

COUNTY OF SUFFOLK

DOCKET NUMBER 50-322-014  
PROD. & UTIL. FACT.



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PETER F. COHALAN  
SUFFOLK COUNTY EXECUTIVE

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JOHN C. GALLAGHER  
CHIEF DEPUTY

April 11, 1984

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Nunzio J. Palladino, Chairman  
Nuclear Regulatory Commission  
1717 H Street, N.W.  
Room 1114  
Washington, D.C. 20036

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Dear Mr. Chairman:

I am writing on Suffolk County's behalf to object to your recent personal intervention in the Shoreham licensing proceeding and to ask that you and your colleagues take prompt action to remedy the procedural irregularities which your intervention produced.

By memorandum to your colleagues dated March 20, you characterized the Shoreham proceeding as experiencing "licensing delays" and proposed an "expedited hearing" so that "a low power decision might be possible" for LILCO on an expedited basis. Your memorandum followed press reports of a meeting that you had with LILCO's Board Chairman and stated that you had discussed Shoreham's "licensing delays" on March 16 with certain NRC staff personnel, including "Tony Cotter." Mr. Cotter, who is the NRC's Chief Administrative Judge, and the NRC's other Judges sit as adjudicators in contested licensing proceedings such as Shoreham. They are, by law, required to be impartial in their judgments and free from the undue influence of anyone, including the members and chairman of the NRC.

On March 30, Mr. Cotter issued an unanticipated order which precipitously changed the Licensing Board Judges who would consider LILCO's request for a low power license. On the same day, these new Judges issued a separate order which mandated that they would decide LILCO's low power license request on an "expedited basis." Neither the previous Licensing Board which had heard and rejected LILCO's low power license request on February 22, nor Mr. Cotter, nor any other NRC Judge had ever suggested the need to "expedite" the Shoreham proceeding.

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On April 4, the new Judges convened an "oral argument" of counsel. Two days later, the Judges "expedited" consideration of LILCO's low power license request in the fashion of an entirely new form of proceeding: a so-called "limited evidentiary hearing on an expedited basis." The Board's "expedited basis" turned out to mean the flat rejection of every significant legal and procedural request of Suffolk County and a mockery of due process. The "limited evidentiary hearing" turned out to mean crippling the County's ability to prepare and present a meaningful substantive case so thoroughly that it was tantamount to barring the County from being heard on the merits. (In this light, it is inconsequential that the Board went even farther by stating that it could have probably ruled on LILCO's low power license request with no hearings at all.)

Adding insult to the County's injury, the Board punctuated its order with the statement (contrary to the explicit representations of Suffolk County and New York State) that the "expedited schedule will not prejudice any party to this proceeding." Seen in this context, the Board's order was a tribute to the power of your office as Chairman to influence the purportedly impartial decisionmaking of the Licensing Board.

The effects of your personal involvement in Shoreham, Mr. Chairman, did not end with the Licensing Board's abusive procedural ruling. They tainted the NRC Staff as well. From January 26 through April 3, the Staff, and Messrs. Denton and Eisenhut particularly, publicly repeated their position that Shoreham would not be permitted to operate, even at low power, until the "serious problems" (as Mr. Denton put it) with the Transamerica Delaval emergency diesels were resolved. On April 4, as part of the "expedited basis"-juggernaut that you had set running in March, the Staff unexpectedly reversed itself. At that time, the Staff announced to the Licensing Board that not only did it now support low power operation of Shoreham with the defective Transamerica Delaval diesels, but with no onsite emergency power system whatsoever. The Staff went so far as to read the Commission's regulations, which explicitly require onsite emergency power and have always been interpreted by the NRC to mean just that, out of existence. Then, in keeping with the spirit of its other rulings, the Licensing Board bought the Staff's arguments one hundred per cent.

Mr. Chairman, the inevitable inference to be drawn from these events is that your meeting with LILCO's Board Chairman, your expression of interest to "expedite" the Shoreham proceeding when meeting with Mr. Cotter and the NRC Staff on March 16, and your March 20 memorandum proposing "expedited" treatment of LILCO's low power license request signalled the Licensing Board Judges and the Staff to shift gears; they were now to rush forward and issue a low power license for Shoreham, despite the

effect this would have on the concerns for safety expressed by Suffolk County and New York State. The Licensing Board and Staff, in turn, took your signal as a marching order. And, without any justification, they "expedited" the Shoreham proceeding so faithfully that the Board is now poised to issue a low power license for Shoreham while significant safety issues, such as the following, remain outstanding:

(1) There is no qualified onsite emergency power source at Shoreham, as required expressly by NRC regulations, because the installed Transamerica Delaval diesels are defective (the new replacement diesels which LILCO has ordered will not be ready for operation until late 1985);

