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Date

1/31/86

TO: (Name, office symbol, room number, building, Agency/Post)

Initials

Date

1. John Roberts

2.

3.

4.

5.

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| Approval | For Clearance | Per Conversation |
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REMARKS

Attached is a copy of
Suffolk Local Law No. 2-86
and correspondence to and from the
County; including Richard Willard's
letter which was sent today.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

Room No.—Bldg.

Raphael Gomer

Sorell Brady (633-3331)

Phone No.

633-1318

5041-102

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- A. Suffolk Local Law No. 2-86
- B. Letter dated 1/22/86 from NRC and FEMA to Peter Cohalen, Suffolk County Executive.
- C. Letter dated 1/23/86 from Richard K. Willard, Assistant Attorney General, Civil Division to Peter Cohalen, Suffolk County Executive.
- D. Letter dated 1/30/86 from Gregory Blass, Presiding Officer for the Suffolk County Legislature.
- E. Letter dated 1/31/86 from Richard K. Willard to Gregory Blass.

A

Intro. Res. No. 2127-85

Introduced by Legislators Blass, Prospect, Caracappa, Englebright, Morgo, Nolan, Bachety, Devine, Foley, Allgrove, D'Andre, Rizzo, Mahoney, Glass, Heaney, LaBua, Rosso

RESOLUTION NO. 1255-1985, ADOPTING LOCAL LAW NO. YEAR 198, A LOCAL LAW CONCERNING THE PROTECTION OF POLICE POWERS HELD BY THE COUNTY OF SUFFOLK

WHEREAS, the County of Suffolk, pursuant to the Constitution and laws of the State of New York, has been delegated police powers by the State; and

WHEREAS, the County has a duty to ensure that such police powers are not usurped by other entities; and

WHEREAS, County preparations for and responses to natural and man-made emergency situations involve the County's exercise of its police power functions; and

WHEREAS, the Long Island Lighting Company has prepared an off-site emergency plan for the Shoreham Nuclear Power Station in which private persons, including Long Island Lighting Company employees, would carry out governmental functions and otherwise usurp the police powers of Suffolk County; and

WHEREAS, at the initiative of the Long Island Lighting Company there is proposed to be a test of that Company's off-site emergency plan, during which test the roles and governmental functions of Suffolk County officials would be performed and "simulated" by persons who are not officials of Suffolk County and who are not legally authorized to perform or simulate Suffolk County roles or governmental functions; and

WHEREAS, the County of Suffolk has not been informed of what roles and governmental functions of the County would be so performed or "simulated," what actions would be taken by persons carrying out the test, and what public roadways, lands, and other property would be affected during such test; and

WHEREAS, the County of Suffolk finds that it would be inconsistent with its police powers and its duty to prevent such powers from being usurped if it were to remain indifferent to usurpation of its police powers or to allow unauthorized persons to perform or simulate the County's roles or governmental functions; and

WHEREAS, the County of Suffolk finds that it is required to establish a mechanism of general applicability to gain information needed to assess whether persons are proposing to take actions or perform roles or governmental functions, or otherwise usurp the County's police powers in a test or actual emergency situation; and

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on , 1985, a proposed local law entitled, "A LOCAL LAW CONCERNING THE PROTECTION OF POLICE POWERS HELD BY THE COUNTY OF SUFFOLK," and said local law in final form is the same as when presented and introduced; now, therefore, be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. , SUFFOLK COUNTY, NEW YORK

LOCAL LAW CONCERNING THE PROTECTION OF POLICE POWERS HELD BY THE COUNTY OF SUFFOLK

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF SUFFOLK AS FOLLOWS:

Section 1. Definition.

As used herein, "person" shall mean any individual, partnership, corporation, association, or public or private organization of any character, provided, however, that "person" shall not include any governmental entity authorized by law to perform the governmental function of Suffolk County or authorized by law to exercise police powers within the State of New York.

Section 2. Prohibition.

(a) It shall be a crime for any person to conduct or participate in any test or exercise of any response to a natural or man-made emergency situation if that test or exercise includes as part thereof that the roles or governmental functions of any Suffolk County official will be performed or simulated, and if the Suffolk County Legislature, pursuant to the procedures set forth in Sections 3 and 4 of this law, has issued via resolution a notice of disapproval of such performance or simulation of County roles or governmental function.

(b) It shall be a crime for any person to conduct or participate in any test or exercise of any response to a natural or man-made emergency situation if that test or exercise includes as part thereof that the roles or governmental functions of any Suffolk County official will be performed or simulated, and if the person shall have failed to comply with the procedures set forth in Sections 3(a) and 3(b) of this Local Law.

Section 3. Procedures and Public Hearings.

