

During a routine safety inspection of the Shoreham facility from February 28 to March 4, 1983, a Region I inspector witnessed portions of the 72 hour preliminary electrical test runs of all three emergency diesel generators. Because the test runs were preliminary in nature, no violations or discrepancies were noted in the subsequent Inspection Report, 83-07, dated March 24, 1983. The Report pointed out, however, that the testing of the diesel generators was accompanied by "problems similar to the many problems that have occurred relating to the diesel generator sets in the past year of testing." (Emphasis added.) For example, the inspector noted that:

- "an apparent overall excessive vibration problem exists with all three of the diesel generator sets,"
- "there are many apparent causal factors underlying the numerous incidents that have occurred to the diesel generator sets,"
- "the reliability for continuous operation and for standby electrical power is questionable at this point," and
- "further trend analysis of these incidents and occurrences is required to resolve the continuing high accident rate of problems and failures to the diesel generator sets."

These problems were designated as an open (unresolved) item to be examined on subsequent inspections.

Inspection Report 82-35, issued by Region I on February 24, 1983, and based on a November 30 to December 31, 1982 routine resident safety inspection of the Shoreham facility, noted inter alia that "a test of one emergency diesel generator may not have been

performed properly and consequently there may not be adequate assurance that the diesel generator will successfully operate under maximum service conditions." The Report also noted that LILCO's management review process designed to assure adequate preoperational testing "failed to identify that the diesel generator's test results did not meet a specified acceptance criterion." This failure was identified as a violation of 10 CFR Part 50, Appendix B, Criterion XI, and resulted in Enforcement Action ("EA") 83-20, dated April 12, 1983.

EA 83-20 stated that the diesel generator testing violation demonstrated:

"a lack of aggressiveness on the part of LILCO to pursue, identify and resolve associated problems that can affect the reliability of the diesel generators, including attention to detail during performance, data review, and approval of the test results of [LILCO's] preoperational test program. . . . [T]hese actions are necessary to demonstrate that the [diesel] components will perform satisfactorily in service."

In order to emphasize "the need for more attention to detail during review and approval of test results," the Staff cited LILCO for a Severity Level III violation and imposed a fine of \$40,000 against the licensee.

The NRC's regulations which pertain directly to the diesels (such as GDC 17, 18, 33-35 and 38), as well as those which mandate quality requirements (such as GDC 1 and Appendix B), are designed to ensure the reliable operation of the emergency diesels, including the rapid starting required in emergency situations. Suffolk County

believes that the recent data concerning the Shoreham emergency diesel generators document a failure by LILCO to comply with these NRC regulatory requirements.^{2/}

Discussion

Suffolk County, as an "interested . . . county" within the meaning of 10 CFR §2.715(c), has a right to raise the issues specified in its proposed contention. Project Management Corporation (Clinch River Breeder Reactor Plant), ALA-354, 4 NRC 383, 392-93 (1976). Section 2.715(c) provides that the Board "will" permit an "interested . . . county" an opportunity to "introduce evidence, interrogate witnesses, and advise the Commission . . ." The participational rights afforded to the County under Section 2.715(c) are not conditioned upon a showing that the contention sought to be admitted is timely. Thus, the Board is not here required to balance the "lateness" factors set forth in 10 CFR §2.714(a) with respect to the County's proposed contention, and the contention should be accepted. In the Matter of Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Station), LBP-79-22, 10 NRC 213, 216-17 (1979).

^{2/} The proposed contention sets forth data which support the contention. The County notes that NRC Region I has informed the County that there are over 40 diesel nonconformances. Region I has agreed to supply the County with the listing but it was not received at the time this Motion was filed. When the listing is received, the County will review the listing to ensure that the contention is complete. The County's proposed contention is attached as Exhibit 1.

Even if the Section 2.714(a) factors were applicable, the County's new contention should be admitted. Section 2.714(a) provides that a non-timely filing "will not be entertained absent a determination by [the Board] that [it] should be granted based upon a balancing of the following factors . . ."

