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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)
)
(Shoreham Nuclear Power Station,)
Unit 1))

APPLICANT'S MOTION FOR
LOW-POWER OPERATING LICENSE

Pursuant to the Commission's regulation 10 C.F.R. § 50.57(c), the applicant, Long Island Lighting Company (LILCO), makes this motion for an operating license authorizing low-power testing and further operations short of full power operation.^{1/} More specifically, LILCO requests authorization to load fuel into the Shoreham reactor and to operate the facility at power levels not to exceed five percent of full power.

^{1/} In addition to this motion under 10 C.F.R. § 50.57(c), LILCO will also request a temporary operating license under section 11 of the 1982-83 NRC Authorization Act, Pub. L. No. 97-415, 96 Stat. 2067 (1983), and the regulations implementing it, 48 Fed. Reg. 14,926-33 (1983) (proposed implementing regulations), once these regulations become final.

As will be shown below, in the circumstances of the Shoreham proceeding no special Board findings tailored to the facts of low-power operation are necessary to grant this motion; all that is required is a partial initial decision on full-power operation with respect to all issues as to which the evidentiary record is complete.

A. Legal Authority

The authority for this motion, 10 C.F.R. § 50.57(c) (1982), reads as follows:

(c) 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.

In the event that there is opposition to this motion, the Atomic Safety and Licensing Board, by the terms of 10 C.F.R. § 50.57(c), will have to make findings "on the matters specified in [§ 50.57(a)] as to which there is a controversy, in the form of an initial decision with respect to the contested activity sought to be authorized."

B. The Activity Sought to Be Authorized

LILCO seeks to load fuel and to operate the Shoreham Station at power levels not to exceed five percent of rated power. This will permit LILCO to conduct low-power testing. The low-power testing program is described in the Shoreham FSAR, Chapter 14.

C. The Matters in Controversy

The "matters specified" in § 50.57(a) are the following:

(1) Construction of the facility has been substantially completed, in conformity with the construction permit and the application as amended, the provisions of

the Act, and the rules and regulations of the Commission; and

(2) The facility will operate in conformity with the application as amended, the provisions of the Act, and the rules and regulations of the Commission; and

(3) There is reasonable assurance (i) that the activities authorized by the operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the regulations in this chapter; and

(4) The applicant is technically and financially qualified to engage in the activities authorized by the operating license in accordance with the regulations in this chapter. However, no finding of financial qualifications is necessary for an electric utility applicant for an operating license for a production or utilization facility of the type described in § 50.21(b) or § 50.22.

(5) The applicable provisions of Part 140 of this chapter have been satisfied; and

(6) The issuance of the license will not be inimical to the common defense and security or to the health and safety of the public.

10 C.F.R. § 50.57(a) (1982), as amended, 47 Fed. Reg. 13,755 col. 3 (Mar. 31, 1982).

The matters in controversy in the Shoreham proceeding can be further narrowed to the contentions, apart from offsite emergency planning, that have not been settled.^{2/} Listed in

^{2/} These litigated and still unsettled contentions have resulted from an operating licensing proceeding begun in 1976.

(footnote continued)

the order in which they were tried, these contentions are the following:

<u>Contention Number</u>	<u>Contention Title</u>
SC/SOC 7B; SOC 19(b)	Safety Classifica- tion/Systems Inter- action
SC 4	Water Hammer
SC 10	ECCS Core Spray
SC 11	Valve Failure
SOC 19(e)	Seismic Design
SC/SOC 22; SC 28(a)(vi)/ SOC 7A(6)	SRV Tests and SRV Challenges
SC 16	ATWS
SC 27/SOC 3	Post Accident Monitoring
SC 21	Mark II
SC/SOC 12; SC 13-15	Quality Assurance

(footnote continued)

After years of discovery and refinement of contentions, evidentiary hearings began in May 1982 and have now run for over 100 days, covering all matters in controversy except offsite emergency planning.

Contention
Number

Contention
Title

SC 8/SOC
19(h)

Environmental
Qualification

Since the evidentiary record has been closed on every one of these issues, there is a record adequate for a full-power license decision as to them and, a fortiori, for a low-power license, as we shall show in Part E below.

D. Phase II (Offsite) Emergency Planning

The only other matter in controversy is offsite emergency planning. The issues involving LILCO's onsite emergency preparedness were addressed in Phase I of this proceeding.^{3/} The County defaulted on Phase I, and consequently no onsite issues are left before this Board.^{4/}

^{3/} The Phase I issues were those "within LILCO's responsibility to perform whether it be on site or off site." Prehearing Conference of April 14, 1982, Tr. 796; see also Tr. 797-802. They were the issues "currently capable of final resolution" even without an offsite plan. Prehearing Conference Order (Phase I - Emergency Planning) 2 (July 27, 1982); see also Memorandum and Order Denying Suffolk County's Motion to Terminate the Shoreham Operating License Proceeding, LBP-83-22, 17 NRC ___, slip op. 64 (Apr. 20, 1983).

