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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Nunzio J. Palladino, Chairman
Thomas M. Roberts
James K. Asselstine
Frederick M. Bernthal
Lando W. Zech, Jr.

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

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

MEMORANDUM AND ORDER

CLI-85- 01

The Commission has decided to allow the Atomic Safety and Licensing Board's October 29, 1984 decision to become effective. That decision grants LILCO's request for an exemption from General Design Criterion (GDC) 17 (10 CFR Part 50, Appendix A), limited to Phases III and IV of LILCO's low power testing program. The Commission's decision to allow the Board's decision to become effective is based on the record of the proceeding before the Board, on the Board's decision, and on the various comments on this matter that have been filed with and orally argued to the Commission by the parties. In its review of these materials the Commission found the following to be important for the limited purpose of this effectiveness review.

1. The Commission's Order in CLI-84-8, 19 NRC 1154 (1984) directed LILCO to discuss its basis for concluding that, for the low power levels associated with Phases III and IV, operation with its alternate AC power

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system would be as safe as it would have been with a fully qualified onsite AC power system. The Board appears to have correctly applied this instruction. The Board identified certain areas of specific comparison where components of LILCO's alternate AC system may have lesser safety margins than corresponding components of the permanent system. However, as we read the Board's decision, the alternate system has sufficient redundancy, capacity, testability, and reliability to supply emergency power for low power operation of the Shoreham unit.¹ More specifically, the Board found adequate assurance that the enhanced system can supply sufficient power well within the time it would be needed in the event of a concurrent

¹After the Board rendered its decision, the staff notified the Board, the parties and the Commission that subsequent review of the alternate AC power system had identified a potential failure mode that could impact both parts of the system. Board Notification (BN) 85-009. The staff further advised that it and the licensee had agreed on a resolution of this problem. Although Suffolk County appeared to concede in oral argument before the Commission that the proposed resolution appeared to satisfactorily cure the identified problem, Suffolk wondered whether it might cause a loss of flexibility in feeding vital loads. In its written submissions, Suffolk also argued that the proposed solution would require feeding bus 11 via the Wildwood substation, which is about one mile from the Shoreham site.

The Commission has reviewed the staff/licensee resolution based on the information available, and finds that it adequately addresses the identified problem. We do not consider bus 11 to be important to safety, because it serves non-vital loads, and we place no reliance on the alternate routing of gas turbine power through Wildwood and bus 11 in concluding that the proposed resolution is adequate. The Commission concludes that there is no regulatory or safety requirement for the purported flexibility cited by Suffolk. Any safety benefit of such flexibility is miniscule and speculative. Moreover, based on our preliminary review, the Commission concludes that the information transmitted in BN-85-009 does not substantively change the basis for the Board's decision, and thus that the Board's findings on safety remain valid. The staff should assure that procedures and training in the use of the alternate system, as modified by the BN, are adequate before the plant commences Phases III and IV operation.

LOCA and loss of offsite power to preclude a peak cladding temperature of 2200⁰F, fuel cladding rupture, and any danger to the public. Further, given the low accident probabilities involved, Suffolk County's probabilistic risk analysis, even if accepted for purposes of our analysis, tends to confirm rather than contradict the essential safety equivalence of LILCO's alternate AC system.

2. The Commission placed special weight on several equitable considerations in its limited review. Most important, the record shows that the safety significance of full compliance with GDC-17 in the special circumstances of this case, and at the power levels associated with Phases III and IV, is small. The corresponding public interest in full compliance is diminished. The Commission also considered the intrinsic value to early discovery of problems during low power testing, the unusual length and cost of this whole licensing proceeding, the fact that the GDC-17 compliance issue arose late in the review process when the plant was almost complete, and LILCO's good faith efforts to comply fully with GDC-17. The Commission is also mindful that LILCO's request for low power authorization came while NRC practice and policy in the granting of exemptions was in a period of transition, and LILCO was confronted with some uncertainty regarding how non-compliances with GDC-17 were to be reviewed and resolved.

3. In order to simplify its limited review for effectiveness purposes of the equitable considerations set forth by the Licensing Board, the Commission assumed for purposes of analysis that Suffolk County may be correct that Shoreham's generating capacity may not be needed to ensure reliable electrical energy supply for some time (as long as ten years). Further, the Commission considered what Suffolk asserts to be LILCO's negligence in bringing on itself the need for the exemption. Even if

Suffolk is correct, we believe that LILCO's recent good faith efforts to cure the problems outweigh or balance any possible past negligence. Also, to simplify the limited review, the Commission gave no weight to any asserted economic advantages or disadvantages to LILCO or its ratepayers associated with grant of the exemption, where these assertions were premised on assumptions that full power licensing would or would not be authorized in the future, and gave no weight to any "favorable signal" to financial markets. Nonetheless, in the Commission's view, the balance of equities set forth in paragraph 2 favors the granting of an exemption.²

4. The Commission has previously rejected the suggestion in this proceeding that a low power license should not be issued where there is no reasonable assurance that a full power license will ever be used.

CLI-83-17, 17 NRC 1032, 1034 (1983); CLI-84-9, 19 NRC 1323, 1327 (1984).

