

DOCKETED
LILCO

LILCO, May 22, 1982

'82 MAY 26 AM 10:32

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

PART 70 LICENSE

1. Attached are copies of the following recent transmittals by LILCO to the NRC Staff regarding Shoreham's Part 70 Application:

SNRC-683 (3/18/82)

SNRC-686 (4/5/82)

SNRC-688 (4/12/82)

SNRC-699 (4/30/82)

SNRC-702 (5/13/82)

Counsel for LILCO have been assured that SNRC's 683 to 702 have been served on the Board and parties. If the Board has failed to receive some or all of these documents, we do not know why. Although we are confident that the Board already has copies of the "Stipulation Regarding Application for a Special Nuclear

8205280 134

G

DS03
5
0/1

Material License," dated September 18, 1979, the Board's "Order Relative to Stipulation Concerning 10 C.F.R. Part 70," dated October 5, 1979, and the License Application itself, dated September 25, 1978, copies of all three are also attached.

2. SNRC's 683 to 702 make clear the Company's belief that:

- (a) LILCO has complied with the terms of the Stipulation governing issuance of Shoreham's Part 70 license;
- (b) LILCO needed a Part 70 license in the very near future;^{1/} and
- (c) the license's issuance was in fact imminent.

If notice was necessary that the Part 70 process was nearing an end, these SNRC's provided it. Notice, however, was not necessary as indicated below.

3. The Stipulation was among the NRC Staff, LILCO and the North Shore Committee. Its terms are central to the present question of who was to do what regarding issuance of the Part 70 license. The Stipulation states that "[p]rior to issuance of a Part 70 license, (a) LILCO will prepare [or take] and

^{1/} E.g., SNRC-683, dated March 18, 1982 and sent to the Board and parties on April 12, 1982 (see SNRC-688), states in part: "This information is hereby being filed . . . as required prior to NRC issuance of a Part 70 license and associated indemnity agreement, which are anticipated in the very near future" (emphasis added); SNRC-699, dated April 30, 1982, at 3: "We request that this license be issued by May 10, 1982."

(b) the Staff will review and approve [a variety of procedures and steps]" (emphasis added). The Stipulation does not say that the North Shore Committee -- much less Suffolk County -- are to review and approve anything prior to issuance of the license, or are to receive notice of its imminence. The Stipulation was accepted without change by the Board in its Order of October 5, 1979. Had the Board wished to require formal notice of the Part 70 license's imminent issuance, it could easily have done so in its Order; it did not. If anyone thereafter thought the Stipulation should no longer control the manner by which the Part 70 license was to be issued, they could and should have so indicated long ago.

4. Suffolk County was not a party to the Stipulation. It chose not to raise Part 70 issues when they were squarely addressed in this proceeding in 1979. Thus, the County may raise them now only after a showing of good cause for its failure to do so earlier. There has been no attempt to show good cause by the County. Until a few days ago, there had not even been an attempt by the County to allege that its existing security contentions had Part 70 implications. Despite numerous exchanges in recent months with LILCO, the Staff and the Board regarding security concerns, the County never once said that it believed its security concerns covered the storage of new fuel onsite, as distinguished from the security of the plant once

operational. Indeed, it was not until the afternoon of May 21 that County counsel first requested access to certain confidential information about new fuel security at Shoreham; access to that information was not granted under the confidentiality agreements covering data relevant to the security of the operating plant. Without notice that the County was interested in new fuel security, no reason existed to infer that the County had such an interest: there are singular differences between the security requirements of new fuel storage onsite and those of an operating plant, and security measures appropriate to new fuel were among the steps to be taken pursuant to the Stipulation. There is simply no justification for the County to have failed to notify the Staff and LILCO of its concerns, if it had them, on a timely basis; with notification, any such concerns might very well have been resolved without creating the exceptionally unfortunate situation that now exists.

5. After the conference call on May 20, LILCO asked the County to specify immediately its concerns, if any, regarding the security of new fuel onsite. If the County does have reasonable suggestions regarding that security, the Company will consider them immediately in order to resolve the current impasse as rapidly as possible.

