

July 12, 1982



SECY-82-28C

ADJUDICATORY ISSUE
(Affirmation)

To: The Commissioners

From: Leonard Bickwit, Jr.
General Counsel

Subject: REQUEST IN SHOREHAM OPERATING LICENSE
PROCEEDING FOR ACCESS TO ALAB-653
(DIABLO CANYON PHYSICAL SECURITY)

Discussion: On July 25, 1982 Anthony F. Earley, counsel for applicant Long Island Lighting Company in the operating license proceeding for the Shoreham Nuclear Power Station, wrote the General Counsel to request that he and one other member of his law firm be given access to certain portions of ALAB-653 (Diablo Canyon Physical Security) and the record supporting it. In that letter Mr. Earley noted that security matters likely will have to be litigated in the Shoreham proceeding, and that the outcome of a number of the security issues may depend on how the NRC's security regulations are interpreted. Noting (1) that counsel for intervenor Suffolk County were also counsel for Governor Brown in the Diablo Canyon proceeding so that they have had access to ALAB-653, and (2) that it would not

Contact:
Rick Levi
41465

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 5
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make sense to litigate issues already decided by the Appeal Board without having access to the Appeal Board's opinion, Mr. Earley requested access to those portions of ALAB-653 and the underlying record dealing with (1) the definition of the design basis threat and (2) the interpretation of the Commission's regulations regarding the appropriate number of armed responders.

Mr. Earley conditioned his request for access to safeguards information on approval by PG&E. He also stated his willingness to sign protective agreements. Finally, he suggested that the Shoreham Licensing Board, NRC staff counsel and counsel for intervenor Suffolk County all be given access if they so desire, assuming the appropriate protective agreements are signed. Since testimony on security matters must be filed by July 20, Mr. Early requested that the information be made available by July 10, 1982.

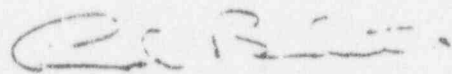
On July 2, 1982, Herbert H. Brown, counsel for Suffolk County, wrote the General Counsel to support Mr. Earley's request. Mr. Brown stated that Long Island Lighting Company's counsel and security experts should be given access to the entire Diablo Canyon physical security file. Mr. Brown then requested that an attorney in his firm, Michael S. Miller, and their consultants, Dr. Brian Jenkins and Marc Goldsmith, also be given access to the Diablo Canyon physical security file.

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Recommendation:

Since testimony on security matters in the Shoreham proceeding must be filed by July 20, this paper should be treated expeditiously.



Leonard Bickwit, Jr.
General Counsel

Enclosures: (1) Earley letter requesting access
(2) Brown letter requesting access
(3) Shoreham protective order
(4) Draft order

Commissioners' comments should be provided directly to the Office of the Secretary by c.o.b. Monday, July 26, 1982.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Monday, July 19, 1982, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open/Closed Meeting during the Week of July 26, 1982. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

DISTRIBUTION:
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ATTACHMENT 1

HUNTON & WILLIAMS

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WASHINGTON, D.C. 20036
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FILE NO. 24566.3

DIRECT DIAL NO. 804-788-8363

June 25, 1982

Leonard Bickwit, Jr., Esq.
Office of General Counsel
Nuclear Regulatory Commission
Washington, D.C. 20555

ALAB-653 (RESTRICTED)

Dear Mr. Bickwit:

Our firm represents the Long Island Lighting Company in the operating license proceeding for the Shoreham Nuclear Power Station. As you undoubtedly know, this proceeding is being contested by several intervenors, one of which (Suffolk County) has raised a number of issues relating to security at the Shoreham plant. It appears likely that security matters will have to be litigated.

The bulk of the security litigation will involve the interpretation of NRC regulations and their application to a specific set of facts. Obviously, our client believes it complies with the applicable security requirements. Suffolk County disagrees. The outcome of a number of the security issues may well turn on how the NRC's security regulations are interpreted.

