

511

RELATED CORRESPONDENCE

LILCO, June 2, 1984

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 JUN -6 P12:01

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
LONG ISLAND LIGHTING COMPANY)	Docket No. 50-322-OL-4
)	(Low Power)
(Shoreham Nuclear Power Station,)	
Unit 1))	

MOTION FOR PROTECTIVE
ORDER AND MOTION IN LIMINE

On numerous occasions, Suffolk County has indicated its belief that security issues are material to resolution of LILCO's request for a low power license and accompanying Application for Exemption. Because there are no pending contentions concerning security and because all security issues are covered by an agreement between the County and LILCO, time-consuming litigation of security issues in this proceeding is neither necessary nor appropriate. Accordingly, LILCO moves for an order precluding all discovery requests whose relevance is to the issue of security and for an order in limine that any evidence whose sole materiality is a question of security is inadmissible.

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PDR ADOCK 05000322
PDR

DS03

This issue is ripe for decision and it is important that the Board decide it at this stage of the proceedings. The County has repeatedly indicated its intent to pursue the security issue in this proceeding. E.g., Suffolk County's Preliminary Views on Scheduling Regarding LILCO's New Motion, March 26, 1984, ¶ 2f; Transcript April 4, 1984 Oral Argument at 122; Request for Production of Documents, April 11, 1984, ¶ 17; April 20, 1984 letters from Lawrence Lanpher to Board; Joint Response of Suffolk County and the State of New York to the Commission's Order of April 30, 1984, filed May 4, 1984, at 8, 11, 26, 36. Most recently, the issue arose when the County resumed its discovery on May 24 by inspecting LILCO's AC power facilities at Shoreham using 3 lawyers and 8 consultants. The County asked to inspect LILCO's security measures for these facilities. Though the inspection of security facilities was permitted, LILCO reminded the County of its objection to the materiality and relevance of security issues. See Lanpher to Rolfe letter May 23, 1984; Rolfe to Lanpher letter May 23, 1984 (attached).

Since the Board has set a thirty-seven day schedule for discovery, the parties need a ruling on this question to avoid wasting valuable discovery time and spending unnecessary resources on issues not material to this proceeding. As

important, the risk of dilatory discovery disputes -- perhaps leading to the delay of hearings -- should be eliminated by early resolution of the issue. And, the parties should be spared the uncertainty and potential waste of resources in preparing testimony for hearings.

The reasons for this immateriality are several. First, the Part 73 security issues to which the County has repeatedly alluded do not fall within the rubric of "common defense and security" to which 10 CFR 50.12(a) expressly refers. "The term 'common defense and security' means the common defense and security of the United States," 42 U.S.C. § 2014(g). See Siegel v. Atomic Energy Commission, 400 F.2d 778, 784 (D.C. Cir. 1968). There is no suggestion that LILCO's request for a low power license implicates the defense and security of the United States. The question which the County seeks to raise is not one of threats to the security of the nuclear fuel.^{1/} The issue involves only the security of AC power facilities which, even if attacked, pose no threat to national security.

^{1/} Nor could it legally raise such an issue. As noted below, all issues relating to the physical security of the plant have been resolved by a comprehensive settlement agreement.

Second, there are no pending contentions concerning security. As well established by precedent, filing of a request for a low power license is not an appropriate opportunity for filing new contentions. E.g., Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 803 n.78 (1983). This Licensing Board's April 6 Memorandum and Order recognized the inappropriateness of security issues by excluding them from the statement of pertinent issues in this proceeding. And, LILCO has introduced no security issues by modifying its request for a low power license in seeking an exemption. LILCO seeks no exemption from any security requirements. The offsite power sources are not subject to Part 73 requirements. Safety Evaluation Report (Supp. 5), NUREG-0420 at 13-3 (April, 1984).

Third, there is in effect an all-encompassing Final Security Settlement Agreement for Shoreham signed by LILCO, Suffolk County and the NRC Staff. This Agreement, dated November 22, 1982, and classified as Safeguards Information, applies to all aspects of the operation of Shoreham without qualification or exemption. The Agreement was arrived at in complete settlement of all security-related contentions raised by Suffolk County in this proceeding. It was ratified on December 3, 1982 by the Atomic Safety and Licensing Board which

had been constituted to try the security issues raised by SC. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), Memorandum and Order Canceling Hearing, Approving Final Security Agreement, and Terminating Proceeding (Dec. 3, 1982) (unpublished). Not only did the Agreement resolve all existing security contentions, it also contains mechanisms for resolving security-related aspects of future changes in plant design.