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

As discussed below, the facts relating to each of the factors of Section 2.714(a) support admitting the County's proposed contention.^{3/}

^{3/} A request to admit a new contention need only demonstrate, on balance, that Section 2.714(a)'s factors favor permitting the new contention. See, e.g., Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975); In the Matter of Duke Power Company (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 NRC 350, 352 (1980); Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 241-42 (1980); In the Matter of Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), Nos. 50-352/50-353, slip op. at 3 (April 12, 1983); In the Matter of Maine Yankee Atomic Power Company (Maine Yankee Atomic Power Station), LBP-82-4, 15 NRC 199, 201 (1982); In the Matter of Cincinnati Gas and Electric Company, supra, LBP-79-22, 10 NRC 213, 214-17 (1979).

1. There is good cause for the County's failure to file the proposed contention earlier.

As previously noted, the problems with the diesel generators did not become apparent until recently. Thus, it would have been impossible for the County to have filed this contention earlier and, therefore, there is good cause for the timing of the County's filing.

The County first learned of problems with LILCO's testing of the diesel generators sometime after February 24, 1983, the date Inspection Report 82-35 was issued by the Staff.^{4/} That Report, however, provided only sketchy information to the County; for example, it merely noted that "a test of one emergency diesel generator may not have been performed properly and consequently there may not be adequate assurance that the diesel generator will successfully operate under maximum service conditions." (Emphasis added.)

In March, the County learned that cracks had developed in some of the diesel components. Thereafter, on April 12, 1983, the Staff announced its enforcement action against LILCO for the violation previously identified in Inspection Report 82-35.

^{4/} The Staff's Readiness Assessment Team ("RAT") Inspection Report, 83-02, did reference an "apparent violation" regarding the "conduct and review of preoperational testing of Emergency Diesel Generator 102 during Inspection 50-322/82-35." Immediately upon receipt of this Report, the County informed the Board and the parties that it intended to question the LILCO and Staff witnesses on this "apparent violation" during the course of the RAT inspection hearings. LILCO, however, opposed any questioning by the County on the diesels, and the Board, over the County's objection, agreed to exclude the issue of the diesels from the scope of the RAT hearings. See, e.g., Tr. 19,422-28, 19,533.

In issuing a Severity Level III violation and imposing a fine of \$40,000 against LILCO, the Staff emphasized its concerns about the reliability of LILCO's diesel testing procedures and management review process. Those concerns are shared by the County. Indeed, at this time, serious questions concerning the operational capabilities of the Shoreham emergency diesel generators remain unanswered.^{5/}

Accordingly, from the information which has been made available to the County, it is clear that there are serious problems with the diesels. The gravity of these problems and the fact that they remain unsolved is evidenced further by the fact that Region I is retaining private consultants to attempt to ascertain the cause of the problems. Since these problems only have become known in the last months, it is clear that the County could not have raised these problems earlier in the proceedings before the Board.^{6/}

^{5/} As noted in Inspection Report 83-07, although the vendor's tests of 300 starts and LILCO's mechanical tests have been completed, LILCO's 72 hour electrical tests, the 24 hour electrical load tests and the 23 start qualification tests have not been completed. Moreover, to the County's knowledge, the integrated electrical test, where the diesels are used during a simulated loss of coolant accident with the loss of offsite power, has not yet taken place.

^{6/} Since the diesel problems were first indicated earlier this year, the County's consultant on this matter, Mr. Goldsmith, and counsel have diligently pursued information regarding the diesels from both the Staff and LILCO. For example, the County has attended meetings on this matter and had numerous telephone calls seeking relevant data so that a decision could be made regarding whether a new contention should be filed.

It is well established that "good cause" for untimely filings may be shown where a contention is based on new research or previously unavailable information. See, e.g., Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-15, 15 NRC 555, 557 (1982). Similarly, the availability of new information appearing in previously unavailable documents has been recognized as a valid reason for accepting new contentions. See, e.g., In the Matter of Cincinnati Gas and Electric Company, supra, LBP-79-22, 10 NRC 213, 214 (1979). Here, the County's proposed contention is based on new information previously unavailable to the County and made known to the County through previously unavailable documents, e.g., Staff inspection reports. Thus, "good cause" exists for this late filing.

This case is analogous to In the Matter of Cincinnati Gas and Electric Company, cited above, where, under similar circumstances, the licensing board granted requests by the parties to the operating licensing proceeding to admit additional contentions. One of those parties, Miami Valley Power Project ("MVPP"), sought admission of a contention dealing with the adequacy of fire protection insulation material planned to be used in the electrical cable trays. With respect to the "good cause" factor, the licensing board acknowledged that the contention was not submitted until April 30, 1979, years after the proceeding was commenced. The contention, however, was based on tests performed during September, October and November 1978, and January 1979, the results of which were provided to the parties on March 1, 1979.

