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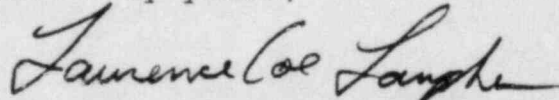
James A. Laurenson, Chairman
Dr. Jerry R. Kline
Mr. Frederick J. Shon
Administrative Judges
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Long Island Lighting Company;
Shoreham Nuclear Power Station,
Unit 1; Docket No. 50-322-OL-3

Gentlemen:

At various times during this proceeding, the Board has indicated its interest in whether any party intended to seek New York State Court resolution of the issues relating to LILCO's authority to implement its offsite emergency plan. Suffolk County has recently filed an action in New York State Court in Riverhead for a declaratory judgment concerning this matter. County of Suffolk v. Long Island Lighting Company, Index No. 84-4615. A copy of the County's complaint is attached.

Sincerely yours,



Lawrence Coe Lanpher

LCL/dk
Enclosure

cc: Service List

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SUPREME COURT OF THE STATE OF
NEW YORK
COUNTY OF SUFFOLK

COUNTY OF SUFFOLK,

Plaintiff,

v.

LONG ISLAND LIGHTING COMPANY,

Defendant.

Complaint

Index No. 84-4615

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. 456-1982, 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 RERP 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

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

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.

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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.

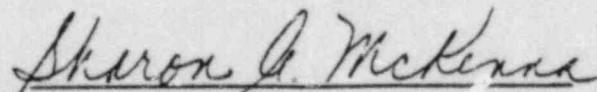
This verification is made by deponent because Suffolk County is a municipal corporation and deponent is an officer thereof.

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. 4683188
Qualified in Suffolk County 1985