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LILCO, March 12, 1985

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
LONG ISLAND LIGHTING COMPANY	)	Docket No. 50-322-OL-4
	)	(Low Power - Remand)
(Shoreham Nuclear Power Station, Unit 1)	)	
	)	

LILCO'S RESPONSES TO THRESHOLD SAFEGUARDS QUESTIONS

I. INTRODUCTORY COMMENTS

LILCO provides below its responses to the Threshold Safeguards Questions posed by the Licensing Board on March 5, 1985. ASLBP No. 77-347-01D-OL. Three background matters should be discussed briefly at the outset: (1) the nature of the Commission's authorization of proceedings on low-power security, (2) the existing record on the need for backup AC power sources at low power, and (3) interpretation of Options (1) and (5) in the Board's Threshold Safety Questions.

A. Scope of This Proceeding

In analyzing this Board's Threshold Questions and any other issues before this Board on remand from ALAB-800, the Commission's instructions in its Memorandum and Order of July 18, 1984 (July 18 Order), contingently opening the low power proceeding to physical security issues, should be kept squarely in mind. The Commission

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did not afford a carte blanche opportunity to raise security contentions. Rather,

> . . . the parties were to be afforded the opportunity to raise new contentions, so long as they were responsive to the new issues raised by LILCO's exemption request, relevant to the exemption application and decision criteria cited and explained in the May 16, 1984 Order, and reasonably specific and otherwise capable of on-the-record litigation. . . . Therefore, the Commission intends that security issues, if any, may be litigated (1) to the extent they arise from the changes in configuration of the emergency electrical power system and (2) to the extent they are applicable to low power operation.

July 18 Order at 2-3. In short, whatever technical questions may be lurking in this proceeding concerning LILCO's compliance or noncompliance with Part 73 security requirements, the Commission has instructed that they are not to be litigated urless they relate specifically to changes in configuration of the emergency electrical power system and, importantly, to low power operation and the criteria set forth in CLI-84-8. Thus, the issues must impact upon the functional safety of operation of the plant in relation to a plant operating at low power with qualified diesel generators. If there are technical areas of noncompliance that do not functionally increase the risks to public safety, they may not be litigated in this proceeding.

B. The Nature of Low Power Risks

It is important to keep also in mind the Licensing Board's findings concerning the availability of AC power. Absent a loss

of coolant accident, no AC power sources would be needed during Phases III or IV for a minimum of thirty days. Initial Decision at 34-35, 79-80. Thus, absent a LOCA, security protection for the EMD diesels and the 20 MW gas turbine is unimportant.[1] Since a LOCA is a low probability event, the safety risk attendant to a sabotage event affecting either of the low power AC power sources is low. Since backup AC power sources are needed promptly not only in the event of a LOCA but for numerous other events when the plant is at full power, the sabotage risk to the general public is much smaller at low power than at full power.

Even with a LOCA, a series of failures would have to occur in order to jeopardize public safety. First, LILCO's extremely reliable offsite system would have to fail. The Initial Decision contains a description of the extent of LILCO's offsite system, its reliability and the degree to which it exceeds the normal requirements of GDC 17 for an offsite power system. Initial Decision at 40-46. Simply, the risks of losing offsite power initially are much lower at Shoreham than at other plants.[2] Second,

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[1] During the low power proceeding, there was uncontradicted testimony that alternative sources of AC power would be available to the site within thirty days if necessary. (Tr. 1867, Tomlinson). Thus, the Licensing Board decided that the availability of the 20 MW gas turbine and the EMD diesels was immaterial except in the event of a LOCA.

[2] Indeed, the risk that saboteurs will cause a loss of offsite power is similarly lower at Shoreham than at most plants. Power

(footnote continued)

LILCO's numerous deadline blackstart offsite power sources would also have to fail to start within the available time so that LILCO could not restore power to Shoreham using true offsite sources.[3] Third, there would have to be failures of both the 20 MW gas turbine and of the four 2.5 MW EMD diesel generators, any one of which would be sufficient to power the necessary ECCS systems at Shoreham. All of these events would have to occur, either independently or in combination with a sabotage attempt, in order to create a risk to the public health and safety at low power. The risk of the coincidence of all of these events during the limited duration of low power testing is extremely low; is lower than that occurring at full power; and should impact upon the evaluation of security necessary for low power testing. See Pacific Gas &

(footnote continued)

can be provided to Shoreham over seven different transmission circuits which enter the plant on three different and independent rights of way. To cause a loss of offsite power by activity taking place off the Shoreham premises one would have to disable each of these seven circuits or each of multiple power generation sources dispersed geographically around Shoreham. See Initial Decision at 40-46.

