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RELATED CORRESPONDENCE

HUNTON & WILLIAMS

707 EAST MAIN STREET

P.O. Box 1535

RICHMOND, VIRGINIA 23212

TELEPHONE 804-788-8200

TWX-710-956-0061

April 13, 1984

2000 PENNSYLVANIA AVENUE, N.W.
P. O. BOX 19230
WASHINGTON, D. C. 20036
TELEPHONE 202-955-1500

333 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071
TELEPHONE 213-617-3052
TELEX 754709

FIRST VIRGINIA BANK TOWER
P. O. BOX 3889
NORFOLK, VIRGINIA 23514
TELEPHONE 804-625-5501
TELEX 755628

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299 PARK AVENUE
NEW YORK, NEW YORK 10171
TELEPHONE 212-980-8200
TELEX 754708

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

FIRST TENNESSEE BANK BUILDING P. O. BOX 109
NORTH CAROLINA 27602
TELEPHONE 919-628-9371
FIRST TENNESSEE BANK BUILDING
P. O. BOX 981
KNOXVILLE, TENNESSEE 37901
TELEPHONE 615-637-4311

FILE NO.

DIRECT DIAL NO. 804-788-

James A. Laurenson, Chairman
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
East-West Tower, Rm. 402A
4350 East-West Highway
Bethesda, MD 20814

Dr. Jerry R. Kline
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
East-West Tower, Rm. 427
4350 East-West Highway
Bethesda, MD 20814

Mr. Frederick J. Shon
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
East-West Tower, Rm. 430
4350 East-West Highway
Bethesda, MD 20814

Gentlemen:

The purpose of this letter is to keep the Board apprised of developments in collateral litigation related to this proceeding.

As the Board knows, Suffolk County and Governor Cuomo filed almost identical suits against LILCO in New York State Supreme Court in Suffolk and Albany Counties on March 8, 1984. On April 6, LILCO removed them to the United States District Courts for the Eastern and Northern Districts of New York. A copy of LILCO's removal petition to the Eastern District is Enclosure 1 hereto; the petition filed in the Northern District is substantially identical.

In addition, as this Board may know, a separate suit has been pending in the United States District Court for the Eastern District of New York styled Citizens for an Orderly Energy

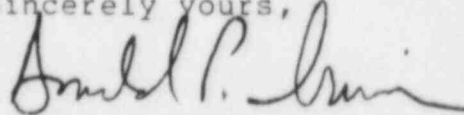
8404160226 840413
PDR ADOCK 05000322
PDR

DS03

HUNTON & WILLIAMS

Policy, et al.(COEP) v. County of Suffolk, et al., (CV-83-4966). The gist of the complaint in that suit is that Suffolk County's refusal to participate in emergency planning at Shoreham violates federal law. On April 3, 1984, LILCO moved to intervene in this suit and attached as an exhibit to its motion a complaint, also docketed separately in the event that intervention was not granted. Copies of that motion and complaint are Enclosures 2 and 3 hereto. Following a hearing on April 9, LILCO was granted leave to intervene in the COEP suit. A copy of the Court's April 11, 1984 Memorandum and Order granting intervention is Enclosure 4 hereto.

Sincerely yours,



Donald P. Irwin
One of Counsel for
Long Island Lighting Company

91/730

Enclosures: As Stated

cc w/Attachments: Attached Service List

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -	x	
COUNTY OF SUFFOLK,	:	
	:	
Plaintiff,	:	
	:	
v.	:	PETITION FOR REMOVAL
	:	
LONG ISLAND LIGHTING COMPANY,	:	
	:	
Defendant.	:	
- - - - -	x	

TO THE HONORABLE JUDGES
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF NEW YORK:

Defendant Long Island Lighting Company (LILCO), respectfully petitions this Court to remove the above styled action from the Supreme Court of the State of New York, County of Suffolk, to the United States District Court for the Eastern District of New York, and sets forth in support of its petition the following:

(1) On or about March 8, 1984 an action was commenced against LILCO in the Supreme Court of the State of New York, County of Suffolk, styled County of Suffolk, Plaintiff, v. Long Island Lighting Company, Defendant, by the service of a Summons and Complaint upon LILCO (copies of which are attached hereto as Exhibit "A").

(2) This Action is a civil action of which this Court has original jurisdiction under the provisions of 28 U.S.C.

§ 1331 and 1337 and is one which may be removed to this Court by defendants pursuant to the provisions of 28 U.S.C. § 1441(a) and (b), for reasons stated hereinafter.

(3) For the reasons stated more fully hereinafter, this Action arises under the Constitution and laws of the United States, and particularly the Supremacy Clause and the Fourteenth Amendment of the United States Constitution and the Atomic Energy Act, 42 U.S.C. § 2011 et seq. (the Act) and regulations adopted by the Nuclear Regulatory Commission (NRC) to implement the Act, in particular, 10 C.F.R. Part 50.

(4) The primary objectives of the plaintiff are (1) to thwart and frustrate the purposes of the Atomic Energy Act by refusing to perform allegedly essential governmental functions, which functions LILCO is entitled to have performed in accordance with LILCO's rights under the Constitution and laws of the United States, and which refusal is for the intended purpose of preventing the licensing of the LILCO Shoreham Nuclear Power Station (Shoreham), and (2) to insert into the federal statutory and regulatory provisions for the licensing of nuclear power plants, an additional level of potentially dispositive governmental scrutiny, which scrutiny was neither contemplated nor permitted by the federal statutory and regulatory framework. In short, Suffolk County, and presumably its various branches, departments and divisions, seeks to obtain

through this Action the right to exercise independent veto power over the licensing of nuclear power plants. Plaintiff seeks a declaration that it has the power to review independently, in accordance with criteria which it alone selects, the adequacy of emergency planning provisions for public health, safety and welfare, associated with the operation of nuclear power plants. This Action represents the latest in a line of attempts by Suffolk County to arrogate unto itself, by use of the judicial process, functions which have been preempted totally by federal law. (See e.g. County of Suffolk, et al. v. LILCO, et al. Docket No. 83-7122)(2d Cir. 1984).

(5) The Complaint acknowledges and alleges that LILCO is presently seeking an operating license for Shoreham from the NRC and that such license is required by federal law before LILCO will be allowed to operate Shoreham (Complaint ¶s 4 and 5).

(6) The Complaint acknowledges and alleges that for purposes of protecting the health and safety of persons in the area of Shoreham, the NRC requires that LILCO submit a radiological emergency response plan (RERP) to the NRC for approval by the NRC (Complaint ¶s 6 and 7).

(7) The Complaint acknowledges and alleges that the Suffolk County legislature has undertaken to substitute its judgment for that of the NRC in determining whether "any...RERP

for a Shoreham accident...[would provide] adequate protection for the health, welfare and safety of Suffolk County residents and transients." (Complaint, ¶ 12). The United States Supreme Court has expressly rejected the contention that local governments may completely prohibit the construction of nuclear power plants until the safety concerns of the local governments are satisfied. Pacific Gas and Electric v. State Energy Resources Conservation and Development Commission, ____ U.S. ____, 103 Supreme Court 1713, 1726, Lawyers Edition ____ 1983).

(8) The Complaint alleges that because of the decision by Suffolk County that no RERP will adequately provide for the health, welfare and safety of Suffolk County residents, Suffolk County will, in the event of a radiological emergency at Shoreham, withhold from its citizenry the performance of public safety functions by Suffolk County employees, such as police. Thus, the County alleges that it will refuse to perform public safety functions; that LILCO is not empowered to perform public safety functions in connection with emergency planning for Shoreham; and that as a result Suffolk County will allegedly accomplish indirectly what it clearly could not legally accomplish directly, namely, the abandonment of the Shoreham Power Station because of the decisions by Suffolk County as to the health, welfare and safety considerations relating to the operation of the plant.

(9) The United States District Court for the Eastern District of New York embraces the County of Suffolk,

(10) LILCO files herewith a bond with good and sufficient security in the amount of \$500, in accordance with 28 U.S.C. Section 1441(d) and Civil Rule 3 of this Court, conditioned that LILCO will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that this action is not removable or improperly removed.

WHEREFORE, defendant Long Island Lighting Company requests that this Court grant this Petition, assume jurisdiction of this action, and remove this action pending in the Supreme Court of New York, County of Suffolk, therefrom to this Court for the reasons stated herein and to grant such other relief as the Court may deem just and proper.

Dated: Mineola, New York
April 5, 1984

LONG ISLAND LIGHTING COMPANY

By _____

Attorneys for Defendant
Long Island Lighting
Company

Of Counsel:

James E. Farnham
W. Taylor Reveley, III
K. Dennis Sisk
Lewis F. Powell, III
Hunton & Williams
P. O. Box 1535
Richmond, Virginia 23212

VERIFICATION

STATE OF NEW YORK)
 : ss.:
COUNTY OF NASSAU)

_____, being duly sworn, states:
that he is _____ of Long Island Lighting
Company, defendant in this action, and that the foregoing Peti-
tion for Removal is true to his own knowledge, except as to
matters therein stated on information and belief, and as to
those matters he believes them to be true.

Sworn before me this
____ day of April, 1984.

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of April, 1984,
a copy of the foregoing PETITION FOR REMOVAL was mailed, post-
age prepaid, to Martin Bradley Ashare, Esquire, H. Lee Dennison
Building, Veterans Memorial Highway, Hauppauge, New York
11788.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

COUNTY OF SUFFOLK,

Plaintiff,

v.

LONG ISLAND LIGHTING COMPANY,

Defendant.

SUMMONS

Index No.

2
11:30 AM
3/8/84
(Circuit Court)
Hester

To the above-named defendant:

You are hereby summoned and required to serve upon plaintiff's attorney, at his address stated below, an answer to the attached complaint.

If this summons was personally served upon you in the State of New York, the answer must be served within twenty days after such service of the summons, excluding the date of service. If the summons was not personally delivered to you within the State of New York, the answer must be served within thirty days after service of the summons is complete as provided by law.


If you do not serve an answer to the attached complaint within the applicable time limitation stated above, a judgment may be entered against you, by default, for the relief demanded in the complaint without further notice to you.

The action will be heard in the Supreme Court of the State of New York, in and for the County of Suffolk.

EXHIBIT A

This action is brought in the County of Suffolk because it is the residence of the plaintiff, which has its principal office to conduct business at the H. Lee Dennison Building, Veterans Memorial Highway, Hauppauge, New York 11788.

Dated: March 8, 1984


Martin Bradley Ashare, Esq.
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788
(516) 360-4049

SUPREME COURT OF THE STATE OF
NEW YORK
COUNTY OF SUFFOLK

_____)	
COUNTY OF SUFFOLK,)	
)	
Plaintiff,)	
)	
v.)	Complaint
)	Index No. _____
)	
LONG ISLAND LIGHTING COMPANY,)	
)	
Defendant.)	
_____)	

Plaintiff, by its attorneys Martin B. Ashare, Suffolk County Attorney, and Kirkpatrick, Lockhart, Hill, Christopher & Phillips, for its complaint against the defendant, alleges:

1. This is an action for a declaratory judgment filed pursuant to CPLR §3001. An actual controversy of a justiciable nature exists between the plaintiff and the defendant involving defendant's usurpation of the police power of Suffolk County and the State of New York in implementing a plan for responding to a nuclear accident or radiological emergency at the Shoreham Nuclear Power Station, which controversy may be determined by a judgment of this Court. Plaintiff asks this Court to declare that defendant's implementation of its plan is unlawful and illegal under the Constitution and laws of the State of New York.

2. Plaintiff COUNTY OF SUFFOLK is a municipal entity existing under and by virtue of the laws of the State of New York, having governmental jurisdiction over an area known as the County of Suffolk, consisting of approximately 920 square miles, with a population of approximately 1.3 million residents, and having its principal office to conduct business in Hauppauge, New York.

3. Defendant LONG ISLAND LIGHTING COMPANY (LILCO) is a gas and electric corporation organized and operating under the laws of the State of New York, engaged as a public utility in the business of providing gas and electric services in the Counties of Suffolk and Nassau, and in a portion of the borough of Queens, with its principal place of business located in Mineola, New York.

4. LILCO has nearly completed construction of the Shoreham Nuclear Power Station (Shoreham), an 820 megawatt nuclear-powered electric generating facility located in the County of Suffolk on the north shore of Long Island.

5. Before a utility is allowed to operate a nuclear power plant, it must obtain an operating license from the Nuclear Regulatory Commission (NRC). LILCO is presently seeking an operating license for Shoreham from the NRC.

6. The NRC may not issue an operating license unless it finds reasonable assurance that adequate measures can and will be taken to protect the public in the event of a nuclear accident or radiological emergency at the nuclear power plant. In the event of an accident or emergency posing an offsite radiological hazard or threat to public health and safety, protective measures will normally include evacuation and/or sheltering of persons within the plume exposure pathway emergency planning zone (EPZ) surrounding the nuclear power plant. This EPZ for Shoreham, as defined by LILCO, is an area approximately ten miles in radius from the Shoreham nuclear plant. The land portion of this ten-mile EPZ falls entirely within Suffolk County, with the remainder located to the north of the facility in Long Island Sound. Protective measures also include actions necessary to prevent radiological contamination or other harm resulting from ingestion of contaminated food, water or products of contaminated land, crops or animals located within the food ingestion pathway EPZ surrounding the nuclear plant. This EPZ for Shoreham is an area approximately fifty miles in radius from Shoreham.

7. In order to permit the NRC to find that adequate offsite emergency preparedness exists for a nuclear power plant, the NRC requires an applicant for an operating license

to submit to the NRC a radiological emergency response plan (RERP) which sets forth the measures that will be taken to protect the health and safety of persons within the plume exposure pathway and food ingestion pathway EPZs in the event of a nuclear accident or radiological emergency at the plant.

8. Upon information and belief, all offsite RERPs which have been submitted to the NRC involving nuclear power plants other than Shoreham have been RERPs which have been sanctioned, and would be implemented, by the governments of the states and/or localities within the EPZs surrounding the nuclear power plants. .

9. In the exercise of its police power under the Constitution and laws of the State of New York, the Suffolk County Legislature adopted Resolution No. 262-1982 in March 1982. That Resolution resolved to undertake to develop, at the County's own expense, an RERP that would provide the best possible protection for residents and transients in Suffolk County in the event of a nuclear accident at Shoreham. Resolution No. 262-1982 further provided that no offsite RERP could be submitted to the NRC by or on behalf of Suffolk County unless such RERP had been approved by the Suffolk County Legislature. A subsequent resolution, Resolution No. 456-1982, provided that

the County Legislature's review of a draft of the plan to be developed would include at least two public hearings in Suffolk County.

10. In April 1982, the Government of Suffolk County proceeded to assemble a team of nationally-recognized experts to develop the RERP for Suffolk County that had been mandated by Resolution No. 262-1982. The work of the experts took approximately eight months to complete and resulted in a draft County RERP and supporting analysis of approximately 775 pages. In December 1982, that draft RERP was presented to the Suffolk County Legislature for its review, as required by Resolution No. 262-1982.

11. Pursuant to Resolution No. 436-1982, eight days of public hearings on the draft County RERP were conducted by the Suffolk County Legislature during January 1983. In the course of these hearings, the County Legislature received testimony from numerous expert witnesses put forth by the County and LILCO, as well as testimony from hundreds of members of the public and concerned citizens groups which both favored and opposed the operation of Shoreham. In addition, the County Legislature travelled to Harrisburg, Pennsylvania in February 1983, to hear testimony from local public officials and

residents concerning the nuclear accident which had occurred in 1979 at the Three Mile Island Nuclear Plant and the emergency planning lessons learned in its aftermath.

12. When it had completed its review of the draft County RERP, the County Legislature determined in Resolution No. 111-1983 that it would not adopt or implement the draft RERP, or any other RERP for a Shoreham accident, because the local conditions existing on Long Island (including density of population, land configuration and the limited roadway network) would preclude any RERP, if implemented, from providing adequate protection for the health, welfare, and safety of Suffolk County residents and transients. Resolution No. 111-1983 recites that "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."

13. Upon information and belief, the Governor of the State of New York, after reviewing the results of a seven-month study of Shoreham prepared by a Commission which the Governor appointed for that purpose, has determined that no offsite REPP for Shoreham will be submitted to the NRC by or on behalf of the State of New York.

14. In the face of determinations by Suffolk County and the State of New York that no local or state RERP will be submitted to the NRC by or on behalf of the County and State, LILCO has developed and submitted to the NRC its own offsite RERP, referred to by LILCO as the "Transition Plan." LILCO's Transition Plan sets forth the means for implementing emergency measures in the ten-mile and fifty-mile EPZs.

15. The primary means for implementing the emergency measures called for in LILCO's Transition Plan is the creation by LILCO of an organization designated the "Local Emergency Response Organization" (LERO). LILCO has established LERO, and it is staffed by approximately 2,000 persons, most of whom are LILCO employees entirely under the control of LILCO. The senior management of LERO consists entirely of LILCO employees and, in one case, a paid LILCO consultant. The head of LERO is designated the "Director of Local Response," a position filled by one of LILCO's vice-presidents. No government official of Suffolk County or the State of New York is a member of LERO.

16. Suffolk County has determined that the County will not participate in implementing LILCO's Transition Plan. Upon information and belief, the Governor of the State of New York also has determined that the State of New York will not participate in implementing LILCO's Transition Plan.

