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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

BEFORE ADMINISTRATIVE JUDGES:

James L. Kelley, Chairman
Glenn O. Bright
Elizabeth B. Johnson

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

Docket No. 50-322-0L-4
(Low Power ~~Remand~~)

ASLBP No. 77-347-01D-0L

March 5, 1985

THRESHOLD SAFEGUARDS QUESTIONS

On the basis the February 28, 1985 conference of counsel and their submissions of March 4, 1985, the Board directs the counsel to brief the questions raised below.

In addition to awaiting the outcome of the TDI litigation before the Brenner Board, it could be suggested, at least in the abstract, that LILCO might choose among five options in proceeding before this Low-Power Board. Those options are --

- (1) Show compliance with Part 73 as to the emergency diesels ("EMD's") and the gas turbine ("GT").
- (2) Seek an exemption from Part 73 as to the G. T. and/or the EMD's.
- (3) Rely on the earlier Part 50 reliability finding for the EMD-GT unitary system, but rely on EMD's alone for Part 73 safeguards compliance.
- (4) Rely solely on the EMD's for Part 50 and Part 73 purposes.
- (5) Show compliance with Part 73 as to the EMD's; proceed under 73.55(a), fourth sentence, to show "high assurance," short of full compliance, as to the GT.

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The Board's present impression -- subject to correction by any party -- is that options 1, 3 and 4 are not available for either practical or legal reasons. As to 1, we gather that the GT probably cannot, for practical reasons, be fully qualified to Part 73 Standards.

The Staff appears to support option 3 (Tr. 3171, 3176), but the Board finds it illogical and inconsistent with the regulatory scheme. We do not understand how an Applicant can rely on one part (the GT) of a system for Part 50 purposes, and disregard it altogether for Part 73 purposes. To illustrate our problem, it seems not to matter under this option whether the GT is located at the site (where presumably some level of safeguards protection could be provided) or, say, in a garage in Riverhead. To put it another way, in the absence of a complete exemption from Part 73, all parts of a "vital equipment" system must be protected to some extent. We do not understand LILCO to be supporting this position. The Staff should provide a fully articulated justification for option 3 if they wish to have it considered further.

As to option 4, it appears that, contrary to the Appeal Board's suggestion at p. 19 of ALAB-800, the EMD's cannot be looked to exclusively under Part 50 because of GDC 17 single failure problems. It is our tentative view, therefore, that only options 2 and 5 may be available, as a practical matter.

1. The Applicants propose to proceed under option 5, which they term a "compliance" proceeding. (Tr. 3139-41) Comment on the legality of this

option, with particular reference to the language of 73.55(a), any pertinent "legislative" history, compatibility or incompatibility with ALAB-800 (particularly the carry-over sentence on pp. 19-20), and any relevant practical or policy factors. Compare 10 CFR 50.47(c)(1).

2. The County argues that if any "vital equipment" (e.g. the GT) is not in full compliance with Part 73, LILCO must seek an exemption under section 73.5. (Tr. 3149-50) What purpose does the general language of section 73.5 serve, given the more specific language in the fourth sentence of section 73.55(a)? Is the county's position compatible with ALAB-800? What practical or policy considerations are relevant?

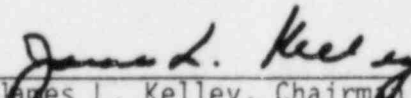
3. From the standpoint of what must be proved by the parties and found by the Board, what practical difference would it make whether the Applicants' proposal were addressed under sections 73.5, 73.55(a), or both. To what extent, if any, would the Commission's decision in CLI 84--8 apply?

4. Are the safeguards risks associated with low-power operation (as distinguished from safety risks) smaller than full power risks, and, if so, does that have the effect of lowering 73.55 safeguards standards for low power? Note the carry-over sentence on pp. 19-20 of ALAB-800. Are the nature and extent of low-power safeguards risks litigable in this case?

5. The Board intends to proceed on the basis of contentions -- under the customary specificity and basis rules applicable to contentions -- whether or not, strictly speaking, contentions are required in this context. We see contentions (or some functional equivalent thereof) as necessary to focus the issues. Two matters can be usefully addressed at this point: (1) The parties should identify specific information that is pertinent to the formulation of contentions. Is that information now available? If not now, when? In this connection, consider the Appeal Board's good "good cause" test from ALAB-687, Duke Power Co. (Catawba Station) 16 NRC 460, 468 (1982). (2) In addition to specificity and basis, should the proponent of a contention be required to show a relationship between its contention and safeguards issues presented by low-power operations? The Board will address the contentions subject in more detail after we have addressed the threshold questions.

Responses to the questions raised above shall be in the Board's and other parties' hands by Tuesday, March 12, 1985. Replies will not be required. Any party wishing to submit a brief reply shall have it in the Board's hands by Friday, March 15, 1985.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


James L. Kelley, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland