



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

PDR-016
LPDR

MAY 23 1984

Docket No. 50-322

Robert R. Belair, Esquire
Kirkpatrick, Lockhart, Hill,
Christopher & Phillips
1900 M Street, NW
Washington, DC 20036

IN RESPONSE REFER
TO FOIA-84-267

Dear Mr. Belair:

This is in response to your letter dated April 9, 1984, in which you requested, pursuant to the Freedom of Information Act (FOIA), three categories of records related to the Shoreham Nuclear Power Station.

The NRC has already provided to you and others on the service list certain records related to the licensing action which are subject to your request. Certain additional subject records are being addressed in NRC's response to your separate FOIA request, FOIA-84-250.

We are placing the additional subject records identified on enclosed Appendix A in the NRC Public Document Room (PDR), 1717 H Street, NW, Washington, DC 20555. These records will be filed in PDR folder FOIA-84-267 under your name. The four records identified on enclosed Appendix B are being withheld in their entirety, for reasons noted below.

The four records identified on enclosed Appendix B contain the legal analysis, opinions, and recommendations of the Office of the General Counsel (OGC). Documents 1-3 contain OGC's recommendations on Commission guidance on Long Island Lighting Company's March 20, 1984, Supplemental Motion for a Low Power Operating License which was submitted in an ongoing formal adjudicatory proceeding regarding the Shoreham facility. Document 4 contains OGC's proposals for hearings on the Shoreham facility. The documents do not contain any reasonably segregable factual portions. Because the documents reflect the predecisional process between the Office of the General Counsel and the Commissioners, the documents are exempt from mandatory disclosure pursuant to Exemption 5 of the FOIA (5 U.S.C. 552(b)(5)), and the Commission's regulations, 10 CFR 9.5(a)(5). Release of the documents would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. For these reasons, these documents are being withheld in their entirety.

8412130527 840523
PDR FOIA
BELAIR84-267 PDR

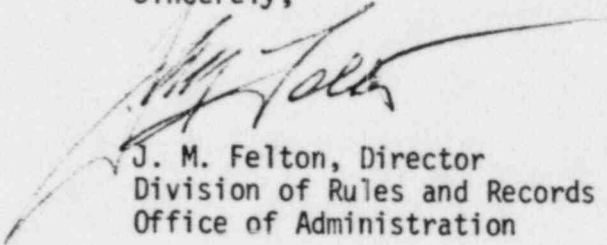
MAY 23 1984

Pursuant to 10 CFR 9.15 of the Commission's regulations, it has been determined that the information withheld is exempt from production or disclosure and that its production or disclosure is contrary to the public interest. The person responsible for this denial is Mr. James A. Fitzgerald, Assistant General Counsel.

This denial may be appealed to the Commission within 30 days from the receipt of this letter. Any such appeal must be in writing, addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision".

In view of the NRC's response to your FOIA request and the fact that you have new appeal rights, no further action is being taken on your letter dated April 25, 1984.

Sincerely,



J. M. Felton, Director
Division of Rules and Records
Office of Administration

Enclosures: As stated

APPENDIX A

1. 3/15/84 Memo for Cotter from Prestemon, "'Impacted' Plants". (2 pages)
2. 3/16/84 Judge Cotter's notes of meeting with Chrmn. Palladino. (2 pages)
3. 3/23/84 Judge Cotter's draft copy of his order responding to "Supplemental Motion for Low Power Operating Licensing". (9 pages)
4. 3/27/84 Note to Cotter from Brenner and Morris, "LILCO Supplemental Motion for Low Power Operating License (dated March 20, 1984)". (1 page)
5. 3/27/84 Judge Cotter's copy of the note identified at No. 4 above, with Judge Cotter's notes.
6. 4/2/84 Judge Lazo's handwritten telephone notes. (1 page)
7. 3/30/84 Judge Cotter's copy of the notice of the establishment of the Shoreham board. (2 pages)
8. 3/30/84 Judge Lazo's handwritten telephone notes. (1 page)
9. 4/1/84 Hearing Status Report on Shoreham. (2 pages)
10. 4/1/84 Hearing Status Report on Limerick. (6 pages)
11. 4/4/84 Memo to Commissioners from Chrmn. Palladino, "Shoreham", with Judge Cotter's marginal notes, w/stated enclosures. (11 pages)
12. 4/6/84 Memorandum and Order Scheduling Hearing on LILCO's Supplemental Motion for Low-Power Operating License, with Judge Lazo's marginal notes. (18 pages)
13. Undated Judge Cotter's handwritten notes on Working Paper attached to No. 8 above. (1 page)
14. Undated Slides and handout prepared by NRR for a meeting of the Chairman, Dircks, Denton and Cotter, "Shoreham". (2 pages)
15. Undated Slides and handout prepared by NRR for a meeting of the Chairman, Dircks, Denton and Cotter, "Limerick Units 1 and 2". (2 pages)
16. Undated Statement prepared by Judge Miller to be read by his secretary to parties of the proceeding with a handwritten note by Judge Miller to Judge Cotter.
17. Undated Handwritten notes by Judge Cotter. (1 page)
18. Undated Handwritten notes by Judge Cotter. (1 page)
19. Undated Copy of file card on Shoreham. (1 page)
20. Undated Copy of file card on Limerick. (1 page)
21. Undated Copy of File card on Limerick. (1 page)

APPENDIX B

1. undated - draft Commission Order and Stay re: March 20, 1984 Supplemental Motion for Low Power Operating License, 3 pp.
2. undated - draft Commission Order and Stay re: March 20, 1984 Supplemental Motion for Low Power Operating License, 4 pp.
3. undated - draft Commission Order and Stay re: March 20, 1984 Supplemental Motion for Low Power Operating License, 3 pp.
4. April 2, 1984 - Memorandum to the Commissioners from Herzel H.E. Plaine, General Counsel, Subject: Shoreham Low Power Proceeding, 5 pp.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL
WASHINGTON, D.C. 20555

March 15, 1984

MEMORANDUM FOR: B. Paul Cotter, Jr.
Chief Administrative Judge, ASLBP

FROM: *for* David L Prestemon ^{CLKE}
Legal Counsel, ASLBP

SUBJECT: "IMPACTED" PLANTS

There are presently only two plants that are actually projected to be "impacted": Shoreham and Limerick. A third, Catawba, will be close to the line.

1. Shoreham. The only remaining issues in the safety phase of the Shoreham proceedings concern the diesel generators. All other safety issues left after issuance of the Board's last partial initial decision were subjected to negotiations between the parties at the direction of the Board and have been settled. Part of the settlement has been approved by the Board and the Board expects to approve the remaining terms of the parties' agreement shortly.

The fundamental pacing item for the remaining hearings is the completion of the Staff's diesel generator study. At present, it does not appear that that study will be completed before June 1984 at the earliest. Based on that estimate, the Board has tentatively scheduled hearings to begin July 30, giving the parties one month to review the study findings. The record is expected to be closed by the end of August and final proposed findings are to be submitted by October 25. Accordingly, the Board estimates issuance of an initial decision by December 21, 1984. The Board emphasizes that these are preliminary estimates only based on an uncertain staff review schedule.

Assuming the schedule for the safety phases of the hearing proves to be correct, it does not appear now that the emergency planning phase of the proceedings will contribute to any "impacting" of the plant. Judge Laurenson has scheduled the current hearings such that the record should close by June 30, 1984. Final proposed findings will be required by August 30, 1984; and an initial decision on emergency planning issues is tentatively projected for November 15, 1984. These estimates are in part based upon FEMA's estimate that it will complete its review by the end of this month.

Dpc 8407310104

①

2. Limerick. The Limerick Board is currently estimating completion of a partial initial decision on all issues required to be resolved for issuance of a low power license by January 1985. The principal pacing item in this case is the Staff review schedule which calls for completion of the FES by the end of this month. The proceeding is heavily contested and even the three months currently projected for evidentiary hearings may prove overly optimistic. Those hearings are in August but have been sidetracked recently by Applicant's motion to store new fuel onsite under a Part 70 license. The Board will be ruling on that motion shortly, probably by the end of this week or early next week.

The Board is also currently preparing a decision on the admissibility of respecified emergency planning contentions. Because of uncertain and incomplete state of emergency plans at present (the respecified contentions were based on draft plans submitted), an estimate for the time required to complete hearings on those issues is difficult. Hearings on both safety and emergency planning issues are tentatively scheduled for March, April, and May.

3. Catawba. Because of the bifurcation of these hearings with the appointment of a second board on February 27, 1984 to hear emergency planning contentions, we are no longer projecting any potential delay for this plant. Judge Kelley currently anticipates that he will be able to complete an initial decision on all safety issues by late May. Hearings on emergency planning issues should be possible in the hiatus between the filing of proposed findings on safety issues and the issuance of the initial decision. This may permit the new Board to complete hearings on emergency planning issues and issue an initial decision by the end of August or early September.

The schedule for Catawba may be affected by an Appeal Board ruling on issues referred to it by Judge Kelley's order. These issues concern whether or not the Licensing Board acted correctly in dismissing certain contentions relating to Catawba diesel generators, which, like those at Shoreham, were built by Delaval.

I will plan to meet with you at 9:00. If there are any other questions you would like to have researched, please let me know.

3/16/84

Notes of July 11/1984 file

①

O/C NSP, WD, H.D.



I. Impacted plants

① Saywell
50 pumps
12/18/84 ID Time
② Read Township's

A. Shreham: ALTERNATIVE SOLUTION FOR LOW POWER

1. LICO file proposal to get around diesel issue + hold hearing on operation at low power
 - Based on LICO proposal, staff can issue report in 30 days as to whether plant safe at 5% w/o diesel's
2. Assessid

A. Commission ordered hearing would

1) Define "CONTENTION" + SET TIME FRAMES FOR EXPEDITED PROCEDURE

b. Reverse Board order of 2/22

NOTE: Concern re
Some Board
Chairman

B. Linnick

see what!

1. Staff thinks will not finish 'til early '85
2. Dutton + Amico don't think (is a problem)

II. March Plants

A. Ingershanna - issue ^{license} next week?

B. Calloway - ready for license in April ("garden variety" allegations re electrical QC)

C. WPPS 2 (OK)

D. Lasalle - OK, no allegations: Briefing Commission 3/23/84

III. Allegations arising at last perimeter

A. Siablo Canyon (ca. 400: looked carefully at 200 + on that basis think all satisfactorily resolved + won't look at other 200)

1. GAP told Staff, utilities fixed in material Staff relied on

②

3/16/84

before ASLAP (QA/QC?)

- Staff told ASLAP which had decision scheduled for next week

- may delay ASLAP decision

-> Commissioner tentatively said will wait for ASLAP decision

Denton concerned Comptroller might force independent

B. Waterford (Timothy Buggs district)

1. Denton thinks substantial

2. Still impact April completion date

3. Motion to proceed before Appeal Board to review allegations

4. Staff reply due April 13

4. Allegedly records worse than Zimmer

- no allegations directly as to hardware underlying records

5. Bascom ^{records} leak
C. Committee

See subject

1. Denton: completion date slipped to September

2. Inspector intimidation by company (TUGCO) "open warfare"

- security rifled desks of "not just" ^{QC} inspectors

D. Byron

1. Denton thinks will be remanded - 6 more months

DON'T HAVE SHORT (MORE THAN ONE) HEARING PROCESS



NIP: Allegations Board? How handle

ORDER

On March 20, 1984, LILCO filed with the Licensing Board a "Supplemental Motion for Low Power Operating License". LILCO has requested the Board either to refer the motion immediately to the Commission for decision or to decide the motion on an expedited basis and to certify its decision to the Commission pursuant to 10 C.F.R. § 2.730(f) (1983). As discussed below, the Commission has reviewed LILCO's motion and has concluded that referral at this time would be inappropriate. We agree, however, that a decision on certain issues raised by the Applicant should be expedited to the extent possible consistent with the development of a sound record. In the exercise of the Commission's inherent authority over the conduct of our adjudicatory proceedings, we hereby grant that portion of LILCO's motion that requests an expedited proceeding. To that end, we direct the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, in consideration of the existing schedule and caseload of the Panel's members, to appoint an Atomic Safety and Licensing Board to hear and decide LILCO's supplemental motion in accordance with the procedures and schedule outlined below.

