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STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

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USNRC

FABIAN PALOMINO
Special Counsel to the Governor

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

August 5, 1985

Annexed is a copy of a letter recently sent by Governor Cuomo to Secretary Herrington with respect to the Shoreham nuclear facility.

Attachment

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STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

MARIO M. CUOMO
GOVERNOR

August 2, 1985

Dear Secretary Herrington:

This is to acknowledge receipt of your letter of July 17, 1985, in response to my letter to President Reagan of May 21, 1985, expressing my concerns to him about both preserving the lines of sovereignty between Federal and state government with respect to emergency planning for the Shoreham nuclear plant, and preserving the integrity of the Nuclear Regulatory Commission as an independent adjudicative body.

I am pleased that you agree that the integrity of the NRC should be preserved. However, I believe that the best way to do that is for you to refuse to meet with nuclear industry representatives who publicly suggest that such meeting may result in directions from you to the NRC to take actions which will result in the opening of the Shoreham facility; and, for you to publicly disavow any motion that you or anyone in your agency would seek to suggest to the NRC how it should interpret its regulations or decide cases.

Your letter states:

"The County Executive, Mr. Cohalan, has agreed to assume the command and control functions for a test of the Shoreham plan which will assure that the emergency plan is properly structured."

That may have been Mr. Cohalan's intention when he issued Executive Order 1-1985 on May 30, 1985. However, on June 10, 1985, Mr. Justice Doyle of the New York State Supreme Court ruled that County Executive Cohalan did not have the power to assist LILCO in such exercise (that power was vested in the County Legislature which opposed the opening of Shoreham). Justice Doyle's order also nullified Executive Order 1-1985 and, among other things, enjoined Mr. Cohalan and all persons acting in concert with him from as ing or expending any funds or resources "...or

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directing any County personnel to review, test or implement the LILCO plan or a radiological emergency response plan for the Shoreham nuclear plant without securing a resolution adopted by the County Legislature...". That decision and injunction was affirmed by the highest court of New York State, the New York State Court of Appeals, on July 9, 1985, approximately a week and one-half before your letter was written. If Mr. Cohalan were to seek to assist LILCO in an exercise, as asserted in your letter, at a minimum he would be subjecting himself and those acting in concert with him to punishment for contempt of that injunction.

We in New York State do not share your view as to Shoreham's importance to the State or the Nation. LILCO's own representatives testified before the Marburger Commission that the power to be generated by Shoreham would not be needed for ten years. Others said that this period would be 13 or more years. Moreover, there are adequate alternative sources of the power Shoreham would generate which present no threat to the health and welfare of the residents of Long Island and New York State, and which will be available long before that power is needed. In addition, the New York State Energy Office has advised me that the reduction in the use of imported oil that would result assuming Shoreham went on-line and operated continually (except for refueling) could be achieved by converting LILCO's E. F. Barrett and Port Jefferson power plants from oil to coal. Indeed, that Office informed me that LILCO sought such coal conversions and thereafter abandoned those efforts.

Contrary to your assertions, the treatment by New York State and local authorities of other nuclear power plants as compared to Shoreham is not disparate with respect to emergency planning. Nuclear power plants are not fungibles with respect to emergency planning, and differences in treatment are not necessarily disparities. Because of the configuration of Long Island, the limited East-West roadway network, its climatology, the fact that only safe evacuation may be to the westward, the density of population involved, and other factors, Shoreham is a unique case. The independent decisions by the Suffolk County Legislature (which is vested with power to make such determination) and New York State against adopting or implementing an emergency plan for Shoreham were not disparate, but rather the result of sound and deliberative action necessary to protect the safety and welfare of the inhabitants of Suffolk County and New York State. Their lawfulness have been upheld by the New York State Supreme Court and the United States District Court. I reiterate that New York State would consider efforts by your agency to promote the operation of that plant over those objections to be an affront to the sovereignty of New York State, and a reversal of the policy established by

John S. Herrington

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your Administration not to impose the Federal Government's 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" (letter from President Reagan to Congressman William Carney, October 11, 1984).

Respectfully,

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Honorable John S. Herrington
Secretary of Energy
Washington, D. C. 20585