



UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL
WASHINGTON, D.C. 20555

April 18, 1984

MEMORANDUM FOR: Linda Robinson, FOIA
FROM: Charles J. Fitti
Executive Secretary
SUBJECT: FOIA-84-267

54-322, 352, 353

Listed below are copies of various documents and handwritten notes which we located in response to Robert R. Belairs's FOIA request of April 9, 1984.

David Prestemon, ASLBP Legal Counsel, who also attended the FOIA session on April 10, as I did, pointed out there are items in the list which have to do with the Office of the Chairman. Accordingly, those items should not be sent without checking with the Chairman's Office. Those items are numbered 5-10 below.

1. Copy: Memorandum and Order Scheduling Hearing on LILCO's Supplemental Motion For Low-Power Operating License. Hand-written notes are Judge Lazo's.
2. Judge Cotter's copy of the notice of the establishment of the Shoreham Board.
3. Judge Cotter's draft copy of his order responding to "Supplemental Motion for Low Powr Operator License."
4. March 15, 1984 memorandum from David Prestemon to Judge Cotter: Impacted Plants.
5. Judge Cotter's notes of meeting with Chairman Palladino.
6. Slides and handout prepared by NRR for a meeting of the Chairman, Dircks, Denton and Cotter.
7. " " " " " " " " " " " " " "
8. Judge Cotter's copy of Chairman Palladino's April 4, 1984 memo to the Commission with a copy of Judge Cotter's draft order (item 3) and a copy of the Chairman's working paper (items 9 & 10).
9. Copy of Chairman Palladino's working paper with notes by Judge Cotter.

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CORRESPONDENCE PDR

10. Copy of Chairman's Palladino's working paper with notes by Judge Cotter..
 11. Judge Cotter's copy of a note from Judges Brenner and Morris on "LILCO Supplemental Motion for Low Power Operating License (dated March 20, 1984) with Judge Cotter's notes.
 12. Ditto above, without Judge Cotter's hand-written notes.
 13. Statement prepared by Judge Miller to be read by his secretary to parties of the proceeding with a hand-written note by Judge Miller to Judge Cotter.
 14. Copy of Judge Lazo's hand-written telephone notes, 3/30/84.
 15. Copy of Judge Lazo's hand-written telephone notes, 4/2/84.
 16. Copy of Judge Cotter's hand-written notes.
 17. Copy of Judge Cotter's hand-written notes.
 18. Copy of hearing status report - Limerick.
 19. Copy of hearing status report - Shoreham.
 20. Copy of file-card - Limerick.
 21. Copy of file-card - Shoreman.
 22. Copy of file-card - Limerick.
- cc: R. M. Lazo
E. W. Leins
B. Paul Cotter, Jr.

ORDER

On March 20, 1984, LILCO filed with the Licensing Board a "Supplemental Motion for Low Power Operating License". LILCO has requested the Board either to refer the motion immediately to the Commission for decision or to decide the motion on an expedited basis and to certify its decision to the Commission pursuant to 10 C.F.R. § 2.730(f) (1983). As discussed below, the Commission has reviewed LILCO's motion and has concluded that referral at this time would be inappropriate. We agree, however, that a decision on certain issues raised by the Applicant should be expedited to the extent possible consistent with the development of a sound record. In the exercise of the Commission's inherent authority over the conduct of our adjudicatory proceedings, we hereby grant that portion of LILCO's motion that requests an expedited proceeding. To that end, we direct the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, in consideration of the existing schedule and caseload of the Panel's members, to appoint an Atomic Safety and Licensing Board to hear and decide LILCO's supplemental motion in accordance with the procedures and schedule outlined below.

I. LILCO's Motion

LILCO asserts that the Shoreham plant is essentially complete and, by its motion, seeks authority to conduct four phases of low power activities, namely:

Phase I: fuel load and precriticality testing;

Phase II: cold criticality testing;

Phase III: heatup and low power testing to rated pressure/temperature conditions (approximately 1% rated power); and

Phase IV: low power testing (1-5% rated power).

