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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

'84 SEP 19 P4:00

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

FILED IN SEVENTH
CIRCUIT COURT OF APPEALS
AT WASHINGTON, D.C.
RECORDING & SERIALIZED
BRANCH

SERVED SEP 19 1984

In the Matter of
LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Generating Plant,
Unit 1)

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

(ASLBP No. 77-347-0IC-OL)

September 19, 1984

ORDER DENYING REVISED SECURITY CONTENTIONS

On August 13, 1984, Intervenors Suffolk County and the State of New York filed seven proposed security contentions for litigation in this low-power proceeding. LILCO replied on August 24, and the County and the State responded to the LILCO reply on August 28, submitting a superseding set of seven "Revised" security contentions. On August 30, at a conference of counsel held in Bethesda, Maryland, the Board heard the response of LILCO, additional arguments of the Intervenors, and the position of the NRC Staff regarding the "Revised" contentions.

Subsequent to that conference, but before this Board had ruled on the contentions, the NRC Staff (Division of Licensing, Office of Nuclear Reactor Regulation) issued a letter to LILCO dated September 11, 1984. This letter apparently constituted an abrupt change in the previous

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position of the Staff on the issues of vital areas or equipment, which are matters significantly related to the subject matter of this segment of the proceeding. We therefore found it necessary to hold another conference with counsel on September 14, 1984 to discuss the "effect and implications" of the Staff's letter "upon substantive issues and scheduling" in the proceeding.

The Commission in its Memorandum and Order of July 18, 1984, set forth guidance on the admissibility of contentions in the special circumstances of this proceeding.¹ The Commission said that admissible contentions must be: (1) "responsive to new issues raised by LILCO's exemption request;" (2) "relevant to the exemption application and the decision criteria as set forth in the Commission's Order of May 16, 1984;" (3) "reasonably specific;" and (4) "otherwise capable of on-the-record litigation." The Commission further explained that security issues, if any, may be litigated:

¹ LILCO has requested an exemption pursuant to 10 C.F.R. § 50.12(a), to requirements of general design criteria (GDC), specifically GDC 17, to allow issuance of a low-power operating license for Shoreham prior to completion of litigation regarding certain emergency power systems. LILCO has added certain "enhancements" to the plant's offsite emergency power systems: four EMD diesels and one gas turbine. The security of the "enhancements" is also part of their exemption request. Tr. S-108, 232-3.

- "(1) to the extent they arise from changes in configuration of the emergency electrical power system, and
(2) to the extent they are applicable to low power operation."

In its Memorandum and Order dated August 20, 1984, the Commission stated that it did not believe that the security agreement, "by its terms, precluded the raising of any new security issues raised by LILCO's exemption request" (at page 2). We have followed this direction and permitted the Intervenors to file (and revise) their proposed contentions, which must be within the Commission's guidelines.

Each of the proffered contentions must be measured against the six criteria, supra, explicitly set forth by the Commission as governing the admissibility of physical security issues. Such contentions must also be viewed in the context of an approved security plan resulting from the parties' November 24, 1982 security settlement agreement, approved by an ASLB order entered December 3, 1982. That plan is a complex, sophisticated security plan which covers all aspects of the Shoreham facility. New contentions involving security issues must therefore plead with reasonable specificity their necessary causal connection with the "changes in configuration" of the enhancements to emergency power, and the "extent they are applicable to low-power operation" covered by the exemption application. The Intervenors have had access to this detailed security plan for almost two years, and their contentions must reflect this high level of prior information in specifying concerns

solely attributable to such "changes in configuration." The intervenors have failed to meet the standards required by the Commission.

The intervenors' proposed contentions wholly fail to plead new security issues arising "from changes in configuration of the emergency electrical power system," as required by the Commission Order of July 18, 1984 (at page 3). These proffered contentions also are not "relevant to the exemption application," and they are not "applicable to low-power operation" (Id.).

The reasons for denial of the intervenors' contentions are set forth and discussed in a Restricted Order Denying Revised Security Contentions (Restricted, Security/Safeguards Information) which has been issued this date and forwarded directly to the Commission for appropriate action. Such Restricted Order is incorporated herein by reference. The proceedings involved in the Restricted Order were held in camera, and were reported in restricted transcripts numbered S-1 to S-333, inclusive. The Commission, of course, has the power to release all or such portions of the Restricted Order as it deems appropriate.

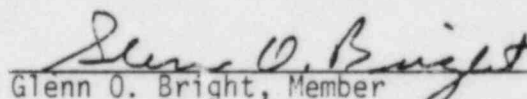
For the foregoing reasons, it is ordered that the "Revised Security Contentions of Suffolk County and the State of New York" are denied in their entirety.

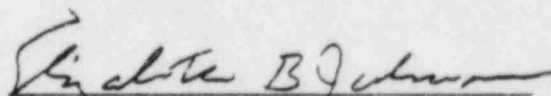
Although this Order denying security contentions may not be technically within the Commission's reserved jurisdiction in CLI-84-8, we believe that it is within its spirit. Accordingly, this Order

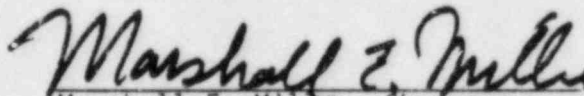
Denying Revised Security Contentions is hereby transmitted directly to the Commission for appropriate action.

It is so ORDERED.

THE ATOMIC SAFETY AND LICENSING BOARD


Glenn O. Bright, Member
ADMINISTRATIVE JUDGE


Elizabeth B. Johnson, Member
ADMINISTRATIVE JUDGE


Marshall E. Miller, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 19th day of September, 1984.