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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Commission

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In the Matter of )

LONG ISLAND LIGHTING COMPANY )

(Shoreham Nuclear Power )  
Plant) )  
\_\_\_\_\_ )

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

DOCKETED  
USNRC  
DEC 26 1985  
OFFICE OF PUBLIC AFFAIRS  
DOCKETING & SERVICE  
BRANCH

SUFFOLK COUNTY, STATE OF NEW YORK AND  
TOWN OF SOUTHAMPTON MOTION FOR  
CANCELLATION OF EMERGENCY PLANNING EXERCISE

I. INTRODUCTION

In a November 12, 1985, letter to Samuel Speck of FEMA, the NRC's Executive Director for Operations, William Dircks, requested FEMA to conduct an "Option 2" exercise<sup>1</sup> of LILCO's emergency plan for Shoreham, stating "that such an exercise would

<sup>1</sup> Mr. Speck described the Option 2 exercise in an October 29 letter to Mr. Dircks:

This option would include all functions and normal exercise objectives. This option would exercise Revision 5 of the LERO Plan. Exercise controllers would simulate the roles of key State or local officials unable or unwilling to participate. It would be desirable that State and local government personnel actually play. However, such a simulation mechanism would at least test the utility's ability to respond to ad hoc participation on the part of State and local governments.

be useful in the licensing process for Shoreham." (emphasis added). Mr. Dircks sent this letter after the NRC voted 3-2 in favor of requesting FEMA to conduct such an exercise.

Suffolk County, the State of New York, and the Town of Southampton (collectively, "Governments") repeatedly have advised the Commission of their opposition to any offsite exercise for Shoreham, particularly one which purportedly would "simulate" what the Governments would do in the event of a Shoreham emergency.<sup>2</sup> However, the NRC nonetheless decided to request an exercise. The majority took this action without citing any legal authority for conducting an exercise of LILCO's unimplementable plan and without explaining how such an exercise could possibly be "useful." Moreover, the majority failed to acknowledge, much less respond to, the Governments' objections, and held no public meeting at which its decision to request an exercise could be considered and explained.

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<sup>2</sup> See, e.g., November 29, 1984, Letter from Mario M. Cuomo, Governor, State of New York, to Harold R. Denton; November 28, 1984, Letter from John C. Gallagher, Deputy Suffolk County Executive, to Harold R. Denton; March 14, 1985, Letter from John C. Gallagher, Deputy Suffolk County Executive, to Harold R. Denton; November 7, 1985, Letter from Peter F. Cohalan, Suffolk County Executive, to NRC Commissioners; November 12, 1985, Letter from Martin B. Ashare, Suffolk County Attorney, to NRC Commissioners; November 13, 1985, Letter from Mario M. Cuomo, Governor, State of New York, to NRC Commissioners; November 12, 1985, letter from Martin Lang, Supervisor, Town of Southampton, to Samuel W. Speck, FEMA, with copies to NRC Commissioners.

There is no legitimate basis for the NRC to go forward with an "exercise" for Shoreham at this time. Surely, it is not within the NRC's statutory mandate or "useful," to conduct an exercise at a plant which has been denied an operating license. Similarly, it is not within the NRC's mandate nor is it "useful" to "exercise" a plan which the courts and the NRC Licensing and Appeal Boards have declared to be unlawful, a usurpation of State police powers, and unimplementable. Further, it is not "useful" to conduct "simulations" of supposed Suffolk County actions in a Shoreham emergency, particularly since the law is clear that Suffolk County personnel will never implement LILCO's plan. And, contrary to an assertion attributed to Commissioner Bernthal,<sup>3</sup> the proposed "exercise" would not help to prove whether in an actual Shoreham emergency it would be possible to evacuate Long Island.

An exercise of LILCO's plan could potentially be "useful" only if there were a basis to believe that that plan could be implemented as submitted. Under applicable legal decisions, however, none of which have been reversed or stayed, LILCO clearly cannot implement the plan it has submitted as part of its license application. Accordingly, the Governments file this motion to urge the Commission to reverse its improvident decision and to cancel the exercise.

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<sup>3</sup> See New York Times article, Sunday, December 15, 1985.

## II. DISCUSSION

There are two basic reasons why the exercise must be cancelled. First, if the exercise is designed to test LILCO's ability to implement its plan, the binding decisions of the New York State Supreme Court and the NRC's Licensing and Appeal Boards make clear that as a matter of law, LILCO cannot implement its plan. Indeed, the Cuomo v. LILCO decision documents that almost every critical function which normally would be tested in an exercise is beyond LILCO's authority to perform. Since LILCO lacks authority to perform those functions in an emergency, it certainly is not within LILCO's authority, nor is it "useful," to conduct a test or exercise in which LILCO pretends or practices to perform those functions.

Second, if the exercise is designed to test the implementability of the LILCO plan, using simulated State and County personnel who supposedly will perform functions which LILCO cannot perform, the exercise cannot produce results which could be used in the licensing proceeding. The LILCO plan which has been adjudicated for 2-1/2 years in this proceeding is a plan to be implemented solely by LILCO. That is the law of the case. Any test of an emergency plan which presupposes implementation by County and State personnel would be a test of a different plan

than the one which has been adjudicated. The results of the "test" could have no bearing on the licensing process for Shoreham.

