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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-OL-4  
(Low Power)

NRC STAFF RESPONSE TO LILCO MOTION FOR  
PROTECTIVE ORDER AND MOTION IN LIMINE

I. INTRODUCTION

On June 2, 1984, LILCO filed a "Motion For Protective Order and Motion in Limine" to limit the litigation of security issues in the litigation of its application for a low power license under 10 C.F.R. § 50.57(c). LILCO in its motion asks "for an order precluding all discovery requests whose relevance is to the issue of security and for an order in limine that any evidence whose sole materiality is a question of security is inadmissible." The NRC staff supports this motion in the present posture of this proceeding.

II. DISCUSSION

As LILCO recites at p. 2 of its motion Suffolk County has repeatedly indicated its intent to pursue security issues in this proceeding in regard to the 10 C.F.R. § 50.57(c) application for approval of low power operation without qualified TDI diesels. The County had previously by a

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Security Settlement Agreement for Shoreham, November 22, 1982, settled its "security concerns" in this proceeding. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), Memorandum and Order Cancelling Hearing, Approving Final Security Agreement, and Terminating Proceeding (December 3, 1982), at 2 (unpublished). 10 C.F.R. § 50.57(c).

The issues in this proceeding involve whether LILCO is entitled to a low power license under the regulations of the Commission. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-84-8, \_\_\_ NRC \_\_\_ (May 16, 1984). These regulations include provision for seeing that security is provided in nuclear generating plants. See 10 C.F.R. Part 73. Issues in regard to security no longer exist in this proceeding. They were settled by the stipulation of November 22, 1982, and dismissed by a Licensing Board order of December 3, 1982. An application for a low power license "does not open the proceeding or a new round of contentions," on matters where the record has already been closed. See Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-728, 17 NRC 777, 801 (1983). Where one seeks to raise these issues they must meet the standards for late-filed contentions and for reopening the record. Id.<sup>1/</sup>

To reopen issues, one would need to show -

- 1) The motion to reopen is timely made;
- 2) The matter involved addresses a significant issue, and

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<sup>1/</sup> The Commission Order of June 8, 1984, dealing with various motions of Suffolk County for clarification of CLI-80-4, did not state that security matters must be considered in this low power operation request, but that ". . . it is for the Licensing Board to address in the first instance the 'common defense and security' showing required under 10 C.F.R. § 50.12(a)." Thus it is on the Licensing Board to determine whether these matters should be considered in this proceeding.

3) A different result may be reached on consideration of the newly proffered material..

Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-738, 18 NRC 177, 180 (1983); Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1978). The proponent of such a motion to reopen has a heavy burden. Id.

In the context of this proceeding, to reopen the record on security matters, it would have to be shown that the security concerns raise issues in the low power hearing that could not have been raised before on the application for the full power license, that these security issues are significant (i.e. present a credible threat), and that they could lead to a different result in a decision on the low power application. Thus, among other matters, the proponent of such a motion would have to show (1) that the security concern in regard to low power operation involves equipment not similarly relied upon for full power operation, (2) that a credible security incident could occur which affects the function of that equipment; and (3) that such an incident could realistically occur during low power testing when the equipment is needed to deal with a severe accident.<sup>2/</sup>

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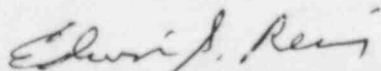
<sup>2/</sup> Section 13.7 to Supplement to the Shoreham SER (NUREG-0420) details that the safeguards provided for the reactor coolant pressure boundary are to remain the same for low power operation as they are for full power operation. Thus, the likelihood of a security event causing a loss of coolant accident (LOCA) remains the same and any security issue in regard to that boundary could have been litigated in the security proceedings on the full power application. The SER also details that the only time offsite power or the augmented electrical equipment in dispute in this proceeding could be needed for safe shutdown would be during a LOCA (§§ 13.7 & 15), and there is no technical reason to protect offsite power sources or the augmented power sources for safe shutdown in the absence of a LOCA (§ 13.7).

Until Suffolk County or the State of New York successfully demonstrates that the record should be reopened in regard to security issues they may not be a subject of litigation in this low power licensing proceeding. Similarly, as security issues have not been identified as a matter in controversy, discovery may not be had on that subject. See 10 C.F.R. § 2.740(b)(1).

III. CONCLUSION

For the above stated reasons LILCO's motion for a protective order against considering or discovering matters relative to security in the low power proceeding should be granted.

Respectfully submitted,



Edwin J. Reis  
Assistant Chief Hearing Counsel

Dated at Bethesda, Maryland  
this 19th day of June, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO LILCO MOTION FOR PROTECTIVE ORDER AND MOTION IN LIMINE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 19th day of June, 1984:

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