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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-6
	)	(25% Power)
(Shoreham Nuclear Power Station, Unit 1)	)	
	)	

NRC STAFF'S RESPONSE TO LILCO'S AND INTERVENORS' BRIEFS OF APRIL 1, 1988 ON MOTION TO AUTHORIZE OPERATION AT 25% OF FULL POWER

INTRODUCTION

By Order of February 26, 1988, the Board directed the parties to file briefs by April 1, 1988, "on the impact of pending emergency contentions on a reasonable assurance finding authorized by 10 C.F.R. § 50.57(c)." The parties were "to develop whether such contentions are substantively relevant to a 25% power operation of the Shoreham Nuclear Facility." The Order further provided that responses to those briefs which might be submitted twenty days after April 1, 1988.

In a pleading of March 9, 1988, the Staff advised the Board, that although it projected completing work on whether there are issues of safety significance to operation at 25% power and the difference in the progression of accidents at that power level as compared with accidents at 100 percent power in the late spring, it would not be able to ascertain whether pending contentions are substantively relevant to operation at a 25% power level until early fall of this year.

The Staff here responds to the briefs of the other parties filed on April 1, 1988.

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DISCUSSION

In its April 1, 1988 pleading, LILCO again indicates that finding that present contentions are not relevant to operations at 25% power requires a detailed analysis of risks at that power level as compared with operations at full power. LILCO's Brief at 2-10. On the basis of such an analysis it is maintained that it can be ascertained that the remaining contentions do not have substantive relevance to operations at 25% power and that Shoreham may be authorized to operate at that power level. Id. at 11-24. As the Staff does, LILCO recognizes that action on its request to operate at 25% power requires an analysis of the validity of its projections of differences in accident sequence progressions at a 25% power level in contrast with operations at full power. Id. at 8-10.

The Intervenors, although recognizing that accident sequences at 25% of full power has relevance to the remaining contentions, maintain that the application for authority to operate at a 25% power should be summarily rejected. Governments' Brief at 1-2. In doing so they ignore the directions of this Board in its February 26, 1988 Order of the matters to be encompassed in the subject pleadings, as well as its January 7, 1988 Memorandum and Order, which considered and rejected most of the arguments Intervenors again make to have the Board summarily reject LILCO's application. Memorandum and Order at 7. 1/

1/ The Intervenors indicate in their brief that they have not yet started a review and analysis of the application. At 4. They state that such a review must await the completion of the Staff review (at 3), and that it would thereafter take Intervenors at least as long as the Staff to review the application. At 5. The Intervenors are wrong. They, as other parties in NRC proceedings, are obligated to reply to an application, not the Staff's review. See generally

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This Board has previously rejected arguments that consideration of the 25% license application was foreclosed because the LILCO plan was not found to comply with NRC regulations. Memorandum and Order, January 7, 1988, at 7. The question upon consideration of the subject motion is whether emergency planning issues are "significant for the plant in question" (10 C.F.R. § 50.47(c)(1)), and whether those issues "are relevant to the activity sought to be authorized" (10 C.F.R. § 50.57(c)). Id. at 6-7. Thus the bulk of Intervenors' brief (at 8-18) concerning what has been decided in former proceedings is not dispositive, for the question to be determined under LILCO's motion is the relevance and significance of issues where it has not yet been decided that the emergency plan met Commission regulations. This in turn, as the Board

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Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983). The Intervenors have an independent obligation to commence a review of the application now if they seek to oppose it. See Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981). The Intervenors will forfeit any right to an extension of time to reply to the application if they do not commence a concerted and expeditious review of the application now.

