



ADJUDICATORY ISSUE

(Affirmation)

May 2, 1983

SECY-83-157

COMMISSION LEVEL
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For: The Commission
From: Herzel H. E. Plaine, General Counsel
Subject: COMMISSION ORDER

Purpose: To solicit Commission approval of a proposed order

Discussion: I. Background

On April 20, the Licensing Board conducting the operating license proceeding for the Shoreham Nuclear Power Station issued two orders concerning the ongoing offsite planning controversy. In LBP-83-22, the Board denied intervenor Suffolk County's motion to terminate the proceeding because it had resolved not to approve or implement an offsite emergency plan. In concluding that the agency can consider a utility plan in lieu of a State or local government-approved plan, the Board's sixty-six page order includes an extensive discussion of the applicable regulations and statutory bases supporting this result. The Board also

Contacts:
Mark E. Chopko, GC, X-41493
Paul Bollwerk, GC, X-43224

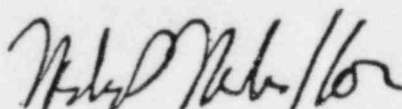
concludes that to terminate the proceeding on the basis of the County's emergency planning determination would impermissibly allow the County to regulate radiological health and safety in violation of the preemptive federal authority over such matters. Finally, in this order, the Board establishes a schedule for the submission of a utility plan and for litigation of the adequacy of that plan by the parties to the Shoreham proceeding.

The Licensing Board's second order, LBP-83-21, referred its ruling on the motion to terminate to the Appeal Board. The Licensing Board requested a ruling from the Appeal Board by mid-June when, under the schedule established in LBP-83-22, it would be ready to hold a prehearing conference concerning the litigation of offsite emergency planning issues. In addition, the Licensing Board certified to the Commission, through the Appeal Board, the issue of whether the Shoreham facility should be licensed for low-power operation when there is preliminary doubt whether the emergency preparedness requirements for full-power operation can and will be met in the future. The Board's order indicates that although the licensee has not yet applied for a low-power license, it anticipates such an application and wishes to give the Commission an adequate opportunity to consider the problem in the event the Board's partial initial decision on nonemergency planning contentions, now due in the end of July 1983, is favorable to the licensee.

On
April 26, the Appeal Board referred the
Licensing Board's ruling to the Commis-
sion for its consideration, indicating
in the same order that it would not be
making any statement on the certified
question concerning low-power licensing,
absent some Commission request to do so.

Recommendation:

Authorize the Secretary to issue the attached order.



Herzel H. E. Plaine
General Counsel

Attachment:
Proposed Order

The General Counsel requests that Commissioners' comments be sent directly to the Office of the Secretary ASAP. This paper will be scheduled for affirmation as soon as ready.

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