17. In the event of a nuclear accident at Shoreham, LILCO's Transition Plan provides that LILCO, through its alter ego LERO, and without consent or approval by, or participation of, Suffolk County or the State of New York, will arrogate to itself functions purporting to protect the health, welfare and safety of residents and transients within Suffolk County. The offsite emergency response to the accident for a distance of fifty miles from that plant will, under LILCO's Transition Plan, be under the management, direction and control of LILCO. Those public safety functions which are possessed inherently by local and state government officials for exercise through the police power will, according to LILCO's Transition Plan, be possessed and exercised by LILCO employees. In the LILCO Transition Plan, among other things LILCO employees, and not any local or state government official, are designated (a) to decide what actions should be taken to protect the health, welfare, and safety of persons in the EPZs; (b) to determine whether and how more than one hundred thousand Suffolk County residents and transients within the ten-mile EPZ, and several hundred thousand persons beyond that who will respond to the emergency, should be evacuated; (c) to advise Suffolk County residents and transients, through announcements on the Emergency Broadcast System, press statements and press conferences,

what specific actions they should take to protect their health, welfare and safety; (d) to activate emergency sirens which LILCO has installed throughout the ten-mile EPZ to alert the public to the occurrence of a nuclear accident or radiological emergency; (e) to manage and direct the flow of traffic on roads within Suffolk County through various means including blocking lanes, altering roads to one-way flow, erecting barricades and installing road signs; (f) to control and direct the removal and displacement of more than one hundred thousand residents and transients from the ten-mile EPZ; and (g) to establish controls over drinking water, milk, food, crops and livestock in the fifty-mile EPZ, an effort which could affect millions of people.

18. LILCO has begun implementing its Transition Plan. In addition to creating LERO, it has assigned specific jobs in its LERO organization to specific LILCO employees at the senior management level and throughout the other working levels of the organization. Classroom training sessions for these employees have been held and drills have been conducted. Moreover, LILCO has entered into letters of intent or agreements with other private companies to provide buses and ambulances to be used to evacuate persons pursuant to LILCO's orders. LILCO has also entered into letters of intent or agreements with radio

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stations for the broadcasting of emergency messages from LILCO to the public over the Emergency Broadcast System.

19. LILCO has asserted that it has the necessary legal authority to implement its Transition Plan and "to effectively protect the safety and health of the public." LILCO Transition Plan, p. 1.4-1. LILCO further asserts:

[N]othing in New York State law prevents the utility from performing the necessary functions to protect the public. To the contrary, Article 2-B of New York State Executive Law, § 20.1.e, makes it the policy of the State that State and local plans, organization arrangements, and response capability "be the most effective that current circumstances and existing resources allow." Id.

20. Contrary to the foregoing LILCO assertions, LILCO's implementation of its Transition Plan is unlawful and illegal. Under the Constitution and laws of the State of New York, the police power is inherent in and can be possessed and exercised only by the State of New York itself or by a political subdivision of the State if there has been a proper delegation of authority from the State to such subdivision. New York State Constitution, Arts. III, IX (McKinney); Municipal Home Rule Law, §10; Executive Law, Art. 2-B (McKinney). The State of New York has delegated its police powers within the territorial limits of Suffolk County only to the Government of Suffolk

County and other governmental entities within the County. The State of New York has never delegated its police powers to LILCO.

21. An actual and justiciable controversy exists between the plaintiff and the defendant concerning the legality, under the Constitution and laws of the State of New York, of LILCO implementing its Transition Plan. A resolution of this dispute is necessary because LILCO is representing that it has authority under the laws of the State of New York to implement the Transition Plan -- an RERP which usurps the police power authority of the State of New York and Suffolk County -- and LILCO is implementing that Plan. LILCO's acts in implementing such an RERP have violated, are violating and will violate the Constitution and laws of the State of New York.

22. The Chairman of the Atomic Safety and Licensing Board of the NRC, which is presently conducting hearings on the LILCO Transition Plan, has stated on the record his belief that the question of the lawfulness of the Transition Plan under the Constitution and laws of the State of New York should be resolved by the courts of the State of New York.

23. Executive officials within the Federal Emergency Management Agency, which is reviewing the LILCO Transition Plan at

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the request of the NRC, have stated, in official correspondence to the NRC that it is essential that a determination be made as to whether LILCO has legal authority to assume management and control of the offsite emergency response to a nuclear accident at Shoreham under the laws of the State of New York.

24. The plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff prays that, pursuant to CPLR §3001, the Court enter a declaratory judgment that LILCO's implementation of its Transition Plan is unlawful and illegal under the Constitution and laws of the State of New York.

Yours & etc.

Martin B. Ashare
Suffolk County Department of Law
Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788
(516) 360-4049

Herbert H. Brown
Lawrence C. Lanpher
Gilbert C. Miller
Kirkpatrick, Lockhart, Hill,
Christopher & Phillips
1900 M Street, N.W.
Washington, D.C. 20036
(202) 452-7000

Attorneys for Plaintiff
Suffolk County

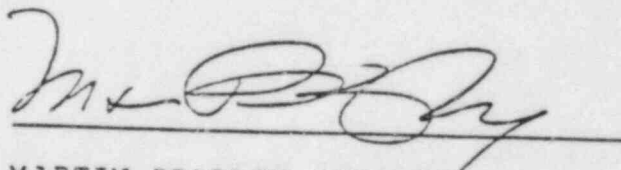
Dated: March 8, 1984

VERIFICATION

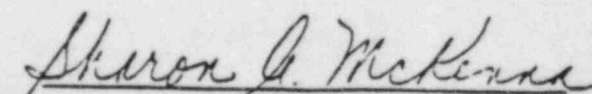
MARTIN BRADLEY ASHARE being duly sworn, deposes and says: That he is the Suffolk County Attorney for the County of Suffolk, a municipal corporation, in the within action that he has read the foregoing complaint and knows the contents thereof, and that the same is true to deponent's own knowledge, except those matters therein stated to be alleged on information and belief, and as to those he believes them to be true.

This verification is made by deponent because Suffolk County is a municipal corporation and deponent is an officer thereof.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:
Deponent has been intimately involved with all aspects of the controversy relating to emergency response planning.


MARTIN BRADLEY ASHARE

Sworn to before me this
8th day of March 1984.


Notary Public

SHARON A. MCKENNA
Notary Public, State of New York
No. 4688188
Qualified in Suffolk County: 6/

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
COUNTY OF SUFFOLK,

Plaintiff,

-against

LONG ISLAND LIGHTING COMPANY,

Defendant.
-----X

: Index No. 84-4615

:
: NOTICE OF MOTION
: TO DISMISS

PLEASE TAKE NOTICE that upon the attached supporting Affidavit, and upon its Memorandum of Law hereinafter to be filed, defendant, Long Island Lighting Company ("LILCO") will move this Court at a Special Term, Part 1, to be held in and for Suffolk County at the courthouse located at Griffing Avenue, Riverhead, New York, on the 19th day of April, 1984, at 9:30 a.m., or as soon thereafter as counsel may be heard, for an order dismissing the above-entitled action (1) pursuant to Section 3211(a)(2) of the CPLR on the ground that the Court does not have jurisdiction of the subject matter of the cause of action, and (2) pursuant to Section 3211(a)(7) of the CPLR on the ground that the Complaint fails to state a cause of action.

WHEREFORE, LILCO respectfully requests that this action be dismissed and for such other, further or different relief as to this Court may seem just and proper.

Dated: April 6, 1984

LONG ISLAND LIGHTING COMPANY

By _____
Edward M. Barrett
Herbert M. Leiman
Long Island Lighting Company
250 Old County Road
Minneola, New York 11501
(516) 228-2244

James E. Farnham
W. Taylor Reveley, III
K. Dennis Sisk
Lewis F. Powell
Hunton & Williams
707 East Main Street
Richmond, Virginia 23219
(804) 788-8200

AFFIDAVIT OF SERVICE

I hereby certify that on the 6th day of April, 1984 I mailed a true copy of the foregoing Notice of Motion to Dismiss to Martin B. Ashare, Esq., Suffolk County Department of Law, Dennison Building, Veterans Memorial Highway, Hauppauge, New York 11788, Herbert H. Brown, Esq., Lawrence C. Lanpher, Esq., Gilbert C. Miller, Esq., Kirkpatrick, Lockhart, Hill, Christopher & Phillips, 1900 M Street, N.W. Washington, D.C. 20036, counsel for plaintiff.

Herbert M. Leiman

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
COUNTY OF SUFFOLK,

Plaintiff,

-against

LONG ISLAND LIGHTING COMPANY,

Defendant.
-----X

: Index No.84-4615

: AFFIDAVIT

STATE OF NEW YORK)
)
COUNTY OF SUFFOLK) ss.:

HERBERT M. LEIMAN, being duly sworn, deposes and
says:

1. I am a member of the New York State Bar and am
general counsel for Long Island Lighting Company.

2. The issues which appear in the Complaint filed by
plaintiff in this action are not within the subject matter ju-
risdiction of this Court and fail to state a cause of action
because they have been preempted by federal law, in particular,
the Atomic Energy Act of 1954 ("the AEA") and the Nuclear Regu-
latory Commission regulations implementing the AEA.

Dated: April 6, 1984

Sworn to before me
this 6th day of
April, 1984

Herbert M. Leiman

Notary Public

AFFIDAVIT OF SERVICE

I hereby certify that on the 6th day of April, 1984 I mailed a true copy of the foregoing Affidavit to Martin B. Ashare, Esq., Suffolk County Department of Law, Dennison Building, Veterans Memorial Highway, Hauppauge, New York 11788, Herbert H. Brown, Esq., Lawrence C. Lanpher, Esq., Gilbert C. Miller, Esq., Kirkpatrick, Lockhart, Hill, Christopher & Phillips, 1900 M Street, N.W. Washington, D.C. 20036, counsel for plaintiff.

Herbert M. Leiman

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

- - - - - x
COUNTY OF SUFFOLK, :
 :
 : Plaintiff, :
 :
 : -against- : NOTICE OF REMOVAL
 :
 : LONG ISLAND LIGHTING COMPANY, :
 :
 : Defendant. :
 - - - - - x

S I R S:

Please take notice that, in accordance with Title 28,
United States Code, Section 1446(e), a petition and bond for
removal of this action to the United States District Court for
the Eastern District of New York, true copies of which are at-
tached, were duly filed in the office of the Clerk of the Unit-
ed States District Court for the Eastern District of New York
this 6 day of April, 1984.

Dated: New York, New York
April 6, 1984

HUNTON & WILLIAMS
Attorneys for Defendant
Long Island Lighting
Company
P. O. Box 1535
Richmond, Virginia 23212
(804) 788-8501

Of Counsel:

James E. Farnham, Esq.
W. Taylor Reveley, III, Esq.
Lewis F. Powell, III, Esq.
K. Dennis Sisk, Esq.
Hunton & Williams
P. O. Box 1535
Richmond, Virginia 23212

Edward M. Barrett, Esq.
Herbert M. Lieman, Esq.
General Counsel
Long Island Lighting Company
250 Old Country Road
Mineola, New York 11501

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X	
CITIZENS FOR AN ORDERLY ENERGY	:
POLICY, INC., <u>et al.</u> ,	:
	:
Plaintiffs,	:
	:
-against-	:
	:
THE COUNTY OF SUFFOLK, and	:
	:
PETER F. COHALAN,	:
	:
Defendants,	:
	:
-----X	

Civil Action No.
83-4966

MOTION BY LONG ISLAND LIGHTING
COMPANY TO INTERVENE AS A PLAINTIFF

Edward M. Barrett
Rosalind M. Gordon
Long Island Lighting Company
250 Old Country Road
Mineola, New York 11501
(516) 228-2244

James E. Farnham
W. Taylor Reveley, III
K. Dennis Sisk
Lewis F. Powell, III
Hunton & Williams
707 East Main Street
Richmond, Virginia 23219
(804) 788-8200

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CITIZENS FOR AN ORDERLY ENERGY :
POLICY, INC., et al., :
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Plaintiffs, :
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-against- : Civil Action No.
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THE COUNTY OF SUFFOLK, and : 83-4966
:
PETER F. COHALAN, :
:
Defendants, :
:
-----X

MOTION BY LONG ISLAND LIGHTING
COMPANY TO INTERVENE AS A PLAINTIFF

Long Island Lighting Company ("LILCO"), by counsel, respectfully moves under Federal Rule of Civil Procedure 24(a) for leave to intervene in this action as a party plaintiff. LILCO's motion is timely because the case is still in its preliminary stages. Moreover, because this litigation arises out of the defendants' efforts to prevent operation of LILCO's Shoreham Nuclear Power Station ("Shoreham"), LILCO has a substantial interest in the outcome of the suit. Third, disposition of the case without LILCO's participation, though not res judicata with respect to LILCO, may as a practical matter impair or impede LILCO's ability to protect its interest in opposing the defendants' efforts to defeat Shoreham. Finally,

while LILCO has confidence in the ability of the current plaintiffs to prosecute their claims, which are essentially the same as LILCO's, the defendants have challenged the current plaintiffs' standing to sue. LILCO believes the current plaintiffs have standing, but it cannot afford nor should it be forced to gamble that the Court will conclude otherwise.

In these circumstances, which are discussed more fully in the accompanying memorandum, LILCO is entitled to intervene of right under Rule 24(a). In addition, counsel for LILCO has been authorized by counsel for the plaintiffs to represent to the Court that the plaintiffs support LILCO's effort to intervene. As required by Rule 24(c), the Complaint LILCO seeks to file is attached to this motion.

WHEREFORE, LILCO respectfully prays that this Court allow it to intervene as a plaintiff in this action and to file and serve the attached Complaint.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

April 3, 1984

By

Edward M. Barrett
Rosalind M. Gordon
Long Island Lighting
Company
250 Old Country Road
Mineola, New York 11501
(516) 228-2244

James E. Farnham
W. Taylor Reveley, III
K. Dennis Sisk
Lewis F. Powell, III
Hunton & Williams
707 East Main Street
Richmond, Virginia 23219
(804) 788-8200

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing MOTION BY LONG ISLAND LIGHTING COMPANY TO INTERVENE AS A PLAINTIFF was on April 3, 1984 hand-delivered to Martin Bradley Ashare, Esq., H. Lee Dennison Executive Office Building, Veterans Memorial Highway, Hauppauge, New York 11788, counsel for defendants; and mailed by express mail to David A. Brownlee, Esq., Kirkpatrick, Lockhart, Johnson & Hutchinson, 1500 Oliver Building, Pittsburgh, Pennsylvania 15222, and Herbert H. Brown, Esq., Kirkpatrick, Lockhart, Hill, Christopher & Phillips, 1900 M Street, N.W., Washington, D.C. 20036, counsel for defendants; and Lucio Swartz, Esq., Pacific Legal Foundation, 1990 M Street, N.W., Suite 550, Washington, D.C. 20036, counsel for plaintiffs.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
LONG ISLAND LIGHTING COMPANY, :
:
Plaintiff, :
:
-against- :
:
:
THE COUNTY OF SUFFOLK, NEW YORK, :
a New York municipal corporation, :
Serve: Martin Bradley Ashare, Esq. :
H. Lee Dennison Executive :
Office Building, :
Veterans Memorial Highway, :
Hauppauge, New York 11788, :
:
PETER F. COHALAN, in his official :
capacity as Suffolk County Executive, :
Serve: Peter F. Cohalan :
County Executive :
H. Lee Dennison Executive :
Office Building :
Veterans Memorial Highway :
Hauppauge, New York 11788, :
:
Defendants. :
:
----- X

Civil Action No.
83-4966

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Edward M. Barrett
Rosalind M. Gordon
Long Island Lighting
Company
250 Old Country Road
Mineola, New York 11501
(516) 228-2244

James E. Farnham
W. Taylor Reveley, III
K. Dennis Sisk
Lewis F. Powell, III
Hunton & Williams
707 East Main Street
Richmond, Virginia 23219
(804) 788-8200

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - x
LONG ISLAND LIGHTING COMPANY, :
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 Plaintiff, :
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 -against- :
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 THE COUNTY OF SUFFOLK, NEW YORK, :
 a New York municipal corporation, :
 Serve: Martin Bradley Ashare, Esq. :
 H. Lee Dennison Executive :
 Office Building, :
 Veterans Memorial Highway, :
 Hauppauge, New York 11788, :
 :
 PETER F. COHALAN, in his official :
 capacity as Suffolk County Executive, :
 Serve: Peter F. Cohalan :
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 Office Building :
 Veterans Memorial Highway :
 Hauppauge, New York 11788, :
 :
 Defendants. :
 :
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Civil Action No.
83-4966

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Long Island Lighting Company, by counsel, respectfully
prays that this Court enter judgment against the defendants and
grant LILCO certain declaratory and injunctive relief, plus
reasonable attorneys' fees and such other relief as the Court
may deem appropriate, because of the defendants' unlawful

attempt under color of state law to prevent LILCO from operating its Shoreham Nuclear Power Station.

Jurisdiction and Venue

(1) This action arises under the Supremacy Clause and the Fourteenth Amendment of the United States Constitution; the Atomic Energy Act, 42 U.S.C. §§ 2011-2296; and section 1 of the Civil Rights Act of 1871, 42 U.S.C. § 1983. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3).

(2) Venue is appropriate in this district under 28 U.S.C. § 1391(b) because the claim arose in this district.