The test results were examined by one of MVPP's witnesses in mid-March. That examination revealed that the tests on the insulation material had been inadequately performed. Thereafter, MVPP secured details of another, earlier test of the insulation material which revealed that the tests of the material had been a failure. The licensing board found this course of events to constitute "good cause" for MVPP's delay in filing the proposed contention. Similarly, the facts surrounding the recent problems with Shoreham's emergency diesel generators constitute "good cause" for the County's delay in requesting this Board to admit its proposed contention.

It is clear, then, that the County had "good cause" for not filing its proposed contention earlier. Therefore, the remaining four factors referred to in Section 2.714(a) do not require as strong a showing. Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 2), ALAB-384, 5 NRC 612, 616 (1977); In the Matter of Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Station), LBP-80-14, 11 NRC 570, 575 (1980). As shown below, however, the County clearly satisfies all of the other Section 2.714(a) factors as well.

2. There are no other available means whereby the County's interest will be protected.

No contention regarding the problems which have recently arisen with the emergency diesel generators has before been

considered by the Board,^{7/} and there is, therefore, no other means available before the ASLB for the County to protect its interest in ensuring that NRC regulatory requirements regarding this crucial safety equipment are met.^{8/} Cf. Long Island Lighting Company (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-292, 2 NRC 631, 647-48 (1975). Nor are the provisions in the Commission's rules for the initiation of rulemaking and adjudicatory proceedings as efficacious as permitting the County to file its new contention in the present proceeding. In the Matter of Consolidated Edison Company (Indian Point Station, Unit No. 2), LBP-82-1, 15 NRC 37, 40-41 (1982).

3. The County can be expected to assist in developing a sound record.

The County has special expertise, through one of its consultants, Marc W. Goldsmith, which would be of assistance to the Board.^{9/} See, In the Matter of Cincinnati Gas and Electric

^{7/} This does not mean that the County has not previously expressed concerns with the emergency diesel generators. SC Contention 2, Diesel Generator Relays, contended that "Shoreham's onsite emergency generating system does not meet 10 CFR 50, Appendix A, GDC 17 because of the high probability of system failure due to accumulation of dirt in relays located in the diesel generator rooms." This contention was resolved without the necessity of a hearing when LILCO agreed to satisfy this particular County concern. See Tr. ff. 1,626.

^{8/} This argument is also relevant to the fourth factor under Section 2.714(a) (concerning whether another party would represent the County's interest in this contention).

^{9/} Mr. Goldsmith is specifically qualified in matters concerning diesel engines and generators. Mr. Goldsmith's background includes training in diesel engines and he operated diesel engines during his tenure in the Merchant Marines. Mr. Goldsmith's qualifications have previously been submitted to the Board. Additional consultants may, of course, also be utilized to work with Mr. Goldsmith.

Company, supra, LBP-80-14, 11 NRC 750, 576 (1980). The County has demonstrated in this proceeding that it responsibly assists in developing a sound record, and it will do so in this instance.

4. The County's interest in the proposed contention will not be adequately represented by other parties.

As noted previously, there is no contention regarding the emergency diesel generators before the Board, and indeed the evidentiary record on health and safety issues has been closed. Accordingly, the County's interest could not be represented by other intervenors. Nor is it practical to suggest that the NRC Staff will adequately represent the County's interest in the proposed contention. The interests represented by the County diverge from those represented by the Staff. In this regard, another licensing board, confronted with this same issue, has noted:

Although the Staff clearly represents the public interest, it cannot be expected to pursue all issues with the same diligence as an intervenor would pursue its own issue. Moreover, unless made an issue in this proceeding, it would not attempt to resolve the issue in an adjudicatory context. Giving all possible deference to the adequacy of the Staff's review, we conclude that the Applicant's reliance on the Staff review gives inadequate consideration to the value of a party's pursuing the participational rights afforded it in an adjudicatory hearing. In the Matter of Cincinnati Gas and Electric Company, supra, LBP-79-22, 10 NRC 213, 215 (1979).

