

LILCO, June 19, 1984
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBefore 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)	

LILCO'S MOTION FOR LEAVE TO FILE A REPLY TO THE
SUFFOLK COUNTY AND STATE OF NEW YORK OPPOSITION TO
LILCO MOTION FOR PROTECTIVE ORDER AND MOTION IN LIMINE

LILCO believes that the papers already before this Board clearly establish adequate basis for granting LILCO's Motion for Protective Order and Motion in Limine. However, there are two aspects of the June 14, 1984 "Suffolk County and New York State Opposition to LILCO's Motion . . ." (the "Opposition") which LILCO could not reasonably have anticipated, and which can be addressed readily by documents not presently before this Board. Accordingly, if the Board desires to see further discussion, LILCO believes that good cause exists for the Board to permit the filing of a reply.

LILCO hereby requests this Board's leave, pursuant to 10 CFR § 2.730(c), to file a reply to address the following two matters: First, Suffolk County, without challenging any of LILCO's specific

add.
J. Goen
OCA

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representations as to the comprehensiveness or finality of the Final Security Settlement Agreement (the "Agreement") (LILCO Motion at 4-5), nonetheless denies its dispositiveness as to security issues in this proceeding (Opposition at 4-5) on bases that LILCO believes are simply and flatly inconsistent with the Agreement and Suffolk County's commitments under it.^{1/} Second, the Opposition suggests (Opposition at 4 note 1) that security matters are in fact before this Board, and at the Staff's instance. The fact is that the only treatment of security issues by the Staff (SSER 5 (April 1984), pp. 13-2 to 13-4) has been an analysis showing that for events postulated to occur coincident with a security contingency at Shoreham, backup AC power is not necessary to keep the reactor in a safe condition. The only other mention of security issues since the signing of the Security Agreement on November 22, 1982 has been occasioned by Suffolk County's repeated efforts, beginning in March 1983 -- several months before the TDI diesels experienced problems, and for reasons totally unrelated to them -- to create doubts whether it would fulfill its commitments under the Agreement.

LILCO could not have anticipated either of these arguments in the Opposition. However, correspondence and other documents not

^{1/} The State of New York, a party to this proceeding when the Agreement was reached, did not choose to participate in security issues at the time and is bound by their complete settlement.

presently before this Board, but producible, would readily demonstrate their falsity.^{2/} If permitted to file a reply, LILCO is prepared to document the following with respect to the two assertions mentioned above:

A. With reference to the effect of the Final Security Settlement Agreement:

1. That Suffolk County is a party to it, and that New York State, though then a party to the Shoreham proceeding, chose not to participate in the resolution of security issues.

2. That the Agreement provided for total resolution of all security contentions raised by Suffolk County.

3. That the Agreement covers security for the operation of the Shoreham plant, with no exceptions or qualifications regarding low power or other details of operation or plant configuration or engineering considerations.

4. That the Agreement contains mechanisms for amendment of its various provisions by the parties.

^{2/} The Agreement is already in the record of this case (Docket 50-322-OL-2), as are the Licensing Board's Orders of December 13, 1982 and April 11, 1983; the letters which LILCO would produce are not. The Agreement and most of the letters are presently classified as Safeguards Information, and there is presently pending with the Staff a request from LILCO to declassify pertinent portions of the Agreement and correspondence. If this request is not timely acted upon by the Staff, LILCO will produce the pertinent documents in a manner consistent with the requirements of 10 CFR Part 73.

5. That the Agreement was accepted by order of a specially constituted Atomic Safety and Licensing Board in complete settlement of all security issues; and that that Board rejected a subsequent attempt by Suffolk County to revisit the Agreement, holding the Agreement to be final and finding itself without jurisdiction.

6. That the Opposition falsely represents that LILCO's present AC power configuration at Shoreham accounts for the County's current denial that the Agreement governs security during low power operation. Beginning on March 15, 1983 -- a month after the County's declared opposition on emergency planning issues but four months before the failure of the TDI diesels -- Suffolk County unilaterally stated conditions under which it would not commit to honor its commitments under the Agreement, and has refused or ignored subsequent attempts by LILCO, beginning in March 1983 and continuing to date, to obtain an unequivocal affirmation regarding those obligations. It was thus the pendency of emergency planning issues and Suffolk County's litigation strategy of attempting to prevent fuel loading or low power operation until after their ultimate disposition -- not the subsequent diesel problems and alternative AC power configuration -- that led Suffolk County to begin sowing doubts about its willingness to honor the Agreement.