Parties

(3) Long Island Lighting Company ("LILCO") is a public service corporation incorporated under the laws of the State of New York and engaged in the production, distribution, and sale of electricity, primarily in Long Island, New York. LILCO owns the Shoreham Nuclear Power Station ("Shoreham"), which is an 809 megawatt nuclear powered electric generating facility located on Long Island's north shore in the County of Suffolk.

(4) Defendant County of Suffolk ("Suffolk County" or the "County") is a municipal corporation incorporated under the laws of the State of New York and having governmental

jurisdiction over the area known as the County of Suffolk, which comprises the eastern portion of Long Island.

(5) Defendant Peter F. Cohalan ("Cohalan") is and since January 1, 1980 has been the Suffolk County Executive. As such, Cohalan is and has been the County's chief executive officer with substantial policy making and administrative authority in the County of Suffolk.

Background and General Allegations

(6) In 1968, LILCO applied to the United States Atomic Energy Commission (the "AEC," now the Nuclear Regulatory Commission (the "NRC")) for a construction permit to build Shoreham. The permit was issued in April 1973. Construction is now essentially complete, at a total cost of nearly \$4 billion.

(7) Until approximately February 1982, the defendants did not oppose, and in some respects encouraged, the construction and operation of Shoreham. Intended to reduce Long Island's dependence on costly foreign oil, Shoreham has provided employment even during its construction to thousands and has generated substantial local property tax revenue. For many years, the County has appraised Shoreham for real estate tax purposes at its enhanced value as a nuclear power plant. As a

result, LILCO has paid approximately \$140 million in local property taxes.

(8) Commencing in early 1982, however, and continuing to the present, the defendants, acting under color of state law, have sought to prevent Shoreham's operation and to arrogate to themselves regulatory functions which by Act of Congress have been exclusively vested in the NRC. In so doing, the defendants have undertaken to cripple LILCO economically. The centerpiece of the defendants' action, however, is the County's refusal to assist LILCO in the preparation of an offsite radiological emergency response plan ("RERP") for Shoreham. Absent approval by the NRC of a RERP, a utility cannot receive the NRC's permission to operate a nuclear plant at full power. The defendants' refusal to provide LILCO with police power protection and their affirmative acts to prevent Shoreham's operation, predicated without justification in law or fact on purported concerns regarding Shoreham's radiological safety, have been wrongful, intentional, arbitrary, and capricious. These acts and omissions amount to attempted regulation of Shoreham's operation, and they constitute a deprivation of LILCO's rights without due process of law.

(9) If the defendants succeed in preventing Shoreham's operation, LILCO will suffer substantial economic damage. The

uncertainty regarding Shoreham's future caused by the defendants' efforts to block its operation has reduced the value of LILCO stock, has directly jeopardized LILCO's ability to obtain necessary financing, and has resulted in a sweeping austerity program that has caused massive lay-offs of LILCO employees. Therefore, the defendants have injured and are continuing to injure LILCO, and this case raises an actual controversy appropriate for resolution by this Court.

Specific Allegations

(10) The construction permit for Shoreham was granted by the AEC on April 12, 1973, five years after the application was filed, and following contested hearings before the AEC that included challenges to the choice of the site and the feasibility of emergency planning. See Long Island Lighting Co. (Shoreham Nuclear Power Station), LBP-73-13, 6 AEC 271, 275-76, 285, 298-99 (1973). At that time Suffolk County was not a party to the licensing proceeding, but H. Lee Dennison, then the Suffolk County Executive, made a limited appearance before the licensing board in 1970 to urge that it grant a construction permit for Shoreham:

I am here in representation of the 1,100,000 people of the county of Suffolk, and I speak as the administrative head of the county government, as the county budget officer; and I have a certain basic responsibility for the

health, safety and well-being of the people of the county, a concern with adequate and safe transportation, police, finances, the general economy, human relationships, public health and welfare, adequate and clean fresh water, and surely the assurance of the quality of service and consumer price for light and power.

.

Now there isn't any other source for energy in this area. We can't depend upon the metropolitan region or New York State or the St. Lawrence powerplants. We must begin to be self-sufficient on our own because we are an island.

.

I urge you, Mr. Chairman, as County Executive, to grant immediate licensing for construction of this nuclear power facility as proposed at Shoreham.

Construction Permit Hearings Transcript ("CP Tr.") at 209, 211, 216.

(11) When the construction permit was granted, the Staff of the AEC found that Shoreham satisfied the applicable regulatory requirements respecting compatibility between facility design and geographic siting on the one hand and emergency planning requirements on the other. CP Tr. at 5969-73. In addition, intervenor Lloyd Harbor Study Group ("LHSG") cross-examined witnesses during the construction permit hearings regarding LILCO's development of an emergency plan. Testimony showed that LILCO had outlined generally its plans for

coping with emergencies (Preliminary Safety Analysis Report at XIII-4-1 to -3) and had discussed emergency planning with the Riverhead Police Department, Suffolk County Police Department, Suffolk County Health Department, Suffolk County Medical Society, and New York State authorities. CP Tr. at 2299, 2511-12.

(12) In its initial decision, the AEC licensing board rejected LHSG's assertion that LILCO was unable to achieve adequate emergency planning for Shoreham, pointing out that "[t]he applicant has outlined its plan for coping with emergencies and has conferred with New York State and local authorities with respect to them." 6 AEC at 285 (footnote omitted). The AEC appeal board concurred. Long Island Lighting Co. (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831, 851 (1973). This issue was not pursued further by LHSG, despite the fact that LHSG did take an unsuccessful appeal on the granting of the Shoreham construction permit.

(13) Following the issuance of the Shoreham construction permit, the Suffolk County Department of Emergency Preparedness was directed by Executive Order in February 1973 to develop a "Response Plan -- Specific Operating Procedures For Major Radiation Incidents." In early 1975 representatives of the State, the County, and LILCO met to define the emergency planning roles and responsibilities of each body. This was the

first of many sessions to support the development of the Suffolk County emergency response plan.

(14) In 1977 Mr. Norman Kelly, Suffolk County Emergency Preparedness Director, was given overall responsibility for emergency planning beyond the perimeter of the plant, and the Suffolk County Department of Transportation was directed to develop an evacuation plan. After numerous working-level meetings and discussions between the County and LILCO, Suffolk County's "General Radiation Emergency Plan" was approved by County Executive John Klein on August 30, 1978. It was reviewed, and eventually accepted, by the New York State Office of Disaster Preparedness.

(15) In late 1978 the United States Environmental Protection Agency and the NRC issued NUREG-0396, a guidance document regarding generic emergency planning concerns at nuclear power plants. NUREG-0396 recommended that emergency planning be expanded to address Class 9 accidents (the most serious postulated accidents) that might necessitate emergency action out to 10 miles from the plant. In response to NUREG-0396, LILCO and certain State and County officials began updating Shoreham's evacuation plan to provide for an emergency response out to 10 miles.

(16) Following the accident at Three Mile Island in 1979, the NRC promulgated new emergency planning regulations, which remain in effect. As a result, LILCO and County Executive John Klein signed a "Memorandum of Understanding" on December 8, 1979 outlining the revised responsibilities of LILCO and the County in emergency planning. Defendant Cohalan (then County Executive-elect) approved the terms of the agreement. A copy of this memorandum with its cover letter is attached to this Complaint as Exhibit A.

(17) To respond to the extensive changes in the NRC's emergency planning requirements following the Three Mile Island accident, LILCO began discussions with private consulting firms early in 1980 with an eye toward hiring outside consultants to assist the County and LILCO in updating Shoreham's existing emergency plan. Throughout 1980, planning discussions with Suffolk County officials continued. County emergency planning personnel inspected the Shoreham site on February 28, 1980. LILCO met with 60 representatives of various Suffolk County departments in March 1980 and submitted 9 volumes of material to the County Legislature's Health Committee in conjunction with legislative hearings on nuclear power. Chief Deputy County Executive John C. Gallagher met with LILCO representatives in September and December 1980 to discuss a proposal the County

had received from an outside consultant (EDS Nuclear, Inc.) to assist in revising the emergency plan.

(18) In February 1981 the County concluded that it could develop the revised emergency response plan on its own, since County personnel had already worked on the original plan and were familiar with local conditions. LILCO Vice President Dr. Matthew C. Cordaro, Suffolk County Planning Department Director Dr. Lee E. Koppelman, and Mr. Gallagher signed a contract on March 15, 1981 calling for the County to produce a revised radiological response plan within 6 months at a cost of \$245,000, to be paid by LILCO. The County Legislature, however, rejected the initial contract because it had not been consulted on the terms. In September 1981 an amended contract with substantially the same terms was submitted to the County Legislature and accepted, and LILCO paid the Suffolk County Planning Department \$150,000 as the first installment on the contract. The County agreed in the contract to complete the plan by March 18, 1982, at which time the balance of the contract amount (\$95,000) would become payable.

(19) Suffolk County represented in the September 1981 contract that it was familiar with the applicable federal regulations and that it could develop a RERP that complied with them. The scope of work included preparing a draft and final

County plan, integrating the plan with State and LILCO plans, developing implementing procedures, preparing and distributing public education materials, providing expert witness testimony concerning planning work, and training emergency planning personnel in coordination with the State and LILCO. A copy of the September 1981 contract is attached to this Complaint as Exhibit B.

(20) The County's Dr. Koppelman was to supervise the County's emergency planning effort. The task of actually revising the plan fell to two Suffolk County planners, Robert Meunkle and Laura Palmer. Mr. Meunkle took specialized courses in traffic engineering and transportation at Polytechnic Institute of Brooklyn in 1970, and was employed by the New York Highway Transportation Studies Group and the New York State Department of Public Works before coming to work for Suffolk County in 1972. Ms. Palmer began work for Suffolk County in 1978 as an engineering aide in the Suffolk County Department of Transportation, where she gained a background in Suffolk County transportation routes. After one year as an aide she was given the professional title of planner.

(21) In a deposition taken in August 1982 in conjunction with the still ongoing Shoreham operating license proceeding before the NRC, Mr. Meunkle described his involvement in

Suffolk County's planning efforts, including his close working relationship with LILCO, particularly with Mr. Charles A. Daverio, who from early 1980 until the spring of 1982 was Chairman of LILCO's Emergency Planning Task Force:

Q. This is a general question. I'm not just talking about protective action now. During the time you had contact with Mr. Daverio, would there ever be an occasion for the County, or through you, to make any demands on Mr. Daverio for any type of services, logistical support, information, anything of that sort?

A. Yes, sir.

Q. Could you tell me generally the demands that you made on Mr. Daverio?

A. I wouldn't categorize it as demands.

Q. How about requests? Do you like that better?

A. Let's say we had what I consider to be a professional working relationship with the people at the utility. We had a common goal of an emergency plan, and we did whatever was necessary to reach that goal. Yes, we made requests of the utility for services.

Q. All right, sir. Insofar as you were concerned then, did the utility respond in a professional manner?

.

A. Absolutely.

Meunkle Tr. at 90-91.

(22) In another deposition in August 1982, also in connection with the NRC licensing proceedings, Ms. Palmer explained why she and Mr. Meunkle were chosen to do the emergency planning work, and described the scope of that work:

Q. As I understand it, the reason that the Planning Department, you and Mr. Meunkle, were given the responsibility to develop the Suffolk County emergency plan instead of outside consultants was to take advantage of the recognized experience and familiarity that you all had with Suffolk County?

A. That is correct.

Q. In doing all the work that you did do on the emergency plan that resulted in the final product in April of 1982, did you take into account as part of your work various local conditions that are unique to Suffolk County, such as its population and demography and its topography and its climate?

A. Yes.

Q. And its geography, all those local conditions?

A. Yes.

Q. I take it you were able to do so in part based on your own longstanding familiarity and experience with the area?

A. Yes, I was.

Palmer Tr. at 26-27.

(23) LILCO continued to cooperate with Suffolk County in exchanging and refining similar information from other nuclear plants on emergency planning, population figures, and

meteorological data. Most of the sections of the County plan were completed by February 1982. At that time, County planners indicated they would need assistance on the Health Department section if they were to finish their work by March 18, the date agreed to by the County in the September 1981 contract. LILCO offered to obtain assistance from Stone & Webster Engineering Corporation, Shoreham's architect-engineer, to complete that section of the plan.

(24) In mid-February 1982, Suffolk County announced it had retained the law firm of Kirkpatrick, Lockhart, Hill, Christopher & Phillips to represent the County in the NRC hearings on LILCO's application for an operating license for Shoreham. The County's new lead attorney, Herbert H. Brown, stated that emergency planning would be the "centerpiece" of what subsequent events have shown to be the defendants' new position of inflexible and aggressive opposition to Shoreham.

(25) Soon thereafter, Dr. Koppelman sent a letter dated February 19, 1982 to LILCO's Dr. Cordaro, noting the existence of "an apparent conflict of interest" in the County's acceptance of LILCO funds for the preparation of an emergency plan, but still promising that the County would develop a plan:

The County will continue, as required by law, to develop a plan consistent with the requirements of law and its obligation to protect the health, safety and welfare of the people.

A copy of Dr. Koppelman's letter is attached to the Complaint as Exhibit C.

(26) Dr. Cordaro responded in a letter to Dr. Koppelman dated March 17, 1982, stating the following:

LILCO . . . has requested neither the return of the \$150,000 paid to date nor the discharge of its obligation to make final payment. The Company is at a loss to understand why the County believes that acceptance of these payments constitutes a conflict of interest.

LILCO is relying on the County to perform its obligations under this contract and will be damaged severely if the County fails to perform these obligations fully.

A copy of Dr. Cordaro's letter is attached to this Complaint as Exhibit D. The County subsequently sent LILCO a check in the amount of \$150,000, which LILCO has not cashed.

(27) On March 23, 1982, the County Legislature adopted Resolution 262-1982, authorizing the County Planning Department to prepare yet another emergency plan. Resolution 262-1982 also stated that whatever plan was prepared would not become operable and would "not be deemed adequate and capable of being implemented" until "approved" by the Legislature. This attempt to reserve an ultimate right of approval constitutes an impermissible usurpation by the County of the NRC's sole authority to regulate matters of nuclear safety. Defendant Cohalan approved this resolution on March 25, 1982. A copy is attached to this Complaint as Exhibit E.

(28) Soon after the adoption of Resolution 262-1982, Ms. Palmer was abruptly relieved of her emergency planning duties. As she explained in her August 1982 deposition:

Q. Without going into additional massive amounts of documents before me that chronicle the work that you and Mr. Meunkle engaged in as part of the emergency plan, is it fair to say that the extent of your work was very substantial to prepare the Suffolk County emergency plan?

A. Yes, it was.

Q. There came a time when you stopped working on the Suffolk County Emergency Plan; is that right?

A. That's correct.

Q. That was sometime in March of 1982?

A. I would say closer to April.

. . . .

Q. But for the change in circumstances, do you think that a final plan would have been reached by May of 1982?

[Objection by counsel omitted.]

A. Definitely.

Palmer Tr. at 43-44.

Q. What did you do when you stopped working on emergency planning, Suffolk County?

A. Basically, it was to re-read some of the work that we had previously done and make corrections, such as typographical errors, et cetera, that we never had time to really look at before; make sure all our files and correspondence were organized in case such

material was required by our lawyers. In general, it was just to clean up the project in the best way possible, tie up loose ends.

Q. Then what did you do?

A. Subsequently, I was transferred to the Department of Public Works out in Yaphank.

Q. Was that transfer at your request?

A. No, it was not.

Q. Who had requested it?

[Objection of counsel omitted.]

A. The transfer was done through resolution through the Suffolk County Legislature.

. . . .

Q. My earlier question was at whose instance was the transfer initiated?

[Counsel for Suffolk County objected and instructed the witness not to answer.]

Palmer Tr. at 49-50.

(29) Mr. Meunkle testified similarly during his August 1982 deposition that he was abruptly discharged from his emergency planning duties:

Q. When did you last have any duties and responsibilities with respect to the emergency plan?

A. April 15th of this year.

. . . .

Q. When your duties and responsibilities in respect of the emergency plan ended on April 15 of this year, were you given a new job title?

A. No.

Q. You just were relieved of those duties and responsibilities?

A. That's correct.

. . . .

Q. Mr. Meunkle, what is your understanding of why you were relieved of your duties on April 15, 1982?

[Counsel for Suffolk County objected and instructed the witness not to answer.]

Meunkle Tr. at 22-24.

(30) After he was directed to abandon his emergency planning efforts, Mr. Meunkle wrote a memorandum dated May 12, 1982 to Deputy County Executive Frank R. Jones emphasizing the cooperation that had existed between Suffolk County and LILCO, and describing the nature of the emergency planning effort at the time it was abruptly broken off by the County:

The purpose of this memo is to clarify some aspects of what has been done with respect to the SCRERP [Suffolk County Radiological Emergency Response Plan]. Initially, let me indicate that everything you have to date was written and prepared by the County.

I must also state that, until the very recent intervention by the County at the Nuclear Regulatory Commission hearings, we were working in a cooperative vain [sic] with LILCO, therefore, their preparation and printing of the exhibits that were designed by the County were to save the County time and money. Subsequent to the lawsuit [Suffolk County's intervention in the NRC operating license proceeding], I received instructions from Dr.

Koppelman to end our formal relationship with LILCO and to get from the utility whatever was then in the pipeline. This has been done.

A copy of Mr. Meunkle's memorandum is attached to the Complaint as Exhibit F.

