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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 MOTIONS
FOR SUMMARY DISPOSITION OF PHASES I AND II

I. INTRODUCTION

On May 22, 1984, LILCO filed before the Licensing Board Motions for Summary Disposition of Phases I and II of its application for a low power license for the Shoreham facility. Pursuant to 10 C.F.R. § 2.749, the Staff herein responds to LILCO's Motions and submits that the Motions should be granted in part and denied in part.

II. LEGAL STANDARDS GOVERNING SUMMARY DISPOSITION

The Commission's Rules of Practice provide that summary disposition of any matter involved in an operating license proceeding shall be granted if the moving papers, together with the other papers filed in the proceeding, demonstrate that there is no genuine issue of material fact and that the movant is entitled to a favorable decision as a matter of law. 10 C.F.R. § 2.749(d). The Rules also provide for summary disposition as to any portions of a matter involved in a proceeding as to

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which there is no genuine issue of material fact. 10 C.F.R.

§ 2.749(a). See, e.g., Public Services Company of Oklahoma, et al., (Black Fox Station, Units 1 and 2), LBP-77-46, 6 NRC 167 (1977); Toledo Edison Company (Davis-Besse Nuclear Power Station), LBP-73-30, 6 AEC 691, 699 (1973).

The use of summary disposition has been encouraged by the Commission and the Appeal Board to avoid unnecessary litigation over contentions for which an intervenor has failed to establish the existence of a genuine issue of material fact. See, e.g., Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981); Houston Lighting & Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 550-01 (1980). A material fact is one that may affect the outcome of the litigation. Mutual Fund Investors Inc. v. Putnam Management Co., 553 F.2d 620, 624 (9th Cir. 1977).

Although the burden of showing the absence of any genuine issue of material fact is upon the moving party, and the record will be viewed in the light most favorable to the party opposing the motion,^{1/} "a party opposing the motion . . . must set forth specific facts showing that there is a genuine issue of fact," 10 C.F.R. § 2.749(b), and may not rest upon the "mere allegations or denials" of his answer. Virginia Electric

^{1/} Cleveland Electric Illuminating Co., et al. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 753-54 (1977).

and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451, 453 (1980). Any facts set forth in the statement of material facts required to be served by the movant will be deemed to be admitted if not controverted by the opponent. 10 C.F.R. § 2.749(a). Any answers supporting or opposing a motion for summary disposition must be served within twenty days after service of the motion. Id. If no answer properly showing the existence of a genuine issue of material fact is filed, the decisions sought by the movant, if properly supported, shall be rendered. 10 C.F.R. § 2.749(b).

III. LILCO'S MOTIONS

Before addressing the substance of LILCO's Motions, those motions must be placed in their proper context. LILCO filed its supplemental application for a low power license on March 20, 1984. That application relies upon supplemental emergency power sources to compensate for the absence of an acceptable onsite emergency power source. The Commission issued an Order (CLI-84-8) on May 16, 1984 holding that GDC 17^{2/} applied to low power operation and that if LILCO's application did not demonstrate compliance with GDC 17, LILCO would have to seek an exemption pursuant to 10 C.F.R. § 50.12. LILCO subsequently filed an exemption request with the Licensing Board. For Phases I and II of its application, however, LILCO also filed the instant Motions for Summary Disposition.

2/ GDC 17 requires onsite and offsite power systems at nuclear plants.

LILCO advances two basic arguments in its motions. First, LILCO asserts that during Phases I and II there is no need for either onsite or offsite AC power to protect the public health and safety. Second, because no AC power is needed, GDC 17 is said to be satisfied at Phases I and II without an approved (or indeed any) onsite power source.

Taking the second argument first, the Staff believes this argument runs afoul of the position taken by the Commission in CLI-84-8. In arguing that no AC power is needed during Phases I and II, LILCO is essentially arguing that GDC 17 does not apply at this level of operation. The Staff had originally taken the position before the Commission that the requirements of GDC 17 were flexible and dependent upon the nature of the activity sought to be licensed. The Staff believes this position was rejected by the Commission, and that CLI-84-8 stands for the proposition that GDC 17 means the same for low power operation as for full power operation and must be completely satisfied before any license (including a low power one) may be issued. The Staff therefore believes that, in the absence of a fully approved onsite power system, an exemption from GDC 17 is needed before any license can be issued pursuant to 10 C.F.R. § 50.57(c).

