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NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of	)	
LONG ISLAND LIGHTING COMPANY	)	Docket No. 50-322-OL
(Shoreham Nuclear Power Station, Unit 1)	)	

SUFFOLK COUNTY PETITION
FOR REVIEW OF ALAB-788

On October 31, 1984, the Appeal Board issued (and served by U.S. mail) ALAB-788. Pursuant to 10 C.F.R. § 2.786(b), Suffolk County petitions for Commission review of ALAB-788.

The Commission should review all the major health and safety issues addressed in ALAB-788 and also should reconsider CLI-84-9, 19 NRC 1323, pertaining to the need for a supplemental EIS covering low power operation followed by abandonment. Given the 10-page limit of Section 2.786, the County highlights only the following issues.

I. LILCO Lacks a Quality Assurance Program for Nonsafety-related Equipment (ALAB-788, at 16-20)

The County argued that systems, structures and components ("SS&Cs") which are important to safety and thus covered by 10 C.F.R. Part 50, Appendix A, GDC 1, must be subject to a systematic quality assurance ("QA") program.1/ LILCO has a QA program for safety-related SS&Cs, but for SS&Cs which are important to safety but not safety-related, LILCO has no systematic QA program. LILCO merely has an ad hoc system of QA activities, the precise

1/ Suffolk County Brief in Support of Appeal of Licensing Board Partial Initial Decision ("SC Brief"), December 23, 1983, at 4-11.

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scope or details of which were never established on the record. The Appeal Board found this ad hoc pursuit of QA to be acceptable and held that not even written procedures are required for QA for nonsafety-related SS&Cs covered by GDC 1. See ALAB-788, at 19-20.

GDC 1 specifies that "a quality assurance program shall be established and implemented" for all SS&Cs important to safety. (Emphasis supplied). The Commission must decide what constitutes a QA program. We submit that a QA program must constitute a series of planned and systematic actions by which a specified regime of QA activities and controls will be applied. For activities pertaining to the nonsafety-related SS&Cs to constitute a "program," there must be a clearly defined set of activities which in fact will be implemented. See SC Brief at 4-11. LILCO does not have such a program.2/

Accordingly, this Commission should take review to (i) define what GDC 1 means in requiring a QA program (an issue that is significant for all plants); and (ii) to decide whether the QA activities documented on the Shoreham record constitute a QA program in compliance with GDC 1 for nonsafety-related SS&Cs.

II. The LILCO QA Program Does Not Comply with 10 C.F.R. Part 50, Appendix B, Criterion 18 (ALAB-788, at 61-66)

The Appeal Board misinterpreted Criterion 18 of Appendix B to Part 50. See SC Brief at 43-48. LILCO does not audit 100 percent of Shoreham's QA records and activities. Rather, LILCO audits only a small number of items, selecting those items to be audited by non-random, non-statistical judgment sampling techniques. Thereafter, based on the specific audit findings from

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2/ Despite repeated requests that LILCO document its alleged nonsafety-related QA program on the record, the construction site inspection manual, which the Licensing Board had alleged to contain the nonsafety-related QA program (see ASLB Decision at 589), was never even placed into the record, a situation which is clearly contrary to Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-580, 11 NRC 227 (1980).

that judgment sample, LILCO attempts to reach conclusions regarding the adequacy of the total QA program.

Criterion 18 requires that the audit program provide a basis for concluding that all aspects of the LILCO QA program have been effectively implemented. Since all aspects of that program are not audited, Criterion 18 can be satisfied only if the audits provide a reliable basis for reaching inferences about the adequacy of the entire QA program.

If an auditor selects items using only judgment instead of using statistical sampling techniques, there can be no confidence in the accuracy of any inferences drawn regarding the entire population. Suffolk County submits that for an accurate extrapolation to be possible, the audit program must include statistical methodology regarding sample selection. Since LILCO does not use such methodology, LILCO has not established an audit program which complies with Criterion 18.3/ This issue is significant not only in the Shoreham proceeding but for other proceedings as well, particularly given the widespread QA/QC breakdowns which have been reported at other plants.

III. The Appeal Board's Decision on Specific Quality Assurance Matters was Erroneous (ALAB-788, at 66-83)

The Appeal Board addressed the details of the County's evidence and arguments (SC Brief at 48-78) relating to whether LILCO's safety-related QA program has been implemented adequately. The Board covered various QA issues, including some pertaining to housekeeping, control of calculations, and elec-

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3/ Suffolk County does not urge that judgmental techniques may not also be utilized. Rather, the focus of this issue is narrow, although its ramifications are broad: whether the Commission is going to require its licensees to have audit programs on the basis of which reliable inferences can be reached about the adequacy of QA which has been applied to areas of the plant or records which are not specifically audited.

trical separation, as well as what constitutes a QA deficiency and the level of assurance that Boards must demand in assessing QA compliance.