(a) At least 25 days prior to conducting or participating in a test or exercise covered by this law, a person who intends to conduct or participate in such test or exercise shall submit to the Clerk of the Suffolk County Legislature a description of the proposed activity, specifying how, when, where, by whom, and for what purpose the roles or governmental functions of Suffolk county officials may be performed or simulated.

(b) Upon receipt of the submittal required by Section 3(a) of this Local Law, the Clerk of the Suffolk County Legislature shall within 7 days inform the person of any additional information required for the Legislature's review of such submittal, and such person shall supply the additional information within 7 days.

(c) The Legislature shall review the submittal to assure that the times, places, manner, and purposes of the proposed performance or simulation of County of Suffolk roles or governmental functions do not interfere with the public's use of or access to public property, do not involve the unauthorized performance of governmental functions, and do not usurp or otherwise impair the police powers held by the County.

(d) The Legislature shall hold a public hearing concerning any submittal hereunder wherein the Legislature determines via resolution that the proposed performance or simulation of County roles or governmental functions may involve an interference with the public's use of or access to public property, or unauthorized performance of governmental functions, or a usurpation or other impairment of the police powers held by the County.

(e) After such public hearing, the Legislature shall determine via resolution whether the proposed performance or simulation of County roles or governmental functions constitutes an interference with the public's use of or access to public property, or unauthorized performance of governmental functions, or a usurpation or other impairment of the County's police powers, and in the event of a determination to disapprove the proposed performance or simulation, the Clerk shall issue and transmit to such person a notice of disapproval of such proposed performance or simulation.

Section 4. Special Procedures.

(a) If any person making a submission pursuant to Section 3 of this law believes that some or all of the data in the submittal merit confidential treatment, the person shall so inform the Clerk at the time of the submission. If the Legislature then determines that confidential treatment is required, the procedures of Section 3 shall be modified as necessary and appropriate. If the Legislature determines that confidential treatment is not required, the person shall be so advised and shall have the option of withdrawing the submittal or proceeding under the procedures of Section 3.

(b) The Presiding Officer is hereby authorized to convene such special meetings of the Legislature as may be required in order to conduct the reviews and other procedures required by this law in a timely manner.

Section 5. Penalties and Remedies.

(a) A violation of Section 2 of this law shall be a Class A misdemeanor and shall be punishable by a sentence of not more than one (1) year

in prison or a fine of not more than one thousand dollars, or by both such fine and imprisonment.

(b) A violation or threatened violation of any section of this law, including a failure to submit information as set forth in Sections 3(a) and 3(b), shall give the County the option, among other civil remedies, of seeking injunctive relief against the person who is in violation or threatening violation thereof.

Section 6. Separability.

If any part of this Law shall be declared invalid or unconstitutional by any Court, such declaration shall not affect the validity of any other part.

Section 7. Effective date.

This Law shall take effect immediately, and shall apply to any activity conducted after such effective date.

DATED: December 23, 1985

APPROVED BY:


County Executive of Suffolk County

Date of Approval: 1/13/86

B

The attached was Federal Expressed to Suffolk County yesterday. It should be delivered before 10:30 today.

We are making no public comment about this letter until after noon in order that the intended recipients, our Commissioners, and our Congressional oversight receive it first.

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.

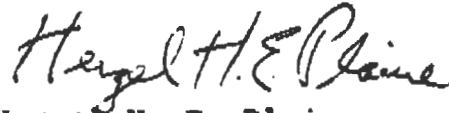
In order to test this aspect of the plan and to add more realism to the exercise, should neither Suffolk County or New York officials choose to participate, federal employees will play the role of such officials during the exercise. Through this role-playing, the NRC is attempting to more effectively 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(g); 44 C.F.R. Part 350.

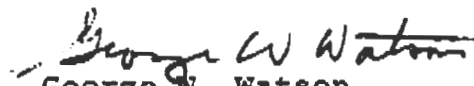
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We would welcome a Suffolk County decision to participate in the Shoreham exercise. In our view the public only loses by your refusal to help the NRC and FEMA perform their federally mandated functions. Regardless of your decision, however, it is NRC's 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

c



U.S. Department of Justice
Civil Division

Office of the Assistant Attorney General

Washington, D. C. 20530

JAN 23 1986

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

Dear Mr. Cohalan:

As you are aware, the Nuclear Regulatory Commission ("NRC"), in conjunction with the Federal Emergency Management Agency ("FEMA") and the Department of Energy, have scheduled for February 13, 1986 an emergency planning exercise for the Shoreham Nuclear Power Plant ("Shoreham") located in Suffolk County, New York. The Long Island Lighting Company ("LILCO") is presently the holder of a federal low-power operating license at Shoreham and is seeking approval for a full-power operating license. In order for LILCO to obtain approval for such a license, the NRC requires, inter alia, that an emergency plan be developed and that NRC and FEMA conduct an exercise to demonstrate the effectiveness of the plan. See 10 C.F.R. § 50.47 and Part 50, Appendix E. These important federal requirements are mandated by the Atomic Energy Act because Congress has found that, with respect to the utilization of atomic energy, it is in the "national interest . . . to protect the health and safety of the public." 42 U.S.C. § 2012(e).