^{4/} Memorandum and Order Confirming Ruling on Sanctions for Intervenor's Refusal to Comply with Order to Participate in Prehearing Examinations (Dec. 22, 1982); see also Memorandum and Order Denying Suffolk County's Motion to Terminate the Shoreham Operating License Proceeding, LBP-83-22, 17 NRC ___, slip op. 63-65 (Apr. 20, 1983).

As for offsite (Phase II) emergency planning issues, no findings need be made before a five percent operating license is issued. The Commission's regulation 10 C.F.R. § 50.47(d) provides that "no NRC . . . review, findings or determinations" on offsite preparedness are required:^{5/}

(d) Notwithstanding the requirements of paragraphs (a) and (b) of this section, no NRC or FEMA review, findings, or determinations concerning the state of offsite emergency preparedness or the adequacy of and capability to implement State and local offsite emergency plans are required prior to issuance of an operating license authorizing only fuel loading and/or low power operations (up to 5% of the rated power). Insofar as emergency planning and preparedness requirements are concerned, a license authorizing fuel loading and/or low power operation may be issued after a finding is made by the NRC that the state of onsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The NRC will base this finding on its assessment of the applicant's emergency plans against the pertinent standards in paragraph (b) of this section and Appendix E of this Part.

47 Fed. Reg. 30,236 col. 1 (July 13, 1982).^{6/}

^{5/} The amended rule is now under judicial review. Union of Concerned Scientists v. NRC, D.C. Cir. No. 82-2053 (petition filed Sept. 10, 1982).

^{6/} The NRC Staff filed written testimony on Phase I emergency planning on October 12, 1982 stating that a low-power license

(footnote continued)

The plain words of this regulation clearly authorize a low-power license under 10 C.F.R. § 50.57(c) for Shoreham. The Licensing Board, however, has said that in its judgment § 50.47(d) should not be applied in the special circumstances of the Shoreham case. Memorandum and Order Referring Denial of Suffolk County's Motion to Terminate to the Appeal Board and Certifying Low-Power License Question to the Commission (Through the Appeal Board), LBP-83-21, 17 NRC ___, slip op. 12 (Apr. 20, 1983).^{7/} The Board certified this question to the Commission. The Commission has not yet decided whether to accept the certified question. Memorandum and Order, Long Island

(footnote continued)

can be granted:

With respect to onsite preparedness, we conclude that adequate protective measures can and will be taken in response to the emergency. Pursuant to the provision of 10 C.F.R. § 50.47(d), this finding is sufficient to support a license authorizing fuel loading and/or low power operation. (See 47 Fed Reg. 30232, July 13, 1982).

NRC Supplemental Testimony of John R. Sears Regarding Onsite Emergency Planning (Phase I) 5 (served Oct. 12, 1982).

^{7/} Circumstances have changed since the Board's April 20 order. On May 26, 1983, LILCO filed offsite emergency plans designed to compensate for Suffolk County's nonparticipation. It is LILCO's view that these plans go far toward removing the obstacle that the Board saw to a low-power license.

Lighting Co. (Shoreham Nuclear Power Station, Unit 1).
CLI-83-13, 17 NRC ___, slip op. 5 n.4 (May 12, 1983). Nor have
the parties had the opportunity to brief the issue.

It is likely that § 50.47(d)'s applicability to Shoreham
will be resolved in one of three fashions: by the Commission
if it accepts the question certified to it by the Board's April
20 order, by the Commission when it acts on LILCO's anticipated
application for a temporary operating license under section 11
of the 1982-83 Authorization Act, or by the new Licensing Board
at some point during the course of the litigation of offsite
emergency preparedness.^{8/} In the event the question has not

^{8/} The Board's April 20 order stated in part:

It may be that our present inability
to find reasonable assurance that full-
power emergency preparedness requirements
can in the future be met for Shoreham will
not be resolved unless and until our ini-
tial decision on the merits of the impend-
ing offsite emergency plan litigation finds
otherwise. However, changes in circum-
stances, or facts developed as part of the
hearing process, could support the con-
clusion prior to issuance of our initial
decision on emergency planning that there
is no longer apparent any factual bar to
the eventual development of offsite emer-
gency preparedness adequate to support is-
suance of a full-power operating license.

LBP-83-21, slip op. 14 (emphasis added).

been resolved by the time this Board is prepared to rule on a low-power license for Shoreham, we urge the Board to issue its decision subject to subsequent resolution of the issue.