Recently, the Atomic Safety and Licensing Appeal Board in the Diablo Canyon case conducted a hearing on security matters and issued an opinion on the subject. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-653 (Restricted) (1981). The transcript and opinion from this proceeding are not publicly available because they contain safeguards information. The recent Commission decision (CLI-82-7) denying review of the Appeal Board decision, however, has led us to believe that the Diablo Canyon security proceeding considered matters directly relevant to Shoreham.

HUNTON & WILLIAMS

June 25, 1982
Page Two

In order to represent our client effectively and to ensure the NRC regulations are applied consistently, we believe it is necessary to have access to certain parts of the Appeal Board transcript and opinion on security matters in the Diablo Canyon case. Counsel for Intervenor Suffolk County were also counsel for Governor Brown in Diablo Canyon. At least one of the County's security experts participated in that case as well. Thus, they have had access to all of these materials. As noted above, they seem to have raised issues in the Shoreham case that are similar to those litigated in Diablo Canyon. And although they are bound by a protective order not to disclose any of the safeguards information learned in the Diablo Canyon proceeding, they certainly will be aided by their knowledge of it. LILCO would be materially prejudiced if forced to litigate security matters without having had access to relevant parts of the Diablo Canyon transcript and opinion. Moreover, it would not make sense for the parties to litigate and the Board to decide issues without the benefit of the Appeal Board's guidance.

Two areas of inquiry are of interest to us: the definition of the design basis threat and the interpretation of the Commission's regulations regarding the appropriate number of armed responders.

LILCO is mindful of the fact that the material to which it seeks access contains safeguards information concerning the Diablo Canyon plant. Accordingly, LILCO believes it is appropriate for Pacific Gas & Electric to approve disclosure to LILCO of any such safeguards information. LILCO is willing to sign protective agreements regarding any safeguards information concerning the Diablo Canyon plant. Consequently, provided that Pacific Gas & Electric agrees, we ask that you allow Mr. T. S. Ellis, III of our firm and me access to ALAB-653 (Restricted) and the record supporting it, limited to the portions dealing with the two areas indicated above. Further, we suggest that the Shoreham Licensing Board, NRC Staff Counsel and Counsel for Suffolk County also be given access if they so desire, assuming the appropriate protective agreements are signed.

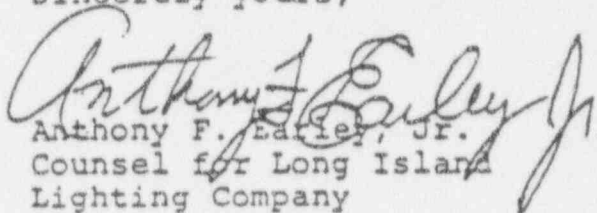
I would appreciate a rapid reply to this request. Testimony on security matters must be filed on July 20. It would be most helpful to us if the information is available no later than July 10, 1982.

HUNTON & WILLIAMS

June 25, 1982
Page Three

Thank you for your consideration in this important matter.

Sincerely yours,


Anthony F. Bailey, Jr.
Counsel for Long Island
Lighting Company

cc: Trip Rothschild, Esq. (OGC)
Philip Crane, Esq. (PG&E)
Herbert Brown, Esq. (Suffolk County)
Bernard M. Bordenick, Esq. (NRC Staff)
Lawrence Brenner, Esq. (ASLB)

ATTACHMENT 2

release

KIRKPATRICK, LOCKHART, HILL, CHRISTOPHER & PHILLIPS

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

1900 M STREET, N. W.

WASHINGTON, D. C. 20036

TELEPHONE (202) 462-7000
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TELEX 440809 KUPHE UI
WRITER'S DIRECT DIAL NUMBER

July 2, 1982

IN PITTSBURGH
KIRKPATRICK, LOCKHART, JOHNSON & HUTCHISON
600 OLIVER BUILDING
PITTSBURGH, PENNSYLVANIA 15222
(412) 366-8600

452-7005

Leonard Bickwit, Esq.
General Counsel
Nuclear Regulatory Commission
1717 H Street, N. W.
10th Floor
Washington, D. C.