If permitted to file a reply, LILCO would demonstrate these points by reference to portions of the Agreement and related correspondence.

B. With Reference to the Asserted "Injection" of Security Issues into this Proceeding:

1. That any doubt whether security issues were fully resolved at Shoreham, despite the existence and Board ratification of the Agreement, was created when the then-Commissioner of the Suffolk County Police Department, Donald J. Dilworth, wrote LILCO's Director of Security on March 15, 1983, asserting a relationship between emergency planning issues at Shoreham and casting doubt, for that reason, on the County's willingness to abide by its commitments under the Agreement.

2. That LILCO has subsequently attempted, unsuccessfully, to induce Suffolk County to clarify its position regarding whether it intended to provide local law enforcement liaison/response services in the event of a security contingency before the completion of emergency planning litigation; and that it was Suffolk County's repeated refusal to clarify its position which has led the NRC Staff, beginning in November 1983, to regard security as a matter which would have to be addressed in some fashion -- though not necessarily before this or any other Licensing Board -- prior to fuel loading.

3. That LILCO has again attempted beginning in March 1984, following the filing of the low power motion, to obtain from Suffolk County a statement of its intentions regarding provision of services under the Security Agreement; and that these requests have been ignored.

4. That beginning in late April or early May 1984, the NRC Staff began efforts to convene a meeting with LILCO and Suffolk County concerning Suffolk County's intentions with respect to provision of security services under the Agreement; that Suffolk County indicated its interest in attending the meeting, which was postponed at least once at Suffolk County's request; and that when the meeting was finally held on June 11, 1984, despite written and telephone notice to Suffolk County, the County failed to appear.

CONCLUSION

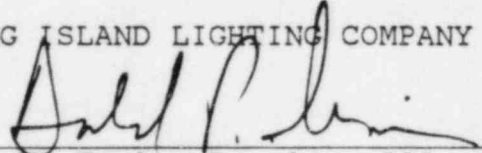
Neither of the arguments which LILCO would address in a reply, if leave is granted to file one, could have been anticipated by LILCO. However, if the Board grants leave to reply, documents in the Shoreham record (though not presently before this Board) will establish clearly, first, that the Final Security Settlement Agreement totally governs the issue of security among the parties, that it provides mechanisms for dealing with change which Suffolk County has ignored, and that the earlier security-issues Licensing Board declined once before to accept Suffolk County's invitation to look behind it; and second, that the "injection" of security issues into this proceeding has been by Suffolk County, improperly, rather than by the NRC Staff. These matters will further support the conclusion that there is no reason for this proceeding to expand its scope to take up security issues associated with low power operation. Thus, if the Board wishes to see

further discussion of these issues, good cause exists to permit LILCO to file the requested reply.

LILCO could file its Reply with one day of notification of the Board's granting of leave to file.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

A handwritten signature in dark ink, appearing to read "W. Taylor Reveley, III", is written over a horizontal line.

W. Taylor Reveley, III
Donald P. Irwin
Robert M. Rolfe
Anthony F. Earley, Jr.

HUNTON & WILLIAMS
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DATED: June 19, 1984

LILCO, June 19, 1984

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 LILCO'S MOTION FOR LEAVE TO FILE A REPLY TO THE SUFFOLK COUNTY AND STATE OF NEW YORK OPPOSITION TO LILCO MOTION FOR PROTECTIVE ORDER AND MOTION IN LIMINE were served this date upon the following by first-class mail, postage prepaid, or by hand (one asterisk), or by Federal Express (two asterisks).

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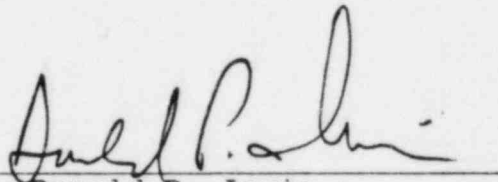
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