

DOCKETED
USNRCUNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

84 DEC 10 AM 11:00

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,
Unit 1))Docket No. 50-322-OL-3
(Emergency Planning)SUFFOLK COUNTY AND STATE OF NEW YORK
MOTION TO VACATE ORDER GRANTING LILCO'S
MOTION FOR SUMMARY DISPOSITION ON
CONTENTION 24.B AND TO STRIKE PORTIONS
OF LILCO'S AND THE STAFF'S PROPOSED FINDINGS

On April 20, 1984, the Board, over the opposition of Suffolk County, granted summary disposition in favor of LILCO on certain emergency planning contentions, including Contention 24.B.^{1/} Contention 24.B, as modified and confirmed by the Board's Order of February 3, 1984,^{2/} provided as follows:

The Plan does not include any agreements with (1) U.S. Department of Energy-Radiological Assistance Program ("DOE-RAP") employees or (2) any outside consultant that has agreed to fill the LERO position of "Radiation Health Coordinator," which identify the services to be provided, the criteria for their implementation or the arrangements for exchange of information, or which obligate them to perform the functions for which they are relied upon by LILCO. In the absence of such agreements, there can be no assurance that the following functions can or will be implemented: accident or dose assessment or projection, recommendation of protective actions to the LERO Director, radiological

^{1/} See Order Ruling on LILCO's Motions for Summary Disposition of Contentions 24.B, 33, 45, 46 and 49 (hereinafter, "Order").

^{2/} See Memorandum and Order Ruling on Intervenors' Proposed Emergency Planning Contentions Modified to Reflect Revision 3 of the LILCO Plan.

add: garen
POCA

DS03

monitoring, decontamination, protection and exposure control for the public and LERO workers, ingestion pathway protective action recommendations or implementation, or recovery and reentry functions. Thus, there is no compliance with 10 CFR Section 50.47(b)(9), (b)(10) and (b)(11).

In its April 20 Order, the Board concluded that LILCO had entered into an agreement with DOE-RAP "wherein the Department of Energy (DOE) has agreed to provide the support of DOE employees for radiological assistance in the event of an emergency at Shoreham." Order, at 4. The Board also found that "the degree of response to be furnished by DOE [was] not in dispute." Order, at 9-10. Accordingly, summary disposition as to Contention 24.B was granted.

Suffolk County and the State of New York do not believe the Board's April 20 ruling was correct, for the reasons set forth in the Suffolk County Memorandum in Opposition to LILCO's Summary Disposition Motions on Contentions 24.B, 33, 45, 46 and 49, dated March 5, 1984. However, even assuming arguendo that the April 20 Order was correct given the facts known to the Board at that time, in light of subsequent developments set forth below, it clearly is not correct today. The County and State accordingly move to vacate the April 20 Order as it pertains to Contention 24.B.

First, in a letter dated October 2, 1984, Department of Energy Secretary Donald Hodel wrote to Congressman William Carney of Long Island to advise that "the Department of Energy does not favor the imposition of Federal Government authority over the

objections of any state and local government in matters regarding the adequacy of an emergency evacuation plan for a nuclear power plant such as Shoreham."

Second, in a letter dated October 11, 1984, President Ronald Reagan stated in a letter to Representative Carney the following:

On a matter of particular concern to you and the people of Eastern Long Island, I wish to repeat Secretary Hodel's assurance to you that this Administration does not favor the imposition of Federal Government authority over the objections of state and local governments in matters regarding the adequacy of an emergency evacuation plan for a nuclear plant such as Shoreham.

Copies of Secretary Hodel's October 2 letter and President Reagan's October 11 letter are appended hereto as Attachments 1 and 2, respectively.

