

266.  
UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

Before the Commission '85 JUN -3 P1:25

In the Matter of

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power Station)

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

SUFFOLK COUNTY MOTION FOR POSTPONEMENT  
OF ORAL ARGUMENT

By Notice dated May 30, 1985, the Commission scheduled oral argument for 2:00 p.m. on June 4, 1985 on issues related to Phase III/IV licensing of Shoreham. Because of developments on May 31 and June 3, 1985, Suffolk County asks that the oral argument be postponed.

Since February 1983, Suffolk County has taken the position that Shoreham should not be licensed for any power level of operation because effective and implementable emergency preparedness is not possible. The County has resolved not to adopt or implement a plan for Shoreham, and the New York State Supreme Court and the NRC's emergency planning licensing board have ruled that LILCO lacks the legal authority to implement a plan on its own. LILCO's lack of legal authority would be addressed at the June 4 oral argument before the Commission because the lack of legal authority and the NRC's alleged NEPA violation are presented for decision in the County/State Petition for Reconsideration of CLI-85-1.

Late on May 30, 1985, Suffolk County Executive Peter F. Cohalan issued an Executive Order (served on the Commission and parties by LILCO on May 31) directing County personnel:

to complete a review and evaluation of [LILCO's plan] and carry out and cause to be conducted a test and exercise of the . . . Plan . . . . I further direct that agents of the County of Suffolk assume the function of command and control with implementation of the police powers of the County of Suffolk over the conduct of said test and exercise.

Mr. Cohalan is reported in the press as stating that if the exercise is successful, he is prepared to support operation of Shoreham.

If Mr. Cohalan's new position constitutes the policy and position of Suffolk County, there will likely be a significant impact on the course of Shoreham-related proceedings. However, as LILCO noted in its May 31 letter to the NRC Commissioners, "[i]t is too early to tell the exact contours of its effects."

By letter telecopied earlier today, a majority of the Suffolk County Legislature advised the undersigned law firm, as counsel to Suffolk County, that Mr. Cohalan's new position is unlawful because it conflicts with the Suffolk County Charter and with Resolutions of the Suffolk County government (Resolution Nos. 262-1982, 456-1982, and 111-1983). The Legislators' letter states, "[T]he Executive Order is beyond the authority of the County Executive and should be considered null and void." The Legislature has instructed counsel not to adhere to the Executive Order and to seek postponement of the Commission's June 4 oral argument. A copy of the Legislature's letter is attached hereto (Attachment 1).

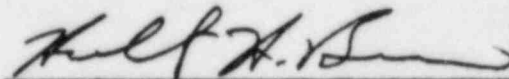
As is clear from the foregoing, a conflict exists between the Suffolk County Resolutions and the Executive's Order. Until the conflict is resolved, the County is unable to present oral argument, because the position of the County is unclear. It appears that the conflict will be resolved expeditiously. The attached letter states that Members of the Legislature "intend to initiate legal action later this week to obtain a prompt judicial resolution of this conflict."

Given the foregoing circumstances, the Commission is hereby requested to postpone the June 4 argument. No useful purpose would be served by holding oral argument when a primary party to the proceeding is temporarily unable to participate on the merits of the pending issues.

The County will keep the Commission informed of pertinent developments concerning this matter.

Respectfully submitted,

Martin Bradley Ashare  
Suffolk County Department of Law  
H. Lee Dennison Building  
Veterans Memorial Highway  
Hauppauge, New York 11788



Herbert H. Brown  
Lawrence Coe Lanpher  
Karla J. Letsche  
KIRKPATRICK & LOCKHART  
1900 M Street, N.W., Suite 800  
Washington, D.C. 20036

Attorneys for Suffolk County

June 3, 1985



June 3, 1985

Kirkpatrick & Lockhart  
1900 M Street, N.W.  
Washington, D.C. 20036

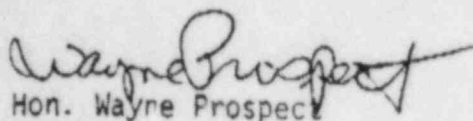
Dear Mr. Brown:

We have been in contact with a majority of the Suffolk County Legislators and have been authorized by each of those individuals to represent to you that they subscribed to the contents of the attached letter.

