

April 1, 1985

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

Before the Atomic Safety and Licensing Board

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In the Matter of )

LONG ISLAND LIGHTING COMPANY )

(Shoreham Nuclear Power Station,  
Unit 1) )  
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OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH  
Docket No. 50-322-OL-4  
(Low Power - Remand)

STATE OF NEW YORK AND SUFFOLK COUNTY  
REQUEST FOR CLARIFICATION

In accordance with the Board's March 22, 1985 Memorandum and Order (Ruling on Threshold Safeguards Questions and Establishing Partial Schedule) (the "Order"), the State and County request Board clarification/interpretation of the following matters.

1. The Board uses the term "safeguards risks" at several places in the Order. E.g., Order at 2, 3, 13-14. The Board poses the issue whether the "safeguards risks associated with low power are lower than those associated with full power." Id. at 2. The Board distinguishes such safeguards risks from safety risks, which pertain mostly to items such as the smaller fission product inventory at low power. Id. at 7, 13. Clarify that when the Board speaks of greater or lesser safeguards risks during Shoreham low power operation, the Board is stating that the parties may contest whether there is a greater or lesser likelihood of the defined design basis threat of Section

73.1(a)(1) being able to breach LILCO's security arrangements at Shoreham so as to achieve radiological sabotage during low power operation using LILCO's alternate AC power system versus during full power operation using the previous configuration that relied on the TDI diesels.

2. At page 2 of the Order, the Board states that LILCO will comply with Section 73.55 if LILCO is able "to demonstrate that its safeguards measures, although not fully meeting the (b)-(h) standards (which assume full power operations), will nevertheless provide protection 'equivalent' to those standards during low power operations because the safeguards risks associated with low power are lower than those associated with full power." (Emphasis supplied). At page 3, the Board states that it will consider "proposed contentions alleging that safeguards risks at low power, under LILCO's safeguards measures, will be as great or greater than full power safeguards risks associated with a fully qualified emergency power source." (Emphasis supplied).

(a) Are we correct that it is LILCO's burden to prove, if it does not demonstrate compliance with Section 73.55(b)-(h) or that it has implemented measures fully equivalent thereto, that the safeguards risks during Shoreham low power operation, i.e., the likelihood of successful radiological sabotage, are less under the alternate AC power system and protective measures proposed by LILCO than would have been the case under LILCO's original security plan relying on the TDI diesels? By how much

must the safeguards risks at low power be lower in order for LILCO to show Section 73.55 compliance?

(b) What is the basis for the Board's statement and apparent conclusion that Section 73.55(b)-(h) assumes full power operation? At page 7, the Board cites page 8 of the Staff Response, which states that "the [security] regulations were not designed with low power operation in mind." However, when one looks at the Staff Response, there is absolutely no citation provided by the Staff to support the assertion that Section 73.55(b)-(h) was not designed to cover low power operation. Further, the State and County know of no citation which supports the Staff or Board positions. There is no language in Section 73.55 itself to support a finding that Section 73.55(b)-(h) is not fully applicable at low power. Thus, for the Board to so find, it should provide a basis, founded on the regulatory history or some other authoritative basis, to support its conclusion.

(c) The essence of the alternate "compliance" standard enunciated by the Board appears to be the Board's reading of Section 73.55 as constituting a full power regulation which permits a lesser standard for low power, without an applicant seeking an exemption, provided that the low power safeguards protections are equivalent to those that would be provided by full compliance with Section 73.55(b)-(h) during full power operation. See Order at 2 (lines 5-10), 10. This same low power/full power comparison was also articulated by the Board in

the conference call on March 28. Tr. 3246. This low power/full power comparison conflicts with the Commission's May 16, 1984 Order (CLI-84-8). See 19 NRC at 1155, ¶ 2. Indeed, it is similar to the ASLB's April 6, 1984 low power/full power comparison,1/ which the NRC reversed in CLI-84-8.2/ Please

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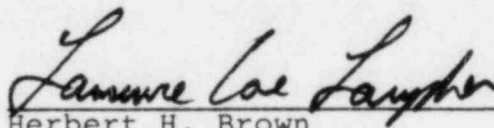
1/ See ASLB Memorandum and Order Scheduling Hearing on LILCO's Supplemental Motion for Low Power Operating License, April 6, 1984, at 7.

2/ GDC 17 did not specify on its face whether it applied to low power operation. The Miller Board read into GDC 17 a different standard for low power operation. The Commission reversed (19 NRC at 1155) and directed that any lesser standard of compliance could only be considered in an exemption context. Further, this Board's decision of March 22, 1985 relied on San Onofre (Order at 7-8). The Miller Board also relied on San Onofre (April 6, 1984 Order at 9), but the NRC reversed. Similarly, this Board's reliance on Diablo Canyon (ALAB-653) is also misplaced since ALAB-653 preceded the NRC's decision in CLI-84-8, which makes clear that a low power/full power comparison is not proper in a "compliance" context.

clarify how this Board's ruling calling for a low power/full power comparison is consistent with the Commission's precedent.

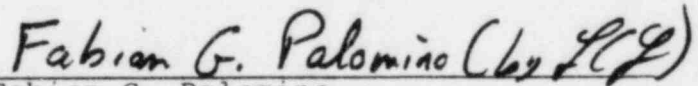
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CERTIFICATE OF SERVICE

I hereby certify that copies of State of New York and Suffolk County Request for Clarification, dated April 1, 1985, have been served on the following this 1st day of April 1985 by U.S. Mail, first class, except as otherwise noted. Copies of the Security Contentions of Suffolk County and New York State were served only upon those persons marked by a number sign, since the Contentions contain safeguards information.

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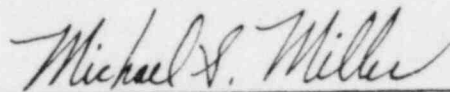
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# Persons receiving Security Contentions only

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