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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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OFFICE OF SECRETARY
DOCKETING & SERVICE
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.....
In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power
Station, Unit 1)
.....

Docket No. 50-322-04

October 14, 1986

MOTION OF GOVERNOR MARIO M. CUOMO, REPRESENTING THE
STATE OF NEW YORK, TO COMPEL PRODUCTION OF AN AUDIT
REPORT ON SHOREHAM PERSONNEL AND MOTION FOR
EXPEDITED CONSIDERATION

SUMMARY

Governor Mario M. Cuomo, representing the State of New York, hereby requests, pursuant to 10 CFR §2.730(a) (1986), that the Commission compel Long Island Lighting Company (LILCO) to immediately produce an audit report on the training and qualifications of Shoreham personnel (hereinafter referred to as the "Audit Report"), which the NRC Staff discussed in NRC Inspection Report No. 50-322/86-10. The State of New York also seeks an order from the Commission compelling LILCO to immediately produce all documents created by or for LILCO after the audit which relate to the analysis or resolution of the 35 audit findings and 19 audit observations noted therein.

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Further, the State of New York requests that the Commission direct the NRC Staff to immediately produce the Audit Report and all documents pertaining thereto, including analyses and resolutions of the 35 findings and 19 observations. Such action is necessary to remedy the NRC Staff's violation of the Federal Records Disposal Act (44 USCA §3301 et seq.), and is required by the Federal Records Act (44 USCA §2901 et seq.) and the Federal Freedom of Information Act (5 USCA §552). The NRC Staff should also be directed to fully explain to the State of New York why the Audit Report was returned to LILCO and not retained in its records, and provide a list of any other Shoreham-related documents which were treated similarly.

Because these matters raise serious questions about LILCO's competency as a low-power licensee and full-power license applicant, and the NRC Staff's integrity as the overseer of LILCO's management of Shoreham, the State of New York respectfully requests that the Commission expedite consideration of this motion.

BACKGROUND

The State of New York learned of the Audit Report through NRC Inspection Report No. 50-322/86-10 (also referred to as the "Inspection Report"). The NRC Staff, Region 1, transmitted this Inspection Report by a cover letter dated June 25, 1986 to LILCO, Governor Cuomo, the New York State Consumer Protection Board (CPB) and interested members of the public.^{1/}

The Inspection Report relates to a "routine resident safety inspection" conducted by the NRC Staff, Region 1, between April 16, 1986 and May 31, 1986. The following salient statement appears on page 12:

[T]he QA Division Manager moved up scheduled Nuclear Review Board Training Audit and QA Training Audits to April from their originally scheduled dates. The Training and Qualifications audit was conducted by a twelve man audit team that expended over 1,000 man hours in audit preparation and conduct. The audit indicated proper qualification of personnel with no problems similar to the qualification deficiencies identified in the radiochemsitry [sic] area. (See Inspection Report 86-03 for further details). However, the audit report did result in 35 audit findings and 19 observations spanning all areas from program/procedure development through record keeping. As a result of these findings the audit report recommended further management attention be applied in the training and qualification area to assure timely resolution of these audit findings and observations. [Emphasis added]

^{1/} The NRC Staff also filed the Inspection Report in the NRC Public Document Room pursuant to 10 CFR §2.790(a) (1986).

The Inspection Report did not provide any more detailed information concerning the nature of these audit findings and observations.

In July 1986, a representative of the State of New York asked the NRC Staff, Region 1, to provide a copy of the Audit Report, but the NRC Staff refused to honor the request.

In a letter dated August 7, 1986 (attached as Appendix A), the CPB asked LILCO for a copy of the Audit Report. The CPB emphasized that since "the Shoreham Nuclear Power Plant is undergoing low-power testing, it is imperative that all facts relevant to the training and qualifications of Shoreham personnel be fully scrutinized."

LILCO responded in a letter of August 21, 1986 (attached as Appendix B). It stated that a review by the CPB "would not be necessary" because the matter allegedly was within the purview of the NRC Staff, not the CPB.

On September 18, 1986, counsel representing Governor Cuomo and the State of New York in all of the Shoreham licensing proceedings contacted LILCO's counsel to request a copy of the Audit Report and related documents. This telephone conversation is described in a letter dated September 18, 1986 (attached as Appendix C). In that letter, the State of New York asked LILCO to reconsider its position and produce the Audit Report no later than September 22, 1986, and produce related, derivative documents no later than September 25, 1986.

In a letter dated September 23, 1986 (attached as Appendix D), LILCO stated that a substantive response would be forthcoming. However, in a letter dated September 29, 1986 (attached as Appendix E), LILCO failed to comply with the State of New York's requests for the Audit Report and related documents. Instead, LILCO invited certain representatives of the State of New York to attend an oral presentation regarding the audit.