I understand that Suffolk County has adopted an ordinance, Suffolk Local Law No. 2-86, which could be interpreted to prohibit federal officials from simulating the role of county officials in any such test, or participating in a test in which someone else was engaging in such role-playing. Such an interpretation would constitute an obstruction to the achievement of a congressionally mandated purpose or objective under the Atomic Energy Act. Because of their concern over any possible frustration of these important federal interests, particularly, the congressional mandate to protect the public health and safety from radiological hazards, we have been discussing with the agencies the possibility of legal action. I feel confident that, once the county understands the context of the test in the federal licensing scheme and the nature of the federal participation, litigation can be avoided. Toward that end, and in the interest of federal, state and local comity, the federal

agencies involved in the test are forwarding to you a description of the upcoming exercise. In addition, we have been advised that LILCO has already submitted to you their description of the February 13, 1986 exercise.

The test is to be supervised and conducted by FEMA. No state or county functions will be exercised by any federal personnel during the upcoming test. No LILCO employee will 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. It will not, and is not intended to, infringe any legitimate police powers of Suffolk County. In sum, the test involves federal employees playing the part of local and/or state personnel, and LILCO employees and other individuals acting out their roles under a simulated exercise. Of course, if the county and/or state decides to participate in the exercise, participation which has long been sought and is welcome now, there would be no need for role-playing of local and/or state personnel. In any event, no action will be taken which would require the actual exercise of local police powers.

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 at 42 U.S.C. §§ 5131 & 5201; 50 U.S.C. 2253(g); 44 C.F.R. Part 350.

For the reasons outlined above and because of the imminence of the February 13th date, the agencies are continuing their preparations for the exercise. However, we do not intend to subject federal employees or others involved in this exercise to confirm the safety of a nuclear power plant to criminal prosecution, however unwarranted. We therefore request that you respond by January 30, 1986, indicating whether you intend to treat this exercise and the role-playing it involves as a criminal misdemeanor. In light of the advance preparation needed to perform this exercise, we need such a prompt response to be assured that you will not be implementing this ordinance

in a manner that constitutes an impermissible obstruction to the congressionally mandated radiological health and safety requirements of the Atomic Energy Act.

Thank you for your cooperation in this matter.

Sincerely yours,

Richard K. Willard (by RKC)

RICHARD K. WILLARD
Assistant Attorney General

D

COUNTY OF SUFFOLK



COUNTY LEGISLATURE

JAN 30 1986

GREGORY J. BLASS
PRESIDING OFFICER

January 30, 1986

Richard K. Willard, Esq.
Assistant Attorney General
Civil Division
U.S. Department of Justice
Washington, D.C.

Dear Mr. Willard:

As Presiding Officer of the Suffolk County Legislature, I acknowledge receipt of your letter to County Executive Peter F. Cohalan, dated January 23, which Mr. Cohalan referred to the County Legislature for consideration. All members of the Legislature have received copies of your letter.

I appreciate your views regarding the proposed Shoreham exercise and Local Law 2-1986, as well as those in the joint NRC/FEMA letter of January 22, to which you refer. Let me assure you that both letters will receive careful consideration by me and by other members of the Legislature. While I cannot speak for the Legislature as a body prior to its official determinations, I am able to state my view that there is no intention to apply Local Law 2-1986 to Federal employees acting within the scope of their authority. Your views will aid the Legislature in considering this matter.

Nevertheless, your letter causes me to believe that there may be some confusion regarding several matters. First, the posture of the proposed exercise presents an unprecedented situation. LILCO lacks authority to sponsor its emergency plan, because major portions of the plan have been declared to be illegal. This was the ruling of the New York State Supreme Court (February 20, 1985) and the NRC's Licensing and Appeal Boards (April 17, August 26, and October 18, 1985). None of these decisions has been reversed or stayed. This raises for the Legislature the question whether LILCO has any legal basis to test its ability to perform illegal acts. In a letter of December 26, 1985, our counsel asked FEMA whether it planned to assist LILCO in demonstrating its capacity to act illegally. FEMA has declined to answer our inquiry. Your letter assists in

Richard K. Willard, Esq.
January 30, 1986
Page 2

our consideration of this matter; we certainly would welcome any additional views you may have on this issue. This issue is particularly important because the NRC has acknowledged that "because of the recent Court decision a full exercise of the LILCO emergency plan may not be possible" and has requested that FEMA schedule only such exercise of LILCO's plan as is "feasible and lawful at the present time." (Emphasis in the original.) Memorandum dated June 4, 1985, from Samuel J. Chilk, Secretary, NRC, to William J. Dircks, Executive Director for Operations, NRC.

