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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

DOCKETED
USNRC

'85 DEC 27 P1:56

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,)
Unit 1))

Docket No. 50-322-1
(OL)

NRC STAFF'S ANSWER TO
"PETITION FOR REVIEW OF APPEAL BOARD DECISION"
FILED BY SUFFOLK COUNTY AND THE STATE OF NEW YORK

On December 10, 1985, Intervenors Suffolk County and the State of New York ("Intervenors") filed a "Petition for Review of Appeal Board Decision" ("Petition"). Therein, the Intervenors request that the Commission take review of ALAB-824, ^{1/} in which the Appeal Board affirmed the Licensing Board's Partial Initial Decision of June 14, 1985 ("PID"), ^{2/} which held that the three Transamerica Delaval, Inc. ("TDI") emergency diesel generators ("EDGs") installed at the Shoreham nuclear plant satisfy the requirements of General Design Criterion 17 for the first fuel cycle.

Pursuant to 10 C.F.R. § 2.786(b)(3), the NRC Staff ("Staff") hereby files its answer to Intervenors' Petition. For the reasons more fully set forth below, the Staff opposes the Intervenors' Petition and recommends that it be denied.

1/ Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-824, 22 NRC _____ (slip op., November 21, 1985).

2/ Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-85-18, 21 NRC 1637 (June 14, 1985).

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INTRODUCTION

Contentions challenging the adequacy of Shoreham's emergency diesel generators under GDC 17 were initially admitted by the Licensing Board in 1983 and 1984. After evidentiary hearings on those contentions had commenced, LILCO moved to reopen and supplement the record and, in conjunction with its motion, sought to amend its FSAR by reducing the maximum permitted load ratings for the EDGs from their original continuous duty ratings of 3500 KW (with a short time excursion rating of 3900 KW), to a "qualified load" of 3300 KW. ^{3/} The Licensing Board granted LILCO's motion by Order of December 4, 1984, and offered the parties an opportunity to challenge the lower "qualified load" rating proposed by LILCO.

On December 17, 1984, the Intervenors filed an additional contention, which was then modified and admitted by the Licensing Board. This contention generally asserted that the EDGs with a "qualified load" of 3300 KW as the maximum permitted load did not provide sufficient capacity and capability to assure various safety functions because the qualified load did not encompass all of the loads that could be imposed

^{3/} The concept of a "qualified load" was introduced by the Staff as an interim licensing basis for TDI emergency diesel generators at Shoreham and other plants. The "qualified load" is that load which bounds the maximum emergency service load (MESL) for the diesel generators, at which certain key components have operated successfully for at least 10,000,000 loading cycles, or approximately 740 hours. The MESL is determined by summing the loads imposed by all equipment which will be connected for more than brief periods of time following the initiation of a LOOP/LOCA event (the design basis event for Shoreham). The MESL for each of the three Shoreham EDGs is 3253.3 KW, 3208.7 KW, and 3225.5 KW, respectively. See PID, 21 NRC at 1691-93.

on the EDGs, including loads that may be imposed due to operator error. See PID, 21 NRC at 1689, 1691. ^{4/}

On January 25, 1985, the Intervenor filed certain testimony concerning the margin between the MESL and the maximum rated load capacity for EDGs at other boiling water reactors. On February 11, 1985, the Licensing Board granted LILCO's motion to strike those portions of the testimony, citing its January 18, 1985 Order ^{5/} that "such litigation would be ' . . . at least so remotely collateral to the material issues before us as to be digressive without any redeeming usefulness.'" ^{6/} Reopened hearings began on February 12, 1985, and the record was closed on March 12, 1985.

^{4/} The Intervenor had proposed that the contention include the following assertion:

(b) There is little or no margin between 3300 KW and the maximum emergency service loads for the EDGs, in sharp contrast to emergency diesel generators at other nuclear plants where a substantial margin provides adequate assurance of requisite reliability under GDC 17.

In denying admission of this part of the proposed contention, the Licensing Board stated it was "unnecessarily redundant," and that:

[T]o the extent admission of this part would arguably include consideration of the margin at other nuclear plants, such litigation would be irrelevant or at least so remotely collateral to the material issues before us as to be digressive without any redeeming usefulness.