I. LILCO's Motion

LILCO asserts that the Shoreham plant is essentially complete and, by its motion, seeks authority to conduct four phases of low power activities, namely:

Phase I: fuel load and precriticality testing;

Phase II: cold criticality testing;

Phase III: heatup and low power testing to rated pressure/temperature conditions (approximately 1% rated power); and

Phase IV: low power testing (1-5% rated power).

Despite pending litigation concerning the emergency diesel generators' reliability, LILCO asserts in its motion: (1) the generators are not needed to protect the public health and safety for Phases I and II; (2) the generators have been tested and are adequate to protect the public health and safety during Phases III and IV, even though litigation of their reliability has not been completed; and (3) ample alternate sources of AC power are available sufficient to assure no undue risk to the public health and safety from low power operation of the plant during Phases III and IV.

II. Background

Of some 122 safety contentions originally filed in this proceeding all but three have been resolved (The settlement of a fourth issue has been presented to the Board for approval). The three remaining

contentions concern the reliability of emergency diesel generators at the facility.

LILCO's motion supplemented a June 3, 1983 motion for a low power license. After the motion was filed, however, additional problems developed with the emergency diesel generators, and the hearing on their reliability scheduled to commence August 29, 1983 was deferred pending completion of LILCO's assessment and the NRC Staff safety evaluation. In a partial initial decision issued September 21, 1983, the Licensing Board decided a number of safety issues in favor of operation up to 5% of rated power but declined to authorize fuel load and low power operation until the then pending diesel generator contention was resolved. The Staff SER is presently scheduled for issuance in June 1984, litigation of the three diesel generator contentions is scheduled to commence in July 1984, and an initial decision is projected for issuance in December 1984.

Suffolk County filed four amended contentions on the generators, and on February 22, 1984, the Board admitted three of them in a ruling on the record. Tr. 21,612 et seq. Although the Board could not find, on the state of the record at that time, that the generators could reliably perform their needed function even as to low power, the Board noted that LILCO was not precluded from proposing other methods by which the standards of 10 C.F.R. 50.57(c) could be met short of litigating the contentions, or seeking a waiver under Section 2.758, or any other

procedure. Tr. 21,616, 21,630-633. Apparently in response to that ruling LILCO filed its March 20, 1984 supplemental motion.

As noted, Applicant has requested that its supplemental motion be referred directly to the Commission for decision. The Commission is fully apprised of the contents of that motion and is of the opinion that certain issues presented require a factual evaluation that can be accomplished more promptly and efficiently by a licensing board than by the Commission directly. Accordingly, referral to the Commission at this time would be inappropriate. However, the present schedule for litigation of contentions related to the TDI diesel generators does present the potential for delay inimical to the public interest given the apparent physical completion of the Shoreham facility within the meaning of 10 C.F.R. § 50.57(a) (1983) and the enormous financial investment involved. If the alternatives proposed by Applicant in its motion are sufficient to permit low-power operation and testing with assurance that the public health and safety are adequately protected, that matter ought to be determined as expeditiously as possible.

The Commission has inherent supervisory authority over the conduct of its adjudicatory proceedings, including specific authority under its rules to establish reasonable adjudication time tables. See The U.S. Energy Research and Development Administration, Project Management Corporation, Tennessee Valley Authority (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67 (1976), and 10 C.F.R. § 2.711 (1983).

III. Issues to be Heard

Accordingly, absent settlement, we direct that the following issues be adjudicated on an expedited basis:

1. Whether the work described in Phases I and II of LILCO's motion can be performed without the need for the presently installed onsite emergency diesel generators;
2. Whether the alternate sources of AC power available to Shoreham are adequate to protect the public health and safety by performing the function that the presently installed onsite emergency diesel generators would have performed during any or all of Phases I, II, III, or IV;
3. What requirements for testing or other demonstration of the availability and effectiveness of the Shoreham alternate power sources should be required as a precondition to the issuance of any license permitting operation at up to 5% of rated power.
4. Whether, in consideration of the Board's findings on the above issues and assuming all other regulatory requirements have been satisfied, LILCO should be granted a low power license to

perform the work described in any or all of Phases I, II, III, or IV.

The Licensing board constituted pursuant to this order is authorized to conform the statement of the above issues to the evidence relevant to LILCO's motion and this order. The licensing board shall not consider the operability and reliability of the TDI diesel generators currently onsite. These matters are presently the subject of an extensive Staff review and will be fully adjudicated when the results of the Staff's review are available.

IV. Proceeding Schedule

The Licensing Board constituted pursuant to this order is directed to certify its Initial Decision on these questions to the Commission 60 calendar days after the Staff files its SER on the technical aspects of the LILCO motion. To that end, the following expedited schedule is recommended to the Board and the parties:

Day -7	Commission Order
Day 1	Staff and parties file response to substantive aspects of LILCO's motion
Day 1	Staff files SER on technical aspects of LILCO Supplemental Motion for Low Power Operating License and serves the SER on the parties.
Day 2	Discovery commences.

Day 18	Discovery is completed
Day 25	Testimony is filed
Day 30	Hearing commences
Day 40	Hearing concludes
Day 60	Board issues decision

The Licensing Board constituted pursuant to this order is authorized to adopt, take official notice, or otherwise incorporate any portion of the existing record in this proceeding as it sees fit. The Board shall closely monitor and assist in the discovery process, limit the number of pages in any filing if necessary, alter, revise or modify any of the intermediate dates or sequences set out above, and otherwise facilitate the expedited completion of the proceeding in the full exercise of its authority. See, e.g., Statement of Policy on Conduct of Licensing Proceedings, 13 NRC 452 (CLI-81-8, 1981).

Steps

1. 3/26: Commission issues brief notice to parties suspending parties response time to LILCO's motion
2. 3/26: Commission orders Staff to prepare SER by April 7
3. 3/30: Commission issues expedited hearing order
4. ca. 6/7: Board decision

Some Considerations

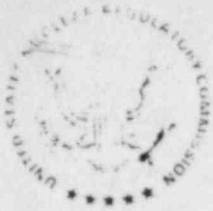
1. Excellent Staff SER is critical to success of this expedited proceeding: Total systems analysis required or Boards and Commission will look bad
 - a. Staff should be formally notified to begin work immediately
 - b. Staff SER issuance on day 1 assumes they have already commenced to prepare it, and this order won't issue until March 30
2. Sixty day schedule is brutally tight. Definitely not recommended but possibly achievable
3. Very important to give Licensing Board flexibility to reformulate issues within overall guidance should evidence shift the nature or emphasis of the issue.
4. Boards committed to hearings or partial or initial decision writing in April and May include Catawba, Comanche Peak, Shearon Harris, Limerick, Midland, Shoreham, and Wolf Creek

-- Need to avoid Commission debate on Board membership (cf.
Indian Point)

5. Phase I and II issue may be resolved by agreement of parties which would make possible PID authorizing that work

THIS DRAFTING SERVICE FURNISHED "AS IS":

NO WARRANTIES EXPRESS OR IMPLIED



UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL

WASHINGTON, D.C. 20555

March 27, 1984



NOTE TO: Judge B. Paul Cotter, Jr.
Chief Administrative Judge

SUBJECT: LILCO SUPPLEMENTAL MOTION FOR LOW POWER OPERATING LICENSE
(dated March 20, 1984)

The subject motion, among other things, asks the Shoreham operating license board presiding over the diesel issues to refer the motion to the Commission. We understand that the Commission is aware of the motion and is considering whether to take action in the immediate future on its own.

In anticipation of imminent Commission action, we have not taken further action beyond scheduling the preliminary procedural answers to the motion by the parties. (Suffolk County's answer was received on March 26. New York State will file an answer on March 28. The NRC Staff's answer is scheduled for March 30.) Unless the Commission issues at least preliminary guidance that the licensing board should hold matters in abeyance pending further Commission orders, we intend to proceed on or about April 2, 1984, to implement some combination of a conference call, prehearing conference and written order to establish with the parties procedures and a schedule for consideration of LILCO's motion.

Depending on the schedule established (by us or the Commission), the Shoreham Licensing Board on which we sit may have to be reconstituted by you due to our heavy schedule for the Limerick evidentiary hearing in April and May.

Lawrence Brenner
Lawrence Brenner, Chairman
ADMINISTRATIVE JUDGE

DPE
8407310129

Peter A. Morris
Dr. Peter A. Morris
ADMINISTRATIVE JUDGE



UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL

WASHINGTON, D.C. 20555

March 27, 1984

NOTE TO: Judge B. Paul Cotter, Jr.
Chief Administrative Judge

SUBJECT: LILCO SUPPLEMENTAL MOTION FOR LOW POWER OPERATING LICENSE
(dated March 20, 1984)

The subject motion, among other things, asks the Shoreham operating license board presiding over the diesel issues to refer the motion to the Commission. We understand that the Commission is aware of the motion and is considering whether to take action in the immediate future on its own.

In anticipation of imminent Commission action, we have not taken further action beyond scheduling the preliminary procedural answers to the motion by the parties. (Suffolk County's answer was received on March 26. New York State will file an answer on March 28. The NRC Staff's answer is scheduled for March 30.) Unless the Commission issues at least preliminary guidance that the licensing board should hold matters in abeyance pending further Commission orders, we intend to proceed on or about April 2, 1984, to implement some combination of a conference call, prehearing conference and written order to establish with the parties procedures and a schedule for consideration of LILCO's motion.

Depending on the schedule established (by us or the Commission), the Shoreham Licensing Board on which we sit may have to be reconstituted by you due to our heavy schedule for the Limerick evidentiary hearing in April and May.

Limerick notes:

Staff FAS due 3/30

*EP issues will be litigated
in Fall*

Lawrence Brenner

Lawrence Brenner, Chairman
ADMINISTRATIVE JUDGE

Peter A. Morris

Dr. Peter A. Morris
ADMINISTRATIVE JUDGE

Check with Ferguson!



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

4/2/84

telecom (from) J. Asselstine

re: new low power Shoreham
Board

Q - reason?

Ans. 2 members heavily
committed to work on
another OL proceeding



4/30/84



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

LONG ISLAND LIGHTING COMPANY

(Docket No. 50-322-OL) 4

[ASLBP No. 77-347-01C OL]

ESTABLISHMENT OF ATOMIC SAFETY AND LICENSING BOARD
TO PRESIDE IN PROCEEDING

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 F.R. 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, and pursuant to the Statement of Policy on Conduct of Licensing Proceedings, 13 N.R.C. 452 (1981), and the advice from the present Atomic Safety and Licensing Board in this operating license proceeding with jurisdiction over non-emergency planning matters that two of its members are heavily committed to work on another operating license proceeding, a separate Atomic Safety and Licensing Board is being established to hear and decide Long Island Lighting Company's March 20, 1984 "Supplemental Motion for Low Power Operating License."

LONG ISLAND LIGHTING COMPANY

Shoreham Nuclear Power Station, Unit 1 (Low Power)

Construction Permit No. CPPR-95

This Board is being established pursuant to a notice published by the Commission on March 18, 1976 in the Federal Register entitled,

~~Dupe~~
8404030163

7


"Receipt of Application for Facility Operating License, Availability of Applicant's Environmental Report; Consideration of Issuance of Facility Operating License; Opportunity for Hearing." 41 Fed. Reg. 11367-68 (1976).

The Board is comprised of the following Administrative Judges:

Marshall E. Miller, Chairman
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Glenn O. Bright
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Elizabeth B. Johnson
Oak Ridge National Laboratory
P.O. Box X, Building 3500
Oak Ridge, Tennessee 37830


B. Paul Cotter, Jr.
Chief Administrative
Judge
Atomic Safety and Licensing
Board Panel

Issued at Bethesda, Maryland,
this 30th day of March, 1984.