In light of the State of New York's and Suffolk County's opposition to the adequacy of LILCO's proposed emergency plan for Shoreham, LILCO's assumption that the Department of Energy or any other federal authority would be available to perform tasks assigned to them by the LILCO Plan is without basis. Clearly, the DOE "letter of agreement" which was relied upon by LILCO and the Board in the Board's April 20 summary disposition ruling has been superseded by the more recent statements of the Secretary of DOE and the President of the United States. In light of the straightforward statements by Secretary Hodel and President Reagan, the State and County submit that the Board can reach but one conclusion: there is no basis for assuming, or finding with

reasonable assurance, that there will be the imposition of Federal authority through the participation of any Federal agency in the implementation of LILCO's Plan, given the opposition of the County and the State. At the very least, the statements by President Reagan and Secretary Hodel raise substantial questions, which this Board has heretofore not considered, as to whether any Federal department or agency, including DOE, could now -- consistent with Federal policy -- impose its authority through implementing LILCO's Plan, over New York State's and Suffolk County's objections. The Board should vacate its April 20 Order granting summary disposition in favor of LILCO on Contention 24.B, and examine this issue in light of the statements by the Secretary of Energy and the President of the United States.

Moreover, in light of the statements by Secretary Hodel and President Reagan discussed above, the County and State hereby move the Board to strike all references to the use of Federal authority (such as DOE and the U.S. Coast Guard) in the implementation of LILCO's Plan, which are contained in the Proposed Findings of Fact filed by LILCO and the NRC Staff. Clearly, statements such as "[LILCO] has incorporated the Department of Energy into the decisionmaking process . . .," (LILCO Finding 112) and "The Coast Guard will provide notification of an emergency with protective action recommendations to boaters . . ." (LILCO Finding 345), contradict the statements of the President and Secretary Hodel.

For the Board's convenience, the portions of LILCO's and the Staff's Proposed Findings sought to be stricken are set forth in Attachment 3 to this Motion.

Respectfully submitted,

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

Michael S. Miller

Herbert H. Brown
Lawrence Coe Lanpher
Karla J. Letsche
Michael S. Miller
KIRKPATRICK & LOCKHART
1900 M Street, N.W.
Suite 800
Washington, D.C. 20036

Attorneys for Suffolk County

MARIO M. CUOMO,
Governor of the State of New York

BY: *Fabian G. Palomino / mjm*
FABIAN G. PALOMINO, ESQ.
Special Counsel to the Governor
of the State of New York

Dated: December 7, 1984

Attorney for the Governor of the
State of New York



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20485

October 2, 1984

Honorable William Carney
House of Representatives
Washington, D. C. 20515

Dear Bill:

I want to take this opportunity to update you on our activities regarding the Shoreham nuclear power plant. As we assured you last spring and at other times when we discussed the concerns of the citizens of Long Island regarding Shoreham, the Department of Energy does not favor the imposition of Federal Government authority over the objections of any state and local government in matters regarding the adequacy of an emergency evacuation plan for a nuclear power plant such as Shoreham.

Our position is clear. The Reagan Administration has always had faith in the ability of American citizens and local elected officials to handle the problems which confront them directly. As one of Long Island's most capable and vigorous elected officials, your advice and counsel regarding energy and economic policies which affect the future of your constituents have been extremely valuable to President Reagan and me. As I mentioned to you earlier this year when you brought in industrial, labor, and Government leaders of the First District to visit with me, you have been a vigorous advocate of the interests of Long Island, especially in behalf of Brookhaven National Laboratory and other Federal facilities.

I look forward to your continued wise counsel on these and other issues in the years ahead.

Sincerely,

DONALD PAUL HODEL

THE WHITE HOUSE
WASHINGTON

October 11, 1984

Dear Bill:

I want you to know of my appreciation for your continuing contributions to and support for my Administration. Your leadership and courage have been determining factors in the progress we have made in the last few years.

On a matter of particular concern to you and the people of Eastern Long Island, I wish to repeat Secretary Mead's assurance to you that this Administration does not favor the imposition of Federal Government authority over the objections of state and local governments in matters regarding the adequacy of an emergency evacuation plan for a nuclear power plant such as Shoreham. Your concern for the safety of the people of Long Island is paramount and shared by the Secretary and me.

