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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Lawrence Brenner, Chairman
Dr. George A. Ferguson
Dr. Peter A. Morris

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

Docket No. 50-322-0L

SERVED DEC 5 1984

December 4, 1984

ORDER CONFIRMING GRANT OF LILCO'S MOTION
TO REOPEN DIESEL ENGINE HEARING

The Decision to Reopen

On November 6, 1984, LILCO filed a motion to reopen and supplement the record on contentions related to the crankshafts and cylinder blocks of the three Transamerica DeLaval, Inc. (TDI) emergency power diesel engines, which are the remaining subjects of the TDI diesel engine litigation phase of this operating license proceeding.^{1/} LILCO's motion was filed after the October 4 close of

^{1/} Issues related to the diesel engine cylinder heads and pistons were settled by the parties, with the Board's approval, after the (Footnote Continued)

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the record on crankshafts, and shortly before the November 15 date on which the record on cylinder blocks would otherwise have been closed. In consideration of LILCO's motion, the November 13 joint answer of Suffolk County and New York State in opposition to the motion, and the November 14 NRC Staff answer in support of LILCO's motion, the Board, on the record of the November 16, 1984 hearing session, granted LILCO's motion. Tr. 26,911-20.

The Board found that LILCO had satisfied the test applicable to reopening the record when such a motion is made at a time before a Board is well into the process of drafting a decision on the merits and therefore is relatively close to issuing such a decision: Whether the proposed new evidence relates to a significant safety (or environmental) question and reasonably might materially affect the outcome of the proceeding. Tr. 26,912-13. The Board found that it was particularly appropriate to grant the motion now, once this test is satisfied, rather than to defer a ruling on the motion until close

(Footnote Continued)

direct testimony had been filed, and in the case of pistons after evidence by all parties except Suffolk County had been presented at the hearing. The settlement of the piston issues is subject to Suffolk County's right to claim that the anticipated, and still awaited, NRC Staff written report of its inspections of the pistons after the recent test run of the number 103 diesel engine, is inconsistent in some material way with the oral representations of the Staff's findings made to the parties and summarized at the hearing. We are pleased to confirm in writing our commendation of the parties and their counsel for the vigor with which they successfully pursued settlement of issues related to these two components.

to or at the decision issuance stage when the applicable standard would be the more stringent one of whether the new evidence (if arguendo believed), would materially affect the outcome on a significant issue. This is because in the unusual circumstance before us of the applicant for an operating license being the champion of a motion to reopen, it is the movant rather than the opponent who will be substantially prejudiced by later delay if the motion is not granted now, but is granted by the Board in the future at the time of a decision on the merits which would otherwise be adverse to the movant. See Tr. 26,917-18.

LILCO is untimely in its late-realized desire to litigate the acceptability of the diesel engine crankshafts and cylinder blocks on the basis of a proposed "qualified (electrical) load" rating (3300 kw) which is lower than the design rating (3500 kw), and to include evidence of strain gauge measurements of the block from a further test "endurance run" of the number 103 diesel engine at the lower qualified load. This Board, on several occasions beginning with the July 5, 1984 conference of parties, and amplified at the September 20, 1984 hearing session (see Tr. 23,107-23,113.1), at first raised the question and by the September 20 hearing session, warned LILCO that it was wasting hearing time and acting in an untimely fashion if it was going to attempt later to meet its burden of proof before this Board on the basis of lower diesel loads. LILCO was in control of the relative timing of its lower qualified load analyses, further

endurance tests, and the start of the hearing. This is because LILCO could have performed some of its work earlier and/or because, had LILCO so requested, the Board would have delayed the start of the hearing on issues affected by further analyses and tests which LILCO wished to perform.

However, LILCO's own untimeliness will inure to its own prejudice to the extent it causes the proceeding to end at a later date than would have been the case if LILCO had timely sought to have the litigation schedule adjusted with its schedule for further analyses and tests. The prejudice to Suffolk County, and indeed the dissatisfaction of the Board, for having to inefficiently participate in a hearing for which part of the litigation will be revisited, with new evidentiary premises and information, is not so substantial that it should result in the Board's turning its back on additional evidence which we find might reasonably affect the outcome of our decision on a significant safety issue. Tr. 26,915-16.