3/30 For Monday Call Malsch.
Shoreham -

m. malsch 41465 (in meeting with chairman)

Display winter

Shoreham - Low Power
Separate Board

does he want to see a copy

~~Fitzgerald 43224 not in office~~

Notice - Board Establishment - Miller, Bright, Johnson
can send him a copy Monday

April 2 left word.

Marty has a copy already

~~██████████~~

HEARING STATUS REPORT

PAGE NO. VI- 9

FACILITY NAME: SHOREHAM APPLICANT/LICENSEE: LONG ISLAND LIGHTING CO. TYPE OF PROCEEDING: DL ASLB MEMBERS: ASLB CHAIR: M. MILLER MEMBER 1: G. BRIGHT MEMBER 2: E. JOHNSON CORPORATE COUNSEL: E. BARRETT ELD CONTACT: PREPARED BY: M. MILLER	ASLB NO. 77-347-01 DL DOCKET NO(S): 0500322 ASLBP DOCKET DATE: REACTOR TYPE: BWR LOCATION: BROOKHAVEN, NY INTERVENOR NAME	REVISION NO. DATE 0 04-01-84 INDIV. CONTACT
---	--	--

6

DOCUMENTATION DATES		ORG. EST.	CURRENT	SER:	ORG. EST.	CURRENT	CP ISSUED:	ORG. EST.	CURRENT
INIT. BD. NOTICE OF HRG:				SSER-1:			CONST. COMP.-NRC:		
ER DOCKETED:				SSFR-2:					
DES ISSUED:				SSER-3:					
FES ISSUED:				SSER-4:					
LWA ISSUED:				SSER-5:			CONST. COMP.-APPL:		
PSAR DOCKETED:				SSER-LATEST:					
FSAR DOCKETED:				FEMA RPT:					
ACRS LETTER:									
COMMENT:									

HEARING MILESTONES	TARGET DAY* DATE	EST./ACTUAL DAY* DATE	TOTAL SLIP*	COMMENTS
(1)FINAL STAFF DOCUMENT				
(2)NEW CONTENT FILED AND INTERROG REQ FILED				
(3)PHC HELD; WRITTEN ORDER SERVED				
(4)ADDL. INTERROG. FILED ON AND BY STAFF				
(5)INTERROG. RESPONSES DUE				
(6)MOTIONS: TO COMPEL FOR SUMMARY DISP. DUE				
(7)ANSWERS TO MOTIONS TO COMPEL DUE				
(8)RUL ON MOTIONS TO COMPEL ANS ON SUM DISP				
(9)RESPONSE TO ANSWERS ON SUMMARY DISP.				
(10)DISCOVERY COMPLETE				
(11)TESTIMONY FILED				
(12)RULINGS ON MOTIONS FOR SUMMARY DISP.				
(13)HEARING BEGINS (LAST PHASE)				
(14)RECORD CLOSES				
(15)APPLICANTS PROPOSED FINDINGS				
(16)INTERVENORS PROPOSED FINDINGS				
(17)STAFFS PROPOSED FINDINGS				
(18)APPLICANTS REPLY FINDINGS				
(19)INITIAL DECISION				
(20)COMMISSION EFFECTIVENESS DECISION				

*DAY=CALENDAR DAYS; TOTAL SLIP=DIFFERENCE BETWEEN ESTIMATED/ACTUAL DATE AND TARGET DATE

CURRENT STATUS:

MARCH ON 03/30/84 BOARD ESTABLISHED TO HEAR MOTION FOR LOW-POWER LICENSE.

CONTENTIONS	NO.	FILER(S)	DENIED	ADMITTED BY ASLB	WITHDRAWN	STIPULATED OUT OR OTHER DISP	SUMMARY DISP.	CONTENTIONS FOR HEARING	ADMITTED BY ALAB
SAFETY									
ENVIRONMENTAL									
EMERG PLANNING									
OTHER									
TOTAL	X								

COMMENTS:

SUMMARY OF MAJOR ISSUES:

NO. OF HEARING DAYS THIS MONTH:
TOTAL NO. OF HEARING DAYS TO DATE:

NO. OF PREHEARING CONFERENCE DAYS THIS MONTH:
TOTAL NO. OF PREHEARING CONFERENCE DAYS TO DATE:

CHRONOLOGY: (ITEMS OF INTEREST IN ADDITION TO MILESTONES)

1984

NOTES:

HEARING STATUS REPORT

PAGE NO. II-29

FACILITY NAME: LIMERICK 1 & 2 APPLICANT/LICENSEE: PHILADELPHIA ELECTRIC TYPE OF PROCEEDING: OL ASLB MEMBERS: ASLB CHAIR: L. BRENNER MEMBER 1: R. COLE MEMBER 2: P. MORRIS CORPORATE COUNSEL: T. CONNER ELD CONTACT: A. HODGON PREPARED BY: L. BRENNER	ASLB NO. 81-465-07 DL DOCKET NO(S): 035240353 ASLBP DOCKET DATE: 09-08-81 REACTOR TYPE: BWR LOCATION: 35 MI NW OF PHILADELPHIA, PA INTERVENOR NAME LIMERICK ECOLOGY ACTION (LEA) DEL-AWARE CONSUMERS EDUCATION (CEPA) GRATERFORD PRISONERS (LWYS GUILD) FOE/DELAWARE VALLEY CHAPTER CONT. UNDER "NOTES"	REVISION NO. DATE 0 10-01-81 27 02-01-84 28 03-01-84 29 04-01-84 INDIV. CONTACT C. ELLIOTT, ESQ R. SUGARMAN, ESQ S. HERSHEY, ESQ A. LOVE, ESQ R. ANTHONY
--	--	---

DOCUMENTATION DATES

	ORG. EST.	CURRENT	SER:	ORG. EST.	CURRENT	CP ISSUED:	ORG. EST.	CH?FHT
INIT. BD. NOTICE OF HRG:	08-21-81	08-21-81C		08-08-83	09-06-83C		04-26-74	06-15-74C
ER DOCKETED:	07-27-81	07-27-81C	SSER-1:	10-30-83	12-13-83C	CONST. COMP.-NRC:	03-00-84	05-00-85C
DES ISSUED:	05-06-83	06-27-83C	SSER-2:			UNIT 2:	N/S	
FES ISSUED:	03-30-84		SSER-3:					
LUA ISSUED:	N/A		SSER-4:					
PSAR DOCKETED:	02-27-70	02-27-70C	SSER-5:			CONST. COMP.-APPL:	08-00-84	08-00-84C
FSAR DOCKETED:	07-27-81	07-27-81C	SSER-LATEST:			UNIT 2:	11-00-88	
ACRS LETTER:			FEMA RPT:	10-07-83				

COMMENT: FOR CONSTRUCTION COMPLETION, DATES IN "ACTUAL" COLUMN ARE CURRENT ESTIMATES. NOTE STAFF & APPLICANT STRONG DISAGREEMENT (9 MO. DIFFERENCE) OVER CONSTRUCTION COMPLETION ESTIMATES. SCH. FOR STAFF FES SEVERE ACCIDENT ANALYSIS AND FEMA REVIEW ARE PACING ASSUMPTIONS FOR COMPLETION OF HEARING. STAFF REVIEW SCH. (FES-3/30/84) MAKES IT IMPOSSIBLE TO MEET AN 8/84 DECISION DATE. PROCEEDING IS HEAVILY CONTESTED. THE 3 MOS. ASSUMED FOR HEARING MAY BE EXCEEDED. EVEN IF MET, PROJ. DEC. DATE IS 5 MOS. LATER THAN APPL EST. DATE FOR COMPL. OF UNIT 1.

HEARING MILESTONES

	TARGET DAY* DATE	EST./ACTUAL DAY* DATE	TOTAL SLIP*	COMMENTS
(1) FINAL STAFF DOCUMENT				
(2) NEW CONTENT FILED AND INTERROG REQ FILED				
(3) PHC HELD; WRITTEN ORDER SERVED				
(4) ADDL. INTERROG. FILED ON AND BY STAFF				
(5) INTERROG. RESPONSES DUE				
(6) MOTIONS TO COMPEL FOR SUMMARY DISP, DUE				
(7) ANSWERS TO MOTIONS TO COMPEL DUE				
(8) RUL ON MOTIONS TO COMPEL ANS ON SUM DISP				
(9) RESPONSE TO ANSWERS ON SUMMARY DISP.				
(10) DISCOVERY COMPLETE				
(11) TESTIMONY FILED				
(12) RULINGS ON MOTIONS FOR SUMMARY DISP.				
(13) HEARING BEGINS (LAST PHASE)	78 06-15-84			
(14) RECORD CLOSES	170 09-15-84			LITIGATION OF THE SUPPLEMENTARY COOLING WATER SYSTEM ISSUES HAS BEEN COMPLETED. A P.I.D. WAS ISSUED MARCH 8, 1983.
(15) APPLICANTS PROPOSED FINDINGS				
(16) INTERVENORS PROPOSED FINDINGS				
(17) STAFFS PROPOSED FINDINGS				
(18) APPLICANTS REPLY FINDINGS				
(19) INITIAL DECISION	292 01-15-85			
(20) COMMISSION EFFECTIVENESS DECISION				SCHEDULE IS FOR A P.I.D. IT DOES NOT INCLUDE OFFSITE EMERGENCY PLANNING

*DAY=CALENDAR DAYS; TOTAL SLIP=DIFFERENCE BETWEEN ESTIMATED/ACTUAL DATE AND TARGET DATE

181

10

FACILITY NAME: LIMERICK 1 & 2

HEARING STATUS REPORT

PAGE NO. II-30

CURRENT STATUS:

MARCH EVIDENTIARY HEARING IS CONTINUING. ON 03/26, THE BOARD RULED IT HAD JURISDICTION OVER ISSUES RELATED TO THE PROPOSED PART 70 LICENSE TO RECEIVE UNIRRADIATED FUEL, BUT FOUND NO BASES TO ADMIT THE PROPOSED CONTENTIONS. ON 03/20, THE BOARD RULED ON THE ADMISSIBILITY OF NEPA SEVERE ACCIDENT ANALYSIS CONTENTIONS, ADMITTING 7 IN WHOLE OR IN PART, AND REJECTING 4. THREE LATE-FILED CONTENTIONS ON MISCELLANEOUS SUBJECTS (ASBESTOS, FINANCIAL QUALIFICATIONS & PRESSURE VESSEL SHOCK) WERE REJECTED. PURSUANT TO BOARD ORDER, THE PARTIES HAVE BEEN HOLDING SETTLEMENT CONFERENCES ON ONSITE EP CONTENTIONS, WITH SOME SUCCESS. RULINGS ON ADMISSIBILITY OF OFFSITE EP CONTENTIONS WILL BE ISSUED NEXT MONTH.

CONTENTIONS	NO.	FILER(S)	DEFERRED	DENIED	ADMITTED BY ASLB	WITHDRAWN	STIPULATED OUT OR OTHER DISP	SUMMARY DISP.	CONTENTIONS FOR HEARING	ADMITTED BY ALAB
SAFETY	116		0	63	9	50	1	1	4	
ENVIRONMENTAL	39		0	28	11	0	1	0	3**	
EMERG PLANNING	31*		0	1	19	11	1	0	18	
OTHER	2		0	2	0	0	0	0	0	
TOTAL	188		0	94	39	61	3	1	25**	

COMMENTS:

* "ONSITE" EMERGENCY PLANNING ONLY. OFFSITE CONTENTIONS WILL BE RESPECIFIED IN FUTURE.

** 2 OF THESE HAVE BEEN LITIGATED AND DECIDED IN A 03/08/83 PARTIAL INITIAL DECISION

SUMMARY OF MAJOR ISSUES:

EMERGENCY PLANNING, NEPA ACCIDENT RISK ASSESSMENT, ENVIRONMENTAL IMPACT OF SUPPLEMENTARY COOLING WATER SYSTEM, (LITIGATION COMPLETED), SYSTEMS INTERACTIONS, ENVIRONMENTAL QUALIFICATION AND A BROAD SPECTRUM OF OTHER SAFETY ISSUES.