(31) On May 17, 1982, the County's Mr. Gallagher (Chief Deputy County Executive) represented in a letter to LILCO's Dr. Cordaro that:

The County is preparing a radiological response plan which will satisfy all local, state and federal criteria and regulations, as contemplated by the September 18, 1981 agreement between the County and LILCO. Pursuant to Legislative Resolution 262 and Executive Order, such plan will be transmitted to the County Legislature by October 1, 1982.

A copy of Mr. Gallagher's letter is attached to this Complaint as Exhibit G.

(32) On May 18, 1982, the County Legislature adopted Resolution 456-1982, which correctly acknowledged the County's legal duty to engage in emergency planning, but which, consistently with Resolution 262-1982, impermissibly reserved to the Legislature the right of ultimate approval of any plan and foreclosed pending such approval the expenditure of any County resources to test or implement emergency planning for Shoreham. A copy of this resolution is attached to this Complaint as Exhibit H.

(33) In his letter of February 19, 1982 (Exhibit C), Dr. Koppelman acknowledged the County's legal obligation to continue to engage in emergency planning. He further represented that the County would fulfill this obligation. Mr. Gallagher's May 17 letter (Exhibit F) contained a similar representation. And in Resolution 456-1982, the Legislature represented that it intended, "through good faith and sound planning efforts, to assure that the best possible emergency plan and preparedness are developed." Notwithstanding these representations, the County and Cohalan embarked upon a course of calculated delay, under color of state law, with the specific intent to induce LILCO to believe the County was seriously working toward the creation of a RERP.

(34) Consistent with its strategy of delay through diversion of LILCO's resources, in June 1982 the County filed a groundless and vexatious lawsuit in state court seeking to compel a full physical inspection of Shoreham (in addition to the countless inspections that had already occurred, all of which confirmed the adequacy of the plant's design and construction), to enjoin operation of the plant pending completion of the inspection, and to assess as damages against LILCO substantial rate relief payable to the Company's ratepayers. LILCO removed the action to this Court, which denied the County's motion to

remand, County of Suffolk v. Long Island Lighting Co., 549 F. Supp. 1250 (E.D.N.Y. 1982), and then dismissed the suit, County of Suffolk v. Long Island Lighting Co., 554 F. Supp. 399 (E.D.N.Y. 1983). The dismissal was subsequently upheld on appeal by the Second Circuit. County of Suffolk v. Long Island Lighting Co., No. 83-7122 (2d Cir. Jan. 25, 1984).

(35) The County's emergency planning strategem is also revealed by the County's actions in the NRC licensing proceeding respecting what were known as Phase I emergency planning issues. "Phase I" refers essentially to those elements of emergency preparedness necessary to cope only with a minor accident not having consequences beyond the perimeter of the plant. Throughout the summer and fall of 1982, the County, as an intervenor in the NRC licensing proceeding, advanced contentions relating to alleged deficiencies in LILCO's Phase I (onsite) emergency planning efforts. Formal contentions (which identify issues for litigation before an NRC licensing board) were filed by the County, extensive discovery was initiated by the County, and hundreds of pages of written direct testimony were prepared and filed by the County and LILCO in advance of the Phase I hearings, which were scheduled to commence on November 29, 1982. On November 23, 1982, however, after having diverted substantial LILCO resources for nearly six months, the

County defaulted on all of its Phase I contentions and declined to litigate them before the NRC. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-107, 16 NRC 1667 (1982); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-115, 16 NRC 1923 (1982).

(36) After having abandoned without justification in the spring of 1982 the almost-completed joint LILCO-Suffolk County emergency response plan, the County delayed consideration of offsite emergency planning for Shoreham for almost a year, extending repeatedly the promised completion date of its alleged planning efforts. Finally, during the first week of December 1982, after the alleged expenditure of \$600,000, the County produced its so-called draft Suffolk County Radiological Emergency Response Plan (the "draft County plan"). The County Legislature announced it would hold hearings on the plan, which were mandated by Suffolk County Resolutions 262-1982 and 456-1982, and then delayed them until January 1983.

(37) The draft County plan was not a "plan" at all within any reasonable meaning of that word, nor was it ever intended to be. Instead, it contained very little information that was site-specific to Shoreham or Long Island. It was little more than a generic blueprint, organized along the lines of NUREG-0654 (another NRC guidance document regarding emergency

planning generally) and identifying the sorts of items one must develop to plan for an emergency at any nuclear power plant. Even the draft County plan itself acknowledged that it required additional "development." Draft County plan at 3, 18. The areas needing further "development" included such essential items as implementing procedures, training, and drills for emergency workers. Draft County Plan at 18-19.

(38) In January 1983, the County Legislature held hearings on the draft County plan over an approximately two-week period. Excerpts from these hearings and the County's subsequent actions confirm that the sole purpose of the hearings was to undertake an evaluation for which under federal law only the NRC has authority -- to assess whether the draft County plan would adequately ensure the safety of County residents in the event of an accident at Shoreham. This wrongful usurpation of NRC authority was compounded by the legislators' ignorance about fundamental aspects of nuclear power and their predisposition to reject the draft County plan, or, for that matter, any plan, for alleged reasons of safety.

Legislator: What type of fuel? I have a car and I pull into the gas station, and there is a high octane, low octane, regular, unleaded. What type of fuel?

. . . .

How long does it take to cool down and what is the radioactivity that would be released when you remove the head of the reactor?

. . . .

Will [an employee working at the plant] take home any radioactivity to his family?

Leg. Tr. at 209-10. Another legislator stated the purpose of the hearings:

We are in a new industry, looking for the kind of regulations and the kind of re-actability of the public so that there will be some maximum protection for the public, and that is precisely what the heart of this particular hearing and this particular process is about, and that is why we have to make a judgment call on what we believe to be the best in the interest of the County of Suffolk.

Leg. Tr. at 228. Also on the hearings' first day, another legislator stated that his mind was already made up:

I don't know that the people that I represent could accept any plan that leaves them stranded at a geographical dead-end of an island in the event of some kind of mishap which we all say is infinitesimally remote [sic] possible, and yet it could or may occur. It depends upon the persons that you speak to that give you these statistical levels of probability that they may or may not occur at all. The point is that we have a nuclear [plant] that has been constructed, and the risk assessment that has been made by various experts, but no matter where you look the substantial communities of eastern Long Island, especially substantial in terms of population during certain times of the year as I said, are virtually excluded Based upon the risk that I see and the exclusion of a substantial part of Long Island, I

don't see how we could adopt a plan like this.

Leg. Tr. at 192. In response to a scientist who emphasized the extraordinarily low probability of an accident in urging that emergency planning continue for Shoreham, another legislator rejected statistical probabilities (which are used by the NRC to assess risks) in connection with emergency planning:

Doctor, I really recognize and appreciate you are talented in the field of nuclear science, as well as the gentlemen who have spoken before you, and as well as all the statistics that we have received in the past and will receive many, many more, I am sure, before this is resolved, but I am sorry, there is just one thing that keeps going through my head.

You say one in 1,000, one in 10,000, one in a million, one in a trillion. That only brings back to my thoughts a vessel that left England many years ago that was supposed to be sinkproof, and it sunk on its maiden voyage. I mean, things like this happen. Don't tell me -- I mean, don't insult me by saying one in ten billion years, because it could happen the day Shoreham opens. We do not know. We are not God, and neither are you. Therefore, it is our job to protect everyone on this island.

Leg. Tr. at 443-44. On the fourth day of legislative hearings, members of the public were invited to make three-minute statements to the Legislature, reflecting their views on Shoreham. The first speaker began by saying "I am here to implore everyone in this room who has the power to do so to prevent

permanently the opening of the Shoreham plant." Leg. Tr. at 468. The statement was so long that the legislator chairing the session interrupted and embraced the views of the speaker:

Legislator: Excuse me. I have extended your speech a few minutes.

Citizen: I am sorry. Thank you.

Legislator: May I just make one point? I know that you are here to express your views, and I believe we all have the same feelings on this particular issue

Leg. Tr. at 471. At the end of the hearings that day, the legislators were invited to comment. One legislator closed his remarks with the following statement:

[S]tay with the fight to the end, [and] I think wisdom might eventually prevail and maybe we will show that there can be no evacuation planning and emergency planning for Long Island, and maybe we will prove that there is no justification for Shoreham to open.

Thanks very much and stay with it.

Leg. Tr. at 575.

(39) A letter dated January 19, 1983 -- three days into the two weeks of hearings and one month before the Legislature voted on the draft County plan -- from a legislator to the President of the People's Action Coalition of Suffolk County illustrates a subsidiary motive for holding hearings on the draft County plan:

As you will remember, I openly expressed my displeasure of . . . legislation relative to the Shoreham Plant. I maintained at the time that the most simple and direct answer to the problem would be institution of legal action by the County of Suffolk at the time the N.R.C. decides to issue the license and demanding that LILCO prove the effectiveness of a viable Evacuation Plan. It stands to reason they could not do so in a million years and then, in my way of thinking, they could not activate the plant.

. . . .

I understand your position that the plan should not be adopted; however, the reasoning behind the hearings for a so-called plan, at the present time, is to use the facts presented as a basis for a future lawsuit.

A copy of the letter is attached to this Complaint as Exhibit I.

(40) On February 16, 1983, defendant Cohalan issued a report "Concerning Radiological Emergency Preparedness in Suffolk County." Mr. Cohalan stated that:

Because of these insurmountable obstacles [Long Island geography and human behavioral characteristics], the County Executive concludes that no emergency plan can provide adequately for the protection of the public safety in the event of a nuclear accident at Shoreham. Thus, the Draft County Plan should be rejected. . . . The fundamental finding must be that, because of the inherent conditions on Long Island, there can be no preparedness adequate to protect the public safety in the event of a serious accident at Shoreham.

Cohalan Report at 6. That same day, Mr. Cohalan issued a separate statement, which included the following:

First, the unique local conditions on Long Island make it impossible to protect the public safety if there were a serious accident at the Shoreham plant. In short, there never can be emergency preparedness to protect our citizens.

Second, the result of no emergency preparedness is that Shoreham should never operate.

(Emphasis in original, as reprinted in Newsday at 34 (February 17, 1983)).

(41) The next day, February 17, 1983, the Legislature adopted Resolution 111-1983, which stated, among other things:

[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, . . . 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

. . . [S]ince no radiological emergency plan can protect the health, welfare, and 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 assure that actions taken by any other governmental agency, be it State or Federal, are consistent with the decision mandated by this Resolution.

A copy of Resolution 111-1983 is attached to this Complaint as Exhibit J.

(42) The following week, on February 23, 1983, the County moved the NRC licensing board to terminate the Shoreham operating license proceeding as a matter of law on the ground that, absent County participation in emergency planning, there could be none, thereby obviating the need for further consideration of LILCO's application for an operating license. Resolution 111-1983 was the justification cited by the County for this wrongful attempt to prevent Shoreham's operation.

(43) After extensive briefing, the NRC licensing board denied the County's motion, Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-22, 17 NRC 608 (1983), and referred its ruling to an NRC appeal board for interlocutory review, Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-21, 17 NRC 593 (1983). By order dated April 26, 1983 (unpublished), the appeal board referred the licensing board's decision to the Nuclear Regulatory Commission itself, which upheld the decision to deny the County's motion. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-83-13, 17 NRC 741 (1983). In its opinion, the licensing board correctly observed that the County's strategy was an impermissible attempt by a local government to regulate matters of nuclear safety, stating that:

[T]he ability of any response plan to protect the health and safety of the public is a determination to be made by the NRC (in conjunction with FEMA), not by state and local governments. Therefore, a decision to neither adopt nor implement a radiological emergency response plan based on a state or local government's assessment of what the public health and safety requires is clearly precluded by federal law. Such a determination, particularly when accompanied by a finding that "no local radiological emergency response plan can protect the health, welfare and safety of Suffolk County residents," is clearly an attempt to regulate matters of radiological health and safety related to "the construction and operation of . . . [a] utilization facility," and is thus preempted from state and local regulation by Section 274(c)(1) of the Atomic Energy Act of 1954. 42 U.S.C. § 2021(c).

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-22, 17 NRC 608, 641 (1983).

(44) Although the centerpiece of the defendants' efforts to prevent Shoreham's operation has been their illegal attempt to veto issuance of an operating license by refusing to participate in emergency planning, a subsidiary effort has been mounted by the County in the NRC licensing hearings for Shoreham on countless issues unrelated to emergency planning. Since the spring of 1982, the County has endeavored to expand and delay the proceedings as long as possible. This proceeding constitutes the longest and most involved licensing process in the history of commercial nuclear power in this country. Since

1982, over 10,000 pages of prefiled direct testimony have been submitted by LILCO, the intervenors (including the County), the NRC staff, and the Federal Emergency Management Agency; over 150 witnesses have testified; over 150 days of prehearing conferences and hearings have been held; over 100 witnesses have been deposed; and over 25,000 pages of hearing transcript have been generated. In September 1983, following the submission by LILCO, the NRC Staff, and the County of over 4,000 pages of proposed findings of fact and conclusions of law, the licensing board issued its partial initial decision, which exceeded 1,500 pages. With few exceptions, the decision was strikingly favorable to LILCO.

(45) Confirmation of the lengths to which the County has gone in attempting to prevent Shoreham's operation is revealed in the licensing board's partial initial decision. After a long and thoughtful review of the enormous record and the proposed findings submitted by LILCO and the County, the board found that, as to the quality assurance issues raised by the County, issues that consumed approximately one-third of the hearing days to date:

"[T]he difficulty of [the board's] task, trying to be objective in consideration of each of the parties' submissions, is further compounded by the County's misrepresentation of the complete record -- by omission, selective citations and distortion of recorded testimony.

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1) LBP-83-57, 18 NRC 445, 579 (1983); see also id. at 545.

(46) After the County's breach in February 1982 of its September 1981 emergency planning contract with LILCO, LILCO continued to develop the offsite plan. Shortly after the County had abandoned that plan, LILCO explored with the County the possibility of refining the plan and using it as an interim plan while the draft County plan was being developed. The County refused. Therefore, on April 29, 1982, LILCO met with New York State Commissioner of Health David Axelrod and William Hennesey, Chairman of the New York State Disaster Preparedness Commission (the "DPC"), and it was agreed that the offsite plan, which was nearly complete before being abandoned by the County, would be submitted to the DPC for its review. This joint LILCO-County plan was submitted to the DPC on May 10, 1982.

(47) The DPC was obligated to review the joint LILCO-County plan because of Article 2-B of the New York Executive Law. In addition, on April 29, 1980, the State of New York and five utilities, including LILCO, entered into an agreement respecting emergency planning at the utilities' nuclear power plants. Under the contract, the DPC became obligated to engage in offsite emergency planning in cooperation with each utility

in exchange for payment by the utilities of \$250,000, with a possible additional payment of \$189,297. The utilities, including LILCO, fulfilled their obligation under this contract. In addition to the financial support afforded the DPC pursuant to the April 1980 contract, LILCO has paid the DPC substantial sums in accordance with the requirements of New York Executive Law § 29-c(2)(a).

(48) In its letter of transmittal to the DPC on May 10, 1982, LILCO specifically noted that Suffolk County did not endorse the plan that was being submitted to the DPC. A copy of this letter is attached to the Complaint as Exhibit K.

(49) Notwithstanding the clear acknowledgment by LILCO that the emergency plan submitted to the DPC in May 1982 had been repudiated by the County, the defendants wrongfully and maliciously urged the Suffolk County District Attorney's Special Investigation Unit to bring criminal charges against LILCO for its alleged misappropriation of the joint LILCO-County plan. After investigating the County's specious accusations, which constituted yet another facet of the County's unlawful attempt to disrupt LILCO's effort to license Shoreham, the District Attorney declined to bring any charges against LILCO and stated that LILCO's action "was not an attempt to mislead any public agency," did "not rise to the level of criminal

conduct," and "is not a matter for action by this office." Letter from the District Attorney's office to the Suffolk County Attorney, dated November 16, 1982 (attached to this Complaint as Exhibit L).

(50) The DPC reviewed the plan submitted by LILCO and returned it to LILCO with comments. LILCO responded to these comments, amended the plan, and resubmitted the plan to the DPC in the fall of 1982. The DPC Staff review found no difficulties with the Plan that would have precluded it from meeting all state and federal requirements.

(51) A hearing was scheduled for December 8, 1982, before the entire DPC, to consider the LILCO-submitted offsite emergency plan. The County was invited to attend and participate. Rather than participate in the lawful administrative process before the DPC, and consistent with its unlawful strategy to frustrate emergency planning for Shoreham at every opportunity, the County sued the DPC in state court in Albany County and obtained a temporary restraining order on December 7, 1982, the day before the scheduled hearing. The court enjoined the DPC from meeting to consider the LILCO plan until a preliminary injunction hearing could be held.

(52) On December 15, 1982 Suffolk County, the DPC, and LILCO stipulated that the DPC would refrain from further action on the LILCO-submitted plan until February 23, 1983. The stipulation further provided that if the County did not file its own offsite plan with the DPC for formal consideration on or before February 22, 1983, the DPC would (a) meet promptly to take action on the LILCO-submitted plan, or any other plan the DPC deemed properly before it, and, (b) if a plan were approved, forward it to the Federal Emergency Management Agency to begin the federal review of the Shoreham Plan. Although the County's suit against the DPC was dismissed following the Legislature's passage of Resolution 111-1983, the DPC has yet to fulfill its contractual and statutory obligation to consider the LILCO-submitted plan.