Second, it appears from your letter that you believe that Local Law 2-1986 prohibits the February 13 exercise unless the Legislature first issues an approval. That is not the case. LILCO on January 16 made a filing with the Legislature pursuant to Section 3(a) of the Local Law and on January 28 provided additional data. In view of such compliance by LILCO with the Local Law, there is as of this time no application of other provisions of the Local Law that would prevent the February 13 exercise. LILCO's exercise would be affected only if the Legislature, after a public hearing, decided via resolution to issue a notice of disapproval with respect to some portion or all of the exercise. It is, of course, not possible for me, as only one member of the Legislature, to predict what action, if any, the Legislature might ultimately take on the merits. However, I can inform you of the Legislature's schedule for consideration of this matter:

Feb. 5 Public Hearing of Legislature at 10 a.m. at the
 Legislature's auditorium in Hauppauge, New York.

Feb. 7 If needed, special meeting of Legislature at the
 Legislature's auditorium in Riverhead, New York.

Therefore, the earliest date that any notice of disapproval might be issued is February 7. In the meantime, the Local Law does not stand in the way of any preparations for the exercise. Indeed, I am informed that on Monday of this week, the Suffolk County Attorney informed U.S. District Judge Wexler (E.D.N.Y.) that Suffolk County would not seek to apply the Local Law to preparatory activities (such as those which occurred last week and similar activities scheduled for this week) that occur within 25 days of the Law's effective date.

Finally, you requested that the County "respond by January 30, 1986, indicating whether you intend to treat this exercise and the role-playing it involves as a criminal

Richard K. Willard, Esq.
January 30, 1986
Page 3

misdeemeanor." This question necessarily involves consideration by the Legislature of LILCO's January 16 and 28 filings, the FEMA/NRC letter of January 22, and your letter of January 23. In view of the schedule described above, the Legislature will not be in a position to act upon LILCO's submission until February 7. I will inform you promptly when a decision is reached.

Again, the Legislature appreciates the time you have taken to convey your views, and we will carefully consider your views and those of FEMA/NRC. If you, or other Federal personnel, would like to address the Legislature on February 5 at the public hearing, please let me know by February 3. Similarly, any further written submissions will also be considered.

Sincerely yours,

A handwritten signature in cursive script that reads "Gregory J. Blass".

Gregory Blass
Presiding Officer

cc: Members of the County Legislature
The Honorable Peter F. Cohalan
Herzel H.E. Plaine, Esq.
George W. Watson, Esq.

E



U.S. Department of Justice

Civil Division

Office of the Assistant Attorney General

Washington, D.C. 20530

3 | page

Honorable Gregory Blass
Presiding Officer
Suffolk County Legislature
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

Dear Mr. Blass:

I appreciate your prompt response on behalf of the Suffolk County Legislature to my January 23rd letter to Mr. Peter F. Cohalan, Suffolk County Executive. With the test of the Long Island Lighting Company's ("LILCO") evacuation plan only two weeks away, resolution of the apparent conflict between the county and the federal agencies conducting the test is urgently needed.

Your letter reflects fundamental misperceptions concerning the test and the ultimate determination by the Nuclear Regulatory Commission ("NRC") concerning LILCO's application for a full-power operating license. Pursuant to the statutory scheme which Congress established under the Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 et seq., the NRC has the regulatory responsibility to ensure the radiological health and safety aspects involved in the construction and operation of nuclear power plants. See Silkwood v. Kerr-McGee Corp., 464 U.S. 238 (1984). To assist the NRC in making its determination that adequate protective measures both on and off the plant site can and will be taken in the event of a radiological emergency, the NRC conducts emergency planning exercises, such as the February 13th test. See 10 C.F.R. 50.47 and Part 50, Appendix E. Thus, the test scheduled for February 13, 1986 is a federal test.

Attached is a determination by the NRC dated January 30, 1986, in which the Commission by a 3-2 vote denied Suffolk County's request to cancel the February 13, 1986 test. (Attached). The Commission reiterates the nature of the upcoming test. It does not involve exercise of police powers and does not "entail interaction with the public that would be affected in the event of an actual emergency." Decision at 2. Rather, it merely involves an examination of facilities, plans and communications and simulation of emergency "scenarios" in order to evaluate LILCO's emergency preparedness. While federal