[3] Briefly, LILCO has ten 50 MW gas turbines at Holtsville, five of which have deadline blackstart capability and any one of which would be sufficient to provide AC power to Shoreham. By test, power has been provided from Holtsville to Shoreham in six minutes. Initial Decision at 82 ¶ 45. LILCO also has independent blackstart deadline gas turbines at Southold, East Hampton and Port Jefferson, any one of which could provide sufficient power within the 55 minutes necessary. Initial Decision at 82-83 ¶¶ 46, 49, 51.

Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-653, 16 NRC 55, 86-88 (1981).

C. "Compliance" with Part 73 in Options (1) and (5)

Additionally, LILCO should clarify its interpretation of options (1) and (5) as set forth in the Threshold Safeguards Questions. Option (1) refers to "compliance with Part 73" while Option (5) refers to "'high assurance,' short of full compliance." LILCO understands Option (1) to contemplate compliance pursuant to the "cookbook" approach specified in § 73.55(b)-(h). In LILCO's view, compliance with the "high assurance" standard in § 73.55(a) would also be "full compliance" with Part 73. In short, LILCO understands the distinction the Board has made for semantic purposes and will follow that distinction for clarity in discussion, but LILCO does not agree that there is any legal significance to the manner in which it complies with Part 73 -- that is, whether by following the "cookbook" approach of § 73.55(b) through (h) or satisfying the "high assurance" standard of § 73.55(a).

Finally, LILCO does not necessarily disagree with the Staff's suggestion that Option (3) could be appropriate. LILCO believes that technical justification could be shown, based on the relationship to safety of operation of the plant, for protecting only one train of AC power. Assuming that this technical justification were to be made, however, LILCO believes that one need not couch the reasoning on a distinction between Part 50 and Part 73

requirements, but instead could justify protection of only one power train by reference to the "high assurance" standard in § 73.55(a). In that event, Options 3 and 5 would become equivalent. In short, if the high assurance of public safety can be achieved by protecting solely the EMDs -- and LILCO would not categorically exclude that proposition -- the high assurance standard of § 73.55(a) is met. However, at this point LILCO does not intend to rely solely on the EMDs and thus the issue does not, in LILCO' view, require decision now.

II. THE BOARD'S QUESTIONS

A. Question One: The Legality of Option (5)

Option (5) as framed by the Board involves a showing of compliance with § 73.55(b)-(h) for the EMD diesels and a showing of compliance for the gas turbine by meeting the "high assurance" standard of 10 CFR § 73.55(a). This option was expressly invited by the Appeal Board in ALAB-800 when it noted that

> [a]s an alternative, the Board might need to consider whether a level of protection of the temporary diesels and the gas turbine is adequate to satisfy the concerns for physical security of this equipment for low power testing, even though that level may be somewhat less than normally provided to vital equipment.

ALAB-800 at 19-20.

This approach is also consistent with the language and structure of § 73.55(a). That Section supports the view that alternative security arrangements may be acceptable independent of either

the "cookbook" of paragraphs (b) through (h) or an exemption, and must be evaluated consonant with the risks involved. It says as follows in pertinent part:

> The Commission may authorize an applicant or licensee to provide measures for protection against radiological sabotage other than those required by this Section if the applicant or licensee demonstrates that the measures have the same high assurance objective as specified in this paragraph and that the overall level of system performance provides protection against radiological sabotage equivalent to that which would be provided by paragraphs (b) through (h) of this Section and meets the general performance requirements of this Section.

