

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. 50-322-0L-4  
(Low Power)

JOINT AFFIDAVIT OF WILLIAM J.  
DIRCKS AND GUY H. CUNNINGHAM, III

Now come William J. Dircks and Guy H. Cunningham, III, and being duly sworn, depose and say as follows:

1. The purpose of this affidavit is to provide factual information concerning the meeting that took place in the Chairman's conference room on March 16, 1984 and which has been cited by New York State and Suffolk County in support of their motion that the Chairman recuse himself from further participation in the Shoreham proceeding. Attendance at this meeting included, in addition to the Chairman and his immediate staff, representatives of the Office of Congressional Affairs, the General Counsel and his Deputy, the Chairman of the Licensing Board Panel, the Executive Director for Operations, the Director of Nuclear Reactor Regulation, the Executive Legal Director and the Chief Hearing Counsel from OELD, and Robert Purple from NRR.

2. The purpose of the meeting was to assist the Chairman in preparing for the hearings before Congressman Bevill, Chairman of the House Appropriations Committee, in which it was anticipated that

questions would be asked about the status of near-term operating licenses. In the past, this Committee has been critical of what it perceived as licensing delays, and the Chairman had to be prepared to expect hard questions on this subject. Parenthetically we observe that there have been suggestions that this meeting was an ex parte session convened by the Chairman for the purpose of discussing Shoreham. We emphasize that the purpose was not to discuss Shoreham, but to discuss a number of near-term operating licensing actions and that in our view, no impermissible ex parte discussion took place during the meeting.

3. Mr. Purple went through a number of prepared summary sheets describing the status of several of the plants deemed to be of concern and highlighted possibly troublesome issues, i.e. items that could cause delay beyond currently projected licensing dates. The briefings were addressed to status matters.

4. When the question of Shoreham came up, the discussion turned to the impact of the diesel generator issue.

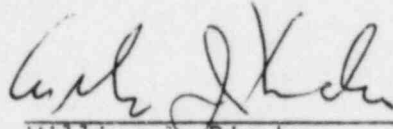
5. The Chairman raised the question, which we understood to be procedural, whether the diesel generator issue had to be resolved prior to low-power operation. He was informed that the applicant could, but had not yet done so, request low-power authorization pursuant to 10 C.F.R. § 50.57(c), and that the applicant would at least have an opportunity to try to make a showing that some resolution short of that which would be required for full-power operation, would justify low-power operation. The Chairman then questioned whether such an application would have to be considered by a hearing board to which he was informed the answer was yes. He then inquired how long such a proceeding

would take, whether it would be as long as a typical hearing? The General Counsel informed him that in the past the Commission has requested expedited hearings on narrow-issue proceedings. In fact, the Deputy General Counsel cited the example of a hearing that was held and completed in one day. The Chairman then asked questions as to whether an expedited hearing could be held on a request from LILCO for a low-power application (which the Staff had informed him was known to be forthcoming) and the discussion turned to a hypothetical reasonably expedited schedule. Most of the discussion was between the Chairman and the Office of the General Counsel, with occasional input from other participants. At the conclusion of the discussion, there was consensus that it would be possible to conduct an expedited proceeding in something on the order of six to eight weeks. The Chairman requested the Office of the General Counsel to prepare a more detailed analysis of this subject.

6. The Executive Legal Director pointed out to the Chairman that if consideration were given to such an expedited proceeding, it should be kept in mind that the current Shoreham Licensing Board Chairman was also Chairman of another active case. No suggestion was made regarding what effect should be given to consideration of this factor. Specifically, the creation of a new board was not discussed, nor was the removal of Judge Brenner for tactical (or any other) reasons discussed.

7. In our judgment the discussion was entirely procedural and hypothetical, and dealt with the matter of the possible resolution of an issue in a time frame consistent with operation of the plant at or near the date requested by the applicant if the outcome of the proceeding were to favor such a result. At no time during the meeting was there

any discussion of any substantive matter at issue in the Shoreham (or any other) proceeding. No one in the room expressed any prejudgment, nor evinced any indication of having a prejudgment, of what the actual outcome would be. The focus was simply on how quickly the issue could be decided.



William J. Dircks

Subscribed and sworn to before me  
this 3<sup>rd</sup> day of July 1984


  
Malinda A. McDonald  
Notary Public

My Commission expires: 7/1/86



Guy H. Cunningham, III

Subscribed and sworn to before me  
this 3<sup>rd</sup> day of July 1984

  
Malinda A. McDonald  
Notary Public

My Commission expires: 7/1/86



W. Taylor Reveley, III, Esq.  
Anthony F. Earley, Esq.  
Robert M. Rolfe, Esq.  
Hunton and Williams  
707 East Main Street  
P.O. Box 1535  
Richmond, Virginia 23212

Mr. Martin Suubert  
c/o Congressman William Carney  
1113 Longworth House Office Building  
Washington, D. C. 20515

Martin Bradley Ashare, Esq.  
Suffolk County Attorney  
H. Lee Dennison Building  
Veterans Memorial Highway  
Hauppauge, New York 11788

Atomic Safety and Licensing  
Appeal Board Panel\*  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555


Stephen B. Latham, Esq.  
Twomey, Latham & Shea  
33 West Second Street  
P.O. Box 398  
Riverhead, New York 11901

James Dougherty, Esq.  
3045 Porter Street, N. W.  
Washington, D. C. 20008

Mr. Brian McCaffrey  
Long Island Lighting Company  
Shoreham Nuclear Power Station  
P.O. Box 618  
North Country Road  
Wading River, New York 11792

Jay Dunkleberger, Esq.  
New York State Energy Off.  
Agency Building 2  
Empire State Plaza  
Albany, New York 12223

Atomic Safety and Licensing  
Board Panel\*  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555



---

Robert G. Perlis  
Counsel for NRC Staff