

February 4, 1981

SO-322



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Director of Nuclear Reactor Regulation

In the Matter of ) Construction Permit No.  
LONG ISLAND LIGHTING COMPANY ) CPPR-95  
(Shoreham Nuclear Power Station, )  
Unit 1) )

Permittee's Response to SOC Pleading of January 23, 1981

I.

On January 23, 1981, the Shoreham Opponents Coalition (SOC) filed a 31 page document entitled "Petition of the Shoreham Opponents Coalition (SOC) to Institute Proceedings on Whether Good Cause Exists to Extend the Completion Date of the Shoreham Nuclear Power Station - Unit 1." Although denominated as simply a request for proceedings on the Permittee's construction permit extension request,<sup>1/</sup> the petition asks for much more. It seeks to have "the Shoreham construction permit . . . suspended" and then "revoked" or "in the alternative, re-issue[d] . . . subject to . . . conditions . . . ." Neither the request for a hearing nor the attack on the CP is meritorious.

---

<sup>1/</sup> By a request dated November 26, 1980, the Permittee asked that the latest date for the completion of the Shoreham plant be extended from December 31, 1980 to March 31, 1983.

DS03  
SO/1

II.

SOC's petition requests that a proceeding be initiated to determine whether good cause exists to extend the latest completion date in Shoreham's CP. As noted before, a request for such an extension, accompanied by the requisite showing of good cause, was filed by the Permittee on November 26, 1980. At this stage, SOC's petition is no more than a request that the NRC issue a notice of hearing and constitute a licensing board on the CP extension request. Presumably, if a hearing is noticed, SOC will petition to intervene and the Permittee will have the opportunity to respond but such time consuming procedures need not take place. The Staff can and should grant LILCO's CP extension request now without issuing a notice of hearing.

In the past, the Staff has routinely issued CP extensions, where merited, without prior notice of hearing. The practice was, and remains, legally permissible<sup>2/</sup> and practically sound. To deviate from the established routine would, in our opinion, create an unnecessary and harmful precedent. The groundwork would be laid for expanding every

---

<sup>2/</sup> The Permittee is aware of the decision in *Sholly v. NRC*, No. 80-1691 (D.C. Cir. Nov. 19, 1980) but the case has no present legal effect since the court's mandate has been stayed until February 10, 1981. A petition for rehearing has been filed in that case.

future CP extension request into an intermediate licensing proceeding. And plants might be subject to several of these such proceedings in the course of their construction.

Our fears are rooted in the lack of reasoned grounds upon which to base such a departure from the norm. As explained below, SOC (1) fails to challenge LILCO's showing of "good cause", (2) raises Shoreham specific issues that should be litigated, if at all, at the OL stage, and (3) raises generic issues entirely inappropriate for a CP extension hearing. Thus, there is nothing in the petition that is even arguably the proper subject of CP extension hearings.

Most notable is the irrelevance of SOC's petition to the issue at hand. LILCO's letter asking for an extension of Shoreham's CP cited specific reasons for the inability to complete construction before December 31, 1980. Those reasons are a prima facie showing that "good cause" for the issuance of a CP extension exists. But nothing in SOC's petition challenges that "good cause" showing. SOC baldly states that "good cause" does not exist and then totally ignores LILCO's explanation. Instead of addressing relevant questions, SOC reaches into its bag of favorite issues hoping that one will fall on a sympathetic ear.

SOC's allegations encompass Shoreham specific and generic issues. The former--issues related to Shoreham's FES and LILCO's financial qualifications--are all ones that should be litigated, if at all, at the OL stage. It would make no sense to open up a new forum for these issues only months away from the start of OL hearings. And, we think, no Board sitting in a CP extension hearing would entertain such a notion. This is not the Bailly case<sup>3/</sup> where construction had yet to start when a CP extension hearing was noticed. Shoreham is approximately 85 percent complete. The OL proceeding has been underway since 1976 and only an SER is needed before the OL hearings begin.

The other issues SOC tries to rely upon are broad generic issues--difficult policy questions that every group opposing nuclear plants would love to be able to engage within the framework of adjudicatory proceedings on CP extension requests. SOC merely seeks a forum to air views more appropriately considered elsewhere. If the NRC gives a measure of legitimacy to SOC's ploy by noticing hearings in the Shoreham case, it will have no logical basis for declining to do so in other cases.