5. Admission of the County's contention would not delay the proceeding.

The County doubts that admission of the proposed diesel contention would delay the proceeding. It now appears that any litigation (in hearing before the ASLB) of offsite emergency

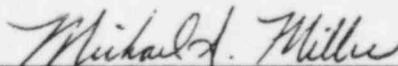
planning issues will not commence for several months, particularly since the new LILCO offsite plan is not due now to be filed until the middle of May. Moreover, although the Board has indicated that it anticipates issuing its partial initial decision on matters other than emergency planning by the end of July 1983, that decision will be partial and will not deal with all issues. Aside from offsite emergency planning, the Board may still entertain a hearing on the much-delayed Teledyne report. Accordingly, the proposed diesel contention appears unlikely to cause any delay.

Conclusion

Accordingly, Suffolk County hereby moves for leave to file its proposed contention concerning the Shoreham emergency diesel generators.

Respectfully submitted,

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May 2, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
)

LONG ISLAND LIGHTING COMPANY)
)

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

) Docket No. 50-322 (O.L.)

CERTIFICATE OF SERVICE

I hereby certify that copies of Suffolk County Motion For Leave to File a New Contention Concerning the Shoreham Emergency Diesel Generators, dated May 2, 1983, have been served upon the following this 2nd day of May, 1983 by first-class mail, postage prepaid unless otherwise indicated.

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Diesel Generator Contention

Suffolk County contends that LILCO has failed to comply with NRC regulatory requirements designed to assure the rapid starting and reliable operation of the Shoreham emergency diesel generators. The specific regulations violated by LILCO are 10 CFR Part 50, Appendix A, GDC 1, 17, 18, 33-35 and 38 and 10 CFR Part 50, Appendix B, Criteria III, V, X, XI and XIV.

GDC 17 requires LILCO to establish an onsite electric power system that permits the functioning of structures, systems and components important to safety. As further specified in GDC 33-35 and 38, the system required by GDC 17 must be sufficient to provide capacity and capability to assure that (1) acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded as a result of anticipated operational occurrences and (2) the core is cooled and containment integrity and other vital functions are maintained in the event of postulated accidents. Further, under GDC 18, the system must also be designed with a capability to test periodically the operability of the system under conditions as close to design as practical. Under GDC 1, the emergency diesel generators must be designed, fabricated, erected and tested to quality standards commensurate with the safety functions to be performed. Further, the Shoreham emergency diesel generators are subject to the specific Appendix B requirements set forth in Criteria III, V, X, XI and XIV, all of which are intended to ensure reliable operation of the diesels.

In violation of regulatory requirements, LILCO has failed to ensure rapid starting and reliable operation of the Shoreham emergency diesel generators. The data supporting this contention are:

- (1) LILCO has failed to test adequately the emergency diesel generators, and has failed to ensure adequate review and approval of test procedures and test results, as documented in I&E Reports 82-35, 83-02, 83-07 and 83-08 and I&E Enforcement Action 83-20. Without adequate testing, reliable operation cannot be assured.
- (2) The diesels have been subject to excessive vibration, as documented in I&E Report 83-07. Such vibration may reflect a design defect or a fabrication/erection deficiency or a combination thereof. In any event, such vibration prevents the diesels from reliably performing their intended functions.
- (3) The diesels have suffered from cracking of components, as documented by LILCO's verbal reports to NRC Region I on March 8 and 30, 1983, and LILCO's written report, SNRC-873, dated April 15, 1983.^{1/} These deficiencies have included water jacket leaks which have the potential to decrease power output and interfere with rapid startup of the diesels.

^{1/} LILCO's written report concerning the deficiencies verbally reported to Region I on March 30, 1983 has not yet been filed.

- (4) One of the diesels "locked-out" (i.e., would not restart) when hot restart was attempted during testing.^{2/}
- (5) LILCO has failed to prepare an adequate trend analysis of the diesel problems and occurrences, as documented by I&E Report 83-07. Such failure means that there can be no assurance that these diesels have been adequately analyzed to ensure reliable performance of required functions.

The County contends that the foregoing deficiencies document that LILCO has failed to comply with the aforementioned regulatory requirements as they pertain to the Shoreham emergency diesel generators.

^{2/} I&E Bulletin Nos. 83-03 and 83-17, issued in March, indicate that there might be a generic problem with the ability of the emergency diesel generators to perform a hot restart.