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LILCO, April 9, 1985

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Before the Commission

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

LILCO'S REPLY TO NEW YORK/SUFFOLK COUNTY MOTION
FOR IMMEDIATE INVESTIGATION OF "60 MINUTES" BROADCAST

LILCO responds here to the March 27, 1985 "Motion of New York State and Suffolk County for Immediate Investigation of Allegations Contained in '60 Minutes' Broadcast." The broadcast referred to occurred on March 24, 1985 and concerned Shoreham; a copy of the transcript is attached to the Motion.

The Motion contains essentially three requests: (1) immediate NRC investigation of allegations contained in the "60 Minutes" broadcast; (2) participation by New York State and Suffolk County in "framing a protocol" for the investigation; and (3) cessation of any Shoreham-related licensing matters pending "completion and public scrutiny" of the NRC's investigation. The Motion is in substance a request for investigation of a series of late-filed allegations, and should be treated in accordance with the

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Commission's Statement of Policy: Handling of Late Allegations, 50 Fed. Reg. 11030 (March 19, 1985).

The Policy Statement was developed in response to the Commission's experience in a number of recent cases of allegations being filed "very shortly before, and in some cases on the eve of, the date on which to authorize the issuance of an operating license was to be made." It specifies procedural and substantive criteria to be used in initial screening and, if warranted, further review of late-filed allegations.

The Policy Statement specifies the following criteria for initial screening:

1. Timeliness: "Any person who has an allegation concerning the design, construction, operation or management of a nuclear power station has a duty to bring such information to the Commission's attention as promptly as possible." (50 Fed. Reg. at 11031 col. 2.)

2. Specificity: All allegations should be "specific and documented to the fullest extent possible." (Id.)

3. Materiality: The allegations must, if true, "require denial of the license sought, the imposition of additional conditions on such license, or further analysis or investigation." (Id. cols. 2-3.)

4. Originality/Non-cumulativeness: The information presented in the allegations must be "new in the sense of raising a matter not previously considered or tending to corroborate

previously considered but not yet resolved allegations," on the basis of "all information available to the Commission," whether that information is in the formal licensing record or not. (Id. col. 3.)

Only allegations which meet the four tests outlined above are to be inquired into further. Id. In making this determination, the Commission may make use of "all information available . . . including that previously provided by an applicant or licensee and that obtained by the Commission in the course of its review and inspection efforts or from its investigation of prior allegations." Id.

As is briefly shown immediately below, none of the allegations made on "60 Minutes" meets the four threshold tests. LILCO firmly believes that there is nothing in the allegations which raises legitimate concerns not already inquired into in minute detail in Shoreham's already hyperextended licensing process. Further, LILCO believes that all material necessary to resolve them has been previously presented to and evaluated by the Commission, sometimes repeatedly, through the Regulatory Staff, the I&E Branch and possibly other branches, by Licensing Boards, and by other government agencies. Thus the allegations should be resolvable now by the Commission without need for further ado, and LILCO offers the following summary observations on them:^{1/}

^{1/} The remarks of Governor Cuomo relating to his administration's desire to resolve Shoreham's fate to the exclusion of

1. Messrs. Henry and McCrystal (and interstitial questions and comments by Mr. Bradley^{2/} (pages 1-6): The NRC, like the FBI and the Suffolk County legislature, has already heard and evaluated these men's allegations more than once. Unless the "60 Minutes" segment contributes substantial new material -- and LILCO knows of no basis to believe that it does -- these televised recitations are merely cumulative of information already presented, as well as being nonspecific in all potentially material areas and inexcusably untimely.

2. Lieutenant Remo Francesini (pp. 6-8): Nothing in Lieutenant Francesini's generalized allegations of union corruption in the construction industry appears to bear specifically on anything related to the design, construction or operation of safety-related systems at Shoreham. Nothing in them is alleged to be new; indeed, the contrary appears to be the case. In short, Lt. Francesini's allegations do not pass the tests of timeliness, specificity or materiality.