6. To repeat, the present issue is not whether, under appropriate circumstances, a Board sitting for OL purposes may

exercise jurisdiction over Part 70 issues. Case law suggests it may. See, e.g., Pacific Gas and Elec. Co. (Diablo Canyon Nuclear Power Plant, Units Nos. 1 and 2), CLI-76-1, 3 NRC 73, 74 n.1 (1976); Cincinnati Gas and Elec. Co. (William H. Zimmer Nuclear Station), LB2-79-24, 10 NRC 226 (1979). Rather, the issue is whether there is any basis for the exercise of such jurisdiction in this case at this time, given (a) the terms of the Board-approved Stipulation of September 18, 1979, and (b) the complete and total failure of anyone -- Board or party -- to suggest until after the Part 70 license had issued that certain contentions raised since approval of the Stipulation had any Part 70 significance. In recent months, counsel for Suffolk County have been assiduous in identifying their concerns, and the Board has been meticulous in its attention to detail. In light of these habits, it was reasonable to assume that the silence of the County and Board as to Part 70 meant that neither objected to the Staff's issuance of the license once the Staff concluded that LILCO had met the terms of the Stipulation.^{2/} It would not have been reasonable to assume that anyone meant to ~~to~~ wait until a Part 70 license was imminent to begin consideration of whether certain contentions might be affected by it. That would be an unacceptable course of

^{2/} It is LILCO's understanding that the Staff has so concluded, despite an ephemeral report to the contrary on May 21.

conduct in any proceeding, but particularly in one where Part 70 issues had previously been raised and where there existed a Board-approved Stipulation regarding issuance of the Part 70 license. In our view, there has been a serious failure of notice as to Part 70, but the failure is neither the Staff's nor LILCO's.

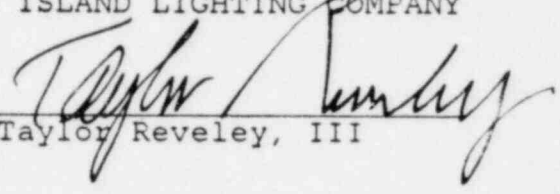
7. The Company fears that today's stay of its shipment of new fuel to Shoreham and the publicity generated by it may have materially impaired LILCO's capacity to accomplish the shipment without incident. The stay, if prolonged, will further exacerbate that risk. The stay, obviously, also has adverse economic implications for Shoreham.

Against this background, the Long Island Lighting Company is profoundly disturbed by the timing, terms and tone of the Board's telephone ruling of May 20. The County waited too late to first make its Part '70 views known. If any relief for the County's belated complaint was appropriate, and none was, it should have been a willingness by the Board to rule immediately on any changes in the security arrangements for new fuel at Shoreham that the County might wish to request, even if the changes had to be considered after the new fuel was en route or at the site.

The Company urgently requests that the present ruling be reconsidered at the outset of the May 25 hearing, that the discussion be in camera, and that any action necessary to lift the stay be identified on the 25th so that the action may be taken without delay and the stay lifted.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY


W. Taylor Reveley, III

Hunton & Williams
P.O. Box 1535
Richmond, Virginia 23212

DATED: May 22, 1982

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

I hereby certify that copies of LILCO's PART 70 LICENSE were served upon the following by first-class mail, postage prepaid, or by hand (as indicated by an asterisk), on May 24, 1982; only the Board members were sent the attachments to the paper.

Lawrence Brenner, Esq.*
Administrative Judge
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. Peter A. Morris*
Administrative Judge
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. James H. Carpenter*
Administrative Judge
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Secretary of the Commission
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Bernard M. Bordenick, Esq.*
David A. Repka, Esq.
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

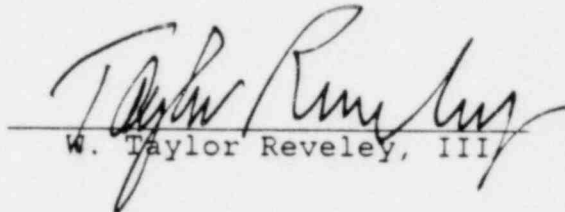
David J. Gilmartin, Esq.
Attn: Patricia A. Dempsey, Esq.
County Attorney
Suffolk County Department of Law
Veterans Memorial Highway
Hauppauge, New York 11787

Herbert H. Brown, Esq.*
Lawrence Coe Lanpher, Esq.
Karla J. Letsche, Esq.
Kirkpatrick, Lockhart, Hill,
Christopher & Phillips
8th Floor
1900 M Street, N.W.
Washington, D.C. 20036

Stephen B. Latham, Esq.*
Twomey, Latham & Shea
33 West Second Street
P.O. Box 398
Riverhead, New York 11901

Ralph Shapiro, Esq.*
Cammer and Shapiro, P.C.
9 East 40th Street
New York, New York 10016

Matthew J. Kelly, Esq.
New York State Energy Office
Agency Building 2
Empire State Plaza
Albany, New York 12223



W. Taylor Reveley, III

Hunton & Williams
707 East Main Street
P.O. Box 1535
Richmond, Virginia 23212

DATED: May 22, 1982