NO. OF HEARING DAYS THIS MONTH: 7
TOTAL NO. OF HEARING DAYS TO DATE: 35

NO. OF PREHEARING CONFERENCE DAYS THIS MONTH: 3
TOTAL NO. OF PREHEARING CONFERENCE DAYS TO DATE: 12

CHRONOLOGY: (ITEMS OF INTEREST IN ADDITION TO MILESTONES)1982

- JAN. ON 10/14, BOARD ISSUED ORDER SPECIFYING FURTHER INFORMATION TO BE FILED REGARDING THE STANDING OF PARTIES AND SETTING SCHEDULE FOR THE FILING OF CONTENTIONS AND ANSWERS AND REBUTTALS THERETO IN NOVEMBER AND DECEMBER. PETITIONERS WERE ENCOURAGED TO FILE, TO THE FULLEST EXTENT POSSIBLE, A COMBINED STATEMENT OF CONTENTIONS AND BASES.
- ON 1/06, SPECIAL PREHEARING CONFERENCE TO DETERMINE ISSUES AND TO COMPLETE DETERMINATION OF PARTIES WAS HELD ON THIS INCLUDED ISSUES RELATED TO PROBABILISTIC RISK ASSESSMENT, EMERGENCY PLANNING AND TMI ACTION ITEMS. ARGUMENTS WERE HEARD ON THE EFFECT OF COLLATERAL ESTOPPEL AND NEPA LEAD AGENCY CONSIDERATIONS ON THE ADMISSIBILITY OF ISSUES ON THE ENVIRONMENTAL IMPACT OF THE COOLING WATER SYSTEM. THE CITY OF PHILADELPHIA HAS ASKED TO PARTICIPATE AS AN INTERESTED GOVERNMENTAL BODY PURSUANT TO 10 CFR 2.715(C).
- FEB. PARTIES FILED CLARIFICATIONS TO AND SUPPLEMENTS ON POSITIONS TAKEN AT CONFERENCE.
- APRIL BOARD IN PROCESS OF PREPARING ORDER RULING ON PARTIES AND ADMISSIBILITY OF THE MANY PROPOSED CONTENTIONS.
- MAY BOARD PREPARING EXTENSIVE ORDER FOR ISSUANCE 06/01 RULING ON STANDING AND CONTENTIONS.
- JUNE EXTENSIVE (160 PAGE) SPECIAL PREHEARING CONFERENCE ORDER WAS ISSUED 06/01, RULING ON PARTIES AND ISSUES. THE BOARD FOUND THAT TEN PETITIONERS HAD SATISFIED THE REQUIREMENT FOR INTERVENTION IN THE PROCEEDING AND THAT THREE HAD NOT. THE BOARD RULED THAT PETITIONERS MAY ALLEGE THEY WILL SUFFER AN INJURY IN FACT SUFFICIENT FOR STANDING WITHOUT HAVING TO DEMONSTRATE THAT THEY WILL SUFFER AN INJURY MARKEDLY DIFFERENT FROM THAT SUFFERED BY ALL PERSONS RESIDING CLOSE TO THE REACTORS. THE BOARD RULED THAT THREE GOVERNMENT AGENCIES COULD PARTICIPATE IN THE HEARING PURSUANT TO 10 CFR 2.715(C). THE BOARD ADMITTED 40 CONTENTIONS, 24 OF THEM ON THE CONDITION THAT THEY BE FURTHER PARTICULARIZED WHEN MORE INFORMATION HAS BEEN DEVELOPED BY THE APPLICANT AND THE STAFF. THE BOARD DENIED ADMISSION OF 36 CONTENTIONS AND DEFERRED CONSIDERATION OF 64 CONTENTIONS. VIRTUALLY ALL OF THE CONTENTIONS FOR WHICH CONSIDERATION WAS DEFERRED RELATED EITHER TO EMERGENCY PLANNING OR PROBABILISTIC RISK ASSESSMENT (PRA). CONSIDERATION OF THE EMERGENCY PLANNING CONTENTIONS WAS DEFERRED UNTIL EMERGENCY PLANS ARE AVAILABLE. THE BOARD FOUND THAT THE PRA IS A PROPER SUBJECT OF CONTENTIONS AND ADMITTED ONE SUCH CONTENTION. THE PARTIES WERE DIRECTED TO NEGOTIATE THE CONTENTION AND ADMISSIBILITY OF THE OTHER CONTENTIONS CONCERNING THE PRA, WITHIN THE GUIDELINES INDICATED BY THE BOARD. THE BOARD CONSIDERED AT LENGTH THE ADMISSIBILITY OF CONTENTIONS CONCERNING THE SUPPLEMENTARY COOLING WATER SYSTEM. FOUR CONTENTIONS, BASED ON CHANGES SINCE THE CP AND LIMITED IN SCOPE, WERE ADMITTED. THE BOARD INDICATED THE EXTENT TO WHICH THE STAFF COULD RELY ON FINDINGS BY OTHER AGENCIES IN ITS DES AND FES.
- JULY THE BOARD ISSUED ITS RULING ON REQUESTS FOR RECONSIDERATION OF THE SPECIAL PREHEARING CONFERENCE ORDER. ON RECONSIDERATION, ALL RULINGS WERE AFFIRMED, EXCEPT ONE OF THE FOUR COOLING WATER SYSTEM CONTENTIONS PREVIOUSLY ADMITTED WAS REJECTED. AN ACCELERATED HEARING ON THE THREE WATER ISSUES HAS BEEN SCHEDULED FOR 10/04-08.
- AUG. SEVERAL RULINGS WERE ISSUED IN DISCOVERY OF WATER ISSUES. AN ORDER ESTABLISHING PROCEDURES IN PREPARATION FOR THE 10/04-08 EVIDENTIARY HEARING WAS ISSUED, PROVIDING FOR THE FILING OF TRIAL BRIEFS, CROSS-EXAMINATION PLANS AND WRITTEN MOTIONS TO STRIKE TESTIMONY IN ADVANCE OF THE HEARING.
- SEPT. TESTIMONY, AND RELATED MOTIONS TO AMEND CONTENTIONS, STRIKE TESTIMONY, AND CROSS-EXAMINATION PLANS AND TRIAL BRIEFS WERE FILED ON WATER ISSUES. THE HEARING ON THESE ISSUES WILL BEGIN ON 10/04. ON ANOTHER SUBJECT, A CONTENTION ON THE PSYCHOLOGICAL STRESS OF VIEWING THE COOLING TOWER PLUME WAS REJECTED PURSUANT TO THE COMMISSION'S POLICY STATEMENT AND FOR LACK OF BASIS.
- OCT. AN EVIDENTIARY HEARING LIMITED TO THE THREE SUPPLEMENTARY COOLING WATER SYSTEM CONTENTIONS WAS HELD AND COMPLETED IN 12 HEARING DAYS (WHICH INCLUDES SOME EXTENDED SESSIONS). AN ORDER DENYING INTERVENOR'S MOTION TO DEFER THE HEARING WAS ISSUED.

CHRONOLOGY: (ITEMS OF INTEREST IN ADDITION TO MILESTONES)1982 (CONT'D)

NOV. PROPOSED FINDINGS HAVE BEEN FILED BY THE APPLICANT, DEL-AWARE AND STAFF ON THE SUPPLEMENTARY COOLING WATER CONTENTIONS LITIGATED IN OCTOBER. THE APPLICANT AND DEL-AWARE HAVE FILED THE FURTHER INFORMATION REQUESTED ON THE EFFECT OF THE PA. PUC ORDER RE UNIT 2 IN THE PROPOSED SUPPLEMENTARY COOLING WATER SYSTEM ISSUES. THE BOARD ISSUED TWO ORDERS: ONE REQUIRING 15 DAYS NOTICE FOR APPLICANT PRIOR TO CONSTRUCTION ON THE SUPPLEMENTARY COOLING WATER SYSTEM. THE OTHER ORDER ADMITTED TWO CONTENTIONS AND DENIED EIGHT ADVANCED BY FRIENDS OF THE EARTH REGARDING INDUSTRIAL HAZARDS TO PLANT SAFETY.

DEC. THE BOARD IS PREPARING ITS DECISION ON THE SUPPLEMENTARY COOLING WATER CONTENTIONS.

1983

JAN. THE BOARD IS PREPARING ITS DECISION ON THE SUPPLEMENTARY COOLING WATER CONTENTIONS, WHICH WILL BE ISSUED IN FEBRUARY. AN ORDER WAS ISSUED DENYING THE REQUEST BY DEL-AWARE TO ADMIT THREE ADDITIONAL SUPPLEMENTARY COOLING WATER CONTENTIONS. THE CONTENTIONS WERE BASED ON ACTIONS BY THE PA. PUC AND OTHERS RAISING THE POSSIBILITY THAT UNIT 2 WOULD NOT BE COMPLETED. THE BOARD'S RULING ASSUMED ARGUENDO THAT UNIT 2 WOULD BE CANCELLED AND HELD THAT THIS WAS NOT, IN FACT, MATERIAL TO THE NEED FOR SUPPLEMENTARY COOLING WATER.

FEB. THE PARTIAL INITIAL DECISION ON SUPPLEMENTARY COOLING WATER ISSUES WILL BE ISSUED THE WEEK OF 03/07, ALONG WITH RULINGS ON DEL-AWARE'S PETITION TO ADMIT A LATE-FILED WATER CONTENTION AND REQUEST FOR RECONSIDERATION OF THE DENIAL OF THREE OTHER WATER CONTENTIONS. BY ORDER OF 02/10, A PETITION TO ADMIT A TABLE S-3 FUEL CYCLE IMPACT CONTENTION, BASED ON THE APRIL 1982 D.C. CIRCUIT DECISION IN HRDC V. NRC, WAS DENIED ON THE BASIS OF THE COMMISSION'S 11/82 POLICY STATEMENT. BY SEPARATE ORDER OF 02/10, THE BOARD CONTINUED INFORMAL DISCOVERY, REQUIRED FILINGS ON SPECIFICATION OF CONTENTIONS, DISMISSED A RADON CONTENTION (AND THEREFORE ECHPO AS A PARTY), REQUIRED A STATUS REPORT ON EMERGENCY PLANNING, AND TENTATIVELY SCHEDULED A PREHEARING CONFERENCE FOR MAY.

MARCH THE PARTIAL INITIAL DECISION ON SUPPLEMENTARY COOLING WATER ISSUES WAS ISSUED ON 03/08. IN A SEPARATE ORDER OF THAT DATE, THE BOARD DENIED DEL-AWARE'S REQUEST: (1) FOR RECONSIDERATION OF REFUSAL TO ADMIT THREE OTHER LATEC CONTENTIONS, AND (2) TO ADMIT A LATE-FILED WATER CONTENTION. ON 03/17 THE BOARD DIRECTED THE PARTIES TO BRIEF WHETHER IT HAS JURISDICTION TO RULE ON A DEL-AWARE MOTION TO REOPEN THE RECORD FILED THE SAME DAY AS THE PARTIAL INITIAL DECISION. ON 03/10, THE BOARD DENIED A MOTION BY FOE TO RECONSIDER THE DENIAL OF SOME OF ITS NEARBY INDUSTRIAL HAZARD CONTENTIONS. ON 03/21, THE BOARD SCHEDULED A SECOND SPECIAL PREHEARING CONFERENCE TO BEGIN ON 05/09 IN PHILADELPHIA.

APRIL ON 04/12, THE BOARD DENIED AMPP'S PETITION TO ADD A LATE CONTENTION BASED ON THE TMI-2 CLEANUP. ON 04/27, THE BOARD RULED THAT THE APPEAL BOARD HAD JURISDICTION TO RULE ON DEL-AWARE'S MOTION TO REOPEN THE RECORD WHICH WAS NOT FILED BEFORE ISSUANCE OF THE PARTIAL INITIAL DECISION, EVEN THOUGH IT WAS FILED BEFORE EXCEPTIONS. THE PARTIES HAVE FILED RESPECIFIED CONTENTIONS AND ANSWERS THERETO IN PREPARATION FOR THE 05/09 SECOND SPECIAL PREHEARING CONFERENCE.