In a letter dated September 30, 1986 (attached as Appendix F), the State of New York reiterated that an oral presentation in lieu of actual production of the Audit Report was unacceptable. Nevertheless, the State of New York again asked LILCO to reconsider and provide the requested documents no later than 2:00 p.m. on October 1, 1986.

Having received no reply, the State of New York is now forced to bring this matter before the Commission and to seek consideration of this motion on an expedited basis.

I. LILCO SHOULD BE COMPELLED TO IMMEDIATELY PRODUCE THE AUDIT REPORT AND ALL RELATED DOCUMENTS

Inspection Report No. 50-322/86-10 indicates that the Audit Report requested by this motion sets forth 35 findings and 19 observations. The Inspection Report's discussion of the findings and observations is vague, so it is not possible to discern whether the findings and observations apply to the training and qualifications of all Shoreham personnel. However, it appears that at least some of the deficiencies involve training and qualifications of personnel in the radiochemistry area.

Radiochemistry personnel are crucial to the safe operation of Shoreham because they are responsible for monitoring the levels of radiation throughout the plant. Erroneous data could lead to incorrect evaluations of plant conditions, which, in turn, could lead to significant on-site and off-site adverse consequences during a radiological emergency. The State of New York has a right to be informed of such a potentially unsafe condition within Shoreham. Accordingly, LILCO should be compelled to produce the Audit Report immediately so that the State of New York can analyze it.

LILCO's performance in the radiochemistry training and qualifications area has been inadequate during the last year. Consequently, it has been subject to much review. Briefly, LILCO's Quality Control Division conducted an audit in May and

June 1985 which resulted in several findings and observations. The Quality Control Division sent its audit findings and observations to the appropriate radiochemistry personnel on July 15, 1985 and asked for a response before August 15, 1985. On October 15, 1985, two months after the August 15, 1985 deadline, LILCO's radiochemistry personnel responded to LILCO's Quality Control Division by assuring it that most of the corrective measures would be in place by December 31, 1985.

To determine the effect of the corrective measures, LILCO's Quality Control Division conducted a follow-up audit during the week of January 13, 1986. The follow-up audit indicated that corrective measures had not been instituted. Soon thereafter, LILCO's radiochemistry personnel agreed to immediately adopt certain corrective training and qualification procedures described in a Corrective Action Request dated January 27, 1986. See NRC Inspection Report No. 50-322/86-03, at 1, 2.

The NRC Staff conducted a special inspection of radiochemistry operations, referred to as NRC Special Inspection No. 50-322/86-03, between January 27, 1986 and February 14, 1986. The Special Inspection identified a large number of deficiencies, which were the subject of NRC Inspection Report No. 50-322/86-03 dated March 14, 1986, an NRC-LILCO Enforcement Conference on March 20, 1986, and a Corrective Action Letter (CAL 86-05) dated March 21, 1986.

The NRC Staff then conducted another inspection between March 1, 1986 and April 15, 1986, which culminated in NRC Inspection Report No. 50-322/86-08, dated May 29, 1986. This report cryptically stated at page 12:

The inspectors are satisfied that the actions taken by the licensee in retraining and requalification of Radiochemistry Technicians are thorough and correct and satisfied the requirements of CAL 86-05 pertaining to technician qualification.

The NRC Staff conducted the inspection that formed the basis for NRC Inspection Report No. 50-322/86-10 between April 16, 1986 and May 31, 1986. The number of audit findings (35) and observations (19) set forth in that report is unusually high, especially since LILCO's radiochemistry personnel supposedly had just corrected deficiencies that the NRC Staff identified earlier in NRC Inspection Report No. 50-322/86-03. In addition, these problems were widespread. Indeed, the 35 findings and 19 observations spanned "all areas from program/procedure development through record keeping." (Inspection Report No. 50-322/86-10, at 12)

These facts indicate that the training and qualifications of Shoreham personnel could be seriously deficient. It is imperative that the Audit Report be produced immediately so that the State of New York can obtain first-hand information about the nature and significance of the findings and

observations, analyze the underlying data, and determine whether further action by the Commission might be required.

LILCO's rejection of our requests for the Audit Report suggests that LILCO is concealing important information bearing on the safety of Shoreham. This increases the State of New York's need to promptly obtain the Audit Report.^{2/}

LILCO's continuing refusal to provide the Audit Report to the State of New York is irresponsible, especially since LILCO provided the Audit Report to the NRC Staff several months ago. For instance, in a September 29, 1986 letter to the State of New York (Appendix E), LILCO attempted to rationalize its selective transmission of the Audit Report to the NRC Staff as follows:

Because the report about which you have inquired involved Shoreham, we naturally shared the results with the NRC, the agency responsible for reviewing nuclear operational and safety matters.