(53) Since the County's abandonment in the spring of 1982 of the emergency planning effort it was legally bound to undertake, LILCO has repeatedly contacted various County officials and sought to restore a cooperative effort to prepare and implement offsite emergency planning for Shoreham. Not only has the County rebuffed all such overtures by LILCO, the County has affirmatively acted to frustrate LILCO's attempt to continue emergency planning without the County's assistance. For example, in its statement filed with the County Legislature at

the start of its hearings on the so-called draft County plan, LILCO expressed hope that "there will be a renewed relationship of cooperation between the Company and the County on emergency planning as a result of LILCO's participation [in the Suffolk County Legislature's hearings]." Long Island Lighting Company's Presentation to the Legislature of Suffolk County on the November 1982 Draft Suffolk County Radiological Emergency Response Plan at 27 (January 14, 1983). The Legislature's response was Resolution 111-1983 and its motion to terminate the Shoreham licensing hearings.

(54) Following the failure of its motion to terminate the NRC licensing proceeding for Shoreham, the County proceeded to exercise its last remaining option before the NRC -- to raise every conceivable objection to the offsite emergency plan developed by LILCO. This latest offsite plan, which LILCO filed with the NRC on May 26, 1983, provides for LILCO personnel to fill the gaps created in emergency planning by the County's wrongful refusal to participate in the process. The County filed 200 pages of contentions -- 97 in number, many with several subparts -- challenging the adequacy of LILCO's plan. Almost without exception, each of the County's contentions has its genesis in Resolution 111-1983 and in the County's baseless insistence that, without its participation, effective offsite

emergency planning for Shoreham is not feasible. Following extensive discovery in the fall of 1983 (which has not yet been concluded) and the filing of thousands of pages of written direct testimony, the NRC licensing board commenced hearings on the County's offsite emergency planning contentions on December 6, 1983. These hearings are still in progress, and they are expected to continue through at least May 1984.

(55) Most recently, on March 8, 1984, the Governor of New York and the County simultaneously filed almost identical lawsuits in state court in Albany and Suffolk Counties, respectively. The Governor and the County seek a declaration from the state court that, in effect, state and local governments may exercise an absolute veto over the licensing and operation of nuclear power plants for reasons of radiological safety. By agreement among the parties, these cases are to be consolidated in the Supreme Court of Suffolk County. LILCO will vigorously defend against this latest wrongful effort to prevent Shoreham's operation.

(56) The acts and omissions of the defendants described above constitute an unlawful effort under color of state law (a) to arrogate to themselves regulatory functions that belong exclusively to the NRC and (b) to deprive LILCO of its property without due process of law. The defendants have

acted arbitrarily, capriciously, intentionally, and in bad faith.

Count 1

(57) LILCO incorporates by reference paragraphs (1) through (56) in this paragraph as if fully restated herein. County Resolutions 262-1982, 456-1982, and 111-1983 and the subsequent acts and omissions of the County pursuant to these resolutions constitute an impermissible attempt by a local government to regulate and prevent the operation of a commercial nuclear power station on grounds of the County's purported conclusions regarding radiological safety. In its enactment of the Atomic Energy Act, the Congress of the United States vested sole and complete authority and responsibility for regulation of matters respecting radiological safety with the United States Nuclear Regulatory Commission. Therefore, under the Supremacy Clause of the United States Constitution, Suffolk County Resolutions 262-1982, 456-1982, and 111-1983 and all actions by the County and Cohalan pursuant thereto are illegal and void.

Count 2

(58) LILCO incorporates by reference paragraphs (1) through (56) as if fully restated herein. Under the Atomic Energy Act, LILCO has a right to seek an operating license for Shoreham from the NRC. Until at least February 1982, and probably until the County's adoption in February 1983 of Resolution 111-1983, LILCO reasonably assumed and was led by the County to believe that the County would not affirmatively oppose, because of purported concerns regarding emergency planning, LILCO's efforts to perfect its entitlement under the Atomic Energy Act to secure an operating license for Shoreham. The County's assessment of Shoreham as a nuclear plant for tax purposes is additional confirmation that the County recognized and would not seek to interfere with LILCO's right to seek a license for Shoreham. Under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, the defendants are obligated to fulfill their governmental duties and responsibilities fairly and without malice toward any citizen, whether corporate or individual. The defendants' about-face regarding emergency planning for Shoreham, predicated as it was on an impermissible usurpation of the NRC's exclusive regulatory authority, constitutes an arbitrary, capricious, and malicious deprivation of LILCO's property without due process of law.

Prayer for Relief

WHEREFORE, LILCO respectfully prays that the Court grant LILCO the following relief:

(1) As to Count 1, a declaration under 28 U.S.C. § 2201, 42 U.S.C. § 1983, the Supremacy Clause of the United States Constitution, and the Atomic Energy Act that Suffolk County Resolutions 262-1982, 456-1982, and 111-1983 and all actions predicated thereon are illegal and void;

(2) As to Count 2, an injunction under 42 U.S.C. § 1983 and the Due Process Clause of the United States Constitution requiring Suffolk County and Cohalan to fulfill their duty to exercise their governmental functions fairly by taking all reasonable steps necessary to assist LILCO in emergency planning for Shoreham;

(3) An assessment against the defendants pursuant to 42 U.S.C. § 1988 of LILCO's costs, including reasonable attorneys' fees; and

(4) Such other relief as the Court deems appropriate.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

April 3, 1984

By Edward M. Barrett / *mm*

Edward M. Barrett

Rosalind M. Gordon

Long Island Lighting
Company

250 Old Country Road

Mineola, New York 11501

(516) 228-2244

James E. Farnham

W. Taylor Reveley, III

K. Dennis Sisk

Lewis F. Powell, III

Hunton & Williams

707 East Main Street

Richmond, Virginia 23219

(804) 788-8200

COUNTY OF SUFFOLK

Exhibit A



John V. N. Klein
COUNTY EXECUTIVE

December 31, 1979

Ira L. Freilicher, Vice President
Long Island Lighting Company
250 Old Country Road
Mineola, New York 11501

Re: Memorandum of Understanding - Shoreham

Dear Ira:

Enclosed herewith is a photocopy of the original Memorandum of Understanding between the Long Island Lighting Company and the County with respect to emergency planning at Shoreham.

With the addition of paragraph 1, providing for mutual termination on ten days notice, I have signed the agreement and made the County Executive-elect Peter Cohalan aware of such action, with which he is in agreement.

If you wish a copy executed in original, I would be glad to do so.

Sincerely yours,

John V. N. Klein
Suffolk County Executive

JVNK:ds
Enclosure

cc: Honorable Peter F. Cohalan
Suffolk County Executive-Elect

11/11 3 19/8

MEMORANDUM OF UNDERSTANDING
BETWEEN
SUFFOLK COUNTY, NEW YORK
AND
LONG ISLAND LIGHTING COMPANY
ON
EMERGENCY PLANNING

In order to comply with 10CFR50 Appendix E IV(D) and to provide for efficient and timely implementation of protective actions should they ever be required as a result of an accident at the Shoreham Nuclear Power Station (SNPS), Suffolk County (County) and the Long Island Lighting Company (LILCO) have reached the following agreements and understandings:

- A. The (LILCO) Emergency Plan defines accident conditions and delineates responsibilities and duties of the SNPS staff in the event of a potential radiological incident. The Emergency Plan Implementing Procedures will be implemented whenever conditions exist which have a significant probability of leading to elevated levels of radiation which might result in an onsite or offsite personnel hazard, and/or environmental concern. Certain nonradiological events at the plant may also result in activating portions of the emergency organization. Emergencies have been separated into five classifications which are explained in detail in Section 13.3 SNPS FSAR.
- B. LILCO is responsible for the protective action of notifying the following persons onsite and in the immediate vicinity of the site in the event of an emergency:
 - 1. All persons whether LILCO employees or visitors within the "owner controlled area" of the site,
 - 2. All persons on the jetties or on the shore-front that is part of the Shoreham site,
 - 3. All persons within the LILCO owned portion of the Wading River marsh on the northeast portion of the site, and
 - 4. All persons associated with the St. Joseph's Villa located on the Shoreham West site.
- C. The County is responsible, in support of New York State, for the notification and protective action of all members of the public not specifically included in B, above.

D. LILCO agrees to notify the Emergency Operations Center (EOC) or Warning Point, using the National Alert Warning System (NAWAS) under the following circumstances:

1. Upon declaration by the LILCO Emergency Director of a Plant Emergency as defined in Section 13.3.3.1.3 of the SNPS FSAR where significant potential exists for the emergency to become a Site or General Emergency, as defined in Sections 13.3.3.1.4-5,
2. Upon declaration by the LILCO Emergency Director (within 15 minutes) of a Site Emergency or a General Emergency,
3. LILCO agrees to notify the County in a timely fashion (within 3 hours) upon a serious incident, regardless of whether such incident involves releases of radioactivity and LILCO also undertakes to notify the County of events which could, mistakenly or otherwise, be construed as a radiological incident, and
4. Upon dispatch from the site of injured or sick personnel who are contaminated with radioactivity and who are being transported to a local hospital (within 3 hours).

E. LILCO will install and maintain at its expense a dedicated telephone line connected to the NAWAS. Three telephones will be installed onsite, in the (1) Control Room, (2) Onsite Emergency Control Center, and (3) Alternate Onsite Emergency Control Center. The County will provide a terminal for this line in its NAWAS system located in its Emergency Operations Center in Yaphank, New York.

F. In the event of a Site or General Emergency, LILCO agrees to notify the County Warning Point and to provide the following information:

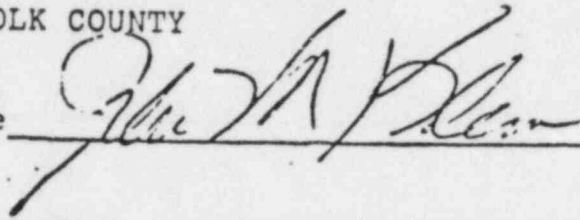
1. Location and type of emergency,
2. Caller's name and means of communications contact if different than the predesignated telephone number,
3. Date/Time of incident,
4. Wind speed and direction, and

5. Status of engineered safeguards (working/not working
County EOC or Warning Point will call LILCO to confirm
information, above. LILCO will then provide as much of
the following additional information as possible:

1. Type of accident (transportation accident, reactor accident, fire involving radioactive material, liquid discharge, fuel handling accident, accidental criticality, other),
 2. Primary effect to offsite areas (release to the atmosphere, release to water, direct radiation),
 3. Estimate of the quantity and type of radioactive material released or that may be released,
 4. Estimates of offsite two-hour whole body (immersion) and thyroid (inhalation) dose,
 5. Perimeter survey results,
 6. Pasquill wind stability category,
 7. Status of safeguards (status of core coolant systems, containment integrity, etc.),
 8. Additional offsite agencies notified and nature of request and response, and
 9. Other pertinent information.
- G. The County and LILCO agree to coordinate their efforts in the release of information to the public to provide the public with accurate and timely information.
- H. LILCO agrees to conduct at least one drill annually to test communication channels in which the County will be invited to participate.
- I. This agreement may be terminated by either party upon 10 days written notice to the other party.

FOR SUFFOLK COUNTY

Signature



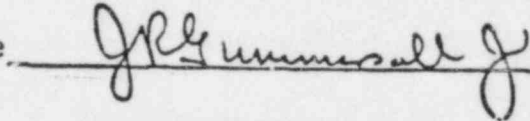
Date

12-28-79

Title

FOR LONG ISLAND LIGHTING COMPANY

Signature



Date

December 26, 1979

Title

Vice President

THIS AGREEMENT, as entered into as of this 18th day of September, 1981, by and between the Long Island Lighting Company (hereinafter referred to as "LILCO") and the County of Suffolk, acting through its Department of Planning (hereinafter referred to as the "DEPARTMENT").

WITNESSETH THAT:

WHEREAS, LILCO desires to enter into a contract with the DEPARTMENT to render certain technical and professional services hereinafter described,

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. Employment of Contractor. LILCO hereby agrees to engage the DEPARTMENT and the DEPARTMENT hereby agrees to perform the services hereinafter set forth. The relationship of the parties hereto shall be that of client and independent contractor; neither the DEPARTMENT nor any person hired by the DEPARTMENT shall be considered employees of LILCO for any purpose.

2. Scope of Services. The DEPARTMENT shall prepare a County Radiological Emergency Response Plan, as required by Federal Regulations in effect on the date of this Agreement for the LILCO Shoreham Nuclear Power Station. Said Plan shall be prepared in accordance with the description contained in clause 1 "Work Statement". The DEPARTMENT represents that it has read and is familiar with the applicable Federal Regulations set forth in Exhibit B attached hereto and that the DEPARTMENT believes it can develop a County Radiological Emergency Response Plan which complies with such regulations. If revisions to the aforesaid Federal Regulations shall be made during the period of this Agreement, calling for changes in the scope of work, then the provisions of clause 10 "Changes in Scope" of this Agreement shall apply.

3. Work Statement.

a. The DEPARTMENT shall perform the activities described in the SCOPE OF WORK appended hereto as Exhibit A.

b. The DEPARTMENT shall conform to the Federal Regulations and guidelines listed in Exhibit B, appended hereto, in the formation of outputs of activities described in Exhibit A.

c. Wherever specialized technical and scientific inputs are necessary, the DEPARTMENT will retain, after consultation with LILCO, the services of appropriate experts, at the DEPARTMENT's expense.

4. Time of Performance.

a. The DEPARTMENT will make every effort to complete the tasks listed in Exhibit A within 6 months from the date of execution of this Agreement, subject to the timely response by Federal and State agencies to requests for information, and the timely receipt of Federal and State concurrences with the draft and final Emergency Radiological Response Plans. In the event the DEPARTMENT fails to receive timely response from Federal and State agencies to requests for information, the DEPARTMENT shall promptly notify LILCO in writing of such failure.

b. The DEPARTMENT will issue monthly progress reports, and distribute them to LILCO, the Nuclear Regulatory Commission, the Federal Emergency-Management Agency, the New York State Department of Health, the Suffolk County Legislature, and other involved and interested agencies as specified by LILCO and agreed to by the DEPARTMENT. The DEPARTMENT agrees to provide LILCO with reasonable access to all memoranda, correspondence, professional qualification records of employees performing under the contract, papers, reports, studies and similar documents prepared by or obtained by the DEPARTMENT in connection with the performance of its obligations under this contract. LILCO shall give the DEPARTMENT 7 days' notice of its intention to exercise its rights under this paragraph.

5. Supervision and Personnel.

a. All work performed by the DEPARTMENT shall be under the direct supervision of Lee E. Koppelman.

b. The DEPARTMENT represents that it has, or will secure at its own expense, all personnel required to perform the services covered by this Agreement. Such personnel shall not be employees of, or have any contractual relationship with, LILCO.

6. Compensation. LILCO agrees to reimburse the DEPARTMENT on a fixed price basis; total compensation shall be TWO HUNDRED AND FORTY-FIVE THOUSAND (\$245,000.00) DOLLARS for the services described in clause 3 "Work Statement" of this Agreement unless this Agreement is amended as provided herein. The DEPARTMENT shall be compensated according to the following payment schedule:

\$150,000.00 on execution of this Agreement;

Balance on Completion.

7. Nondiscrimination. The DEPARTMENT shall not discriminate, directly or indirectly, on the grounds of race, color, religion, sex, age, national origin, or physical handicap in its employment practices related to this Agreement. The DEPARTMENT shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, or national origin.

8. Interest of Contractor. The DEPARTMENT represents that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The DEPARTMENT further represents that, in the performance of this Agreement, no person having any such interest shall be employed.

9. Title of Property. Title to property acquired under this Agreement vests with the DEPARTMENT.

10. Changes in Scope. If during the period of this Agreement, any change in the relevant Federal regulations causes an increase or decrease in the DEPARTMENT's cost of, or the time required for, the performance of any part of the work under this Agreement, an equitable adjustment shall be made and this Agreement modified in writing accordingly. No charge shall be made to LILCO for any change or increase in the obligations of the DEPARTMENT requiring extra work under this Agreement, unless the parties execute such an Agreement specifying the work to be done thereunder and the cost thereof. Disputes over such an adjustment shall be resolved as provided in clause 11 "Remedies" of this Agreement.

11. Remedies. This Agreement shall be interpreted according to the laws of the State of New York. All claims, counter-claims, disputes and other matters in question between LILCO and the DEPARTMENT arising out of or relating to this Agreement or the breach thereof shall be decided by arbitration in accordance with the rules for commercial disputes of the American Arbitration Association in the City of New York. The parties hereto agree that the determination of said arbitration shall be final and binding upon the parties hereto and that a judgment on said award may be entered as a judgment of record in the Supreme Court of the State of New York. The fees and expenses of the arbitrators shall be borne equally by the parties. Claims and disputes shall be defined as any formal written complaint which remains unresolved between the parties after reasonable efforts to resolve such matters have failed.

IN WITNESS WHEREOF, LILCO and the COUNTY have executed this Agreement as of the date first above written.

