

LILCO, December 20, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY  
OF ENERGY  
REGULATING & SERVICE  
BRANCH

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

LILCO'S OPPOSITION TO INTERVENORS'  
MOTION TO VACATE SUMMARY DISPOSITION  
ORDER AND TO STRIKE PORTIONS OF  
LILCO'S AND STAFF'S PROPOSED FINDINGS

On December 7, 1984, Intervenor Suffolk County and the State of New York filed a joint "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." In that motion, Intervenor ask this Board to vacate its April 20, 1984 Order granting summary disposition to LILCO on Contention 24.B, on the ground that allegedly new material, contained in one substantively equivalent sentence in each of two letters dated October 2 and October 11, 1974,<sup>1/</sup> assertedly supersedes the August

<sup>1/</sup> The letters, written by the President and the Secretary of Energy to incumbent Long Island Republican Congressman William Carney in the heat of an electoral race, are plainly campaign documents which anticipate the benefit of Congressman Carney's

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add:  
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20, 1983 letter of agreement between LILCO and DOE which was the basis of summary disposition. In addition, the Intervenor ask the Board to strike certain portions of LILCO's and the Staff's Proposed Findings on the ground that the October 2 and October 11 letters "contradict" certain references made to the use of federal agencies such as DOE and the United States Coast Guard in the implementation of LILCO's Plan.

Intervenors' motion was filed after disposition on the merits of Contention 22.D; thus it is, in essence, a motion to reopen the record after decision.<sup>2/</sup> Any party seeking such a reopening bears a "heavy burden," Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC 1340, 1344 (1983); Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1978), and must meet all parts of a three-part test. First, the motion must be

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"continued wise counsel" and "working with you" "in the years ahead", i.e., following his re-election. Each letter includes a sentence containing the assertedly offending statement that the Reagan 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."

<sup>2/</sup> The second portion of Intervenor's motion -- to strike certain references to letters of agreement from findings -- is a corollary of the request to vacate, and will be analyzed as such.

timely; second, it must be addressed to a significant safety or environmental issue; and third, the material submitted in support of the motion must be sufficiently probative that a different result would have been reached initially if it had been initially considered. Id.

Intervenors' motion is deficient on all three counts. First, it is untimely: Intervenors knew of the October 2 and 11 letters for over seven weeks before filing their motion. Secondly, the issue only generally addressed by the letters -- an undefined notion of "imposition of Federal Government authority" -- has not been shown to be, and is not, the same as normal federal response pursuant to letters of agreement to fulfill NUREG-0654 criteria. Since that latter issue is the relevant one in this proceeding, the cited letters do not raise a significant issue. Finally, while abrogation of letters of agreement between LILCO and DOE or other federal agencies to fulfill NUREG-0654 criteria could raise significant issues, Intervenors' motion does not adduce any evidence, much less sufficient evidence to have produced a different result on the merits, that the letters of agreement with LILCO are affected.

1. The motion is grossly untimely. The letters it cites are dated October 2 and October 11 and are over two months old. The letters were publicly reported at the time they were issued.<sup>3/</sup>

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<sup>3/</sup> The letters were referred to by their addressee, Congressman Carney, in an October 18 press conference and were reported

Suffolk County and its counsel were aware of and commented on them to the press on October 18, offering their opinions that the Carney campaign letters confirm "exactly what the County maintains to be our position" (Cohalan)<sup>4/</sup> and that "the plant cannot now be licensed consistent with what the President of the United States and the Department of Energy have said" (Brown).<sup>5/</sup> Subsequently, however, numerous filings have been made by all parties, without contradiction by Intervenor, which presume the continuing vitality of LILCO's letter of agreement with DOE: Suffolk County's own proposed findings on emergency planning (October 26), the NRC Staff's proposed findings on emergency planning (November 5), and LILCO's reply findings on emergency planning (November 14). Intervenor, despite their knowledge of and professed views on the Carney campaign letters, made no comment whatever on them before this Board at any of those times, and have offered no explanation whatever for that failure. Intervenor's failure is particularly

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and quoted from in articles appearing the following day in The New York Times, Newsday, and the New York Daily News (Attachments 1-3). Suffolk County was on contemporaneous actual notice of them: County Executive Peter Cohalan appeared at Congressman Carney's news conference (Attachment 2 (Newsday Article), col. 2) and Suffolk County counsel Herbert Brown, Esq. was quoted on them (Attachment 1 (NY Times article), col. 2).

4/ Attachment 2, col. 2.