As a result of policy, LILCO does not normally provide information on internal reviews to outside groups.

^{2/} LILCO's proposal that certain representatives of the State of New York attend an oral presentation on the Audit Report (see Appendix F) is unacceptable. If LILCO is willing to make an oral presentation regarding the audit, then LILCO should be willing to release the underlying documentation -- which presumably will support the statements made during the oral presentation. Without the underlying documents, however, the State of New York has no basis to verify LILCO's assertions.

Contrary to LILCO's contention, the State of New York is not an "outside group." The State of New York has a right to receive documented information about Shoreham's safety since the plant is located in New York and a radiological accident there could have many adverse impacts on New York's residents. That concern is justifiably heightened by LILCO's obstinance in refusing to produce the Audit Report, LILCO's record of extensive mismanagement of Shoreham; and the State of New York's well founded lack of confidence in LILCO.

Moreover, ordinary principles of litigation propriety and fair play establish the right of one party in an adversarial proceeding to secure in a timely manner whatever materials other independent, nonaligned parties transmit between themselves. If two independent, nonaligned parties privately share factual information, as LILCO and the NRC Staff have done with respect to the Audit Report, the proper remedy for the Commission is to order that these two parties produce the relevant documents. The other parties can then study the facts and consider on an informed basis whatever action is appropriate. The Commission should apply this remedy here because, as a party in interest in all of the Shoreham licensing proceedings, the State of New York enjoys precisely the same party status as the NRC Staff. The State of New York, therefore, is entitled to the same materials LILCO gave to the NRC Staff and the Commission should order LILCO to produce the Audit Report immediately.

LILCO should also be compelled to immediately produce all documents related to the Audit Report. Audit findings are significant because they usually require corrective actions. Audit observations are significant too because they usually suggest ways of developing and implementing improvements. Indeed, after noting that the Audit Report contained 35 findings and 19 observations, NRC Inspection Report No. 50-322/86-10, at page 12, stated: --

As a result of these findings, the audit report recommended further management attention be applied in the training and qualification area to assure timely resolution of these audit findings and observations.

Thus, the Audit Report cannot be reviewed in isolation. It is essential that the Audit Report be analyzed in conjunction with LILCO's follow-up efforts. The State of New York, therefore, is entitled to review all documents which show whether and to what extent LILCO has "applied further management attention" to the problems described in the Audit Report, and whether and to what extent that attention has resulted in "timely resolution" and correction of the audit findings and observations. Accordingly, the Commission should order LILCO to immediately produce all documents created by or for LILCO after the audit which relate to the analysis or resolution of the 35 findings and 19 observations noted in the Audit Report.

II. THE NRC STAFF SHOULD BE DIRECTED TO IMMEDIATELY PRODUCE THE AUDIT REPORT AND ALL RELATED DOCUMENTS

- A. The NRC Staff's Failure To Retain A Copy Of The Audit Report Is A Violation Of The Federal Records Disposal Act And Must Be Remedied Promptly.

The NRC Staff's action in returning the Audit Report to LILCO without retaining a copy (see Appendix G) violated the Federal Records Disposal Act, 44 USCA §3301 et seq. This Act provides the exclusive means for disposal of federal records.

44 USCA §3314. Records are defined as:

[A]ll books, papers ... or other documentary material ... made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency ... as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because of the informational data in them ... [44 USCA §3301] (Emphasis Added).

Under this statutory scheme, each federal agency must compile lists of records which it wishes to dispose of and submit those lists to the Archivist of the United States.^{3/} 44 USCA §3303. The Archivist must then examine the lists. If the records meet certain criteria, and after the Archivist follows certain procedures, the Archivist may "empower the agency to dispose of those records." 44 USCA §3303a.

^{3/} The implementing regulations further emphasize the Archivist's exclusive authority: "No records of the Government shall be destroyed or otherwise alienated from the Government except in accordance with 44 USC 3314."

The Audit Report clearly is a "record" within the preview of the Federal Records Disposal Act since the NRC Staff received that document from LILCO. (Public Records Disposal Act, 44 USCA §3301) Indeed, such audit reports are mandated by the NRC's Regulations and are an integral part of the licensing process.

