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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COLLECTED
NRC

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Nunzio J. Palladino, Chairman

DOCK LIGHTING & SEA
BRANCH

In the Matter of)
)
LONG ISLAND LIGHTING COMPANY)
)
(Shoreham Nuclear Generating)
Plant, Unit 1))

SERVED JUN 21 1984

Docket No. 50-322-OL-4

MEMORANDUM TO THE PARTIES

On June 6, 1984, counsel for Suffolk County and the State of New York served on me a formal request that I recuse myself from the Shoreham operating license proceeding. On June 18, the applicant filed a response to that request. In considering the Suffolk County/New York State request, it would be useful to have the comments of all parties as to whether I should recuse myself from this proceeding, either as a matter of legal requirement or of discretion. Accordingly, by this memorandum I request the submission of views by the NRC staff, to be filed no later than July 6, 1984.

Until such time as I make a decision on the Suffolk County/New York State request, I intend not to participate in any Commission deliberations on adjudicatory matters in the Shoreham proceeding. My decision to refrain from such

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participation while the request remains pending should in no sense be taken to suggest, one way or the other, any judgment on the legal merits of the request.

For the benefit of the parties, I have requested the Secretary, in serving copies of this Memorandum on the parties, to attach a copy of my testimony, prepared for the hearing of the House Committee on Interior and Insular Affairs on May 17, 1984, in which I presented an account of my participation in this proceeding.


NUNZIO J. PALLADINO
CHAIRMAN

Dated at Washington, D.C.

This 20th day of June, 1984.

INDIVIDUAL STATEMENT
OF
NUNZIO J. PALLADINO, CHAIRMAN
U. S. NUCLEAR REGULATORY COMMISSION
BEFORE THE
SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
U. S. HOUSE OF REPRESENTATIVES

MAY 17, 1984

CONFIDENTIAL

I WILL BEGIN MY STATEMENT BY BRIEFLY COVERING SOME OF THE SHOREHAM BACKGROUND. THE LONG ISLAND LIGHTING COMPANY, OR "LILCO", APPLIED FOR A CONSTRUCTION PERMIT FOR THE SHOREHAM NUCLEAR POWER STATION IN 1968, AND RECEIVED THAT PERMIT IN 1973. IN 1975 LILCO APPLIED FOR AN OPERATING LICENSE. A LICENSING BOARD WAS APPOINTED IN 1981 TO CONDUCT A PUBLIC HEARING, AND THE HEARING STARTED IN 1982. A SECOND BOARD WAS APPOINTED IN AUGUST, 1982 TO ADDRESS PHYSICAL SECURITY ISSUES IN THE CASE. A THIRD BOARD WAS APPOINTED IN MAY, 1983 TO DEAL WITH OFFSITE EMERGENCY PLANNING.

ON JUNE 3, 1983 LILCO FILED A MOTION WITH THE LICENSING BOARD REQUESTING A LICENSE TO OPERATE AT LOW POWER -- THAT IS, AT UP TO 5% OF RATED POWER. ON SEPTEMBER 21, 1983 THE FIRST LICENSING BOARD ISSUED A PARTIAL INITIAL DECISION IN WHICH IT RULED THAT FUEL LOADING AND LOW POWER OPERATION COULD BE AUTHORIZED IN ALL OTHER RESPECTS EXCEPT FOR THE NEED TO RESOLVE A PENDING

CONTENTION RELATED TO EMERGENCY ONSITE DIESEL GENERATORS.

(LBP-83-57, 18 NRC 468 (1983).)

ON FEBRUARY 22, 1984 THE LICENSING BOARD ADMITTED THREE CONTENTIONS, FILED BY SUFFOLK COUNTY, RELATING TO THE DIESEL GENERATORS. IN AN ORAL RULING THE BOARD STATED THAT, ON THE BASIS OF THE RECORD THEN BEFORE IT, IT COULD NOT FIND THE DIESEL GENERATORS ADEQUATE TO PERMIT LOW POWER OPERATION UNLESS IT CONSIDERED THE THREE CONTENTIONS ON THE MERITS. HOWEVER, THE BOARD ADDED:

WHAT WE HAVE SAID SO FAR WOULD NOT PRECLUDE LILCO FROM PROPOSING OTHER METHODS BY WHICH LILCO BELIEVES THE STANDARDS OF 50.57(c) COULD BE MET, SHORT OF LITIGATION OF CONTENTIONS 1, 2, AND 3 ON THE MERITS. OR POSSIBLY SEEKING SOME SORT OF WAIVER UNDER 2.758 OR OTHER PROCEDURES.

(TRANSCRIPT OF CONFERENCE OF PARTIES, FEBRUARY 22, 1984,
PAGE 21,616.)

FOUR WEEKS LATER, ON MARCH 20, 1984 LILCO FILED SUCH A REQUEST
WITH THE LICENSING BOARD.