Despite pending litigation concerning the emergency diesel generators' reliability, LILCO asserts in its motion: (1) the generators are not needed to protect the public health and safety for Phases I and II; (2) the generators have been tested and are adequate to protect the public health and safety during Phases III and IV, even though litigation of their reliability has not been completed; and (3) ample alternate sources of AC power are available sufficient to assure no undue risk to the public health and safety from low power operation of the plant during Phases III and IV.

II. Background

Of some 122 safety contentions originally filed in this proceeding all but three have been resolved (The settlement of a fourth issue has been presented to the Board for approval). The three remaining

contentions concern the reliability of emergency diesel generators at the facility.

LILCO's motion supplemented a June 3, 1983 motion for a low power license. After the motion was filed, however, additional problems developed with the emergency diesel generators, and the hearing on their reliability scheduled to commence August 29, 1983 was deferred pending completion of LILCO's assessment and the NRC Staff safety evaluation. In a partial initial decision issued September 21, 1983, the Licensing Board decided a number of safety issues in favor of operation up to 5% of rated power but declined to authorize fuel load and low power operation until the then pending diesel generator contention was resolved. The Staff SER is presently scheduled for issuance in June 1984. Litigation of the three diesel generator contentions is scheduled to commence in July 1984, and an initial decision is projected for issuance in December 1984.

Suffolk County filed four amended contentions on the generators, and on February 22, 1984, the Board admitted three of them in a ruling on the record. Tr. 21,612 et seq. Although the Board could not find, on the state of the record at that time, that the generators could reliably perform their needed function even as to low power, the Board noted that LILCO was not precluded from proposing other methods by which the standards of 10 C.F.R. 50.57(c) could be met short of litigating the contentions, or seeking a waiver under Section 2.758, or any other

procedure. Tr. 21,616, 21,630-633. Apparently in response to that ruling LILCO filed its March 20, 1984 supplemental motion.

As noted, Applicant has requested that its supplemental motion be referred directly to the Commission for decision. The Commission is fully apprised of the contents of that motion and is of the opinion that certain issues presented require a factual evaluation that can be accomplished more promptly and efficiently by a licensing board than by the Commission directly. Accordingly, referral to the Commission at this time would be inappropriate. However, the present schedule for litigation of contentions related to the TDI diesel generators does present the potential for delay inimical to the public interest given the apparent physical completion of the Shoreham facility within the meaning of 10 C.F.R. § 50.57(a) (1983) and the enormous financial investment involved. If the alternatives proposed by Applicant in its motion are sufficient to permit low-power operation and testing with assurance that the public health and safety are adequately protected, that matter ought to be determined as expeditiously as possible.

The Commission has inherent supervisory authority over the conduct of its adjudicatory proceedings, including specific authority under its rules to establish reasonable adjudication time tables. See The U.S. Energy Research and Development Administration, Project Management Corporation, Tennessee Valley Authority (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67 (1976), and 10 C.F.R. § 2.711 (1983).

III. Issues to be Heard

Accordingly, absent settlement, we direct that the following issues be adjudicated on an expedited basis:

1. Whether the work described in Phases I and II of LILCO's motion can be performed without the need for the presently installed onsite emergency diesel generators;
2. Whether the alternate sources of AC power available to Shoreham are adequate to protect the public health and safety by performing the function that the presently installed onsite emergency diesel generators would have performed during any or all of Phases I, II, III, or IV;
3. What requirements for testing or other demonstration of the availability and effectiveness of the Shoreham alternate power sources should be required as a precondition to the issuance of any license permitting operation at up to 5% of rated power.
4. Whether, in consideration of the Board's findings on the above issues and assuming all other regulatory requirements have been satisfied, LILCO should be granted a low power license to

perform the work described in any or all of Phases I, II, III, or IV.