Unless this portion of § 73.55(a) contemplates methods of protection in addition to the "cookbook" approach specified in §§ (b)-(h), its language would be superfluous.[4] Similarly, unless

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[4] The "legislative history" of § 73.55(a) also supports the common-sense interpretation outlined here. As originally proposed, 39 Fed. Reg. 40038 (1974), § 73.55 contained only the equivalent of subparagraphs (b) through (h). Upon final promulgation in 1977, the Commission added subparagraph (a), a "general performance requirement," stating its reasoning as follows:

> Although performance objectives were considered in the development of the proposed rule, the rule itself did not specify the level of performance that the physical protection system and security organization are to achieve. Many of the comments indicated that inclusion of a general performance requirement would aid in the implementation of the rule and more explicitly indicate the level of protection required. A paragraph has been added to the amendment which addresses these general performance requirements for the physical protection system and the security organization. On the basis of intelligence and other

(footnote continued)

the Appeal Board contemplated that evaluation of such different protection must be made with respect to the risks involved, the

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(footnote continued)

> relevant information available to the NRC there are no known groups in this country having the combination of motivation, skill, and resources to attack either a fuel facility or a nuclear power reactor. In addition, studies have indicated that the generic characteristics (i.e., the "defense-in-depth" concept of reactor plant design) of commercial power reactors make the releasing of radioactivity by acts of sabotage difficult. Furthermore, the potential consequences of a reactor sabotage are judged to be less than the extreme consequences which could be associated with the successful detonation of an illicit nuclear explosive device. Having considered these factors, the Commission has concluded that the level of protection specified in § 73.55 is adequate and prudent at this time. The kind and degree of threat and the vulnerabilities to such threats will continue to be reviewed by the Commission. Should such reviews show changes that would dictate different levels of protection, the Commission would consider changes to meet the changed conditions.
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> Compliance with the detailed requirements should essentially satisfy the general performance requirements stated in the rule in § 73.55(a). However, there may be instances for some plants where additional requirements will have to be imposed so that the general performance requirements can be met. In these cases, such requirements will be specified by the Commission's staff. In any event all licensees subject to the rule must comply with the general performance requirements. Nothing herein should be construed as precluding licensees from providing the Commission's staff with suggested other equivalent detailed measures that the licensee determines to be necessary to meet the general performance requirements.

42 Fed. Reg. 10836 (col. 3) - 10837 (col. 1) (1977) (emphasis supplied).

quoted language from ALAB-800 would be nonsensical.[5]

Thus, if the evidence shows that the level of protection afforded by Shoreham's physical security system against radiological sabotage -- the only concern from the public health and safety standpoint -- is functionally equivalent to the level of protection afforded by adherence to subsections (b) through (h), then Part 73 is satisfied.

There might be two methods of proving this comparable level of protection. On one hand, evidence might show that protection for specific pieces of equipment is comparable to that called for by subparagraphs (b) through (h). For example, it may be that the protection afforded by increasing the number of guards for a piece

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[5] Intervenors have argued that the quoted language from ALAB-800 refers to evaluation of a Part 73 exemption application. A reading of the opinion does not support such a view. The only mention of a potential Part 73 exemption application is contained at page 17 of ALAB-800. There, the Appeal Board was simply responding to the Licensing Board's reasoning that LILCO's Part 50 exemption request would also encompass a request for an exemption from Part 73 requirements. No further mention is made of a potential exemption application. Indeed, beginning with the last paragraph on page 17, the Appeal Board began responding to additional reasoning of the Licensing Board concerning the need to protect certain equipment as vital and its rejection of contentions in view of that reasoning. Following that discussion, which obviously had nothing to do with any request for an exemption from Part 73, the Appeal Board then turned to "one additional matter that will need to be clarified by the Board on remand." ALAB-800 at 18. It is in that paragraph that the Appeal Board postulated a lesser level of protection at low power. Surely, had the Appeal Board contemplated that such an inquiry could be made only upon an exemption application, it would have said so explictly.

of equipment would be comparable to that afforded by erecting barriers. Alternatively, it might be established that the protection afforded a specific piece of equipment so reduces the risk that any sabotage attempt would result in radiological danger to the public that additional protection becomes immaterial. Thus, in looking at the equivalence of the protection afforded, the Board would have to employ a functional approach. This would be the same approach used by this Board in the Initial Decision to determine that low power operation as proposed by LILCO would be as safe as such operation at a plant in compliance with GDC 17. The Commission embraced this reasoning in CLI-85-01.

