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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
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Before the Atomic Safety and Licensing Board

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station,
Unit 1)

DOCKET NUMBER
PROD. & UTIL. FAC.

50-322-OL-4

Docket No. 50-322-OL

PRELIMINARY VIEWS OF GOVERNOR CUOMO,
REPRESENTING THE STATE OF NEW YORK,
REGARDING LILCO'S SO CALLED "SUPPLEMENTAL
MOTION FOR A LOW POWER OPERATING LICENSE

1. RESPONSE TO LILCO'S INTRODUCTION

The State of New York takes seriously its participation in this proceeding. For this reason it is constrained, in the interests of accuracy, to express it's views thereon to the extent of taking issue with the reasons set forth in LILCO's introduction as supporting this motion and for urging that only the Nuclear Regulatory Commission itself can decide it.

In support of this new motion for a low power license and to refer it promptly to the Commission for decision LILCO assigns the following reasons:

"The Shoreham Nuclear Power Station represents both a huge commitment of economic resources and Long Island's only power plant not dependent on foreign oil. Thus, there are compelling reasons for the station's early operation. Instead of being free to begin necessary and beneficial low power testing and training, however, Shoreham faces a nine months of delay rooted in litigation concerning diesel generators. This delay is unnecessary to assure the public health and safety for the activities authorized by a low power license."

"As a practical matter, LILCO believes that whether Shoreham is entitled to such a license is a question that only the Nuclear Regulatory Commission itself can decide. The intensely political environment that now envelops Shoreham makes virtually certain that the NRC's highest tribunal must act before the plant will be allowed to conduct any operations, even loading fuel."

These reasons are not accurate or valid predicates for either request. The fact that the plant is not dependent

upon foreign oil is irrelevant to the grant of a low power license. No savings on foreign oil will take place unless and until the plant goes into full power commercial operation. That could not occur for several years, if ever. Both Suffolk County and New York State, neither of which is participating in the LILCO offsite emergency evacuation plan and both of whom are opposing the licensing of Shoreham plant, have filed suits in New York State Courts to declare that the implementation of the offsite emergency evacuation plan by LILCO employees would be illegal because it requires an unlawful usurpation of powers vested solely in State and local officials. Those suits will not be definitely determined for several years. Indeed, though LILCO insistently urges expeditious determinations of all contested issues in NRC proceedings it promptly obtained an adjournment of an additional one and one-half the time allowed to interpose its answers to the complaints in those State suits.

The commitment of economic resources to the Shoreham Nuclear Power Station is not a compelling reason for that station's early operation. The electricity it will generate will not be needed for at least a decade or more (Marberger Commission Report, p. 37). Rather than being beneficial that electricity would wreak economic havoc at this time.*

*It would be the most costly electricity produced. If that cost was added to the current LILCO ratepayers rate, which is reputed to be the highest in the nation, it would drive businesses out of state, lead to great unemployment and place an undue burden upon the households it did not impoverish.

Insofar as the motion seeks a low power license for the purported purposes of training, it is unfounded. The law and the regulations do not contemplate such a license. They authorize licenses only for low power or full power operation, not for training. The open ended nature of the subject motion -- that is, without limit as to time -- makes it clear that LILCO would obtain a usual low power license and not one limited for purposes of training. As it has previously informed this Board, it would use the same backup generating system until the first fuel outage after full power operation. The issuance of the low power license sought would permit that to happen. Under those circumstances, the use of the Rube Goldberg lashup of unqualified generators and other means proposed by LILCO for emergency backup power would not provide reasonable assurance that health and safety of the public would be protected.

To issue a low power license for the training purposes proposed would be improper. The purpose of training is to educate personnel in the use of equipment they will be using in full power operation. Since LILCO personnel will be using Colt diesels for backup in full power. operation training on the hodge-podge of generators and other equipment proposed would not accomplish that objective.

Furthermore, in view of the lack of qualified LILCO personnel to operate the Shoreham plant, it is egregious to grant a low power license for testing purposes.

The bald, conclusory assertion that the "intensely political environment that now envelops Shoreham" does not provide a basis referring the subject motion to the Commission for decision, as requested by LILCO. There is no "political environment" enveloping Shoreham, intense or otherwise. The only change that has occurred in this proceeding is that the State of New York has entered these proceedings as an interested State and has refused to participate in the offsite emergency evacuation plan, has opposed the licensing of the Shoreham Nuclear Power Station on all levels and has filed a suit in State court, as aforesaid. In taking these actions, the State of New York is pursuing its full legal rights and fulfilling its responsibility protecting the health, welfare and safety of its inhabitants and in seeing that its laws are not unlawfully usurped by LILCO. The pursuit remedies is a solemn sovereign right and responsibility under the circumstances. To imply that it is political is, to say the least, unseemingly.

The reason urged for referring the motion to the Commission is factually inaccurate and legally inadequate. Accordingly, this Board should reject that request.

II. THE MOTION SHOULD BE SUMMARILY REJECTED

Applicants and licensees must comply with the Commission's regulations (NUREG-0386, NRC Practice and Procedure Digest 15.1) or seek a waiver therefrom (10 C.F.R. s 2.758). LILCO states that its motion complies with GDC 17. However, LILCO's motion papers fail to assert that it complies with many other pertinent regulations including GDC 2, 4, 5, 18, and 10 C.F.R. Part 50, Appendix B (See e. g. Standard Review Plan s 8.3.1, which identifies all the foregoing as pertinent to the review of onsite AC power systems). As neither the four mobile diesels nor the gas turbines proposed by LILCO are seismically or otherwise qualified for nuclear service, LILCO has failed to comply with GDC's 4, 5, 17, 18 and 10 C.F.R. 50, Appendix B.

The LILCO motion fails to comply with the aforesaid pertinent regulations and does not seek a waiver therefrom. Accordingly, it is facially insufficient to be entertained by this Board. Therefore, neither this Board nor the parties should be compelled to devote time or resources to responding to it on the merits and it should be summarily rejected.

III. IF THE MOTION IS NOT REJECTED
SUMMARILY, THE BOARD SHOULD
HOLD A CONFERENCE TO CONSIDER
ALL PROCEDURAL MATTERS

The State of New York fully agrees with and adopts Suffolk County's position that if the motion is not summarily rejected by this Board, the normal ten-day period for a response is inadequate and that because of the lack of detailed information in the motion, the legal issues raised, the time presently involved in the issues raised by the EDG contentions, the number of threshold issues to be addressed and time required for Staff review, this Board should convene a conference to consider all of the procedural matters involved and in advance thereof should announce a tentative agenda of matters to be addressed. The State will not belabor the Board by setting forth detailed reasons therefor, but refers the Board to Suffolk County's response dated March 26, 1984.

Respectfully submitted,

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March 28, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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CERTIFICATE OF SERVICE

I hereby certify that copies of PRELIMINARY VIEWS OF GOVERNOR CUOMO REPRESENTING THE STATE OF NEW YORK, REGARDING LILCO'S SO CALLED "SUPPLEMENTAL MOTION FOR A LOW POWER OPERATING LICENSE, dated March 28, 1984, have been served to the following this 28th day of March 1984 by U. S. Mail, first class, except as otherwise indicated.

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