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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

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COMMISSIONERS:

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Frederick M. Bernthal
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OFFICE OF GENERAL
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BRANCH

SERVED JUL 18 1984

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station,
Unit 1)

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

MEMORANDUM AND ORDER

On July 5, 1984, Suffolk County ("County") and the State of New York ("State") filed before the Commission a "Motion for Directed Certification of June 20 ASLB Order Granting LILCO's Motion in Limine." As we understand it, the Licensing Board, by its June 20 order, precluded the County and State from raising any new physical security issues in the proceeding on Long Island Lighting Company's ("LILCO") 10 C.F.R. 50.12(a) exemption application because no contentions on security were currently before the Licensing Board in the operating license proceeding. Earlier physical security contentions in the operating license proceeding were settled as a result of a November 3, 1982 settlement agreement between LILCO and the County. In the July 5 motion pending before the Commission, the County and

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the State have requested Commission guidance as to the proper scope of the exemption proceeding.¹

This filing is interlocutory and, as such, may, but need not, be entertained by the Commission. However, it is apparent to the Commission that some Commission guidance is appropriate in order to avoid confusion and delay.

The Commission's May 16, 1984 Order, CLI-84-8, directed the Licensing Board to take evidence and make an initial decision on all matters in controversy relevant to the 10 C.F.R. § 50.12(a) exemption application. LILCO's exemption application represents a new development in this proceeding, and it raises some new issues not heretofore considered. The Commission did not envision that the filing of the exemption application would be the occasion for the parties to relitigate old issues that were resolved in the operating license proceeding. But, the parties were to be afforded the opportunity to raise new contentions, so long as they were responsive to

¹The County and the State seek to raise the following issues before the Commission:

Is a showing that a requested exemption to the NRC's regulations will not endanger the common defense and security required in order to obtain an exemption under 10 C.F.R. § 50.12(a)?

Is evidence relating to such a showing by LILCO relevant and admissible in the proceeding to be held on LILCO's Application for Exemption dated May 22, 1984?

We observe that it is not at all clear that a physical security (sabotage) issue involving a light water power reactor is cognizable as a "common defense and security" concern. See Siegel v. AEC, 400 F.2d 778 (D.C. Cir. 1968). However, this is only an academic legal point, since a light water power reactor physical security issue is, in any event, cognizable as a public health and safety concern or, using the language of the standards for exemptions in 10 C.F.R. 50.12(a), a concern bearing on whether the exemption will "endanger life or property."

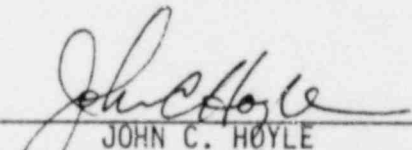
new issues raised by LILCO's exemption request, relevant to the exemption application and decision criteria cited and explained in the May 16, 1984 Order, and reasonably specific and otherwise capable of on-the-record litigation. The Commission did not envision that the special high thresholds applicable to late contentions and reopening records would apply to such new contentions raised in the initial stages of this exemption proceeding. Therefore, the Commission intends that security issues, if any, may be litigated (1) to the extent they arise from the changes in configuration of the emergency electrical power system and (2) to the extent they are applicable to low power operation.

We believe that the above discussion provides sufficient guidance to the Board and parties.

It is so ORDERED.

For the Commission²




 JOHN C. HOYLE
 Assistant Secretary of the Commission

Dated at Washington, D.C.

this 18th day of July, 1984.

²Chairman Palladino has chosen not to participate in matters related to Shoreham pending disposition of the County's and State's "Request for Recusal and, Alternatively, Motion for Disqualification of Chairman Palladino."