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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'88 FEB -1 P3:35

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
LONG ISLAND LIGHTING COMPANY) Docket No. 50-322-OL-6
) (Emergency Planning)
(Shoreham Nuclear Power Station,)
Unit 1))

NRC STAFF COMMENTS ON THE APPROPRIATE SEPARATE FORUM TO
HEAR EVIDENCE ON THE RELEVANCE OF PENDING EMERGENCY PLANNING
CONTENTIONS TO LILCO'S APPLICATION FOR A 25% POWER LICENSE

I. INTRODUCTION

In its Memorandum and Order (In Re: LILCO's Request for Authorization to Operate at 25% of Full Power), dated January 7, 1988 ("Order"), the Licensing Board determined that the applicant is entitled to pursue its request for a 25 % power license under its theory that the pending emergency planning contentions are not significant for the plant in question (under 10 C.F.R. Section 50.47(c)(1)). ^{1/} Order at 7. It ruled that Intervenor's are entitled to be heard on whether their contentions are relevant to the application, as provided under Section 50.57(c), id. at 7, and that further opportunity for Intervenor's to present their position should await publication of the Staff's Safety

1/ The Board determined that since LILCO is "entitled to explore all possibilities afforded by NRC regulations for obtaining an operating license for Shoreham within a meaningful time frame. . . It is no longer open for the parties to argue that no proceeding be undertaken or that it be long deferred on grounds of excessive burden or lack of resources." Order at 12.

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Evaluation of the LILCO proposal, ^{2/} Id. at 11. With regard to LILCO's request for appointment of a new licensing board to hear these matters, the Board determined to separate out this portion of the proceeding for consideration by another board, a special master, alternate board member or technical interrogator, in accordance with the authority in 10 C.F.R. Section 2.722. Id. at 10-11. On this last matter the Board requested the parties' views on the relative merits of the options for separate consideration. Id. at 11. The Staff's comments - recommending appointment of a Special Master - are provided below.

II. DISCUSSION

As set forth in the Staff's previous filings on this application, ^{3/} the Staff argued that Section 50.57(c) contemplated consideration by the sitting licensing board of the relevance to the low power license

^{2/} The Board also "directed" the Staff to proceed with a review of LILCO's 25% power application. Id. at 11,15. While the Staff does not here oppose the resumption of Staff review of the LILCO technical proposal regarding the lower accident risks at 25% power operation, the Staff notes that the Licensing Board's direction to the Staff to do so is contrary to law. Generally, licensing boards have no authority to order the preparation of Staff studies or analyses. See, Carolina Power & Light Co. (Sharon Harris Nuclear Power Plant) CLL-80-12, 11 NRC 514, 516-17 (1980); Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 206-07(1978); Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 2 and 3), LBP-83-36, 18 NRC 45, 48 (1983); New England Power Co., (NEP, Units 1 and 2) LBP-78-9, 7 NRC 271, 279 (1978).

^{3/} See, NRC Staff Response to Board Memorandum Requesting Parties' Views on Questions Raised by LILCO 25% Power Authorization Motion, dated November 6, 1987, ("Staff Response") and the NRC Staff Reply to Other Party Views on Board Questions Concerning LILCO Motion for Authorization to Operate at 25% Power, dated December 15, 1987.

application of the contentions already pending before that Board, and that this Board's familiarity with those contentions weighed heavily against creation of a separate board. The Staff adheres to these views.

Of the options which the Board is now considering, designation of a new licensing board suffers the same infirmities previously described in the cited pleadings. However, appointment of a Special Master to preside over evidentiary proceedings leading to a report and recommendation to this Licensing Board as to the relevance of pending emergency planning contentions addresses many of the Staff's reservations concerning further segmenting of this case.

As suggested by the Board's Order, at 10-11, the principal initial focus of the proceeding would be on the adequacy of the probabilistic risk assessment associated with operation of the Shoreham plant, as modified, at up to 25% power for an indefinite period. As previously noted by the Staff, probabilistic risk evaluations present technical issues which do not, per se, overlap with emergency planning. See, Staff Response, dated November 6, 1987. The likelihood of an accident, the release characteristics of an accident, and the radiological consequences of an accident can be considered without evaluating the import of any findings on emergency planning deficiencies. These issues have not been previously litigated in this case, and accumulated expertise of the sitting Licensing Board with regard to the Shoreham plant would not be wasted. Moreover, a Special Master with expertise in this area could be selected.

With regard to the question of relevance, as noted by the Board in its recent Order, the threshold for showing relevance is much lower than

for showing significance. Order at 7. Detailed familiarity with the pending issues is less critical for this determination than for the determination of significance. The decision of relevance will likely turn mainly on whether the technical presentation reveals that, at 25 % power, offsite emergency planning is needed or not, rather than whether particular aspects of the emergency plan are adequate. In addition, the report of the Special Master would be advisory, and subject to review by the Licensing Board, with its expertise in the emergency planning area. Order at 10-11.

As a result, appointment of a Special Master meets most of the legal and policy reservations previously expressed on appointment of a separate licensing board.

Appointment of a technical interrogator, as provided by Section 2.722, "to study the written testimony and sit with the presiding officer to hear the presentation and cross-examination by the parties of all witnesses. . ." offers too limited assistance. Appointment of a technical interrogator would require the Licensing Board to continue to make all prehearing determinations, dealing with discovery and other matters that may arise, as well as to preside over the presentations on the issue of relevance. This Board's burden would not be substantially lightened by this approach.

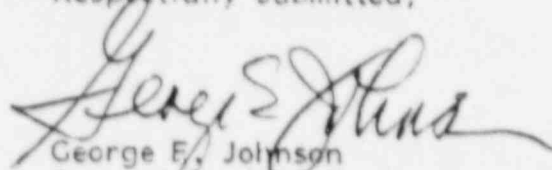
Selection of an alternate board member "to sit with the presiding officer. . .", like the appointment of a technical interrogator, anticipates full participation of the Board on all pending matters and similarly would not provide the "separate consideration" the Board seeks.

Finally, appointment of a separate Licensing Board, while lightening this Board's burdens, would require that additional Board to pass not only the technical issues and issues of relevance, but the merits of the case. Under this option, the value of this Board's expertise on emergency planning matters is lost, while requiring the commitment of three judges to deal with matters which could be handled by a qualified Special Master. In addition, a new licensing board might take a different approach to the underlying emergency planning issues possibly leading to inconsistent results on issues already decided by the other sitting Boards in the OL-3 and OL-5 proceedings. These problems are avoided by appointment of a Special Master.

III. CONCLUSION

The Board should appoint a Special Master to hear this application on all matters pertaining to the relevance of the pending emergency planning contentions to operation at 25% of rated power.

Respectfully submitted,


George E. Johnson
Counselor NRC Staff

Dated at Bethesda, Maryland
this 22nd day of January, 1988.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF COMMENTS ON THE APPROPRIATE SEPARATE FORUM TO HEAR EVIDENCE ON THE RELEVANCE OF PENDING EMERGENCY PLANNING CONTENTIONS TO LILCO'S APPLICATION FOR A 25% POWER LICENSE" 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 22nd day of January 1988.

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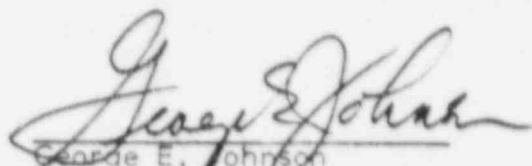
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