UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Appeal Board

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

LILCO'S REPLY BRIEF ON THE LEGAL AUTHORITY, CONFLICT OF INTEREST, AND STATE PLAN ISSUES

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This brief is a reply to the "Brief of Suffolk County and the State of New York in Opposition to LILCO's Appeal From the Atomic Safety and Licensing Board's Partial Initial Decision on Emergency Planning," dated July 11, 1985 (referred to hereinafter as "Intervenors' Brief") and the "NRC Staff's Brief in Response to Long Island Lighting Company's Appeal from the Partial Initial Decision on Emergency Planning of April 17, 1985," dated July 19, 1985 ("Staff's Brief"). In light of the New York State court's decision of July 19, 1985, the "Intervenors'" brief represents the State's, but no longer necessarily the County's, views. Prospect v. Cohalan, Index 85-10520 (N.Y. Sup. Ct. July 19, 1985) (Brown, J.).1/ The Suffolk County Executive's position is given in the letter of July 11, 1985, from Eugene R. Kelley, Chief

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1/ In a letter of June 3, 1985, from Martin Bradley Ashare, Suffolk County Attorney, to the Chairman of the NRC, Mr. Ashare indicated that counsel for the County had been discharged. The July 19 decision in Prospect v. Cohalan confirmed the County Executive's power to hire and fire counsel.

Deputy County Attorney, to the Appeal Board. References below to "LILCO's Brief" are to LILCO's Brief Supporting its Position on Appeal from the "Partial Initial Decision on Emergency Planning" of April 17, 1985, dated June 3, 1985.

A. Realism: Recent Developments Confirm the "Realism" Argument

The Intervenors argue (Intervenors' Brief at 47) that recent developments in Suffolk County have "no bearing on these proceedings" (id.). The NRC Staff says essentially the same thing about the Commission's Order of June 20, 1985, Long Island Lighting Co. (Shoreham Nuclear Power Station), CLI-85-12, 21 NRC ___ (June 20, 1985) (Staff's Brief at 34-35). Nothing could be further from the truth.

The record in this proceeding shows that the Governor of New York has stated that both the State and County would help "to the extent possible" in a real emergency.2/ In addition, the record contains the opinion of LILCO

2/ Cordaro and Weismantle, ff. Tr. 13,899, at 7. The NRC Staff's insistence that this statement is "extra record," Staff's Brief at 31, cannot change the fact that it is record evidence and that no one has attempted to refute it, even though the evidence to refute it, if any, would be in the control of the Intervenors. See also LILCO's Brief at 58 (on the "emergency consensus" that occurs in an emergency), 45 (presumption that state officials are doing their duty), 69 (inference that, if a party fails to produce his evidence, it is unfavorable to him). If there were no evidence and no presumptions in LILCO's favor on this point LILCO would ask the NRC to take official notice that both State and County have repeatedly and emphatically stated their single-minded commitment to the public health and safety, and further to take notice that everyone knows an emergency response in accordance with a plan protects the public better than an unplanned response.

witnesses that state and county officials would respond. See, e.g., Tr. 10,518-19 (Weismantle); see also Tr. 14,680 (Rasbury) (in an emergency political considerations will not affect people's response). The State and County chose not to attempt to refute this evidence, which in any event merely states the obvious: if real people were really at risk, all the governments involved would try to protect them.

Subsequent events have only tended to confirm this. On June 26, 1985, the Suffolk County Executive wrote counsel for LILCO that he would respond "to the best of my ability and in accordance with the duties and obligations placed upon me by Article 2-b of the Executive Law." Then, in Executive Order 1-1985, dated May 30, 1985, he ordered the County to undertake a test of the LILCO Plan. This order was declared unlawful on July 9, 1985, by the New York Court of Appeals in a four-to-three vote. But the majority opinion included the following passage:

> If the challenged executive order is merely a vehicle for the gathering of information to enable the county executive to perform his statutorily mandated functions of taking "an active and personal role in the development and implementation of disaster preparedness programs (Executive Law § 20(1)(b)) and giving "advice and assistance" to the local legislative body or other duly appointed planning authority (Executive Law § 23(5)), it is clearly authorized under the statute.