The need for and purpose of quality assurance audits in the NRC's licensing process is highlighted by Section XVIII of Appendix B of 10 CFR Part 50. That section provides:

A comprehensive system of planned audits shall be carried out to verify compliance with all aspects of the quality assurance program and to determine the effectiveness of the program ... Audit results shall be documented and reviewed by management having responsibility in the area audited. Follow-up action, including reaudit of deficient areas, shall be taken where indicated. (Emphasis Added)

Section XVII also is relevant. It provides:

Sufficient records shall be maintained to furnish evidence of activities affecting quality, the records shall include at least the following: Operating logs and the results of reviews, inspections, tests, audits, monitoring of work performance, and materials analyses ... Records shall be identifiable and retrievable ... (Emphasis Added)

Further, Section I provides:

The quality assurance functions are those of:
(a) assuring that an appropriate quality assurance program is established and effectively executed, and (b) verifying, such as by checking, auditing, and inspection that activities affecting the safety related functions have been correctly performed. (Emphasis Added)

The information concerning quality assurance specified in these regulations must be included in the Preliminary Safety Analysis Report (PSAR) and the Final Safety Analysis Report (FSAR), pursuant to CFR §50.34(a)(7) and (b)(6)(ii). Since the PSAR and FSAR are mandatory elements of applications for a construction permit and an operating license, respectively, audit reports are records "received ... in connection with the transaction of public business and ... appropriate for preservation." (Public Records Disposal Act, 44 USCA §3301)

This basic fact is not affected by the NRC Staff's action of returning the Audit Report to LILCO. Once the Audit Report was received by the NRC Staff, it became part of the NRC's records. As such, it was exclusively within the Archivist's control pursuant to the Public Records Disposal Act and could not be disposed of without authorization by the Archivist. The NRC Staff, however, apparently did not comply with the statute. There is no indication that the NRC Staff placed the Audit Report on the list contemplated by the statute. Nor is there any evidence that the Archivist authorized the NRC Staff to dispose of the Audit Report by returning it to LILCO.

Under these circumstances, the Commission is required by the Federal Records Act, 44 USCA §2901 et seq., to initiate appropriate action to regain possession of the Audit Report. The Federal Records Act provides:

The head of each Federal Agency shall notify the Archivist of any actual, impending or threatened unlawful removal, defacing, alteration or destruction of records in the custody of the agency of which he is the head that shall come to his attention, and with the assistance of the Archivist shall initiate action through the Attorney General for the recovery of records he knows or has reason to believe have been unlawfully removed from his agency ... [44 USCA §3106] (Emphasis Added)

In this case, the Audit Report has been in the possession of the NRC Staff but has been unlawfully without authorization by the Archivist. The Commission is, therefore, obligated by the Federal Records Act to recover the Audit Report from LILCO. In this way, the Audit Report can rightfully be placed in the NRC Public Document Room (like NRC Inspection Report No. 50-322/86-10) and made available to parties in this proceeding and the public in general. The Commission clearly cannot cite the NRC Staff's failure to retain the Audit Report as justification for failing to provide it to the State of New York.

B. The Freedom of Information Act Requires That The Audit Report Be Provided To The State Of New York

The Freedom of Information Act, 5USCA §552, requires that the records of Federal government agencies be made available upon request, except in the case of certain narrowly construed exemptions which clearly do not apply here. It is obvious that the NRC would be obligated to provide the Audit Report if that

document were still in its physical possession. The same result must apply in this instance, notwithstanding the subsequent return of the Audit Report to LILCO.

In light of its actions, the NRC Staff must be deemed to have constructive possession of the Audit Report. The NRC Staff took possession of the Audit Report, reviewed it and discussed its findings in Inspection Report No. 50-332/86-10. As such, the Audit Report is an integral part of the NRC's records in the Shoreham licensing proceedings. The NRC has the general authority to require LILCO to produce any documents concerning the Shoreham quality assurance including the Audit Report.^{4/} Moreover, the NRC has an affirmative obligation under the Federal Records Act to reclaim the document from LILCO. (See Point II-A supra)

Thus, the physical return of the Audit Report to LILCO cannot relieve the NRC of its obligation under the Freedom of Information Act to provide the Audit Report to the State of New York. If it were otherwise, the explicit language and overriding policy of the Freedom of Information Act could be frustrated simply by disposing of records concerning potentially controversial matters. Such a result clearly would be untenable.

Accordingly, the Audit Report should promptly be provided to the State of New York pursuant to the Freedom of Information Act.

^{4/} See e.g., 10 CFR, Appendix B, §§ I, XVII, XVIII.