"Memorandum and Order Ruling on Admissibility of Emergency Diesel Generator Load Contention," dated January 18, 1985, at 8.

^{5/} See n. 4, supra.

^{6/} "Memorandum and Order Ruling on Motions to Strike Portions of Suffolk County and LILCO Testimony," dated February 11, 1985, at 3.

On June 14, 1985, the Licensing Board issued its PID on emergency diesel generator issues, finding that the three TDI diesel generators at Shoreham satisfy the requirements of General Design Criterion 17, 10 C.F.R. Part 50, Appendix A. ^{7/} The PID resolved all remaining issues in controversy necessary for the issuance of a low power operating license, and authorized the Staff to issue a low power license (up to 5% of rated power), upon making the findings specified in 10 C.F.R. § 50.57(a). ^{8/}

^{7/} GDC 17 provides, as pertinent to the instant Petition, as follows:

Criterion 17 - Electric Power Systems. An onsite electric power system and an offsite electric power system shall be provided to permit functioning of structures, systems, and components important to safety. The safety function for each system (assuming the other system is not functioning) shall be to provide sufficient capacity and capability to assure that (1) specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded as a result of anticipated operational occurrences and (2) the core is cooled and containment integrity and other vital functions are maintained in the event of postulated accidents.

The onsite electric power supplies, including the batteries, and the onsite electric electric distribution system, shall have sufficient independence, redundancy and testability to perform their safety functions assuming a single failure.

* * *

As stated in the Introduction to 10 C.F.R. Part 50, Appendix A, the General Design Criteria "establish minimum requirements for the principal design criteria for water-cooled nuclear power plants similar in design and location to plants for which construction permits have been issued by the Commission."

^{8/} The PID also authorized the issuance of a full power operating license for the first fuel cycle, to the extent that such a license depended upon resolution of the emergency diesel generator issues which were before the Licensing Board.

On July 17, 1985, Intervenor Suffolk County and the State of New York filed their brief on appeal from the PID. ^{9/} Therein, they argued that the PID should be reversed on the sole ground that the Licensing Board had erroneously excluded evidence as to the capacity/power demand margin at other nuclear plants ^{10/} -- which, the Intervenor contended, would have demonstrated that GDC 17 had previously been "interpreted and applied [by the Staff] to require that . . . the maximum load at which EDGs are permitted to operate ('maximum permitted load') must be substantially higher than the EDGs' maximum emergency service loads ('MESL'))" (Appeal Brief, at 1-2). On November 21, 1985, the Appeal Board issued ALAB-824, in which it upheld the Licensing Board's rulings and squarely rejected the Intervenor's appeal. Intervenor's Petition seeking review of that decision was filed on December 10, 1985.

DISCUSSION

The standards governing the grant of petitions seeking Commission review of Appeal Board decisions are well defined. The Commission's regulations provide that a party may file a petition for review "on the ground that the decision or action is erroneous with respect to an

^{9/} "Suffolk County and State of New York Brief in Support of Appeal of June 14, 1985, ASLB Decision" ("Appeal Brief"), dated July 17, 1985.

^{10/} In their Appeal Brief, the Intervenor made passing reference, in a footnote, to the fact that the Licensing Board had limited their cross-examination of LILCO and Staff witnesses concerning the capacity/power demand margin (Appeal Brief, at 10 n.10). However, as noted by the Appeal Board during oral argument, the Appeal Brief directly addressed only the Licensing Board's exclusion of evidence and failed to indicate clearly that the Intervenor were appealing from a limitation of cross-examination. See Transcript of Oral Argument, September 26, 1985, at Tr. 12, 16-18. See also Appeal Brief, at 1-2, 6, 8-13, and 14.

important question of fact, law, or policy." 10 C.F.R. § 2.786(b)(1). While the grant of such a petition is within the discretion of the Commission, as set forth in 10 C.F.R. § 2.786(b)(4), it is clear that a petition seeking review of matters of law or policy, such as the instant Petition, must present an important question which merits the Commission's review:

(i) A petition for review of matters of law or policy will not ordinarily be granted unless it appears the case involves an important matter that could significantly affect the environment, the public health and safety, or the common defense and security, constitutes an important antitrust question, involves an important procedural issue, or otherwise raises important questions of public policy.

