

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges  
Marshall E. Miller, Chairman  
Glenn O. Bright  
Elizabeth B. Johnson

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USNRC  
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SERVED MAY 31 1984

In the Matter  
LONG ISLAND LIGHTING COMPANY  
(Shoreham Nuclear Generating Plant,  
Unit 1)

Docket No. 50-322-OL-4  
(Low Power)

May 31, 1984

ORDER ESTABLISHING SCHEDULE FOR RESUMED HEARING

On May 22, 1984, LILCO filed its "Application for Exemption" (under the provisions of 10 CFR §50.12(a)<sup>1</sup> from the requirements of that portion of General Design Criterion 17 and from any other applicable regulations, which require the complete adjudication of LILCO's TDI diesel generators prior to the commence of low-power testing.

<sup>1</sup> 10 CFR 50.12(a) specific exemptions:

(a) The Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

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LILCO's Application For Exemption was filed pursuant to the Commission's discussion of a proposed modified application in its Order of May 16, 1984 (CLI-84-8, 19 NRC \_\_\_). That Order stated that the modified application of LILCO should be submitted to this Board, and further provided:

In addressing the determinations to be made under 10 CFR 50.12(a), the applicant should include a discussion of the following:

1. The "exigent circumstances" that favor the granting of an exemption under 10 CFR 50.12(a) should it be able to demonstrate that, in spite of its noncompliance with GDC 17, the health and safety of the public would be protected.<sup>3</sup>
2. Its basis for concluding that, at the power levels for which it seeks authorization to operate, operation would be as safe under the conditions proposed by it, as operation would have been with a fully qualified onsite A/C power source.

The Licensing Board shall conduct the proceeding on the modified application in accordance with the Commission's rules. The Licensing Board shall make findings and issue an initial decision. Any initial decision authorizing the grant of an exemption shall not become effective until the Commission has conducted an immediate effectiveness review.

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<sup>3</sup>The Commission regards the use of the exemption authority under 10 CFR 50.12 as extraordinary. This method of relief has previously been made available by the Commission only in the presence of exceptional circumstances. See, United States Department of Energy, et al. (Clinch River Breeder Reactor Plant), CLI-83-1, 17 NRC 1, 4-6 and cases cited therein (1983). A finding of exceptional circumstances is a discretionary administrative finding which governs the availability of an exemption. A reasoned exercise of such discretion should take into account the equities of each situation. These equities include the stage of the facility's life, any financial or economic hardships, any internal inconsistencies in the

regulation, the applicant's good-faith effort to comply with the regulation from which an exemption is sought, the public interest in adherence to the Commission's regulations, and the safety significance of the issues involved.

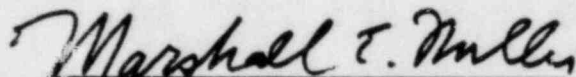
Of course, these equities do not apply to the requisite findings on public health and safety and common defense and security.

Pursuant to guidance provided to this Board by the Commission Order, the schedule for the resumed hearing on LILCO's modified application is established as follows:

May 22, 1984	LILCO's Application for Exemption filed with same-day service to all parties.
May 23, 1984	Discovery commences
June 29, 1984	Discovery ends
July 16, 1984	Testimony filed
July 30, 1984	Hearing begins

It is so ORDERED.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

  
Marshall E. Miller, Chairman  
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland  
this 31st day of May, 1984.