Thank you again for your support. I look forward to working with you in the years ahead.

Sincerely,

Ronald Reagan

The Honorable William Carney
House of Representatives
Washington, D.C. 20515

LILCO'S AND THE STAFF'S PROPOSED FINDINGS^{1/}

<u>Federal Agency(s)</u>	<u>Portion Sought to be Stricken</u>
Coast Guard, DOE	L.F. 2, lines 9-10 and N.F. 2, line 10, "the U.S. Coast Guard, the U.S. Department of Energy"
DOE	L.F. 62; N.F. 57
DOE	L.F. 89; N.F. 124
DOE	L.F. 90, line 5, "the DOE RAP Team"; N.F. 123, line 5, sentence beginning "Besides getting information . . ."
DOE	L.F. 112, lines 5-6, sentence beginning "It has incorporated . . ."; N.F. 125, lines 5-7, "DOE personnel . . . at the EOC"
DOE	L.F. 123, lines 5-7, sentence beginning "The Department of Energy . . ."; N.F. 82, line 2, "DOE"
DOE, Coast Guard	L.F. 134, lines 3-4, "DOE's performing monitoring . . . its own procedures"); and lines 6-7, "or the Coast Guard's . . . in its own way"); N.F. 87, line 11, "DOE, the Coast Guard"
DOE, Coast Guard, FAA	L.F. 174, lines 3-4, "the Department of Energy RAP Team" and "the United States Coast Guard"; line 9, "DOE" and "and the Coast Guard"; N.F. 179,

^{1/} See LILCO's Proposed Findings of Fact and Conclusions of Law on Offsite Emergency Planning, dated October 5, 1984 (hereinafter, "L.F."); NRC Staff's Proposed Findings of Fact and Conclusions of Law in the Form of a Supplemental Partial Initial Decision on Emergency Planning, dated November 5, 1984 (hereinafter, "N.F.").

Federal Agency(s)

Portion Sought to be Stricken

	lines 2-4, "Brookhaven National Laboratory" and "the United States Coast Guard;" N.F. 182, lines 2-7, sentence beginning "Brookhaven National Laboratory . . ."
DOE, Coast Guard	L.F. 178, n. 71, lines 6-7, 8, "the Coast Guard, the DOE/RAP team"
DOE, Coast Guard	L.F. 197, line 14, "principal federal response organizations," line 16, "DOE/RAP Team" and line 17, "the U.S. Coast Guard"; N.F. 212, line 2, "relevant federal response organizations" and lines 11-15, sentence beginning "Additional communication paths . . ."
DOE	L.F. 219; N.F. 238, 239
Coast Guard, DOE	L.F. 226, line 4, "the Coast Guard, DOE"; N.F. 249, line 4 "the United States Coast Guard, DOE"
Coast Guard, DOE	L.F. 228, line 3, "U.S. Coast Guard," and line 8, "DOE RAP"; N.F. 251, lines 2-3, "U.S. Coast Guard" and line 8, "DOE RAP"
DOE	L.F. 234; N.F. 256
DOE	L.F. 237, lines 1-5 (except reference to Red Cross)
DOE, Coast Guard	L.F. 238, line 6, "DOE"; N.F. 261, lines 3-6, sentence beginning "Likewise, the Board finds . . ."
Coast Guard	L.F. 239; N.F. 259
Coast Guard	L.F. 242, line 3, sentence beginning "Likewise, the Board . . ."