(2) LILCO is financially unqualified to operate Shoreham, because the company is teetering on bankruptcy and the New York Public Service Commission Staff has, following a year-long investigation, recommended that no more than \$2.2 billion of the "grossly mismanaged" \$4.1 billion Shoreham project be permitted into LILCO's rate base;

(3) LILCO is organizationally unqualified to manage and direct operations of Shoreham, because the company's upper management is known, by the NRC itself, to lack requisite experience in nuclear power management;

(4) LILCO is technically unqualified to operate Shoreham, because the company does not have the requisite licensed operators with BWR operating experience;

(5) There is no offsite emergency preparedness for Shoreham, and no reasonable basis to assume there ever will be;

(6) Both Suffolk County and the State of New York oppose issuance of a low power license on safety and economic grounds (issuance of a low power license would prejudice these interests).

The stark fact, Mr. Chairman, is that there is no justification for the NRC even to consider issuance of a low power license at this juncture, let alone to rush the proceeding forward with the present public-be-damned spirit. Shoreham's electricity -- by LILCO's own admission -- will not be needed for 10 years. Why then rush forward with action which prejudices the public interest for the sake of licensing an unsafe, unneeded, uneconomical, and unwanted plant?

The answer is that you, followed by the Staff and the Licensing Board, have sought to aid LILCO's efforts to gain access to Wall Street money markets. Although this objective lies beyond the NRC's proper health and safety jurisdiction, there is unfortunately recent precedent for such an abuse. On March 16, FEMA admitted using its regulatory authority in the Shoreham proceeding for the purpose of seeking to give LILCO "breathing space with Wall Street."

The only interest that the NRC should have in LILCO's financial health, Mr. Chairman, is whether and how the company's financial frailties might cause it to cut corners on safety. The recent statements of LILCO's Board Chairman that the company has "four months left" and that "the plant will have to be abandoned" unless the NRC and FEMA use some undefined "power" are testimony to the company's financial illness. So is the continuing downgrading of LILCO's securities and the \$2.2 billion cap on Shoreham's costs which the Public Service Commission Staff has proposed as LILCO's recovery for the \$4 billion Shoreham plant. (The PSC Staff found that the remaining costs for Shoreham were "imprudently" incurred by LILCO because the company had "grossly mismanaged" the Shoreham project.)

In light of the company's financial instability, the NRC, for example, should want to know whether LILCO will be able to attract and retain qualified nuclear management and operators for Shoreham. Similarly, the NRC should inquire whether LILCO's proposal to operate Shoreham without a qualified onsite emergency power system is caused by the company's financial inability to wait for the installation of new diesel generators in late 1985. The NRC should not be using the power of its federal authority to force the Shoreham plant at hell-bent speed on the local and State governments which oppose it on substantive safety grounds. That is a denial of due process. Yet, that is just what the NRC, with your personal encouragement, has done here.

Mr. Chairman, your actions have unfortunately converted the Shoreham proceeding into a forum where the accommodation of LILCO's financial interests, as LILCO perceives those interests, is the paramount objective. The Licensing Board and Staff, in shaping the way they exercise their own responsibilities, have loyally followed your lead by giving LILCO's financial interests priority over the public's health and safety. If the Shoreham proceeding is ever to possess integrity as an adjudication in which public safety issues are addressed fairly, you must personally act to rectify the procedural abuses which your earlier personal involvement produced. On behalf of Suffolk County, I therefore request you and your fellow Commissioners:

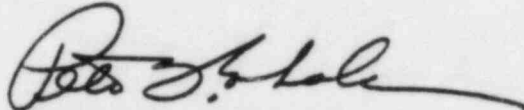
(1) Take the necessary action to disestablish the Licensing Board that has abused due process and issued unfounded orders to "expedite" with artificially "limited evidentiary hearings" LILCO's low power license request;

(2) Issue an order to the Staff and to the Licensing Board Panel that the Shoreham proceedings, including any proceeding on LILCO's low power license request, should not be expedited except on a showing by LILCO of good cause and special circumstances that are within the purview of the NRC's health and safety jurisdiction; and that in no event should expedition, if any, of this proceeding bar a party from developing and making a meaningful presentation of its case on the merits; and

(3) Reply promptly to this letter so that all affected parties can know precisely where their interests stand.

The County awaits your early reply so that, one way or another, this unfortunate situation can be remedied.

Sincerely yours,



PETER F. COHALAN  
SUFFOLK COUNTY EXECUTIVE

cc: Governor Cuomo  
Commissioner Gilinsky  
Commissioner Roberts  
Commissioner Asselstine  
Commissioner Bernthal

PFC/ps