Dear Mr. Bickwit:

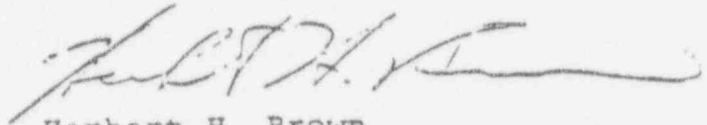
This is in reference to the letter dated June 25, 1982, from Anthony F. Early, Jr., of Hunton & Williams, to you, requesting that he, his law partner, and certain other persons directly involved in the Shoreham security proceeding be given access to portions of the Diablo Canyon security decision. We agree with Mr. Early's request, and believe that the litigation of security issues in Shoreham will be more productive and fair if all parties have access to the Diablo Canyon decision.

Based on our personal knowledge of the Diablo Canyon evidentiary record, we believe that it would be most useful if LILCO's counsel and security experts who have the requisite need-to-know are given access to the entire Diablo Canyon security file. The transcripts, exhibits, and pleadings would aid counsel and consultants who wish to prepare effectively for litigation. In this regard, we ask that an attorney in our firm who is working on the Shoreham security contentions, Mr. Michael S. Miller, and our consultants, Dr. Brian Jenkins and Mr. Marc Goldsmith, also be given access to Diablo Canyon security materials. These individuals, of course, will execute the necessary affidavit of non-disclosure.

With respect to a related matter, I ask that you bring to the immediate attention of the Commission a request filed by Governor Brown on October 13, 1981, for the public disclosure of non-protected information in the Diablo Canyon proceeding. The Governor stressed the importance of the Diablo Canyon decision for parties in future proceedings and for the public

at large. The Shoreham security proceeding underscores the need for favorable Commission action on the Governor's request. Enclosed herewith is a copy of the Governor's October 13, 1981 request.

Sincerely yours,



Herbert H. Brown

Enclosure

cc: Trip Rothschild, Esq. (OGC)
Philip Crane, Esq. (PG&E)
Bernard M. Bordenick, Esq. (NRC Staff)
Lawrence Brenner, Esq. (ASLB)
Thomas Moore, Esq. (ASLAB)
Byron S. Georgiou, Esq., Legal Affairs
Secretary to the Governor

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

release

BEFORE THE COMMISSION

In the Matter of)	
)	
PACIFIC GAS AND ELECTRIC COMPANY)	Docket Nos. 50-275 O.L.
)	50-323 O.L.
(Diablo Canyon Nuclear Power Plant,)	
Units 1 and 2))	

NOTIFICATION OF GOVERNOR BROWN'S PETITION
FOR COMMISSION REVIEW OF ALAB-653 AND
REQUEST FOR PUBLIC DISCLOSURE OF NON-PROTECTED INFORMATION

On October 13, 1981, Governor Brown filed a Petition for Review of the Appeal Board's decision that approved PG&E's security plan for the Diablo Canyon Nuclear Power Plant, ALAB-653 (Sept. 9, 1981). The Governor's Petition was required by the NRC to be withheld from public disclosure so as to ensure protection of the details of PG&E's security plan. This pleading, therefore, is to provide the public with knowledge that the Governor has requested the Commission to review the Appeal Board's security decision.

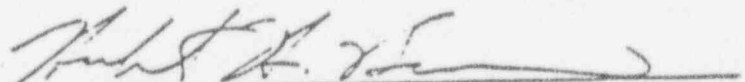
In addition, the Governor requests that the Commission delete from the Governor's Petition for Review any information that the Commission believes is "protected information" and not subject to public disclosure. Once such "protected information" is deleted, the Governor requests the Commission to release to the public the Governor's Petition. Much of the Governor's Petition for Review contains legal argument which is neither a description nor analysis of any details or facts contained in PG&E's

security plan. Such legal argument should be publicly disseminated. It is important that the public be apprised of the substance of the Governor's positions and of the serious legal and policy errors that the Governor contends the Appeal Board made in approving PG&E's security plan.