<u>Federal Agency(s)</u>	<u>Portion Sought to be Stricken</u>
Coast Guard	L.F. 345, lines 1-5; N.F. 345, lines 1-6, beginning "By letter of agreement . . ." through "within 10 miles of Shoreham"
Coast Guard	L.F. 346, lines 2-3, "Coast Guard notification"
Coast Guard	L.F. 349, line 17, "by the Coast Guard"
Coast Guard	L.F. 385, lines 3-6, sentence beginning "In addition, . . ."; N.F. 393, lines 6-11, sentence beginning "Further, under an agreement . . ."
Coast Guard	N.F. 394, lines 3-5 sentence beginning "Boaters will be . . ."
DOE	L.F. 412, lines 5-6, "and the extensive resources . . . DOE RAP response"
DOE	L.F. 640, lines 4-6, sentence beginning "OPIP 3.6.6 provides . . ."
DOE	L.F. 646; N.F. 712
DOE	L.F. 647, lines 10-11, sentence beginning "These samples . . ."
DOE	L.F. 648, lines 2-3, sentence beginning "OPIP 3.6.6 calls for . . ."
DOE	L.F. 650, lines 1-3, sentence beginning "In the event . . ."; N.F. 724, lines 1-2, "environmental survey teams"
DOE	L.F. 655; N.F. 736, lines 4-9, beginning "The Department of Energy . . ." through "ingestion exposure path"
Federal Government, generally	L.F. 658; N.F. 742

LILCO'S REPLY FINDINGS^{2/}

<u>Federal Agency(s)</u>	<u>Portion Sought to be Stricken</u>
DOE	R.F. 190, lines 5-8, sentence beginning "Moreover, the DOE Team . . ."
DOE, Coast Guard	R.F. 200, lines 6-7 "the Department of Energy, the Coast Guard"
DOE	R.F. 205, line 7, "and DOE"
DOE	R.F. 208, lines 5-6, sentence beginning "The sources . . ."
DOE	R.F. 331
DOE	R.F. 340, line 16, "and DOE"
Coast Guard	R.F. 401, line 9, "or to the Coast Guard"
Coast Guard	R.F. 422, lines 1-5
FDA	R.F., n. 134

^{2/} See LILCO Reply Findings on Offsite Emergency Planning, dated October 14, 1984 (hereinafter, "R.F.").

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
)
)

LONG ISLAND LIGHTING COMPANY)

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

Docket No. 50-322-OL-3
(Emergency Planning)

CERTIFICATE OF SERVICE

I hereby certify that copies of Suffolk County and State of New York Motion to Vacate Order Granting LILCO's Motion for Summary Disposition on Contention 24.B and to Strike Portions of LILCO's and the Staff's Proposed Findings have been served to the following this 7th day of December, 1984 by U.S. mail, first class, except as otherwise noted.

James A. Laurenson, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Frederick J. Shon
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Mr. Brian McCaffrey
Long Island Lighting Company
Shoreham Nuclear Power Station
P.O. Box 618
North Country Road
Wading River, New York 11792

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

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

W. Taylor Reveley, III, Esq.
Hunton & Williams
P.O. Box 1535
707 East Main Street
Richmond, Virginia 23212

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

Stephen B. Latham, Esq.
Twomey, Latham & Shea
P.O. Box 398
33 West Second Street
Riverhead, New York 11901

Joel Blau, Esq.
New York Public Service Commission
The Governor Nelson A. Rockefeller
Building
Empire State Plaza
Albany, New York 12223

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

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

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

Bernard M. Bordenick, Esq.
Edwin J. Reis, Esq.
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

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

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

Hon. Peter F. Cohalan
Suffolk County Executive
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

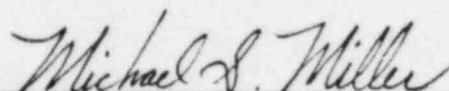
Stuart Diamond
Business/Financial
New York Times
229 W. 43rd Street
New York, New York 10036

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

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

Nora Bredes
Executive Director
Shoreham Opponents Coalition
195 East Main Street
Smithtown, New York 11787

Spence Perry, Esq.
Associate General Counsel
Federal Emergency Management
Agency
Washington, D.C. 20472



Michael S. Miller
KIRKPATRICK & LOCKHART
1900 M Street, N.W., Suite 800
Washington, D.C. 20036