A. The LILCO Plan Cannot Be Implemented By  
LILCO And No Exercise Can Change That Fact

The New York State Supreme Court ruled on February 20, 1985, that an attempt by LILCO to implement its emergency plan for Shoreham would constitute an unlawful usurpation of governmental police powers. Cuomo v. LILCO, Consol. Index No. 84-4615 (N.Y. Sup. Ct., Feb. 20, 1985). That decision has not been reversed or stayed and thus is the binding law which the NRC must respect, particularly since that decision was rendered after the NRC's Licensing Board requested the parties to seek a state court resolution of the legal authority issues.<sup>4</sup> In addition, the NRC's own Licensing and Appeal Boards have ruled that the State and local laws which LILCO's plan violates, are not preempted by federal law. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-85-12, 21 NRC 644, 900-909 (1985) (hereinafter "April 17, 1985 PID"); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-818 slip op. (Oct. 18, 1985) (hereinafter, "ALAB-818").<sup>5</sup> The ASLB and the Appeal

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<sup>4</sup> See e.g., Tr. 3675. For purposes of the NRC's proceedings, LILCO has accepted the Cuomo v. LILCO decision as a binding interpretation of Stat law. See ALAB-818, slip. op. at 8.

<sup>5</sup> On a related issue, the United States District Court for the Eastern District of New York ruled that Suffolk County  
(footnote continued)

Board thus ruled that LILCO's plan cannot be implemented, and the ASLB accordingly denied LILCO a full power license. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-85-31, 22 NRC 410, 432 (1985).

LILCO must have an implementable emergency plan in order to comply with the NRC's regulations. The proposed exercise, regardless of its "results," could not alter the fact that, as a matter of law, LILCO's plan, upon which its license application is based, cannot be implemented. That unalterable legal reality is thus dispositive of LILCO's license application. There is no basis for asserting that the proposed exercise could serve any purpose, or be "useful," in the Shoreham licensing process.

The NRC must further understand the full extent of the legal rulings which are in effect. This understanding is essential because if the proposed exercise is designed to test LILCO's ability to implement its plan, it is clear that multiple functions in the plan clearly cannot be performed by LILCO and cannot be included in any exercise.

Mr. Speck's October 29 letter to Mr. Dircks described the proposed "Option 2" exercise as one that "would include all functions and normal exercise objectives." The New York State

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Resolutions 262-1982, 456-1982, and 111-1983 are not preempted by Federal law. See Citizens for an Orderly Energy Policy, Inc. v. County of Suffolk, 604 F. Supp. 1084 (E.D.N.Y. 1985).



Supreme Court's February 20 ruling and the Partial Declaratory Judgment entered thereon make clear that all functions and normal exercise objectives cannot be tested. The Court's opinion identifies specific functions that are embraced by the LILCO plan, including the following:

- Determination of the action to be taken in order to protect the public.
- The declaration of an emergency.
- Notification of the public.
- The instruction of the public by means of EBS messages as to protective measures to be taken, including selective and general evacuation of the EPZ.
- Implementation of traffic control measures in order to evacuate the public along specified routes.
- The removal of stalled cars and other obstacles from the roadway by tow trucks.
- The formulation of protective action recommendations which are to be broadcast to the public present in the ingestion exposure pathway.
- The making of decisions and recommendations with reference to recovery and re-entry to the EPZ after a nuclear accident.

Cuomo v. LILCO, slip. op. at 4-5; N.Y. Law Journal, April 19, 1985, p. 16, col. 5.

The Court's opinion holds that LILCO's performance of the functions summarized above and set forth at greater length in LILCO's plan are "inherently governmental in nature and fall

clearly within the ambit of the STATE's police power."<sup>6</sup> The Court held that "implementation of the PLAN amounts to an exercise of the police power .... The exercise of such power by LILCO would ... violate the public policy of this state."<sup>7</sup> Accordingly, the Court held that LILCO's efforts to perform the plan functions listed above would be illegal. The Court also held that no provision of the State Constitution and no State statute authorized LILCO or any other private corporation to exercise any portion of the State's police power; it concluded that any attempted delegation of that police power to LILCO would be an unlawful delegation of governmental powers and a violation of the public policy of New York State. Finally, the Court held that LILCO, as a state-chartered corporation, has only those powers specifically conferred upon it. The Court rejected LILCO's claim that it had corporate authority to carry out the LILCO plan; it held that LILCO has no corporate authority to carry out the plan or to perform basic plan functions. A fortiori, LILCO has no corporate authority to test its ability to carry out illegal acts.

Thereafter, the New York State Supreme Court entered a Partial Declaratory Judgment rejecting LILCO's legal authority claims. That Judgment specifically decrees that "the contested acts, enumerated more fully in the complaints, contemplated by

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<sup>6</sup> Cuomo v. LILCO, slip. op. at 12.

<sup>7</sup> Cuomo v. LILCO, slip. op. at 14-15.



LILCO in implementing its Plan, are acts which are inherently governmental in nature and are embraced by the State's police powers and are therefore prohibited." Partial Declaratory Judgment dated March 25, 1985, ¶12.

The contested acts set forth in the Complaints filed by the County, State, and Town of Southampton include the following specific functions:

1. Exercise of basic command and control functions in the offsite area during a nuclear emergency;
2. Determination of how to protect the health, safety and welfare of persons within the EPZ and ingestion pathway;
3. Determination of whether EPZ residents should be evacuated or sheltered and, if so, where and how;
4. Notification of the public concerning the emergency and communication of recommendations concerning evacuation or sheltering;
5. Direction of any evacuation effort and control and management of evacuation traffic;
6. Determination of protective measures throughout the ingestion pathway concerning food, produce and other health and safety issues and notification of the public concerning such measures;
7. Determination of decisions concerning recovery and re-entry steps after a nuclear accident and notification of the public concerning such decisions.

