

LILCO, June 30, 1983

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of )

LONG ISLAND LIGHTING COMPANY )

REC'D CH (Shoreham Nuclear Power Station, )  
Unit 1) )

Docket No. 50-322 (OL)  
Emergency Planning



Applicant's Answer to  
Suffolk County's Motion to Defer Commission Action  
And Motion to Strike Letter from Peter F. Cohalan

On June 29, 1983, Suffolk County, an intervenor in this proceeding, filed its "Motion to Defer Commission Action and for Commission to Hear Views of the Parties Before Deciding Certified Question Regarding Low Power License for Shoreham." The motion asks the Commission to defer action on the question certified to it by the ASLB in LBP-83-21 and to allow the parties to brief the issue. The County's motion was served on the Commissioners June 29 and reached LILCO on June 30, less than five hours before the Commission is scheduled to act on the certified question.<sup>1/</sup> The County also provided the

<sup>1/</sup> Suffolk County has at least three means of getting a document in LILCO's counsel's hands the same day it is delivered to the Commissioners: by telecopier, by word-processing computer, and by delivery to LILCO's counsel's Washington office.

DSO3

Commissioners with a June 29, 1983 letter from the Suffolk County Executive. The letter repeats the arguments and the request for action contained in the County's motion.

The applicant, Long Island Lighting Company (LILCO), opposes the County's motion and moves to strike the letter from the County Executive, for the following reasons:

First, the County's tactic is merely a last-minute attempt at delay, presumably prompted by an article in the newspaper Newsday on June 29 indicating that the Commission would act on the certified question in such a way as to remove an obstacle to a low-power license for the Shoreham Station.<sup>2/</sup> The County has had ample opportunity before this to ask for briefing of the certified issue, which has been pending before the Commission for more than two months;<sup>3/</sup> indeed, on June 27 the County filed with the Licensing Board its "Answer and Opposition of Suffolk County to LILCO's Motion for a Low Power Operating License." In this Answer and Opposition the County argued that "the motion should be denied because the low power issue certified to the Commission has not yet been resolved"

---

<sup>2/</sup> "NRC Seen Set to Okay N-Test Without Plan," Newsday, June 29, 1983.

<sup>3/</sup> The Board's order certifying this question without briefs from the parties was issued on April 20, 1983. If the County objected to the procedures outlined in that order, it could have stated its objections in a pleading. The County in fact appealed that order without objecting to the Board's procedures.

but did not ask for additional briefing on the issue. The County served its Answer and Opposition on the Commissioners, and that would have been the occasion to argue the certified issue, or at least to ask for more briefing, had the County wanted to do so. The present Motion, which in effect simply asks for additional time to file a supplemental answer to the low power license application, therefore appears to be merely an attempt at delay.

Second, the County's Motion to Defer Commission Action amounts to nothing more than the argument, repeated by the County often before, that since Suffolk County will not participate in offsite emergency planning for Shoreham, the plant cannot be licensed. The County has made this argument to the Commissioners at least three times before, and it is now before the Atomic Safety and Licensing Board. There is little point in arguing it once again in the context of the low-power license application.<sup>4/</sup>

---

<sup>4/</sup> The County's Motion to Defer Commission Action cites such things as FEMA's recent review of the LILCO offsite emergency plan and the County's own contentions about alleged inadequacies in the plan to try to show that offsite emergency planning is impossible. In this respect, two things need to be said. First, the 34 inadequacies found by FEMA are entirely or almost entirely of two types: (1) those that can be easily repaired by revising sections of the plan and (2) difficulties caused purely by Suffolk County's refusal to participate in emergency planning. Citing the FEMA evaluation is merely another way of raising the issue of Suffolk County's nonparticipation. Second, as for the County's draft contentions, many of

(footnote continued)

-4-

Third, LILCO believes it is improper for Suffolk County to continue the practice of having its Executive address argumentative letters to the Commissioners in addition to its lawyers' pleadings. LILCO has pointed this out before. See Applicant's Answer to Suffolk County's "Motion for Commission Ruling on LILCO's 'Utility Plan' for Emergency Preparedness" and "Motion for Immediate Commission Decision Rejecting LILCO 'Transition Plan'" 9-10 (June 15, 1983).

Fourth, the certified question is one which can quite properly be resolved now, without further delay. As the Licensing Board said when it certified the question:

In raising the certified question, we did not solicit the views of the parties because we believe it is a matter of policy which the Commission must decide for itself, rather than a matter of interpretation of the language of the regulation in question. The Appeal Board or the Commission may, after preliminary inquiry, believe there are some salient points on which the parties' views before it would be helpful.

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-21, 17 NRC \_\_\_\_, slip op. 21 (1983). It is important

---

(footnote continued)

them in one way or another likewise simply raise the issue of the County's nonparticipation, attempting to take advantage of an obstacle that the County created itself and has the power to remove at will. Many of the other draft contentions are objectionable in one way or the other. None of them, LILCO believes, will withstand the scrutiny of an ASLB when evidence is at last presented.