C. The NRC's Regulations Require That The Audit Report Be Made Available For Copying In The NRC Public Document Room.

10 CFR § 2.790(a) sets forth rules for the availability of NRC records. This section provides that certain NRC records and documents shall be disclosed and shall be made available for inspection and copying in the NRC Public Document Room, with certain qualifications, none of which apply to the Audit Report. The NRC Staff is familiar with this requirement because it placed NRC Inspection Report No. 50-322/86-10, which discusses the Audit Report, in the Public Document Room pursuant to this provision.

The Audit Report falls within the scope of this regulation because it is "correspondence to ... the NRC regarding the issuance, denial, amendment, transfer, renewal, modification, suspension, revocation, or violation of a license, permit or order." As explained in Point II-A supra, LILCO prepared the Audit Report and the NRC Staff reviewed it as part of the licensing process established under 10 CFR §50.34. The NRC Staff violated 10 CFR § 2.790(a) by not treating the Audit Report as a public record, not placing it in the NRC Public Document Room, and simply giving it back to LILCO. The Commission should take immediate action to rectify this error and recall the Audit Report.

D. The NRC Staff's Failure to Comply With Applicable Laws Requires A Full Explanation And Accounting.

NRC regulations impose a duty on the NRC Staff, as well as the Commission, to conduct the affairs of the NRC in an ethical manner. In this regard, 10 CFR §0.735-30(o) prohibits the concealment, removal or destruction of public records. Further, Section 0.735.49a prohibits conduct which might result in, or create the appearance of, giving preferential treatment, impeding government efficiency, losing complete independence or impartiality, and affecting adversely the confidence of the public in the integrity of the NRC. In addition, Annex A of 10 CFR Part O, entitled Code of Ethics for Government Service, states, among other things, that special favors or privileges should not be given and corruption should be exposed wherever discovered.

The NRC's actions with regard to the Audit Report appear to be inconsistent with these regulations. The fact that the NRC Staff returned the Audit Report to LILCO without retaining a copy (see Appendix G) raises a number of basic questions, especially since the NRC Staff reviewed the Audit Report and relied upon it to support the evaluations set forth in NRC Inspection Report No. 50-322/86-10.

First, why was the Audit Report returned to LILCO and not included in the public record? It is anomalous that such an

important document would not be in the public record and would not even be in the NRC Staff's possession.

Second, what are the NRC Staff's procedures in regard to documents received from licensees and applicants? Are those procedures written or informal? (If there are written procedures, they should be provided.)

Third, were the established procedures followed with respect to the Audit Report? If they were not, what was the reason?

Fourth, have there been any other instances in which documents received from LILCO were returned? If so, what were the circumstances and the reasons for such action?

Fifth, to what extent did the NRC Staff utilize the Audit Report? Did the NRC Staff prepare notes regarding the Audit Report? Did the NRC Staff utilize the Audit Report in evaluating LILCO's subsequent performance? Any notes or other NRC Staff records concerning the Audit Report should be provided.

The State of New York requests that the Commission direct the NRC Staff to respond fully to each of these questions and provide the information requested therein. It is imperative that those responses be given promptly.

- E. The NRC Staff Should Be Required To Immediately Produce All Documents Related To The Audit Report.

As discussed in Points I supra, it is essential that the State of New York be provided with all documents related to the Audit Report, as well as the Audit Report itself. This necessarily includes relevant documents prepared by and for the NRC Staff, since that entity relied on the Audit Report to formulate the pertinent evaluations set forth at page 12 of the Inspection Report No. 50-322/86-10 and is responsible for reviewing LILCO's follow-up efforts regarding the problems highlighted in the Audit Report. Indeed, the Audit Report presumably would be used as a baseline to evaluate future LILCO performance.

Accordingly, the Commission should direct the NRC Staff to promptly provide all such documents to the State of New York.

III. THE MATTERS RAISED IN THIS MOTION SHOULD BE CONSIDERED
EXPEDITIOUSLY

The matters raised in this motion involve very important questions about the safety of Shoreham. The unusually high number of observations and findings noted in the Audit Report bear this out. LILCO's refusal to produce the document underscores the State of New York's concern that the Audit Report reflects significant deficiencies in the safety of Shoreham. Moreover, the NRC Staff's action in returning the Audit Report to LILCO appears irregular and, at a minimum, requires a full explanation.

Both LILCO and the NRC Staff are familiar with the specific issues raised by this motion. Almost two months have elapsed since the CPB asked LILCO for the Audit Report, and one month since counsel representing Governor Cuomo and the State of New York reiterated that request. The NRC Staff has been cognizant of the State of New York's request for the Audit Report for much longer -- since early July. Hardship will not accrue to either LILCO or the NRC Staff since both parties have had ample time to gather the relevant documents and to formulate positions.