UNWARRANTED LICENSING DELAYS

IN THE MEANTIME, HOWEVER, OTHER EVENTS HAD TAKEN PLACE. AS THE
COMMITTEE IS AWARE, THE COMMISSION ROUTINELY REPORTS TO THE
CONGRESS ON THE STATUS OF OUR LICENSING CASES. THAT REPORT
INCLUDES ESTIMATES OF THE DATES ON WHICH THE COMMISSION IS
PROJECTED TO REACH LICENSING DECISIONS IN THESE CASES. AS
RECENTLY AS JANUARY 25, 1984 THE COMMISSION HAD ADVISED THE
CONGRESS THAT IN ONLY ONE CASE WAS IT PROJECTED THAT THE FACILITY
WOULD BE PHYSICALLY COMPLETE, AND THEREFORE POTENTIALLY READY FOR
OPERATION, PRIOR TO A DECISION ON ITS OPERATING LICENSE. THAT

PLANT WAS LIMERICK, AND THE ESTIMATED TIME GAP INVOLVED WAS
7 MONTHS.

ON MARCH 9, 1984, HOWEVER, OUR EXECUTIVE DIRECTOR FOR OPERATIONS
NOTIFIED THE COMMISSION THAT THE AMOUNT OF DELAY HAD INCREASED
SIGNIFICANTLY. THE EDO NOW PROJECTED A TOTAL TIME GAP OF 14
MONTHS -- 5 MONTHS ATTRIBUTABLE TO LIMERICK AND 9 MONTHS TO
SHOREHAM. I WAS FURTHER INFORMED ORALLY BY THE EDO, ON OR ABOUT
MARCH 13, THAT ADDITIONAL DELAYS MIGHT BE DEVELOPING WITH RESPECT
TO THE WATERFORD AND COMANCHE PEAK FACILITIES, AND THAT SIZEABLE
NRC STAFFING ADJUSTMENTS WERE BEING MADE FOR THESE TWO PLANTS. I
BELIEVE THE EDO ALSO INFORMED ME AT THAT TIME THAT HE WAS SENDING
A NOTE (OR NOTES) ON BYRON AND SHOREHAM. I DO NOT RECALL THAT HE
DESCRIBED THE NOTES FURTHER. NEVERTHELESS, I WAS MINDFUL OF
CONCERNS FROM THIS COMMITTEE AND FROM INDIVIDUAL COMMISSIONERS
ABOUT SURPRISES AS A RESULT OF A RECENT BOARD DECISION DENYING
THE BYRON LICENSE. ALSO IN MY MIND AT THAT TIME WAS THE

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POSSIBILITY THAT IF NRC DIDN'T DO SOMETHING SHOREHAM WOULD GO UNDER BECAUSE OF NRC'S INABILITY TO MAKE TIMELY LICENSING DECISIONS, AND I FELT THAT, WHATEVER HAPPENED TO SHOREHAM, I DID NOT WANT INACTION BY NRC TO BE THE CAUSE. I DON'T RECALL THAT THESE THOUGHTS ON SHOREHAM WERE DISCUSSED WITH THE EDO. ALL OF THIS BACKGROUND CONTRIBUTED TO MY DESIRE TO HAVE A BRIEFING ON THE STATUS OF THESE MATTERS.

I WAS CONCERNED ABOUT THE INFORMATION I WAS RECEIVING, AND I THINK I WAS RIGHT, AS CHAIRMAN, TO BE CONCERNED. I FELT THE SITUATION I WAS BEING INFORMED OF WARRANTED PROMPT ATTENTION. ALSO, ANY TIME THAT THE CHAIRMAN OF THE AGENCY DISCOVERS THAT INFORMATION HE PROVIDED TO THE CONGRESS ONLY SIX WEEKS EARLIER WAS NO LONGER ACCURATE IN A SIGNIFICANT RESPECT, I THINK HE OUGHT TO BE CONCERNED, AND HE OUGHT TO BE ASKING HOW THIS CAME ABOUT. THE LAST THING I WANTED TO HAPPEN WAS TO HAVE THE PROJECTED

DELAYS CONTINUE TO INCREASE RAPIDLY AND CATCH THE COMMISSION AND THE CONGRESS BY SURPRISE.

OVER THE LAST SEVERAL YEARS, CONGRESS HAS INDICATED ITS CONCERN ABOUT UNWARRANTED LICENSING DELAY. IN ITS REPORT ON THE NRC APPROPRIATION FOR FY 1981, THE HOUSE APPROPRIATIONS COMMITTEE DIRECTED THE COMMISSION TO PROVIDE A MONTHLY REPORT TO THE CONGRESS ON THE STATUS OF LICENSING PROCEEDINGS. (H.REP. NO. 96-1093, 96TH CONG., 2D SESS., 146-47 (1980).) THE HISTORY OF THIS REQUIREMENT MAKES CLEAR THE CONCERN OVER UNWARRANTED LICENSING DELAY. ANOTHER EXAMPLE IS THE TEMPORARY OPERATING LICENSE AUTHORITY IN THE COMMISSION'S AUTHORIZATION FOR FY 1982-83 IN WHICH THE CONGRESS DIRECTED THE COMMISSION TO ADOPT ADMINISTRATIVE MEASURES TO MINIMIZE THE NEED TO LICENSE PLANTS PRIOR TO THE COMPLETION OF PUBLIC HEARINGS. (PUB. LAW 97-415, 96 STAT. 2067, § 11 (1983).) IT IS CLEAR TO ME THAT THE INTENT OF THIS CONGRESSIONAL INSTRUCTION WAS THAT THE COMMISSION SHOULD

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ADDRESS ADMINISTRATIVELY THE MATTER OF UNWARRANTED LICENSING
DELAY IN SPECIFIC CASES.