CHRONOLOGY: (ITEMS OF INTEREST IN ADDITION TO MILESTONES)1983 (CONT'D)

- MAY ON 05/09-11, THE SECOND SPECIAL PREHEARING CONFERENCE WAS HELD. SCHEDULES WERE ESTABLISHED FOR FURTHER DISCOVERY AND FILING OF SPECIFIED CONTENTIONS BASED ON NEW INFORMATION, AND ONSITE EMERGENCY PLANNING CONTENTIONS. OFFSITE EMERGENCY PLANNING CONTENTIONS WILL BE FILED AFTER THE DRAFT OFFSITE PLANS ARE AVAILABLE. AS A RESULT OF THE SPECIFICATION AND NEGOTIATION PROCESS REQUIRED BY THE BOARD, THIRTY-SIX (36) CONTENTIONS WERE WITHDRAWN AND SEVEN (7) WERE DENIED. AN ADDITIONAL TWENTY-ONE (21) PRA CONTENTIONS AND THREE (3) OTHER SAFETY CONTENTIONS WILL BE RULED ON IN THE NEAR FUTURE.
- JUNE ON 06/01, THE BOARD DENIED DEL-AWARE'S REQUEST TO REOPEN THE RECORD ON COOLING WATER ISSUES DECIDED IN THE 03/08 PARTIAL INITIAL DECISION THE NRC STAFF PROJECTED THAT UNIT 1 WILL NOT BE COMPLETE UNTIL THE SECOND QUARTER OF 1985 MONTHS LATER THAN THE APPLICANT'S ESTIMATE OF 08/84.
- JULY ON 07/14, THE BOARD DENIED DEL-AWARE'S REQUEST TO REOPEN THE RECORD AND ADMIT, POST-HEARING, A NEW CONTENTION CONCERNING THE DIVERSION OF COOLING WATER FOR LIMERICK. ON 07/26, THE BOARD ISSUED ITS SECOND SPECIAL PREHEARING CONFERENCE ORDER RULING ON PRA AND OTHER SAFETY CONTENTIONS. THREE CONTENTIONS WERE ADMITTED, WHILE 19 CONTENTIONS WERE NOT.
- AUG. DISCOVERY ON ADMITTED CONTENTIONS CONTINUES TO TAKE PLACE. LEA HAS FILED ITS CONTENTIONS ON THE NEPA SEVERE ACCIDENT RISK ASSESSMENT.
- SEPT. PREHEARING CONFERENCE, LIMITED APPEARANCE SESSIONS AND SITE VISIT SCHEDULED FOR WEEK OF 10/17/83. ARGUMENT WILL BE HEARD ON ADMISSIBILITY OF CONTENTIONS ON ONSITE E.P., NEPA SEVERE ACCIDENT ANALYSIS AND ENVIRONMENTAL QUALIFICATION. MISCELLANEOUS ORDERS ISSUED ON DISCOVERY DISPUTES, AND SCHEDULING OF CONTENTIONS AND HEARING.
- OCT. PREHEARING CONFERENCE AND LIMITED APPEARANCE SESSIONS HELD. RULINGS ON RESPECIFIED SAFETY CONTENTIONS AND ONSITE EMERGENCY PLANNING CONTENTIONS ISSUED. HEARING SCHEDULED TO START 12/07 ON FOUR CONTENTIONS. MOTIONS FOR SUMMARY DISPOSITION OF THOSE CONTENTIONS HAVE BEEN FILED.
- NOV. SUMMARY DISPOSITION GRANTED ON ONE CONTENTION (PRESSURIZED THERMAL SHOCK) AND DENIED ON THREE OTHERS. HEARING ON THREE CONTENTIONS (REGARDING GAS AND PETROLEUM PIPELINES HAZARDS AND AIRCRAFT CARBURETOR ICING BY PLUME) WILL BEGIN 12/12/83. DISCOVERY PROCEEDING ON OTHER CONTENTIONS.
- DEC. FOUR MISCELLANEOUS ORDERS ISSUED ON DISCOVERY SCHEDULE, MOTIONS TO STRIKE TESTIMONY, PROPOSED FINDINGS FORMAT AND DENIAL OF MOTION TO RECONSIDER GRANT OF SUMMARY DISPOSITION. FIVE DAYS OF HEARING HELD ON FOE'S PIPELINE HAZARDS CONTENTIONS. HEARING ON THIS ISSUE AND ON AWPP'S AIRCRAFT CARBURETOR ICING CONTENTION WILL CONTINUE IN 01/84.

1984

- JAN. HEARINGS COMPLETED ON AWPP AIRCRAFT CARBURETOR ICE CONTENTION. HEARINGS CONTINUED ON FOE PIPELINE HAZARDS CONTENTIONS AND WILL BE COMPLETED IN MARCH 1984. SUPPLEMENTAL CONTENTIONS ON OFFSITE EP AND NEPA SEVERE ACCIDENTS ARE BEING FILED AND ANSWERED IN JANUARY AND FEBRUARY. PREHEARING CONFERENCE WILL BE HELD IN MARCH TO CONSIDER ADMISSIBILITY OF SUCH CONTENTIONS AND SCHEDULE FOR LITIGATION OF PREVIOUSLY ADMITTED ONSITE EP AND OTHER SAFETY CONTENTIONS.

FACILITY NAME: LIMERICK 1 & 2

H E A R I N G S T A T U S R E P O R T
(CONTINUED)

PAGE NO. II-34

CHRONOLOGY: (ITEMS OF INTEREST IN ADDITION TO MILESTONES)

1984 (CONT'D)

FEB. EVIDENTIARY HEARINGS ON SAFETY AND ONSITE EMERGENCY PLANNING CONTENTIONS HAVE BEEN SCHEDULED FOR MARCH, APRIL AND MAY. FOE HAS MOVED TO PROHIBIT STORAGE OF NEW FUEL AT LIMERICK UNTIL CERTAIN CONTENTIONS ARE DECIDED ON THE MERITS. RESPONSES AND ARGUMENT ARE SCHEDULED FOR EARLY MARCH. NUMEROUS OFFSITE EP CONTENTIONS HAVE BEEN RESPECIFIED BASED ON THE DRAFT OFFSITE PLANS SUBMITTED FOR FEMA REVIEW. INTERVENORS HAVE FILED 30 CONTENTIONS, THE CITY OF PHILADELPHIA 12, AND PENNSYLVANIA 2. A PREHEARING CONFERENCE ON OFFSITE EP WILL BEGIN THE WEEK OF 03/05. RESPECIFIED NEPA SEVERE ACCIDENT CONTENTIONS BASED ON THE STAFF'S SUPPLEMENTAL DES HAVE BEEN FILED BY LEA (6) AND BY PHILADELPHIA (5). ANSWERS AND ARGUMENT ON THEIR ADMISSIBILITY ARE SCHEDULED FOR MARCH.

NOTES:

ADDITIONAL INTERVENORS
INTERVENOR NAME:

AIR & WATER POLLUTION PATROL
COMMONWEALTH OF PENNSYLVANIA
CITY OF PHILADELPHIA
MARVIN I. LEWIS
JOSEPH H. WHITE, III

INDIVIDUAL CONTACT:

F. ROMANO
ZORI G. FERKIN, ESQ.
M. BUSH, ESQ./K. LEWIS, ESQ.
PRO SE
PRO SE

LIMITED DISTRIBUTION



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

*4/6/84
Muller order
Commission:
1) Decision date
2) Scope issues
3) Ideas S.D. within
4) No action*

April 4, 1984

[Redacted] (8)

MEMORANDUM FOR: Commissioner Gilinsky
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal

FROM: Nunzio J. Palladino *NJP*

SUBJECT: SHOREHAM

As you know, in my March 20, 1984 memorandum on licensing delays, I asked OGC to prepare a paper for the Commission discussing possible approaches to expediting the remaining Shoreham hearings on low power. I asked OGC to work with other offices within NRC as necessary in preparing this paper.

The OGC paper (Limited Distribution) was provided to the Commission on April 2, 1984. I would like to get Commission reactions to this paper as soon as possible, but not later than April 9, 1984. SECY please track.

During my status and scheduling meeting with OGC, OPE, the ASLBP Chairman and staff on March 16, 1984, some preliminary ideas regarding expediting the Shoreham hearing were discussed. These ideas were later articulated in a working paper (enclosed) that was discussed with Judge Cotter by my Legal Assistant. Judge Cotter provided his comments in the form of a draft order (enclosed). I asked that this draft order be given to OGC for possible consideration in the above-referenced OGC paper. It was given to OGC on March 27, 1984. Further action on this or any other draft order will depend on the nature of Commissioner comments on OGC's April 2, 1984 memorandum.

- Enclosures:
1. Working Paper
 2. ASLBP Draft Order

cc: SECY
OGC
OPE
ASLBP

*Sup
8412070468*

LIMITED DISTRIBUTION

(11)

ORDER

On March 20, 1984, LILCO filed with the Licensing Board a "Supplemental Motion for Low Power Operating License". LILCO has requested the Board either to refer the motion immediately to the Commission for decision or to decide the motion on an expedited basis and to certify its decision to the Commission pursuant to 10.C.F.R. § 2.730(f) (1983). As discussed below, the Commission has reviewed LILCO's motion and has concluded that referral at this time would be inappropriate. We agree, however, that a decision on certain issues raised by the Applicant should be expedited to the extent possible consistent with the development of a sound record. In the exercise of the Commission's inherent authority over the conduct of our adjudicatory proceedings, we hereby grant that portion of LILCO's motion that requests an expedited proceeding. To that end, we direct the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, in consideration of the existing schedule and caseload of the Panel's members, to appoint an Atomic Safety and Licensing Board to hear and decide LILCO's supplemental motion in accordance with the procedures and schedule outlined below.

I. LILCO's Motion

LILCO asserts that the Shoreham plant is essentially complete and, by its motion, seeks authority to conduct four phases of low power activities, namely:

Phase I: fuel load and precriticality testing;

Phase II: cold criticality testing;

Phase III: heatup and low power testing to rated pressure/temperature conditions (approximately 1% rated power); and

Phase IV: low power testing (1-5% rated power).

Despite pending litigation concerning the emergency diesel generators' reliability, LILCO asserts in its motion: (1) the generators are not needed to protect the public health and safety for Phases I and II; (2) the generators have been tested and are adequate to protect the public health and safety during Phases III and IV, even though litigation of their reliability has not been completed; and (3) ample alternate sources of AC power are available sufficient to assure no undue risk to the public health and safety from low power operation of the plant during Phases III and IV.

II. Background:

Of some 122 safety contentions originally filed in this proceeding all but three have been resolved (The settlement of a fourth issue has been presented to the Board for approval). The three remaining

contentions concern the reliability of emergency diesel generators at the facility.

LILCO's motion supplemented a June 3, 1983 motion for a low power license. After the motion was filed, however, additional problems developed with the emergency diesel generators, and the hearing on their reliability scheduled to commence August 29, 1983 was deferred pending completion of LILCO's assessment and the NRC Staff safety evaluation. In a partial initial decision issued September 21, 1983, the Licensing Board decided a number of safety issues in favor of operation up to 5% of rated power but declined to authorize fuel load and low power operation until the then pending diesel generator contention was resolved. The Staff SER is presently scheduled for issuance in June 1984, litigation of the three diesel generator contentions is scheduled to commence in July 1984, and an initial decision is projected for issuance in December 1984.

Suffolk County filed four amended contentions on the generators, and on February 22, 1984, the Board admitted three of them in a ruling on the record. Tr. 21,612 et seq. Although the Board could not find, on the state of the record at that time, that the generators could reliably perform their needed function even as to low power, the Board noted that LILCO was not precluded from proposing other methods by which the standards of 10 C.F.R. 50.57(c) could be met short of litigating the contentions, or seeking a waiver under Section 2.758, or any other

procedure. Tr. 21,616, 21,630-633. Apparently in response to that ruling LILCO filed its March 20, 1984 supplemental motion.

