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(BY HAND)

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DOCKET NUMBER 50-322 OC-4
PROD & UTIL. FAC.

Re: Reply to "Board Notification 85-009
Exemption from General Design Criterion
17 Regarding Low Power Operation of
the Shoreham Nuclear Power Station"

Dear Members of the Commission:

Suffolk County is in receipt of Board Notification 85-009. That Notification discloses that the Shoreham alternate AC power configuration does not meet the single failure criterion. This constitutes an important revelation, particularly because compliance with the single failure criterion was a critical issue in the GDC 17 exemption litigation. Indeed, in reliance on Staff testimony, the Miller Board in its October 29 Initial Decision found that LILCO complied with the single failure criterion and therefore with the "as safe as" standard. The facts disclosed in the Notification make clear that the Initial Decision is wrong.

This new development must be addressed by the parties in the context of the appropriate adjudicatory procedures of the NRC rules, not by the informal procedure of a routine Board Notification. Suffolk County strongly objects to the Staff's apparent attempt to bypass those procedures and to minimize the importance of the new development. We have been authorized by the Special

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Counsel to Governor Cuomo to state that the State of New York agrees with the content of this letter.1/

The County and State emphasize that the new revelations are not some minor matter appropriate for casual, behind the scenes, accommodation between the Staff and LILCO. Rather, these revelations demonstrate that the alternate AC power system approved in the October 29 Initial Decision is a deficient system, one that does not even meet the single failure criterion. The single failure criterion is one of the "minimum requirements" for design of nuclear power plant systems. 10 C.F.R. Part 50, Appendix A, Introduction. If the alternate AC power system does not even satisfy such a "minimum requirement," there is no possible basis to make the "as safe as" finding required by the NRC's May 16, 1984 Order.

Further, the Commission must be aware of the importance of this revelation in the context of its review of the Miller Board's Initial Decision. In the exemption litigation, LILCO proposed a particular alternate AC power configuration for use during low power operation. That configuration was reviewed by the Staff, litigated during the August hearing, and approved by the Board in the October 29 Decision. It is that configuration that the Commission is now reviewing and that configuration is clearly inadequate. Absent a full evidentiary hearing, the NRC has no authority to consider a new configuration such as the "proposed solution" (the racking down of Breaker 460) which is discussed in the Notification. That "solution" represents a significantly different, less safe AC power configuration, which was not proposed or litigated before the Licensing Board and is thus not before the Commission.

Therefore, the Commission is confronted with the undisputed fact that the Initial Decision is wrong in finding that the original configuration of the alternate AC power system complies with the single failure criterion. The Initial Decision is thus also clearly wrong in its finding that the "as safe as" standard is satisfied. The NRC must accept these facts and refuse to authorize any Phase III/IV license to LILCO.

1/ This letter is being filed with the Commission to be responsive to the fact that the NRC Staff brought this matter directly to the Commission's attention via the Notification.

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DISCUSSION

Under the NRC's May 16 Order, the Miller Board was required to assess whether operation with the alternate AC power system would be "as safe as . . . operation would have been with a fully qualified onsite A/C power source." 19 NRC at 1156. In the litigation which followed the May 16 Order, a critical issue on which the parties introduced evidence was whether the alternate AC power system met the single failure criterion. This was important, in particular, because if the alternate AC power system were subject to being defeated by a single failure, LILCO clearly could not meet the "as safe as" criterion.

The Staff was insistent in urging that LILCO's alternate configuration complied with the single failure criterion. E.g., SSER 6, at pp. 8-5 thru 8-9 and Staff prefiled testimony of Messrs. Knox and Tomlinson at pp. 6 and 14. Indeed, the Staff testified:

The design has sufficient redundancy, independence and testability so that it can perform its safety function, given a single failure. We have concluded that a fully qualified onsite AC power system would not provide a degree of safety greater than that which would be provided by a [sic] proposed alternate AC power system.

Tr. 1859-60 (Knox). Suffolk County submitted testimony arguing that the alternate AC power system was subject to single failures and thus was less safe than a fully qualified system. E.g., Eley, et al., Tr. 2452, 2459-60.