The Licensing board constituted pursuant to this order is authorized to conform the statement of the above issues to the evidence relevant to LILCO's motion and this order. The licensing board shall not consider the operability and reliability of the TDI diesel generators currently onsite. These matters are presently the subject of an extensive Staff review and will be fully adjudicated when the results of the Staff's review are available.

IV. Proceeding Schedule

The Licensing Board constituted pursuant to this order is directed to certify its Initial Decision on these questions to the Commission 60 calendar days after the Staff files its SER on the technical aspects of the LILCO motion. To that end, the following expedited schedule is recommended to the Board and the parties:

Day -7	Commission Order
Day 1	Staff and parties file response to substantive aspects of LILCO's motion
Day 1	Staff files SER on technical aspects of LILCO Supplemental Motion for Low Power Operating License and serves the SER on the parties
Day 2	Discovery commences

Day 18	Discovery is completed
Day 25	Testimony is filed
Day 30	Hearing commences
Day 40	Hearing concludes
Day 60	Board issues decision

The Licensing Board constituted pursuant to this order is authorized to adopt, take official notice, or otherwise incorporate any portion of the existing record in this proceeding as it sees fit. The Board shall closely monitor and assist in the discovery process, limit the number of pages in any filing if necessary, alter, revise or modify any of the intermediate dates or sequences set out above, and otherwise facilitate the expedited completion of the proceeding in the full exercise of its authority. See, e.g., Statement of Policy on Conduct of Licensing Proceedings, 13 NRC 452 (CLI-81-8, 1981).

Steps

1. 3/26: Commission issues brief notice to parties suspending parties response time to LILCO's motion
2. 3/26: Commission orders Staff to prepare SER by April 7
3. 3/30: Commission issues expedited hearing order
4. ca. 6/7: Board decision

Some Considerations

1. Excellent Staff SER is critical to success of this expedited proceeding: Total systems analysis required or Boards and Commission will look bad
 - a. Staff should be formally notified to begin work immediately
 - b. Staff SER issuance on day 1 assumes they have already commenced to prepare it, and this order won't issue until March 30
2. Sixty day schedule is brutally tight. Definitely not recommended but possibly achievable
3. Very important to give Licensing Board flexibility to reformulate issues within overall guidance should evidence shift the nature or emphasis of the issue.
4. Boards committed to hearings or partial or initial decision writing in April and May include Catawba, Comanche Peak, Shearon Harris, Limerick, Midland, Shoreham, and Wolf Creek

-- Need to avoid Commission debate on Board membership (cf.
Indian Point)

5. Phase I and II issue may be resolved by agreement of parties which would make possible PID authorizing that work

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conference held April 4

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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

hearing to start April 24 (2 weeks)

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

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

April 6, 1984

MEMORANDUM AND ORDER SCHEDULING HEARING ON LILCO'S
SUPPLEMENTAL MOTION FOR LOW-POWER OPERATING LICENSE

On March 20, 1984, LILCO filed its Supplemental Motion for Low Power Operating License. Suffolk County responded with its preliminary views on scheduling in this matter on March 26, and submitted a supplement to those views on March 30. The State of New York and the NRC Staff filed their responses to the LILCO Motion on March 28 and 30, respectively.

On March 30, 1984, via telephonic notice to the parties confirmed by a written Order of the same date, we scheduled a conference of counsel for the purpose of hearing oral arguments of the parties on "the issues that had been raised by the parties in their filings, as well as a schedule for their expedited consideration and determination." (Order

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at 1) New York State then filed a Motion, dated April 3, in which it asked that the provision in our March 30 Order mandating "expedited consideration and determinative" of the issues in the LILCO Motion be deleted as lacking in any valid basis.