County of Suffolk v. LILCO Complaint, ¶ 17; Cuomo v. LILCO Complaint, ¶ fifteen; Town of Southampton v. LILCO Complaint, ¶ 19.

Under the terms of the Partial Declaratory Judgment, LILCO is prohibited from exercising each of the functions set forth above. LILCO has asserted, however, that its exercise objectives would include a demonstration of its ability to perform these specific, prohibited functions.<sup>8</sup> For example, LILCO has proposed to test its ability to exercise basic command and control functions in the offsite area during a nuclear emergency. See LILCO's "Emergency Operations Management" Objectives, attachment to Exhibit 1 at 2-3.<sup>9</sup> Such functions are prohibited under the Partial Declaratory Judgment. A "test" or "exercise" of LILCO's purported ability to perform functions prohibited by State law could hardly be "useful."

LILCO also seeks to test its ability to determine how to protect the health, safety and welfare of persons within the EPZ and ingestion pathway, including decisions relating to evacuation and sheltering.<sup>10</sup> Again, that is a prohibited function.

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<sup>8</sup> See Letter from John D. Leonard, Jr., LILCO, to Harold R. Denton, NRC, dated November 14, 1984, Exhibit 1 hereto. This letter was attached to a February 8, 1985 letter from John D. Leonard to Harold R. Denton, which reiterated LILCO's request for a FEMA-graded exercise and indicated that no objectives other than those in the November 14 Leonard letter had been submitted to FEMA/NRC.

<sup>9</sup> LILCO asserts it will "demonstrate the ability of key emergency personnel within the Shoreham Nuclear Power Station Emergency Response Organization and LERO to initiate, coordinate and implement timely and effective decisions during a radiological emergency and clearly demonstrate who is in charge."

<sup>10</sup> LILCO's "Accident Assessment" Objectives include:

Demonstrate the ability of both the Shoreham  
(footnote continued)

Next, LILCO seeks to test its ability to notify the public in the event of a radiological emergency, including communication of recommendations concerning evacuation or sheltering.<sup>11</sup> Public notification by LILCO is a prohibited function under the Partial Declaratory Judgment. Indeed, even the NRC's emergency planning

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Nuclear Power Station Emergency Response Organization and LERO to receive and assess radiological data.

Demonstrate the ability of Shoreham Nuclear Power Station Emergency Response Organization and LERO to respectively project and compare dose projections to the public via the plume exposure pathway, compare their projections to the Protective Action Guides, available shelter, evacuation time estimates and determine appropriate action recommendations.

Demonstrate the ability of LERO to project doses to the public via the ingestion pathway and to determine appropriate protective measures based on PAG's and other relevant factors.

Exhibit 1 attachment at 3-4.

11 LILCO's "Public Alerting and Notification" Objectives include:

Demonstrate that the Shoreham Nuclear Power Station (SNPS) Emergency Response Organization and LERO authorities can effectively provide accurate information to the public in a timely fashion.

Demonstrate the capability of LERO to activate the prompt notification system within 15 minutes of the decision to implement protective actions to simulate using sirens, EBS and tone alert radios. In addition, demonstrate the capability of LERO to implement route alerting and simulate the notification provided by the United States Coast Guard to boaters.

Demonstrate the capability of the SNPS Emergency Response Organization and LERO to provide initial  
(footnote continued)

regulations specifically provide that the responsibility for public notification rests with governmental bodies. See 10 C.F.R. Part 50, Appendix E (IV, D, 3).

Finally, LILCO seeks to test its ability to implement an evacuation of the area surrounding Shoreham, including the control and management of evacuation traffic, the determination and communication of protective measures throughout the ingestion pathway, and the determination and communication of decisions concerning recovery and re-entry.<sup>12</sup> Again, evacuation management

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and follow up information to the public in a timely fashion.

Exhibit 1 attachment at 3.

<sup>12</sup> LILCO's "Actions to Protect the Public" Objectives include the following:

Demonstrate the implementation of appropriate protective action response options by LERO, including (all sheltering and evacuation to be simulated):

- \* Sheltering and evacuation of offsite areas including schools and special facilities;
- \* Informing the public on the development of the accident and any required protective actions;
- \* Identification, notification and evacuation of non-institutionalized mobility-impaired persons;
- \* Analyzing and determining ingestion exposure pathway considerations;
- \* Provision for removal of impediments from evacuation routes;
- \* Provision to guide traffic during a  
(footnote continued)

is a prohibited function.

While Cuomo v. LILCO clearly prohibits LILCO from exercising the foregoing functions, any exercise which tests "all functions and normal exercise objectives" must include a demonstration of LILCO's ability to perform these functions. FEMA's 35 Core Exercise Objectives are set forth in FEMA's Modular Format for Uniformity of Radiological Emergency Preparedness Exercise Observations and Evaluations (June 1983).<sup>13</sup> These objectives generally set the standard by which graded exercises are measured by FEMA. Such objectives include the following:

3. Demonstrate ability to make decisions and to coordinate emergency activities.

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simulated evacuation;

- \* Provision to evacuate members of the public without transportation;
- \* Activation of Reception Center;
- \* Coordination with the American Red Cross for the provision of Congregate Care Centers.