In doing so, the Commission found that 10 CFR § 50.47(d) of its regulations established unqualified authorization for it to issue a low power license in the absence of either NRC or FEMA approval of an offsite emergency plan and without the need for a predictive finding of reasonable assurance that a full power license will eventually issue, so long as the prerequisites for a low power license are met. CLI-83-17, 17 NRC at 1034. Accordingly,

²The State and County argue that because section 50.12(a) requires a "public interest" finding, and because they represent the public interest, that we essentially should afford their views conclusive weight. Congress charged the NRC with licensing and regulating nuclear power safety, and the Commission cannot delegate this responsibility by treating State or County views on the issues as conclusive. Moreover, the safety and equitable considerations supporting the Commission's decision in this case are within the special knowledge and expertise of the Commission since they arise directly from the conduct of NRC's own licensing process. These considerations bear directly on the national interest in effective and efficient nuclear safety regulation.

in the context of this low power proceeding, the Commission declined to speculate on whether offsite emergency planning issues would be resolved satisfactorily for purposes of a full power license. In any contested full power proceeding, there is uncertainty over the outcome of full power licensing issues; nevertheless, 10 CFR § 50.57 authorizes the issuance of a low power license even though such uncertainty might exist. Indeed, the interjection of such doubts into the low power proceeding could create a limited full power hearing before issuance of the low power license. Such a procedure for a low power license would have little to commend it. Id., 17 NRC at 1034.

The State and County's position regarding public interest considerations appear to be predicated, to some extent at least, on the belief that Shoreham will never be allowed to operate in excess of five percent power. Thus, according to their theory, the plant's fuel will be used for no beneficial purpose because the plant will never be able to achieve its intended purpose. This is largely based on their speculation on the outcome of the NRC adjudication and of the New York State court litigation concerning offsite emergency planning issues. Reliance on such speculation for public interest determination purposes being considered here is unfounded, and is rejected for the same reasons found in CLI-83-17, and in CLI-84-9, to wit: the Commission's authority to issue a low power license does not depend on a predictive finding of reasonable assurance that a full power license will eventually issue; the interjection of speculation on such matters into the low power licensing process would render it essentially meaningless.

5. The Commission understands that contentions related to physical security were disallowed. If there are no issues in controversy, the

substantive findings in this matter should be made by NRC staff rather than by the Licensing Board.

6. The foregoing is entirely without prejudice to pending appeals before the Atomic Safety and Licensing Appeal Board. Moreover, the grant of the exemption, and authorization of Phases III and IV of low power testing, is entirely without prejudice to ongoing reviews and hearings related to low or full power authorization.

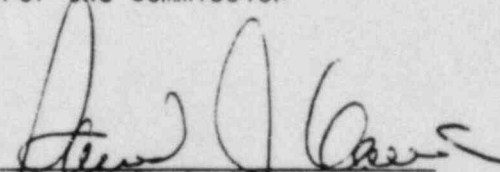
To allow for the orderly processing of any request for expedited judicial review, this Order shall not become effective until 5 p.m., Eastern Standard Time, on February 13, 1985. If such a request is filed prior to that time, the effectiveness of this order shall be delayed until 5 p.m., E.S.T., on February 19, 1985.

Commissioner Asselstine disapproved this order, and his separate views are attached. The additional views of Chairman Palladino and Commissioners Roberts, Bernthal and Zech are also attached.

It is so ORDERED.



For the Commission


 SAMUEL J. CHALK
 Secretary of the Commission

Dated at Washington, D.C.

this 12th day of February, 1985.

SEPARATE VIEWS OF COMMISSIONER ASSELSTINE

Exemptions to the NRC's licensing requirements should not be granted lightly. A person seeking a waiver of our rules and regulations bears a heavy burden in showing that he is entitled to such a waiver. To provide otherwise would lead to the evisceration of our rules and to a patchwork of regulatory standards. LILCO has not met its burden in this case, and should not be given an exemption to the requirements of General Design Criterion (GDC) 17.

An operating license limited to 5 percent of rated power is of limited utility to the operator of a boiling water reactor (BWR) such as Shoreham. Little testing can be accomplished at that power level that cannot also be completed without taking the reactor beyond cold criticality. To do substantial testing of a BWR plant the operators must be able to take the plant to 20 percent or more of rated power. Thus, LILCO's assertion that there will be substantial benefits to having a 5 percent license three months before a final determination about the qualification of Shoreham's emergency diesels is made carries little weight. The real benefits cited by LILCO would come only from full power operation, something which, given the emergency planning controversy, may not occur for quite some time, if ever.

Moreover, the other equities cited by [redacted] and the Licensing Board do not support granting an exemption. The [redacted]s, length and complexity of

the Shoreham litigation should not properly be a consideration in determining whether to grant an exemption to a Commission safety requirement. Nor is the fact that the facility is otherwise physically complete a justification for granting an exemption to a Commission safety requirement. The requirement in GDC 17 that a plant have a fully qualified on-site source of emergency AC power is not an insignificant safety requirement; it should not, therefore, be modified without compelling reasons for doing so.

The essential question presented by LILCO's exemption request becomes then: should the Commission waive one of its safety requirements so that a licensee with financial problems can "send a signal" to Wall Street? I believe not. The Commission should not be in the business of relaxing its licensing requirements merely because a particular licensee is having financial difficulties.

I cannot, therefore, agree with the Commission's decision to grant LILCO an exemption to the requirements of GDC 17 and thereby grant LILCO a license to operate at up to 5 percent of power. LILCO has presented no good reason to relax the requirements of GDC 17, and there appears to be no practical benefit to be gained from allowing operation at 5 percent power at this time.

ADDITIONAL VIEWS OF ^{THM}
CHAIRMAN PALLADINO, COMMISSIONERS ROBERTS, BERNTHAL AND ZECH
ON SHOREHAM

In spite of the fact that the majority opinion states that we "gave no weight to any 'favorable signal' to financial markets" in balancing the equities related to the granting of the exemption requested by LILCO, our dissenting colleague implies that we did. Thus, he once again impugns the motives of those of us with whom he disagrees. Such action beclouds the important issues involved in this decision, and thereby detracts from public understanding of the Shoreham proceeding.