The conference of counsel was held on April 4, 1984, in the NRC Hearing Room at Bethesda, Maryland. Attorneys attending the conference were:

W. Taylor Reveley, III; Anthony F. Earley and
Robert M. Rolfe for LILCO

Alan R. Dynner, Herbert H. Brown and
Lawrence Coe Lanpher for Suffolk County

Fabian Palomino for New York State

Edwin Reis and Robert Perlis for NRC Staff

LILCO's Motion asks us to grant a low-power operating license to its Shoreham Nuclear Power Station, pursuant to 10 CFR §50.57(c). It characterizes the present motion as "Supplemental" to the earlier motion for a low-power license which it had filed on June 8, 1983. In ruling on that motion, the Licensing Board indicated that it had resolved all contentions relevant to issuance of a low-power license for Shoreham in LILCO's favor except for certain recently-admitted contentions regarding reliability of diesel generators at the site. ("TDI's" or "TDI diesels", so called because of the manufacturer's name, Transamerica Delaval, Inc.). No low-power license could be issued, that Board said, "until such time as that portion of Suffolk County's recently admitted emergency diesel generator contention may be resolved in LILCO's favor,

at least insofar as necessary to support a finding of reasonable assurance that Shoreham can be operated at levels up to five percent of rated power without endangering the health and safety of the public." Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-57, 18 NRC 445, 634 (1983). LILCO's Motion of March 20, 1984, purports to show that the pending diesel issues related to high-power operations need not be resolved prior to the granting of a low-power license for Shoreham.

At the conference of counsel, counsel for LILCO indicated that the TDIs are assumed not to operate in the accident analyses LILCO offers in support of its motion (Tr. 20). Therefore, LILCO's counsel agreed with the Board that no discussion of the TDI's possible or potential use in an emergency would be relevant.

LILCO frames the issues to be heard regarding its motion as one major issue with three factors thereunder.

Issue: Whether emergency power sources available are sufficient to ensure public health and safety during low-power testing

- one 20 megawatt gas turbine (deadline blackstart)
- four mobile diesel engines (deadline blackstart)

-- calculations regarding the amount of time available to react to certain events.¹

Suffolk County argued against the LILCO motion. The County quoted the "law of the case" -- specifically the statement made on the record (Tr. 21,631) by the original Licensing Board in this matter that the usefulness or effectiveness of the TDI's is uncertain. The County pointed out that there is no qualified onsite AC power system at Shoreham, and that General Design Criterion (GDC) 17 specifically requires both an onsite and an offsite power system. Thus, the County argued, LILCO's efforts to disregard the requirements of GDC-17 -- absent any petition for waiver thereof -- was nothing more than an impermissible challenge to NRC regulations.

The Staff believes that the regulations have to be read as a whole, and that GDC-17 should be read in conjunction with our low-power license provision, 10 CFR §50.57(c). The Staff would thus view the requirements for full-power activities (e.g., GDC-17) as not totally applicable when the issue is whether low-power activities should be authorized.

¹ In regard to the time question, LILCO's stated position, supported by affidavit, was that in the event of a loss-of-coolant accident while the plant was operating at five percent power, plant operators would have at least 55 minutes to restore coolant. The same calculation, when performed without some of the "conservatisms" that had been built into it, would show that operators had ¹¹⁰ minutes ~~or~~ three hours in which to restore coolant. *from* *CC*

New York State, as an interested state, argued that 10 CFR §2.758 which prohibits attack on the other regulations specifically prohibits looking to the intent of a regulation rather than its explicit requirements, as the Staff would have us do with GDC-17. In addition, in its written response of March 28 it argued that LILCO had failed to comply not only with DGC-17, but also with GDC's 4, 5, 18, 19 and with 10 CFR 50, App. B.