Prospect v. Cohalan, ___ N.Y.2d ___, slip op. at 3 (No. 440 July 9, 1985). In response to this decision the County Executive, on July 15, 1985, issued Executive Order 2-1985, in which he announced that he would from time to time direct appropriate County Department heads to review such radiological

emergency response plans for Shoreham as may be feasible, including the LILCO Plan. Thus, the County Executive has given at least a qualified endorsement of the realism argument. See letter from Eugene R. Kelley to Appeal Board, July 11, 1985, at 3. What we now have, in short, is a Governor who has admitted he would respond in a real emergency and a County Executive who has committed both to respond in a real emergency and to gather information in advance about existing emergency plans.

At the same time, the NRC itself lent support to the "realism" argument. On June 20, 1985, the Commission issued an order in this case, CLI-85-12. In denying a request for a NEPA evaluation of low power operation, the Commission stated its confidence that, if it upholds the Licensing Board's determination that an adequate emergency plan is feasible with state and local participation, the State and County will accede to that judgment and provide the participation needed to make the plan successful. Long Island Lighting Co. (Shoreham Nuclear Power Station), CLI-85-12, 21 NRC ___, slip op. at 4 (June 20, 1985).

The State argues (Intervenors' Brief at 48) that any State or County response would be "unplanned and ad hoc in nature." But that is not the issue in Contentions 1-10; the issue is whether there is legal authority, and there clearly would be in a real emergency. The Intervenors could have raised contentions based on what would really happen in an emergency, but instead they preferred to cling doggedly to the First Great Myth of this proceeding -- that is, to assume that no County or State response would

occur3/ -- and to resist all attempts by LILCO to submit evidence to the contrary. Now that assumption has been shown to be wrong, as everyone knew it was, and it is too late to raise issues about "coordination" with the County government.4/

Moreover, the cooperative County-LERO response would not be ad hoc. New York law allows a county executive to make use of all available resources:

3/ This fictional notion governed most of the proceeding, despite LILCO's best efforts. When LILCO first submitted its offsite emergency plan, it included a variety of alternate modular sections to the Plan to be used if various governmental entities -- including the County or State -- took command and control. LILCO asked that all these alternatives be considered but emphasized that the plan designed to be implemented by Suffolk County was the "principal offsite plan" and the one that should be considered first. LILCO's Memorandum of Service of Supplemental Emergency Planning Information at 2, 10 (May 26, 1983). At the same time LILCO noted that the LILCO Transition Plan has the capability of incorporating County personnel into the response after an emergency has begun, id. at 11 n.8, and that LILCO expected that many County personnel would be willing to perform their duties in an actual emergency, id. at 15. The ASLB declined to hear any but the utility-only version of the Plan. Order Limiting Scope of Submissions at 3 (June 10, 1983).

Later, in the first written testimony filed with the Board, LILCO witnesses testified that State and County personnel would respond in a real emergency. The Board struck this evidence. Cordaro et al., ff. Tr. 831, at 29-30; Tr. 790-93 (Dec. 1, 1983); Order Confirming Changes in Schedule with Regard to "Group II" Contentions and Rulings on Motions to Strike (Dec. 2, 1983). Other such evidence was likewise stricken. See LILCO's Brief at 68-69; LILCO's Brief on Contentions 1-10 at 49-52 (Nov. 19, 1984).

4/ The County did, in Contention 92, raise the issue of coordination with the State. The reason is that when the contentions were written the State had not yet begun to oppose Shoreham in this proceeding. But the issue of coordination with the State is dealt with under Contentions 81, 85, 88, and 92, where LILCO showed that it has arranged to substitute for the State, if necessary, and to communicate with the State.

> Upon the threat or occurrence of a disaster, the chief executive of any political subdivision is hereby authorized and empowered to and shall use any and all facilities, equipment, supplies, personnel and other resources of his political subdivision in such manner as may be necessary or appropriate to cope with the disaster or any emergency resulting therefrom.

