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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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'84 JUN -8 P4:54

COMMISSIONERS:

Nunzio J. Palladino, Chairman
Victor Gilinsky
Thomas M. Roberts
James K. Asselstine
Frederick M. Bernthal

OFFICE OF SECRETARY
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BRANCH

SERVED JUN 11 1984

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

Docket No. 50-322-0L-4
(Low Power)

ORDER

On May 21, 1984, Suffolk County requested the Commission to "clarify" its Order of May 16, 1984 (CLI-84-8). The State of New York supported that request. An examination of Suffolk County's filing shows that some of the requests are actually either for reconsideration or substantive interpretations of the Commission's rules. Well-established principles of administrative regularity require a movant to provide a strong factual showing in support of a motion for reconsideration and strongly suggest that the Commission should not make a substantive interpretation of its rules without the views of the parties. Suffolk County has not provided an adequate factual predicate for reconsideration or any legal analysis in support of its proposed interpretation of the rules. Moreover, Suffolk County has not raised any issue requiring clarification.

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However, in the interest of focusing any further proceedings on the substantive issues, the Commission responds to Suffolk County and the State of New York as follows: Suffolk County has demonstrated no practical consequences from the Commission's use of the word "resume" in CLI-84-8 to characterize the hearing before the Licensing Board. The State of New York's concern that a resumed hearing would deny New York procedural rights is speculative. Suffolk County's concerns over the schedule for any such hearing are premature and also speculative. The schedule was established as guidance to the Licensing Board and the Board may determine to modify that schedule on the basis of adequately supported motions. As for Suffolk County's ability to file motions for disposition as a matter of law, the Commission explicitly stated in CLI-84-8 that "[t]he Licensing Board shall conduct the proceeding on the modified application in accordance with the Commission's rules." Finally, it is for the Licensing Board to address in the first instance the "common defense and security" showing required under 10 C.F.R.

50.12(a).¹

It is so ORDERED.²



For the Commission

Samuel J. Chilk
 SAMUEL J. CHILK
 Secretary of the Commission

Dated at Washington, DC,
 this 8th day of June, 1984.

¹There are currently pending before the Commission the following joint motions by Suffolk County and the State of New York:

1. Motion of May 24, 1984, to strike certain of LILCO's filings i.e., Motions for Summary Disposition on Phase I and Phase II Low Power Testing and Motion for Prompt Response to LILCO's Summary Disposition Motion;
2. Motion of May 30, 1984, supplementing the requests for clarification addressed in this Order;
3. Motion of May 31, 1984, for prompt clarification of this proceeding; and
4. Motion of June 1, 1984, for prompt Commission action on pending motions and for stay of certain Licensing Board Orders.

These motions all address issues which are properly before the Licensing Board, and therefore, have been directed to the Board for its consideration.

²Chairman Palladino abstained and Commissioner Gilinsky did not participate. Chairman Palladino's separate statement is attached.

Separate Statement of Chairman Palladino

I have decided to abstain on this matter. The reasons for my decision are as follows:

On June 6, 1984, Suffolk County and the State of New York filed a request for my recusal. I have not had sufficient time to review in detail the arguments made in that paper, consult with legal counsel, or consider the steps I should take in responding to it. Therefore, I am not prepared at this time to respond to the recusal request.

My action on this matter does not imply a decision on my part with regard to the requested recusal or my participation in any future Shoreham matter.