Finally, the Governor requests that the Commission similarly make public as much as possible of the Appeal Board's September 9, 1981, decision. Major portions of that decision relate to the Board's interpretation of the Commission's regulations and to the construction of the Atomic Energy Act and Part 73 of the NRC's regulations. It is essential that the public, other States, and indeed, other parties in NRC proceedings, have the benefit of knowing how the Appeal Board has interpreted the NRC regulations so that they may have sound and accurate guidance. There would be no public benefit gained from the Commission choosing to treat legal interpretations of its regulations and promulgations of its regulatory policies as matters that must be kept secret from the very public who are affected by those regulations and policies.

Respectfully submitted,

Byron S. Georgiou
 Legal Affairs Secretary
 Governor Brown's Office
 State of California



Herbert H. Brown
 Lawrence Coe Lanpher
 Christopher B. Hanback
 HILL, CHRISTOPHER AND PHILLIPS, P. C.
 1900 M Street, N. W.
 Washington, D. C.

October 13, 1981

Counsel for Governor Edmund G. Brown, Jr.
 State of California

ATTACHMENT 3

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:
Lawrence Brenner, Chairman
Dr. James H. Carpenter
Dr. Peter A. Morris

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In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,)
Unit 1))

Docket No. 50-322 O.L.

(Security Proceeding)

June 9, 1982

REVISED PROTECTIVE ORDER
GOVERNING ACCESS TO SECURITY PLAN INFORMATION

On January 14, 1981, this Board issued a "Protective Order on Security Plan Information" permitting access to the Shoreham security plan under specified conditions. Since that time, the Board has modified its original order on several occasions. In order to (1) clarify who is permitted access to Shoreham security information, (2) revise the conditions governing that access, and (3) reemphasize the importance of holding protective data in confidence, the Board has issued this Revised Protective Order. It supersedes all previous security protective orders issued in this proceeding.

Authorized persons who have executed an Affidavit of Non-Disclosure in the form attached shall be permitted access to protected security information (hereinafter, "safeguards information"), upon the following conditions:

1. Herbert E. Brown, Lawrence Coe Lanpher and Michael S. Miller, as counsel to Suffolk County, and Brian M. Jenkins, Richard E. White, Marc W. Goldsmith, Donald J. Dilworth, Philip McGuire and Thomas P. Compitello, as experts/consultants to the County, are qualified in accordance with the requirements of the Appeal Board's decision in Pacific Gas & Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398 (1977), and subsequent orders in that proceeding relevant to security plan information, and may have access to safeguards information on a "need to know" basis.

2. In addition, Ms. Diana Kraemer and Ms. Amy Pinto, secretaries to counsel for Suffolk County, are authorized to type pleadings and other materials which may contain safeguards information. Mr. Frank Jones, Deputy County Executive for Suffolk County, is authorized to consult with the above-named lawyers and experts/consultants regarding safeguards information on a "need to know" basis; however, he is not authorized to have access to the documents which themselves contain safeguards information.

3. Counsel and the experts/consultants who receive any protected (safeguards) information on behalf of Suffolk County (including transcripts of in camera hearings, filed testimony or any other document that reveals safeguards information) shall maintain its confidentiality as required by the attached Affidavit of Non-Disclosure, the terms of which are hereby incorporated into this protective order.

4. Counsel and the experts/consultants who receive any protected (safeguards) information shall use it solely for the purpose of participation in matters directly pertaining to Suffolk County's security contentions and any hearing that may be held or any further proceedings in this case directly involving security matters, and for no other purposes.

5. In order to keep the service list as limited as possible and thus to reduce the possibility of materials becoming lost or misplaced, copies of documents will be formally served on each Board member and only on the following who shall be considered "lead counsel" for service purposes:

Suffolk County:	Michael S. Miller
LILCO:	Anthony F. Earley, Jr.
NRC Staff:	Bernard M. Bordenick

In addition, copies of documents shall be served upon

Chief, Records Services Branch, Division of Technical Information and Document Control, Nuclear Regulatory Commission, Washington, D.C. 20555. Service shall be accomplished by the means described in paragraph 11 of this Order, except each outside envelope shall be marked "Personal and Confidential".

