

12770

LOCKETED
USNRC

'92 FEB 14 P2:36 LILCO, February 13, 1992

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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

Docket No. 50-322
(Decommissioning)
DCOM

LILCO'S RESPONSE TO NRC STAFF'S MOTION TO DISMISS
INTERVENTION PETITIONS ON DECOMMISSIONING PLAN

On February 5, 1992, the NRC Staff moved to dismiss intervention petitions filed on January 22, 1992 by the Shoreham-Wading River Central School District (SWRCSD) and Scientists and Engineers for Secure Energy (SE₂). These petitions concern the Shoreham decommissioning plan proposed by the Long Island Power Authority. In its February 5 motion, the Staff asked for dismissal of the petitions on collateral estoppel and jurisdictional grounds. LILCO supports the Staff motion.

D503

I.

Nine months ago, LILCO sought the same sort of relief. As LILCO then stated:

In their April 19 requests for a hearing on the Shoreham transfer application, Petitioners pretend as if the Commission never issued CLI-91-02. Indeed, insofar as their NEPA-based argument is concerned, Petitioners' April 19 pleadings are a verbatim rehash of their earlier requests for hearing on LILCO's request for a POL, papers that were filed a month before the Commission issued CLI-90-08. Petitioners have not engaged the legal issues here at all. Rather, they have merely engaged their word-processor to replicate literally (including the same typographical errors) the very arguments that the Commission has already read, considered, and explicitly rejected.

Petitioners' disregard for the Commission's authority should not be tolerated. Their April 19 pleadings should be struck. In its Statement of Policy on Conduct of Licensing Proceedings, CLI-81-08, 13 NRC 452 (1981), the Commission stated that "[f]airness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations." 13 NRC 454. When a "participant fails to meet its obligations," the Commission continued, "the imposition of sanctions against the offending party" should be considered. Id. Among the "spectrum" of available sanctions, the Commission said, is the "refus[al] to consider a filing by the offending party." Id.

LILCO's Opposition to Petitioners' Request for Hearing on Shoreham's Transfer and LILCO's Response to Comments on Proposed No Significant Hazards Consideration Determination at 14-15, 17 (May 6, 1991).

LILCO advanced these arguments again two months ago, when SWRCSD and SE₂ continued their total disregard of prior Commission rulings. See *LILCO's Opposition to Petitioners' Contentions on License Transfer Amendment* at 3-5 (Dec. 9, 1991). LILCO then "renew[ed] its request that SWRCSD's and SE₂'s requests to intervene in the license transfer amendment proceeding . . . be struck as a sanction for their repeated, blatant disregard of the Commission's instruction and authority." *Id.* at 3.

II.

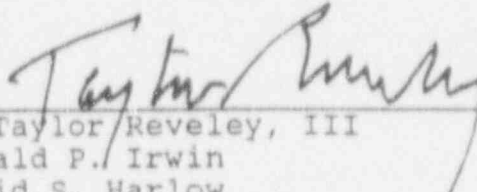
No federal court would tolerate the contemptuous course of conduct SWRCSD and SE₂ have pursued through a series of interlocking NRC proceedings, for more than two years.^{1/} While experience makes clear that the NRC adjudicatory process is more forgiving than the federal judicial process, the time has long since passed for the NRC to insist that its prior rulings be acknowledged and honored by SWRCSD and SE₂. Judges whose rulings are defied impose whatever sanctions are necessary to protect the integrity of their proceedings. The NRC should do the same, so that its own rulings amount to something more than words on paper that litigants may disregard when they find them inconvenient.

^{1/} The issue is not whether SWRCSD and SE₂ may disagree with, and challenge on appeal, NRC rulings with which they disagree. Of course they may. The issue is whether SWRCSD and SE₂ may flatly disregard NRC rulings then binding on the proceedings in which these parties are appearing. Of course they may not. But they have, incessantly. They have simply ignored dispositive NRC rulings with which they disagree. That is contempt pure and simple.

III.

In LILCO's view, the present intervention petitions should be struck. Further, the Petitioners should be instructed that they will be dismissed from all ongoing Shoreham proceedings if they continue their disregard of Commission rulings.

Respectfully submitted,



W. Taylor Reveley, III
Donald P. Irwin
David S. Harlow
Counsel for Long Island
Lighting Company

Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219

DATED: February 13, 1992

LILCO, February 13, 1992
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'92 FEB 14 P2:36

Before the Commission

RECEIVED
DOCKETING & SERVICE
BRANCH

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

CERTIFICATE OF SERVICE

I hereby certify that copies of LILCO'S RESPONSE TO NRC STAFF'S MOTION TO DISMISS INTERVENTION PETITIONS ON DECOMMISSIONING PLAN were served this date upon the following by Federal Express, as indicated by an asterisk, or by first-class mail, postage prepaid.

Commissioner Ivan Selin, Chairman*
Nuclear Regulatory Commission
One White Flint North Building
11555 Rockville Pike
Rockville, MD 20852

Commissioner E. Gail de Planque*
Nuclear Regulatory Commission
One White Flint North Building
11555 Rockville Pike
Rockville, MD 20852

Commissioner Kenneth C. Rogers*
Nuclear Regulatory Commission
One White Flint North Building
11555 Rockville Pike
Rockville, MD 20852

The Honorable Samuel J. Chilk*
The Secretary of the Commission
Office of the Secretary
U.S. Nuclear Regulatory Commission
One White Flint North Building
11555 Rockville Pike
Rockville, MD 20852

Commissioner James R. Curtiss*
Nuclear Regulatory Commission
One White Flint North Building
11555 Rockville Pike
Rockville MD 20852

Administrative Judge*
Thomas S. Moore, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
East-West Towers, Fourth Floor
4350 East-West Highway
Bethesda, MD 20814

Commissioner Forrest J. Remick*
Nuclear Regulatory Commission
One White Flint North Building
11555 Rockville Pike
Rockville, MD 20852

Administrative Judge*
Jerry R. Kline
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
East-West Towers, Fourth Floor
4350 East-West Highway
Bethesda, MD 20814

Administrative Judge*
George A. Ferguson
Atomic Safety and Licensing Board
5307 A1 Jones Drive
Shady Side, MD 20764

James P. McGranery, Jr., Esq.*
Dow, Lohnes & Albertson
1255 23rd Street, N.W., Suite 500
Washington, D.C. 20037

Mitzi A. Young, Esq.*
Office of the General Counsel
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852

Nicholas S. Reynolds, Esq.
David A. Repka, Esq.
Winston & Strawn
1400 L Street, N.W.
Washington, D.C. 20005

Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219

DATED: February 13, 1992

Stanley B. Klimberg, Esq.
Executive Director and General Counsel
Long Island Power Authority
200 Garden City Plaza, Suite 201
Garden City, NY 11530

Carl R. Schenker, Jr., Esq.*
Counsel, Long Island Power Authority
O'Melveny & Myers
555 13th Street, N.W.
Washington, D.C. 20004

Gerald C. Goldstein, Esq.
Office of General Counsel
New York Power Authority
1633 Broadway
New York, NY 10019

Samuel A. Cherniak, Esq.
New York State Department of Law
Bureau of Consumer Frauds and Protection
120 Broadway
New York, NY 10271

Stephen A. Wakefield, Esquire
General Counsel
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585


David S. Harlow