All parties were heard on oral arguments by counsel regarding LILCO's motion for low-power operations at the hearing held April 4, 1984. Extensive arguments on all aspects of the low-power motion and the responses thereto enabled the Board to probe the underlying reasoning of the diverse views presented by the parties. Based upon a consideration of the LILCO motion and the facts alleged in its attached affidavits,² the matters contained in the responsive filings of the other parties and the arguments of counsel in depth, the Board concludes as follows:

1. LILCO has made a sufficient preliminary showing to justify holding a Section 50.57(c) limited hearing.³

² Affidavits concerning the alleged facts and expert opinion were filed by Jack A. Notaro and William E. Gunther, Jr.; William G. Schiffmacher; Dr. Glenn G. Sherwood, Dr. Atambir S. Rao and Mr. Eugene C. Eckert; and William J. Museler.

³ 10 CFR §50.57(c) provides:

2. The Board will be required to determine whether there is reasonable assurance that the activities associated with LILCO's request for a low-power license can be conducted without endangering the health and safety of the public, in the absence of resolution by another licensing board of the emergency diesel generator contentions related to full-power operation.
3. The provisions of Section 50.57 regarding low-power operations must be read together with the requirements of

(Footnote Continued)

An applicant may, in a case where a hearing is held in connection with a pending proceeding under this section make a motion in writing, pursuant to this paragraph (c), for an operating license authorizing low-power testing (operation at not more than 1 percent of full power for the purpose of testing the facility), and further operations short of full power operation. Action on such a motion by the presiding officer shall be taken with due regard to the rights of the parties to the proceedings, including the right of any party to be heard to the extent that his contentions are relevant to the activity to be authorized. Prior to taking any action on such a motion which any party opposes, the presiding officer shall make findings on the matters specified in paragraph (a) of this section as to which there is a controversy, in the form of an initial decision with respect to the contested activity sought to be authorized. The Director of Nuclear Reactor Regulation will make findings on all other matters specified in paragraph (a) of this section. If no party opposes the motion, the presiding officer will issue an order pursuant to §2.730(e) of this chapter, authorizing the Director of Nuclear Reactor Regulation to make appropriate findings on the matters specified in paragraph (a) of this section and to issue a license for the requested operation.

GDC 17⁴ concerning emergency power needs for full-power operations.

4. If the evidence shows that the protection afforded to the public at low power levels without the diesel generators required for full-power operations, is equivalent to (or greater than) the protection afforded to the public at full-power operations with approved generators, then LILCO's motion should be granted.
5. In making such determinations, the record should establish the following:
 - (a) Assuming an accident such as a LOCA at five percent power, how much time would plant operators have before emergency core cooling was necessary, and
 - (b) Could such core cooling be supplied within that time.
6. An expedited hearing should be held on the discrete issues described above, to the extent that such matters are reasonably relevant to a low-power license.

⁴ GDC 17 requires that electric power systems assure that in the absence of either the onsite or offsite power system,

(1) specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded as a result of anticipated operational occurrences and (2) the core is cooled and containment integrity and other vital functions are maintained in the event of postulated accidents.

Authority for the issuance of low-power licenses is contained in 10 CFR §50.57(c), as described above. Motions for a low-power operating license should be ruled on promptly, while decisions on full-power issues not associated with such operations may be resolved at a later time.⁵ In ruling upon Section 50.57(c) motions, a clear distinction must always be made between low-power operations and full-power operations. At the threshold, the Board must consider and resolve the question of whether the factual record arguably supports the requirement of reasonable assurance that proposed low-power operations can be conducted without endangering public health and safety.

In this case LILCO's motion requested approval for the following activities:

- (a) Phase I: fuel load and precriticality testing;
- (b) Phase II: cold criticality testing;
- (c) Phase III: heatup and low power testing to rated pressure/temperature conditions (approximately 1% rated power); and
- (d) Phase IV: low power testing (1-5% rated power).

The original Licensing Board which issued a Partial Initial Decision on September 21, 1983, decided all issues before it except that

⁵ Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361, 362 (1981).

involving the adequacy of the emergency diesel generators.⁶ That matter remains pending in adjudicatory proceeding involving full-power licensing being concurrently conducted by that Board. The jurisdiction of these two boards is separate and independent, and the instant low-power proceeding is not intended to duplicate or relitigate the massive record compiled in the extensive hearings preceding the issuance of the Partial Initial Decision.