6. There shall be a limit of two transcripts per party for any proceeding conducted on the record in which safeguards information is disclosed or discussed. Parties shall not photocopy these transcripts without the express prior approval of the Board.

7. At the conclusion of this proceeding (including any necessary appeals), the person designated to maintain the official NRC file of documents shall ensure that extra copies of documents to be kept during the lifetime of the plant are destroyed.

8. Any individual in this proceeding who has reason to suspect that documents containing safeguards information may have been lost or misplaced, or that safeguards information has become available to unauthorized persons, shall notify the Board promptly of those suspicions and the reasons for them.

9. The County's counsel and experts/consultants may review safeguards information at a location made available by the NRC Staff in Silver Spring, Maryland, or at a facility on Long Island to be provided by LILCO. In addition, (a) any notes which designated Suffolk County representatives have made from their review of the safeguards information, and (b) copies of pleadings containing safeguards information, may be maintained by the following authorized persons at the following locations:

Richard E. White: Notes and pleadings to be kept at:
NRC Regional Office
Walnut Creek, California*/

Brian M. Jenkins: Notes and pleadings to be kept at:
The Rand Corporation
1700 Main Street
Santa Monica, California 90406*/

Herbert E. Brown
Lawrence Coe Lanpher
Michael S. Miller: Notes and pleadings to be kept at:
Kirkpatrick, Lockhart,
Hill, Christopher & Phillips
1900 M Street, N. W.
Washington, D. C. 20036.

In addition, permission to create notes and pleadings at the aforementioned locations is hereby granted.

*/ Designates an NRC-approved facility for the maintenance, storage and review of safeguards information.

10. Suffolk County and its above-named authorized representatives, in keeping safeguards information at the above-designated locations, shall take such protective measures and procedures necessary to satisfy fully the specific requirements of 10 C.F.R. § 73.21. Such protective measures and procedures are as follows:

a. The buildings in which the safeguards information (i.e., notes and pleadings) will be maintained will qualify as controlled access buildings in that they are either attended around the clock or locked at night;

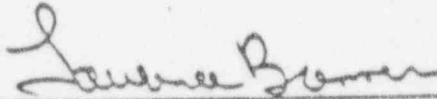
b. The safeguards information, when unattended, will be stored in a locked security storage container, such as a steel filing cabinet or map cabinet equipped with a locked bar and GSA-approved combination padlock. Access to the security storage container will be positively controlled by use of keys or other comparable means; and

c. While in use, the safeguards information will be under the sole control of an authorized individual.

11. With respect to transportation of the safeguards information in question, procedures will be utilized which ensure compliance with regulatory requirements. Specifically, documents containing safeguards information, when transmitted outside an authorized place of use or storage, will be enclosed in two sealed envelopes or wrappers, with the inner envelope or wrapper containing the name and address of the intended recipient and marked on both sides, top and bottom, with the words "SAFEGUARDS INFORMATION."

The outer envelope or wrapper will contain the intended recipient's name and address, with no indication that the document inside contains safeguards information. Safeguards information will be transported by registered or certified mail or by other courier methods or hand delivery which ensure that a receipt is obtained to verify delivery or by an individual authorized access pursuant to 10 C.F.R. § 73.21(c). Any authorized individual transporting the safeguards information in question will be instructed to retain the documents in his personal possession at all times.

IT IS SO ORDERED:



Lawrence Brenner, Chairman

June 9, 1982
Hauppauge, New York

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,)
Unit 1))

) Docket No. 50-322 O.L.