Demonstrate the capability of emergency personnel to identify requirements, evaluate data and implement procedures for re-entry.

Demonstrate the capability of emergency personnel to identify requirements, programs and policies governing recovery.

Exhibit 1 attachment at 4.

<sup>13</sup> Attachment 2 to Letter from Dave McLoughlin, FEMA Deputy Associate Director State and Local Programs and Support, to Regional Directors, Acting Regional Directors, Regions III, V, August 5, 1983.

10. Demonstrate ability to project dosage to the public via plume exposure, based on plant and field data, and to determine appropriate protective measures based on PAG's, available shelter evacuation time estimates, and all other appropriate factors.
11. Demonstrate ability to project dosage to the public via ingestion pathway exposure based on field data, and to determine appropriate protective measures based on PAG's and other relevant factors.
12. Demonstrate ability to implement protective actions for ingestion pathway hazards.
13. Demonstrate ability to alert the public within the 10-mile EPZ, and to disseminate an initial instructional message within 15 minutes.
14. Demonstrate ability to formulate and distribute appropriate instructions to the public in a timely fashion.
15. Demonstrate the organizational ability and resources necessary to manage an orderly evacuation of all or part of the plume EPZ.
16. Demonstrate the organizational ability and resources necessary to deal with impediments to evacuation, such as inclement weather or traffic obstructions.
17. Demonstrate the organizational ability and resources necessary to control access to an evacuated area.
18. Demonstrate the organizational ability and resources necessary to effect an orderly evacuation of mobility-impaired individuals within the plume EPZ.
19. Demonstrate the organizational ability and resources necessary to effect an orderly evacuation of schools within the plume EPZ.



- . . .
21. Demonstrate the ability to make the decision, based on predetermined criteria, whether to issue KI to emergency workers and/or the general population.
  22. Demonstrate the ability to supply and administer KI, once the decision has been made to do so.
- . . .
35. Demonstrate ability to determine and implement appropriate measures for controlled recovery and re-entry.

In light of the New York State Supreme Court's ruling in Cuomo v. LILCO, LILCO cannot satisfy any of these FEMA Core Exercise Objectives. In short, no exercise of LILCO's plan can lawfully include "all functions and normal exercise objectives." The exercise should therefore be cancelled.

- B. If The Proposed Exercise Were To Involve Plan Implementation By Non-LILCO Personnel,  
It Could Not Be Justified Under NRC Regulations

If the proposed exercise were to include plan implementing actions performed or simulated by persons other than LILCO or its agents identified in the LILCO plan, the exercise would be irrelevant to the Shoreham licensing process. The only emergency plan involved in the Shoreham proceeding is the LILCO plan which relies solely upon LILCO personnel and certain LILCO agents for implementation. Indeed, the ASLB expressly ruled on June 10,

1983 that versions of the LILCO plan involving assumed participation of New York State and Suffolk County were not the subject of litigation in the license proceeding.<sup>14</sup>

Indeed, not only did the ASLB reject LILCO's attempt at the outset of the proceeding in June 1983 to have the ASLB consider plans calling for State and Suffolk County participation, but several LILCO efforts to introduce evidence at trial regarding alleged State and County participation in the emergency response were rejected by the ASLB as well.<sup>15</sup> LILCO has not appealed the ASLB's limitation on the scope of the licensing proceeding and its time to do so has now long since passed. Therefore, it is the law of this case that the "plan" which is being assessed in the Shoreham licensing process is one without State or local government participation.

Furthermore, the LILCO plan assumes no actions, participation, or implementation, "ad hoc" or otherwise, by Suffolk County or the State of New York. See, e.g., April 17 PID, 21 NRC at 895 (LILCO plan relies "wholly upon the services of LILCO personnel for the performance of emergency functions"); ALAB-818 slip. op. at 5-6 ("The [LILCO] plan does not rely on

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<sup>14</sup> ASLB Order Limiting Scope of Submissions, June 10, 1983.

<sup>15</sup> See e.g., Order Confirming Changes in Schedule with Regard to "Group II" Contentions and Rulings on Motions to Strike, (Dec. 2, 1983), (striking certain LILCO testimony on Contention 25); Tr. 1298 (striking certain LILCO testimony on Contention 65); Tr. 5562-63, 5566 (striking certain LILCO testimony on Contention 92).

County or State personnel"). Thus, any "test" or "exercise" which purported to involve actions by officials of Suffolk County or the State of New York would of necessity "test" some "plan" or "scenario" of FEMA's, the NRC's, or someone else's invention -- it could not be a test of the plan submitted by LILCO in its license application, since that plan assumes implementation only by LILCO.

The NRC's regulations provide for a two-part assessment of the adequacy of offsite emergency plans. First, with FEMA taking the lead, essentially a "paper" review is conducted, during which the plans are evaluated against the criteria of NUREG-0654 and the Section 50.47(b) planning standards. In this case, FEMA has provided several RAC reports evaluating the LILCO plan against the NUREG-0654 criteria; and litigation of contentions concerning the adequacy and regulatory compliance of LILCO's plan consumed more than a year, and resulted in the ASLB decisions of April 17 and August 26, 1985 and the Appeal Board decision of October 18, 1985.

