

LILCO, July 19, 1984

84 JUL 19 AM 11:50

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF THE
DIRECTOR
NRC
BRANCH

Before the Commission

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
RECONSIDERATION OF THE
COMMISSION'S JULY 18 MEMORANDUM AND ORDER

On July 18, 1984, the Commission issued a Memorandum and Order concerning Suffolk County's "Motion for Directed Certification of June 20 ASLB Order Granting LILCO's Motion in Limine." The Commission's order neither granted nor denied the County's motion but rather provided guidance on security matters to the Board and parties. The Commission, however, expressed no views on whether, under the facts in Shoreham, any security issues should be litigated. For the reasons stated below, we ask the Commission to reconsider its Memorandum and Order.

8407230031 840719
PDR ADOCK 05000322
G PDR

*add: given
5:00 PM*

DS03

On July 16, LILCO filed a response to SC's Motion for Certification by placing it in first class mail in accordance with applicable Commission regulations. Long Island Lighting Company's Response to Motion for Directed Certification on Security Issues (July 16, 1984). LILCO had not been informed that the Commission intended to consider this matter on an expedited basis. As in the past, of course, the Company would have responded in an expedited fashion if the Commission had so desired.

On the morning of July 17, the Office of General Counsel (OGC) inquired as to whether LILCO intended to respond to the County's Motion for Certification because the Commission was considering the issue that morning. LILCO indicated that it had filed a timely response by first class mail. As a result of the phone call, LILCO immediately made efforts to get a copy of the pleading to the General Counsel on an expedited basis. Although a copy of LILCO's pleading was provided to the General Counsel by approximately 11:00 am on the 17th, a complete version of the response, including its voluminous attachments, was not requested by OGC until approximately midday; it was delivered to OGC from Richmond later that afternoon. LILCO was informed at approximately 9:30 the next morning, July 18, that the Commission had already issued an order on the County's motion. From this sequence of events, it seems likely that the Commission was not able to consider fully LILCO's response to

the County's motion. Significantly, the order did not acknowledge LILCO's response nor did it address LILCO's arguments. Thus, LILCO believes the Commission acted prematurely in issuing its Memorandum and Order on the 18th and should reconsider it in light of LILCO's response in order to provide more definitive guidance for the conduct of these proceedings.

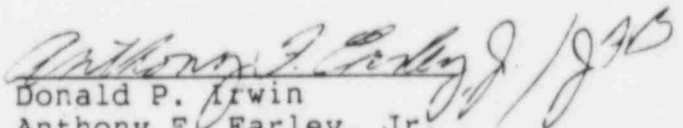
In particular, the Commission did not address the effect of the comprehensive security settlement agreement on security issues in the low power licensing proceeding. The order states that it was the Commission's understanding that the Licensing Board prevented the County from raising new security issues "because no contentions on security were currently before the Licensing Board in the operating license proceeding." Order at 1. But this was not the only ground for the denial relied upon in the Licensing Board's order. Order Granting LILCO's Motion in Limine at 2-3 (June 20, 1984). As LILCO argued in its response, the Final Security Settlement Agreement between LILCO and Suffolk County provided a separate and independent basis for excluding security issues. LILCO Response at 23-26. This agreement resolved all pending security matters and established a framework for resolving security disputes in the future.^{1/} Since the Commission's order makes no mention of

^{1/} LILCO's response recognized that the settlement agreement does not prevent the NRC Staff from engaging security matters as part of its continuing review responsibility. By signing the agreement, however, the County waived the right to raise security issues in the future except as provided by the agreement. LILCO Response at 19.

the agreement, presumably it was not considered. We believe that if the Commission had fully considered LILCO's papers, it would have concluded that the settlement agreement was dispositive. Consequently, LILCO requests that the Commission reconsider its July 18 Memorandum and Order in light of LILCO's submittal of July 16.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY


Donald P. Irwin
Anthony F. Earley, Jr.
Lee B. Zeugin

HUNTON & WILLIAMS
707 East Main Street
Richmond, Virginia 23219

DATED: July 19, 1984

LILCO, July 19, 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)

DOCKETED
JUL 19

'84 JUL 19 AM 1:50

I hereby certify that copies of LILCO'S MOTION FOR RECONSIDERATION OF THE COMMISSION'S JULY 18 MEMORANDUM AND ORDER dated July 19, 1984 were served this date upon the following by U.S. mail, first-class, postage prepaid, and in addition by hand (as indicated by one asterisk) or by telecopier (as indicated by two asterisks).

Chairman Nunzio J. Palladino*
U.S. Nuclear Regulatory
Commission
1717 H Street
Washington, D.C. 20555

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

Commissioner Lando W. Zech, Jr.*
U.S. Nuclear Regulatory
Commission
1717 H Street, N.W.
Washington, D.C. 20555

Commissioner Frederick M. Bernthal*
U.S. Nuclear Regulatory
Commission
1717 H Street, N.W.
Washington, D.C. 20555

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

Judge Marshall E. Miller*
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
Fourth Floor
East West Towers (West Tower)
4350 East-West Highway
Bethesda, Maryland 20814

Judge Glenn O. Bright*
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
Fourth Floor
East West Towers (West Tower)
4350 East-West Highway
Bethesda, Maryland 20814

Judge Elizabeth B. Johnson**
Oak Ridge National Laboratory
P.O. Box X, Building 3500
Oak Ridge, Tennessee 37830

Eleanor L. Frucci, Esq.*
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
Fourth Floor
East West Towers (West Tower)
4350 East-West Highway
Bethesda, Maryland 20814

Honorable Peter Cohalan
Suffolk County Executive
County Executive/
Legislative Building
Veterans Memorial Highway
Hauppauge, New York 11788

Fabian G. Palomino, Esq.**
Special Counsel to the
Governor
Executive Chamber, Room 229
State Capitol
Albany, New York 12224

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

Mr. Martin Suubert
c/o Congressman William Carney
113 Longworth House Office Bldg.
Washington, D.C. 20515

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

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

Edwin J. Reis, Esq.*
Office of the Executive
Legal Director
U.S. Nuclear Regulatory
Commission
Maryland National Bank Building
7735 Old Georgetown Road
Bethesda, Maryland 20814
Attn: NRC 1st Floor Mail Room

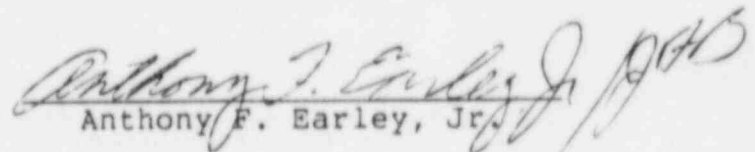
Stephen B. Latham, Esq.
Twomey, Latham & Shea
33 West Second Street
P. O. Box 398
Riverhead, New York 11901

Martin Bradley Ashare, Esq.
Suffolk County Attorney
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

Docketing and Service Branch
Office of the Secretary
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Hunton & Williams
707 East Main Street
Post Office Box 1535
Richmond, Virginia 23212

DATED: July 19, 1984


Anthony F. Earley, Jr.