Suffolk County took the position that there was no such thing as an immaterial or unimportant QA deficiency. Id. at 49. A QA program must establish the necessary discipline among plant workers to ensure that all aspects of the program are rigorously implemented. Successful implementation depends on active management involvement.

There were repeated instances of deficient QA implementation at Shoreham. When these instances were brought to management's attention, little often was done to correct the deficiencies.4/

The Appeal Board seemed to view most of these QA deficiencies as relatively minor because the County could not point to actual safety problems of particular QA deficiencies. This represents the wrong standard and thus Commission review is essential. The issue in the QA context is not whether a particular QA deficiency constitutes a safety problem. It is often difficult to tell whether there is safety significance to a particular QA deficiency. However, by allowing lax QA implementation, LILCO permitted creation of a climate in which there is increased potential for QA deficiencies to constitute safety problems.

The Commission should rule that all QA deficiencies are significant and that the NRC will be satisfied with a licensee's QA/QC implementation only if

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4/ For example, there were repeated instances where the control of calculations did not comply with LILCO's own QA manual. Similarly, over a several year period, the cleanliness and housekeeping requirements of LILCO's QA program (and Criterion 13) were not met. Indeed, LILCO even made specific promises to the Staff that effective remedial measures would be taken but time after time it was discovered that effective corrective action had not been taken. Id. at 62-67.

there is strong evidence that a rigid and unyielding protocol of QA effectiveness has been adopted by the licensee.

There is one additional procedural error which should be brought to the Commission's attention. (ALAB-788, at 92-96; SC Brief at 79-81). In connection with the housekeeping deficiencies, the Staff in January 1983 uncovered additional housekeeping deficiencies and issued a Confirmatory Action Letter to LILCO, a form of heightened enforcement action. The Licensing Board thereafter convened a further hearing to examine the ramifications of this action. Suffolk County requested an opportunity to present evidence. LILCO and the NRC Staff were permitted to present testimony but the County was barred, the Board apparently believing that the County could argue its position in its findings and that the County's evidence would be cumulative of previous positions taken by the County. The Appeal Board seemed to agree, and faulted the County for having failed to present an offer of proof.

The Commission should not permit such a flageral denial of due process. It is a per se violation of procedural fairness to allow parties on one side of an issue to present evidence but to deny other parties the same right. The Board's ruling in this regard and the Appeal Board's affirmance thereof, is an open invitation for procedural error in future proceedings.5/

The NRC has an obligation to ensure that its licensing and appeal boards comp'y with the regulations and conduct proceedings in accordance with the Atomic Energy Act and fundamental fairness. This is an instance where the

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5/ There can be no justification for this extraordinary action. All testimony was to be prefiled. If the County testimony was cumulative or repetitive, the Board had authority under 10 C.F.R. § 2.743(c) to bar that testimony. However, the Licensing Board did not even permit the County to get to that point, instead ruling as a matter of law that we would not be permitted to submit evidence.

boards have acted squarely contrary to fundamental fairness. It is imperative that the Commission take review of this matter so that the serious due process violation can be addressed.

IV. The Decisions Concerning System Interaction are Clearly Erroneous (ALAB-788, at 36-59)

Contention 7B concerned, inter alia, the adequacy of LILCO's methodology for identifying adverse systems interactions. The County documented a serious systems interaction concerning the BWR water level sensing system. SC Brief at 19-22. This interaction, the so-called Michelson concern, involves the reactor protection and feedwater control systems which share instrument sensing lines that monitor reactor vessel water level.

The Appeal Board appeared to consider the Michelson concern with no alarm because GE and apparently LILCO had identified this problem and had determined that the interaction would likely remain within design limits. Thus, nothing was done to fix it; instead, increased reliance was placed on operators to respond to the problem when it occurred. This is an incorrect view of the way the NRC's regulations are to be construed and also is indicative of a failure of methodology.

The Commission should address the fact that for years the methodology employed by LILCO and GE permitted an adverse systems interaction to exist despite the fact that there were methods for addressing this concern. The lessons of the TMI accident are clear to be careful not to place undue demands on operators and to decrease challenges to safety systems, which challenges may increase the opportunity for operator error. However, the LILCO/GE methodology did not address these concerns and rather permitted an adverse systems interaction to continue. In this context, the Appeal Board should have ruled that a deficiency in the LILCO methodology was established. The

Commission should review this aspect of the decision so that it can provide necessary guidance regarding the adequacy of a methodology which did not address or attempt to correct adverse systems interactions.