Second, the NRC regulations contemplate that once the plan adequacy review is completed (including litigation before the ASLB), a FEMA exercise of that plan is to be held to assess its implementability. See 10 CFR § 50.47(b)(14); 10 CFR Part 50, Appendix E, Section F.1. The exercise is designed to determine whether there are any fundamental inadequacies in the nature or

implementation capacity of the plan which had previously been reviewed. See Union of Concerned Scientists v. NRC, 735 F.2d 1437 (D.C. Cir. 1984), cert. denied, 105 S.Ct. 815 (1985).

Thus, a fundamental aspect of the NRC's two-part process is that the plan review and the exercise must concern the same plan. If one plan were reviewed but a different plan exercised, the necessary finding that a plan is both adequate and capable of being implemented would be impossible. Indeed, in this very case, many findings by FEMA and the ASLB concerning the alleged "adequacy" of LILCO's plan on paper, were expressly made contingent upon a demonstration of implementability during an exercise.<sup>16</sup>

The NRC has no authority to conduct an "exercise" of hypothetical and non-existent "plans" that have never been submitted to the NRC, subjected to FEMA or NRC review, or made available to the Governments for litigation. Whatever "roles" or "ad hoc participation" are proposed to be simulated would clearly be either the invention of "exercise controllers" or "scenario" writers, or else contained in some secret plan that has never seen the light of day. Neither could be the basis of a legitimate exercise in this case. To go forward with an exercise of

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<sup>16</sup> See, e.g., Direct Testimony of Thomas E. Baldwin, Joseph H. Keller, Roger B. Kowieski, and Philip H. McIntire Concerning Phase II Emergency Planning, ff. Tr. 12,174 and 14,151, at 10, 12, 16, 30, 34, 36, 37, 48, 62, 73, 85, 98; April 17, 1985, PID 21 NRC at 756.

such non-existent or secret plans, purportedly as part of the NRC's licensing process, would be a gross violation of the Governments' due process rights and the NRC's own regulations.<sup>17</sup>

Furthermore, the proposal to "simulate" assumed Suffolk County actions during the proposed exercise of LILCO's plan is clearly irrational.

1. Resolutions of the Suffolk County Legislature prohibit County personnel from testing or implementing any radiological emergency response plan for Shoreham that has not been approved and duly adopted by the Suffolk County Legislature. See Suffolk County Resolutions 456-1982 and 111-1983.

2. The Suffolk County Legislature has not approved or adopted any radiological emergency response plan for Shoreham.<sup>18</sup>

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<sup>17</sup> For example, Section 50.47(b) sets forth planning standards, each of which (except 50.47(b)(2)) applies to review of off-site plans. There could be no rational basis for applying standards b(1), (3)-(13), and (15)-(16) to one plan and b(14) regarding exercises to a different plan. Further, if in connection with the proposed exercise or otherwise, the NRC, LILCO or FEMA were to create a "plan" for purported execution or simulation by State or local officials or by FEMA-contracted imposters, that "plan" could not be considered. See e.g., Letter, dated May 9, 1983, from Chairman Palladino to Congressman Ottinger ("the Commission agrees with your statement that a utility cannot submit a plan on behalf of a local government against the wishes of that local government"). See also, 44 CFR § 350.6(b) (FEMA assistance "does not include the actual writing of State and local government plans").

<sup>18</sup> The New York Court of Appeals has made clear that there is no obligation under State law for Suffolk County to adopt or implement a plan for Shoreham. See In re Prospect v. Cohalan, 65 (footnote continued)

3. The County's emergency planning resolutions have been upheld by the courts as valid governmental actions; those resolutions are binding upon all County employees, including the County Executive. See Citizens for an Orderly Energy Policy, Inc., v. County of Suffolk, 604 F. Supp. 1084 (E.D.N.Y. 1985) and In re Prospect v. Cohalan, N.Y. Sup. Ct., June 10, 1985, aff'd, 109 A.D. 2d 210, 490 N.Y.S. 2d 795, aff'd, 65 N.Y. 2d 867, 493 N.Y.S. 2d 867 (1985). The New York Supreme Court's June 10, 1985 Order, which was affirmed by the New York Court of Appeals in In re Prospect v. Cohalan, by its terms prohibits the County Executive and other County personnel "from assigning or expending any funds or resources in contravention of Resolutions 262-1982, 456-1982, and 111-1983 or directing any County personnel to . . . implement the LILCO plan." LILCO asked the New York Court of Appeals to clarify its affirmance of this aspect of the New York Supreme Court order but the Court of Appeals in a September 12, 1985 Order refused to do so; thus the New York State Supreme Court's Order remains in effect.

4. On June 17, 1985, counsel to LILCO, Mr. Reveley, wrote to the Suffolk County Attorney, Mr. Ashare, and asked whether "the County Executive will respond fully, in cooperation with LERO, to protect the public health and safety in the event a radiological accident occurs at Shoreham." In response, Mr.

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N.Y.2d 867, 493 N.Y.S.2d 867 (1985). And it has never been suggested that under federal law a county is obligated to adopt a plan.



Cohalan stated that he would "respond to the best of [his] ability and in accordance with the duties and obligations placed upon [him] by Article 2-b of the Executive Law." Mr. Cohalan did not commit the County to act in concert with LERO or to implement the LILCO plan. In fact, County law expressly prohibits Mr. Cohalan and all other County employees from implementing the LILCO plan. Moreover, Mr. Cohalan's June 26, 1985, letter was written before the Court of Appeals' decision in In re Prospect v. Cohalan and before the Court of Appeals denied LILCO's request for reconsideration. The Court of Appeals' affirmance of the Supreme Court's Order and its denial of reconsideration limit any response that the County might have to a nuclear emergency at Shoreham and make clear that the LILCO plan will never be implemented by Suffolk County personnel.

