

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Commission

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In the Matter of )

LONG ISLAND LIGHTING COMPANY )

(Shoreham Nuclear Power Station, )  
Unit 1) )  
\_\_\_\_\_ )

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
Docket No. 50-322-OL-4  
(Low Power)

NEW YORK STATE AND SUFFOLK COUNTY REQUEST FOR  
RECONSIDERATION OF COMMISSION DENIAL OF  
OPPORTUNITY FOR ORAL ARGUMENTS

By Order issued November 19, 1984, the Commission denied the joint request of New York State and Suffolk County to present oral arguments on the Licensing Board's October 29 decision which in effect recommended a low power license for Shoreham. For the reasons set forth below, the State and County request that the Commission reconsider such denial and schedule oral arguments on the subject matter.

If ever a case required oral arguments and a full and open engagement of the issues, Shoreham is the one. First, no other case has presented such potential for a spectacular confrontation between the federal government and State and local governments. Indeed, the NRC's issuance of a low power license here, in the face of the reasonable positions taken by the State and County, would be tantamount to an act of federal regulatory belligerency. Surely, a case with such far-reaching implications deserves the

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inquiry and open presentation of views that oral arguments would provide. (Attached hereto is a Resolution of the Suffolk County Legislature, dated November 27, 1984, reiterating the County's opposition to NRC issuance of a low power license for Shoreham.)

Second, the President of the United States has written, as set forth in the attached letter, "this Administration does not favor the imposition of federal government authority over the objections of state and local governments." The issuance of a low power license to LILCO would do precisely what the Administration's policy does not favor. Shoreham thus presents the extraordinary case where an applicant is asking the Commission to take action which contravenes Administration policy. Oral arguments would permit the Commission to flesh this out.

Third, the Commission's consideration of a low power license for Shoreham is not business-as-usual for the NRC. In ordinary cases, the Commission has considered a low power license only when there have been no outstanding issues which could bar issuance of a full power license. Here, by contrast, the situation is precisely the opposite: There are determinative issues concerning LILCO's emergency plan and its legal authority to implement that plan that are before the New York State Supreme Court. Pending the resolution of those issues, it would be unreasonable per se for the Commission to authorize any action by LILCO which would contaminate Shoreham and create a contingent liability for LILCO, its creditors, the ratepayers, or some combination of those. The Commission should bear in mind that when it creates cost

consequences in this proceeding, it is blindly creating financial and regulatory/economic issues for the very State and local governments whose interests and constituents are being represented here.

Finally, the Commission's refusal to hold open oral arguments in this case would suggest to the public that the Commission is seeking to dodge public scrutiny and to decide the extraordinary Shoreham issues in shadows and silence. But, this is no time for peek-a-boo; it is time only for a full and frank meeting open to the public's eye. Indeed, it did not slip public attention that the Commission chose to issue LILCO a Phase I and II license on the eve of Thanksgiving Day, the start of an extended holiday weekend when media attention was at a low.

Shoreham is too important a case for the NRC to give the people of Suffolk County and New York State anything less than the fullest and fairest opportunities to present their case. And, it is also too important for the Commission to settle for anything less than seeking to gain all the information it can. The Atomic Energy Act in Section 274 and the NRC's regulations in Section 2.715(c) specifically provide that the Commission shall afford State and County governments the opportunity "to advise the Commission" on matters affecting their interests. Those interests here require a full airing by oral arguments and the comity and "cooperation" which Congress mandated the Commission to exhibit toward the States in Section 274.

It defies imagination to find good reason for the Commission to deny the State and County an opportunity to be heard at oral

arguments, much less a reason to suggest that such a denial serves the public interest. There is no time-pressure: LILCO itself admits that electricity equivalent to Shoreham's output will not be needed for a decade. And, there are no logistic or administrative hurdles which could stand in the way of meaningful oral arguments.

At the heart of this case is the public interest, and it is on that very point that the Commission in the past has said that the views of State governments must be given "great weight." Thus, in the NRC's "Brief in Opposition to Emergency Motion for Stay," filed on November 10, 1983, in the U.S. Court of Appeals case concerning Diablo Canyon, the Commission stated:

"Finally, the Supreme Court has noted that the debate over nuclear power is one in which the States have a vital stake. [Citing Vermont Yankee.] In this case the Governor of California, as representative of the people and the public interest, has indicated in hearings before the NRC Appeal Board that he does not oppose this action. [Citation omitted.] The views of the chief elected representative of the people of California should be accorded great weight in fixing where the public interest lies." NRC Brief, page 34.

Here, in the Shoreham case, the chief elected representative of the people of New York and the elected government of the people of Suffolk County oppose issuance of a low power license. It is time for the Commission to take their views seriously and to give them meaningful "great weight," just as the Commission rested its position on the views of California's government. Surely, it was with conviction and not convenience in mind that the Commission spoke to the Court.

