

STATEMENT
OF
NUNZIO J. PALLADINO, CHAIRMAN
U. S. NUCLEAR REGULATORY COMMISSION
BEFORE THE
SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
U. S. HOUSE OF REPRESENTATIVES

MAY 17, 1984

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I AM PLEASED TO BE HERE THIS MORNING, ALONG WITH MY FELLOW COMMISSIONERS. IN YOUR LETTER OF APRIL 25, 1984 YOU REQUESTED THIS HEARING IN ORDER TO DISCUSS THE PROCEDURES WHICH THE NUCLEAR REGULATORY COMMISSION IS FOLLOWING WITH REGARD TO THE SHOREHAM NUCLEAR POWER PLANT.

AT THE OUTSET I SHOULD POINT OUT THAT THE SHOREHAM PROCEEDING IS NOW PENDING BEFORE THE NRC. IT IS AN ADJUDICATION BEING CONDUCTED UNDER THE ADMINISTRATIVE PROCEDURE ACT, AND HERE MY FELLOW COMMISSIONERS AND I FUNCTION IN A QUASI-JUDICIAL CAPACITY. AS ADJUDICATORS, WE MUST MAKE OUR DECISIONS ON THE RECORD THAT COMES BEFORE US, FREE FROM OUTSIDE INFLUENCE, REAL OR APPARENT. WE HAVE DISCUSSED, IN CORRESPONDENCE WITH THE COMMITTEE, THE LEGAL PRECEDENTS WHICH INDICATE THAT CLOSE CONGRESSIONAL INQUIRY INTO A DECISIONMAKER'S DELIBERATIVE PROCESSES IN AN ADJUDICATION WHICH IS STILL IN PROGRESS CAN JEOPARDIZE THE DUE PROCESS RIGHTS

OF THE PARTIES AND LEAD TO INVALIDATION BY A REVIEWING COURT OF THE OUTCOME OF THE ADJUDICATION.

AS A RESULT, THERE IS A NEED TO BALANCE THE COMMISSION'S OBLIGATION, ON THE ONE HAND, TO KEEP THE CONGRESS "FULLY AND CURRENTLY INFORMED," AND ITS OBLIGATION, ON THE OTHER HAND, TO ASSURE THAT THERE IS NEITHER THE REALITY NOR THE APPEARANCE OF PREJUDICE TO, OR UNDUE INFLUENCE ON, THE INTEGRITY OF THE ADJUDICATORY PROCESS.

I WOULD LIKE TO EMPHASIZE THAT IT IS NOT MY INTENT TO SEEK LEGAL EXCUSES TO FRUSTRATE THIS COMMITTEE'S INQUIRY. ON THE CONTRARY, IT IS MY INTENT TO RESPOND TO THE COMMITTEE'S CONCERNS AS FULLY AS I CAN.

I WOULD LIKE TO TURN NOW TO A DISCUSSION OF THE BACKGROUND OF THE SHOREHAM PROCEEDING. FOLLOWING THAT, I WILL HIGHLIGHT THE CURRENT STATUS OF THE CASE.

SHOREHAM BACKGROUND

THE LONG ISLAND LIGHTING COMPANY, OR "LILCO", APPLIED FOR A CONSTRUCTION PERMIT FOR THE SHOREHAM NUCLEAR POWER STATION IN 1968, AND RECEIVED THAT PERMIT IN 1973. IN 1975 LILCO APPLIED FOR AN OPERATING LICENSE. A LICENSING BOARD WAS APPOINTED IN 1981 TO CONDUCT A PUBLIC HEARING, AND THE HEARING STARTED IN 1982. A SECOND BOARD WAS APPOINTED IN AUGUST, 1982 TO ADDRESS PHYSICAL SECURITY ISSUES IN THE CASE. A THIRD BOARD WAS APPOINTED IN MAY, 1983 TO DEAL WITH OFFSITE EMERGENCY PLANNING.