E. The Reason this Motion Should Be Granted

In the particular circumstances of this case, it will not be necessary for the Board to address the facts of low-power operation per se in order to make the necessary findings on the non-emergency planning matters in controversy.^{9/} It will be sufficient to issue a partial initial decision on the unresolved full-power issues as to which the record has been closed (Part C above). Little more is needed, in short, than a partial initial decision along the lines of "LILCO's Proposed Opinion, Findings of Fact and Conclusions of Law in the Form of a Partial Initial Decision" (Jan. 17 and May 2, 1983) and "QA/QC and EQ Supplement to LILCO's Proposed Opinion, Findings

^{9/} Strictly speaking, if it is asserted that there are matters "as to which there is a controversy," the initial decision on these matters, insofar as this motion for a low-power license is concerned, need only be "with respect to the contested activity sought to be authorized," 10 C.F.R. § 50.57(c). For example, the Board would only have to find, with respect to the ATWS issue, that Shoreham is adequately protected against ATWS events at five percent power or less. But in this case LILCO is proposing instead that the Board simply decide the full-power issues except for those involving Phase II emergency planning.

of Fact and Conclusions of Law in the Form of a Partial Initial Decision" (Mar. 28, 1983).

On April 8, 1983, the record in this proceeding was closed as to all issues except Phase II (offsite) emergency planning. Tr. 21,176.¹⁰/ Proposed findings have been filed on all these issues.

A fortiori, then, there is a record sufficient to support a low-power license as to these issues, because the risks of low-power operation are less than those of full-power operation.¹¹/ As the Commission has observed, 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

¹⁰/ Suffolk County now has two requests to reopen the record pending before the Board and may file others in the future. But there will be no reopening unless the County can meet the Commission's usual standards for revisiting the record. For a recent summary of these standards, see Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC __, slip op. 34 n.66 (May 18, 1983).

¹¹/ Because the record is complete on all such issues relevant to a low-power license, there is no need for new contentions or evidence on low-power operation. The low-power motion context is not a "free opportunity to bring in new contentions." Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-3, 15 NRC 61, 186 (1982); see also Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC __, slip op. 37-38 n.72 (May 18, 1983).

necessary corrective action in the event of an accident.

46 Fed. Reg. 47,765 col. 1 (Sept. 30, 1981) (supplementary information accompanying adoption of final rule concerning Commission effectiveness review prior to fuel loading); see also the notice of the amendment of 10 C.F.R. § 50.47(d), 47 Fed. Reg. 30,232-36 (July 13, 1982).

As for emergency planning, all onsite issues were disposed of by the intervenors' default in Phase I. No offsite preparedness need be shown by the terms of § 50.47(d). Therefore, there is nothing to prevent the Board from issuing a partial initial decision and granting this motion, apart from the views about the special circumstances of this case in the Board's April 20 certification order. Again, if the Board's question regarding the applicability of § 50.47(d) remains unresolved when the Board is prepared to rule on the present motion, we respectfully request that a ruling be issued, subject to subsequent resolution of the § 50.47(d) matter.

F. Need for a Low-Power License

The Shoreham Station is now about 99 percent complete; it is expected to be physically ready for fuel loading by August 1983. Two of the intervenors in this case have referred

to the "substantial delay" that will result from litigating the offsite emergency planning issues:

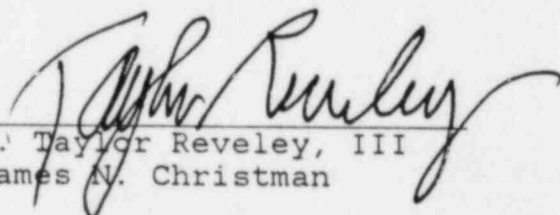
Moreover, the granting of the County's motion [to terminate this proceeding] would obviate the substantial delay in the resolution of this proceeding that would otherwise result from the months of intensive litigation that we are now facing.

Memorandum of Shoreham Opponents Coalition and North Shore Committee in Support of Suffolk County's Motion to Terminate the Shoreham Operating License Proceeding 14-15 (March 17, 1983). Thus, as LILCO pointed out in its brief of March 18, 1983, no matter when Shoreham is ready to load fuel, that time will likely come before the litigation of emergency planning can be completed.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

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DATED: June 8, 1983

CERTIFICATE OF SERVICE

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LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322 (OL)

I hereby certify that copies of Applicant's Motion for Low-Power Operating License were served this date upon the following by Federal Express as indicated by one asterisk, and otherwise by first-class mail, postage prepaid.

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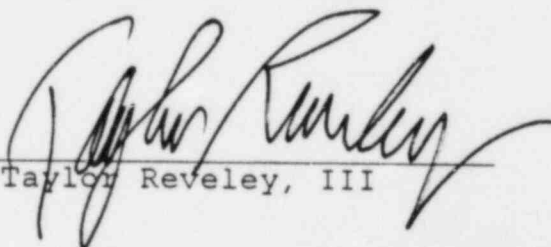
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