LILCO did not seek summary disposition of its exemption request and, as further set out in CLI-84-8, an exemption determination involves factual issues (concerning the existence of "exigent" circumstances) not addressed in LILCO's Motions. The Staff therefore believes that summary disposition of the ultimate issue involved in Phases I and II, whether a license should be granted for those Phases, must be denied.

In both of its motions, LILCO recognizes that an exemption might be required and alternatively requests that its motions be treated as seeking summary disposition of all health and safety issues with respect to Phases I and II. Section 2.749(a) clearly contemplates the grant of partial summary disposition of a proceeding where appropriate. The Staff responds to the technical issues raised in LILCO's Motions as follows:

A. Phase I

Phase I involves fuel loading and precriticality testing. During Phase I, the reactor will not attain criticality and there will be neither heat generation in the core nor fission products. Because there will be no power generation, there will be no decay heat and thus no need for cooling systems to remove decay heat. Affidavit of M. Wayne Hodges (Hodges Affidavit), attached hereto, ¶ 3.

The Staff reviewed the 38 accident and transient events addressed in Chapter 15 of the FSAR and determined that the occurrence of those events that conceivably could occur during Phase I would raise no safety concerns because of the absence of power generation in the core. Hodges Affidavit, ¶ 4.

The Staff has reviewed the Statement of Material facts submitted by LILCO with its Motion for Summary Disposition of Phase I. The Staff neither supports nor opposes the first four statements, which involve the testing program LILCO has devised for Phase I. The Staff agrees with Statements 5-9 (Hodges Affidavit, ¶ 9) and submits that, unless properly controverted by the County or State pursuant to 10 C.F.R. § 2.749, the statements should be deemed admitted for purposes of this proceeding.

B. Phase II

Phase II involves cold criticality testing at a power range of .0001% to .001% of rated power at essentially ambient temperature and atmospheric pressure. Because of the low power level and limited duration of testing, fission product inventory and decay heat will be very low. Hodges Affidavit, ¶ 5.

As during Phase I, many of the events analyzed in Chapter 15 of the FSAR cannot occur during Phase II. For those transients which can occur, AC power would be needed only during a loss-of-coolant accident. For all other events, core cooling can be achieved using the existing core water inventory and passive heat loss to the environment. Hodges Affidavit, ¶ 6.

Because Phase II does not involve high pressure conditions, a loss-of-coolant accident is highly unlikely. However, should such an accident occur, LILCO has determined that months are available to restore make-up water for core cooling. At the decay heat levels extant during Phase II, heat transfer to the environment would remove a significant fraction of the decay heat. Applying more conservative assumptions of assuming no heat transfer from the fuel rods and assuming equilibrium fission products (i.e., an accident after operation of .001% power for an infinite period of time), more than 30 days would remain available to restore cooling prior to exceeding 2200°F, the peak cladding temperature of 10 C.F.R. § 50.46(b)(1). Hodges Affidavit, ¶¶ 7-8.

The Staff has reviewed the Statement of Material facts submitted by LILCO with its Motion for Summary Disposition of Phase II. The Staff

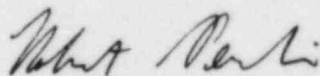
neither supports nor opposes the first four statements, which involve the testing program LILCO has devised for Phase II. The Staff agrees with Statements 5, 8, 9, 10, 11, 12, and 13 (Hodges Affidavit, ¶ 10) and submits that, unless properly controverted by the County and State, they should be deemed admitted for purposes of this proceeding.

The Staff disagrees with a portion of Statement 6. That Statement provides in part that "20 (Chapter 15 events) do not require the assumption of loss or unavailability of offsite AC power." The Staff believes it is more appropriate to say that the loss of offsite power would not adversely affect these twenty events. Hodges Affidavit, ¶ 10). Similarly, with Statement 7, it is not that these three events assume the unavailability of offsite power, but rather that the loss of offsite power could (at certain power levels) adversely affect these events. Id. The Staff has provided alternate statements which should be deemed admitted unless properly controverted.

IV. CONCLUSION

For the reasons presented above, the Staff submits that LILCO's Motions for Summary Disposition should be denied insofar as they apply to the ultimate issue, but that the Statements of Material Facts, appended to the Motions should be deemed admitted (as modified herein) unless properly controverted.

Respectfully Submitted,



Robert G. Perlis
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 13th day of June, 1984