personnel will "role-play" for absent local and state officials, they will not exercise police functions at this exercise. The NRC is conducting this test to assist it in its determination as to whether "any defects . . . exist as a result of 'the limitations of LILCO's plan when executed under the state and county restrictions'" and whether there exists a basis to approve LILCO's application where LILCO's "plan provides for planned LILCO action in the event of an ad hoc State and County response to an actual emergency." Decision at 4. Thus, LILCO's sponsorship of an emergency plan is not at issue. While the New York State Supreme Court decision in Cuomo v. LILCO, No. 84-4605 (N.Y. S.Ct., Feb. 20, 1985), to which you refer, holds that in event of an actual emergency, certain elements of LILCO's plan which require police power cannot be exercised on LILCO's authority alone, it does not preclude sponsorship of an emergency plan or this test. As discussed below, the County will have the opportunity to address that issue, as well as approval of LILCO's plan with only ad hoc participation by the County, at a hearing before the NRC. Furthermore, because the NRC is conducting this test in furtherance of its congressionally mandated responsibilities, it is not required to submit this test for approval to the Suffolk County Legislature. See Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Commission, 461 U.S. 190, at 205, 212.

Your letter also appears to misperceive the status of this federal test under NRC's regulatory scheme for approving full-power operating licenses. When an interested party objects to the issuance of such a license and requests a hearing, as the County has done with respect to LILCO's application, in accordance with NRC practices a hearing will be held. If Suffolk County requests a hearing with regard to the results of the upcoming exercise, it will be entitled to receive a hearing before issuance of such a license. At that hearing the County will have the opportunity to express its concerns regarding whether an evacuation plan can be approved where the County opposes its implementation. If the County is dissatisfied with the final determination by the NRC, it can, of course, exercise its right to appeal to a United States Circuit Court. 42 U.S.C. § 2239 (b); see County of Suffolk v. Long Island Lighting Co., 728 F.2d 52 (2d Cir. 1984); Union of Concerned Scientists v. NRC, 735 F.2d 1437 (D.C. Cir. 1984); cert. denied, 105 S.Ct. 815 (1985).

I understand the County's desire to deliberate on this matter in depth. However, significant federal resources have been allocated in preparation for this test and we perceive no role for the County in deciding whether it should go forward. In these circumstances, we see no point in our waiting until the legislature makes that decision on February 7. There are numerous preparations which must be made well before the exercise and can no longer be delayed. If this matter cannot be resolved by Monday, February 3, 1986, it may be necessary to authorize seeking immediate judicial relief to ensure that this federal test is not impermissibly obstructed.

Sincerely yours,

Richard K. Willard (yjc)

RICHARD K. WILLARD
Assistant Attorney General

COUNTY OF SUFFOLK



COUNTY LEGISLATURE

GREGORY J. BLASS
PRESIDING OFFICER

January 31, 1986

HAND DELIVERED

The Honorable Edwin Meese, III
Attorney General
Department of Justice
10th and Constitution Ave., N.W.
Room 4414
Washington, D.C.

Subject: Emergency Planning for the Shoreham Nuclear Power Plant

Dear Mr. Attorney General:

I have read with satisfaction the speech you delivered before the Conservative Political Action Conference on January 30 and applaud your eloquent plea for the principle of federalism. I particularly share your view that federalism should be put into practice as a mechanism for governing in the public's interest.

With your speech so freshly in mind, I thought it essential to bring to your personal attention the urgent fact that, at this moment, your subordinates at the Department of Justice are acting in concert with the Department of Energy, the Federal Emergency Management Agency, and six other Federal agencies to repudiate the principle of federalism and, indeed, to betray a promise that President Reagan made on October 11, 1984, to the people of Suffolk County concerning emergency planning for the Shoreham nuclear power plant. For your information, I am attaching a copy of the January 27 and 29 letters from the Suffolk County Legislature to the President concerning this matter. Moreover, I am attaching a copy of the January 23 letter from Assistant Attorney General Richard K. Willard to Suffolk County that cannot be reconciled with your speech or the principle of federalism.

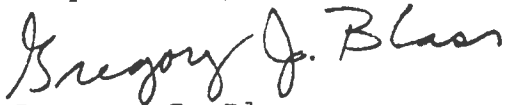
Finally, I am attaching a recent editorial from a local newspaper, Suffolk Life, that expresses the views of roughly 80 percent of this County's 1.3 million residents.

The Honorable Edwin Meese, III
January 31, 1986
Page Two

As the County Legislature's letters to President Reagan make clear, Federal agencies are now poised to make a mockery of federalism by participating on February 13 in the exercise of an illegal emergency plan for a nuclear power plant that has been denied an operating license by the NRC's Licensing Board. Moreover, they intend to take this intrusive action despite the objections of State and county officials that have been upheld by the courts to be lawful.

I do not believe, Mr. Attorney General, that such Federal conduct can be reconciled with your speech of January 30 or the President's October 11, 1984 promise. Accordingly, I respectfully ask that you expeditiously inquire into this matter and bring it to a halt.

Respectfully,

A handwritten signature in cursive script that reads "Gregory J. Blass".