Indeed, depending upon the regulatory assumptions which this Board will have to determine and apply as a matter of law, it may be that the Staff is correct in asserting that the 20 MW gas turbine need be given no additional protection. Shoreham already has an approved security plan which gives high assurance of protection against a sabotage-induced LOCA at any power level. Given the adequacy of that plan, the only potential risk to public health and safety arises with the simultaneous occurrence of an independently occurring LOCA, an unrestored loss of offsite power and the failure of both the 20 MW gas turbine and the EMD diesels. Yet, the risk of a LOCA coincident with a single failure of one of the AC power sources and a sabotage attempt may simply be too remote to postulate. Additionally, it may not be necessary to contemplate

that potential saboteurs could successfully enter and destroy two areas such as the EMD diesels and the 20 MW gas turbine, which are several hundred yards apart. Such a dual effort would be inconsistent with the reasoning of the Appeal Board in the Diablo Canyon case,[6] and with that of the Staff in its proposed rulemaking to require protection, for the first time, of at least one power train to the ECCS systems as vital. The Federal Register notice of that rulemaking states that

> [m]any vital areas are so configured that a saboteur must enter two or more areas in order to carry out successful sabotage. In such cases, it is not necessary to protect all of the areas in order to thwart sabotage.

49 Fed. Reg. 30,735 col. 2.

Moreover, the Appeal Board has interpreted Part 73 to allow a lesser level of protection at low power because of the lower risks. In Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant), ALAB-653, 16 NRC 55, 86-88 (1982) a low power license was conditioned on bringing inadequate guard training into full compliance prior to commencement of full power operation. The Appeal Board found that the guard force at Diablo Canyon was not

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[6] Pacific Gas & Electric Company (Diablo Canyon Nuclear Power Plant), ALAB-653, 16 NRC 55, where the Appeal Board, in determining the size of the design basis threat, noted that the Commission's regulations postulate "several" persons acting only as a "single team" as the threat at power reactors. By contrast, the threat postulated at fuel cycle facilities involves a larger force postulated to be capable of operating as two or more independent teams. Id. at 62, 68.

adequately trained to meet the design basis threat. Nevertheless, the Appeal Board observed that safety risks were lower at low power and that the guard force -- inadequate for full power -- was nevertheless adequate for fuel load and low power testing. Id. Importantly, the Appeal Board required no exemption in that context, while at the same time recognizing that the full power security requirements in Part 73 had not been met for low power operation. Such reasoning is also consistent with the Commission's July 18 Order in this proceeding which mandated that any security contention be relevant to the decision criteria cited in CLI-84-8. Thus, the Commission has instructed that any admissible contention must pertain to the relative safety of operation of the plant.

Finally, language analogous to § 73.55(a) is found in the emergency planning regulations, 10 CFR § 50.47, which affords an applicant "an opportunity to demonstrate to the satisfaction of the Commission that deficiencies in the [emergency plan] are not significant for the plant in question." 10 CFR § 50.47(c)(1). Before 10 CFR § 50.47(d), which generically allows low power testing before approval of offsite emergency plans, was promulgated, § 50.47(c)(1) was recognized as allowing such a showing to be made on a case-by-case basis. See Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-3, 15 NRC 61, 288-90 (1982); Pacific Gas & Electric Co.

(Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-81-21, 14 NRC 107, 121-23 (1981). In neither case was the applicant required to seek a formal exemption pursuant to 10 CFR § 50.12(a). Similarly, LILCO should be afforded the opportunity under 10 CFR § 73.55(a) to prove the adequacy of its security protection for the EMD diesels and 20 MW gas turbine with specific reference to low power operating conditions, regardless of the technical inadequacy of that protection for full power operation.

B. Question Two: Necessity for an Exemption

LILCO's response to the questions in paragraph 2 of the Licensing Board's Threshold Safeguards Questions is essentially set forth in its answer to Question 1. That is, Part 73 does not require full protection of vital equipment pursuant to the "cookbook" approach so long as the high assurance standard and general performance requirements set forth in the fourth sentence of § 73.55(a) are met. In that event, Part 73 is satisfied and no exemption need be sought.