Fourth, as LILCO has demonstrated in its affidavits and prefiled testimony, security for the AC power sources is not a health and safety concern. Except in the event of a LOCA,^{2/} the plant has more than 30 days to restore AC power. One or all of the AC power facilities could be lost by sabotage, yet repaired, replaced or substituted for in 30 days. And, the redundancy of LILCO's multiple AC power sources make it extremely unlikely that any security threat would successfully debilitate all of its offsite power sources. In sum, any safety concerns relating to the sabotage of LILCO's AC

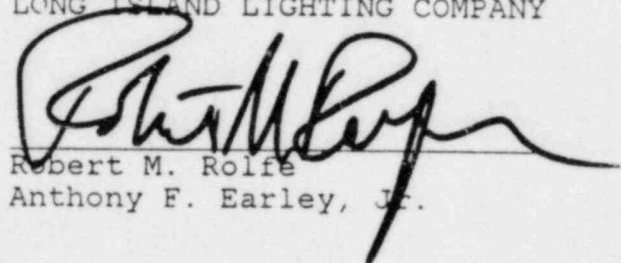
^{2/} The single failure criterion does not require LILCO to postulate a LOCA, a loss of normal offsite power and the successful sabotage of all of its black start AC power sources simultaneously. Common sense also dictates the conclusion that it is not credible to assume that a potential saboteur could choose the precise moment of a LOCA, itself highly unlikely, for his attack. Nor would it be credible or legally permissible to postulate that the LOCA is sabotage-induced since the plant is protected by an approved security plan.

power system are adequately covered by the analyses of the loss of offsite power event at 5% power. It would be pointless to permit speculative inquiries into the various potential causes (e.g. sabotage, weather) of such an event.

Accordingly, the Board should grant LILCO's motions and order that (1) there shall be no discovery in this proceeding of matters whose sole relevance is to security issues and (2) no evidence whose sole materiality is security shall be admissible in the hearings in this proceeding.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

A large, stylized handwritten signature in dark ink, appearing to read 'Robert M. Rolfe', is written over the printed name and extends upwards and to the left.

Robert M. Rolfe
Anthony F. Earley, Jr.

Hunton & Williams
Post Office Box 1535
Richmond, Virginia 23212

DATED: June 2, 1984

Attachment A

KIRKPATRICK, LOCKHART, HILL, CHRISTOPHER & PHILLIPS

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

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May 23, 1984

YETTER'S DIRECT DIAL NUMBER
202/452-7011

(BY TELECOPIER)

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

Dear Bob:

I talked several times yesterday with Tony Earley regarding a visit to the Shoreham site set for 10:30 a.m. on Thursday, May 24, 1984. When we arrive at the site, we will ask for John Morin. As discussed with Tony, we intend to take pictures and thus request that the appropriate passes be provided.

First, the people who will be on the visit are as follows:

	<u>SS No.</u>
Lawrence Coe Lanpher	223-60-9267
Karla J. Letsche	223-80-0246
John E. Birkenheier	368-62-4504
Gregory C. Minor	562-48-8919
* Dale G. Bridenbaugh	503-62-5591
Robert Weatherwax	562-62-5591
M. M. El-Gasseir	560-02-2069
Dennis Eley	143-74-7297
Aneesh Bakshi	167-62-3119
Richard Roberts	047-20-6801
* Phillip McGuire	128-26-4859
Christian Meyer	560-82-6618

Those marked with an asterisk are not on the list given to John Morin by Tony. Please note that Dr. Roesset, who was on Tony's list, will not be attending.

I outlined to Tony the areas which we want to visit. Obviously, the primary areas are the power sources and associated components relied upon by LILCO for low power operation, and also the onsite power sources (TDI diesels) that would have been relied upon but for the TDI problems. The specific areas which we can identify in advance are set forth below. I note, however,

EMERATICK, LOCKHART, HILL, CHRISTOWZER & PHILLIPS

Robert Rolfe, Esq.

May 23, 1984

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that other areas may also need to be visited once our experts have conferred further. At any rate, the areas already identified are:

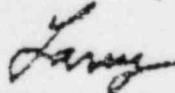
NSS and RSS transformers and associated structures; the 4 BMD mobile diesels and associated components, fuel supplies and cable/conduit to the plant; the 20 MW gas turbine and associated components, fuel supplies, and cable/conduit connecting to the 69 KV circuit; the 138 and 69 KV switchyards; the Wildwood Station; identification of location of buried cables; the 69 KV bypass; the TDI diesels; the emergency and non-emergency switchgear rooms; and the Shoreham control room.