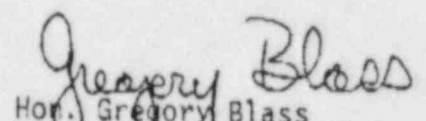
The purpose of this correspondence is to make sure that there are no obstacles placed in the way of effective legal representation in proceedings concerning the Shoreham plant.

Just as soon as we are able to circulate it among the legislators, a signed copy of the letter will be sent to you.

Sincerely,

  
Hon. Wayne Prospect

Suffolk County Legislator  
15th District

  
Hon. Gregory Blass  
Suffolk County Legislator  
1st District

WP:gjh  
encl.

# OFFICE OF THE COUNTY LEGISLATURE

COUNTY OF SUFFOLK



From: The Suffolk County Legislature

To: Kirkpatrick & Lockhart  
1900 M Street, N.W.  
Washington, D.C. 20036

Date: June 3, 1985

Dear Mr. Brown,

We have received copies of your letter dated May 31, 1985 to the Suffolk County Attorney. This is to advise you that you are correct in your understanding that Kirkpatrick and Lockhart is retained to represent the County of Suffolk and not the County Executive in an independent capacity. The Executive Order Number 1-1985, signed on May 30th by the County Executive is in violation of the Suffolk County Charter and Suffolk County resolutions 262-1982, 456-1982 and 111-1983. Accordingly, the Executive Order is beyond the authority of the County Executive and should be considered null and void. Members of the legislature intend to initiate legal action later this week to obtain a prompt judicial resolution of this conflict.

Suffolk County wishes to emphasize that the contract of retainer with Kirkpatrick and Lockhart remains in effect and that the law firm should continue to represent and promote the interests of Suffolk County in accordance with those resolutions and others duly enacted by the county of Suffolk. In the event that the present conflict between the county's resolutions and the executive's order create logistical problems with respect to any pending litigation or other proceedings, we are instructing you, as necessary, to notify the concerned parties and tribunals of such conflict and to request a postponement, where appropriate, or other temporary remedies until this matter is resolved in Suffolk County. We also request that you seek a postponement of the oral argument scheduled on June 4th before the Commissioners of the Nuclear Regulatory Commission concerning low power licensing issues.



Moreover, we want to emphasize that you should no longer adhere to the unilateral restrictions of your activities imposed by the letter to you from Chief Deputy County Executive, John Gallagher, dated April 18, 1985. Such restrictions, particularly in light of County Executive Cohalan's reversal of position, create obstacles to efficient and effective representation of the interests of the County of Suffolk, and are accordingly prejudicial to the pursuit of the county's resolutions and public welfare.

We also request that you keep members of the legislature informed of all significant filings which are made on the county's behalf, and any significant activities in which you believe we should be properly informed.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of  
LONG ISLAND LIGHTING COMPANY  
(Shoreham Nuclear Power Station,  
Unit 1)

DOCKETED  
USNRC  
Docket No. 50-322-OL-4  
(Low Power) 85 JUN -3 P1:25

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of Suffolk County Motion for Postponement Of Oral Argument have been served on the following this 3rd day of June, 1985, by U.S. mail, first class, except as otherwise noted.

Judge James L. Kelley  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Edward M. Barrett, Esq.  
Long Island Lighting Company  
250 Old Country Road  
Mineola, New York 11501

Judge Glenn O. Bright  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Honorable Peter Cohalan  
Suffolk County Executive  
H. Lee Dennison Building  
Veterans Memorial Highway  
Hauppauge, New York 11788

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

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

Atomic Safety and Licensing  
Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

\*\* W. Taylor Reveley, III, Esq.  
Anthony F. Earley, Jr., Esq.  
Robert M. Rolfe, Esq.  
Hunton & Williams  
707 East Main Street  
Richmond, Virginia 23212

