



OFFICE OF THE SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

February 21, 1990

RELEASED TO THE PDR
3/8/91
date initials

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations
FROM: Samuel J. Chilk, Secretary
SUBJECT: SECY-91-014 - SHOREHAM NUCLEAR POWER STATION,
UNIT 1 (SNPS) - THE LONG ISLAND LIGHTING
COMPANY'S (LILCO'S) REQUEST TO SHIP FUEL
SUPPORT CASTINGS & PERIPHERAL PIECES FOR
BURIAL

The Commission (with Chairman Carr and Commissioners Rogers and Remick agreeing) has approved the staff denial of LILCO's request to ship 137 fuel castings and 12 peripheral pieces to the Barnwell LLWR for disposal. Commissioner Curtiss disapproved this action for reasons contained in his comments which are attached.

Attachment:
As stated

cc: Chairman Carr
Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
OGC
GPA

SECY NOTE: THIS SRM, SECY-91-014, AND THE VOTE SHEET OF COMMISSIONER CURTISS WILL BE MADE PUBLICLY AVAILABLE 10 WORKING DAYS FROM THE DATE OF THIS SRM

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Commissioner Curtiss' comments on SECY-91-014:

For the reasons set forth in my vote on SECY-90-421 ("Decommissioning Criteria for Fort St. Vrain as a Prematurely Shutdown Plant"), I disapprove several aspects of the staff's treatment of prematurely shutdown licensees prior to NRC approval of decommissioning plans. In particular:

1. I strongly disagree with the staff's proposal to continue to require these licensees to protect and preserve all systems needed for full power operation from irreversible degradation. Since the NRC cannot require a licensee to return to power operation, and since neither NEPA nor the Atomic Energy Act requires that the NRC consider resumed operation as an alternative to decommissioning, Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-90-8, 32 NRC 201, 203, 207-208 (1990), the NRC has no basis in my view for requiring a prematurely shutdown licensee to preserve equipment and systems that are necessary only for resumed operation.¹
2. I also disagree with the staff's view that, until a possession-only license (POL) is issued, prematurely shutdown licensees must conduct their 10 CFR §50.59 analyses based on the unmodified operating license that authorizes full power operation. The staff's approach ignores the fact that, even though a POL has not been issued in this case, the operating license for Shoreham has been modified to prohibit operation.² The staff's approach fails to

¹ In an October 1, 1990 letter to LILCO, the staff noted that LILCO's proposal to ship 137 fuel support castings to a low-level waste disposal site "would preclude a timely restart [of Shoreham] and should be delayed until after a possession-only license is issued to LILCO." In view of the Commission's determinations in CLI-90-08, the fact that certain proposed licensee actions might "preclude a timely restart" should be irrelevant.

² Facility Operating License NPF-82 was modified by an order which provides that

the licensee is prohibited from placing any nuclear fuel into the Shoreham reactor vessel without prior approval of the NRC.

recognize the true licensed status of the plant³ and instead insists that LILCO evaluate \$50.59 modifications against some fictionalized "operating license," ignoring the reality of the situation and thereby unduly restraining the licensee in the actions that it might otherwise wish to take.

As I indicated in my vote on SECY-90-421, I believe that the Commission should recognize the true status of operating authorizations for the facility. Where, prior to issuance of a POL, the license has been modified to restrict or prohibit operation, the appropriate \$50.59 analysis is one which is applied to that license as modified. Specifically, the benchmark for addressing facility changes that may be made without prior NRC approval should be the operating license as modified by any amendment or order restricting or prohibiting operation.

3. Finally, I disagree with the staff's continuing practice of judging whether a particular action constitutes the start of decommissioning by determining whether the proposed action could be reversed (and, presumably, the facility restored to an operable condition) "without requiring substantial cost or substantial time."⁴ By focusing on reversibility and the restoration of equipment, components, systems, and structures to their original (operable) status, the staff, once again, seems to ignore the implications of the Commission's rulings in CLI-90-08 -- that the licensee's ability to return to power operation is irrelevant.⁵ The standards for determining whether a particular action constitutes the start of decommissioning are provided in 10

³ Although the confirmatory order restricting further operation of Shoreham states that it "in no way relieves the licensee of the terms and conditions of its operating license or of its commitments covering the continued maintenance of structures, systems and components outlined in its letter of September 19, 1989," the fact remains that, under the modified operating license, LILCO is no longer authorized to operate the Shoreham facility.