The Intervenors also speak of a right to file contentions on the 25% power application. Governments' Brief at 4, n.8. Section 50.57(c) of 10 C.F.R. provides that the only matters to be heard on an application for low power operations is whether present "contentions are relevant to the activity to be authorized." Thus new contentions are not to be submitted on the application. Further, if new contentions were permissible on the application they would be out of time as they would have been due shortly after the application was filed. See Catawba, supra. This Board has indicated that it did not contemplate the filing of new contentions, but would give the Intervenors "further opportunity to state with basis and specificity the way in which any of the present contentions are relevant to the proposed operation." Memorandum and Order, January 7, 1988, at 11.

recognized, is dependent on the nature and scope of emergency planning needed at 25% power. Id. To merely say that areas where compliance has not been found prevents issuance of a license only restates the Intervenors' claim that a low power license may not issue, without showing whether those areas are substantively relevant to the issuance of such a license. 2/

Further, as this Board has recognized "fundamental flaws are by no means uncorrectable flaws." Memorandum (Extension of Board's Ruling and Opinion on LILCO Summary Disposition Motions etc.), April 8, 1988 at 42, see also 40. Thus proceedings to determine whether LILCO is entitled to a 25% power license should go forward at the same time as pending scheduled hearings and a new exercise are going forward to see if the fundamental flaws have been corrected.

The Intervenors' also argue that unless an exemption is obtained under 10 C.F.R. § 50.12(a), compliance with Appendix E to 10 C.F.R. Part 50 is required whether or not the requirements of 10 C.F.R. § 50.47(c)(1) are met. Governments' Brief at 22-23. As we have stated under 10 C.F.R. § 50.57(c), the question is whether contentions are relevant to operation at the power level sought. If the requirements of

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2/ Intervenors claim that prior Board decisions on certain issues are "res judicata." Those decisions dealt with the issuance of a license for 100% power operations, not with whether compliance with those provisions was necessary for 25% power operations. Similarly the question of whether LILCO's ability to implement the plan is adequate for 25% power operations was not previously ruled upon. Questions concerning the scope of the exercise and the results of the exercise must be viewed under 10 C.F.R. §§ 50.57(c) and 50.47(c)(1) in the context of the activity for which permission is sought and whether the deficiencies are significant for the plant in question.

Appendix E are not relevant to such operations a limited power license might be authorized.

Intervenors also argue that the provisions of § 50.47(c)(1) allowing exceptions to be made to emergency planning regulations for "deficiencies not significant for the plant in question" is only applicable to the provisions of § 50.47(b) and not to Appendix E. Governments' Brief at 22-23. This ignores that § 50.47(b)(14) particularly provides that emergency plans must provide for the exercises mentioned in Appendix E, and that § 50.47(c)(1) allows exceptions to be made to all provisions of § 50.47(b). 3/ As this Board indicated in its Memorandum (Extension of Board's Ruling and Opinion on LILCO Summary Disposition Motions, etc.), of April 8, 1988, at 22, the complimentary provisions in § 50.47 and Appendix E "should be read together where possible." It concluded that the provisions of 10 C.F.R. § 50.47(b), allowed "due allowance for compensatory measures... for the requirements of Appendix E also." Id. The exception to exercise requirements, as well as other emergency planning requirements, might be shown under 10 C.F.R. § 50.47(c)(1), when failure to satisfy those requirements "are not significant for the plant in question." 4/

3/ No amendment to the regulations was needed to include exercise requirements, as well as other emergency planning requirments, under the provisions of 10 C.F.R. § 50.47(c)(1), as all emergency planning provisions must be read together and § 50.47(b)(14) covers emergency planning exercises.

4/ Intervenors also seek to butress their argument on the need for an exemption to waive exercise requirements on the fact that such exemptions were granted in the past where full power operation was

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No cause is shown to dismiss the subject application until it is determined whether pending contentions are substantively relevant to the operation of Shoreham at 25% of full power.

CONCLUSION

For the foregoing reasons, proceedings should continue to determine whether LILCO is entitled to a license for operations at 25% of rated power under 10 C.F.R. §§ 50.57(c) and 50.47(c)(1).

Respectfully submitted,

Edwin J. Reis
Deputy Assistant General Counsel

Dated at Rockville, Maryland
this 20th day of April 1988

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sought. Governments' Brief at 22-23. Those instances do not show that such relief is required here where LILCO seeks an authorization under 10 C.F.R. § 50.57(c).

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO LILCO'S AND INTERVENORS' BRIEFS OF APRIL 1, 1988 ON MOTION TO AUTHORIZE OPERATION AT 25% OF FULL POWER" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 20th day of April 1988.

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