Clearly, a "simulation" of Suffolk County personnel supposedly participating in any way in the implementation or testing of the LILCO plan would be nonsensical. By law, no Suffolk County personnel could ever participate in the implementation or a test of the LILCO plan. Therefore, a test or "simulation" of County actions regarding the LILCO plan bears no relation to reality and thus could not possibly be "useful" in the licensing process.

### III. CONCLUSION

Contrary to the NRC's assertions, an Option 2 exercise could lead to no "useful" results. LILCO has no authority to implement its plan, and an exercise of LILCO's actions under an illegal plan could serve no useful purpose. Further, an exercise of any plan other than the one which has been submitted as part of LILCO's license application could not lead to results which are relevant to LILCO's license application, and would violate the Governments' due process rights. Accordingly, the exercise must be cancelled.

Respectfully submitted,

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December 24, 1985



LONG ISLAND LIGHTING COMPANY

SHOREHAM NUCLEAR POWER STATION

P.O. BOX 818, NORTH COUNTRY ROAD • WADING RIVER, N.Y. 11792

JOHN D. LEONARD, JR.  
VICE PRESIDENT - NUCLEAR OPERATIONS

November 14, 1984

SNRC-1107

Mr. Harold R. Denton, Director  
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U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

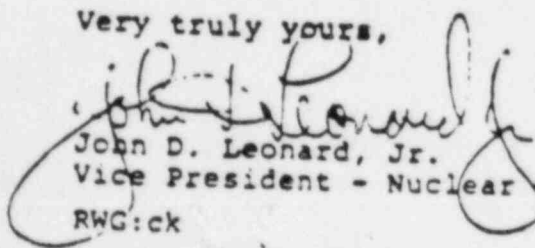
Exercise Objectives for Emergency Plan Exercise  
Shoreham Nuclear Power Station - Unit 1  
Docket No. 50-322

Dear Mr. Denton:

Attached for your review and forwarding to the Federal Emergency Management Agency pursuant to the FEMA-NRC Memorandum of Understanding dated as of November 1, 1984, 45 Fed. Reg. 02713 (1980), is a statement of objectives to be demonstrated at an exercise of the Shoreham Emergency Preparedness Plan and the Local Emergency Response Organization (LERO) Plan. This attachment is in two parts: first, a statement, in LILCO's terms, of the objectives of the exercise labeled "LERO Objectives", and second, a correlation of these objectives with the standard FEMA "Core Objectives." It is being submitted to you in order to support a graded exercise which LILCO is planning for the week of February 11, 1985. LILCO has also developed three potential scenarios for the exercise, which have been kept under security provisions. We would appreciate your transmitting this document promptly to FEMA and your good offices in arranging the preliminary meeting necessary to commence the detailed planning process for the exercises.

If you have any questions, please contact this office.

Very truly yours,

  
John D. Leonard, Jr.  
Vice President - Nuclear Operations

RWG:ck

Attachment

cc: P. Eselgroth  
C. Petrone (FEMA Region II)  
Robert DeYoung (I&E)  
Edward Jordan (I&E)  
All Parties Listed in Attachment I

Attachment I

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Attachment I  
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LILCO SHOREHAM/LERO PLAN

A. Emergency Response Facilities and Equipment

1. Demonstrate the prompt activation, adequacy of the staffing and set up as appropriate of emergency response facilities as follows:
  - o Shoreham Nuclear Power Station Control Room
  - o Shoreham Nuclear Power Station Technical Support Center
  - o Shoreham Nuclear Power Station Operations Support Center
  - o Shoreham Nuclear Power Station Emergency Operations Facility
  - o Local Emergency Response Organization Emergency Operations Center in Brentwood (LERO EOC)
  - o Local Emergency Response Organization Staging Areas in Riverhead, Patchogue and Port Jefferson (LERO SA)
  - o Emergency News Center (ENC)
  - o Emergency Worker Decontamination Facility
2. Demonstrate the Shoreham Nuclear Power Station communication capabilities among the Control Room, Technical Support Center, Emergency Operations Facility, Operations Support Center, and the Emergency News Center.
3. Demonstrate the capability to communicate effectively between Shoreham Nuclear Power Station Emergency Response Organization and LERO.
4. Demonstrate effective communications among the LERO EOC in Brentwood, and the various staging areas, the Emergency News Center, and among Staging Areas, Bus Transfer Points, Traffic Control Points and Field locations.
5. Demonstrate the ability of the Shoreham Nuclear Power Station, and LERO communications to:
  - o Perform a 24-hour per day notification
  - o Transmit accurate and timely information
6. Demonstrate the ability of the Shoreham Nuclear Power Station Emergency Response Organization and LERO to deploy, coordinate and control radiological monitoring teams.
7. Demonstrate exposure control capabilities for onsite corrective action teams.
8. Demonstrate communication of technical information to the Nuclear Regulatory Commission via the NRC hotlines.

9. Demonstrate the adequacy of internal communications within the Emergency Response Facilities as defined in A.1 above.
10. Demonstrate adequacy of facilities and displays to support emergency operations.