As the Board intimates in this question, any other interpretation would make the fourth sentence of § 73.55(a) superfluous in view of § 73.5, the general exemption provision for Part 73. There is no reference in § 73.55(a) to the need to seek an exemption pursuant to § 73.5. Nor can it be argued that § 73.5 would itself become superfluous under LILCO's interpretation of § 73.55.

There are a number of other security requirements in Part 73 which do not contain the option provided by § 73.55(a) to provide alternative protection with an equivalent level of safety.

Similarly, as discussed above, the County's position that an exemption must be sought is not compatible with ALAB-800. The Appeal Board's decision clearly contemplates the possibility of some lesser protection for the EMD diesels and/or the 20 MW gas turbine than that normally provided to vital equipment to be used at full power. ALAB-800 at pages 19-20.[7] See also Pacific Gas & Electric Co., supra, at 86-88, where low power operation not fully in conformity with the "cookbook" of § 73.55(b) through (h) was permitted on the specific facts of that case, with no mention of an exemption.

Finally, any interpretation of ALAB-800 to require that LILCO petition for an exemption if it did not meet the pure "cookbook" approach of § 73.55(b) through (h) would be inconsistent with the

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[7] The discussion at pages 18-20 of ALAB-800 would be totally unnecessary if the Appeal Board had contemplated LILCO's petitioning for an exemption from the Part 73 requirements. The Appeal Board was instead postulating ways LILCO might comply with Part 73 given the facts that had already been developed in the low power record. Thus, the Appeal Board suggested that LILCO might want to rely solely on the EMD diesels for safety purposes and, accordingly, simply protect it as vital. Surely this option, would not require an exemption. Yet this possibility was discussed in the same paragraph as the possibility of a combined level of protection for the gas turbine and the EMDs which might suffice for low power, even though deficient for full power operation.

Commission's July 18 Order. The Commission, in contingently permitting litigation of low power security issues, talked in terms of admitting security contentions to the extent they were relevant to the safety issues at low power and the considerations set forth in CLI-84-8. If the Commission had contemplated that an additional exemption would be necessary pursuant to Part 73, presumably it would have said so. Instead, it said that only contentions which related to safety of operation and the "as safe as" test would be admissible. Nor did the Intervenors, whose contentions have always alleged that the EMD diesels and 20 MW turbine must, but fail, to meet the provisions of § 73.55(b) through (h), argue in the summer of 1984 that LILCO must obtain an exemption for them. Intervenors' current insistence on talismanic compliance with § 73.55(b) through (h) or an exemption proceeding overlooks the regulation, the Commission's guidance, prior case law and their previous position in this matter.

C. Question Three: Practical Difference Between Compliance and Exemption Proceedings

Ideally, it should make no practical difference whether this remand proceeds in the "exemption" or "compliance" mode. The Commission has instructed that any issues to be litigated be pertinent to the criteria set forth in CLI-84-8 and be relevant to low power operation and the new AC power configuration. Thus, presumably, whatever form this proceeding takes, it will lead to

the same central inquiry of whether the protection afforded the EMD diesels and the 20 MW gas turbine makes operation of Shoreham at low power as safe as low power operation at any other plant with qualified onsite diesel generators. Thus from a safety standpoint, the issues should be identical. And, the other elements of § 73.5 are identical with the elements of § 50.12(a). Consequently, the finding that it is in the public interest to grant LILCO a § 50.12 exemption -- a finding already made by the Board -- would apply equally to the grant of any Part 73 exemption and should require no further adjudication.[8]

Unfortunately, this has not been an ideal proceeding. Intervenors have demonstrated that they are less interested in resolving legitimate safety concerns, if any exist, than in using and prolonging disputes regarding them to thwart operation of the plant, regardless of how safe that operation may be. Thus, it is LILCO's judgment that Intervenors would seek to exploit the form of an exemption proceeding to raise a host of additional issues and complicate their resolution. Indeed, at the February 28 conference of counsel, Intervenors' counsel vigorously asserted that in an exemption proceeding they would be entitled to