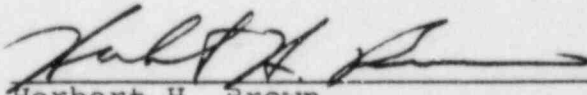


With the strong words of the Commission's Diablo brief in mind, it is worth noting that in its Phase I and II Order the Commission gave no weight, let alone the "great weight" it celebrated in Diablo, to the public interest views of the State and County. This was an error. The Commission can now mitigate the damage by scheduling open and objective oral arguments in this case.<sup>\*/</sup>

Respectfully submitted,

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<sup>\*/</sup> Contrary to LILCO's November 9 "Comments," the issues before the Commission here are not merely conventional "stay motion" issues involving the four-part test for a stay. Here, Section 50.12 makes the Commission responsible for the final substantive decision on an exemption request, and the Commission's May 16 Order and caselaw (e.g., San Onofre) underscore that responsibility. This proceeding thus does not call for a cursory or cosmetic review of the merits. It requires the Commission's meaningful and substantive engagement.

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November 29, 1984

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SENSE OF THE LEGISLATURE RESOLUTION REITERATING  
SUFFOLK COUNTY'S OPPOSITION TO LILCO'S SHOREHAM  
NUCLEAR POWER PLANT

SENSE 3

WHEREAS, the Nuclear Regulatory Commission is considering Lilco's request to operate the Shoreham Nuclear Power Plant at lower power levels up to 5%; and

WHEREAS, Suffolk County has determined in Resolution 111-1983 that in recognition of the impossibility of evacuating or otherwise protecting the health, welfare, and safety of the citizens of Suffolk County in the event of a serious nuclear accident at the Shoreham plant, the County will not adopt or implement a radiological emergency plan for Shoreham; and

WHEREAS, the Governor acting on behalf of the State of New York has determined not to impose a radiological emergency plan on Suffolk County or otherwise to act in a manner inconsistent with the determination of Suffolk County; and

WHEREAS, Suffolk County and New York State has asserted to the Nuclear Regulatory Commission in the pending licensing proceedings that both governments oppose the licensing of Shoreham, including operation of Shoreham at low power; and

WHEREAS, the low power operation of Shoreham would contaminate the plant while there is no reasonable basis on which to believe the plant should ever operate at commercial power levels; and

WHEREAS, the cost of cleaning up such contamination of the Shoreham plant following lower power operation would be well in excess of \$100 million; and

WHEREAS, the quantity of electricity which Shoreham represents will not be needed for at least a decade and, therefore, there is no reason for the Nuclear Regulatory Commission to make a precipitous decision concerning low power operation at Shoreham; and

WHEREAS, the President of the United States wrote on October 11, 1984, that "...this Administration does not favor the imposition of federal government authority over the objections of state and local governments in matters regarding the adequacy of an emergency evacuation plan for a nuclear power plant such as Shoreham;" and

WHEREAS, any action by the Nuclear Regulatory Commission to license Shoreham to operate at low power levels would constitute the imposition of federal government authority over the objections of Suffolk County and the State of New York; and

WHEREAS, such action by the Nuclear Regulatory Commission would be in derogation of the comity and cooperation the federal government should show with respect to this issue, which is a matter of particular local and state concern; now, therefore, be it

RESOLVED, that Suffolk County hereby reiterates its opposition to the operation of the Shoreham plant at any and all power levels; and be it further

RESOLVED, that Suffolk County hereby urges the Nuclear Regulatory Commission to deny Lilco's pending request to operate Shoreham at low power levels up to 5%; and be it further

RESOLVED, that the clerk of the County Legislature promptly transmit a copy of this resolution to the Chairman and Commissioners of the Nuclear Regulatory Commission and to other officials of the federal administration and Congress as appropriate.

DATED: 11/27/84



THE WHITE HOUSE  
WASHINGTON

October 11, 1984

Dear Bill:

I want you to know of my appreciation for your continuing contributions to and support for my Administration. Your leadership and courage have been determining factors in the progress we have made in the last few years.

On a matter of particular concern to you and the people of Eastern Long Island, I wish to repeat Secretary Rodal's assurance to you that this Administration does not favor the imposition of Federal Government authority over the objections of state and local governments in matters regarding the adequacy of an emergency evacuation plan for a nuclear power plant such as Shoreham. Your concern for the safety of the people of Long Island is paramount and shared by the Secretary and me.

Thank you again for your support. I look forward to working with you in the years ahead.

Sincerely,

*Ronald Reagan*

The Honorable William Cerney  
House of Representatives  
Washington, D.C. 20515

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NUCLEAR REGULATORY COMMISSION

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Docket No. 50-322-OL-4  
Low Power

CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY AND STATE OF NEW YORK COMMENTS CONCERNING COMMISSION REVIEW OF LILCO'S EXEMPTION REQUESTS, - SUFFOLK COUNTY AND STATE OF NEW YORK MOTION TO EXCEED PAGE LIMIT, and NEW YORK STATE AND SUFFOLK COUNTY REQUEST FOR RECONSIDERATION OF COMMISSION DENIAL OF OPPORTUNITY FOR ORAL ARGUMENTS, all dated November 29, 1984, have been served on the following this 29th day of November 1984 by U.S. mail, first class, except as otherwise indicated.

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\* / Attachments 3-7 to the Comments are already available to the parties and thus are being served only on the individual Commissioners.

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DATE: November 29, 1984

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\*\* By Hand  
# By Federal Express