5/ Attachment 1, col. 2.



egregious in light of their professed views of the letters' importance back in October. Intervenor's motion is fatally out of time and should be rejected on that basis alone.<sup>6/</sup>

2. Substantively, the contents of the letters do not, contrary to Intervenor's suggestion, contradict the evidence of record that federal agencies would participate pursuant to agreement in response to an emergency at Shoreham. The sentence in each letter cited by the Intervenor states only, as a general matter, that DOE and the Administration do "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." Participating in an emergency response pursuant to agreement and normal federal procedures is not "imposing federal government authority"; thus on their face the letters do not say what the Intervenor thinks they say. Second, the letters are not

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<sup>6/</sup> This is not the first time of late that Intervenor has been dilatory in raising issues of professed importance. This Board has found the County fatally untimely in raising issues concerning the LILCO strike last summer. Docket No. 50-322-OL-3, Memorandum and Order Denying Suffolk County Motion to Admit New Contentions, September 7, 1984 (slip op.). Similarly, the Brenner Board has found Intervenor to have been fatally late in seeking to raise a financial-qualifications contention. Docket No. 50-322-OL, Memorandum and Order Denying Suffolk County and the State of New York Petition for Exemption from Regulations Precluding Financial Qualifications Contention and Motion for Certification to the Commission, August 13, 1984, LBP-84-30, \_\_\_ NRC \_\_\_ (slip op.).

an operational directive of any sort to any federal agency. Nothing in the quoted sentence states that any of the agreements included in the LILCO Plan have been or were intended to be abrogated. Certainly, LILCO has not received any information from DOE or any other federal agency suggesting anything other than that the federal government intends to honor its agreements and to continue to fulfill its normal duties regarding response to a nuclear power plant emergency, at Shoreham as elsewhere. Thus the Carney campaign letters, even if taken literally, do not effect what Intervenor's would claim they do.

3. The Intervenor's have made no offer of proof, beyond the rhetorical generalities of the October 2 and 11 letters, that would support their claim that the letters mean that DOE or other agencies would not perform their ordinary duties and respond in an emergency at Shoreham. In seeking to reopen the summary disposition order granted by this Board, as with opposition to a summary disposition motion, the Intervenor's cannot simply rely on allegations but must set forth specific facts showing that there is a genuine issue of fact. See Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-584, 11 NRC 451, 453 (1980).<sup>7/</sup> The Intervenor's have not filed affidavits, made

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<sup>7/</sup> Intervenor's have proffered nothing but the unadorned Carney campaign letters. However, a proffer of evidence -- even had evidence been proffered -- sufficient to avoid summary

offers of proof, nor suggested what additional evidence they might provide to show that any agencies have repudiated the letters, or to otherwise disprove the continuing vitality of the letters of agreement in the record. Thus Intervenor's have not sustained their heavy burden of demonstrating that, upon a reopening of the record, affected federal agencies would disavow at Shoreham their normal agreements to perform emergency response functions.

4. Any inability or unwillingness of any agency, including a federal agency, to respond would likely surface during an exercise. LILCO has requested an exercise for the emergency plan for Shoreham. Presumably, any failure or refusal on the part of DOE or any other federal agency to respond would emerge during that exercise and could be addressed by the parties during post-exercise proceedings. On the other hand, participation by DOE and other federal agencies during the exercise would moot any need to reopen the record regarding Contention 24.B.

5. Intervenor's motion to strike all references to the letters of agreement from proposed filings (Motion at 4 and Attachment 3 thereto) totally begs the question of the effect of

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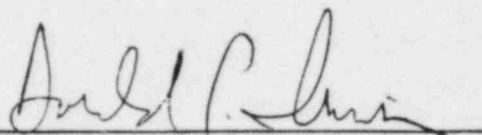
(footnote continued)

disposition is not automatically sufficient to justify reopening of a record. Otherwise, as the Appeal Board noted in Diablo Canyon, *supra*, 18 NRC at 1345 note 8, movants for reopening "would [be] relieve[d] of the heavy burden imposed by Wolf Creek, ALAB-462, 7 NRC 320, 338 (1978) and decisions cited therein."

the October re-election campaign letters. For the reasons outlined above, the Board should not vacate its April 20 Order granting summary disposition on Contention 24.B. It follows that the references to DOE and other federal agencies in findings of fact should not be struck.

Accordingly, the Intervenor's motion should be denied in entirety.

LONG ISLAND LIGHTING COMPANY



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DATE: December 20, 1984



## Reagan Pledges Not to Override Shoreham Foes

### Rules Out an Imposition of Evacuation Plan

By MATTHEW L. WALD

President Reagan, in a letter to a Long Island Representative, said yesterday that the Administration would not override Suffolk County's objections to the opening of the Shoreham nuclear power plant.

Suffolk's objection to the proposed emergency plans for Shoreham, which has cost the Long Island Lighting Company nearly \$4.2 billion, has threatened to force abandonment of the project.

Last March, the United States Department of Energy began discussions with other Federal agencies to develop an acceptable emergency plan that did not require state or local participation. But after the efforts were made public on April 22, Donald Paul Hodel, the Secretary of Energy, pledged not to "impose" a plan on the county.

#### Plan Counts on Federal Help

The President's promise, made in a letter to Representative William Carney, Republican of Hauppauge, appears to bind the entire Federal Government to that position.

The letter said in part 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."