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[8] Any new public interest concerns could relate only to safety. If there are legitimate safety concerns, they would be adjudicated as such and not under the rubric of "public interest." If there are none, the existing public interest considerations approved by the Appeal Board and Commission should prevail.

relitigate public interest issues. (Tr. 3159 (Lanpher), 3168-69 (Palomino), 3173 (Brown)). Additionally, counsel for Suffolk County has repeatedly stated that no contentions are required in an exemption proceeding, and that no further steps should be taken until LIILCO proposes and files an exemption application. (Tr. 3149-50, 3179-80). It is this potential additional delay and expense that LILCO seeks to avoid by not proceeding in an exemption mode.

D. Question Four: The Level of Risks

Comparing safeguards risks at low power with those at full power at any plant requires two preliminary comparisons: (1) the nature of the design basis threat at low and full power, and (2) the level of safety risks at low and full power. The regulations, supplemented by the Appeal Board's decision in Diablo Canyon, supra, provide clear answers to each of these questions. The design basis threat is a generic one -- i.e., it does not vary by site or power level. ALAB-653, 16 NRC at 63-64, 74-75. However, the level of safety risks is lower at low power than at full power. See pages 2-4, supra. The purpose of the general performance requirement of the Part 73 regulations is to provide "high assurance" that acts of "radiological sabotage" will not directly or indirectly endanger the public health and safety by exposure to radiation. Diablo Canyon, supra, at 58-59. The reference values

for determining endangerment of the public health and safety are a constant: the offsite doses set out at 10 CFR Part 100, § 100.11. Id. at 58 note 14. Thus the absolute level of security protection required to afford "high assurance"[9] of protection against this degree of exposure to the general public necessarily varies directly with the risk of its occurrence as a safety matter. It follows that if, as in low power operation, absolute safety risk levels are lowered relative to the benchmark level, required security levels can be lowered commensurately.

Thus while the nature of the design basis threat at Shoreham remains constant at low or full power, the ability of any putative saboteurs to cause radiological consequences to the public is lower at low power than at full power. Time, redundancy of equipment, and geography combine to render the risk that destruction of emergency power sources for Shoreham's ECCS systems by a sabotage attempt could threaten the public health and safety lower at low power operation than at full power. By contrast with full power operation, where any of numerous events may require prompt availability of emergency power sources, such sources are nowhere

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[9] The term "high assurance," though not defined in the regulations, has been construed by the Appeal Board as "comparable to the degree of assurance contemplated by the Commission in its safety review for protection against severe postulated accidents having potential consequences similar to the potential consequences from reactor sabotage," Diablo Canyon, supra, at 59 -- i.e., the traditional "reasonable assurance" standard.

needed at low power in less than a month except following a LOCA. Even then, the most conservative analyses provide 55 minutes to restore power either from one or more of the EMDs, the 20 MW turbine, or the offsite power grid. Further, security for the remainder of the plant other than the EMDs and the 20 MW turbine is already approved. While the TDI diesels are housed in one location, the 20 MW gas turbine and the EMD diesel generators are several hundred yards apart. Thus, it is less likely that the same saboteurs would be able to incapacitate both of those power sources, of which only one is necessary to mitigate a LOCA. For these reasons, which are analogous to the reasoning in Diablo Canyon, supra, and are reflected in ALAB-800 at 19-20, the absolute level of security protection required to demonstrate compliance with § 73.55 at low power is not identical to, and is lower than, that required to demonstrate compliance at full power.

The Board further inquired whether the nature and extent of low power safeguards risks are litigable in this case. The only issues that may be litigable here pertain to LILCO's ability to respond to the design basis threat and its impact on the overall safety of operation at low power. The nature and extent of the risks per se are not subject to relitigation. First, the nature and capabilities of LILCO's AC power configuration have already been determined, as has its reliability and sufficiency for safety purposes. Similarly, the lower safety risks at low power have

already been determined by this Board and generally recognized by the Commission. E.g., 10 CFR § 50.47(d). Second, the risk resulting from the failure (for whatever reason) of any of the AC power sources available to Shoreham has been determined by this Board. Third, the nature of the design basis threat does not change, though the level of protection necessary to respond to it does. There may be certain regulatory assumptions which the Board will be called to rule on as a matter of law in evaluating whether safeguard protections are sufficient. However, the ambit of litigable factual issues in this proceeding is a very narrow one.