Other licensing boards have considered the comparative risks associated with low-power versus full-power operations. It has been noted that the Commission endorsed the general proposition that fuel loading and low-power testing

"involve minimal risk to the public health and safety, in view of the limited power level and correspondingly limited amounts of fission products and decay heat, and greater time available to take any⁷ necessary corrective action in the event of an accident."

It has been held that the emergency planning measures required for low-power licenses are not the same as those required for full-power operation, but that the level of planning for a low-power license must be sufficient to provide the same level of protection to the public as

⁶ LBP-83-57, 18 NRC 445, 634 (1983).

⁷ Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-3, 18 NRC 61, 188, 190 (1982).

afforded by full compliance with the regulations at full-power operation.⁸

Without passing upon the ultimate merits of LILCO's supporting affidavits at this time, we observe that taken together they furnish sufficient analyses and data to provide a preliminary record to justify holding a limited evidentiary hearing on matters in controversy regarding low-power operations.

The Affidavit of Jack A. Nataro and William E. Gunther, Jr. describes in some detail the steps involved in each of LILCO's Phases I through IV. The affidavit of William G. Schiffmacher lists and describes all the normal and additional sources of offsite emergency AC power available to support the Shoreham plant. The affidavit of Dr. Glenn G. Sherwood, Dr. Atambir S. Rao and Mr. Eugene C. Eckert presents the results of the affiants' review of postulated accidents and transient events which must be accommodated by the Shoreham plant to demonstrate compliance with NRC regulations (Chapter 15, FSAR). The review specifically addressed the risk to public health and safety during low-power operations, taking into account such factors as reduced fission product inventory, increased time available for operators to take corrective or mitigating action, and the reduction in required

⁸ Pacific Gas and Electric Co. (Diablo Canyon Plant, Units 1 and 2), LBP-81-21, 14 NRC 107, 120-23 (1981). See also another decision in the same proceeding, LBP-81-5, 13 NRC 226 at 230 (1981).

capacity for mitigating systems at less than five percent of rated power. Included were findings as to the time in which lost AC power would have to be restored to prevent exceeding the regulatory limits in the event of a concurrent loss of cooling accident (LOCA). Lastly, the affidavit of William J. Museler sets forth LILCO's commitment to effect reactor shutdown in the event of hurricanes, tornadoes, earthquakes or similar happenings, or of power transmission line or onsite backup power problems.

In passing upon LILCO's motion, it is necessary to consider two NRC rules together, and seek to harmonize them in order to reach a sensible result and respect the purposes of both. GDC-17, as discussed above,⁹ contains requirements for full-power operation regarding the absence of either the onsite or offsite power system. It also sets forth the intent of assuring that fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded by anticipated operational occurrences, and that the core is cooled and containment integrity and other vital functions are maintained in the event of postulated accidents.

The GDC-17 requirements, which govern full-power operation, must be read in light of the low-power operation provisions of Section

⁹ See footnote 3, pages 5-6, supra.

50.57(c).¹⁰ That regulation gives applicants the right to seek a low-power license by a written motion, in cases where licensing proceedings are pending but uncompleted. The very purpose of this regulation is to permit motions for low-power operations where, as here, the licensing proceedings are not completed because of pending hearings on the satisfaction of all of the requirements of GDC-17, among others.