3. Ken McCallion (pp. 8-10): Mr. McCallion's statement, describing the career of labor leader Daniel Cunningham, former

(footnote continued)

other duly constituted governments, and those of Suffolk County legislator Wayne Prospect merely rehashing one view of past negotiations over physical inspections of Shoreham, are purely political or philosophical in nature and do not warrant staff scrutiny as late-filed allegations.

^{2/} In each of the following items, the questions and interstitial comments by Mr. Bradley are included in LILCO's comment.

head of the union in charge of industrial construction-site (not nuclear) security at Shoreham, contains nothing allegedly related to the safety of Shoreham, or allegedly new. Thus his story does not meet the tests of relevance, materiality, specificity or timeliness.

4. Messrs. Henry and McCrystal (pp. 10-13): Their allegations concerning quality control and the TDI diesels are all already known, to LILCO's knowledge and belief, to the NRC and the FBI. Unless there is new material presented here which itself warrants further investigation, it is merely cumulative of earlier statements by them. Further, the statements are untimely given the dates when the events are alleged to have occurred and the alleged contemporaneous knowledge of them.

5. Messrs. Bradley and Prospect (pp. 13-14): Discussions of access to Shoreham by third parties (like "60 Minutes") do not relate to the plant's safety; nor does a one-sided rehashing of negotiations which ended three years ago. The discussion is irrelevant and immaterial to safety issues at Shoreham, and untimely. The discussion of concrete supplies at Shoreham contains no allegation that the concrete actually used at Shoreham was defective. In addition, the NRC and other agencies have been investigating the quality of concrete used at Shoreham ever since allegations were first made about criminal involvement in the concrete industry. The current allegations fail the tests of relevance, materiality, specificity and non-cumulativeness.

6. Governor Cuomo (pp. 14-15): Governor Cuomo's political philosophy as applied to Shoreham is a matter for public policy debate, but does not itself provide any basis for Staff inquiry into late-filed allegations.

The matters potentially relating to safety at Shoreham have already been inquired into by the Staff, by NRC Licensing Boards, and by other governmental agencies. Their recapitulation on "60 Minutes" contains no grist for further inquiry. Further, they have already been sufficiently presented to the Commission, LILCO believes, to enable it to so determine. To the extent that any further inquiry is desired by the Commission, it should be done as an initial screening of allegations under the Policy Statement.

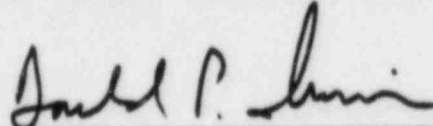
The Motion asks for a "joint protocol" for investigation, involving participation by New York State and Suffolk County. The Commission should reject this proposal for two fundamental reasons. First, to the extent that the "60 Minutes" allegations raise any matters potentially cognizable by the Commission, they deal with the effects of alleged defects in the design or construction of the plant on the protection of the public against radiological hazards. This is a radiological health-and-safety matter within the exclusive province of the NRC. Second, New York State and Suffolk County are avowed antagonists of LILCO in this proceeding. For them to add the role of judge to their role of antagonist, sitting or assisting in judgment of the merits of

allegations as well as advocating views on their merits, would deny LILCO due process of law.

Finally, the Motion asks that all Commission proceedings be halted pending disposition of the issues allegedly raised by the "60 Minutes" broadcast. The Policy Statement sets forth, 50 Fed. Reg. at 11032 col. 1, a mechanism for reconciling review of late-filed allegations with the needs and equities of the licensing process. Under that mechanism, allegations not found to be safety significant will be resolved in the normal course of business independent of license issuance. Given the nature and circumstances of the "60 Minutes" allegations, LILCO suggests that method for resolution of any allegations which are felt to need further inquiry.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY



T. S. Ellis, III, Esq.
Donald P. Irwin
Anthony F. Earley, Jr.

Hunton & Williams
P.O. Box 1535
Richmond, Virginia 23212

DATED: April 9, 1985

LILCO, April 9, 1985

CERTIFICATE OF SERVICE

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

DOCKETED
USNRC

I hereby certify that copies of LILCO'S REPLY ⁰⁵ ~~05~~ ^{NEW} 10 P3:26
YORK/SUFFOLK COUNTY MOTION FOR IMMEDIATE INVESTIGATION OF 60
MINUTES BROADCAST were served this date upon the following by
U.S. mail, first-class, postage prepaid, or by Federal Express
(as indicated by an asterisk).