A further issue relating to systems interaction concerns the lack of progress in addressing unresolved generic safety issue A-17. SC Brief at 29-40. There has been almost no progress in the resolution of A-17, either generically or with respect to Shoreham. Indeed, the lack of progress led the chief Staff reviewer of the A-17 matter, Mr. Conran, to reverse his testimony and to testify that adequate progress on A-17 to support licensing had not been achieved.

The apparent position of the Appeal Board was that since A-17 was allegedly only "confirmatory" in nature, the lack of progress, while perhaps not to be applauded, was not of safety concern. However, under the North Anna standard, A-17 cannot be resolved on so simple a basis. It is undisputed that A-17 has had a high priority since it initially was recognized as an issue back in the 1970's. If the North Anna standard is to have significance, this Commission must rule that there must be a basis for finding that adequate progress has been made. It is not enough to say that confirmatory studies that have not made any progress have not indicated any problems. The reason that no problems have been identified is perhaps that no progress has been made at all.

V. The Appeal Board Erred in Vacating the License Condition (ALAB-788 at 13-14)

The Licensing Board found that LILCO had misinterpreted the term "important to safety," equating it with the narrower class of safety-related SS&Cs. Because of this error, the Licensing Board conditioned the issuance of any license on LILCO's adoption of the proper definition. LILCO appealed the

license condition and the Appeal Board vacated the same. The Appeal Board did not disagree that LILCO had misinterpreted the regulations but found that since LILCO allegedly had treated important to safety SS&Cs properly, the license condition was not necessary. The County had urged that the license condition and much more was necessary to correct LILCO's failure to comply with the NRC regulations. See SC Brief at 11-18.

The Commission must review this holding. This is an instance of a licensee having fundamentally misinterpreted key NRC regulatory requirements and the Appeal Board holding that all is just fine despite this fact. Indeed, no effective steps were even put in place to ensure that LILCO complies in the future. This is a serious abdication of regulatory responsibility.

VI. The Licensing Board's Use of Evidentiary Depositions was Erroneous (ALAB-788 at 137-43)

A number of errors pertaining to onsite emergency planning were briefed to the Appeal Board. SC Brief at 87-98. The Appeal Board decided each of them in an erroneous manner. The Commission should review each. We highlight one in particular.

The Shoreham onsite emergency planning proceeding started in April 1982 and involved extensive discovery, especially via depositions. By November 1982, the parties had prefiled direct testimony and were preparing for a hearing. The Licensing Board then decided to experiment with the due process rights of the Intervenors. The Board ordered that so-called "evidentiary depositions" be conducted instead of the normal hearing which has always been held in NRC proceedings. Although the Board stated that it would convene a special hearing after the evidentiary depositions to allow focused inquiries concerning the testimony and demeanor of witnesses, it made clear that a large percentage of the "hearing" would be conducted out of the presence of the

Licensing Board. Thus, it was inevitable that the Board would be barred from a full exposition of the facts. The Appeal Board approved this experimentation.

Section 189 of the Atomic Energy Act provides parties with an opportunity for a hearing in any proceeding for a license to operate a nuclear plant. This hearing requirement has consistently been construed by the NRC to mean an actual hearing before the NRC's administrative judges. Depositions have been used in NRC practice as a proper pretrial device, but have never been used as a substitute in whole or in part for a public adjudicatory hearing. Thus, the order to proceed by evidentiary depositions was totally at odds with the norm and practice of NRC proceedings.

A licensing board has discretion to control the course of a proceeding. However, that discretion does not extend to making a serious adjudicatory proceeding into a forum for administrative experimentation. The parties in the Shoreham proceeding are entitled to the full attention of the Licensing Board in the trial proceeding.

The Licensing Board's December 22, 1982 order dismissing onsite emergency planning contentions was premised solely on the fact that Intervenors had "defaulted" by refusing to submit to the Board's use of evidentiary depositions. Since the order for evidentiary depositions was unlawful, the subsequent default ruling was likewise unlawful. Accordingly, this Commission should reverse the dismissal of Phase I emergency planning contentions and order a hearing on those issues.

Respectfully submitted,

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November 20, 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY PETITION FOR REVIEW OF ALAB-788, dated November 20, 1984, have been served on the following this 20th day of November 1984 by U.S. mail, first class.

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