

DOCKETED  
USNRCUNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSIONBefore the Atomic Safety and Licensing Board <sup>'83 SEP 12 P1:16</sup>OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of )

LONG ISLAND LIGHTING COMPANY )

(Shoreham Nuclear Power Station,  
Unit 1) )Docket No. 50-322-OL-3  
(Emergency Planning)SUFFOLK COUNTY MOTION FOR A PROTECTIVE ORDER

LILCO has noticed the deposition of Mr. Frank Jones, Deputy Suffolk County Executive, and Dr. Lee Koppelman, Director of the County Planning Department. Neither person has been identified by the County as a prospective witness. Nevertheless, LILCO desires to depose Mr. Jones and Dr. Koppelman on six subjects:

- (1) the aspects of radiological emergency response planning at Shoreham that led the [Suffolk County] Steering Committee to the conclusion that it was infeasible,
- (2) the bases on which the Steering Committee reached that conclusion,
- (3) [Dr. Koppelman's/Mr. Jones'] views on the feasibility of radiological emergency response planning at Shoreham,

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- (4) [Dr. Koppelman's/Mr. Jones'] views on the role of the Suffolk County government in the event of a radiological emergency at Shoreham assuming that the LILCO Transition Plan is in effect,
- (5) Suffolk County's emergency planning for nonradiological emergencies, e.g., hurricanes, blizzards, and
- (6) Suffolk County's emergency planning for radiological emergencies at other nuclear facilities, e.g., Brookhaven National Laboratory, Northeast Utilities' Millstone Station.<sup>1/</sup>

For reasons discussed below, Suffolk County submits that these areas of inquiry are not relevant to the emergency planning proceeding. Accordingly, Suffolk County requests this Board to issue a protective order barring the depositions. To put the instant motion in perspective, some background data are set forth.

#### Background

Prior to March 1982, several County employees in the County Planning Department worked on a draft Suffolk County emergency plan. In early 1982, the County found the ongoing emergency planning work to be inadequate, and in March 1982 discarded the work to date. In place of that, the County embarked on a new greatly upgraded planning effort through a team of nationally recognized experts.

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<sup>1/</sup> See Notices of Deposition, dated August 25, 1983.

The discarded emergency planning work was subsequently revised and completed by LILCO over County objections, and was called the "LILCO-County plan" in LILCO's May 26, 1983, Memorandum of Service of Supplemental Emergency Planning Information. By Order Limiting Scope of Submissions, dated June 10, 1983, this Board ruled that the LILCO-County plan was not to be litigated in this proceeding unless the County first agreed to implement that Plan.

The post-March 1982 County planning effort was directed by the Suffolk County Radiological Emergency Response Plan Steering Committee. Mr. Jones and Dr. Koppelman (as well as other persons) were members of the Steering Committee. The County's consultants produced a draft County plan in December 1982. The County Legislature considered the draft plan during eight days of hearings in January 1983 and rejected it in February 1983.

In Resolutions 456-1982 and 111-1983,<sup>2/</sup> the Suffolk County Legislature resolved the following:

-- In Resolution 456-1982, the Legislature resolved that no County personnel or resources would be used to test or implement any emergency response plan for Shoreham unless the plan had first been approved by the County Legislature; and

-- In Resolution 111-1983, the Legislature resolved not to approve or implement any emergency response plan for Shoreham. The Legislature also terminated the County's planning process for Shoreham.

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2/ Copies of Resolutions 456-1982 and 111-1983 are attached hereto.

These resolutions constitute County law: the County will not train for or respond to a Shoreham emergency. That law is binding conclusively upon the County and its employees.

Discussion

With the foregoing background in mind, the County next demonstrates that LILCO's proposed depositions should be barred.

(1) Steering Committee Process. In items 1 and 2 of the deposition notice, LILCO proposes to inquire into those "aspects of radiological emergency response planning at Shoreham that led the Steering Committee to the conclusion that it was infeasible" and "the bases on which the Steering Committee reached that conclusion."<sup>3/</sup> Therefore, the clear thrust of this inquiry is to inquire into the County's own planning process prior to the February 1983 decision of the Legislature to reject the County's draft plan.

The focus of the instant emergency planning proceeding is not on the County's planning process or the County's decision not to adopt a plan. Rather, the sole focus is whether the LILCO Transition Plan meets the NRC's emergency planning requirements. Thus, just as the Board ruled that it would "not entertain certain contentions premised solely on the absence of a Suffolk County approved plan,"<sup>4/</sup> and just as the Board in

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<sup>3/</sup> To correct a factual misstatement in the Deposition Notices, the Steering Committee did not say emergency planning was "infeasible." The Committee oversaw preparation by the County's consultants of a draft plan, and the Legislature then rejected that plan in Resolution 111-1983.