ON JUNE 3, 1983 LILCO FILED A MOTION WITH THE LICENSING BOARD REQUESTING A LICENSE TO OPERATE AT LOW POWER -- THAT IS, AT UP TO 5% OF RATED POWER. ON SEPTEMBER 21, 1983 THE FIRST LICENSING BOARD ISSUED A PARTIAL INITIAL DECISION IN WHICH IT RULED THAT FUEL LOADING AND LOW POWER OPERATION COULD BE AUTHORIZED IN ALL OTHER RESPECTS EXCEPT FOR THE NEED TO RESOLVE A PENDING CONTENTION RELATED TO EMERGENCY ONSITE DIESEL GENERATORS. (LBP-83-57, 18 NRC 468 (1983).)

ON FEBRUARY 22, 1984 THE LICENSING BOARD ADMITTED THREE CONTENTIONS, FILED BY SUFFOLK COUNTY, RELATING TO THE DIESEL GENERATORS. IN AN ORAL RULING THE BOARD STATED THAT, ON THE BASIS OF THE RECORD THEN BEFORE IT, IT COULD NOT FIND THE DIESEL GENERATORS ADEQUATE TO PERMIT LOW POWER OPERATION UNLESS IT CONSIDERED THE THREE CONTENTIONS ON THE MERITS. HOWEVER, THE BOARD ADDED:

WHAT WE HAVE SAID SO FAR WOULD NOT PRECLUDE LILCO FROM PROPOSING OTHER METHODS BY WHICH LILCO BELIEVES THE STANDARDS OF 50.57(c) COULD BE MET, SHORT OF LITIGATION OF CONTENTIONS 1, 2, AND 3 ON THE MERITS. OR POSSIBLY SEEKING SOME SORT OF WAIVER UNDER 3 OR OTHER PROCEDURES.

(TRANSCRIPT OF CONFERENCE OF PARTIES, FEBRUARY 22, 1984, PAGE 21,616.)

FOUR WEEKS LATER, ON MARCH 20, 1984 LILCO FILED SUCH A REQUEST WITH THE LICENSING BOARD.

ON MARCH 30, 1984 JUDGE COTTER APPOINTED A NEW LICENSING BOARD, WITH JUDGE MARSHALL MILLER THE PRESIDING OFFICER, TO CONSIDER LILCO'S LOW POWER MOTION. IN HIS ORDER ESTABLISHING THE NEW BOARD, JUDGE COTTER STATED THAT HE HAD BEEN ADVISED BY THE EXISTING SHOREHAM BOARD THAT TWO OF ITS MEMBERS WERE HEAVILY COMMITTED TO WORK ON ANOTHER OPERATING LICENSE PROCEEDING.

CURRENT STATUS OF SHOREHAM CASE

ON APRIL 4 THE NEW BOARD HELD ORAL ARGUMENT ON THE ISSUES RAISED BY THE PARTIES IN THEIR FILINGS, AND ON A SCHEDULE FOR THE EXPEDITED CONSIDERATION AND DETERMINATION OF THOSE ISSUES. ON APRIL 6, THE BOARD ISSUED A MEMORANDUM AND ORDER IN WHICH IT RULED THAT A HEARING SHOULD BE HELD ON AN EXPEDITED BASIS ON LILCO'S LOW POWER MOTION. THE BOARD SET OUT IN ITS ORDER THE STANDARD WHICH IT BELIEVED LILCO HAD TO MEET IN ORDER TO SUCCEED ON ITS MOTION, AND IT ALSO SET OUT ITS SCHEDULE FOR A DECISION.

ON APRIL 16, SUFFOLK COUNTY AND NEW YORK STATE FILED OBJECTIONS TO THE BOARD'S MEMORANDUM AND ORDER IN SIMULTANEOUS FILINGS BEFORE THE LICENSING BOARD AND THE COMMISSION. ON APRIL 20, THE LICENSING BOARD ISSUED AN ORDER REAFFIRMING THE APRIL 6 ORDER.

ON APRIL 23, THE COMMISSION MET TO CONSIDER SUFFOLK COUNTY'S AND NEW YORK STATE'S OBJECTIONS. AFTER DELIBERATIONS, THE COMMISSION DECIDED NOT TO STAY THE PROCEEDINGS BEFORE THE LICENSING BOARD.

