

582

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD ⁸⁴ JUN -8 P5:11

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

DOCKETING & SER.
BRANCH

SERVED JUN 11 1984

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

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

June 8, 1984

NOTICE OF RESUMED HEARING

PLEASE TAKE NOTICE that the resumed evidentiary hearing in this low-power proceeding will commence at 9:00 a.m., local time, on Monday, July 30, 1984, at the Court of Claims, State Office Building, Veterans Memorial Highway, Hauppauge, New York 11787. The hearing will continue through Friday, August 3, and through the week of August 6, if necessary.

This resumed evidentiary hearing will consider LILCO's Application For Exemption, filed May 22, 1984. 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:

8406120214 840608
PDR ADOCK 05000322
PDR

DS02

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.
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.

³The 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.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Marshall E. Miller
Marshall E. Miller, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 8th day of June, 1984.