As noted, Applicant has requested that its supplemental motion be referred directly to the Commission for decision. The Commission is fully apprised of the contents of that motion and is of the opinion that certain issues presented require a factual evaluation that can be accomplished more promptly and efficiently by a licensing board than by the Commission directly. Accordingly, referral to the Commission at this time would be inappropriate. However, the present schedule for litigation of contentions related to the TDI diesel generators does present the potential for delay inimical to the public interest given the apparent physical completion of the Shoreham facility within the meaning of 10 C.F.R. § 50.57(a) (1983) and the enormous financial investment involved. If the alternatives proposed by Applicant in its motion are sufficient to permit low-power operation and testing with assurance that the public health and safety are adequately protected, that matter ought to be determined as expeditiously as possible.

The Commission has inherent supervisory authority over the conduct of its adjudicatory proceedings, including specific authority under its rules to establish reasonable adjudication time tables. See The U.S. Energy Research and Development Administration, Project Management Corporation, Tennessee Valley Authority (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67 (1976), and 10 C.F.R. § 2.711 (1983).

III. Issues to be Heard

Accordingly, absent settlement, we direct that the following issues be adjudicated on an expedited basis:

1. Whether the work described in Phases I and II of LILCO's motion can be performed without the need for the presently installed onsite emergency diesel generators;
2. Whether the alternate sources of AC power available to Shoreham are adequate to protect the public health and safety by performing the function that the presently installed onsite emergency diesel generators would have performed during any or all of Phases I, II, III, or IV;
3. What requirements for testing or other demonstration of the availability and effectiveness of the Shoreham alternate power sources should be required as a precondition to the issuance of any license permitting operation at up to 5% of rated power.
4. Whether, in consideration of the Board's findings on the above issues and assuming all other regulatory requirements have been satisfied, LILCO should be granted a low power license to

perform the work described in any or all of Phases I, II, III, or IV.

The licensing board constituted pursuant to this order is authorized to conform the statement of the above issues to the evidence relevant to LILCO's motion and this order. The licensing board shall not consider the operability and reliability of the TDI diesel generators currently onsite. These matters are presently the subject of an extensive Staff review and will be fully adjudicated when the results of the Staff's review are available.

IV. Proceeding Schedule

The Licensing Board constituted pursuant to this order is directed to certify its Initial Decision on these questions to the Commission 60 calendar days after the Staff files its SER on the technical aspects of the LILCO motion. To that end, the following expedited schedule is recommended to the Board and the parties:

Day -7	Commission Order
Day 1	Staff and parties file response to substantive aspects of LILCO's motion
Day 1	Staff files SER on technical aspects of LILCO Supplemental Motion for Low Power Operating License and serves the SER on the parties
Day 2	Discovery commences

Day 18	Discovery is completed
Day 25	Testimony is filed
Day 30	Hearing commences
Day 40	Hearing concludes
Day 60	Board issues decision

The Licensing Board constituted pursuant to this order is authorized to adopt, take official notice, or otherwise incorporate any portion of the existing record in this proceeding as it sees fit. The Board shall closely monitor and assist in the discovery process, limit the number of pages in any filing if necessary; alter, revise or modify any of the intermediate dates or sequences set out above, and otherwise facilitate the expedited completion of the proceeding in the full exercise of its authority. See, e.g., Statement of Policy on Conduct of Licensing Proceedings, 13 NRC 452 (CLI-8I-8, 1981).

Steps

1. 3/26: Commission issues brief notice to parties suspending parties response time to LILCO's motion
2. 3/26: Commission orders Staff to prepare SER by April 7
3. 3/30: Commission issues expedited hearing order
4. ca. 6/7: Board decision

Some Considerations

1. Excellent Staff SER is critical to success of this expedited proceeding: Total systems analysis required or Boards and Commission will look bad
 - a. Staff should be formally notified to begin work immediately
 - b. Staff SER issuance on day 1 assumes they have already commenced to prepare it, and this order won't issue until March 30
2. Sixty day schedule is brutally tight. Definitely not recommended but possibly achievable
3. Very important to give Licensing Board flexibility to reformulate issues within overall guidance should evidence shift the nature or emphasis of the issue.
4. Boards committed to hearings or partial or initial decision writing in April and May include Catawba, Comanche Peak, Shearon Harris, Limerick, Midland, Shoreham, and Wolf Creek

-- Need to avoid Commission debate on Board membership (cf.
Indian Point)

5. Phase I and II issue may be resolved by agreement of parties which
would make possible PID authorizing that work

THIS DRAFTING SERVICE FURNISHED "AS IS":

NO WARRANTIES EXPRESS OR IMPLIED

THE EDO HAS RECENTLY PROVIDED THE COMMISSION AN ASSESSMENT FOR SHOREHAM THAT PROJECTS A NINE-MONTH LICENSING DELAY DUE TO, I AM TOLD, THE SHOREHAM LICENSING BOARD'S REQUIREMENT TO LITIGATE THE DIESEL-GENERATOR QUESTION BEFORE ALLOWING OPERATION AT LOW POWER.

THE COMMISSION WOULD LIKE THIS MATTER LITIGATED ON AN EXPEDITED BASIS WITH A TARGET DATE OF RECEIVING THE BOARD'S DECISION ON THIS MATTER BY MAY 9, 1984. WOULD YOU PLEASE LOOK INTO WHAT STEPS ARE REQUIRED TO MEET SUCH A DATE AND INFORM THE COMMISSION ON THESE STEPS AS SOON AS POSSIBLE, BUT NOT LATER THAN MARCH 30, 1984.

FOR PLANNING PURPOSES, YOU COULD ASSUME THE FOLLOWING STEPS:

- A TWO WEEK STAFF REVIEW OF THE PROPOSAL BY LILCO;
- A ONE WEEK DISCOVERY PERIOD;
- A TWO WEEK PERIOD FOR FILING TESTIMONY AND HOLDING A HEARING;
- A TWO WEEK PERIOD TO ISSUE THE BOARD'S DECISION

FINAL COMMISSION GUIDANCE ON THE EXPEDITED HEARING ON THIS MATTER WOULD BE BASED ON YOUR SUBMITTAL AND FOLLOW UP DISCUSSIONS. IF YOU HAVE ANY QUESTIONS, PLEASE LET ME KNOW.

Lago

①

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

*Conference held
April 4*

ATOMIC SAFETY AND LICENSING BOARD

*Hearing to
start April 24
(2 weeks)*

Before Administrative Judges
Marshall E. Miller, Chairman
Glenn O. Bright
Elizabeth B. Johnson

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Generating Plant,
Unit 1)

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

April 6, 1984

MEMORANDUM AND ORDER SCHEDULING HEARING ON LILCO'S
SUPPLEMENTAL MOTION FOR LOW-POWER OPERATING LICENSE

On March 20, 1984, LILCO filed its Supplemental Motion for Low Power Operating License. Suffolk County responded with its preliminary views on scheduling in this matter on March 26, and submitted a supplement to those views on March 30. The State of New York and the NRC Staff filed their responses to the LILCO Motion on March 28 and 30, respectively.

On March 30, 1984, via telephonic notice to the parties confirmed by a written Order of the same date, we scheduled a conference of counsel for the purpose of hearing oral arguments of the parties on "the issues that had been raised by the parties in their filings, as well as a schedule for their expedited consideration and determination." (Order

~~84041-00153~~

⑫

at 1) New York State then filed a Motion, dated April 3, in which it asked that the provision in our March 30 Order mandating "expedited consideration and determination" of the issues in the LILCO Motion be deleted as lacking in any valid basis.

The conference of counsel was held on April 4, 1984, in the NRC Hearing Room at Bethesda, Maryland. Attorneys attending the conference were:

W. Taylor Reveley, III; Anthony F. Earley and
Robert M. Rolfe for LILCO

Alan R. Dynner, Herbert H. Brown and
Lawrence Coe Lanpher for Suffolk County

Fabian Palomino for New York State

Edwin Reis and Robert Perlis for NRC Staff

LILCO's Motion asks us to grant a low-power operating license to its Shoreham Nuclear Power Station, pursuant to 10 CFR §50.57(c). It characterizes the present motion as "Supplemental" to the earlier motion for a low-power license which it had filed on June 8, 1983. In ruling on that motion, the Licensing Board indicated that it had resolved all contentions relevant to issuance of a low-power license for Shoreham in LILCO's favor except for certain recently-admitted contentions regarding reliability of diesel generators at the site. ("TDI's" or "TDI diesels", so called because of the manufacturer's name, Transamerica Delaval, Inc.). No low-power license could be issued, that Board said, "until such time as that portion of Suffolk County's recently admitted emergency diesel generator contention may be resolved in LILCO's favor,

at least insofar as necessary to support a finding of reasonable assurance that Shoreham can be operated at levels up to five percent of rated power without endangering the health and safety of the public." Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-57, 18 NRC 445, 634 (1983). LILCO's Motion of March 20, 1984, purports to show that the pending diesel issues related to high-power operations need not be resolved prior to the granting of a low-power license for Shoreham.

At the conference of counsel, counsel for LILCO indicated that the TDIs are assumed not to operate in the accident analyses LILCO offers in support of its motion (Tr. 20). Therefore, LILCO's counsel agreed with the Board that no discussion of the TDI's possible or potential use in an emergency would be relevant.

LILCO frames the issues to be heard regarding its motion as one major issue with three factors thereunder.

Issue: Whether emergency power sources available are sufficient to ensure public health and safety during low-power testing

- one 20 megawatt gas turbine (deadline blackstart)
- four mobile diesel engines (deadline blackstart)

-- calculations regarding the amount of time available to react to certain events.¹

Suffolk County argued against the LILCO motion. The County quoted the "law of the case" -- specifically the statement made on the record (Tr. 21,631) by the original Licensing Board in this matter that the usefulness or effectiveness of the TDI's is uncertain. The County pointed out that there is no qualified onsite AC power system at Shoreham, and that General Design Criterion (GDC) 17 specifically requires both an onsite and an offsite power system. Thus, the County argued, LILCO's efforts to disregard the requirements of GDC-17 -- absent any petition for waiver thereof -- was nothing more than an impermissible challenge to NRC regulations.

The Staff believes that the regulations have to be read as a whole, and that GDC-17 should be read in conjunction with our low-power license provision, 10 CFR §50.57(c). The Staff would thus view the requirements for full-power activities (e.g., GDC-17) as not totally applicable when the issue is whether low-power activities should be authorized.

¹ In regard to the time question, LILCO's stated position, supported by affidavit, was that in the event of a loss-of-coolant accident while the plant was operating at five percent power, plant operators would have at least 55 minutes to restore coolant. The same calculation, when performed without some of the "conservatisms" that had been built into it, would show that operators had ^{from} 110 minutes ^{to} three hours in which to restore coolant. EC

New York State, as an interested state, argued that 10 CFR §2.758 which prohibits attack on the other regulations specifically prohibits looking to the intent of a regulation rather than its explicit requirements, as the Staff would have us do with GDC-17. In addition, in its written response of March 28 it argued that LILCO had failed to comply not only with DGC-17, but also with GDC's 4, 5, 18, 19 and with 10 CFR 50, App. B.

All parties were heard on oral arguments by counsel regarding LILCO's motion for low-power operations at the hearing held April 4, 1984. Extensive arguments on all aspects of the low-power motion and the responses thereto enabled the Board to probe the underlying reasoning of the diverse views presented by the parties. Based upon a consideration of the LILCO motion and the facts alleged in its attached affidavits,² the matters contained in the responsive filings of the other parties and the arguments of counsel in depth, the Board concludes as follows:

1. LILCO has made a sufficient preliminary showing to justify holding a Section 50.57(c) limited hearing.³

² Affidavits concerning the alleged facts and expert opinion were filed by Jack A. Notaro and William E. Gunther, Jr.; William G. Schiffmacher; Dr. Glenn G. Sherwood, Dr. Atambir S. Rao and Mr. Eugene C. Eckert; and William J. Museler.

