



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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USNRC

November 19, 1982

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PROD. & UTIL. FAC. 50-322 OL

OFFICE OF SECRETARY
DOCKETING & SERVICE
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Mr. Peter F. Cohalan
Suffolk County Executive
Office of the Suffolk County
Executive
Veterans Memorial Highway
Hauppauge, NY 11788

SERVED NOV 22 1982

Dear Mr. Cohalan:

In your November 8, 1982 letter to the Commission you requested that we intervene to prevent the implementation of a procedure for "evidentiary depositions" proposed by the Atomic Safety and Licensing Board presiding at the ongoing Shoreham operating license hearings. I understand your concern that Suffolk County, as an intervenor to that proceeding, will have a fair opportunity to present its concerns at this agency hearing. While the Commission does have inherent supervisory authority over the Shoreham proceeding, your request that the Commission exercise this authority is one that is precluded by the agency's rules, 10 CFR §§ 2.730(f), 2.786(b)(9), and thus must be denied.

In accordance with agency rules, 10 CFR §§ 2.718(i), 2.730, 2.785(b), if the Licensing Board decides to follow its proposed procedures, your objections, in the form of a request for certification, should be addressed in the first instance to the Licensing Board and, if you are unsuccessful in that forum, then to the Atomic Safety and Licensing Appeal Board.

I hope you will understand that our insistence on compliance with our rules does not indicate either a lack of interest in the Shoreham proceeding or any judgment on the merits of the Board's proposal. We have been following the proceeding closely and the option of exercising our supervisory authority will always be available to us.

Sincerely,


Nunzio J. Palladino

cc: All Parties in Docket No. 50-322



OFFICE OF THE COUNTY EXECUTIVE

PETER F. COHALAN
SUFFOLK COUNTY EXECUTIVE

JOHN C. GALLAGHER
CHIEF DEPUTY

November 8, 1982

The Honorable Nunzio J. Palladino
The Honorable Victor Gilinsky
The Honorable James K. Asselstine
The Honorable John F. Ahearne
The Honorable Thomas Roberts
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Messrs. Chairman and Commissioners:

On behalf of the citizens of Suffolk County, I am writing to inform you that the hearing on the safety of the Shoreham nuclear power plant is being marred by the procedural irregularity of your Licensing Board. I ask that you promptly intercede to exercise the Commission's supervisory authority over the conduct of the hearing.

Last week, the Licensing Board tentatively decided to discard normal hearing procedures on certain critical issues of emergency preparedness and quality assurance. The Board stated its intention not to preside over the cross-examination of expert witnesses and, thus, in effect not to exercise its important role of helping to shape the development of probative evidence in the adversarial framework established by law.

Instead, the Board directed the parties to schedule questioning among themselves by the invention of so-called "evidentiary depositions," outside the public hearing room and in the absence of the Board Members. The Board indicated that it would later rule on the admissibility of portions of the parties' question-and-answer transcripts at a brief public session and ask the witnesses any questions the Board might then have.

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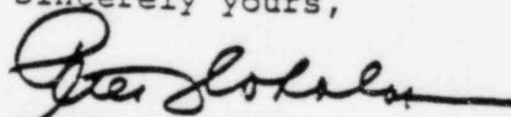
The Board's proposal displays either ignorance of or indifference to the meaning and importance of a public hearing. The proposal is a gross departure from the norm and is unacceptable to Suffolk County. Accordingly, I am instructing the County's counsel and expert consultants not to participate in the Board's proposed procedures.

By joining the NRC's Shoreham hearing, Suffolk County assumed and accepted the applicability of established rules and customary procedures. We now insist that your Licensing Board apply those rules and procedures. In Suffolk County, a "public hearing" means just that, nothing more and nothing less. A hearing is a forum of right and privilege in which to develop facts. The personal involvement of attentive adjudicators is indispensable. Your Licensing Board's invention of so-called "evidentiary depositions" as a substitute for the normal hearing procedures not only does violence to the settled adjudicatory framework of the NRC, but it cheapens the roles of both the Board and the parties to the proceeding.

To the residents of this County who are affected by Shoreham's safety, the issues being heard by the Licensing Board are serious matters. We hold the Board accountable to perform its judicial functions with care, temperament, and maturity befitting the high public responsibility with which it has been entrusted. The Board's proposal to discard normal hearing procedures in this case is an insult -- a suggestion that the NRC does not consider the public's safety concerns at Shoreham to be important enough to justify following the ordinary course.

I ask that you promptly act to terminate this potentially divisive controversy by instructing the Licensing Board to use normal public hearing procedures in the Shoreham proceeding. Suffolk County is not willing to permit the Shoreham safety hearing to become a laboratory for experiments in regulatory procedure.

Sincerely yours,



PETER F. COHALAN
SUFFOLK COUNTY EXECUTIVE

cc: Lawrence Brenner, Esq.
Dr. Peter A. Morris
Dr. James L. Carpenter