Gregory J. Blass
Presiding Officer
Suffolk County Legislature

Attachments

COUNTY OF SUFFOLK



COUNTY LEGISLATURE

GREGORY J. BLASS
PRESIDING OFFICER

January 27, 1986

President Ronald Reagan
The White House
Washington, D.C. 20500

Dear Mr. President:

We, the elected members of the Suffolk County Legislature, are writing to ask for your personal intervention to prevent agencies of your Administration from betraying your promise to the people of Suffolk County.

On October 11, 1984, in a letter to Congressman William Carney, you wrote:

(T)his Administration does not favor the imposition of Federal Government authority over the objections of state and local governments in matters involving the adequacy of an emergency evacuation plan for a nuclear power plant such as Shoreham.

At this very moment, agencies of your Administration are repudiating these words.

-- The Department of Energy, the Federal Emergency Management Agency, and other departments and agencies of your Administration are committed to implementing the Long Island Lighting Company's (LILCO's) radiological emergency plan for the Shoreham Nuclear Power Station over the objections of New York State, Suffolk County, and other local governments.

-- The Federal Emergency Management Agency and other departments and agencies of your Administration are committed to participate on February 13 in an exercise of LILCO's emergency plan over the objections of New York State, Suffolk County, and other local governments.

-- In this exercise, Federal agency personnel are committed to pretend that they are State and local government officials, and intend to play the roles of such officials, over the objections of the very State and local government officials whose roles the Federal personnel intend to impersonate. Such role playing by Federal personnel is no less objectionable -- no less distasteful -- than if we, in our official governmental capacity, acted as pretenders to the Presidency and represented our conduct to be yours.

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There is no legitimate reason for such an exercise of LILCO's emergency plan. On February 20, 1985, LILCO's plan was ruled by the New York State Supreme Court to be illegal and not implementable. On March 18, 1985, the United States District Court ruled that Suffolk County's actions concerning emergency planning for Shoreham were lawful. On August 26, 1985, the Nuclear Regulatory Commission's Licensing Board denied LILCO a license to operate Shoreham. Mr. President, we cannot understand why in any circumstance your Administration would participate in an exercise of an illegal emergency plan for a nuclear power plant that has been denied a license to operate, let alone do so over the objections of a local government whose actions have been found to be lawful.

We are not alone in taking this view:

— On November 12, 1985, Governor Mario Cuomo wrote to the Director of the Federal Emergency Management Agency, objecting to an exercise of LILCO's emergency plan and stating that Federal participation in such an exercise "would be without legal basis and an affront to the sovereignty of New York State."

— On January 11, 1986, New York Senator Daniel Patrick Moynihan wrote you, "I urge you to hold fast to the sound policy you have chosen, and to honor the rights of States and local governments."

— On January 24, 1986, New York Senator Alfonse D'Amato wrote you, stating that an exercise of LILCO's emergency plan would "usurp State and local governments' rights" and asking that you "direct the Federal Emergency Management Agency to adhere to your policy statement and to cancel the February 13 exercise."

-- On January 24, 1986, Long Island Congressmen Tom Downey and Robert Mrazek wrote you, urging that you "honor the pledge that you made on October 11, 1984" and "direct FEMA to suspend plans" for the February 13 exercise.

Our views, Mr. President, are without regard to politics or party. We are united as Republicans, Democrats, and Conservatives on this issue of compelling public importance. We ask only that you honor your own words of October 11, 1984, and that you prevent your subordinates from dishonoring them by aiding LILCO's illegal emergency plan. Particularly, we ask that you direct

your Administration to refrain from participating in LILCO's plan or in any exercise of that plan, including playing the roles of officials of this County government over our objections.

Respectfully,

Gregory J. Blass

Gregory J. Blass
Presiding Officer
Suffolk County Legislature

Edward P. Romaine

John J. Sgley
Rose Toracappa

Steven Engelbright

Michael M. Deane

Steve Levy
Joseph Lizzo

Philip C. Nolan

Patrick J. Sullivan

Sandra M. Sackety

Gerard Glass

Wayne Prosser

Tony Bullock
Jane Devine

Michael J. DeMarco

COUNTY OF SUFFOLK



COUNTY LEGISLATURE

GREGORY J. BLASS
PRESIDING OFFICER

January 29, 1986

President Ronald Reagan
The White House
Washington, D.C. 20500

Dear Mr. President:

By letter dated January 27, 1986, the Suffolk County Legislature requested your personal intervention to prevent departments and agencies of the Administration from participating in the Long Island Lighting Company's illegal emergency plan for the Shoreham Nuclear Power Plant and from acting in derogation of your October 11, 1984, pledge to the people of Suffolk County. We respectfully submit that there is no reason to permit Federal personnel to be parties to illegal acts or otherwise to aid the exercise of an illegal plan. The legality of LILCO's plan is now before the appellate court of New York, and no exercise should even be considered unless the court reverses the present law and rules LILCO's plan to be legal.