³ 10 CFR §50.57(c) provides:

(Footnote Continued)

2. The Board will be required to determine whether there is reasonable assurance that the activities associated with LILCO's request for a low-power license can be conducted without endangering the health and safety of the public, in the absence of resolution by another licensing board of the emergency diesel generator contentions related to full-power operation.
3. The provisions of Section 50.57 regarding low-power operations must be read together with the requirements of

(Footnote Continued)

An applicant may, in a case where a hearing is held in connection with a pending proceeding under this section make a motion in writing, pursuant to this paragraph (c), for an operating license authorizing low-power testing (operation at not more than 1 percent of full power for the purpose of testing the facility), and further operations short of full power operation. Action on such a motion by the presiding officer shall be taken with due regard to the rights of the parties to the proceedings, including the right of any party to be heard to the extent that his contentions are relevant to the activity to be authorized. Prior to taking any action on such a motion which any party opposes, the presiding officer shall make findings on the matters specified in paragraph (a) of this section as to which there is a controversy, in the form of an initial decision with respect to the contested activity sought to be authorized. The Director of Nuclear Reactor Regulation will make findings on all other matters specified in paragraph (a) of this section. If no party opposes the motion, the presiding officer will issue an order pursuant to §2.730(e) of this chapter, authorizing the Director of Nuclear Reactor Regulation to make appropriate findings on the matters specified in paragraph (a) of this section and to issue a license for the requested operation.

GDC 17⁴ concerning emergency power needs for full-power operations.

4. If the evidence shows that the protection afforded to the public at low power levels without the diesel generators required for full-power operations, is equivalent to (or greater than) the protection afforded to the public at full-power operations with approved generators, then LILCO's motion should be granted.
5. In making such determinations, the record should establish the following:
 - (a) Assuming an accident such as a LOCA at five percent power, how much time would plant operators have before emergency core cooling was necessary, and
 - (b) Could such core cooling be supplied within that time.
6. An expedited hearing should be held on the discrete issues described above, to the extent that such matters are reasonably relevant to a low-power license.

⁴ GDC 17 requires that electric power systems assure that in the absence of either the onsite or offsite power system,

- (1) specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded as a result of anticipated operational occurrences and
- (2) the core is cooled and containment integrity and other vital functions are maintained in the event of postulated accidents.

Authority for the issuance of low-power licenses is contained in 10 CFR §50.57(c), as described above. Motions for a low-power operating license should be ruled on promptly, while decisions on full-power issues not associated with such operations may be resolved at a later time.⁵ In ruling upon Section 50.57(c) motions, a clear distinction must always be made between low-power operations and full-power operations. At the threshold, the Board must consider and resolve the question of whether the factual record arguably supports the requirement of reasonable assurance that proposed low-power operations can be conducted without endangering public health and safety.

In this case LILCO's motion requested approval for the following activities:

- (a) Phase I: fuel load and precriticality testing;
- (b) Phase II: cold criticality testing;
- (c) Phase III: heatup and low power testing to rated pressure/temperature conditions (approximately 1% rated power); and
- (d) Phase IV: low power testing (1-5% rated power).

The original Licensing Board which issued a Partial Initial Decision on September 21, 1983, decided all issues before it except that

⁵ Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361, 362 (1981).

involving the adequacy of the emergency diesel generators.⁶ That matter remains pending in adjudicatory proceeding involving full-power licensing being concurrently conducted by that Board. The jurisdiction of these two boards is separate and independent, and the instant low-power proceeding is not intended to duplicate or relitigate the massive record compiled in the extensive hearings preceding the issuance of the Partial Initial Decision.

Other licensing boards have considered the comparative risks associated with low-power versus full-power operations. It has been noted that the Commission endorsed the general proposition that fuel loading and low-power testing

"involve minimal risk to the public health and safety, in view of the limited power level and correspondingly limited amounts of fission products and decay heat, and greater time available to take any necessary corrective action in the event of an accident."⁷

It has been held that the emergency planning measures required for low-power licenses are not the same as those required for full-power operation, but that the level of planning for a low-power license must be sufficient to provide the same level of protection to the public as

⁶ LBP-83-57, 18 NRC 445, 634 (1983).

⁷ Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-3, 18 NRC 61, 188, 190 (1982).

afforded by full compliance with the regulations at full-power operation.⁸

Without passing upon the ultimate merits of LILCO's supporting affidavits at this time, we observe that taken together they furnish sufficient analyses and data to provide a preliminary record to justify holding a limited evidentiary hearing on matters in controversy regarding low-power operations.

The Affidavit of Jack A. Nataro and William E. Gunther, Jr. describes in some detail the steps involved in each of LILCO's Phases I through IV. The affidavit of William G. Schiffmacher lists and describes all the normal and additional sources of offsite emergency AC power available to support the Shoreham plant. The affidavit of Dr. Glenn G. Sherwood, Dr. Atambir S. Rao and Mr. Eugene C. Eckert presents the results of the affiants' review of postulated accidents and transient events which must be accommodated by the Shoreham plant to demonstrate compliance with NRC regulations (Chapter 15, FSAR). The review specifically addressed the risk to public health and safety during low-power operations, taking into account such factors as reduced fission product inventory, increased time available for operators to take corrective or mitigating action, and the reduction in required

⁸ Pacific Gas and Electric Co. (Diablo Canyon Plant, Units 1 and 2), LBP-81-21, 14 NRC 107, 120-23 (1981). See also another decision in the same proceeding, LBP-81-5, 13 NRC 226 at 230 (1981).

capacity for mitigating systems at less than five percent of rated power. Included were findings as to the time in which lost AC power would have to be restored to prevent exceeding the regulatory limits in the event of a concurrent loss of cooling accident (LOCA). Lastly, the affidavit of William J. Museler sets forth LILCO's commitment to effect reactor shutdown in the event of hurricanes, tornadoes, earthquakes or similar happenings, or of power transmission line or onsite backup power problems.

In passing upon LILCO's motion, it is necessary to consider two NRC rules together, and seek to harmonize them in order to reach a sensible result and respect the purposes of both. GDC-17, as discussed above,⁹ contains requirements for full-power operation regarding the absence of either the onsite or offsite power system. It also sets forth the intent of assuring that fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded by anticipated operational occurrences, and that the core is cooled and containment integrity and other vital functions are maintained in the event of postulated accidents.

The GDC-17 requirements, which govern full-power operation, must be read in light of the low-power operation provisions of Section

⁹ See footnote 3, pages 5-6, supra.

50.57(c).¹⁰ That regulation gives applicants the right to seek a low-power license by a written motion, in cases where licensing proceedings are pending but uncompleted. The very purpose of this regulation is to permit motions for low-power operations where, as here, the licensing proceedings are not completed because of pending hearings on the satisfaction of all of the requirements of GDC-17, among others.

Looking at the provisions of GDC-17 is only the first step, not the last or only step, as urged by the State of New York and Suffolk County. It is unreasonable to refuse to consider the terms of Section 50.57 as applied to the requirements of GDC-17. This is also true of the findings required by subsection (c) of Section 50.57 on the matters specified in paragraph (a) of that section "as to which there is a controversy." The operation of the facility in conformity with the rules and regulations of the Commission includes the possibility of low-power operations equal to the full-power requirements of GDC-17, provided that (as the Staff states), it can be found by the Board that there is reasonable assurance that the low-power activities can be conducted with the protection to the public at least equal to the protection afforded at full-power operations with the approved diesel generators. The purpose of the limited evidentiary hearing established

¹⁰ See footnote 2, page 5, supra.

by the Board is to determine whether or not there is such "reasonable assurance."

Although LILCO's motion for a low-power license could probably be ruled upon without further evidentiary hearings¹¹ upon affidavits and counteraffidavits, the Board believes that the record would be more complete by granting a limited evidentiary hearing on an expedited basis. The issues should only be those relevant to low-power operations as set forth above.¹² There is no need to reinvent the wheel or to go into a mass of nonrelevant matters. A very substantial record has already been compiled by the Board which issued the Partial Initial Decision (18 NRC 445, supra). Any significant and relevant portions of that record may be used in this limited motion hearing, provided that such testimony or exhibits are specifically identified in advance and proffered in this proceeding.

The Board has also concluded that the taking of evidence on this Section 50.57 motion should be upon an expedited basis. That section itself contemplates prompt action on the motion, prior to the conclusion of the pending evidentiary hearings. The nature of and the risks associated with low-power operations are significantly different from

11 Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361 at 362 (1981).

12 Id.

full-power operations. Where the construction of any large electric generating facility has been substantially completed and it is ready for testing, it would make no sense not to rule speedily and expeditiously on motions for low-power activities. Expedited proceedings do not prejudice the issues, as the decision on the motion can go either way depending upon the quality of the relevant evidence adduced by the parties. But no party has a right to delay for its own sake, or to engage in dilatory practices. The motion of the State of New York objecting to expeditious consideration, filed on the date of arguments (April 4, 1984), is denied.

Even in cases where power plants have not been completed, licensing proceedings should be conducted expeditiously. The Commission has published a Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981) to aid licensing boards in expediting hearings. Therein, the Commission said that

"the actions consistent with applicable rules, which may be taken to conduct an efficient hearing are limited primarily by the good sense, judgment, and managerial skills of a presiding board which is dedicated to seeing that the process moves along at an expeditious pace, consistent with the demands of fairness." Id. at 453.

Our own Rules of Practice also permit the use of expedited procedures. For example, 10 CFR §2.711 gives a presiding officer the power to reduce established time limits when there is good cause for so doing, and §2.118 gives him all powers necessary "to conduct a fair and

impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order."

The Commission has also said that "as a general matter when expedition is necessary, the Rules of Practice are sufficiently flexible to permit it by ordering such steps as shortening -- even drastically in some circumstances -- the various time limits for the party's filings and limiting the time for, and types of, discovery." Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1) CLI-82-32, 16 NRC 1245, 1263 (1982).

Scheduling

The Board heard the opinions of all the parties upon scheduling of any hearing which might be held. LILCO suggested a time frame in which testimony would be filed by all the parties on April 17 or 19, 1984, and hearings would commence on April 24. Hearings on this motion, LILCO submitted, should last no more than one week (Tr. 99-101). The NRC Staff stood by the suggested schedule that it had presented in its written response (at footnote 3, pages 5-6): that LILCO's testimony should be filed on April 13, the testimony of the Intervenors and the Staff on April 23, and the hearing itself should commence by the end of April (Tr. 106-08). Suffolk County proposed a schedule which would include a lengthy discovery period to permit exploration of "a plethora of new, substantive, factual issues" (Tr. 114-17). Discovery, according to Suffolk County's proposed schedule, would continue through May 30. Specification of issues would be on June 15, responses thereto on

June 25, and prehearing conference on July 5. After submission of testimony on July 20, hearing would commence on August 5 (Tr. 113-14).

The Board considered the suggestions in light of the issues as we have framed them. We exercise our judgment on scheduling in accordance with our decision above. We find that the expedited schedule set forth below will not prejudice any party to this proceeding.

<u>Date</u>	<u>Event</u>
April 6-16, 1984	Discovery
April 19, 1984	NRC Staff supplemental SER
April 20, 1984	All direct written testimony filed
April 24-28, 30 through May 5, 1984	Hearing

No further adjudicatory hearing days will be scheduled in this matter.

Discovery shall be limited to documents and depositions. We expect the parties to exercise the maximum cooperation in this regard. All prefiled written testimony must be in question/answer format. Testimony filed April 20, including that for Judge Johnson, shall be sent to the Bethesda Office. All filings shall be hand delivered or expedited delivery, and no additional time shall be allowed for mailing. All filings shall be in the hands of the Board not later than 3:30 p.m. on the date due.

Parties to this proceeding are reminded that they have an affirmative duty to promptly inform the Board of any and all changes in

circumstances which might impact upon our hearing on the issues before it.


Standards of practice have been established by the Commission governing the "appearance and practice in adjudicatory proceedings."¹³ The Rules of Practice expressly provide that parties and their representatives "are expected to conduct themselves with honor, dignity, and decorum as they should before a court of law" (Id.). Counsel and parties have always conducted themselves with propriety and decorum in the past, and the Board is confident that orderly and expeditious procedures will continue to be followed.

Hearing will commence at 9:00 a.m., local time, on Tuesday, April 24, 1984 at Courtroom 1, State Office Building, Veterans Memorial Highway, Hauppauge, New York 11787.