Looking at the provisions of GDC-17 is only the first step, not the last or only step, as urged by the State of New York and Suffolk County. It is unreasonable to refuse to consider the terms of Section 50.57 as applied to the requirements of GDC-17. This is also true of the findings required by subsection (c) of Section 50.57 on the matters specified in paragraph (a) of that section "as to which there is a controversy." The operation of the facility in conformity with the rules and regulations of the Commission includes the possibility of low-power operations equal to the full-power requirements of GDC-17, provided that (as the Staff states), it can be found by the Board that there is reasonable assurance that the low-power activities can be conducted with the protection to the public at least equal to the protection afforded at full-power operations with the approved diesel generators. The purpose of the limited evidentiary hearing established

¹⁰ See footnote 2, page 5, supra.

by the Board is to determine whether or not there is such "reasonable assurance."

Although LILCO's motion for a low-power license could probably be ruled upon without further evidentiary hearings¹¹ upon affidavits and counteraffidavits, the Board believes that the record would be more complete by granting a limited evidentiary hearing on an expedited basis. The issues should only be those relevant to low-power operations as set forth above.¹² There is no need to reinvent the wheel or to go into a mass of nonrelevant matters. A very substantial record has already been compiled by the Board which issued the Partial Initial Decision (18 NRC 445, supra). Any significant and relevant portions of that record may be used in this limited motion hearing, provided that such testimony or exhibits are specifically identified in advance and proffered in this proceeding.

The Board has also concluded that the taking of evidence on this Section 50.57 motion should be upon an expedited basis. That section itself contemplates prompt action on the motion, prior to the conclusion of the pending evidentiary hearings. The nature of and the risks associated with low-power operations are significantly different from

11 Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361 at 362 (1981).

12 Id.

full-power operations. Where the construction of any large electric generating facility has been substantially completed and it is ready for testing, it would make no sense not to rule speedily and expeditiously on motions for low-power activities. Expedited proceedings do not prejudge the issues, as the decision on the motion can go either way depending upon the quality of the relevant evidence adduced by the parties. But no party has a right to delay for its own sake, or to engage in dilatory practices. The motion of the State of New York objecting to expeditious consideration, filed on the date of arguments (April 4, 1984), is denied.

Even in cases where power plants have not been completed, licensing proceedings should be conducted expeditiously. The Commission has published a Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981) to aid licensing boards in expediting hearings. Therein, the Commission said that

"the actions consistent with applicable rules, which may be taken to conduct an efficient hearing are limited primarily by the good sense, judgment, and managerial skills of a presiding board which is dedicated to seeing that the process moves along at an expeditious pace, consistent with the demands of fairness." Id. at 453.

Our own Rules of Practice also permit the use of expedited procedures. For example, 10 CFR §2.711 gives a presiding officer the power to reduce established time limits when there is good cause for so doing, and §2.118 gives him all powers necessary "to conduct a fair and

impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order."

The Commission has also said that "as a general matter when expedition is necessary, the Rules of Practice are sufficiently flexible to permit it by ordering such steps as shortening -- even drastically in some circumstances -- the various time limits for the party's filings and limiting the time for, and types of, discovery." Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1) CLI-82-32, 16 NRC 1245, 1263 (1982).

Scheduling

The Board heard the opinions of all the parties upon scheduling of any hearing which might be held. LILCO suggested a time frame in which testimony would be filed by all the parties on April 17 or 19, 1984, and hearings would commence on April 24. Hearings on this motion, LILCO submitted, should last no more than one week (Tr. 99-101). The NRC Staff stood by the suggested schedule that it had presented in its written response (at footnote 3, pages 5-6): that LILCO's testimony should be filed on April 13, the testimony of the Intervenors and the Staff on April 23, and the hearing itself should commence by the end of April (Tr. 106-08). Suffolk County proposed a schedule which would include a lengthy discovery period to permit exploration of "a plethora of new, substantive, factual issues" (Tr. 114-17). Discovery, according to Suffolk County's proposed schedule, would continue through May 30. Specification of issues would be on June 15, responses thereto on

June 25, and prehearing conference on July 5. After submission of testimony on July 20, hearing would commence on August 5 (Tr. 113-14).