In its October 29 Initial Decision, the Miller Board accepted the Staff position that the alternate AC power system met the single failure criterion. The Board stated in its section entitled "Single Failure Criterion":

Suffolk County's testimony was devoted almost exclusively to showing that each unit in the enhanced system (the gas turbine and the EMDs) was either inferior to the qualified system or, in the case of the EMDs, that the potential existed

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for a single failure which would disable all four of them. The Board finds this line of evidence to be irrelevant. The two units (the gas turbine and the EMDs) were planned as a system, and it is the system that the Staff has reviewed and has determined that the alternate power source was adequate. The only potential common fault is that the output of both units gains entry to the nonemergency switchgear room through a concrete block wall, but even here they are separated by approximately forty feet. The EMDs also will have an independent line which allows their output to be delivered to the emergency switchgear room. The Board therefore finds that the EMDs and the gas turbine are adequately independent of each other.

Decision at 50-51 (emphasis supplied; footnotes omitted).

Based upon the revelations in Board Notification 85-009, it is clear that the foregoing Board finding was wrong. A single failure in Breaker 460 could prevent power from reaching the emergency busses from both the 20 MW gas turbine and the 4 EMD diesels. Thus, the configuration which was proposed by LILCO and litigated in the exemption hearing did not comply with the single failure criterion and thus was not as safe as a fully qualified AC power system. The only possible conclusion, therefore, is that the Initial Decision must be vacated and the issue remanded to determine what action(s) to take as a result of these developments.

The NRC Staff, apparently at LILCO's urging (see LILCO's letter of January 29, 1985 to the Staff), has attempted by the Board Notification to circumvent fair procedures and to permit licensing action despite the clear error in the Initial Decision. It is pertinent to review the Staff and LILCO actions:

1. The Staff discovered (on some unrevealed date) that its prior testimony, upon which the Board relied, was wrong.

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2. The Staff, without any disclosure to Suffolk County, the State of New York, the Miller Board, the Appeal Board, or the Commission, informed LILCO of its error.
3. LILCO reviewed the situation and had to agree that the single failure criterion is not met.2/
4. Still without any disclosure of the problem to any party, Board, or the Commission, LILCO and the Staff worked out a proposed "solution" to the problem, i.e., the proposal to rack down Breaker 460.
5. On January 29, LILCO proposed its solution; this was followed immediately by the Staff's acceptance thereof in the Board Notification.3/

This proceeding was convened pursuant to the May 16 Order and was to be conducted "in accordance with the Commission's rules." 19 NRC at 1156. It hardly needs to be pointed out that when material facts relied upon by a Board turn out to be false, the "solution" cannot be one of informal accommodation between two allied parties -- the Staff and LILCO. Rather, all parties must be properly informed and the matter returned to the Licensing Board for proper resolution. Until then, there is no possible basis for the Commission to consider authorizing a Phase III/IV license.4/

2/ In its January 29 letter, LILCO urges that a fault in Breaker 460 is not a "credible" event. Suffolk County disagrees and notes that LILCO presents no analysis to support that assertion.

3/ LILCO's January 29 letter on this matter was received by Counsel on Monday, February 4. We immediately consulted with experts who discovered in conversations with the Staff that the Board Notification had been issued on Friday, February 1. We obtained the Notification from the Staff yesterday, February 3, and only because we specifically asked that it be telecopied to us. We still have not received a service copy of the Notification.

4/ Further, the Staff/LILCO proposed "solution" highlights that the alternate AC power system is not as safe as a fully qualified system. In order to attempt to rectify the single failure
(footnote continued)

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Sincerely yours,

KIRKPATRICK & LOCKHART

By: *Lawrence Coe Lanpher*
Lawrence Coe Lanpher

Attorneys for Suffolk County

LCL/dk

cc: Judge Marshall E. Miller
Judge Glenn O. Bright
Judge Elizabeth B. Johnson
Alan S. Rosenthal, Esq.
Howard Wilber
Gary J. Edles, Esq.
Remainder of Shoreham Service List

(footnote continued from previous page)
problem, LILCO has reduced the capability of the alternate AC power system to supply power to the 4 KV busses. As originally proposed, the alternate system was not in compliance with the single failure criterion but allegedly, absent a Breaker 460 failure, the 20 MW gas turbine could supply power to any of the 4 KV busses, i.e., to busses 101, 102, 103, 11 and 12. Under the "new solution," the alternate system now allegedly satisfies the single failure criterion but the 20 MW gas turbine can now supply power to bus 11 only if the operator uses alternate paths from those normally used. This reduces the operator's options in how to power the essential busses. This new "solution" thus further reduces the capability of supplying power to the safety loads, making it all the more clear that operation with the alternate configuration is not as safe as operation with fully qualified diesels.