Messrs. Roberts and McGuire, both County Police Officers, will be attending the site visit to assess the security arrangements proposed for low power operation. They will likely need to tour the entire protected area boundary, as well as the locations described above.

Some County personnel also intend to tour the Wicksville Operations Center after the site tour.

The County appreciates Tony's efforts to arrange for this visit.

Sincerely yours,



Lawrence Coe Lanpher

LCL/dk

cc: John Morin
Edmund Reis, Esq.
Fabian Palcmino, Esq.
Steven Latham, Esq.

HUNTON & WILLIAMS

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May 23, 1984

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By Telecopier

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Kirkpatrick, Lockhart, Hill,
Christopher & Phillips
1900 M Street, N.W.
Washington, D.C. 20035

Long Island Lighting Company
Shoreham Nuclear Power Station
Docket No. 50-322-OL-4 (Low Power)

Dear Larry:

This will address several matters concerning discovery incident to LILCO's Supplemental Motion for Low Power Operating License and Application for Exemption.

1. At your request, a visit to the Shoreham site has been arranged for tomorrow, May 24, 1984 at 10:30 a.m. Your letter of May 23 indicates those who will be in attendance from the County. I assume that if any representative of New York State wished to attend, he would have coordinated his request through you.

There are three caveats to LILCO's willingness to provide the site tour. First, inspection of the TDI diesels will not be permitted both because of work going on in the area and because they have no relevance to the health and safety issues in this proceeding. In any event, the County has previously inspected the diesels and their installation. Second, accompanying you will be two County police officers who intend to "assess the security arrangements proposed for low power operation." Their attendance will be permitted, though LILCO does not agree that security issues are relevant or material to any issue before the Licensing Board. LILCO's willingness to afford the police officers the opportunity to see the areas identified in your letter is not to be construed in any way as a waiver of LILCO's position that security issues

HUNTON & WILLIAMS

Lawrence Coe Lanpher, Esq.

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are immaterial and irrelevant. Third, no photographs will be permitted in vital areas or in the normal switchgear room. Also before taking any photographs, the County must sign a nondisclosure agreement and agree that a copy of any photographs taken will be provided LILCO.

2. Enclosed is LILCO's Request for Production of Documents to the County. We request that the documents be produced in Hunton & Williams' Richmond Office no later than June 6, 1984.

3. Between June 7 and June 22, LILCO will depose the following persons:

- (a) Robert K. Weatherwax;
- (b) George Dennis Ely;
- (c) Aneesh Bakshi;
- (d) Dr. Christian Meyer;
- (e) Gregory C. Minor;
- (f) Professor Jose M. Roesset;
- (g) Dale Bridenbaugh;
- (h) Richard Hubbard;
- (i) Mohamed M. El-Gasseir;
- (j) Stanley Christensen.

LILCO will also depose during that period any additional consultants retained by the County, but not yet identified. We ask that you identify any such consultants as quickly as possible so that they may be deposed during the anticipated discovery period. Without waiving its objection to the raising of any security issue, LILCO will also depose Officers Roberts and McGuire during this time period if it is determined that security is an issue.

Rather than specify dates for the depositions of particular individuals, we have suggested a range of times to allow you maximum flexibility to arrange the depositions at a

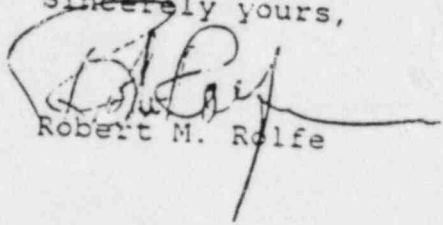
HUNTON & WILLIAMS

Lawrence Coe Lanpher, Esq.
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convenient time for the deponents. Please let us know by May 30, at the latest, suggested dates for these depositions.

I look forward to your prompt response.

Sincerely yours,


Robert M. Rolfe

177/643
Enclosure

cc: Fabian Palomino, Esq.
Edward J. Reis, Esq.

LILCO, June 2, 1984

CERTIFICATE OF SERVICE

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322-OL-4 (Low Power)

I hereby certify that copies of MOTION FOR PROTECTIVE ORDER AND MOTION IN LIMINE were served this date upon the following by Federal Express as indicated by an asterisk and otherwise by first-class mail, postage prepaid, on June 4, 1984:

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Judge Glenn O. Bright*
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DATED: June 2, 1984

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Robert M. Rolfe