APPROVED
E. M. BARRETT
GEN'L COUNSEL
By E. M. Barrett Date 7/24/71

LONG ISLAND LIGHTING COMPANY

By: Matthew C. Cordaro
Matthew C. Cordaro, Vice-President

SUFFOLK COUNTY DEPARTMENT OF PLANNING

By: Lee E. Koppelman
Lee E. Koppelman, Director

COUNTY OF SUFFOLK

APPROVED AS TO FORM,
NOT REVIEWED AS TO EXECUTION By:

By: John C. Gallagher
John C. Gallagher
Chief Deputy County Executive

Alfred Jackson, Jr.
Alfred Jackson, Jr.
Deputy County Attorney

8/24/71

STATE OF NEW YORK)

COUNTY OF NASSAU)

On this 18th day of September, 1981, before me personally came
MATTHEW C. CORDARO, to me known, and known to me to be the person described
in and who executed the foregoing instrument as Vice-President of the
LONG ISLAND LIGHTING COMPANY, and he duly acknowledged to me that he
executed the same.

Therese Powers
Notary Public

STATE OF NEW YORK)

COUNTY OF SUFFOLK)

On this 28 day of August, 1981, before me personally came
LEE E. KOPPELMAN, to me known, who being by me duly sworn did depose
and say: That he resides at Suffolk County, New York; that he is the
Director of the SUFFOLK COUNTY DEPARTMENT OF PLANNING, described herein,
and which executed the above instrument, and that it was executed by
order of them, and that he signed his name thereto by like order.

Louis G. Della
Notary Public

LOUIS G. DELLA
NOTARY PUBLIC, STATE OF NEW YORK
No. 34-55343
Suffolk County
Comm. Expires 12/31/84

STATE OF NEW YORK)

COUNTY OF SUFFOLK)

On this 28 day of August, 1981, before me personally came
JOHN C. GALLAGHER, to me known, who being by me duly sworn did depose
and say: That he resides at Suffolk County, New York; that he is the
Chief Deputy County Executive of Suffolk County, and that he executed
the within instrument, and that he signed his name thereto by order of
the County Executive of Suffolk County.

Louis G. Della
Notary Public

LOUIS G. DELLA
NOTARY PUBLIC, STATE OF NEW YORK
No. 34-55343
Suffolk County
Comm. Expires 12/31/84

EXHIBIT A

SCOPE OF WORK

The preparation of the County Radiological Emergency Response Plan consists of nine phases. In carrying out the nine phases, the Suffolk County Department of Planning (the DEPARTMENT) will provide overall management and technical direction, and will be responsible for preparing document draft input (or modifications to existing documents), typing, printing, and distribution. In the development and effectuation of the Emergency Radiological Response Plan, the DEPARTMENT may utilize and employ the responsible County agencies and Departments to the maximum degree possible. The work already performed by LILCO, Suffolk County emergency planning organizations, the State of New York, and other New York counties surrounding operating nuclear plants in New York State will be utilized to the fullest extent practicable.

Each phase and its associated tasks is discussed below:

Phase I - Assess Suffolk County Emergency Planning Needs

The purpose of this phase is to review and assess the present status of the County emergency preparedness program and to make recommendations for a detailed program concerning schedules for both the County Radiological Emergency Response Plan and its Implementing Procedures. Based upon the results of this analysis, Suffolk County would have clear understanding of how best to accomplish its emergency planning responsibilities and could add to or modify the further phases and tasks described below. The specific tasks to be performed follow.

Task No. 1

Review and evaluate existing Suffolk County plans and procedures and determine the level of effort needed to bring them into compliance with existing regulations. Develop a schedule and an action plan that would accomplish this.

Task No. 2

Review existing evacuation plans, evacuation time estimates and public notification/communication systems with those parties involved. Develop a detailed program for upgrading or developing these plans and systems in order to meet existing requirements.

Task No. 3

Evaluate Suffolk County's independent environmental radiological monitoring capabilities and determine steps necessary to bring this capability up to the level required by Suffolk County to meet applicable Federal and State requirements. This task shall be coordinated with other work in this area done by LILCO and New York State. Methods and equipment required to perform radiological assessments to a degree desired by County officials in order to meet applicable laws and regulations will be determined.

Task No. 4

Prepare a needs analysis report which would address each aspect of Tasks 1-3; develop a detailed recommended approach to meet these needs; and provide a refined schedule for both the plan and its respective implementing procedures.

Phase II - Development of Draft Suffolk County Radiological Emergency Response Plans

The purpose of this phase would be to develop a County RERP that incorporates all necessary information and which is suitable for review by all appropriate agencies. The specific tasks to be performed follow.

Task No. 1

Perform an in-depth review of participating County government organizations and their existing radiological emergency response plans.

Task No. 2

Identify County agencies involved in emergency planning, define the authorization and responsibilities of these agencies, and identify the cognizant individuals within each agency.

Establish technical and managerial liaison with the responsible individuals in the County preparedness agency, LILCO, New York State, the Nuclear Regulatory Commission, and the Federal Emergency Management Agency.

Task No. 3

The DEPARTMENT will conduct familiarization meetings with the cognizant individuals in the County emergency preparedness agencies. The DEPARTMENT will provide guidance and background concerning the role and contribution of each agency in the emergency planning process, and recommend measures which will result in the most efficient planning activity.

Task No. 4

Identify a list of available County resources so that the overall emergency plan will make maximum use of these resources. The DEPARTMENT will develop checklists and prepare discussion agenda to ensure that the initial survey information is obtained in an orderly fashion, is properly documented, and is complete. These discussions will help determine assignment of various responsibilities to applicable emergency preparedness agencies and will also provide an effective format for identifying special emergency planning situations and/or problems.

Task No. 5

Manage the RERP development effort. The DEPARTMENT will identify individual agency tasks, responsibilities and interfaces to ensure maximum coordination and to facilitate the preparation of the draft plan.

The execution of Task No. 5 will require the completion of the following Sub-tasks.

Subtask No. 5.1

Building on the work done in Phase 1, Task 3, those agencies or organizations having some radiological assessment role during the emergency will be identified and their responsibilities will be delineated. Discussions will be held with the Department of Energy Regional Coordinating Office to determine their assistance role. The specifications, procurement and installation of this equipment is not included as part of this program.

Subtask No. 5.2

Review the existing or proposed communications network between the responsible Federal agencies, State and local officials, LILCO and field survey teams to ensure that the system is effective and reliable.

Subtask No. 5.3

Review and outline existing development of an early warning system for the general public. Individuals responsible for maintaining and actuating this system will be identified and their specific roles will be determined. Twenty-four (24) hour per day operational capability of the system shall be a program requirement.

Subtask No. 5.4

Incorporate into the County RERP the emergency action levels developed for the Shoreham Nuclear Power Station in accordance with NUREG-0610.

Subtask No. 5.5

Incorporate the prepared evacuation plans and associated time estimates into the County Plan.

Task No. 6

This task will be performed in parallel with Task No. 5, and will comprise the following subtasks:

Subtask No. 6.1

The RERP will also include the use of protective measures other than general evacuation. The following protective action response options will be developed

- Initial Precautionary Operations (i.e., institution of road blocks, etc.)
- Selective Evacuation
- Selective Sheltering
- General Sheltering
- Radioprotective Drug Administration
- Isolation of Ingestion Pathways and Sources

Subtask No. 6.2

The emergency planning needs for special facilities and/or problems will be addressed in this subtask along with the development of preliminary approaches for dealing with them. Facilities having special emergency planning needs and/or problems include, but are not limited to, the following:

- Hospitals
- Nursing/Retirement Homes
- Jails
- Recreational Areas
- Airports

Task No. 7

Prepare and issue the draft RERP for Licensee, State and local agency review and comment. This RERP shall emphasize proper and effective coordination between the responsible emergency preparedness agencies. All authorities and responsibilities, as determined in Task No. 2, will be clearly delineated in the plans.

Phase III - Preparation of Final Emergency Response Plan

The objective of this phase would be to finalize the emergency plan for submission to the Nuclear Regulatory Commission and to the Federal Emergency Management Agency. The following tasks will be completed during this phase.

Task No. 1

Conduct meetings with the responsible County emergency planning officials, the Licensee, and New York State officials to discuss their comments on the draft plan and to secure action, where necessary, to resolve outstanding concerns.

Task No. 2

Gather inputs and other information from County and State planning representatives and the Licensee as necessary to resolve outstanding differences.

Task No. 3

Finalize the County and State emergency plans by incorporating the information developed in Task No. 2. The DEPARTMENT will print and distribute the finalized plans to all parties.

Task No. 4

Coincident with Task No. 1 above, the DEPARTMENT and the cognizant emergency planning agencies will finalize the development of plans for the previously identified special emergency planning situations and/or solutions to problems.

Task No. 5

Coordinate final plan sign-off meetings, print and distribute final plans to the Licensee, State and local agencies and other organizations as designated by the County.

Phase IV - Assist in Obtaining Federal Agency Staff Concurrence With Emergency Plans

The objective of this phase is to confer with the reviewing Federal agency staffs to discuss their comments and to develop a program for obtaining agency concurrence with the plans developed in Phases I through III.

Task No. 1

Participate in meetings with the NRC, FEMA, DOT and other responsible agency staffs to discuss the plans and, to the extent possible, resolve commission and agency concerns.

Task No. 2

Discuss agency comments with the County and State emergency planning representatives and the Licensee to develop a program to resolve outstanding differences.

Phase V - Preparation of RERP Implementing Procedures

The objective of this phase is to develop detailed implementing procedures for the County Radiological Emergency Response Plan.

Task No. 1

Develop a listing of all necessary implementing procedures for the County emergency response plan. Any available local specific operating procedures will be utilized to the maximum extent feasible.

Task No. 2

Hold discussions with the County emergency planning organizations to ensure that they are fully aware of the latest Federal requirements for preparing satisfactory implementing procedures. Develop detailed outlines for each implementing procedure in cooperation with County emergency planning coordinators.

Task No. 3

The DEPARTMENT will prepare drafts of the implementing procedures and distribute them to the respective agencies for review and approval.

Task No. 4

Coordinate comments from the agencies and prepare final drafts of the procedures.

Task No. 5

The DEPARTMENT will assist the County agencies in meetings held with the NRC, FEMA, New York State, or other reviewing agencies as necessary to obtain final approval of the procedures.

Phase VI - Notification System Integration

In cooperation with LILCO and work which LILCO contracted to an independent consultant experienced in site evaluation, system design and system specification, the DEPARTMENT shall determine the resources, both administrative and physical, that are required to comply with the NRC 15-minute EPZ notification regulation and assist in review of the preparation of specification and procurement of the necessary hardware. Installation and test procedures would also be developed upon selection of a vendor. Actual installation would be accomplished by others.

Task No. 1

Review survey of the 10-mile EPZ; including demographic, topographic and geographic considerations that determine the characteristics of the required warning/notification system. Also, review the evaluation of existing notification capabilities, such as town and village fire department sirens.

Task No. 2

The DEPARTMENT will work jointly with LILCO to:

- i. select the notification system(s) that will be utilized;
- ii. review list of commercially available equipment and vendor selection/qualification; and
- iii. develop system installation and test procedures.

Phase VII - Public Education Program

Task No. 1 - Define Program Scope

During this task, the detailed scope and content of the public education information program will be identified after consultation with and concurrence by LILCO. Work completed or in progress by LILCO shall also be reviewed and evaluated. Examples of items which will be addressed include:

- brief factual information on radiation
- sources for additional information during emergency (i.e., Emergency Broadcasting System)
- guidance on respiratory protection
- protective action response options such as sheltering and evacuation
- emergency response planning areas (map)
- evacuation routes (map)
- reception center assignment and location
- provisions for identifying transit captives and those individuals requiring special handling who live in private residences
- ingestion exposure safeguards
- what plans and preparations can be made now
- things to take during evacuation (checklist)
- notification or alerting system details (sirens, etc.)
- method for notifying authorities that residents have left their homes (verification/confirmation)

Task No. 2 - Method of Dissemination

During this task, the means of disseminating the information to the public will be developed and supported by detailed procedures formulated jointly by the DEPARTMENT and LILCO. These methods could include:

- regional information centers
- periodic information in utility bills
- public service announcements (radio and TV)
- ads in periodicals (local newspapers and magazines)
- posting in public areas
- pamphlets distributed on a periodic basis
- information in the telephone book
- distribution to school children/PTA meetings
- local government/community meetings
- telephone information service

Task No. 3 - Program Implementation

During this task, the program will be implemented via procedures incorporating details developed in Tasks No. 1 and 2.

Phase VIII - Testimonial Services

At the request of Suffolk County or appropriate Federal or State agencies having jurisdiction or supervision over Emergency Response Plans, the DEPARTMENT will provide expert witness testimony before local, State and/or Federal regulatory agency boards concerning all emergency planning work performed by the DEPARTMENT.

Phase IX - Radiological Emergency Response Training

In cooperation with LILCO and New York State, where practical, and in support of the overall Radiological Emergency Response Program, the DEPARTMENT will provide personnel training services for all program participants. Emphasis will be placed on the following disciplines:

- emergency plan and procedure familiarization
- use of radiological survey instruments
- radioactive waste disposal methods and techniques
- radiation protection measures
- decontamination procedures
- radiological exposure control record keeping
- dosimetry
- notification procedures
- evacuation methodology
- radiological accident prognosis
- protective action response option evaluation process

EXHIBIT B

Guideline Documents

All finalized plans and procedures will be developed to meet NRC, FEMA, EPA and any other applicable regulatory requirements in effect at the date of the execution of this Agreement. It is the intention of the DEPARTMENT therefore, to utilize the following criteria as the basic guideline documents for the development of the appropriate plans and implementing procedures.

a. NUREG-0396

"Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants"
December, 1978

b. NUREG-0610

"Draft Emergency Action Level Guidelines for Nuclear Power Plants"
September, 1979

c. EPA-520/1-75-001

"Manual of Protective Action Guides and Protective Actions for Nuclear Incidents"
September, 1975

d. 10 CFR 50, Appendix E

"Emergency Plans for Production and Utilization Facilities"

e. NUREG-0654, FEMA-REP-1 Rev. 1

"Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants"
November, 1980.

COUNTY OF SUFFOLK



DEPARTMENT OF PLANNING

LEE E. KOPPELMAN
DIRECTOR OF PLANNING

February 19, 1982

Long Island Lighting Company
Executive Offices
250 Old Country Road
Mineola, New York 11501

Re: Radiological Emergency Response Plan

Gentlemen:

We wish to inform you that based on current evaluation we believe an apparent conflict of interest exists in accepting your funds for the preparation of the County's Radiological Emergency Response Plan. Accordingly, we will return the funds you advanced and will not call for any further funds.

The County will continue, as required by law, to develop a plan consistent with the requirements of law and its obligation to protect the health, safety, and welfare of the people.

Very truly yours,

Lee E. Koppelman
Director of Planning

LEK:ej



LONG ISLAND LIGHTING COMPANY

175 EAST OLD COUNTRY ROAD · HICKSVILLE, NEW YORK 11801

MATTHEW C. CORDARO, Ph. D.
VICE PRESIDENT

March 17, 1982

Dr. Lee E. Koppelman
Director of Planning
County of Suffolk
H. Lee Dennison Bldg.
Veterans Memorial Highway
Hauppauge, NY 11787

Re: Contract Between Suffolk County and
LILCO Regarding Emergency Planning

Dear Dr. Koppelman:

Your letter of February 19, 1982, indicates that Suffolk County intends to return \$150,000 that LILCO has paid to the County pursuant to a contract under which the County is to receive financial assistance from LILCO to help defray the County's expense in preparing its Radiological Emergency Response Plan for the Shoreham Nuclear Power Station. Pursuant to the contract, the County is to complete its plan by March 18, 1982.

Your letter of February 19th also states that LILCO should not make the final payment that will become due upon completion of the County plan.

LILCO, however, has requested neither the return of the \$150,000 paid to date nor the discharge of its obligation to make final payment. The Company is at a loss to understand why the County believes that acceptance of these payments constitutes a conflict of interest.

LILCO is relying on the County to perform its obligations under this contract and will be damaged severely if the County fails to perform these obligations fully. LILCO will not accept the return of any money paid under this contract unless the County first assures the Company in writing (1) that acceptance of this money by LILCO will not be construed to release or discharge the County from its obligations under the contract, (2) that the County intends to perform its obligations under the contract, and (3) that the return of this money will not impair the County's ability to perform its contractual obligations fully. The Company intends to make final payment in accordance with the terms of the contract.

Dr. Lee E. Koppelman
Director of Planning
County of Suffolk
March 17, 1982
Page 2

If you would like to discuss this matter further, please do not hesitate to contact me.

Very truly yours,

Michael C. Cardano

cc: Hon. Peter F. Cohalan
David J. Gilmartin, Esq.
W. T. Reveley, III, Esq. ✓
I. L. Freilicher, Esq.

Exhibit E

Intro. Res. No. 1266-82

Laid on Table 1/9/82

Introduced by the Presiding at the request of the County Executive

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

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

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

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

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

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

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

01-8026-992

01-8026-993

01-8026-994

and be it further

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

FROM

Employee Benefits Health Insurance
01-9060-836

\$175,000

TO

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

10,000

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

19,000

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

40,000

Planning Radiological Response Plan (Adv.) 01-8026-177	1,000
Planning Radiological Response Plan (Mileage) 01-8026-411	5,000
Planning Radiological Response Plan (Fees for services for non-Employees 01-8026-456	300,000

and be it further

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

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

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

DATED: March 23, 1982.

APPROVED BY:

[Signature]
County Executive of Suffolk County

Date of Approval: 3/25/82

SUFFOLK COUNTY
County Legislature
RIVERHEAD, N. Y.