Scope of the Reopening

The scope of the reopening as proposed by LILCO would be unfairly narrow and one-sided. The Board generally agreed with the views of the NRC Staff, Suffolk County and New York State on the proper scope of the reopened hearing if LILCO is permitted to put in its new evidence. Any party which so desires may submit a contention which

challenges, on a material issue, the lower qualified loads now proposed by LILCO for the diesel generators. Such contentions have to meet the tests applicable for admissibility of timely contentions. Regardless of whether the Board admits a contention on the acceptability of the lower qualified loads, parties may submit evidence concerning: (1) DEMA stress calculations for the crankshaft, and any other calculations consistent with the County's crankshaft contention (i.e., criteria of the American Bureau of Shipping, Lloyd's Register of Shipping, the International Association of Classification Societies, or the German Kritzer-Stahl criteria used by F.E.V.), at a new qualified load level (including consideration of any uncertainties in new load levels or load demands which have the potential for approval); and (2) the results of additional testing and inspections of the crankshaft and cylinder block after the recently completed endurance test run of EDG 103. Tr. 26,924, 26,927-30.^{2/}

^{2/} Although not arising under LILCO's motion to reopen and supplement the record, the parties have agreed that further evidence, at least in the form of a micrograph (photograph), will be presented of a 500X magnification of the coating of the original EDG 103 cylinder block cam gallery cracks in the vicinity of the weld (e.g. S.C. Ex. S-4) as a comparison to the 500X photograph in LILCO Ex. B-63. Tr. 26,990-91. Depending on future developments, further evidence may be heard regarding further tests of the coatings in the cam gallery cracks of the old EDG 103 cylinder block, to try to determine the general extent of the presence or absence of magnetite, an Fe_3O_4 form of iron oxide (ferrosoferric oxide), or other oxides.

Schedule for the Reopened Hearing

During a recess in the November 16, 1984 hearing session, Suffolk County, LILCO and the NRC Staff were able, by commendable compromise, to synthesize their diverse proposed schedules and some of the Board's suggestions into a schedule which they agreed upon and which the Board approved. See Tr. 26,946, 26,957-63. That schedule, with all dates noted being received dates, is:

- (1) December 3, 1984: LILCO and PNL (NRC Staff's consultant) inspection reports on the crankshaft and block after the EDG 103 endurance run.
- (2) December 3, 1984: NRC Staff draft SER (identical in substance to the final SER) on the acceptability of LILCO's proposed (3300 kw) lower qualified load.
- (3) December 17, 1984: Proposed contentions, or notice that there are none, on the acceptability of a lower qualified load. (Parties are required to negotiate prior to, and if necessary, after this filing, to attempt to agree at least on the scope and admissibility of any proposed contentions.)
- (4) December 17, 1984: Completion of discovery by Suffolk County (and New York State).
- (5) December 18, 1984: NRC Staff final SER on post-EDG 103 endurance run inspections, and tests of the crankshaft and block, and on the acceptability of LILCO's proposed lower qualified load.

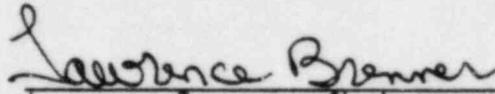
- (6) December 21, 1984: Completion of discovery by LILCO and the NRC Staff.
- (7) December 27, 1984: Last date for LILCO and NRC Staff answers to any proposed contentions on the acceptability of a lower qualified load. (Parties are required to negotiate prior to this filing to attempt to agree at least on the scope and admissibility of any proposed contentions.)
(See Tr. -
26,967-71)
- (8) January 15, 1985: LILCO written direct testimony on all issues.
- (9) January 25, 1985: Suffolk County (and any New York State) written direct testimony on all issues.
- (10) February 5, 1985: NRC Staff written direct testimony on all issues.
- (11) February 12
or 13, 1985:^{3/} Commencement of hearings.

Any motions to strike written testimony shall be received no later than one week after receipt of the testimony, and answers thereto shall be received one week after receipt of any such motions.

^{3/} New York State Court facilities will be closed on February 12, 1985. February 18, 1985 is a federal holiday. For the parties' long-term scheduling considerations, the Board will not be available for hearings on February 22 through March 1, 1985. In part to maximize the number of hearing days, and the availability of the full Board, hearings may be scheduled in Bethesda, Maryland, at least for February 12-15 and 19-21, 1985.

Minor adjustments to the schedule may be agreed to by the parties, and the Board so notified, without the need for prior Board approval, with the exceptions of item 7, and, of course, item 11.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

A handwritten signature in cursive script that reads "Lawrence Brenner". The signature is written in dark ink and is positioned above a horizontal line.

Lawrence Brenner, Chairman
ADMINISTRATIVE JUDGE

December 4, 1984
Bethesda, Maryland