SUFFOLK COUNTY AND THE STATE OF NEW YORK THEN SOUGHT RELIEF IN COURT. ON APRIL 25, 1984 JUDGE JOHNSON OF THE FEDERAL DISTRICT COURT FOR THE DISTRICT OF COLUMBIA ISSUED A TEMPORARY RESTRAINING ORDER AGAINST THE NRC, ENJOINING THE COMMISSION FROM FURTHER HEARINGS BEFORE THE LICENSING BOARD ON LILCO'S LOW POWER MOTION. JUDGE JOHNSON FOUND THAT THE EXPEDITED SCHEDULE ADOPTED BY THE BOARD APPEARED TO PRECLUDE SUFFOLK COUNTY AND THE STATE OF NEW YORK FROM ADEQUATELY PREPARING THEIR CASE.

THE RESTRAINING ORDER WAS MADE EFFECTIVE PENDING A HEARING ON THE REQUEST BY THE COUNTY AND THE STATE FOR A PRELIMINARY INJUNCTION. A SCHEDULING CONFERENCE ON THE INJUNCTION WAS HELD BEFORE JUDGE GESELL ON APRIL 26. JUDGE GESELL MADE CLEAR HIS INTEREST IN SEEING THAT THE PARTIES REACHED A NEGOTIATED ACCOMMODATION, IF POSSIBLE, ON A SCHEDULE FOR THE LOW POWER HEARING.

THE SAME DAY THAT JUDGE GESELL HELD HIS CONFERENCE, THE COMMISSION AGREED TO DIRECT THE PARTIES TO THE LOW POWER PROCEEDING TO MEET WITH THE MILLER LICENSING BOARD ON THE FOLLOWING DAY (APRIL 27) TO DISCUSS A POSSIBLE SCHEDULE. A BRIEF ORDER TO THAT EFFECT WAS APPROVED, AND ITS SUBSTANCE WAS COMMUNICATED TO THE PARTIES AND THE BOARD BY TELEPHONE ON APRIL 26. IN ADDITION, ON APRIL 26 THE COMMISSION RECONSIDERED WHETHER OR NOT TO REVIEW IMMEDIATELY THE BOARD'S APRIL 6 ORDER; BUT THE ISSUE WAS NOT DECIDED UNTIL THE FOLLOWING DAY, APRIL 27, WHEN THE COMMISSION AGREED TO CONSIDER AN ORDER WHICH CALLED FOR IMMEDIATE COMMISSION REVIEW.

ON APRIL 30, 1984 THE COMMISSION ISSUED AN ORDER VACATING THE SCHEDULE ADOPTED BY THE LICENSING BOARD AND DIRECTING THE PARTIES TO ADDRESS, AT ORAL ARGUMENT BEFORE THE COMMISSION ON MAY 7, SEVERAL LEGAL AND TECHNICAL ISSUES RELEVANT TO THE LOW POWER PROCEEDING. THE PARTIES WERE INVITED TO FILE WRITTEN SUBMISSIONS AS WELL. THE COMMISSION ORDER ANNOUNCED THAT A DECISION WOULD BE RENDERED PROMPTLY. IT ALSO STATED THAT, IN THE EVENT ANY SUBSEQUENT HEARING BEFORE THE LICENSING BOARD WAS HELD, THE COMMISSION WOULD ALLOW A REASONABLE PERIOD OF TIME FOR THE PARTIES TO PREPARE THEMSELVES, AND WOULD SET A REASONABLE SCHEDULE FOR PREHEARING ACTIVITIES AND FOR THE CONDUCT OF THE HEARING ITSELF. THE PARTIES WERE INVITED TO COMMENT AT ORAL ARGUMENT ON SCHEDULING MATTERS.

IN LIGHT OF THE APRIL 30 ORDER, THE PARTIES TO THE LAWSUIT BEFORE JUDGE GESELL SOUGHT AND RECEIVED A VOLUNTARY DISMISSAL OF THE CASE.

ON MAY 7, 1984 THE COMMISSION HEARD DIRECT AND REBUTTAL ARGUMENT FROM ALL THE PARTIES. THE COMMISSION IS CURRENTLY CONSIDERING AN ORDER AND EXPECTS TO MAKE A DECISION ON IT IN THE VERY NEAR FUTURE.

MR. CHAIRMAN, THIS COMPLETES MY PREPARED STATEMENT.