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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

ATOMIC SAFETY AND LICENSING BOARD

'84 JUN 28 A10:13

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

SERVED JUN 28 1984

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

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

June 27, 1984

ORDER REGARDING DISCOVERY RULINGS

On June 22, 1984, an oral argument and discovery conference with counsel in this proceeding was held at the U. S. Nuclear Regulatory Commission Hearing Room, Bethesda, Maryland.^{1/} This Order confirms the oral discovery rulings made from the bench at that conference.

^{1/} The existence of discovery disputes between the parties was first brought to the Board's attention on June 21, 1984 by the filing of the following papers: LILCO's "Response to Suffolk County's First Discovery Request to LILCO Relating to LILCO's Application for Exemption", "Suffolk County's Second Discovery Request to LILCO Relation to LILCO's Application for Exemption", LILCO's "Objections to Suffolk County's Second Discovery Request to LILCO Relating to LILCO's Application for Exemption", and LILCO's "Motion for Protective Order". In view of the imminent close of the discovery period in this proceeding (June 29, 1984), we immediately scheduled this conference. Telephonic notice, followed by written notice via telecopier, was given to the parties early in the afternoon on June 21.

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LILCO's Motion for Protective Order

LILCO filed a written motion, June 21, 1984, asking for a protective order prohibiting the deposition of George J. Sideris or others concerning LILCO's financial qualifications to operate the Shoreham facility. LILCO argued that but for the outstanding TDI diesel contentions, it would be authorized to operate Shoreham at low power. Further, the "economic and financial considerations" among the equities to be weighed in deciding LILCO's application for exemption must be limited to the economic advantages of commencing low power testing sooner versus awaiting completion of adjudication of the TDI diesel issues. Considerations of LILCO's general financial health would not be relevant to that narrower issue.

Suffolk County's position was that the financial information sought is probative of the issue of whether the grant of LILCO's requested exemption is in the public interest. The State of New York supported the County's position.

The NRC Staff supported LILCO's motion. The Staff's position was that the Commission's Financial Qualification Statement of Policy (49 Fed. Reg. 24111, June 12, 1984), and the Commission's policy that such questions should not impact upon the issuance of a low- power testing license, rendered such discovery irrelevant.

The protective order was granted from the bench because general, detailed financial information is not relevant to this inquiry (Tr. 712). The financial or economic hardships referred to under the

category of "equities" in the Commission's May 16 Order (CLI-84-8, footnote 3), is limited to those which the Board is charged with looking at in this proceeding. Those matters include financial or economic impacts of the earlier commencement of activities under a low-power license, compared or contrasted with the later time that low-power operations could commence as a result of the final decisions of other Boards.

Other Discovery Controversies

LILCO complained that Suffolk County's consultants had testified during depositions that they had not as yet reached certain conclusions. The Board analogized its power under 10 CFR §2.740(e)(3) to enter an order directing all parties affirmatively to update information furnished by discovery, to render it current and accurate (Tr. 653-55; 639-55). This Order is reaffirmed, and it applies to depositions, document production, and all other forms of discovery disclosure. This Order is intended to establish an automatic and continuing duty on all parties to provide such supplementation and updating.

A question was raised as to whether interrogatories are a permissible discovery tool in this proceeding. We ruled that the Commission's Orders of May 16 and June 11, 1984, do not alter or vacate the limitation of discovery to documents and depositions, which was previously established in this proceeding by our Memorandum and Order of April 6, 1984 (Tr. 645-47; 555-60). All documents requested with interrogatories and not produced, should be promptly produced (Tr. 660).

Suffolk County complained that LILCO had refused to produce certain drafts of documents requested in the County's "First Discovery Request" on the grounds that the production would be "unduly burdensome and oppressive." LILCO is directed to produce all requested drafts that it can reasonably locate (Tr.662-68). Suffolk County further complained that a request that LILCO supply documents in the possession or subject to the control of LILCO's consultants, persons under contract with LILCO and vendors of equipment or services to LILCO had been objected to as "burdensome and oppressive", and because it was not limited to documents in the possession, custody or control of LILCO. We directed counsel to meet and agree upon which documents of the type requested were obtainable and producible (Tr. 668-70).

