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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

April 4, 1984

*G #16184
Muller, C. L.
Commission:
1) Decision date
2) Sept. cases
3) Then S.D. motion
4) No action*

MEMORANDUM FOR: Commissioner Gilinsky
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal

FROM: Nunzio J. Palladino *NJP*

SUBJECT: SHOREHAM

As you know, in my March 20, 1984 memorandum on licensing delays, I asked OGC to prepare a paper for the Commission discussing possible approaches to expediting the remaining Shoreham hearings on low power. I asked OGC to work with other offices within NRC as necessary in preparing this paper.

The OGC paper (Limited Distribution) was provided to the Commission on April 2, 1984. I would like to get Commission reactions to this paper as soon as possible, but not later than April 9, 1984. SECY please track.

During my status and scheduling meeting with OGC, OPE, the ASLBP Chairman and staff on March 16, 1984, some preliminary ideas regarding expediting the Shoreham hearing were discussed. These ideas were later articulated in a working paper (enclosed) that was discussed with Judge Cotter by my Legal Assistant. Judge Cotter provided his comments in the form of a draft order (enclosed). I asked that this draft order be given to OGC for possible consideration in the above-referenced OGC paper. It was given to OGC on March 27, 1984. Further action on this or any other draft order will depend on the nature of Commissioner comments on OGC's April 2, 1984 memorandum.

Enclosures:

- 1. Working Paper
- 2. ASLBP Draft Order

cc: SECY
OGC
OPE
~~ASLBP~~

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PDR COMMS NRCC
CORRESPONDENCE PDR

LIMITED DISTRIBUTION

ORDER

Mar 23, 1984

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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