¹³ 10 CFR §2.713.

This decision was fully participated in by Judge Elizabeth B. Johnson, who concurs in the foregoing Order but was unavailable to sign it when issued.

THE ATOMIC SAFETY AND LICENSING BOARD


Glenn O. Bright, Member
ADMINISTRATIVE JUDGE


Marshall E. Miller, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 6th day of April, 1984.

3/22/84
NTP Office

 9

The EDO has recently provided the Commission an assessment for Shoreham that projects a nine-month licensing delay due to, I am told, the Shoreham Licensing Board's requirement to litigate the diesel-generator question before allowing operation at low power.

5.6. } The Commission would like this matter litigated on an expedited basis with a target date of receiving the Board's decision on this matter by May 9, 1984. Would you please look into what steps are required to meet such a date and inform the Commission on these steps as soon as possible, but not later than March 30, 1984.

For planning purposes, you could assume the following steps:

- 4/1. } -- A two week staff review of the proposal by LILCO;
-- A one week discovery period;
-- A two week period for filing testimony and holding a hearing;
-- A two week period to issue the Board's decision

Final Commission guidance on the expedited hearing on this matter would be based on your submittal and follow up discussions. If you have any questions, please let me know.

SHOREHAM

CONSTRUCTION COMPLETION: THE LONG ISLAND LIGHTING COMPANY ESTIMATES A CONSTRUCTION COMPLETION DATE OF MARCH 1984. THE NRC STAFF ESTIMATES A CONSTRUCTION COMPLETION DATE OF MAY 1984 BASED ON THE NEED TO COMPLETE THE TESTING OF THE EMERGENCY DIESEL GENERATORS.

OVERALL STATUS: CONSTRUCTION IS COMPLETE EXCEPT FOR TESTING OF EMERGENCY DIESELS. PROJECT IS HEAVILY CONTESTED WITH ISSUES OF EMERGENCY DIESELS AND EMERGENCY PLANNING YET TO BE LITIGATED. EXTENDED DELAYS IN PLANT COMPLETION HAVE PLACED UTILITY IN EXTREME FINANCIAL DIFFICULTIES.

MAJOR ISSUES: SEVERAL ISSUES REMAIN THAT COULD CONTRIBUTE TO SUBSTANTIAL DELAY IN READINESS FOR LICENSING AND FULL POWER OPERATION.

ONE OF THE TWO SHOREHAM HEARING BOARDS, DEALING WITH ALL HEARING ISSUES EXCEPT OFFSITE EMERGENCY PLANNING, HAS DENIED A MOTION BY THE UTILITY FOR A LOW POWER LICENSE UNTIL THE DIESEL GENERATOR CONTENTIONS HAVE BEEN COMPLETELY LITIGATED OR AN ALTERNATE BASIS FOR LOW POWER OPERATION HAS BEEN APPROVED BY THE BOARD. WE EXPECT THE APPLICANT TO REQUEST RELIEF FROM THIS BOARD ACTION.

ADEQUACY OF THE INSTALLED DELAVAL EMERGENCY DIESEL GENERATORS IS UNDER EVALUATION AND MUST BE RESOLVED. HEARINGS ON THIS ISSUE ARE EXPECTED TO START IN JULY 1984 WITH AN INITIAL BOARD DECISION POSSIBLE IN DECEMBER 1984.

NO STATE OR LOCAL GOVERNMENT OFFSITE EMERGENCY PLANS HAVE BEEN APPROVED. A UTILITY OFFSITE EMERGENCY PLAN IS UNDER REVIEW BY FEMA. THIS UTILITY PLAN IS BEING LITIGATED BEFORE THE OTHER HEARING BOARD. AN INITIAL DECISION ON EMERGENCY PLANNING IS PROJECTED FOR NOVEMBER 1984. THE STATE AND SUFFOLK COUNTY HAVE FILED SUIT IN THE STATE OF NEW YORK SUPREME COURT TO HAVE THE UTILITY EMERGENCY PLAN DECLARED ILLEGAL.

NO SHOREHAM LICENSED OPERATORS HAVE HOT LICENSED OPERATING EXPERIENCE. THE NEED EXISTS FOR MORE OPERATING EXPERIENCE ON THE SHOREHAM PLANT STAFF.

ASSUMING THAT THE PROBLEMS WITH OFFSITE EMERGENCY PLANS CAN BE RESOLVED, IT IS LIKELY THAT THIS PLANT WILL BE DELAYED SEVERAL MONTHS BECAUSE OF THE DIESEL GENERATOR PROBLEMS.

7

LIMERICK UNITS 1 AND 2

CONSTRUCTION COMPLETION: THE PHILADELPHIA ELECTRIC COMPANY ESTIMATES UNIT 1 COMPLETION IN AUGUST 1984 AND UNIT 2 IN OCTOBER 1989. THE NRC STAFF DOES NOT DISAGREE WITH THESE DATES FOR COMPLETION OF PHYSICAL PLANT CONSTRUCTION, HOWEVER THE STAFF'S ESTIMATE OF THE UTILITY'S READINESS FOR UNIT 1 FUEL LOADING IS EARLY 1985. THIS STAFF ESTIMATE IS SEVERAL MONTHS LATER THAN THE UTILITY'S ESTIMATE BECAUSE UTILITY'S SCHEDULES FOR DEVELOPMENT OF PROCEDURES FOR AND EXECUTION OF PREOPERATIONAL TESTING IS CONSIDERED TOO OPTIMISTIC.

OVERALL STATUS: UNIT 1 CONSTRUCTION IS 93.7% COMPLETE. UNIT 2 CONSTRUCTION IS 31% COMPLETE.

THE LIMERICK PROJECT IS HEAVILY CONTESTED.

MAJOR ISSUES: SEVERAL ISSUES REMAIN THAT COULD CONTRIBUTE SUBSTANTIVE DELAY IN READINESS FOR LICENSING AND FULL POWER OPERATION.

HEARINGS, ON ADMITTED CONTENTIONS, ARE NOT EXPECTED TO CONCLUDE BEFORE JANUARY 1985. ADMITTED CONTENTIONS REMAINING TO BE LITIGATED ARE PIPELINE HAZARDS, EQUIPMENT QUALIFICATIONS, WELDING QUALIFICATION, AND ONSITE EMERGENCY PLANNING. OTHER CONTENTIONS RELATING TO THE LIMERICK PROBABILISTIC RISK ASSESSMENTS AND TO OFFSITE EMERGENCY PLANNING MAY REQUIRE LITIGATION.

15

ELEMENTS OF THE SYSTEM BEING RELIED UPON TO PROVIDE SUPPLEMENTARY COOLING WATER FROM THE DELAWARE RIVER ARE BEING DELAYED. ALTHOUGH THIS IS NOT A SAFETY ISSUE, THE ABILITY OF THE PLANT TO GENERATE POWER BEGINNING WITH THE WARM WEATHER MONTHS OF 1985 MAY BE RESTRICTED DUE TO LIMITATION PLACED ON THE WITHDRAWAL OF WATER FROM THE ADJACENT SCHUYLKILL RIVER.

THE STAFF BELIEVES THAT THERE IS A REASONABLY GOOD PROBABILITY THAT ALL SAFETY ISSUES WILL BE RESOLVED BEFORE THE PLANT IS ACTUALLY READY TO LOAD FUEL (PROBABLY IN EARLY 1985). HOWEVER, BECAUSE OF THE COMPLEXITY OF THE PRA/RISK ISSUES TO BE LITIGATED, IT IS PROBABLE THAT AN EXTENDED HEARING WILL RESULT.

~~_____~~ (13)

Counsel are notified that oral arguments will be heard Wednesday, April 4, 1984, on LILCO's "Supplemental Motion For Low Power Operating License," dated March 20, and the responses thereto or preliminary views filed by the other parties. The issues raised by those filings, and a schedule for their expedited decision, will be considered at that time. The arguments will commence at 9:00 a.m. in the NRC Hearing Room, 5th floor, 4350 East West Highway, Bethesda, Maryland.

Larry wants this telephonic preliminary notice to state that a new board has been appointed. I am neutral on this, a written notice will be mailed today if you decide to proceed, but would be rather late for the sale notice.
MTM

(16)

Considerations

16

I. Available Judges

A. Timinski schedule (3/27, 28, 29, 30: 4/9, 10, 11, 12, 13 - 4/23, 24, 25, 26, 27)
BRENNER, MORRIS, COLE ST 1, 2, 3, 4

B. Stratton schedule (3/27, 28, 29, 30: 4/4, 5, 6, 24, 25, 26, 27 (3 on 20th))
Lamson, Shon, Kline
(Brenner, Morris, Ferguson)

C. OTHER POSSIBLE:

	CHAIR	SAFETY	ENV
	Frye?	Ferguson	Anderson
*	Gleason	Netuck	Compton
	Goodhope	Hell?	Hand
Lamson	Lays	Lueble	Holton
	Malinski?	Shon	Hopewell
*	Muller	(LEEDS? (P. D. Lee))	Kline?
① Ferguson, ② Lamson, ③ Shon	Smith?		Paras
	Hornum		Schitt
*	Half		Stouffer

II. Shoshaw attorney availability - should be OK

III. Order Considerations (I History II PRIORITY III ISSUES III BO INST.)

A. Priority softens by reciting resolution of all but direct safety issue

IV. Possible Boards

- Smith Hell Lueble
- Gleason
- Muller

Notes

BOARD I
Safety

Project Summary
8/50 Blast Testing
8/30 Close Testing
10/25 Findings
12/21 ID

Construction
Completion

① BOARD 2
EP Office
4/30 ID (FEMA Findings 3/16/04)
Completed
8/30 Findings
11/15 ID

? 9/184 (NY Times 7/1/85)

FES^{3/11} by Staff
(part 70)

② EP Office

3/18 (S) month X-ray about (max 500/hr)
4/15 X-ray class: 100/1000
(1000 EP)

? 8/184 (NY Times 4/1/85)
Staff - early '85

BOARD 1
5/30 ID

(Gunn's source?)
1951-PP
Richard Gunnerson

BOARD 2
EP Office

ID 9/15

? 5/184 (NY Times 4/1/85)

4. Commander
Pleats

~~Staff~~

CASE

LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station,
Unit 1) (Low Power)

Docket No. 50-322-OL-4

[ASLBP No. 77-347-01C OL]

Construction Permit No. CPPR-95

BOARD (Est. 3/30/84)

Miller, Chairman
Bright
Johnson

Note: Separate Board, not new case, to hear and decide LILCO's March 20, 1984 "Supplemental Motion for Low Power Operating License".

Shoreham 1

LONG ISLAND LIGHTING COMPANY

OL-4



CASE

PHILADELPHIA ELECTRIC COMPANY
(Limerick Generating Station,
Units 1 and 2)

Docket Nos. 50-352 and 50-353

Construction Permit Nos. CPPR-106 and CPPR-107

3/8/83 Bd. issued Permit I.B.

BOARD (Est. 9/8/81)

Brenner, Chairman
Cole
Morris

LIMERICK 1 and 2

PHILADELPHIA ELECTRIC COMPANY

Operating

20

20

Notice of Hearing(s) Date(s)
published in Fed. Reg.

F.R. No. & Title 37 F.R. 28710, Sec. 2.105
2.700, 2.702, 2.714, 2.714a, 2.717 & 2.721

List type of Hearing(s):
i.e., Prehearing, Evidentiary,
Board Conference, or other:
Give dates -

Initial Decision Date:

Appeal Process

Date to Appeal Board:

Date to Commission:

Reactivated - date:

CHAIRMAN: Lawrence Brenner 9/8/81

MEMBERS: Richard F. Cole
Peter A. Morris

18

Petitions Board(s)

MEMBERS: Same as above - Brenner. etc/

Note change in type of board or
board members (for either of the
above boards); show date(s).

Facility (Case) Docket No(s).
LIMERICK GENERATING STATION, Units 1 & 2
CPPR-106 & CPPR-107

Applicant: Case Type
Phila. Elec. Company Petitions & Proceeding