<sup>4/</sup> Memorandum and Order Denying Suffolk County's Motion to Terminate the Shoreham Operating License Proceeding, p. 62, April 20, 1983.



June 1983 barred litigation of the LILCO-County plan, the Board also should now rule that the factors or bases which led the County to reject its own plan are also not relevant here. Put simply, the County's decision-making process is not on trial before the NRC. Thus, this Board should issue a protective order barring inquiry into that process.<sup>5/</sup>

(2) Views on Feasibility. LILCO next proposes to inquire into the views of Mr. Jones and Dr. Koppelman regarding "the feasibility of radiological emergency response planning at Shoreham." This inquiry again is not relevant. The central issue is whether the LILCO plan meets regulatory requirements, including LILCO's capability to implement the plan. The "feasibility" of planning in Suffolk County as some sort of abstract matter is not relevant.

(3) County Response. LILCO also proposes to obtain the views of Mr. Jones and Dr. Koppelman regarding "the role of the Suffolk County government in the event of a radiological emergency at Shoreham assuming that the LILCO Transition Plan is in effect." The law (Resolutions 456-1982 and 111-1983) presently is clear that the County will not respond to a Shoreham emergency, and that law is conclusive. There is no factual dispute on that issue.

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<sup>5/</sup> The County does not object to LILCO inquiry into substantive emergency planning matters which are at issue in the immediate proceeding and were considered in the County's planning effort. Such issues include the evacuation shadow phenomenon and role conflict problems. The proper inquiry, however, is how these matters may affect the LILCO Transition Plan. LILCO, however, wishes to inquire into these matters within the context of the County planning effort -- something which is not an issue in this proceeding.

(4) County Planning for Nonradiological Emergencies.

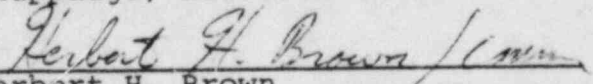
LILCO next proposes to inquire about County "emergency planning for nonradiological emergencies, e.g., hurricanes, blizzards." First, nonradiological emergencies have no relevance to this proceeding. More important, however, the County planning for such emergencies clearly is irrelevant. This proceeding concerns LILCO's planning, not the County's.

(5) County Planning for Other Nuclear Facilities. Finally, LILCO proposes to depose Mr. Jones and Dr. Koppelman concerning "Suffolk County's planning for radiological emergencies at other nuclear facilities, e.g., Brookhaven National Laboratory, Northeast Utilities' Millstone Station." Again, the County's planning processes are not at issue here. Indeed, if LILCO thinks the County's processes are relevant, it had an obligation to submit contentions thereon.

For the foregoing reasons, Suffolk County respectfully urges that the Board issue a protective order barring the proposed depositions of Dr. Koppelman and Mr. Jones.

Respectfully submitted,

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August 29, 1983

Attorneys for Suffolk County

Intro. Res. o. 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 of 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 Holm*  
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.

*William H. Rogers*  
Clerk of the County Legislature



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

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

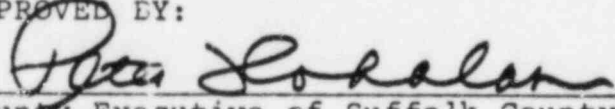
RESOLVED, that the document submitted by LILCO to the DPC without the County approval or authorization, if implemented, would not protect the health, welfare, and safety of Suffolk residents and thus will not be approved and will not be implemented; and be it further

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

DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION SEP 12 P1:16

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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In the Matter of )  
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LONG ISLAND LIGHTING COMPANY )

(Shoreham Nuclear Power Station, )  
Unit 1) )  
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Docket No. 50-322-OL-3  
(Emergency Planning)

CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY MOTION TO COMPEL DISCOVERY and SUFFOLK COUNTY MOTION FOR A PROTECTIVE ORDER, dated September 7, 1983, have been served to the following by U.S. mail, first class, except where noted, this 7th day of September 1983.

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*Dr. Jerry R. Kline Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Howard L. Blau, Esq. 217 Newbridge Road Hicksville, New York 11801
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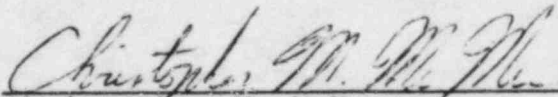
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DATED: September 7, 1983