10 C.F.R. § 2.786(b)(4)(i). The Staff submits that the Intervenor's Petition seeking Commission review of ALAB-824 fails to satisfy this standard and should be denied.

A. The Exclusion of Evidence.

The Intervenor's first complaint concerns the Licensing Board's determination to exclude evidence as to the capacity and capability of EDGs installed at other nuclear plants. ^{11/} The Intervenor contends that

^{11/} In their Petition, the Intervenor also challenge the Licensing Board's refusal to admit a portion of their EDG load contention concerning the capacity/power demand margins at other nuclear plants, and assert that the Appeal Board "inexplicably" failed to address this matter (Petition, at 3, 6). However, contrary to their assertion (Id., at 5), the Intervenor made only passing reference to this matter in their Appeal Brief, and never asserted that the Licensing Board had erred in this regard or that they wished to appeal on this ground (see Appeal Brief, at 8 n.8). Similarly, this matter was not raised during oral argument (see generally, Transcript of Oral Argument, September 26, 1985, at 11). Accordingly, this issue may not be raised before the Commission at this time. 10 C.F.R. § 2.786(b)(4)(iii); Long Island Lighting Co.

the rejected evidence would have demonstrated that the Staff has interpreted and applied GDC 17 to require a substantial capacity/power demand margin for the EDGs at other BWR plants, and that the EDGs at Shoreham fail to comply with that purported Staff interpretation of GDC 17 (Petition, at 4, 7-8). ^{12/}

These assertions fail to present an "important question" that requires Commission review. The Licensing Board's action in excluding the testimony was carefully reviewed and squarely upheld by the Appeal Board in ALAB-824, and no further review of that action is warranted. The Appeal Board correctly determined that "the evidence in question could not serve its intended purpose and, therefore, was properly excluded." (ALAB-824, slip op. at 3). As noted by the Appeal Board, the testimony and Table excluded by the Board established only that the 27 identified BWRs "possess emergency generators with widely varying capacity/power demand margins," not all of which could be characterized

(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

(Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL-3, Order dated December 19, 1985, at 1 ("the Commission will not review issues 'that could have been but were not raised' before the Appeal Board").

^{12/} In a related vein, the Intervenor's again assert that they were improperly restricted from conducting certain cross-examination concerning the capacity and capability of EDGs installed at other BWRs (Petition, at 4, 6). The Licensing Board correctly ruled that this issue was collateral to the issue before it, i.e., the issue of whether Shoreham's TDI EDGs comply with GDC 17. Accordingly, even assuming, *arguendo*, that the cross-examination issue had been raised before the Appeal Board (see n. 10, *supra*), to the extent that Intervenor's Petition addresses this issue, it is governed by the discussion above concerning the exclusion of Intervenor's direct testimony as to the capacity/power demand margins at other nuclear plants.

as "substantial" (Id., at 8). In addition, as noted by the Appeal Board, not all licensed BWRs, and no PWRs, were included in the Table, and at least one other plant possesses a capacity/power demand margin which is less than those possessed by the Shoreham EDGs (Id., at 8-9). ^{13/} Moreover, as further noted by the Appeal Board, the Staff has denied that it had ever interpreted and applied GDC 17 in the manner attributed to it by the Intervenorors (Id., at 8). ^{14/}

In sum, the evidence proffered by the Intervenorors simply does not support the inference they seek to draw, concerning the Staff's alleged construction of GDC 17. The Appeal Board summed up the matter as follows:

. . . [E]ven had the table reflected that the emergency generators associated with all of the listed reactors possessed large capacity/power demand margins, there still scarcely would have been room to infer that such margins were provided in obedience to a staff mandate, rooted in GDC 17. For utilities and their contractors do many things in the construction

^{13/} The Intervenorors' assertions that the Appeal Board incorrectly interpreted their proffered table (Petition, at 7-8), even if true, are irrelevant. Regardless of whether the smallest capacity/power demand margin reflected in the table is 3% or 7%, the table simply fails to establish that the Staff has interpreted GDC 17 to require a "substantial margin". Further, the Intervenorors have inadequately addressed the fact that other plants have a margin lower than that possessed by the Shoreham EDGs (see ALAB-824, slip op. at 9).