B. Notification and Mobilization of Key Personnel and Staff

1. Demonstrate the ability of the Shoreham Nuclear Power Station staff to properly classify actual or potential emergencies in accordance with LILCO Emergency Plan Implementing Procedures.
2. Demonstrate the capability of the Shoreham Nuclear Power Station Emergency Response Organization to notify the Local Emergency Response Organization (LERO) through the established notification system.
3. Demonstrate the capability of the Shoreham Nuclear Power Station Emergency Response Organization and LERO to notify emergency response personnel.
4. Demonstrate the capability of the Shoreham Nuclear Power Station Emergency Response Organization and LERO to mobilize staff and activate the emergency response facilities in a timely manner and maintain staffing around the clock.
5. Demonstrate, as appropriate the ability to identify the need for, notify and request assistance from Federal agencies.
6. Demonstrate, as appropriate, the notification of and coordination with counties and states within the ingestion pathway EPZ and with agencies such as FEMA, NRC, DOE, Red Cross, Federal Aviation Administration, and Coast Guard.

C. Emergency Operations Management

1. Demonstrate the capability of the Shoreham Nuclear Power Station Emergency Response Organization and LERO to implement their radiological emergency preparedness plans.
2. Demonstrate the ability of key emergency personnel within the Shoreham Nuclear Power Station Emergency Response Organization and LERO to initiate, coordinate and implement timely and effective decisions during a radiological emergency and clearly demonstrate "who is in charge."

3. Demonstrate that there is effective organizational direction and control and integrated radiological emergency response including deployment of field monitors, acquisition, receipt and analysis of field data.
4. Demonstrate the capability to coordinate actions (internally/externally) among organizations in order to obtain support and to make appropriate decisions.
5. Demonstrate the capability of responsible personnel to recommend and/or implement appropriate protective actions.

D. Public Alerting and Notification

1. Demonstrate that the Shoreham Nuclear Power Station (SNPS) Emergency Response Organization and LERO authorities can effectively provide accurate information to the public in a timely fashion.
2. Demonstrate the capability of LERO to activate the prompt notification system within 15 minutes of the decision to implement protective actions to simulate using sirens, EBS and tone alert radios. In addition, demonstrate the capability of LERO to implement route alerting and simulate the notification provided by the United States Coast Guard to boaters.
3. Demonstrate the capability of the SNPS Emergency Response Organization and LERO to provide initial and follow up information to the public in a timely fashion.

E. Public and Media Relations

1. Demonstrate staffing of the Emergency News Center by Shoreham Nuclear Power Station Emergency Response Organization and LERO personnel and the capability to issue coordinated periodic public information releases.
2. Demonstrate ability to provide rumor control and responses to inquiries from the general public in a coordinated fashion.
3. Demonstrate the ability to provide clear, timely and accurate briefings to the news media and public relative to the emergency at the Shoreham Nuclear Power Station.

F. Accident Assessment

1. Demonstrate the ability of both the Shoreham Nuclear Power Station Emergency Response Organization and LERO to receive and assess radiological data.
2. Demonstrate the ability of Shoreham Nuclear Power Station Emergency Response Organization and LERO to respectively project and compare dose projections to the public via the plume exposure pathway, compare their projections to the Protective Action Guides, available shelter, evacuation time estimates and determine appropriate protective action recommendations.

3. Demonstrate the ability of LERO to project doses to the public via the ingestion pathway and to determine appropriate protective measures based on PAG's and other relevant factors.
4. Demonstrate the activation, equipment and procedures of both the Shoreham Nuclear Power Station Emergency Response Organization and LERO field radiation monitoring teams.
5. Demonstrate the ability of in-plant personnel to safely draw and analyze post-accident liquid and gaseous samples.
6. Demonstrate equipment and procedures for measurement of airborne radioiodine concentrations as low as  $10^{-7}$  uCi/cc in the presence of noble gases.

G. Actions to Protect the Public

1. Demonstrate the implementation of appropriate protective action response options by LERO, including (all sheltering and evacuation to be simulated):
  - Sheltering and evacuation of offsite areas including schools and special facilities;
  - Informing the public on the development of the accident and any required protective actions;
  - Identification, notification and evacuation of non-institutionalized mobility-impaired persons;
  - Analyzing and determining ingestion exposure pathway considerations;
  - Provision for removal of impediments from evacuation routes;
  - Provision to guide traffic during a simulated evacuation;
  - Provision to evacuate members of the public without transportation;
  - Activation of Reception Center;
  - Coordination with the American Red Cross for the provision of Congregate Care Centers.
2. Demonstrate the capability of emergency personnel to identify requirements, evaluate data and implement procedures for re-entry.
3. Demonstrate the capability of emergency personnel to identify requirements, programs and policies governing recovery.
4. Demonstrate ability to effect an orderly evacuation of protected area personnel (on site only).
5. Demonstrate adequacy of procedures for registration and radiological monitoring of evacuees (off site only).

H. Health, Medical and Exposure Control Measures

1. Demonstrate the decision making process for limiting exposure of emergency workers.
2. Demonstrate processing of local emergency workers and vehicles through personnel monitoring and decontamination facility.
3. Demonstrate the decision making process for recommending the use of Potassium Iodide for emergency workers.
4. Demonstrate methods and resources for distributing dosimetry and thyroid blocking agents, if appropriate, to emergency workers.
5. Demonstrate the record keeping of radiation exposure and use of dosimetry and thyroid blocking agents for the protection of emergency workers.
6. Demonstrate knowledge, on the part of the emergency worker, of dosimetry and Potassium Iodide usage procedures and of the individual authorized to allow worker exposures above permissible limits.

