

PDR

January 22, 1986

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

Dear Mr. Cohalan:

On January 16, 1986, Suffolk County Local Law 2-86 became effective. That law, entitled "A Local Law Concerning the Protection of Police Powers Held by the County of Suffolk" purports to require Suffolk County Legislature approval of certain tests or exercises for responding to emergency situations. The law obviously is designed to apply to the upcoming February 13, 1986 scheduled emergency planning exercise for the Shoreham Nuclear Power Plant. This exercise will include not only federal government participants from the Nuclear Regulatory Commission ("NRC" or "Commission"), the Federal Emergency Management Agency ("FEMA"), the Department of Energy, the Department of Commerce, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Transportation, and the Department of Agriculture, but also employees of the Long Island Lighting Co. ("LILCO"), the holder of a Commission low-power operating license.

We have no desire for a confrontation with Suffolk County over Local Law 2-86. To the contrary, we would welcome a reversal of Suffolk County's opposition to the upcoming exercise and its participation in that important information gathering function. The NRC has requested FEMA to conduct that exercise to enable the Commission to gain facts that will assist it in evaluating aspects of LILCO's emergency plan and in determining whether that plan provides reasonable assurance that adequate protective measures can and will be taken in the event a radiological emergency were ever to occur at Shoreham. This important task could be done more efficiently and effectively were Suffolk County to participate in the exercise, as have other local communities surrounding the more than 100 nuclear power plants in operation or close to operation in this country. Moreover, were Suffolk County to participate in the upcoming exercise, any legitimate concerns over either infringement of its police powers during the exercise or lack of information about the exercise would obviously be satisfied.

Regardless of the County's decision concerning participation in the February 13 exercise, however, its concerns over that

exercise are not justified: the County's police powers will not be impinged in any way and we have no desire to unreasonably withhold information concerning the upcoming exercise from the County. We are hopeful that, once the County understands the context of the test in the federal licensing scheme and the nature of the federal participation, a confrontation can be avoided. Toward that end we want to advise you about the upcoming exercise. We understand that LILCO has also submitted a description of the February 13, 1986 exercise for your information.

The exercise is to be supervised and conducted by FEMA at the request of the NRC. No State or County functions will be performed by any federal personnel during the upcoming exercise. No LILCO employee will be, or appear to be, performing any State or County functions. Indeed, as the NRC made clear in requesting FEMA to schedule and conduct the exercise, the upcoming test will comply with all State and County laws which limit the exercise of certain functions to State or County personnel. Although, as explained below, federal personnel will, to a limited degree, play the roles of certain State and County officials, this limited role-playing will not, and is not intended to, infringe on any legitimate police powers of Suffolk County.

The LILCO Transition Plan for Shoreham provides for the lead role for offsite emergency response to be administered by the Local Emergency Response Organization ("LERO"), an organization comprised of primarily utility employees. In the upcoming Shoreham exercise, FEMA intends to observe, by examination of facilities, plans, and communications, but not by interacting with the affected public, a number of LERO primary response capabilities. Specifically, FEMA plans to observe the following facilities and/or activities:

- * LERO Emergency Operations Center
- * Emergency Operations Facility
- * Emergency News Center
- * Reception Center
- * Congregate Care Centers
- * Emergency Worker Decontamination
- * General Population Bus Routes
- * School Evacuation
- * Special Facilities Evacuation
- * Mobility Impaired at Home
- * Route Alerting
- * Traffic Control Points
- * Impediments to Evacuation
- * Radiological Monitoring
- * Accident Assessment

In addition to the above areas, FEMA will evaluate the part of the plan which provides for possible New York State and/or Suffolk County involvement in response to a radiological emergency. The LILCO Plan in part states that:

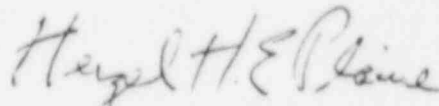
The role of Suffolk County, should it decide to become involved in the response to a radiological emergency, either because the Governor orders it to do so or because the County Executive so chooses, will be for the various members to participate to the extent to which they are qualified by reason of prior training or experience.

In order to test this aspect of the plan and to add more realism to the exercise, should neither Suffolk County or New York officials choose to participate, federal employees will play the role of such officials during the exercise. Through this role-playing, the NRC is attempting to more effectively evaluate LERO's capability (1) to accommodate the presence of State and local officials, (2) to support those officials using the resources available through LERO, and (3) to provide those officials with sufficient information to carry out their State and County responsibilities. These "actors," however, will be instructed not to play decisionmaking roles, not to assume any command and control authority, not to interact with members of the public so as to lead anyone to believe that they are actually County officials, and not to actually perform any State or local functions, which are exclusively reserved to State or County officials by State or County laws. The basis for the number of actors to be used in this aspect of the exercise and the detailed instructions they will be provided are based, primarily, on New York State plans for other nuclear power plants and the manner in which New York State personnel and other counties have participated in other New York facility exercises.

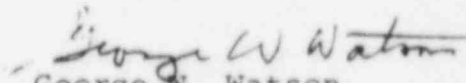
As is clear from the above description, the February 13 Shoreham exercise is not intended to, nor will it, infringe on any lawful County interest. As stated above, the NRC is requiring this exercise to fulfill the congressionally mandated objective under the Atomic Energy Act of ensuring that the public health and safety is protected by any decision that the NRC makes on LILCO's application. In order to carry out this important federal function, the NRC is granted specific statutory authority to obtain information through such studies and investigations which it deems necessary and proper. See, e.g., 42 U.S.C. § 2201c. Similarly, FEMA has a congressional mandate to conduct such an exercise at the request of the NRC. 42 U.S.C. §§ 5131 & 5201; 50 U.S.C. § 2253(q); 44 C.F.R. Part 350.

We would welcome a Suffolk County decision to participate in the Shoreham exercise. In our view the public only loses by your refusal to help the NRC and FEMA perform their federally mandated functions. Regardless of your decision, however, it is NRC's intention that FEMA continue to plan for and conduct the upcoming February 13 exercise in order to fulfill our federal responsibilities.

Sincerely,



Herzel H. E. Plaine
General Counsel
United States Nuclear
Regulatory Commission



George W. Watson
Acting General Counsel
Federal Emergency
Management Agency