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

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

[Signature]
Clerk of the County Legislature

SUFFOLK COUNTY DEPARTMENT OF PLANNING
EVACUATION PLANNING GROUP
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, N.Y. 11788

438

MEMORANDUM
May 12, 1982

TO: Frank Jones
Deputy County Executive

FROM: Robert Meunkle
Planning Department

RE: Suffolk County Radiological Emergency Response Plan (SCRERP)

The purpose of this memo is to clarify some aspects of what has been done with respect to the SCRERP. Initially, let me indicate that everything you have to date was written and prepared by the County.

I must also state that, until the very recent intervention by the County at the Nuclear Regulatory Commission hearings, we were working in a cooperative vain with LILCO, therefore, their preparation and printing of the exhibits that were designed by the County were to save the County time and money. Subsequent to the law suit, I received instructions from Dr. Koppelman to end our formal relationship with LILCO and to get from the utility whatever was then in the pipeline. This has been done.

There also appears to be some confusion as to consultants, again I must stress, that the discussions relative to consultants was prior to the County's legal actions.

There were two distinct areas where we have asked the utility for assistance. One was when we suggested they retain KLD Associates to do the dynamic analysis of the evacuation routing assignments. We requested this because the County did not have the in-house computer or traffic model capability needed, and predicated on inquiries we had made, it was apparent that KLD had the state-of-the-art model which was proprietary. In addition, we wanted someone (as did the utility) to independently verify our time estimates for the various evacuation senarios as postulated in NUREG 0654, Appendix IV. The initial meeting with KLD occurred on December 30, 1981.

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May 12, 1982

The second major area we asked the utility for assistance with were items within the Health Services portion of the SCRERP. The firm of Stone and Webster, already acting as consultants to LILCO on their emergency plan, were asked by the utility to work with us on the County Health Services portion of the local plan. This occurred in early March. Subsequent to your directive to me on April 15, 1982, and further reinforced by a discussion with Dr. Koppelman and myself, I contacted LILCO to request that any materials belonging to us be returned and to indicate we would not be making further requests.

During the long process that this planning effort has been following, many meetings were held with representatives of the Department of Health Services, some of which were attended by the utility. Predicated on those meetings, the utility asked Stone and Webster to write the Health Services portion of the County plan at our direction.

At the initial meeting with the principals, I presented an outline of what I wanted in this portion of the plan. There were two subsequent meetings, prior to being directed by yourself to terminate any working relationships with the utility. At each of these meetings we commented on the draft document and requested changes and modifications. At the termination of the working relationship with the utility we did not have the current Health Services section of the plan. I specifically explained this to Chris MacMurray, stating that we were working on health with the utility and the utility was currently in possession of the Health Services portion of the plan. Mr. MacMurray indicated that if we did not receive the document to inform him and he would see that it was provided through the attorneys.

It was over three years ago that we initiated work on the Evacuation Plan (Appendix A) for the ten mile EPZ. At that time, it was our stated objective to prepare the best possible document to protect the health and safety of the people of Suffolk County.

When the County entered into an agreement with the utility to prepare the SCRERP, our role greatly expanded but the stated objective has always remained the same.

I believe we were successful in realizing our stated objective, which is probably unfortunate in view of the current County position with respect to emergency planning. I state this, having read many other plans, all of which have been prepared by consultants. Invariably, consultants cannot devote the time necessary to guarantee that their methodology is functional. In essence a consultant ultimately gets to move on to their next project, while a local agency which develops a plan, must make sure that their plan is, in fact, operable.

4020438



OFFICE OF THE COUNTY EXECUTIVE

PETER F. CONALAN
SUFFOLK COUNTY EXECUTIVE

JOHN C. SALLAS
SUFFOLK COUNTY EXECUTIVE

May 17, 1982

Mr. Matthew C. Cordaro, Ph.D.
Vice President
Long Island Lighting Company
175 East Old Country Road
Hicksville, New York 11801

Dear Mr. Cordaro:

This is in reply to your letter of March 17, 1982, concerning the September 18, 1981 agreements between Suffolk County and LILCO regarding emergency planning.

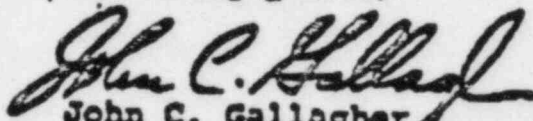
1. Given that the County is in an adversarial relationship to LILCO in the pending licensing hearings before the Nuclear Regulatory Commission, the County believes there would be the appearance of a conflict-of-interest by receiving any funds from LILCO.
2. The County is preparing a radiological emergency response plan which will satisfy all local, state and federal criteria and regulations, as contemplated by the September 18, 1981 agreement between the County and LILCO. Pursuant to Legislative Resolution 262 and Executive Order, such plan will be transmitted to the County Legislature by October 1, 1982.
3. The County's emergency planning effort is being performed by a team of nationally recognized experts. A list of these experts is enclosed herewith for your information. The County Executive has informed these experts that Suffolk County wishes to develop the best possible emergency plan to protect the health and safety of the residents of Suffolk County. Needless to say, a meaningful, workable radiological emergency plan would also be in LILCO's best interests.

May 17, 1982

4. Should LILCO be dissatisfied with the foregoing, please refer to Clause II of the September 18, 1982 agreement. Therein, it is stated that all matters in question relating to the agreement be decided by a stipulated arbitration procedure.

It is the County's hope that LILCO will promptly terminate its resistance to the County's good faith emergency planning efforts. An increasing amount of the County's time is being consumed by the need to respond to seemingly belligerent actions of LILCO that challenge the County's current effort. I ask that you convey to your colleagues these serious sentiments, and that LILCO refrain from escalating further with rhetoric or deed any difference which exists between LILCO and the County with respect to the critical goal of effective radiological emergency preparedness.

Sincerely yours,



John C. Gallagher
Chief Deputy County Executive

JCG/tr

SUFFOLK COUNTY
RADIOLOGICAL EMERGENCY RESPONSE
PLANNING CONSULTANTS

Suffolk County has retained the following persons to develop the County's radiological emergency response plan.

1. FAC - Voorhes of Milford Virginia, a firm with extensive experience in local radiological emergency planning and preparedness will have the overall responsibility for preparation of the plan. FAC-Voorhes has worked on radiological emergency response plans for local governments at twelve nuclear sites - the most recent being at San Luis Obispo County regarding the Diablo Canyon plant, and near Cleveland, Ohio, for the Perry plant.
2. Philip D. Barr, Professor of Planning at MIT, is a member of the County Executive's Steering Committee which is overseeing the emergency planning effort and will provide guidance and advice to FAC-Voorhes. Professor Barr has prepared analyses and testified on the status of emergency preparedness in NRC proceedings concerning the Seabrook Plant in New Hampshire and the Pilgrim I Plant in Massachusetts.
3. Dr. Neil W. Britton, Professor of Sociology at Yale University and Editor of the Yale Review, joined by Dr. James H. Johnson, Assistant Professor of Sociology at UCLA who has performed extensive research on the emergency response near the Three Mile Island plant, will study the sociological aspects of radiological emergency response planning on Long Island. They will be assisted by Dr. Donald J. Mosler, Assistant Professor of Geography at Old Dominion University, Dr. Walter G. Jurek, Professor of Community Studies, University of Wisconsin at Milwaukee, and Dr. David Stevenson, Department of Psychiatry, University of Chicago.

4. Dr. Fred Pinlayson, of Los Angeles, California, will perform the consequence analysis for the County's emergency response plan. Dr. Pinlayson recently provided technical direction to the State of California in its evaluation of Emergency Planning Zone Requirements and served as a consultant to the NRC's Special Inquiry Group which investigated the accident at Three Mile Island.
5. Dr. Robert J. Dahnitz, president of Future Resources Associates, Inc., in Berkeley, California, will join Dr. Pinlayson in the area of probabilistic risk assessment. Dr. Dahnitz is a former Director of the Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, and in 1979 served as technical coordinator for the NRC's Special Inquiry into the Three Mile Island accident.
6. Dr. Edward P. Radford, Director of the Center for Environmental Epidemiology of the University of Pittsburgh, will study the health effects of a possible nuclear accident on the population of Suffolk County. Dr. Radford was formerly Chairman of the NRC (Biological Effects of Ionizing Radiation) Committee of the National Academy of Sciences.

Introduced by Legislators Blass, Rosso, Foley, Caracappa, Gleese, Allgrove, Richards, Wenzelberg, Rizzo, Nolan, Hariton, Noto, Howard, Prospect, Lanza, Divine, Meade

RESOLUTION NO. 466 -1982, ESTABLISHING THE
RADIOLOGICAL EMERGENCY RESPONSE PLANNING
POLICY OF THE COUNTY OF SUFFOLK

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

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

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

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

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

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

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

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

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

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

and, be it further

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

DATED: May 13, 1982

APPROVED BY:

L. E. Holman
County Executive of Suffolk County

Date of Approval: *5/19/82*

SUFFOLK COUNTY
County Legislature
RIVERHEAD, N. Y.

I, the County Clerk 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 Testimony 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

COUNTY OF SUFFOLK



COUNTY LEGISLATURE

FERDINAND J. GIESE
COUNTY LEGISLATOR, FIFTH DISTRICT

CHAIRMAN
SENIOR CITIZENS COMMITTEE

MEMBER
PUBLIC SAFETY COMMITTEE
VETERANS AFFAIRS COMMITTEE
FINANCE, LEGISLATIVE AND MANAGEMENT
FINANCE COMMITTEE
FARM AND FORESTRY COMMITTEE
TOWN COMMITTEE
HEALTH AND GENERAL SAFETY BOARD

149 MAIN STREET, U
EAST SETAUKET, NEW YORK 11733-2899
(516) 688-8300

January 19, 1983

Mrs. Deborah Schechner, President
Peoples Action Coalition of Suffolk County
P. O. Box 27
Shirley, New York 11967

Re: Shoreham Evacuation

Dear Mrs. Schechner:

I am in receipt of your letter dated January 6th in relation to the above-referenced topic.

As you will remember, I openly expressed my displeasure of Legislator Prospect introducing legislation relative to the Shoreham Plant. I maintained at the time that the most simple and direct answer to the problem would be institution of legal action by the County of Suffolk at the time the N.R.C. decides to issue the license and demanding that LILCO prove the effectiveness of a viable Evacuation Plan. It stands to reason they could not do so in a million years and then, in my way of thinking, they could not activate the plant.

The purpose of Mr. Prospect's resolution, as I see it, was to spend four million dollars of taxpayers' money, not counting the untold millions that will be paid in the event any so-called Evacuation Plan is implemented.

I understand your position that the plan should not be adopted; however, the reasoning behind the hearings for a so-called plan, at the present time, is to use the facts presented as a basis for a future lawsuit. In this case, Legislator Prospect has saddled the people with an expense that is atrocious, unreasonable and, in my humble opinion, with no affirmative result in the future. On the other hand, were the Legislators to agree that, as elected officials, we should reject the plan, we are in effect indicating that we do not cherish human life and have no desire to protect our constituents. On the basis of this assumption, Legislators have no other

Mrs. Deborah Schechner, President

January 19, 1983

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alternative but to vote in the affirmative.

There is no longer a simple solution to this problem because of the political maneuverings of one individual. I regret the situation that we are confronted with but we have no other alternative. I have been criticized for voting for the original resolution; however, how was it possible to vote "no" and give the impression that I was in favor of the LILCO operation.

I thank you for the comments in your letter and I assure you of my continued interest in the safety of all constituents throughout Suffolk County.

Sincerely yours,

FERDINAND J. GIESE
County Legislator
5th District

FJG:gfk

cc to: All Suffolk County Legislators

WHEREAS, in accepting 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;

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; 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

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 County residents and thus will not be approved and will not be implemented; and

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

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.

Resolution No. III -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



LONG ISLAND LIGHTING COMPANY

175 EAST OLD COUNTRY ROAD • HICKSVILLE, NEW YORK 11801

MATTHEW C. CORDARO, Ph. D.
VICE PRESIDENT

May 10, 1982

Commissioner William Hennessey
Chairman
Disaster Preparedness Commission
c/o Dr. David Axelrod
N.Y.S. Dept. of Health
Empire State Plaza
Tower Building
Albany, N. Y. 12237

Dear Commissioner Hennessey:

On August 11, 1981, the Suffolk County Legislature passed Resolution No. 694, approving a contract for the development of a local off-site emergency plan for the Shoreham Nuclear Power Station; the contract had previously been signed on behalf of the Suffolk County Executive and LILCO. A copy of the contract is attached to this letter.

Under the September 18th contract, County emergency planners, funded by \$245,000 from LILCO, were to prepare the local off-site emergency plan for Shoreham, to be completed within six months of the contract's effective date. County emergency planners, assisted in various ways by LILCO, have in fact produced a local off-site emergency plan for Shoreham. It is bound in two binders, which were produced at the request of the County Planning Department, entitled "Suffolk County Radiological Emergency Response Plan" and "Suffolk County Radiological Emergency Response Plan - Appendix A."

LILCO hereby submits the local off-site emergency plan for Shoreham to the Disaster Preparedness Commission for its review. Also included is a separate volume containing the missing Suffolk County Health Department Section which was prepared by Stone & Webster at the request of the Suffolk County Planning Department. This section has not yet received final County review.

Commissioner William Hennessey
Chairman
Disaster Preparedness Commission
May 10, 1982
Page 2

As you know, the County has recently refused to endorse the local off-site emergency plan prepared by its own planners, and has attempted to return the funds provided to it by LILCO under the contract of September 18. However, political endorsement of the plan is not required for its submission to and review by New York State and FEMA; the contracted work, essentially completed, is ready for review. The County can certainly fine-tune this local off-site plan if its further emergency planning efforts so require.

Very truly yours,

M. C. Cordaro

Matthew C. Cordaro, Ph. D.
Vice President

MCC:tz

Attach.

NOV 19 1982

Exhibit L

COUNTY OF SUFFOLK



OFFICE OF DISTRICT ATTORNEY

ADDRESS REPLY TO:
SPECIAL INVESTIGATION UNIT

PATRICK HENRY
DISTRICT ATTORNEY

November 16, 1982

David J. Gilmartin, Esq.
Suffolk County Attorney
H. Lee Dennison Building
Hauppauge, NY 11788

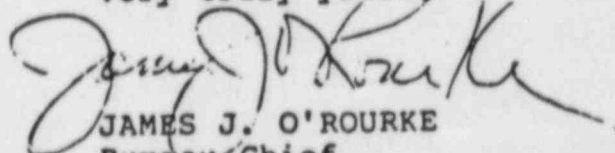
Dear Mr. Gilmartin:

Pursuant to your request, this office has reviewed the report to the Subcommittee of the Suffolk County Legislature concerning the actions of LILCO in filing an Emergency Radiological Evacuation Plan.

It would appear by a review of the correspondence dated May 10, 1982 of Dr. Matthew C. Cordaro to Commissioner William Hennessey that LILCO advised the state of the county's position with respect to the Radiological Emergency Evacuation Plan. This letter clearly indicates that LILCO fully acknowledged the county's disavowal of the off-site emergency plan submitted on May 10, 1982. Indeed, there is evidence to suggest that in April of 1982 a meeting was held with the county, state and LILCO officials present in which LILCO suggested its alternative to approval by the county of the evacuation plan was to submit a draft as is. LILCO has plainly maintained since April that the County's final approval is not required. Regardless of the substantive merit of that position, no mens rea on the part of LILCO can be found.

Though it cannot be denied that the binder and title of the Radiological Evacuation Response Plan suggested it was Suffolk County's plan, this was not an attempt to mislead any public agency. This certainly does not rise to the level of criminal conduct and while perhaps ill-advised is not a matter for action by this office.

Very truly yours,


JAMES J. O'ROURKE
Bureau Chief

JJO:bam

cc: Peter F. Cohalan
Suffolk County Executive

John Wehrenberg, Presiding Officer
Suffolk County Legislature

Rosalind Gordon, Esq., LILCO ✓

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

CITIZENS FOR AN ORDERLY ENERGY
POLICY, INC., et al.

Plaintiffs,

-against-

COUNTY OF SUFFOLK and PETER F.
COHALAN, in his capacity as
County Executive,

Defendants.

CV-83-4966
MEMORANDUM
AND ORDER

-----x

APPEARANCES:

PACIFIC LEGAL FOUNDATION
Attorneys for Plaintiffs
1990 M. Street, N.W., Suite 550
Washington, D.C. 20036
By: Lucinda Low Swartz

HON. MARTIN BRADLEY ASHARE
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

KIRKPATRICK, LOCKHART, HILL,
CHRISTOPHER & PHILLIPS
1900 M. Street, N.W.
Washington, D.C. 20036
By: Herbert H. Brown, Esq.

KIRKPATRICK, LOCKHART, JOHNSON
& HUTCHINSON
1500 Oliver Building
Pittsburgh, Pennsylvania 15222
By: David A. Brownlee, Esq.
Attorneys for Defendants,

Suffolk County and Peter F. Cohalan,
County Executive

EDWARD M. BARRETT
Long Island Lighting Co.
250 Old Country Road
Mineola, New York 11501

HUNTON & WILLIAMS
Attorneys for Long Island Lighting Co.
707 East Main Street
Richmond, Virginia 23219
By: Lewis F. Powell, III, Esq.