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SHOREHAM/LERO PLAN  
EXERCISE OBJECTIVE WORKSHEET

FEMA Core Objective*	LERO Objective(s)
1. Demonstrate ability to mobilize staff and activate facilities promptly.	B.4
2. Demonstrate ability to fully staff facilities and maintain staffing around the clock.	A.1, B.4
3. Demonstrate ability to make decisions and to coordinate emergency activities.	C.2
4. Demonstrate adequacy of facilities and displays to support emergency operations.	A.10
5. Demonstrate ability to communicate with all appropriate locations, organizations, and field personnel.	A.3,4,6
6. Demonstrate ability to mobilize and deploy field monitoring teams in a timely fashion.	A.6
7. Demonstrate appropriate equipment and procedures for determining ambient radiation levels.	F.4
8. Demonstrate appropriate equipment and procedures for measurement of airborne radiiodine concentrations as low as $10^{-7}$ uCi/cc in the presence of noble gases.	F.6

\* Source - Modular Format for Uniformity of Radiological Emergency Preparedness Exercise Observations and Evaluations (June 1983) Attachment 2 to letter from Dave McLoughlin (Deputy Associate Director, State and Local Programs Support) to Regional Directors, Acting Regional Directors, Regions III, V; Concerning Procedural Policy on Radiological Emergency Preparedness Plan Reviews, Exercise Observations and Evaluations, and Interim Findings.



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EXERCISE OBJECTIVE WORKSHEET

FEMA Core Objective	LERO Objective(s)
9. Demonstrate appropriate equipment and procedures for collection, transport and analysis of samples of soil, vegetation, snow, water, and milk.	
10. Demonstrate ability to project dosage to the public via plume exposure, based on plant and field data, and to determine appropriate protective measures based on PAG's, available shelter evacuation time estimates, and all other appropriate factors	F.2
11. Demonstrate ability to project dosage to the public via ingestion pathway exposure based on field data, and to determine appropriate protective measures based on PAG's and other relevant factors.	F.3
12. Demonstrate ability to implement protective actions for ingestion pathway hazards.	
13. Demonstrate ability to alert the public within the 10-mile EPZ, and disseminate an initial instructional message within 15 minutes.	D.2, 3
14. Demonstrate ability to formulate and distribute appropriate instructions to the public in a timely fashion.	D.1, E.3, G.1
15. Demonstrate the organizational ability and resources necessary to manage an orderly evacuation of all or part of the plume EPZ.	G.1

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EXERCISE OBJECTIVE WORKSHEET

FEMA Core Objective	LERO Objective(s)
16. Demonstrate the organizational ability and resources necessary to deal with impediments to evacuation, such as inclement weather or traffic obstructions.	G.1
17. Demonstrate the organizational ability and resources necessary to control access to an evacuated area.	G.1
18. Demonstrate the organizational ability and resources necessary to effect an orderly evacuation of mobility-impaired individuals within the plume EPZ.	G.1
19. Demonstrate the organizational ability and resources necessary to effect an orderly evacuation of schools within the plume EPZ.	H.5, 6
20. Demonstrate ability to continuously monitor and control emergency worker exposure.	H.3
21. Demonstrate the ability to make the decision, based on predetermined criteria, whether to issue KI to emergency workers and /or the general population.	H.4
22. Demonstrate the ability to supply and administer KI, once the decision has been made to do so.	G.4
23. Demonstrate ability to effect an orderly evacuation of onsite personnel.	E.3
24. Demonstrate ability to brief the media in a clear, accurate and timely manner.	

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EXERCISE OBJECTIVE WORKSHEET

FEMA Core Objective	LERO Objective(s)
25. Demonstrate ability to provide advance coordination of information released.	E.1
26. Demonstrate ability to establish and operate rumor control in a coordinated fashion.	E.2
27. Demonstrate adequacy of procedures for registration and radiological monitoring of evacuees.	G.5
28. Demonstrate adequacy of facilities for mass care of evacuees.	
29. Demonstrate adequate equipment and procedures for decontamination of emergency workers, equipment and vehicles.	H.2
30. Demonstrate adequacy of ambulance facilities and procedures for handling contaminated individuals.	
31. Demonstrate adequacy of hospital facilities and procedures for handling contaminated individuals.	
32. Demonstrate ability to identify need for, request, and obtain Federal assistance.	C.4
33. Demonstrate ability to relocate to and operate the alternate EOF/EOC.	Not applicable
34. Demonstrate ability to estimate total population exposure.	
35. Demonstrate ability to determine and implement appropriate measures for controlled recovery and reentry.	G.2, 3

Date: 11/9/84

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Commission

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In the Matter of )

LONG ISLAND LIGHTING COMPANY )

(Shoreham Nuclear Power Station, )  
Unit 1) )

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

Certificate of Service

I hereby certify that copies of the SUFFOLK COUNTY, STATE OF NEW YORK AND TOWN OF SOUTHAMPTON MOTION FOR CANCELLATION OF EMERGENCY PLANNING EXERCISE have been served on the following this 24th day of December 1985, by U.S. mail, first class, except as otherwise noted.

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Date: December 24, 1985

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\* By Hand

\*\* By Federal Express