E. Question Five: Formulation of Contentions

With one exception, information concerning security at Shoreham is now available and has been available to the Intervenors for a long time. For more than two years, Suffolk County has had access to Shoreham's full security plan[10] pursuant to the Final Security Settlement Agreement of November 1982.[11]

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[10] Under the Agreement, Suffolk County also reviews advance copies of any amendment to it and is guaranteed the right of comment. The County has chosen not to exercise this right of comment in order to resolve any questions or difficulties it may have concerning the security configuration of the EMDs and the 20 MW turbines.

[11] New York State's failure to participate in that Agreement or to have participated actively in the licensing hearings at the time of that Agreement does not provide it with a brand new opportunity to raise contentions which have otherwise been foreclosed.

Intervenors have also known the proposed low power AC power configuration since at least March 20, 1984, when LILCO's Supplemental Motion for Low Power Operating License was served. The nature and location of the 20 MW gas turbine and the EMD diesels have not been altered since then. And, at least since November, 1984, Suffolk County has been aware of additional protection provided to the EMD diesels, as it was sent revision 9 of LILCO's Security Plan describing that additional protection. The only information unavailable to Intervenors at this point concerns certain details of any additional protection LILCO may provide for the EMDs and the 20 MW gas turbine. LILCO expects to be able to provide that information by March 15.

Under these circumstances, it will be incumbent upon Intervenors to file new contentions promptly after LILCO's submission of its final detailed information on low power security. This opportunity is not an open season to plead around the deficiencies of specificity, basis and nexus, or relevance found by the Licensing Board, and not disturbed by the Appeal Board in ALAB-800, in the contentions filed by Intervenors in August 1984. Thus any contentions not materially different from contentions rejected by the Licensing Board last summer for reasons other than the "vitality" of the EMDs and the 20 MW turbine should be subject to summary dismissal. To the extent contentions are premised on the asserted noncompliance of the EMDs and 20 MW

turbine, as proposed to be protected by LILCO, with the requirements of § 73.55 as they may have been found by this Board, such contentions are admissible if properly pleaded. Any other contentions must be justified under the late-filed contentions test set out in Duke Power Company (Catawba Station) (ALAB-687), 16 NRC 460, 468 (1982).

It bears repeating that the Commission's July 18, 1984 Order mandates that any contention demonstrate a relationship to safeguards issues presented by low power operations. Absent such a relationship, the Commission's July 18 Order precludes the admission of any contention.

III. CONCLUSION

For the reasons discussed above, this Board should:

1) hold that LILCO may proceed under 10 CFR §73.55(a), without applying for an exemption;

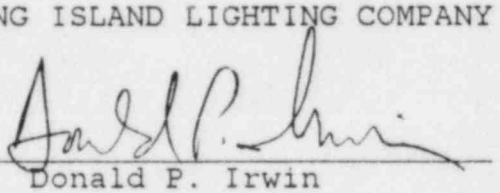
2) afford Intervenors an opportunity to file security contentions concerning the protection to be afforded vital equipment -- all other contentions having been precluded by the Board's September 19 Order and ALAB-800 -- and require those contentions to be sufficiently specific to notify all parties of specific aspects of protection which is allegedly insufficient and why and whether Intervenors contend that an

alternative security arrangement would be preferable and, if so, what;

3) set a schedule for responses to the proffered contentions and a hearing on their admissibility as well as for discovery, filing of testimony and hearings, if necessary.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY



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DATED: March 12, 1985

LILCO, March 12, 1985

CERTIFICATE OF SERVICE

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322-OL-4
(Low Power - Remand)

I hereby certify that copies of LILCO'S RESPONSES TO THRESHOLD SAFEGUARDS QUESTIONS were served this date upon the following by first-class mail, postage prepaid, or (as indicated by an asterisk) by hand or telecopier.

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