LOU LEWIS, ESQ.
Attorney for Shoreham-Wading River Central
School District
55 Market Street
Poughkeepsie, New York 12601

ALTIMARI, D.J.:

Plaintiffs Citizens for an Orderly Energy Policy, Inc. ("Citizens"), a not-for-profit corporation, and five of its members commenced the instant action by the filing of a complaint on or about November 10, 1983. Seeking declaratory as well as injunctive relief, plaintiffs plead two causes of action. Briefly stated, plaintiffs' first cause of action seeks a judgment declaring three resolutions adopted and implemented by defendants void and illegal as preempted by the Atomic Energy Act, 42 U.S.C. § 2011 et seq. For a second state law cause of action, plaintiffs seek an injunction requiring the Suffolk

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County Planning Department to develop or assist in the development of a radiological emergency response plan for the Shoreham Nuclear Power Facility ("Shoreham"), and requiring the County of Suffolk to make available all necessary resources in the event of an emergency at Shoreham for the protection of the residents' health and safety. See N.Y. Const. art. 9, § 2(c)(10); N.Y. Exec. Law §§ 20, 23, 25 (McKinney 1982).

The Shoreham-Wading River Central School District (the "District"), pursuant to Rule 24(a)(2) and (b)(2), Fed. R. Civ. P., and Long Island Lighting Company ("LILCO"), pursuant to Rule 24(a)(2), by separate motions seek leave to intervene in this lawsuit as plaintiffs. Defendants urge that we deny their motions to intervene. In addition, defendants have moved to dismiss plaintiffs' complaint.

DISCUSSION

Rule 24(a)(2), Fed. R. Civ. P., provides that:

"Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, un-

less the applicant's interest is adequately represented by existing parties.

Rule 24(b)(2) provides that:

"Upon timely application anyone may be permitted to intervene in an action:
. . . (2) when an applicant's claim or defense and the main action have a question of law or fact in common
. . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

While some courts and commentators refer to a "threefold test for intervention of right," see 7A Wright & Miller, Federal Practice and Procedure, § 1908, at 495 (1972) (hereinafter "Wright & Miller"), this Circuit has recently analyzed the applicants' burden in terms of a four-pronged test. An intervenor must show that:

"(1) the application is timely;
(2) the applicant claims an interest relating to the property or transaction which is the subject matter of the action"; (3) the protection of the interest may as a practical matter be impaired by the disposition of the action; and (4) the interest is not adequately protected by an existing party."

Restor-A-Dent Dental Laboratories, Inc. v. Certified Alloy Products, Inc., 725 F.2d 871, 874 (2d Cir. 1984).

See, 3B Moore, Moore's Federal Practice, par. 24.07[1], at 24-50 (2d ed. 1982) (hereinafter "Moore's Federal Practice"). Guided by the above test, we address separately the two motions for intervention.

A. LILCO'S APPLICATION

In support of its motion to intervene, LILCO argues with respect to the first requirement that its motion is timely since the complaint was filed barely four and a half months ago; no answer has been filed; no discovery has taken place; no trial date has been set; and intervention will neither inconvenience the parties or the court nor delay the resolution of the ultimate issues in the case. As to the second requirement, LILCO argues that the defendants seek to prevent Shoreham's operation for reasons of radiological safety. Since Shoreham is LILCO's "single largest economic endeavor" and "[t]he financial well-being of LILCO is inextricably linked to Shoreham," LILCO argues that its interest in the subject matter of the action "could hardly be greater." As to the third requirement, LILCO argues that while dismissal of plaintiffs' complaint would not prevent it from raising its claims against the defendants in a

separate action, the stare decisis impact of an earlier decision on the same subject might impair its ability to prosecute its claims. Turning to the last requirement, LILCO argues that while it has confidence in the plaintiffs and their attorneys, the defendants have challenged their standing to maintain the instant action. Moreover, LILCO reasons that because of the magnitude of its interest in the resolution of the subject matter of the instant action, "it would be appropriate to allow LILCO to intervene in recognition of the reality that, no matter how ardent the plaintiffs, they have a significantly smaller stake in this case than does LILCO."

Answering LILCO's motion, defendants argue that LILCO has not clearly demonstrated inadequate representation to justify intervention, i.e., it has not established that the original plaintiffs have interests adverse to LILCO's or are guilty of nonfeasance, or that the original plaintiffs and defendants are in collusion. Defendants also argue that given the circumstances of this case, LILCO's motion to intervene is untimely, and that LILCO's ability to protect its interest will not be impaired by denial of the motion to intervene.

Addressing first LILCO's request that we resolve its motion to intervene before turning to the defendants' motion to dismiss, we think such a procedure, especially under the facts of the instant case, most appropriate. First, LILCO has recently filed an action against defendants in this Court. Contrary to defendants' argument, the action is essentially identical to the instant case, but for an additional claim styled under the Civil Rights Act, 42 U.S.C. § 1983. If allowed to intervene in this action, LILCO will withdraw its separate action saving both the Court and the defendants the burden of essentially duplicative litigation and putting all concerned parties before the Court at one time. More importantly, LILCO, as even defendants must surely recognize, has as great an interest in the subject matter of this action as defendants and certainly more than plaintiffs. It asks this Court to allow it the opportunity to file a brief and be heard before we decide issues of paramount importance to it. That defendants argue that the parties before the Court have already exhaustively briefed the legal issues and that there is little left for LILCO to add, is an argument

we find particularly unpersuasive. Obviously, LILCO does not ask for the opportunity to address the issues in the hope that it will discover a case or some authority unnoticed by the other very able attorneys involved in this matter. It merely asks the Court to allow it the opportunity to persuade us that plaintiffs and its position, rather than defendants, is best supported by the applicable authority. Furthermore, we are unmoved by defendants' suggestion that deferring the motion to dismiss, so that LILCO may respond, will benefit neither the Court nor the parties. This Court believes we all benefit when every lawfully interested party is afforded the opportunity to express its thoughts and position before a court takes possibly dispositive action. Our system of jurisprudence requires it and parties appearing before this Court can expect nothing less. Finally, the delay occasioned by LILCO's entrance into the action will be relatively short and to the prejudice of no party.

As the above discussion indicates, we think LILCO's motion to intervene proper. First, while one can question why it wasn't brought on a bit earlier, the delay will not prejudice the existing parties to

the action. See Wright & Miller, supra, § 1916, at 575-76 ("The most important consideration in deciding whether a motion for intervention is untimely is whether the delay in moving for intervention will prejudice the existing parties to the case.") Indeed, the argument of the motion's untimeliness carries little force when one notes that discovery has yet to commence, nor motions to date decided, nor prejudice likely to befall any party by allowing intervention. See, Jet Traders Inv. Corp. v. Tekair Ltd., 89 F.R.D. 560, 568 (D. Del 1981).

Second, LILCO clearly has a direct and substantial interest in the determination of the issues presented in this action. Simply put, plaintiffs seek to compel defendants to participate in offsite emergency planning for Shoreham and thereby remove a major impediment to Shoreham's licensing. Third, it is similarly clear that LILCO's ability to protect its interest may well be impaired if we continue this action and grant defendants' motion to dismiss in its absence. While LILCO could still raise the same issues in its action, the principle of

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stare decisis would undoubtedly impair LILCO's ability to protect its interest were it prevented from intervening in this action and addressing the pending motion. See, Smith v. Pangilnan, 651 F.2d 1320, 1325 (9th Cir. 1981); Nuesse v. Camp, 385 F.2d 694, 702 (D.C. Cir. 1967); Atlantis Development Corp. v. United States, 379 F.2d 818, 826-29 (5th Cir. 1967); Spirit v. Teachers Ins. and Annuity Ass'n, 93 F.R.D. 627, 643 (S.D.N.Y. 1982); In re Oceana International, Inc., 49 F.R.D. 329, 332 (S.D.N.Y. 1969); see also, New York Public Interest Research Group, Inc. v. Regents of University of State of New York, 516 F.2d 350, 352 (2d Cir. 1975); Securities and Exchange Commission v. Everest Management Corp., 475 F.2d 1236, 1239 n. 4 (2d Cir. 1972); Wright & Miller, supra, § 1908, at 515; Moore's Federal Practice, supra, par. 24.07[3], at 24-65. Finally, we turn to the more difficult question of adequacy of representation. While the leading commentators disagree with respect to whether the burden is on the intervener to show that representation may be inadequate, see, Moore's Federal Practice, supra, par. 24.07[4], at 24-70-71, or on the party opposing intervention to show that representation

is adequate, see Wright & Miller, supra, § 1909, at 520-21, in this Circuit the burden lies with LILCO, the intervener, to show that representation may be inadequate. United States Postal Service v. Brennan, 579 F.2d 188, 191 (2d Cir. 1978). We think LILCO has satisfied its "minimal" burden. Trbovich v. United Mine Workers of America, 404 U.S. 528, 538 n. 10, 92 S. Ct. 630 (1972); United States Postal Service v. Brennan, supra, 579 F.2d at 191. To begin with, we reject defendants' suggestion that an intervener may satisfy the inadequate representation requirement only by establishing (i) that the original plaintiffs have interests adverse to the intervener's or are guilty of nonfeasance or (ii) that the existing parties are in collusion. (Defendants' Memorandum in Response to LILCO's Motion to Intervene at 5, citations omitted). See, Wright & Miller, supra, § 1909, at 523-24. Here, defendants have challenged plaintiffs' standing to maintain this lawsuit. This challenge alone creates a serious possibility that plaintiffs may not adequately represent LILCO.¹ Moreover, it is clear that while plaintiffs' and LILCO's interests are not adverse, they are different. This too adds to the risk that

plaintiffs may not adequately represent LILCO's interest. In sum, we find that LILCO has satisfied its minimal burden and is entitled to intervene as of right in this action. In any event, were we to conclude otherwise, as by finding that LILCO is adequately represented in this action, we would invite LILCO to move to intervene pursuant to Rule 24(b)(2), Fed. R. Civ. P., and immediately grant that motion. In light of LILCO's great interest in the subject matter of this action, the possible contribution it may make to proper resolution of the issues, and the Court's interest in resolving these difficult issues in one lawsuit with the participation of all concerned parties, it hardly makes sense to bar LILCO's entrance into this lawsuit. See Discussion, p. 13-14 infra.

THE DISTRICT'S MOTION

The District moves to intervene pursuant to Rule 24(a)(2), or, in the alternative, 24(b)(2), Fed. R. Civ. P. Without addressing the more difficult question of the District's right to intervene as of right, we grant its motion for permissive intervention under Rule 24(b)(2).

Under Rule 24(b)(2), there are three requirements for permissive intervention:

- (1) "timely application;"
- (2) "a question of law or fact in common between the applicant's claim or defense and the main action;" and
- (3) a determination that the intervention will not "unduly delay or prejudice the adjudication of the rights of the original parties."

United States v. Columbia Pictures Industries, Inc., 88 F.R.D. 186, 189 (S.D.N.Y. 1980). Accord, United States v. Yonkers Bd. of Education, 518 F. Supp. 191, 202 (S.D.N.Y. 1981). It is well-settled that the principal consideration in either granting or denying an application for permissive intervention is "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." United States Postal Service v. Brennan, *supra*, 579 F.2d at 191; Spirt v. Teachers Ins. and Annuity Ass'n, *supra*, 93 F.R.D. at 645; Weisman v. Darneille, 89 F.R.D. 47, 52 (S.D.N.Y. 1980); United States v. Columbia Pictures Industries, Inc., *supra*, 88 F.R.D. at 189. See generally, Wright & Miller, *supra*, § 1913, at 552; 7 Cyclopedia of Federal Procedure, § 24.23, at 22

(rev. ed. 1971). In addition, the Court may also consider the nature and extent of the intervener's interests, whether the intervener's participation will contribute to the just and equitable adjudication of the issues, and whether the intervener's interests are adequately represented by the parties of record.

United States Postal Service v. Brennan, supra, 579 F.2d at 191. The last factor, adequacy of representation, is "a minor factor at most." United States v. Columbia Pictures Industries, Inc., supra, 88 F.R.D. at 189. See, Groves v. Insurance Company of North America, 433 F. Supp. 877, 888 (E.D. Pa. 1977).

In resisting the District's attempt to permissively intervene in this action, defendants in essence argue that the District's position is as legally faulty as plaintiffs', that its participation will not materially assist our resolution of the action, and that the original plaintiffs will adequately represent its interests. Significantly, defendants do not even suggest that the District's intervention will unduly delay or prejudice the original parties.

1

Having reviewed the intervener's complaint and the arguments contained in the District's memorandum of law, it is self-evident that the District's claims and the main action contain common, if not identical, questions of law and fact. Moreover, the application is clearly timely, see p.8-9 supra, and while the District's addition will cause some delay, in that "additional parties always take additional time," Wright & Miller, supra, § 1913, at 553, the delay will certainly not be undue or to the prejudice of the original parties. In addition, the District has a great interest in the subject matter of this action, economic and otherwise, and its participation will only benefit the just and equitable adjudication of the issues. For all of these reasons, the District's motion to intervene under Rule 24(b)(2) is granted.

LILCO and the District are granted leave to file briefs in opposition to the defendants' motion to dismiss, such briefs to be filed within two weeks from receipt of this memorandum and order. Defendants may respond to those briefs within two weeks from receipt and, in addition, address any issues raised by the interveners' presence in the action, including its

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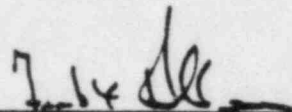
effect on the motion to dismiss and the grounds raised therein. In addition, in the interests of justice and equal time, plaintiffs may respond to defendants' final submission.

CONCLUSION

For the reasons stated herein, the motions of LILCO and the District to intervene are granted.

SO ORDERED.

Dated: Uniondale, New York
April 11, 1984.



Frank X. Altimari
U.S. District Judge

FOOTNOTE

1

The Court recognizes that intervention cannot cure a jurisdictional defect that would have barred us from hearing the original action between the parties; however, if plaintiffs are later found to be without standing to proceed in this action, it is within our discretion to treat LILCO's pleadings as a separate action since it would appear that no challenge can or will be made to its standing. 7A Wright & Miller, Federal Practice and Procedure, § 1917, at 585-86 (1972).

LILCO, April 13, 1984

CERTIFICATE OF SERVICE

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station, Unit 1)
(Emergency Planning Proceeding) Docket No. 50-322-OL-3

I hereby certify that copies of a letter dated April 13, 1984 from Donald P. Irwin to James A. Laurenson, et al., with attachments, were served this date upon the following by first-class mail, postage prepaid.

James A. Laurenson,
Chairman
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
East-West Tower, Rm. 402A
4350 East-West Hwy.
Bethesda, MD 20814

Dr. Jerry R. Kline
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
East-West Tower, Rm. 427
4350 East-West Hwy.
Bethesda, MD 20814

Mr. Frederick J. Shon
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
East-West Tower, Rm. 430
4350 East-West Hwy.
Bethesda, MD 20814

Eleanor L. Frucci, Esq.
Attorney
Atomic Safety and Licensing
Board Panel
U. S. Nuclear Regulatory
Commission
East-West Tower, North Tower
4350 East-West Highway
Bethesda, MD 20814

Secretary of the Commission
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Bernard M. Bordenick, Esq.
David A. Repka, Esq.
Edwin J. Reis, Esq.
U. S. Nuclear Regulatory
Commission
7735 Old Georgetown Road
(to mailroom)
Bethesda, MD 20814

Stewart M. Glass, Esq.
Regional Counsel
Federal Emergency Management
Agency
26 Federal Plaza, Room 1349
New York, New York 10278

Stephen B. Latham, Esq.
Twomey, Latham & Shea
33 West Second Street
Post Office Box 398
Riverhead, NY 11901

Fabian G. Palomino, Esq.
Special Counsel to the
Governor
Executive Chamber
Room 229
State Capitol
Albany, New York 12224

Herbert H. Brown, Esq.
Lawrence Coe Lanpher, Esq.
Christopher M. McMurray, Esq.
Kirkpatrick, Lockhart, Hill
Christopher & Phillips
8th Floor
1900 M Street, N.W.
Washington, D.C. 20036

Mr. Marc W. Goldsmith
Energy Research Group
4001 Totten Pond Road
Waltham, Massachusetts 02154

MHB Technical Associates
1723 Hamilton Avenue
Suite K
San Jose, California 95125

Mr. Jay Dunkleberger
New York State Energy Office
Agency Building 2
Empire State Plaza
Albany, New York 12223

Gerald C. Crotty, Esq.
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Ralph Shapiro, Esq.
Cammer & Shapiro, P.C.
9 East 40th Street
New York, New York 10016

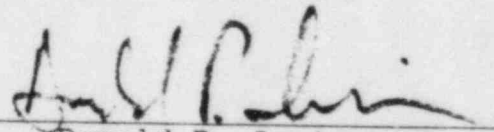
James B. Dougherty, Esq.
3045 Porter Street
Washington, D.C. 20008

Jonathan D. Feinberg, Esq.
New York State Public Service
Commission, Staff Counsel
3 Rockefeller Plaza
Albany, New York 12223

Spence W. Perry, Esq.
Associate General Counsel
Federal Emergency Management
Agency
500 C Street, S.W., Rm. 840
Washington, D.C. 20472

Ms. Nora Bredes
Executive Coordinator
Shoreham Opponents' Coalition
195 East Main Street
Smithtown, New York 11787

Martin Bradley Ashare, Esq.
Suffolk County Attorney
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788


Donald P. Irwin

Hunton & Williams
707 East Main Street
Post Office Box 1535
Richmond, Virginia 23212

DATED: April 13, 1984