AFFIDAVIT OF NON-DISCLOSURE

I, _____, being duly sworn,
state:

1. As used in this Affidavit of Non-Disclosure, (a) "protected information" is (1) any form of the physical security plan for the Applicant's Shoreham Nuclear Power Station; or (2) any information obtained by virtue of these proceedings which is not otherwise a matter of public record and which deals with or describes details of the security plan; (b) an "authorized person" is (1) an employee of the Nuclear Regulatory Commission entitled to access to protected information; (2) a person who, at the invitation of the Atomic Safety and Licensing Board ("Licensing Board"), has executed a copy of this Affidavit; (3) a person employed by Long Island Lighting Company, the Applicant, and authorized by it in accordance with Commission regulations to have access to protected information, or (4) counsel for Long Island Lighting Company.

2. I shall not disclose protected information to anyone except an authorized person, unless that information has previously been disclosed in the public record of this proceeding. I will

safeguard protected information in written form (including any portions of transcripts of in camera hearings, filed testimony or any other documents that contain such information), so that it remains at all times under the control of an authorized person and is not disclosed to anyone else. It is understood that any secretaries having access to protected information shall have such access solely for the purpose of necessary typing and other support services. Further, Mr. Frank Jones, Deputy Suffolk County Executive, shall have access to protected information only in the manner authorized in the Board's June 9, 1982 Order entitled "Revised Protective Order Governing Access to Security Plan Information."

3. I will not reproduce any protected information by any means without the Licensing Board's express approval or direction. It is understood, however, that pleadings which are necessary to be prepared in this proceeding can be reproduced, provided that each copy thereof is maintained in confidence as required by the Board's protective order described hereafter. So long as I possess protected information, I shall continue to take these precautions until further order of the Licensing Board.

4. I shall similarly safeguard and hold in confidence any data, notes, or copies of protected information, by means of the following:

(a) Except as otherwise permitted in the Board's June 9, 1982 Order entitled "Revised Protective Order Governing Access to Security Plan Information," my use of the protected information will be made at a facility on Long Island to be made

Silver Spring, Maryland, made available by the NRC Staff.

(b) Except as otherwise permitted in the Board's June 9, 1982 Order entitled "Revised Protective Order Governing Access to Security Plan Information," I will keep and safeguard all such material in a safe to be provided by Long Island Lighting Company or the NRC Staff, after consultation with Long Island Lighting Company or the Staff, and to be located at all times at the above-designated locations.

(c) Except as otherwise permitted in the Board's June 9, 1982 Order entitled "Revised Protective Order Governing Access to Security Plan Information," any secretarial work performed at my request or under my supervision will be performed at the above locations either (1) by a secretary provided by the Long Island Lighting Company or the NRC Staff authorized in accordance with paragraph 1(b) above, or (2) by a secretary of my designation who has been authorized by the Board to perform such work.

(d) Necessary typing and reproduction equipment will be furnished by Long Island Lighting Company and the NRC Staff when secretarial work is performed at the LILCO or Staff offices.

5. I shall use protected information only for the purposes of participation in matters directly pertaining to Suffolk County's security contentions and any hearings that may be held or any further proceedings in this case dealing with security plan issues, and for no other purpose.

6. At the conclusion of this proceeding, I shall account to the Licensing Board or to a Commission employee designated by that Board for all the papers or other materials (including notes and papers prepared by me) containing protected information in my possession. I may either destroy the papers which do not need to be saved (such as unimportant notes) and certify that action in writing, or for papers which need to be saved (such as transcripts) may deliver them as provided herein. When I have finished using the protected information they contain, but in no event later than the conclusion of this proceeding (including any necessary appeals), I shall deliver those papers and materials that were not destroyed to the Licensing Board (or to a Commission employee designated by the Board), for safekeeping during the lifetime of the plant.

7. I make this agreement with the understanding that I will not corroborate the accuracy or inaccuracy of information obtained outside this proceeding by using protected information gained through participation in matters directly pertaining to Suffolk County's security contentions and any hearing that may be held or any further proceedings in this case dealing with security plan issues.

Subscribed and sworn to before me this

_____ day of _____ 1982.

ATTACHMENT 4