There were other Suffolk County requests to which LILCO had offered instead to provide some "representative documents" or "summaries of available information." One such request (number 52 in the County's "First Discovery Request") asked for documentary support for certain assertions in LILCO's exemption application.^{2/} LILCO is ordered to

^{2/} a. "The Shoreham proceeding has become prejudicially burdensome to LILCO." (p. 17);

b. "Many of LILCO's people have been compelled to devote inordinate amounts of their time and energy to licensing struggles."

c. The Shoreham proceeding "has been prejudicial to LILCO because it has created the perception that licensing litigation over

(Footnote Continued)

produce as much of the requested material as possible, since it had made these allegations (Tr. 687-93).

Suffolk County had requested from LILCO certain documents or studies produced for it by certain seismic experts. Such studies were prepared for counsel to the extent that counsel had asked specific questions of the experts. However, they were studies of seismic matters potentially relevant to this proceeding. We directed the production of these documents, but with any portions thereof which reflect opinions or mental processes of counsel excised or deleted (Tr. 672-82).

Suffolk County complained that requested information regarding the actual state of completion of the Shoreham plant had been withheld as not reasonably calculated to lead to the discovery of admissible evidence. (Number 68 in the County's "First discovery request".)^{3/} Counsel for LILCO elected to produce any documents pertinent to the request to avoid any potential error (Tr.693-704).

(Footnote Continued)

Shoreham may never end...." (p. 18);

d. The Shoreham proceeding "has been prejudicial to LILCO because it has created the perception...that the plant may never come on line because a merits decision on its operation will be delayed for one reason or another, over and over again." (p. 18);

e. "The prejudice to LILCO caused by the [Shoreham proceeding] is not justified by its substantive results to date." (p. 18).

^{3/} 68. At pages 19-20 of the Application, LILCO asserts "the plant is now ready to load fuel and conduct low power testing."

LILCO had refused to provide documents pertaining to existing experience, qualifications or training of LILCO personnel who would allegedly receive the training benefits LILCO discussed in its exemption application (Numbers 87, 88 and 89 in the County's "First Discovery Request"). LILCO had objected that the requested information would not lead to admissible evidence.^{4/} LILCO is ordered to provide the

^{4/} 87. With respect to all current LILCO employees who are licensed reactor operators, provide the following information:

- a. Identify each such individual by name and current job title. Identify also whether each individual is scheduled to be part of a regular operating shift.
- b. State the number of years of actual BWR operating experience for each such individual.
- c. State the length of time each such individual has been employed by LILCO.
- d. Identify each such individual who has notified LILCO that he or she will leave LILCO's employ, and state the date on which he or she will leave LILCO's employ.

88. With respect to all individuals other than licensed reactor operators who are involved in the management chain of command for SNPS, from operator supervisors through Chairman of the Board, provide the following information:

- a. Identify each such individual by name and current job title.
- b. State the number of years of actual BWR operating experience for each such individual.
- c. State the length of time each such individual has been employed by LILCO.

(Footnote Continued)

information insofar as it goes to individuals who would be in the chain of operation, up through operator's management supervisors (Tr. 707-08). However, information regarding individuals who have notified LILCO that they are leaving the company need not be produced. Information about new hires should be produced, to the extent it is feasible (Tr. 706-09).

The NRC Staff has not as yet identified any additional witnesses it may contemplate using. The Staff is directed to attempt to identify its additional witnesses promptly, and to supplement that list daily if necessary (Tr. 682-86). The Staff is ordered to notify the parties

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d. Identify each such individual who has notified LILCO that he or she will leave LILCO's employ, and state the date on which he or she will leave LILCO's employ.

89. With respect to all individuals who have been hired by LILCO to serve as reactor operators of SNPS, who have not yet begun working for LILCO at SNPS, provide the following information.

a. Identify each such individual by name, current employer and current job title.

b. State the number of years of actual BWR operating experience for each such individual.

c. State whether each such individual is a licensed reactor operator.

d. State the date on which LILCO hired each such individual.

immediately whether a supplemental Safety Evaluation Report pertaining to the exemption will be forthcoming (Tr. 686).

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 27th day of June, 1984.