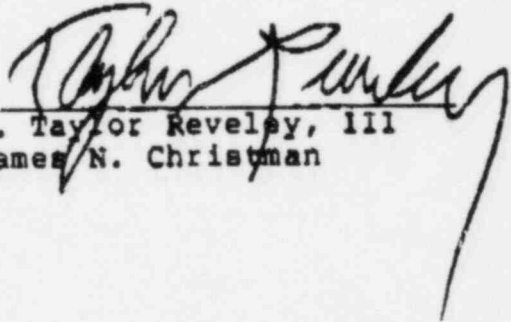
to distinguish between the policy question about the meaning of the regulations certified by the Board and the different question whether a low-power license will actually be issued in this case. The Commission is today not deciding to issue a license, but merely resolving one issue that the Licensing Board needs resolved to decide whether a license can be issued. The County has had plenty of opportunity to be heard on the various other issues affecting low-power license issuance, and if the truth be told no further opportunity on the certified policy issue is necessary either.

Suffolk County's motion should be denied and Mr. Cohalan's letter stricken.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

By

  
W. Taylor Reveley, III  
James N. Christman

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

DATED: June 30, 1983



CERTIFICATE OF SERVICE

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 Answer to Suffolk County's Motion to Defer Commission Action and Motion to Strike Letter from Peter F. Cohalan were served this date upon the following by first-class mail, postage prepaid, or (as indicated by one asterisk) by hand, or (as indicated by two asterisks) by telecopier.

James A. Laurenson,  
Chairman  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
East-West Tower, Room 402A  
4350 East-West Highway  
Bethesda, MD 20814

Dr. Jerry R. Kline  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
East-West Tower, Room 427  
4350 East-West Highway  
Bethesda, MD 20814

Dr. M. Stanley Livingston  
1005 Calle Largo  
Sante Fe, New Mexico 87501

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

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

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

Lawrence J. Brenner, Esq.

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.  
Edwin J. Reis, Esq.  
U.S. Nuclear Regulatory  
Commission  
7735 Old Georgetown Road  
(to mailroom)  
Bethesda, MD 20814

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

Eleanor L. Frucci, Esq.  
Attorney  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
East-West Tower, North Tower  
4350 East-West Highway  
Bethesda, MD 20814

Chairman Nunzio J. Palladino\*  
U.S. Nuclear Regulatory  
Commission  
1717 H Street, N.W., Room 1114  
Washington, D.C. 20555

Commissioner Victor Gilinsky\*  
U.S. Nuclear Regulatory  
Commission  
1717 H Street, N.W., Room 1103  
Washington, D.C. 20555

Commissioner James K. Asselstine\*  
U.S. Nuclear Regulatory Commission  
1717 H Street, N.W., Room 1136  
Washington, D.C. 20555

Commissioner John F. Ahearne\*  
U.S. Nuclear Regulatory Commission  
1717 H Street, N.W., Room 1113  
Washington, D.C. 20555

Commissioner Thomas M. Roberts\*  
U.S. Nuclear Regulatory Commission  
1717 H Street, N.W., Room 1113  
Washington, D.C. 20555

Mr. Paul Bollwerk\*  
Office of the General Counsel  
U.S. Nuclear Regulatory  
Commission  
1717 H Street, N.W.  
Washington, D.C. 20555

Mr. William Reamer\*  
Assistant to Chairman Palladino  
U.S. Nuclear Regulatory  
Commission  
1717 H Street, N.W.  
Washington, D.C. 20555

Mr. William Manning\*  
Office of Commissioner Gilinsky  
U.S. Nuclear Regulatory  
Commission  
1717 H Street, N.W.  
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

-3-

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

Mr. Marc W. Goldsmith  
Energy Research Group  
4001 Totten Pond Road  
Waltham, Massachusetts 02154

MHB Technical Associates  
1723 Hamilton Avenue  
Suite K  
San Jose, California 95125

Mr. Jay Dunkleberger  
New York State Energy Office  
Agency Building 2  
Empire State Plaza  
Albany, New York 12223

Stewart M. Glass, Esq.  
Regional Counsel  
Federal Emergency Management  
Agency  
26 Federal Plaza, Room 1349  
New York, New York 10278

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

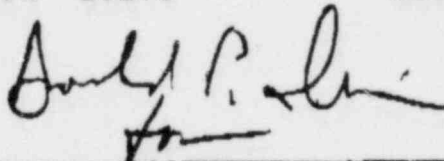
Ralph Shapiro, Esq.  
Cammer & Shapiro, P.C.  
9 East 40th Street  
New York, New York 10016

James B. Dougherty, Esq.  
3045 Porter Street  
Washington, D.C. 20008

Howard L. Blau  
217 Newbridge Road  
Hicksville, New York 11801

Jonathan D. Feinberg, Esq.  
New York State  
Department of Public Service  
Three Empire State Plaza  
Albany, New York 12223

Spence W. Perry, Esq.  
Associate General Counsel  
Federal Emergency Management  
Agency  
500 C Street, S.W.  
Room 840  
Washington, D.C. 20472

  
\_\_\_\_\_  
W. Taylor Reveley, III

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

DATED: June 30, 1983