The Board considered the suggestions in light of the issues as we have framed them. We exercise our judgment on scheduling in accordance with our decision above. We find that the expedited schedule set forth below will not prejudice any party to this proceeding.

<u>Date</u>	<u>Event</u>
April 6-16, 1984	Discovery
April 19, 1984	NRC Staff supplemental SER
April 20, 1984	All direct written testimony filed
April 24-28, 30 through May 5, 1984	Hearing

No further adjudicatory hearing days will be scheduled in this matter.

Discovery shall be limited to documents and depositions. We expect the parties to exercise the maximum cooperation in this regard. All prefiled written testimony must be in question/answer format. Testimony filed April 20, including that for Judge Johnson, shall be sent to the Bethesda Office. All filings shall be hand delivered or expedited delivery, and no additional time shall be allowed for mailing. All filings shall be in the hands of the Board not later than 3:30 p.m. on the date due.

Parties to this proceeding are reminded that they have an affirmative duty to promptly inform the Board of any and all changes in

circumstances which might impact upon our hearing on the issues before it.

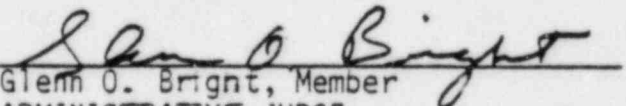
Standards of practice have been established by the Commission governing the "appearance and practice in adjudicatory proceedings."¹³ The Rules of Practice expressly provide that parties and their representatives "are expected to conduct themselves with honor, dignity, and decorum as they should before a court of law" (Id.). Counsel and parties have always conducted themselves with propriety and decorum in the past, and the Board is confident that orderly and expeditious procedures will continue to be followed.

Hearing will commence at 9:00 a.m., local time, on Tuesday, April 24, 1984 at Courtroom 1, State Office Building, Veterans Memorial Highway, Hauppauge, New York 11787.

¹³ 10 CFR §2.713.

This decision was fully participated in by Judge Elizabeth B. Johnson, who concurs in the foregoing Order but was unavailable to sign it when issued.

THE ATOMIC SAFETY AND LICENSING BOARD


Glenn O. Bright, Member
ADMINISTRATIVE JUDGE


Marshall E. Miller, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 6th day of April, 1984.

4/30/84

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

LONG ISLAND LIGHTING COMPANY

(Docket No. 50-322-OL) 4

[ASLBP No. 77-347-11C OL]

ESTABLISHMENT OF ATOMIC SAFETY AND LICENSING BOARD
TO PRESIDE IN PROCEEDING

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 F.R. 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, and pursuant to the Statement of Policy on Conduct of Licensing Proceedings, 13 N.R.C. 452 (1981), and the advice from the present Atomic Safety and Licensing Board in this operating license proceeding with jurisdiction over non-emergency planning matters that two of its members are heavily committed to work on another operating license proceeding, a separate Atomic Safety and Licensing Board is being established to hear and decide Long Island Lighting Company's March 20, 1984 "Supplemental Motion for Low Power Operating License."

LONG ISLAND LIGHTING COMPANY

Shoreham Nuclear Power Station, Unit 1 (Low Power)

Construction Permit No. CPPR-95

This Board is being established pursuant to a notice published by the Commission on March 18, 1976 in the Federal Register entitled,

~~8404030163~~ 298


"Receipt of Application for Facility Operating License, Availability of Applicant's Environmental Report; Consideration of Issuance of Facility Operating License; Opportunity for Hearing." 41 Fed. Reg. 11367-68 (1976).

The Board is comprised of the following Administrative Judges:

Marshall E. Miller, Chairman
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Glenn O. Bright
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Elizabeth B. Johnson
Oak Ridge National Laboratory
P.O. Box X, Building 3500
Oak Ridge, Tennessee 37830


B. Paul Cotter, Jr.
Chief Administrative
Judge
Atomic Safety and Licensing
Board Panel

Issued at Bethesda, Maryland,
this 30th day of March, 1984.