I am now writing to respectfully request that you meet with the members of the Suffolk County Legislature, who are prepared to travel to Washington at your earliest convenience, to discuss this matter of compelling urgency. More than 100 personnel of the Administration, representing eight departments and agencies, are scheduled to participate in the exercise of LILCO's emergency plan on February 13, 1986. Accordingly, we would deeply appreciate the opportunity for a meeting appropriately in advance of that date.

Respectfully,

Gregory J. Blass
Presiding Officer
Suffolk County Legislature

cc: Governor Mario Cuomo
Senator Daniel P. Moynihan
Senator Alfonse M. D'Amato



U.S. Department of Justice

Civil Division

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JAN 24 12 55 PM '86

Office of the Assistant Attorney General

RECEIVED
JAN 23 1986
U.S. DEPT. OF JUSTICE
WASHINGTON, D.C. 20530
MAIL ROOM, D.C.

JAN 23 1986

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

Dear Mr. Cohalan:

As you are aware, the Nuclear Regulatory Commission ("NRC"), in conjunction with the Federal Emergency Management Agency ("FEMA") and the Department of Energy, have scheduled for February 13, 1986 an emergency planning exercise for the Shoreham Nuclear Power Plant ("Shoreham") located in Suffolk County, New York. The Long Island Lighting Company ("LILCO") is presently the holder of a federal low-power operating license at Shoreham and is seeking approval for a full-power operating license. In order for LILCO to obtain approval for such a license, the NRC requires, inter alia, that an emergency plan be developed and that NRC and FEMA conduct an exercise to demonstrate the effectiveness of the plan. See 10 C.F.R. § 50.47 and Part 50, Appendix E. These important federal requirements are mandated by the Atomic Energy Act because Congress has found that, with respect to the utilization of atomic energy, it is in the "national interest . . . to protect the health and safety of the public." 42 U.S.C. § 2012(e).

I understand that Suffolk County has adopted an ordinance, Suffolk Local Law No. 2-86, which could be interpreted to prohibit federal officials from simulating the role of county officials in any such test, or participating in a test in which someone else was engaging in such role-playing. Such an interpretation would constitute an obstruction to the achievement of a congressionally mandated purpose or objective under the Atomic Energy Act. Because of their concern over any possible frustration of these important federal interests, particularly, the congressional mandate to protect the public health and safety from radiological hazards, we have been discussing with the agencies the possibility of legal action. I feel confident that, once the county understands the context of the test in the federal licensing scheme and the nature of the federal participation, litigation can be avoided. Toward that end, and in the interest of federal, state and local comity, the federal

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agencies involved in the test are forwarding to you a description of the upcoming exercise. In addition, we have been advised that LILCO has already submitted to you their description of the February 13, 1986 exercise.

The test is to be supervised and conducted by FEMA. No state or county functions will be exercised by any federal personnel during the upcoming test. No LILCO employee will 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. It will not, and is not intended to, infringe any legitimate police powers of Suffolk County. In sum, the test involves federal employees playing the part of local and/or state personnel, and LILCO employees and other individuals acting out their roles under a simulated exercise. Of course, if the county and/or state decides to participate in the exercise, participation which has long been sought and is welcome now, there would be no need for role-playing of local and/or state personnel. In any event, no action will be taken which would require the actual exercise of local police powers.

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 at 42 U.S.C. §§ 5131 & 5201; 50 U.S.C. 2253(g); 44 C.F.R. Part 350.

For the reasons outlined above and because of the imminence of the February 13th date, the agencies are continuing their preparations for the exercise. However, we do not intend to subject federal employees or others involved in this exercise to confirm the safety of a nuclear power plant to criminal prosecution, however unwarranted. We therefore request that you respond by January 30, 1986, indicating whether you intend to treat this exercise and the role-playing it involves as a criminal misdemeanor. In light of the advance preparation needed to perform this exercise, we need such a prompt response to be assured that you will not be implementing this ordinance

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in a manner that constitutes an impermissible obstruction to the congressionally mandated radiological health and safety requirements of the Atomic Energy Act.

Thank you for your cooperation in this matter.

Sincerely yours,

Handwritten signature of Richard K. Willard in cursive, with the initials "(by RKC)" written at the end.

RICHARD K. WILLARD
Assistant Attorney General

Willmotts and Why-Not's

David J. Willmott, Editor

Letter To The President

Dear Mr. President:

I am the publisher of Suffolk Life Newspapers. We currently reach 318,000 homes, with a readership of over 1,000,000. This newspaper has vigorously supported you and your programs because we believed in you and in your promises.