N.Y. Exec. Law § 25(1) (McKinney 1982). The authority of the County Executive to respond to an emergency was recently confirmed. See Prospect v. Cohalan, ___ A.D.2d ___, slip op. at 9-10 (June 24, 1985), aff'd, ___ N.Y.2d ___ (No. 440 July 9, 1985). And, since the County Executive has decided to gather information about the LILCO Plan, in an emergency he would be informed about how it works and his response would not be "ad hoc."

B. Preemption: The Intervenors' Argument is Based on a Myth

The Intervenors have built their case against federal preemption, successfully so far, on the Second Great Myth of this case: that LILCO's emergency plan interferes with state and local government. Repeatedly the Intervenors' Brief speaks in expansive hyperbole of striking down "the basic governance statutes" of New York (Intervenors' Brief at 10), invalidating the state laws that establish "the essential structure of state government" (id. at 7), and the like. If LILCO is allowed to respond to an emergency, we are told, the Republic will fall. The Licensing Board's decision also reflects this idea, calling a response under the LILCO Plan a "fundamental . . . shift in the structure of federal-state relations." PID, 21 NRC at 909.

This is wrong. The LILCO Plan exists only because the State and County declined to carry out the functions at issue: They refused to plan in advance, and the hypothesis of the proceeding5/ was that they would not respond in a real emergency either. LILCO's plan merely fills a void. And it expressly provides for subordination of LERO to governmental personnel, should they decide to act. Behind the state law or laws that LILCO's planned emergency response is now held to violate -- the law giving exclusive emergency response authority to the government -- is the assumption that the government will do the job. Under the assumption that this is no longer the case -- that the government will not function -- LILCO's response may still be contrary to state law, but it cannot accurately be said for purposes of federal presumption to shift "the structure of federal-state relations." It would be a more difficult case if a utility proposed a counterplan to an existing governmental plan that would have its employees pushing policemen aside. But that is not the case before this Appeal Board.

In fact, if LILCO's position is upheld no state law will be stricken from the books. Enforcement of state law will be preempted, but only to the following, extraordinarily limited, extent:

1. If a highly unlikely radiological accident occurs6/;

5/ See n.3 above.

6/ Except for the posting of signs marking evacuation routes, addressed in Contention 3.

2. If the County and State refuse to respond to that emergency;

3. To the extent LERO performs acts that the NRC has determined to be necessary to protect the public health and safety; and

4. To the extent that the NRC has approved LILCO's plan for performing these acts.

This is the answer to the NRC Staff's fear that LILCO's theory would allow utility parapolice to carry guns and generally run amok. Staff's Brief at 28 n.39.

In reality, the only state action that LILCO's Plan or emergency response would frustrate is the State's decision not to allow Shoreham to operate, a decision based squarely on radiological health and safety grounds. The State is still, under LILCO's Plan, fully in control of emergency response, and it could be in control of emergency planning if it wanted to be. In short, the State can plan and respond; what it cannot do, in the face of federal law, is prevent emergency planning altogether as a tactic for preventing the plant from operating above five percent power.

For the same reason, the State's arguments about "actual conflict" are wrong. The Intervenors' Brief says that the federal purpose of promoting nuclear power is not to be carried out "at all costs." (The brief ignores the federal purpose of promoting emergency planning.) But what is "the cost" of approving LILCO's plan to respond to emergencies? How does it lessen any state prerogative, except that of deciding, on health and safety grounds, that Shoreham may not operate?

C. Preemption: The Intervenors and NRC Staff Have Over-emphasized and Misconstrued the State "Purpose"

The State and the NRC Staff argue that if the original legislative purpose of a state law is not directed at radiological health and safety, then the law can never be preempted by the Atomic Energy Act and NRC regulations.7/ This is an incorrect reading of Pacific Gas & Electric Co. v. State Resources Conservation & Development Comm'n, 461 U.S. 190 (1983).