Accordingly, the State of New York requests that the matters raised in this motion be considered on an expedited basis, with the period for answers set forth in 10 CFR

\$2.730(c) (1986) reduced for all interested parties, including LILCO and the NRC Staff, to seven days from the date of service of this motion, or Monday, October 20, 1986.

CONCLUSION

The Commission should not allow LILCO's irresponsible actions to interfere with the right of the people of the State of New York to be informed of conditions within a resident nuclear power plant. The Audit Report and related documents should be available to the State of New York, but, unfortunately, they currently are not.

Accordingly, the Commission should issue an order compelling LILCO to immediately produce the Audit Report and all documents created by or for LILCO after the audit which relate to the analysis or resolution of the 35 findings and 19 observations noted therein.

In addition, the Commission should direct the NRC Staff to immediately produce the Audit Report and all documents in its possession pertaining thereto, as well as to the analysis or resolution of the 35 findings and 19 observations. The NRC Staff should also be directed to explain fully why the Audit Report was returned to LILCO and not included in the public files, and to provide a list of any other Shoreham-related documents that were treated similarly.

Since these matters raise serious questions about the competency of LILCO as a low-power licensee and full-power license applicant, and the integrity of NRC Staff as an overseer of LILCO's management of Shoreham, this motion should be granted on an expedited basis.

Respectfully submitted,

Richard J. Zahnleuter / RB

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STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE CONSUMER PROTECTION BOARD

RICHARD M. KESSEL
CHAIR AND EXECUTIVE DIRECTOR

☒ REPLY TO:
99 WASHINGTON AVENUE
ALBANY, NEW YORK 12210
(518) 474-3514

August 7, 1986

☐ REPLY TO:
250 BROADWAY, 17TH FLOOR
NEW YORK, NEW YORK 10007
(212) 587-4482

William J. Catacosinos
Chairman and Chief Executive Officer
Long Island Lighting Company
175 East Old Country Road
Hicksville, NY 11801

Dear Chairman Catacosinos:

The June 1986 Nuclear Regulatory Commission Inspection Report for Shoreham indicated that the Long Island Lighting Company has conducted an audit of the training and qualifications of personnel working at the Shoreham nuclear power plant. This audit report, conducted by the LILCO Nuclear Review Board (LILCO QA), included 35 findings and 19 observations. To date, this audit has not been provided to New York State.

I would hereby request that LILCO provide the Consumer Protection Board with a full copy of this audit so that its findings and observations can be analyzed. Now that the Shoreham nuclear power plant is undergoing low-power testing, it is imperative that all facts relevant to the training and or qualifications of Shoreham personnel be fully scrutinized.

I appreciate your cooperation and look forward to receiving a copy of this report.

Sincerely,

njg

Richard M. Kessel

cc: Lando Zech, Chairman
Nuclear Regulatory Commission





LONG ISLAND LIGHTING COMPANY

EXECUTIVE OFFICES: 175 EAST OLD COUNTRY ROAD • HICKSVILLE, NEW YORK 11801

WILLIAM J. CATACOSINOS
CHAIRMAN AND CHIEF EXECUTIVE OFFICER

CONSUMER PROTECTION BOARD
ALBANY, N. Y.

REC'D AUG 25 1986

August 21, 1986

Mr. Richard M. Kessel
Chair and Executive Director
State Consumer Protection Board
99 Washington Avenue
Albany, NY 12210

Dear Mr. Kessel:

As your August 7th letter reflects, the Nuclear Regulatory Commission has been actively reviewing the training and qualification of personnel working at Shoreham as part of their statutory responsibility for the regulation of nuclear power plants. We believe the Nuclear Regulatory Commission is fully capable of assessing the adequacy of LILCO's programs in this area and that a review by the Consumer Protection Board would not be necessary.

As you know, LILCO has and will continue to cooperate fully with the State Consumer Protection Board in those areas which fall within its purview.

Sincerely,

W. J. Catacosinos

WJC/dh



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

FABIAN PALOMINO
Special Counsel to the Governor

September 18, 1986

By Telecopier

Donald P. Irwin, Esq.
Hunton & Williams
P.O. Box 1535
Richmond, Virginia 23212

Dear Don:

Under cover of a letter, dated June 25, 1986, Region I of the NRC transmitted Inspection Report No. 50-322/86-10 to my office and interested members of the public. The report covers the period between April 16, 1986 and May 31, 1986. The following salient statement appears on page 12:

