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July 20, 1984

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Washington, D.C. 20555

Dr. George A. Ferguson
Administrative Judge
Howard University
School of Engineering
2300 6th Street, N.W.
Washington, D.C. 20059

Re: Long Island Lighting Company;
Shoreham Nuclear Power Station,
Unit 1; Docket No. 50-322-OL

Gentlemen:

In a footnote on page 2 of the Memorandum and Order Denying LILCO's Motion to Quash Subpoenas for Deposition of ABS Employees, the Board accused this firm of intentionally misleading the Board by omitting to state certain information in Suffolk County's Application for Issuance of Subpoenas, July 9, 1984 (the "Application") and for this reason criticized counsel for Suffolk County. The Board's accusation is incorrect and its criticism is unjustified. The omitted information was of no significance to the Application and was irrelevant under the controlling NRC regulatory standards.

In setting forth the "general relevance" of the evidence sought to be subpoenaed (as required by 10 C.F.R. § 2.720), the Application stated that the County learned in mid-May that Trans-america Delaval, Inc. ("TDI") had requested ABS approval of the replacement crankshafts, that shortly thereafter the County's representatives contacted ABS to attempt to obtain information from them about the matter, that two of the employees of ABS which the County sought to depose attended a meeting in March during which the requested TDI approval was discussed, and that thereafter TDI submitted a torsional analysis and other information to

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add: J. J. ...
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one of the ABS proposed deponents to assist in obtaining the approval. The Application stated that on July 3 the ABS refused to voluntarily provide substantive information to the County, and the Application explained the relevance of deposing the ABS personnel concerning an alleged certification letter and the torsional analysis and other information submitted by TDI. In a footnote the County noted that these documents had not been produced by LILCO and TDI until June 22 and July 5, 1984; copies of these documents were attached to the Application.

To show the importance of the subpoenas to issues joined in litigation, the Application also stated that LILCO claims the ABS has certified the crankshafts (referring to LILCO's Response to Suffolk County's Filing Concerning Litigation of Emergency Diesel Generator Contentions, June 21, 1984, at 11). The Board charges that this firm intentionally misled the Board "in a manner potentially beneficial to" our client, because the Application did not also state that on May 9 the County knew that the ABS had given some form of certification or approval of the crankshafts. If the Board was misled by this omission, it was not intentional, and the omission could not have benefited our client.

It is clear that the entire thrust of the Application was, properly, to meet the standards of Section 2.720, to demonstrate the relevancy of obtaining testimony and evidence from the ABS personnel concerning the matters surrounding the alleged certification of the crankshafts and the documents cited and attached. In our view, the issue of when the County knew or had reason to believe that ABS certification had been obtained was not and is not material or relevant to the Application or the standards of Section 2.720.

Apparently the Board assumes that we were concerned about the timeliness of the Application, and tried to improve the posture of the Application by implying that the County only learned on June 22, rather than in mid-May, that claims of ABS approval had been made. That we were not concerned about the timeliness of the Application is amply demonstrated in Suffolk County's Opposition to LILCO's Motion to Quash Subpoenas, July 16, 1984 (the "County's Opposition"). The County's Opposition, inter alia, responds to LILCO's Motion to Quash Subpoenas by conceding that

The County could have sought to subpoena the ABS personnel earlier, but such action would have been premature and

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inefficient, and the depositions would have been taken without key documents not then produced by LILCO. Moreover, LILCO's complaint that the County's Application was untimely is without legal support. An application for subpoenas of non-parties pursuant to Section 2.720 may be made at any time, and is not limited to the discovery period.

County's Opposition at 2.

The County's Opposition was prepared on Sunday, July 15, and filed by messenger with the Board on the morning of July 16.^{1/} We received the Board's July 16 Order on July 18. Hence, the views in the County's Opposition were not influenced by the Board's July 16 Order.

Both the Application and the County's Opposition make it perfectly clear that the County preferred to obtain information from ABS informally and voluntarily, and that the County chose not to apply for subpoenas until after July 3, when we were informed that ABS would not cooperate voluntarily. There is no argument in the Application regarding any alleged timeliness requirements, and no reliance upon the issue of when the County learned that ABS had given some form of approval of the replacement crankshafts. The issue of whether ABS certification is claimed is discussed solely in the context of the relevance of the evidence and testimony sought to be subpoenaed.

Accordingly, there was no way in which the omission of what we regarded and regard as an immaterial and irrelevant matter could have benefited our client or ourselves. This firm did not "shade" any facts, did not intentionally mislead anyone, and did not act in a manner other than one which comports with the highest ethical standards of legal practice.

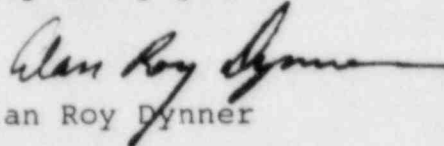
^{1/} After sending the County's Opposition out by messenger, we received a telephone call from Judge Brenner's secretary that LILCO's Motion had been denied and that the Board would be preparing an order. By return telephone call we asked Judge Brenner's secretary to inform him that the County's Opposition was being filed in case he wished to read it before writing the order. The County's Opposition is not mentioned in the July 16 Order.

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This firm, and not simply the specific attorney who signed the pleading, is responsible for the Application. We remain convinced that the Application fully and fairly set forth the facts material to the issue of whether subpoenas should be issued pursuant to the applicable NRC regulation.

Very truly yours,



Alan Roy Dynner

ARD/dk

cc: Service List