In the first place, if the state legislation regulates construction or operation of a nuclear plant (the "how" of construction or operation rather than the "whether" to build nuclear plants at all), then no state purpose can save the state law. That is the message of the following passage from PG&E, which neither the State nor the NRC Staff has been able to explain away:

> At the outset, we emphasize that the [California] statute does not seek to regulate the construction or operation of a nuclear power plant. It would clearly be impermissible for California to attempt to do so, for such regulation, even if enacted out of non-safety concerns, would nevertheless directly conflict with the NRC's exclusive authority over plant construction and operation.

461 U.S. at 212 (emphasis added).8/

7/ This is true under the "zone" test, but also under the "actual conflict" tests, where state purpose is irrelevant. Indeed, under the State's and Staff's analysis it appears that no NRC regulation can ever "actually conflict" with a state law.

8/ In the same decision, after distinguishing First Iowa Hydro-Electric Cooperative v. FPC, 328 U.S. 152 (1946), as not controlling because it involved a federal agency with comprehensive planning authority, such as the NRC does not have, the court said:

(footnote continued)

Does radiological emergency planning fall within the preempted field, described in PG&E as "the safety and 'nuclear' aspects of energy generation," 461 U.S. at 212, and the "construction or operation of a nuclear power plant," id. at 212? Of course it does, as a well-known group of lawyers once made clear:

> Off-site preparedness is no different than any other safety issues examined by the [NRC] in the context of the operation of a nuclear powerplant. Indeed, off-site emergency preparedness may be among the most important safety considerations inasmuch as these plans are the last resort by which the public is protected from radiological danger.

Brief of Mario Cuomo, Governor of the State of New York in Support of Suffolk County Exception Nos. XII-1 through XII-6 to the September 21, 1983 Preliminary Initial Decision, December 20, 1983, at 6-7. It is also apparent that radiological emergency planning is a federally regulated field from the pervasive regulation of the field in 10 C.F.R. § 50.47 and NUREG-0654.

The State's answer to this is that the state laws do not regulate "construction or operation" of the Shoreham facility. Intervenors' Brief at 17. This is patently incorrect. New York state law as applied prohibits Shoreham

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(footnote continued)

> Moreover, § 25524.2 [of the California statute] does not interfere with the type of plant that could be constructed. State regulations which affected the construction and operation of federally approved nuclear power plants would pose a different case.

461 U.S. at 223 n.34.

from operating at greater than five percent power; it prohibits LILCO from implementing a safety system required by the NRC. If this is not regulating the operation of a nuclear plant, nothing is.

In the second place, it is simply incorrect to see as the state "purpose" as only the legislative purpose behind the state laws' enactment. As the Supreme Court said in Jones v. Rath Packing Co., 430 U.S. 519, 526 (1977):

> The [preemption] inquiry requires us to consider the relationship between state and federal laws as they are interpreted and applied, not merely as they are written.

(Emphasis added.) Only by separating the enactment of state laws from their interpretation and application, and ignoring the latter, have the Intervenors been able to carry their argument.

Moreover, the Intervenors have been able to prevail only by keeping separate their prevention of government planning and their prevention of utility planning. They claimed first, in federal district court, that local law does not prevent emergency planning (because LILCO can do a utility plan). Thus, as the Intervenors point out, they persuaded the federal court that the County's anti-planning resolutions are not federally preempted. Citizens for an Orderly Energy Policy v. County of Suffolk, 604 F.Supp. 1084 (E.D.N.Y. 1985). The court found that the County resolutions do not "regulate" LILCO, but merely manifest the County's intention not to engage in emergency planning, leaving LILCO free, in theory, to provide its own emergency plan. See id. at 1093-94. Then, in a separate proceeding in state court and now before the NRC, the Intervenors argue that the private plan

may not be implemented either. The combination of the two actions is to prohibit emergency planning for Shoreham; if the former action (the prohibition of governmental plans) is not preempted, then the latter, the prohibition of private plans, must be.