No issues have been raised that would prevent you from finding both (a) "good cause" for an extension of Shoreham's

---

<sup>3/</sup> Northern Indiana Public Service Company (Bailly Generating Station, Nuclear 1), ALAB-619, \_\_\_ NRC \_\_\_ (1980).

CP and (b) "no significant hazards consideration" involved in granting it. Therefore, you should issue the Shoreham CP extension now without prior notice of a hearing, an action that you legally have the power to take.

### III.

To the extent you perceive that SOC's request for the suspension, revocation or amendment of Shoreham's CP goes beyond the scope of the hearing request, it presumably will be considered by you pursuant to your authority under 10 CFR § 2.206(a). LILCO opposes SOC's attempt to terminate or alter the effectiveness of Shoreham's CP.

A request under 10 CFR § 2.206 for a show cause order "must identify a significant unresolved safety issue or a major change in facts material to the resolution of major environmental issues." Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), DD-79-10, 10 NRC 129, 130-31 (1979). But such a petition must not be used to seek reconsideration of issues already decided, issues that are properly within the scope of operating license proceedings, or issues that are more appropriately considered in other forums (e.g., rulemakings). See Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), DD-79-21, 10 NRC 717 (1979).

Given these guidelines, the Permittee believes a careful reading of the petition shows that the issues raised are not properly considered in a § 2.206 proceeding or so insubstantial that you would be justified in summarily denying the request for a show cause order. And we urge you to do just that. If, however, you elect not to act immediately but rather to investigate the factual allegations further, LILCO would like the opportunity to submit a detailed response to the petition. While 10 CFR § 2.206 does not provide for pleadings in response to petitions of this sort, it is established that Permittees may submit comments if so desired. Northern Indiana Public Service Company (Bailly Generating Station, Nuclear 1), CLI-78-7, 7 NRC 429, 433 (1978); Wisconsin Electric Power Company (Point Beach Nuclear Plant, Unit 1), DD-79-22, 10 NRC 728, 729 n.1 (1979). It would seem that if you feel it necessary to go beyond the face of the petition, a response by the Permittee would be helpful, if not essential, to the inquiry.

Lacking specified time limits for the submission of comments, LILCO requests until March 1, 1981 to respond.

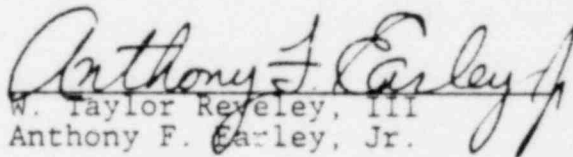
#### IV.

SOC has presented no factual basis for either (a) its request for a proceeding on the Shoreham CP extension

request, or (b) its request that Shoreham's CP be suspended, revoked or amended. With respect to the former, the requirements for issuance of a CP extension for Shoreham have been met. To delay because SOC wants to litigate issues unrelated to the extension request would set the precedent for fruitless litigation in a myriad of other licensing cases. If the NRC believes the extension request is meritorious it ought to act promptly. As to the latter, if the Director does not decide to deny the 10 CFR § 2.206 request immediately, LILCO requests until March 1 to submit detailed comments on the allegations made by SOC.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

  
W. Taylor Reveley, III  
Anthony F. Earley, Jr.

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

Dated: February 4, 1981

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

CERTIFICATE OF SERVICE

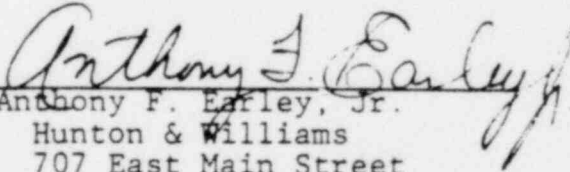
I hereby certify that copies of PERMITTEE'S RESPONSE  
TO SOC PLEADING of JANUARY 23, 1981 were served on the  
following by first-class mail, postage prepaid, on February 4,  
1981:

Harold R. Denton, Director  
Office of Nuclear Reactor Regulation  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20550

Stephen B. Latham, Esq.  
Twomey, Latham & Schmitt  
33 West Second Street  
P. O. Box 398  
Riverhead, NY 11901

Bernard M. Bordenick, Esq.  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Secretary  
U.S. Nuclear Regulatory Commission  
Attn: Chief, Docketing and Service Section  
Washington, D.C. 20555

  
Anthony F. Earley, Jr.  
Hunton & Williams  
707 East Main Street  
Richmond, VA 23212

Dated: February 4, 1981