[T]he QA Division Manager moved up scheduled Nuclear Review Board Training Audit and QA Training Audits to April from their originally scheduled dates. The Training and Qualifications audit was conducted by a twelve man audit team that expended over 1,000 man hours in audit preparation and conduct. The audit indicated proper qualification of personnel with no problems similar to the qualification deficiencies identified in the radiochemsitry [sic] area. (See Inspection Report 86-03 for further details). However, the audit report did result in 35 audit findings and 19 observations spanning all areas from program/procedure development through record keeping. As a result of these findings the audit report recommended further management attention be applied in the training and qualification area to assure timely resolution of these audit findings and observations. [Emphasis added]

In furtherance of our telephone conversation on the morning of September 18, 1986, I hereby request that the State of New York receive in hand a copy of the audit report referred to in the NRC Inspection Report immediately, but in no event later than

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the close of business on Monday, September 22, 1986. In addition, please provide in hand before the close of business on Thursday, September 25, 1986 a copy of all documents created by or for LILCO after the audit report which relate to the analysis and resolution of the 35 audit findings and 19 audit observations.

As you are aware, the State Consumer Protection Board requested this same information from LILCO in a letter, dated August 7, 1986. However, in a letter, dated August 21, 1986, Mr. Catacosinos responded, "We believe the Nuclear Regulatory Commission is fully capable of assessing the adequacy of LILCO's programs in the area and that a review by the Consumer Protection Board would not be necessary." Mr. Catacosinos also pledged to cooperate fully with the State Consumer Protection Board "in those areas which fall within its purview."

The State of New York has a right to be informed of conditions, both positive and negative, within all of its resident power plants. Shoreham is no exception. 35 audit observations and 19 audit findings are unusually high numbers, particularly since LILCO's performance in the radiochemistry area supposedly has improved since March 1986. The mere fact that LILCO has resisted disclosing documents which it already has submitted to the NRC suggests to us that LILCO is concealing something of importance and increases the intensity of our need to obtain the documents promptly. Moreover, as a party in interest in the NRC proceedings regarding Shoreham, the State of New York has a right to secure in a timely manner from LILCO any materials that LILCO provides to the NRC Staff, another party to the Shoreham proceedings.

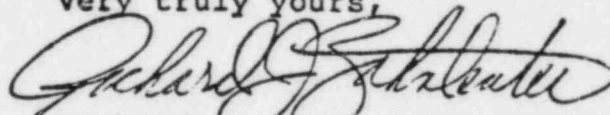
Your suggestion to the effect that the State of New York should agree to withhold the audit report and related documents from the State Consumer Protection Board as a condition to receiving such materials is untenable. The government of the State of New York represents the interests of all its citizens, including consumers. We will not agree to withhold information concerning Shoreham from the State Consumer Protection Board.

Further, we are not willing to accept an oral presentation concerning the audit report and related documents or an inspection of these materials by representatives of the State of New York in lieu of actual production.

-3-

In view of these considerations, I ask that LILCO reconsider its position and release its audit report and related documents in compliance with the terms of this request.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Richard J. Zahnleuter". The signature is fluid and cursive, with the first name "Richard" being more prominent and the last name "Zahnleuter" following in a similar style.

Richard J. Zahnleuter
Deputy Special Counsel
to the Governor

HUNTON & WILLIAMS

707 EAST MAIN STREET P.O. Box 1535

RICHMOND, VIRGINIA 23212

TELEPHONE 804-788-8200

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September 23, 1986

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FILE NO

DIRECT DIAL NO. 804 788

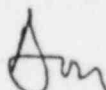
Richard J. Zahnleuter, Esq.
Deputy Special Counsel to
the Governor
State of New York
Executive Chamber
Albany, New York 12224

BY TELECOPIER

Dear Rick:

LILCO is currently reviewing your letter of the 18th. I
will be back to you with a substantive response as soon as
possible.

Sincerely yours,



Donald P. Irwin

91/730

HUNTON & WILLIAMS
707 EAST MAIN STREET P.O. Box 1535
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TELEPHONE 804-788-8200
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September 29, 1986

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Received
9/29/86 RZ

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FILE NO
DIRECT DIAL NO. 804 788-8357

Richard J. Zahnleuter, Esq.
Deputy Special Counsel to the Governor
State of New York
Executive Chamber
Albany, New York 12224

By Telecopier

LILCO QA Audit

Dear Rick:

On Friday, September 26, LILCO made a public statement concerning the LILCO Quality Assurance audit that was the subject of your September 18 letter. The Company noted that as a matter of policy, LILCO's organization includes quality assurance and auditing teams which regularly conduct reviews and evaluations of personnel, procedures and operations. LILCO insists on having a highly skilled and well-trained work force and constantly strives to improve the Company's performance. The internal quality assurance and auditing reviews, such as the audit of training activities requested by your letter, are part of LILCO's ongoing effort to achieve self-imposed high standards of excellence. Because the report about which you have inquired involved Shoreham, we naturally shared the results with the NRC, the agency responsible for reviewing nuclear operational and safety matters.