\* Edwin J. Reis, Esq.  
Bernard M. Bordenick, Esq.  
Office of Exec. Legal Director  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Mr. Martin Suubert  
c/o Cong. William Carney  
1113 Longworth House Office  
Building  
Washington, D.C. 20515

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

\* Nunzio J. Palladino, Chairman  
U.S. Nuclear Regulatory Commission  
Room 1114  
1717 H Street, N.W.  
Washington, D.C. 20555

\* Commissioner Lando W. Zech, Jr.  
U.S. Nuclear Regulatory Commission  
Room 1113  
1717 H Street, N.W.  
Washington, D.C. 20555

\* Commissioner James K. Asselstine  
U.S. Nuclear Regulatory Commission  
Room 1136  
1717 H Street, N.W.  
Washington, D.C. 20555

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

Dr. George A. Ferguson  
Administrative Judge  
Atomic Safety & Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Morton B. Margulies, Esq.  
Administrative Judge  
Atomic Safety & Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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

Mr. L. F. Britt  
Long Island Lighting Company  
Shoreham Nuclear Power Sta.  
P.O. Box 618  
North Country Road  
Wading River, New York 11792

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

\* Comm. Frederick M. Bernthal  
U.S. Nuclear Regulatory Comm.  
Room 1156  
1717 H Street, N.W.  
Washington, D.C. 20555

\* Comm. Thomas M. Roberts  
U.S. Nuclear Regulatory Comm.  
Room 1103  
1717 H Street, N.W.  
Washington, D.C. 20555

Stephen B. Latham, Esq.  
John F. Shea, Esq.  
Twomey, Latham and Shea  
33 West Second Street  
Riverhead, New York 11901

Lawrence J. Brenner, Esq.  
Administrative Judge  
Atomic Safety & Licensing Bd.  
U.S. Nuclear Regulatory Comm.  
Washington, D.C. 20555

Dr. Peter A. Morris  
Administrative Judge  
Atomic Safety & Licensing Bd.  
U.S. Nuclear Regulatory Comm.  
Washington, D.C. 20555

Dr. Jerry R. Kline  
Administrative Judge  
Atomic Safety & Licensing Bd.  
U.S. Nuclear Regulatory Comm.  
Washington, D.C. 20555



Mr. Frederick J. Shon  
Administrative Judge  
Atomic Safety & Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Stewart M. Glass, Esq.  
Regional Counsel  
Federal Emergency Management Agency  
New York, New York 10278

Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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

Jonathan D. Feinberg, Esq.  
Staff Counsel  
New York State Public Service  
Commission  
3 Rockefeller Plaza  
Albany, New York 12223

Ms. Nora Bredes  
Executive Director  
Shoreham Opponents Coalition  
195 East Main Street  
Smithtown, New York 11787

Mr. Frank R. Jones  
Deputy County Executive  
H. Lee Dennison Building  
Veterans Memorial Highway  
Hauppauge, New York 11788

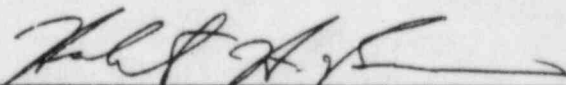
Joel Blau, Esq.  
New York Public Service Comm.  
Gov. Rockefeller Building  
Empire State Plaza  
Albany, New York 12223

Mr. Stuart Diamond  
Business/Financial  
NEW YORK TIMES  
New York, New York 10036

Spence Perry, Esq.  
Associate General Counsel  
Fed. Emergency Mgmt. Agency  
Washington, D.C. 20472

E. Milton Farley, III, Esq.  
Hunton & Williams  
P.O. Box 19230  
2000 Pennsylvania Ave., N.W.  
Washington, D.C. 20036

Odes L. Stroupe, Jr., Esq.  
Hunton & Williams  
P.O. Box 109  
333 Fayetteville Street  
Raleigh, North Carolina 27602

  
Herbert H. Brown  
KIRKPATRICK & LOCKHART  
1900 M Street, N.W., Suite 800  
Washington, D.C. 20036

DATE: June 3, 1985

\* By Hand  
\*\* By Telecopy