⁴ Apparently, the staff would define "decommissioning activity" as any activity that requires substantial time or substantial money to reverse.

⁵ At this stage, the issue is not whether the action that the licensee proposes would foreclose the option of resumed operation. The pertinent issue is whether the proposed action "would materially and demonstrably affect the methods or options available for decommissioning or . . . would substantially increase the costs of decommissioning." CLI-90-08, 32 NRC 201, 207 at n.3.

CFR §50.2, which defines "decommission"; the Statements of Consideration that support the decommissioning rules; and CLI-90-08.

Under 10 CFR §50.2, "'Decommission' means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license." As the Statements of Consideration in support of the decommissioning rule make clear --

The decommissioning rule applies to the site, buildings and contents, and equipment associated with a nuclear facility that are or become contaminated during the time the facility is licensed, and to activities related to [this] definition of "decommission" in the amended regulations. The decommissioning rule will not apply to the disposal of nonradioactive structures and materials beyond that necessary to terminate the NRC license.

53 Fed. Reg. 24018, 24021 (June 27, 1988). Thus, under the provisions of the decommissioning rule, a licensee of a prematurely shutdown plant is free to deal with those non-radioactive, uncontaminated parts of its facility as it sees fit, provided that it complies with the strictures of 10 CFR §50.59 and the terms of its modified operating license or POL and preserves those systems and components needed to maintain the plant in the safe shutdown condition.

As to the contaminated/radioactive parts of the facility, the Statements of Consideration for the decommissioning rule provide that --

The amendments contained in this rulemaking do not alter a licensee's capability to conduct activities under §50.59. Although the Commission must approve the decommissioning alternative and major structural changes to radioactive components of the facility or other major changes, the licensee may proceed with some activities such as decontamination, minor component disassembly, and shipment and storage of spent fuel if these activities are permitted by the operating license and/or §50.59.

53 Fed. Reg. 24018, 24025-26. In short, the decommissioning rules prohibit major structural changes to radioactive components or other major changes without prior NRC approval

of a decommissioning plan, but the rules do not prohibit all activity that might relate to decommissioning and they do not mention reversibility or the time and cost of restoring the facility to an operable status as factors that have a bearing on whether a specific activity constitutes the start of decommissioning. As the Commission emphasized in CLI-90-08, our obligation under NEPA, the Atomic Energy Act, and the Commission's health and safety and environmental regulations, is to ensure that the licensee --

refrains from taking any actions that would materially and demonstrably affect the methods or options available for decommissioning or that would substantially increase the costs of decommissioning, prior to the submission and approval of a decommissioning plan in accordance with the requirements of the Commission's decommissioning rules.

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-90-08, 32 NRC 201, at 207, n.3 (1990). These are the limits on the licensee's activities prior to the approval of a decommissioning plan.⁶ Estimates of the time or cost to restore the facility to an operable status should play no role in these determinations.

One concluding observation: The overall effect of the staff's approach in SECY-91-014 may well be to substantially and unnecessarily increase the costs and complexities of decommissioning⁷ -- a result that the Commission could not have

⁶ I would leave it to the staff to determine whether the action proposed in the instant case, the removal and shipment of 137 fuel support castings and 12 peripheral pieces from the Shoreham facility, constitutes a decommissioning activity under the proper standards. Although it would appear that the proposed activities would not materially and demonstrably affect the methods or options available for decommissioning or substantially increase costs -- indeed, they might help to hold decommissioning costs down -- the issue as to whether these activities are "major structural changes to radioactive components" is a closer question.

⁷ LILCO has indicated that it will have to provide separate onsite storage areas and incur higher LLW disposal charges if the NRC prohibits shipment of the fuel support castings until the final decommissioning plans are approved. Such increased costs and complexities would be appropriate and necessary if they were to result from a proper interpretation of the definition of

intended when it promulgated the decommissioning rules. For this reason, as well as for the more detailed reasons set forth above, I disapprove the course of action recommended by the staff and would, instead, direct the staff to proceed in accordance with the course of action outlined herein.

decommissioning and a proper application of the decommissioning rules. They would be unnecessary and wholly inappropriate if they were to result only from the staff's insistence that LILCO preserve its ability to resume full power operation at Shoreham.