC guidelines. LBP-83-22, at 54. In fact, the County's plan explicitly tracks the 16 planning standards of NUREG 0654.

IV. Conclusion

For the foregoing reasons, The Commission should: (1) expeditiously review the Licensing Board's decision and the issues referred by the Appeal Panel; (2) establish an accelerated schedule for submission of the parties' briefs on these issues; and (3) stay, or otherwise suspend, further Licensing Board proceedings on the forthcoming LILCO plan pending such Commission review and resolution of the subject issues.

Respectfully submitted,

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Attorneys for Suffolk County

May 4, 1983.

COUNTY OF SUFFOLK



OFFICE OF THE COUNTY EXECUTIVE

PETER F. COHALAN
SUFFOLK COUNTY EXECUTIVE

February 23, 1983

JOHN C. GALLAGHER
CHIEF DEPUTY

Chairman Palladino
Commissioner Gilinsky
Commissioner Ahearne
Commissioner Roberts
Commissioner Asselstine
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairman and Commissioners:

This letter is to advise you of recent action by Suffolk County that requires termination of the Shoreham licensing proceeding. Our counsel has today filed a request for immediate certification of this question to the Commission. It is essential to bring the matter to a head quickly so that the public, the Long Island Lighting Company ("LILCO"), agencies of the State of New York, and the financial markets are not confronted with continuing uncertainty. Any delay in this matter by the Commission will not serve the public interest.

Last week, Suffolk County determined that it is impossible to prepare a local radiological emergency plan that would protect the public if a serious nuclear accident were to occur at the Shoreham plant. This determination follows nine months of extensive analyses, studies, and surveys by a team of nationally recognized experts retained at a cost to the County of nearly \$600,000, and weeks of public hearings and careful consideration by both the Legislative and Executive branches of the County's government.

Accordingly, Suffolk County has resolved not to adopt or implement a radiological emergency plan. In short, there can be no radiological emergency preparedness in Suffolk County. The County's action means to us that Shoreham will not operate. We have already accepted this as fact and are seeking to put the issue of Shoreham's operation behind us, so that just and equitable decisions can be reached before the State Public Service Commission on the cost and rate consequences of Shoreham not going on line.

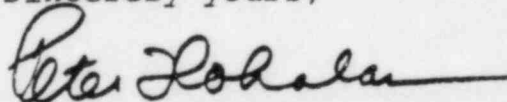
Nuclear Regulatory Commission
Chairman and Commissioners
Page 2
February 23, 1983

We would consider any further NRC licensing action to be an excess of promotionalism, at odds with both the Commission's mandate to be a neutral regulator and the exclusive right of our local government to plan and prepare for emergencies. It is a propitious coincidence that LILCO's construction permit for Shoreham expires on March 31, a timeframe we would hope is sufficient to bring the Shoreham proceeding to a conclusion.

The importance of the Commission swiftly taking personal charge of this matter cannot be overemphasized. The affected interests on Long Island and elsewhere require prompt and decisive NRC action. We trust that you will attend to this matter with fitting dispatch.

If you believe that a meeting of the Commissioners with Suffolk County officials to discuss this matter would hasten NRC action, I am prepared to meet in Washington or Long Island.

Sincerely yours,



PETER F. COHALAN
SUFFOLK COUNTY EXECUTIVE

Enclosures: Suffolk County Resolution 111-1983
Suffolk County Motion for Certification
Suffolk County Motion to Terminate Shoreham
Operating License Proceeding

cc: Suffolk County Legislature
Long Island Congressional Delegation
Long Island State Delegation
Licensing Board Members
NRC Service List
Public Service Commission

Intro. Res. No. 1196-83

Introduced by Legislators Wehrenberg, Caracappa, D'Andre, Geise, Allgrove, Bachet 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

Intro. Res. No. 157-85 Page 1
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

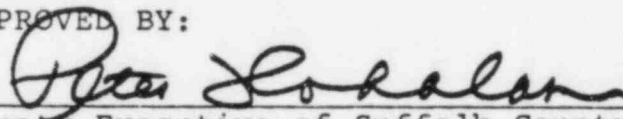
RESOLVED, that the document submitted by LILCO to the DPC without the County approval or authorization, if implemented, would not protect the health, welfare, and safety of Suffolk residents and thus will not be approved and will not be implemented; and be it further

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

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 O.L.

SUFFOLK COUNTY MOTION
FOR REVISION OF SCHEDULE

On April 20, 1983, this Board issued its Memorandum and Order Denying Suffolk County's Motion to Terminate the Shoreham Operating License Proceeding. (LBP-83-22). By a separate Memorandum and Order also dated April 20, 1983, portions of LBP-83-22 were referred to the Appeal Board and the low power issue addressed by the ASLB was certified to the Commission through the Appeal Board. See LBP-83-21. By Order dated April 26, 1983, the Appeal Board transferred these matters to the Commission for the latter's consideration.

This motion addresses only part III.A of LBP-83-22, which establishes a schedule for filing of contentions in future emergency planning proceedings before the Board.^{*/} There (at pp. 60-65) this Board ruled, inter alia, that the County

^{*/} Any filings by the County concerning substantive rulings in LBP-83-21 or -22 will be addressed to the Commission.

and other intervenors must submit initial emergency planning contentions three weeks after receipt of the LILCO revised offsite radiological emergency plan ("LILCO Revised Plan"). For the reasons set forth herein, the County respectfully moves: (1) that the Board delete the three-week time limitation for the filing of contentions; and (2) that, in place of such three week limitation, the Board order that within two weeks after receipt of the LILCO Revised Plan, the parties meet to attempt to reach agreement on the time period for submission of initial contentions. Failing agreement of the parties, the Board, after consideration of the parties' views, would establish a schedule for submission of contentions.