Lilco's plan, which has the utility's meter readers and linemen taking jobs that would normally be filled by policemen, firemen and other government employees, counts on several Federal agencies, including the Coast Guard, the Food and Drug Administration, and the Environmental Protection Agency, to perform a variety of functions in a nuclear emergency.

But, according to Suffolk County and to a spokesman for Representative Carney, Mr. Reagan's letter appears to bar their participation if Suffolk objects.

A spokesman for Lilco, Susan Ruggiero, said the company had no comment.

#### Opposition to Operating Plant

Mr. Carney is facing a serious challenge in his campaign for a fourth term from Assemblyman George J. Hochbrueckner, Democrat of Port Jefferson, who opposes the plant's operation. Mr. Carney's campaign coordinator, Michael P. Forbes, said the Congressman has opposed operation "until such time as all questions about safety are resolved," including having in place a locally approved evacuation plan, and until the plant is economically feasible.

The attorney who has represented Suffolk before the Nuclear Regulatory Commission, Herbert Brown, said yesterday that "the plant cannot now be licensed consistent with what the President of the United States and the Department of Energy have said. It puts Lilco in a situation now of having no light at the end of the tunnel."

# **GOP Cites A Reagan Stand On Shoreham**

By Rick Brand

President Ronald Reagan has sent Rep. William Carney a letter saying he "does not favor the imposition of federal authority over . . . local governments" in emergency planning for nuclear power plants such as Shoreham.

The letter reiterates Energy Secretary Donald Hodel's position on the issue. Whether it is significant became the subject of debate after Carney (C.R.-Hauppauge) released the letter at a news conference yesterday.

Some Republican officials who oppose Shoreham's operation on emergency planning grounds said the letter represented a commitment from the administration. But Democrats said the letter was merely an effort to help Carney in a difficult re-election campaign in which Shoreham is an issue.

Reagan's letter refers to a statement made by Hodel in July that he would not impose a drill of Long Island Lighting Co.'s emergency plan for Shoreham over the objections of Gov. Mario Cuomo and Suffolk County officials.

"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 matters regarding the adequacy of an emergency evacuation plan for a nuclear power plant such as Shoreham," the letter said.

Carney declared the letter "puts to rest once and for all the issue of Shoreham in this campaign." Carney said the letter means "that LILCO should clearly get the message that they have to deal with the county executive and governor of New York" if the utility wants to open the plant.

But Carney's opponent, Assemb. George Hochbrueckner (D-Coram), said, "Nothing has changed . . . Two weeks before the election, they are trying to use a letter from the president to prop up a losing campaign . . . He's been wrong on the issue and is just trying to recover."

Carney has been the target of Shoreham opponents who claim he has done little to stop Shoreham's opening. Carney maintains the plant should not open if it does not have a safe evacuation plan but also said he has taken a "neutral position for the last six years" on whether the NRC should grant the plant an operating license.

Hochbrueckner, who has the endorsement of several anti-nuclear groups, opposes the opening of the plant for economic and safety reasons. Carney has attacked him for introducing bills in past years to have the New York Power Authority take over and run the controversial plant.

Carney was flanked at the news conference by several Republican officials who oppose the plant's opening, including County Executive Peter F. Cohalan. "This is exactly what we in the county maintain to be our position," Cohalan said. "Bill deserves credit for getting this commitment from the president." LILCO officials declined comment.

Nora Bredes, director of the Shoreham Opponents Coalition, said the letter would only be important if it signaled a total withdrawal of federal participation in LILCO's emergency plan. Otherwise, she said, "It's nothing more than a political ploy."

## Carney: I am neutral on Shoreham opening

By MICHAEL HANRAHAN

Rep. William Carney (C-Hauppauge) said yesterday that he was "neutral" on the issue of whether the Shoreham nuclear plant should be opened.

Carney made the remarks in response to questions at a press conference he called on the plant.

Carney called the conference to announce that he had obtained President Reagan's assurances that his 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."

Carney is facing a tough reelection challenge from Assemblyman George Hochbrueckner (D-Coram).

Carney said yesterday that his letter from President Reagan was a "pledge" that the federal government would not force an evacuation plan on Suffolk County.

However, the announcement will have the opposite effect, according to Hochbrueckner, who showed up as an uninvited guest and challenged Carney to come out in opposition to Shoreham.



ANTHONY CASALE DAILY NEWS  
Rep. William Carney at  
yesterday's  
conference.

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 certify that copies of LILCO'S OPPOSITION TO INTERVE-NORS' MOTION TO VACATE SUMMARY DISPOSITION ORDER AND TO STRIKE PORTIONS OF LILCO'S AND STAFF'S PROPOSED FINDINGS were served this date upon the following by first-class mail, postage pre-paid, or (as indicated by an asterisk) by Federal Express.

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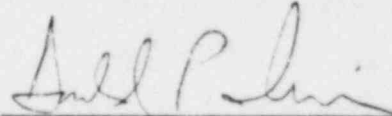
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