^{14/} The Intervenorors complain that the Appeal Board improperly relied upon a "post-hearing" statement by the Staff which "is not in evidence and was not subject to cross-examination" (Petition, at 6-7). Contrary to Intervenorors' suggestion, however, this matter was addressed before the Licensing Board. Thus, Staff witnesses had testified that the design load, as defined in IEEE 387-1977, does not include loads attributable to operator error. See Tr. 27,796-97, 28,174 (Knox); Tr. 28,277-81 (Berlinger, Hodges); see generally, PID, 21 NRC at 1698-1700 (Findings L-30 - L-33). In addition, Staff witnesses had testified that there may be, and probably are, operating plants where addition of loads induced by operator error would result in exceeding the ratings of the EDGs at those plants. Tr. 28,200 (Hodges, Knox). The Intervenorors' assertions in this regard must be rejected.

and operation of nuclear power reactors that are not
in direct response to a staff-imposed requirement.

The short of the matter is that the table, and accordingly the testimony of the witnesses founded thereon, were of so little probative value on the question of the staff's interpretation and application of GDC 17 that the Licensing Board was fully justified in excluding them from the record.

The Appeal Board's conclusions with respect to this matter are clearly correct, and do not present an "important question" for Commission review.

B. The Single Failure Criterion.

The Intervenor's second complaint concerns the Appeal Board's determination that the Shoreham EDGs are adequate under the single failure criterion of GDC 17. ^{15/} The Intervenor's claim the Appeal Board ruled as follows:

[E]ven if the Shoreham EDGs are of insufficient capacity and capability to meet the requirements of GDC 17 because of inadequate Maximum Permitted Loads, they would nevertheless be accepted because even if one EDG were lost, the other two would be sufficient to perform the necessary safety functions.

(Petition, at 9, citing ALAB-824, slip op. at 12). In effect, the Intervenor's contend that the Appeal Board waived the first requirement of GDC 17, and they assert that this is "an erroneous and dangerous interpretation of GDC 17 and the single failure criterion" (Id.).

The Intervenor's incorrectly characterize the Appeal Board's ruling. Contrary to their assertion, the Appeal Board found that the Shoreham EDGs are adequate under both of the standards set forth in GDC 17.

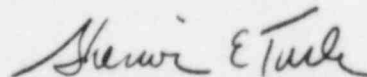
^{15/} This matter was addressed by the Appeal Board in its sua sponte review, and was never appealed by the Intervenor's although it had been directly addressed by the Licensing Board (PID, 21 NRC at 1698-99 (Finding L-32)).

First, the Licensing Board found that the design basis load need not include additional loads attributable to operator error, and that the Shoreham EDGs possess sufficient capacity and capability to accommodate the MESL as required by GDC 17 without requiring any additional margin; this determination was affirmed by the Appeal Board (see ALAB-824, slip op. at 12-14). Secondly, the Appeal Board found that the single failure criterion of GDC 17 was met, in that any two of the EDGs must and do "meet the power demand should the worst case event be accompanied or followed by a loss of the third generator (either because of operator error or otherwise)" (Id., at 12). The Intervenor's incorrectly assert that ALAB-824 "eviscerates" GDC 17 (Petition, at 10), and they fail to present an "important question" that warrants Commission review of that decision.

CONCLUSION

For the reasons set forth above, the Staff submits that the Intervenor's Petition for review of ALAB-824 should be denied.

Respectfully submitted



Sherwin E. Turk
Deputy Assistant Chief
Hearing Counsel

Dated at Bethesda, Maryland
this 26th day of December, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

85 DEC 27 P1:58

BEFORE THE COMMISSION

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,)
Unit 1))

Docket No. 50-322-1
(OL)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO 'PETITION FOR REVIEW OF APPEAL BOARD DECISION' FILED BY SUFFOLK COUNTY AND THE STATE OF NEW YORK" 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 26th day of December, 1985.

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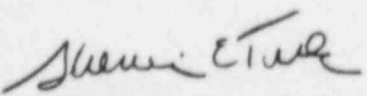
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