HUNTON & WILLIAMS

APPENDIX I
Sheet 2 of

Richard J. Zahnleuter, Esq.
September 29, 1986
Page 2

As a matter of policy, LILCO does not normally provide information on internal reviews to outside groups. But since New York State has expressed an interest in this particular report, the Company announced on Friday that it would be happy to meet with state representatives to review the findings of the audit team. We think the meeting would be most productive if state employees actively involved with other operating nuclear power plants in New York State are in attendance. Please let me know at your earliest convenience who will participate in the review for the state so we can arrange a mutually convenient time.

Sincerely yours,



Donald P. Irwin

91/730



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

FABIAN PALOMINO
Special Counsel to the Governor

September 30, 1986

By Telecopier

Donald P. Irwin, Esq.
Hunton & Williams
P.O. Box 1535
Richmond, Virginia 23212

Dear Don:

This is in response to your letter to me of September 29, 1986.

Unfortunately, your letter misses the point. The State of New York simply wants a copy of the same radiochemistry training and qualifications audit report which LILCO selectively provided to the NRC Staff, another party in the Shoreham licensing proceedings, several months ago. We are not interested in listening to an oral presentation by LILCO in lieu of immediately receiving a copy of the actual, relevant documents.

If I do not receive these documents in hand by 2:00 p.m. on October 1, 1986, the State of New York will ask the Commission to compel LILCO to produce the requested documents forthwith.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Richard J. Zahnleuter".

Richard J. Zahnleuter
Deputy Special Counsel
to the Governor

Newsday 10/1/86

LILCO, State Clash On Review of Audit

By John McDonald

An audit commissioned by Long Island Lighting Co. to review the training of employees at the Shoreham nuclear power plant has become the focus of the latest battle between the utility and New York State.

Last week, LILCO offered to allow state officials to "review the findings" of the audit but stopped short of saying they could have a copy of it. LILCO had provided a copy of the audit to the Nuclear Regulatory Commission, but an NRC official said he returned it to the utility after reviewing it.

In a letter to LILCO yesterday, Richard J. Zahnleuter, deputy special counsel to Gov. Mario Cuomo, said of the conditions the utility offered, "We are not interested in listening to an oral presentation by LILCO in lieu of immediately receiving a copy of the actual, relevant documents." Zahnleuter warned that, "If I do not receive these documents in hand by 2 p.m. on October 1, 1986, the State of New York will ask the [Nuclear Regulatory] Commission to compel LILCO to produce the requested documents."

In a report on a routine inspection of Shoreham, NRC officials said in June that the audit resulted in "35 findings and 19 observations," terms frequently used in audits to note criticism. LILCO has maintained that the audit — done by LILCO and a consultant early this year — is part of the company's ongoing review of standards at the plant and that the state has no right to it.

John Berry, the regulatory commission's senior resident inspector at Shoreham, said that the audit found problems with documentation of training and was generally critical of LILCO's training program for Shoreham employees. He added that the audit essentially confirmed the findings of the NRC's annual evaluation of Shoreham, which said the training program needed improvement. Berry said it was a bulky document and that he saw no need to keep it, so he gave it back to LILCO.

Richard Kessel, executive director of the State Consumer Protection Board, said, "This incident raises a major question about LILCO's ability to run a nuclear power plant. If LILCO is willing to withhold from the public a document about training of people working at the plant, one wonders to what length LILCO would go to hide an accident at the plant."

LILCO spokeswoman Lynne Abraham said of the audit, "We knew we would find problems; we found problems and we have been working on those problems for the last six months." She added that LILCO is willing to review the audit findings with state officials. "We don't understand their reluctance to come and talk with us," she said.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Commission

'86 OCT 16 P2:57

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)

LONG ISLAND LIGHTING COMPANY)
)

(Shoreham Nuclear Power Station,)
Unit 1))
)
_____)

Docket No. 50-322

October 13, 1986

Certificate of Service

I hereby certify that copies of "MOTION OF GOVERNOR MARIO M. CUOMO, REPRESENTING THE STATE OF NEW YORK, TO COMPEL PRODUCTION OF AN AUDIT REPORT ON SHOREHAM PERSONNEL AND MOTION FOR EXPEDITED CONSIDERATION" have been served this date upon the following by Federal Express as indicated by one asterisk, or by first-class mail, postage prepaid.

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Richard J. Zahnleuter
Deputy Special Counsel
to the Governor
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State Capitol
Albany, NY 12224

Date: October 13, 1986
