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NUCLEAR REGULATORY COMMISSION<sup>84</sup> MAR 28 11:32Before 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) )SUFFOLK COUNTY'S PRELIMINARY VIEWS  
ON SCHEDULING REGARDING LILCO'S NEW MOTIONI. Background

At a conference of counsel on February 22, 1984, this Board admitted the first three Suffolk County supplemental emergency diesel generator ("EDG") contentions. In rejecting LILCO's request for a low power license after only a limited number of EDG components are litigated, this Board stated:

[W]e don't have any confidence that any of these diesels will operate at any power unless we have litigated Contentions 1, 2 and 3 on the merits.

Tr. 21,631 (emphasis added). However, this Board did not preclude LILCO from later filing a proposal to obtain a low power license for Shoreham without relying upon the EDGs. See Tr. 21,631-32.

Late on March 20, 1984, counsel for the County received LILCO's Supplemental Motion for Low Power Operating License (the "Motion"). The Motion is not "supplemental" at all; rather, it is

an entirely new motion for a low power license that seeks to circumvent litigation of the adequacy of the EDGs. Thus, the new Motion is apparently a proposal to avoid the impact of the Board's above-quoted comments.

On March 22, Judge Brenner's secretary, Ms. Lane, telephoned the County's counsel, explained that Judge Brenner was in out-of-town hearings, and asked whether counsel could join in a conference call with her and the other parties on Thursday or Friday to discuss when they would be in a position to respond to LILCO's Motion. Receipt of the parties' preliminary views by Monday, March 26, would facilitate issuance on Monday of any scheduling orders that might be appropriate.

Because the County's counsel and experts on EDG matters at the time were in Oakland, California, for document discovery at TDI, and because the County's counsel and experts had insufficient time to review the Motion, counsel told Ms. Lane that a conference call would be premature. Counsel offered to give preliminary views to the Board in writing early on Monday, and Ms. Lane indicated that this would meet the Board's needs.

## II. The County's Preliminary Views

A. The County believes that the normal ten-day period for a response to LILCO's Motion (10 C.F.R. § 2.730(c)) is inadequate in this instance. The Motion is a voluminous, new proposal for low power operation of Shoreham, based upon complex technical factual information and novel legal arguments never before presented to the County or this Board. On its face, LILCO's Motion is the type

of proposal which this Board envisioned to require an entirely separate collateral proceeding. For the following reasons, additional time will be required for the County to analyze and respond to the Motion.

1. LILCO's proposal raises a host of new substantive factual issues,<sup>1/</sup> including:

- a. The nature and reliability of LILCO's interties to the New York Power Pool and New England Power Grid;
- b. The nature and reliability of the various gas turbines mentioned by LILCO (e.g., those at Holtsville, at Shoreham, and at other locations);
- c. The nature and reliability of LILCO's transmission lines;
- d. The nature and reliability of the four mobile diesels;
- e. The possibility of a seismic event rendering unreliable all of the power sources relied upon by LILCO in the Motion;
- f. The risks presented by low power operation and the amount of onsite power which must be reliably available in view of those risks;
- g. Whether there are any substantial benefits in terms of training or other relevant factors which would justi-

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<sup>1/</sup> The list of new substantive factual issues herein is preliminary and merely illustrative. Until the County is able to retain appropriate experts to review the Motion, a complete list of issues cannot be compiled.

fy the sharp departure from NRC practice that LILCO proposes.

Since some of the new issues are outside the expertise of the County's current EDG consultants, the County must retain appropriate experts in order to make meaningful responses. Analysis of these new substantive issues will thus take significant additional time.

2. LILCO's Motion, while lengthy, lacks many essential details. Examples of information which the County must receive before filing meaningful answers to the factual assertions in LILCO's proposal include:

- a. Specific data regarding the duration and sequence of operation at each power level sought in the Motion.
- b. Copies of approved Technical Specifications for Shoreham or a copy of the most recent draft.
- c. Procedures for electrical power system operation during the low power license period, including normal operation; test operations; emergency situations; installation and maintenance procedures; and procedures for startup, synchronization and load sequencing of four mobile diesels.
- d. Equipment specifications for each normal and additional source of AC power cited as available to support Shoreham without reliance on TDI diesels, including manufacturer; history of operation; specification; qualification data; transmission facilities design envelope, including seismic, hurricane, and other similar

data; installation reports; and quality assurance records for the above equipment.

e. Underlying data which support the Affidavits attached to the Motion, including reports or risk analyses relied upon; detailed analyses underlying Sherwood Exhibit 4; bases for conclusions in Sherwood and Schiffmacher Affidavits; reliability analyses relied upon for structures, systems and components; and allowable time to repair unavailable power sources.

f. Description of security measures in place to assure availability and protection of offsite power sources (to the extent this involves safeguards information, data will need to be handled under procedures governing such information).

g. Description of all instrumentation and control systems which will be used to initiate operation, control, or protection of the additional power sources cited in the Motion, including instruments mounted on the specific equipment; control room mounted equipment; and other equipment for control, monitoring, and protection of the additional power sources.

h. Transmission and distribution operation procedures which will be used instead of normal load dispatching and grid integrity protection procedures.

i. List of all protection system inputs and specific set point indications which will be modified or relied upon to assure staying within the 5% power limit.