In conversations with LILCO's counsel, the County was told that the document which LILCO submitted to the New York State Disaster Preparedness Commission as the purported Suffolk County radiological emergency response plan (and which was provided to the ASLB in February 1983) will constitute the basic LILCO scheme for offsite planning in Suffolk County. LILCO's counsel has informed the County that LILCO intends to prepare an additional document or supplement in which a number of "alternative means" to implement the LILCO Revised Plan will be proposed, since Suffolk County will not adopt or implement an offsite emergency plan.

LILCO's counsel has previously informed the Board that "other governmental entities" will be substituted

for the County to implement the LILCO Revised Plan (Tr. 20,990). However, LILCO's counsel recently informed the County that LILCO may also use non-governmental entities to implement the plan. LILCO's counsel has declined to identify for the County the individuals and/or entities which LILCO will propose to implement its Revised Plan. A letter to LILCO's counsel setting forth our understanding of their representations is attached hereto.

A key issue in the forthcoming proceeding will be the ability and legal authority of various entities (still unidentified) to implement the LILCO Revised Plan. Indeed, the Board has already stated that contentions questioning the ability to implement specific portions of the LILCO Revised Plan are within the scope of Phase II. (LBP-83-22, at 62-63). However, until LILCO's "alternative means" for implementation are reviewed, those contentions cannot be framed.

The fact that there will be a number of schemes proposed by LILCO to implement its Revised Plan will make the County's review more involved and time consuming. Moreover, any proposals in the LILCO Revised Plan for implementation by various private, quasi-governmental or governmental entities within the sphere of jurisdiction of the County government will raise legal issues under State, local, and federal law that may require lengthy analysis and research. At a minimum, any such proposals will require consultations with law enforcement officials at the County level, and perhaps other levels of government, as well as factual, legal, and policy determinations by governmental authorities in Suffolk County.

For the County, therefore, the review of LILCO's plan will be neither a simple nor casual matter, and the County must have sufficient time to assess the full implications of LILCO's unprecedented implementation schemes on the laws, policies, and programs of the County government and the welfare of its citizens.

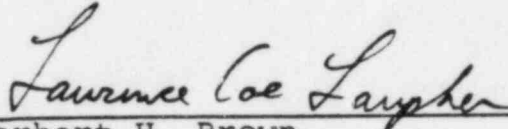
In short, under the Board's Order, the County will be required to analyze the technical feasibility and legal validity of a variety of proposals for implementation of the LILCO Revised Plan and to prepare draft contentions, all within three weeks. We submit that this short time limit places an unfair, and unmanageable burden upon Suffolk County to deal with complex and unprecedented proposals for implementation of LILCO's version of an offsite emergency plan without participation by the local government. The other intervenors may also have difficulties in complying with the Board's three week limitation, and it would seem appropriate for their views to be considered by the Board. At a minimum, the Board, the County and other parties should have an opportunity to review the LILCO Revised Plan before any schedule for submission of contentions is established.*/
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*/
_ By letter from LILCO counsel dated April 29, 1983, the Board and parties were informed that the LILCO Revised Plan will not be available until the week of May 16. This delay from early May was occasioned by "the size of the task." The County can understand such delay, since the task confronting LILCO involves the unprecedented attempt to prepare an emergency preparedness implementation program without the involvement of County resources. For the County, the size of the task of reviewing and analyzing LILCO's proposal will also be large, and the County requests that this be considered by the Board.

The County requests, therefore, that the three week time limitation for submission of contentions be deleted and, instead, that the parties be directed, after receipt of the LILCO Revised Plan, to meet within two weeks for the purpose of reaching agreement on a schedule for the submission of contentions. Failing agreement of the parties, the Board would receive the parties' views and make a determination of the matter.

Respectfully submitted,

David J. Gilmartin
Patricia A. Dempsey
Suffolk County Department of Law
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Hauppauge, New York 11788



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Attorneys for Suffolk County

May 2, 1983

KIRKPATRICK, LOCKHART, HILL, CHRISTOPHER & PHILLIPS

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

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April 29, 1983

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James N. Christman, Esq.
Hunton & Williams
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Dear Jim:

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

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

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

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

James N. Christman, Esq.

April 29, 1983

Page Two

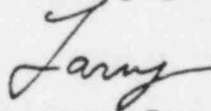
any governmental entity which LILCO will suggest for implementing the LILCO plan. You indicated that such identification will not be provided before LILCO files the plan. Further, you indicated that in addition to governmental entities, there may also be other entities involved in implementation of the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

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

Thank you for the foregoing information.

Best regards.

Sincerely yours,

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

Lawrence Coe Lanpher

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

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Motion Of Suffolk County For Expeditious Commission Ruling On Issues Transferred From The Appeal Panel" were sent on May 4, 1983 by first class mail, except where otherwise noted, to the following:

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Washington, DC 20036

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Nuclear Regulatory Commission
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Lawrence Brenner, Esq.*
Administrative Judge
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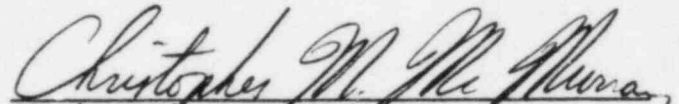
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May 4, 1983