DOCKETED
USNRC
BRANCH

Chairman Nunzio J. Palladino*
United States Nuclear
Regulatory Commission
1717 H Street
Washington, DC 20555

Commissioner James K. Asselstine*
United States Nuclear
Regulatory Commission
1717 H Street, N.W.
Washington, DC 20555

Commissioner Frederick M. Bernthal*
United States Nuclear
Regulatory Commission
1717 H Street, N.W.
Washington, DC 20555

Commissioner Thomas M. Roberts*
United States Nuclear
Regulatory Commission
1717 H Street, N.W.
Washington, DC 20555

Commissioner Lando W. Zech, Jr.*
United States Nuclear
Regulatory Commission
1717 H Street, N.W.
Washington, DC 20555

Judge James L. Kelley,
Chairman, Atomic Safety
and Licensing Board
United States Nuclear
Regulatory Commission
Fourth Floor
East-West Towers (West Tower)
4350 East-West Highway
Bethesda, MD 20814

Judge Glenn O. Bright
Atomic Safety and Licensing
Board, United States
Nuclear Regulatory Commission
Fourth Floor
East-West Towers (West Tower)
4350 East-West Highway
Bethesda, MD 20814

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

Edwin J. Reis, Esq.
Bernard M. Bordenick, Esq.
Office of the Executive
Legal Director
United States Nuclear
Regulatory Commission
Maryland National Bank Building
7735 Old Georgetown Road
Bethesda, MD 20814

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

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

James B. Dougherty, Esq.
3045 Porter Street
Washington, DC 20008

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

Stephen B. Latham, Esq.
John F. Shea, Esq.
Twomey, Latham & Shea
33 West Second Street
Riverhead, NY 11901

The Honorable Peter Cohalan
Suffolk County Executive
County Executive/
Legislative Building
Veterans Memorial Highway
Hauppauge, NY 11788

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

Mr. Martin Suubert
c/o Congressman William Carney
1113 Longworth House Office
Building
Washington, DC 20515

Docketing and Service
Branch (3)
Office of the Secretary
United States Nuclear
Regulatory Commission
1717 H Street, N.W.
Washington, DC 20555

Judge Lawrence J. Brenner, Esq.
Chairman
Atomic Safety and Licensing
Board, United States
Nuclear Regulatory Commission
Washington, DC 20555

Dr. Peter A. Morris
Administrative Judge
Atomic Safety and Licensing
Board, United States
Nuclear Regulatory Commission
Washington, DC 20555

Dr. George A. Ferguson
Administrative Judge
Atomic Safety and Licensing
Board Panel
School of Engineering
Howard University
2300 6th Street, N.W.
Washington, D.C. 20059

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

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

Morton B. Margulies,
Chairman
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
East-West Tower, Rm. 402A
4350 East-West Hwy.
Bethesda, MD 20814

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

Mr. Frederick J. Shon
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
East-West Tower, Rm. 430
4350 East-West Hwy.
Bethesda, MD 20814

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

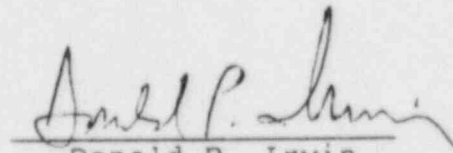
Spence W. Perry, Esq.
Associate General Counsel
Federal Emergency Management
Agency
500 C Street, S.W., Room 840
Washington, D.C. 20472

Hunton & Williams
P.O. Box 1535
Richmond, Virginia 23212

DATED: April 9, 1985

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

Herzel Plaine, Esq.
U.S. Nuclear Regulatory
Commission
10th Floor
1717 H Street, N.W.
Washington, D.C. 20555


Donald P. Irwin