If there were any doubt that the "purpose" of New York is to regulate radiological health and safety, it was ended by the argument before the NRC on June 4, 1985:

> COMMISSIONER ASSELSTINE: Okay. So the State position remains that they have responsiblities and roles in emergency planning and are not prepared to carry those out, and that therefore there are defects or deficiencies.
>
> MR. PALOMINO [counsel for State of New York]: Yes, that's right.
>
> . . . .
>
> COMMISSIONER BERNTHAL: You are saying in effect, then, that it is not a question of the State having the resources to do that, but they simply would refuse to do that? Is that your argument?
>
> MR. PALOMINO: Yes, that's my argument. That is the Governor's position.
>
> COMMISSIONER BERNTHAL: And the State would not carry out its protective functions in the event of an accident?
>
> MR. PALOMINO: No. What we are saying is that we won't carry them out or agree to carry them out to put this plant on line and present us with a hazard where we might have to.

Tr. 16-18.

> COMMISSIONER BERNTHAL: But it [the Governor's position] rests strictly on the emergency evacuation question?
>
> MR. PALOMINO: No, also the safety of the plant. He doesn't feel it is safe and he doesn't feel you can have a safe evacuation, and he feels that at Long Island you should have the safest evacuation because of the density of the population.

Tr. 22-23.

. . . .

> MR. PALOMINO: Yes. There are legal impediments which we control, and it [Shoreham] won't operate as long as we can control the legal impediments.

Tr. 25. In short, the State quite candidly is seeking to prevent the operation of Shoreham by raising "legal impediments" because the Governor asserts that the plant is not safe. It is completely unrealistic to claim that this is not regulating nuclear power on radiological health and safety grounds. See also Tr. 3655-58, 3669-70 (Jan. 27, 1984) (counsel for New York State argues that since the Governor says that State laws forbid the LILCO Plan, the ASLB should automatically rule against LILCO on Contentions 1-10 and terminate the proceeding), 3659-63 (former Suffolk County counsel argues the same thing).

The State argues that offsite planning is not a field reserved to federal "action." Intervenors' Brief at 15. This is true; state action is not only allowed, but encouraged. But state regulation is preempted. And there is a difference. In this case the State has refused to take action and has tried to regulate LILCO's taking it.

D. Preemption: Arguments Over Details Cannot Obscure the Fact that the Legislative History Reveals a Specific Intent Not to Let States Halt Reactor Operation Through Failures of Emergency Planning

Perhaps there is too much legislative history in this case. Both sides have cited colloquies, extended remarks of individual Congressmen, and such, and the Intervenors have even cited testimony by individual NRC commissioners before Congress. Let us ignore, then, the less authoritative legislative materials and look only at committee reports. The report language for three successive authorization acts has shown that Congress did not intend state and local failures to do emergency planning to "penalize" applicants (that is, to force nuclear plants to shut down) and that it enacted the "utility plan" provision specifically because of concern over this "potentially significant problem." H.R. Rep. No. 96-1070, 96th Cong., 2d Sess. 27 (1980), reprinted in 1980 U.S. Code Cong. & Ad. News 2260, 2270 (conferees sought to avoid penalizing an applicant if a State or locality does not submit an emergency plan or if the submitted plan does not satisfy all the guidelines or rules); S. Rep. 97-113, 97th Cong., 1st Sess. 17-18 (May 15, 1981), reprinted in 1982 U.S. Code Cong. & Ad. News 3592, 3601-02; H.R. Rep. 97-22 Part 2, 97th Cong., 1st Sess. 27 (June 9, 1981); Conf. Rep. 97-884, 97th Cong., 2d Sess. 27-28 (Sept. 28, 1982) (provision is designed to clarify certain legal ambiguities in the NRC regulations as to whether the NRC could issue a license in the absence of a State or local emergency plan approved by FEMA; this amendment "resolves any legal ambiguity" by requiring that the

NRC regulations be interpreted consistent with Congress's intent as expressed in the 1980 Authorization Act; the provision reiterates the intent of the 1980 Act); S. Rep. No. 98-546, 98th Cong., 2d Sess. 14-15 (June 29, 1984) (witnesses called to the Senate subcommittee's attention two potentially significant problems, the first being that state or local governments might keep FEMA and the NRC from evaluating a utility plan); see also H.R. No. 98-223, 98th Cong., 1st Sess. 30-31 (1983) (FEMA appropriations). The other, less authoritative legislative history materials are valuable chiefly because they form a consistent pattern -- consistent with the language of the statutes and committee reports.