- j. Additional preoperation tests and demonstration tests to verify validity and reliability of inter-connected network of new equipment and existing equipment, including how the system would be tested during operation.
- k. Data supporting the man-hour assertions in the Notaro Affidavit and the length of time involved at each power level.
- l. Identification of system tests discussed in the Notaro Affidavit which can only be conducted during nuclear operation.
- m. Identify for the additional power sources the applicable regulatory guides and applicable standards and the degree of compliance with each. For example, separation; single failure criteria; fire protection; periodic testing; independence of onsite systems; installation; maintenance; bypassed and inoperable status indication.
- n. Detailed description of the tests to be performed during the proposed low power test program, including reference to items in FSAR Section 14.

This information must be obtained from LILCO through informal discovery. This process and the analysis of such data by appropriate experts will no doubt take significant time. The willingness and ability of LILCO to respond expeditiously to these data requirements will influence the length of time necessary for such informal discovery.

3. The legal issues raised by the LILCO Motion include:

a. LILCO cites GDC 17 as the pertinent regulatory standard by which its Motion is to be judged. See, e.g., LILCO Motion at 6, 11, 23. In fact, however, LILCO's compliance with many other regulatory standards also must be evaluated, including GDC 2, 4, 5, 18, and 50, and 10 C.F.R. Part 50, Appendix B. See, e.g., Standard Review Plan, § 8.3.1, which identifies all of the foregoing as pertinent to review of the adequacy of onsite AC power systems. LILCO's Motion never even mentions these other regulations.

b. Based on initial review of the LILCO Motion, it is clear that LILCO does not comply with certain regulatory requirements. For example, neither the four mobile diesels nor the gas turbine are seismically or otherwise qualified for nuclear service. Thus, LILCO is proposing operation of the plant despite failure to comply with GDCs 4, 5, 17, 18 and 50 or with Appendix B. LILCO has not filed pursuant to 10 C.F.R. § 2.758 for waiver of these applicable regulations. Absent a proper waiver petition, Section 2.758 prohibits licensing boards from considering arguments that a licensee should not be required to comply with the Commission's regulations. This Board has recognized this Commission requirement and, indeed, specifically stated on February 22 that any LILCO proposal seeking waiver or exemption would need to comply with regulatory requirements. Tr. 21,632. LILCO's Motion does not do so.

Adequate time must be allotted for the County to further research and address these and other possible legal issues.

4. The County's counsel and experts in this proceeding are already devoting full time to the issues raised by the EDG contentions. Thousands of documents were identified as relevant during their trip to TDI in Oakland last week, and when those documents are produced, their review will require all of April. Depositions have not yet been scheduled. Counsel are working under a very expedited schedule, given the extent and complexity of EDG matters. Unless that schedule is relaxed significantly,<sup>2/</sup> the responses to the Motion will need to be delayed even further.

In summary, the Motion represents an extremely significant (in size and complexity) new "collateral litigation" (Tr. 21,515). The County cannot at this early date provide a detailed estimate of when it can respond to the merits of the LILCO proposal.

B. There are a number of threshold issues which the Board and parties should address.

1. The LILCO Motion does not meet the particular criteria enunciated by the Board on February 22 for consideration of such a proposal. See Tr. 21,631-33. The County believes that, for example, the LILCO proposal does not specify how it meets "the applicable requirements of the regulations for backup power or point out where it does not strictly meet those requirements why [LILCO] should be entitled to some exemption or waiver under 2.758 . . . ." Tr. 21,632. If the proposal does not meet the Board's criteria, it should be summarily rejected and the parties should

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<sup>2/</sup> The County has indicated to the other parties that when the Board issues its order regarding its rulings at the February 22 conference, the County will seek additional time to carry out the many matters that must be accomplished. This was the County's intention even before receipt of the Motion.



not be required to devote time and resources to answering it substantively.