You promised the people that you were a staunch defender of states' rights, of the ability of local government to control their local destiny. You reaffirmed that promise in October of 1984 when, in a letter to Congressman William Carney, you declared that you would not impose your administration's authority over state and local government's objections concerning evacuation planning for the Shoreham nuclear power plant.

Mr. President, the people of Suffolk County believed that promise and gave you their support. They put their trust in your hands, believing as we have editorialized time and again that you are a man of your word. That if President Ronald Reagan made a promise you could count on him to keep it. That you would not turn your back on our people.

Mr. President, surely you know that there are those in your administration who are doing just that. People who are working hand in hand with the management of LILCO to thrust an evacuation plan upon us over the objections of nearly 80 percent of our residents who know evacuation is simply not possible because of the unique geographic conditions here.

Officials of your Department of Energy, including the head of that department, have been in collusion with the management of the Long Island Lighting Company to run a test of an illegal plan. Officials of the Nuclear Regulatory Commission, and of the Federal Emergency Management Agency, are also involved in this collusion, and are making every attempt to seek ways to approve the evacuation plan submitted by LILCO to do an end

run over the objections of state and county governments.

FEMA, at the insistence of the NRC and with the urging of Energy Secretary John Herrington, has scheduled a "test" of this plan for February 13. This test is different from any held before. It is designed only to give the NRC an excuse to approve this plant for full power operation. This test will prove nothing. It will not move people, nor make any attempt to be an honest evaluation of the LILCO plan. It is subterfuge at its worst by a government run amuck, a prime example of the bureaucratic arrogance that has caused people to lose confidence in their government. It is a betrayal of the people. Mr. President, you made a promise to the people of Suffolk County, and we ask that you keep that promise. Please do not betray the trust that has been put in you.

Mr. President, officials of the County of Suffolk determined, after a costly planning study and a series of public hearings, that a safe evacuation would not be possible. They decided they would not lie to the people and tell them that a safe evacuation is possible when it is not. All action in this matter taken by the county has been found to be legal in the courts. In contrast, LILCO's actions regarding emergency planning has been found by the courts to be illegal.

The NRC has denied Shoreham an operating license because the courts have determined that LILCO cannot legally implement its plan over the objections of state and county governments. How can it be, Mr. President, that your administration would justify the test of an illegal emergency plan for a nuclear plant that has been denied a license to operate, a test that is being held over the lawful objections of local governments? How can your administration possibly justify the holding of a test of this illegal plan, over the objections of the majority of our people, when you promised

you would not utilize your authority to impose such a plan?

Mr. President, our fight is not a fight against nuclear power. Our fight is in support of good government, of a government which tells its people the truth that evacuation is not possible, of taking a stand on behalf of the safety of its people. Isn't that the kind of government you have advocated for these many years?

Mr. President, we ask only that you keep your word to us as we

kept our word to you, and supported you and your programs based on your promises. We told our readers you were a man of your word. Were we wrong?

Mr. President, we are loyal Americans who believe that when the man who holds the highest office in our land makes a promise, he should keep that promise. Mr. President, will you keep your promise?

And why not?

To Our Readers

Suffolk Life Newspapers has been in the forefront of the fight against putting an unsafe nuclear plant, Shoreham, on line. We have spent countless hour and finances in this effort. We now need your help.

Time and again our readers have asked: "What can we do to help?" And time and again our readers have responded to let our officials know how they feel.

We are now in the final hours of the Shoreham battle. If we don't succeed now, all the efforts that have gone before will have been in vain. And we will have to face a

future with a nuclear plant that was poorly built, in an area where a safe evacuation is not possible. Our president promised he would not impose an evacuation plan upon us, but there are those in his administration who are doing just that, without regard for the safety of the public.

Please fill out the coupon below and sent it to President Ronald Reagan, The White House, Washington, D.C. 20500. Do it today! This may be your last chance to voice your view in this important matter.

And why not?

Send to the President Today

Dear Mr. President:

Please keep your promise. In October of 1984 you gave your word that your administration would not use its authority to impose a Shoreham emergency plan upon the people of Suffolk County and over the objections of local governments. And yet, there are those in your administration who are doing exactly that in scheduling a test of an illegal plan.

Mr. President, we trusted you when you said in 1984 that this would not happen. We ask you to keep your word. We ask that you halt the action within your administration to hold a test of the emergency plan the courts have ruled illegal.

Name:.....

Address:.....

Town:.....

Confessions of a Canner

I am a canner. Rather than hauling my beverage containers back to the store, I throw them out. A nicker

good indication why they passed up this opportunity. Major bottlers and brewers and their associations

Ronald Reagan Presidential Library Digital Collections

This is not a presidential record. This marker is used as an administrative marker by the Ronald W. Reagan Presidential Library Staff. This marker identifies that there was an object in this folder that could not be scanned due to its size.