The legislative history does show Congress's unwillingness to compel states to write and implement their own plans. And nowhere is there express preemption of emergency planning specifically -- that is, nowhere are the words "state laws governing emergency planning are hereby rendered null and void." But Congress also showed its unwillingness to shut down nuclear plants automatically when state emergency planning had deficiencies. LILCO's Brief at 24-25. And, short of express preemption, Congress's intent not to allow state and local governments to shut down nuclear plants by failures of emergency planning could hardly be clearer.

The Intervenors cite both legislative history and NRC language to the effect that a utility plan is not to be approved if it can not protect the public. The Intervenors interpret this to mean de jure, not de facto. But this interpretation has been rejected by the Brenner Board, and that Board's

interpretation was affirmed as "correctly analyz[ing] the question of whether the agency can consider a utility offsite emergency plan." 17 NRC at 742; LILCO's Brief at 34. Nor is there any reason to believe that when Congress set as the sole criterion of utility (or other) plans the requirement that the plan provide "reasonable assurance that public health and safety is not endangered" by operation of the reactor, it meant anything other than that the plan be physically able to protect the public.

The NRC Staff emphasizes the need to show a "clear and manifest" purpose of Congress to preempt and thinks that such a showing has not been made. But the Staff appears to be applying a standard of clearness and manifestness that can only be met by express preemption, thus reading implied preemption out of the law. Moreover, the Staff would require this express exemption, apparently, not only of the field as a whole (radiological health and safety)9/ but of each subject within it -- emergency planning, quality assurance, and so forth. The Staff agrees that emergency planning is an integral part of the NRC's regulation of health and safety, Staff's Brief at 25, but finds it uniquely exempted from the field for purposes of preemption -- even though when Congress has elsewhere made such an exception it has done so clearly and expressly. PG&E, 461 U.S. at 212-13 n.25.

9/ The Brenner Board found that the field of nuclear licensing and regulation has been "both explicitly and implicitly" preempted. LBP-83-22, 17 NRC 608, 638.

E. Conflict of Interest: The PID Is Inconsistent With the Whole Structure of NRC Regulation

The State disagrees with LILCO's conclusion that under the Licensing Board's reasoning neither onsite emergency plans nor private operation of nuclear plants can be allowed. Intervenors' Brief at 56-57. But LILCO is clearly correct. What the record contains is NRC Staff testimony that there is no difference in kind between utility decisions in regular operation and decisions in offsite or onsite emergency planning,10/ see Schwartz, ff. Tr. 15,143, at 2, and an ASLB decision that utility employees are disqualified from making the latter types of decisions. This decision simply cannot stand without shaking the entire basis of NRC regulation.

Moreover, the ASLB's decision on Contention 11 rests on the preposterous notion that the "subtle biases" that affect all humans do not affect elected officials or, even worse, on a refusal to consider any but the particular kind of bias that the Intervenors singled out for attention.

F. State Plan: There is No Basis for Assuming the State Will Sabotage an Emergency Response

Contrary to the hypothesis under which the other issues in this case were tried, Contention 92, which concerns the absence of a state plan, raises the possibility that the State will respond in a real emergency, but without

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10/ LILCO's testimony made the same point. Cordaro et al., ff. Tr. 10,196, at 26.

"coordination" with LILCO. The reason is that when the contention was written, the State had not yet announced that it would not cooperate in emergency planning.

The legal basis for the Licensing Board's decision on Contention 92 is erroneous. The preference for "coordination" found in the rules presupposes that two or more parties will be undertaking different parts of the task. There is no rationale for coordination with the State if LILCO has provided to substitute completely for the State, as the record shows it has. There are simply two independent and complete means (the State and LERO) for responding to an emergency.