2. On February 22, this Board clearly expressed its concern with LILCO's reliance on any power sources which are not seismically qualified. Thus, Judge Brenner stated:

Personally I have great doubts that a waiver from the seismic criteria would suffice when the very reason for having emergency backup power is in some instances what might happen to your offsite power in the event of an earthquake.

I don't want to preclude your attempting to show things.

Tr. 21,633. The Motion outlines alternate power sources, both onsite and offsite, including gas turbines, existing transmission lines, and four mobile diesels. None of these sources meet the seismic criteria. LILCO suggests that this is not crucial because it will have a procedure at some point to start plant shutdown if an acceleration of 0.01g is recorded. See Motion at 22. Without reaching the merits of such a procedure,<sup>3/</sup> the threshold question is whether, as a matter of law, LILCO's proposal to use the non-seismically qualified power sources is acceptable when no Section 2.758 waiver is sought.

3. This Board clearly indicated on February 22 that any proposal which LILCO might file for a low power license must not rely upon the TDI EDGs. This Board said:

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<sup>3/</sup> The County has serious doubts whether it is reasonable to assume that there will necessarily be sufficient time to shut down the plant after a 0.01g acceleration is recorded and before a larger acceleration which causes significant damage. Moreover, the LILCO suggestion is not relevant to the basic issue of whether, after a seismic event, there will be sufficient power to cool down the plant.

[W]e don't have any confidence that any of these [TDI] diesels will operate at any power unless we have litigated Contentions 1, 2 and 3 on the merits.

Tr. 21,631 (emphasis added). Contrary to this caveat, LILCO's proposal does rely upon the TDI EDGs. The Motion argues that the TDI diesels will be fully tested, although not fully litigated, during a portion of the low power operation phase, and thus would be "available for operation." Motion at 3.

Moreover, LILCO implicitly relies upon the TDI EDGs for the lengthy period after low power testing is completed, but before the replacement Colt diesels are operational. LILCO has estimated that the Colt EDGs will not be installed and tested until August or September of 1985, and will not be connected until the first refueling outage. Until the first refueling outage, LILCO can only rely upon the TDI EDGs. Accordingly, LILCO's Motion seeks a quick and easy low power license on the dubious assumption that the TDI EDGs will necessarily be proven adequate, despite the voluminous evidence of their deficiencies, this Board's and the Staff's lack of confidence in them, and LILCO's own lack of confidence in them as evidenced by its decision to replace them with Colt diesels in any event. The County submits that the true presumption should be that the cracked and defective TDI EDGs will never be qualified, and that accordingly the LILCO Motion, which relies upon those TDI diesels contrary to this Board's caveat, should be summarily dismissed.

4. LILCO has requested that this Board refer the Motion directly to the Commission pursuant to 10 C.F.R. § 2.718. See

Motion at 4. The County preliminarily believes that such referral would be especially inappropriate in this case. This Board has extensive familiarity with the matters at issue and has set standards for an anticipated low power proposal by LILCO. LILCO's attempt to circumvent this Board ignores the plethora of factual and technical issues which the proposal raises, and which can only be adequately addressed after investigation and testimony in a separate "collateral" proceeding. Moreover, LILCO's arguments for referral or certification (see Motion at 24-26) contain numerous assertions of alleged facts which the County maintains are false and misleading. An inquiry into these assertions should be required before any determination is made to circumvent this Board and a factual hearing on the merits.

5. The LILCO Motion obviously is an entirely new and radical change from LILCO's initial application for a low power license. It is therefore a new application which, pursuant to 10 C.F.R. § 2.101, must be reviewed for completeness and acceptability by the Staff. Time for such a review of LILCO's proposal is essential, since technical analyses must be performed to assess the merits and deficiencies of the LILCO proposal. Mr. Bordenick, the Staff counsel, has informed the County that the Staff intends to prepare a technical SER review of LILCO's proposal. By assigning it "high priority," the Staff expects to have its SER complete by April 17. The County understands that this completion date is premised on the Staff promptly obtaining answers from LILCO to questions which are being formulated. As noted previously, however, the County must retain additional experts and receive

additional information from LILCO before reaching a conclusion on the technical merits. This cannot be accomplished by April 17.

In view of the foregoing, the County respectfully requests that the Board convene a conference of counsel in Bethesda to consider all of the procedural matters which affect both the ongoing EDG litigation and LILCO's Motion. In advance of such a conference, the Board could announce its tentative agenda of the matters it desires to address, so that counsel will be prepared to provide focused responses.

Respectfully submitted,

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March 26, 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY'S PRELIMINARY VIEWS ON SCHEDULING REGARDING LILCO'S NEW MOTION, dated March 26, 1984, have been served to the following this 26th day of March 1984 by U.S. mail, first class, except as otherwise indicated.

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