The only way, therefore, to rule against LILCO on this issue is to presume that the State will respond but willfully and destructively sabotage the response by stubbornly refusing to use LERO's resources or to inform LERO what it is doing. This is an incredible presumption, and one with no basis in law or fact.

G. All the Issues: Any State or Local Government Can Prevent a Plant from Operating if the Board's Decision Stands

The State and the the NRC Staff claim that this case has little or no bearing on other cases. This is demonstrably incorrect. If the ASLB's decision stands, any state that decides a nuclear plant is unsafe can prevent its operation merely by announcing its refusal to do an emergency plan.

With this power, of course, goes the attendant responsibility. It will not be long before the states perceive that they have to make the decision, in the context of emergency planning, as to whether each nuclear plant is safe enough; that they make that decision will be demanded by interests opposing each plant. There will follow a debate over the safety of each plant, carried on in state forums, to decide whether each plant can begin to operate or even continue to operate. There is simply no way to limit the Board's finding to the facts of this case.

This very case provides a dismal example of what happens when the licensing decision is made at the state or local level. Since this NRC proceeding became active some three years ago LILCO has been made a defendant, or been forced to intervene, in five state or federal court lawsuits.11/ It has had to participate in proceedings before a Governor's fact-finding commission and in Suffolk County legislative hearings. It has been investigated for possible criminal prosecution because it submitted an offsite plan for the County to the State Disaster Preparedness Commission. More recently, litigation has been threatened in Nassau County, simply because the reception center for evacuees is situated there.12/ And the debate over Shoreham likewise has

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11/ Cohalan v. New York State Disaster Preparedness Comm'n, No. 5145-82 (N.Y. Sup. Ct., petition filed December 6, 1982); County of Suffolk v. Long Island Lighting Co., 554 F. Supp. 399 (E.D.N.Y. 1983); Cuomo v. LILCO, Consol. Index No. 84-461 (N.Y. Sup. Ct., Feb. 20, 1985); Citizens for an Orderly Energy Policy, Inc. v. County of Suffolk, 604 F. Supp. 1084 (E.D.N.Y. 1985); Prospect v. Cohalan, Index No. 85-10520, ___ N.Y.2d ___ (No. 440 July 9, 1985); id. (N.Y. Sup. Ct. July 19, 1985) (Brown, J.).

12/ See the Statement by John Matthews, ff. Tr. 15,956, at 3, promising that "[l]egal action will be taken within the next few days" to invalidate the choice of the Nassau Coliseum as a reception center. (This part of the hearing record is not yet before the Appeal Board.)

been carried to the schools, churches, and Red Cross chapters in both Suffolk and Nassau Counties. Unless the NRC finds state laws preempted in this case, any nuclear plant in the country can hereafter be shut down, through the mechanism of emergency planning, by state or local governments. This would be contrary to the "clear and manifest" intent of Congress and to years of judicial decisions confirming the exclusive federal role in the regulation of nuclear power.

Respectfully submitted,

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DATED: July 24, 1985

LILCO, July 24, 1985

CERTIFICATE OF SERVICE

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

I hereby certify that copies of LILCO'S MOTION FOR LEAVE TO FILE REPLY BRIEF and LILCO'S REPLY BRIEF ON THE LEGAL AUTHORITY, CONFLICT OF INTEREST, AND STATE PLAN ISSUES were served this date upon the following by U.S. mail, first-class, postage prepaid or, as indicated by an asterisk, by Federal Express:

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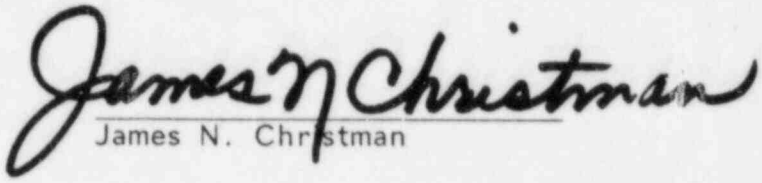

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