THE COMMISSION'S POLICY AND PLANNING GUIDANCE ALSO ADDRESSES THE
MATTER OF DELAY IN THE LICENSING PROCESS. AMONG OTHER THINGS, IT
PROVIDES THAT, "CONSISTENT WITH MAINTAINING THE SAFETY OF
OPERATING FACILITIES, STAFF REVIEWS AND PUBLIC HEARINGS SHOULD BE
COMPLETED ON A SCHEDULE THAT ASSURES THE LICENSING PROCESS WILL
NOT BE A CRITICAL PATH ITEM WHICH COULD UNNECESSARILY DELAY
REACTOR STARTUP." AS CHAIRMAN, IT IS MY RESPONSIBILITY TO TAKE
STEPS TO GATHER DATA AND INFORM THE COMMISSION OF ACTION NEEDED
TO FULFILL THIS GUIDANCE.

THE ADMINISTRATIVE PROCEDURE ACT (APA) REQUIRES THAT AGENCY
LICENSING PROCEEDINGS BE CONDUCTED BOTH WITH DUE REGARD FOR THE
RIGHTS OF ALL THE PARTIES AND COMPLETED "WITHIN A REASONABLE
TIME." SINCE THE COMMISSION HAS SUPERVISORY RESPONSIBILITY OVER

ALL OF ITS ADJUDICATIONS, IT IS ENTIRELY IN KEEPING WITH THE SPIRIT OF THE APA THAT I, AS CHAIRMAN, SUGGEST MEASURES DESIGNED TO ASSURE THAT THE COMMISSION COMPLIES WITH BOTH THESE STATUTORY REQUIREMENTS.

MARCH 16, 1984 MEETING

THE BEST THING TO DO IN MY VIEW WAS TO TRY TO GATHER AS MANY FACTS AS POSSIBLE ABOUT THE VARIOUS PLANTS THAT WERE POTENTIALLY DELAYED, AND THEN ALERT THE COMMISSIONERS (AND ULTIMATELY THE CONGRESS) ABOUT THE PROBLEM AND ADVISE THEM OF PROPOSED COURSES OF ACTION TO ADDRESS IT. ON MARCH 15 I MET WITH REPRESENTATIVES FROM OUR OFFICES OF POLICY EVALUATION AND GENERAL COUNSEL CONCERNING WHAT COULD BE DONE ABOUT THE PLANTS IMPACTED BY THE POTENTIAL DELAYS NOW BEING PROJECTED. DURING THAT DISCUSSION THERE WAS A CONSENSUS THAT I SHOULD CALL A MEETING WITH THE EXECUTIVE DIRECTOR FOR OPERATIONS, MEMBERS OF HIS STAFF, THE GENERAL COUNSEL AND HIS DEPUTY, AND THE CHAIRMAN OF THE ATOMIC

SAFETY AND LICENSING BOARD PANEL TO DISCUSS THE STATUS OF A NUMBER OF PLANTS AT WHICH THERE WERE PROBLEMS OR POTENTIAL PROBLEMS.

I WOULD LIKE TO SAY A FEW WORDS AT THIS TIME ABOUT THE ATTENDANCE AT THAT MEETING. THE NRC STAFF WAS TO BE THERE BECAUSE EXPERIENCE SHOWS THAT THE STAFF'S REVIEW AFFECTS LICENSING SCHEDULES. THE CHAIRMAN OF THE LICENSING BOARD PANEL WAS ASKED TO ATTEND BECAUSE IT IS HIS JOB TO BE KNOWLEDGEABLE ABOUT THE STATUS OF LICENSING CASES AND HE MIGHT HAVE IDEAS AS TO HOW UNNECESSARY DELAYS INVOLVING THE BOARDS COULD BE AVOIDED. HE WAS ALSO ASKED TO BE THERE TO CLARIFY ANY QUESTIONS ABOUT WHETHER OR NOT DELAYS WERE DUE TO THE NEED FOR STAFF DOCUMENTS BEFORE HEARINGS COULD BEGIN. THE GENERAL COUNSEL AND HIS DEPUTY WERE ASKED TO ATTEND IN ORDER TO PROVIDE ADVICE BASED ON THEIR EXPERIENCE AND TO ENSURE THAT OUR DISCUSSIONS WERE WITHIN LAW AND

COMMISSION RULES. THE OTHER ATTENDEES WERE ASKED TO ATTEND BECAUSE THEY MIGHT HAVE INFORMATION OR ADVICE TO CONTRIBUTE.

AT THAT MEETING, HELD ON MARCH 16, I WAS BRIEFED AS TO THE STATUS OF A NUMBER OF CASES, INCLUDING THE SHOREHAM PROCEEDING. WHILE THE BRIEFING INCLUDED IDENTIFICATION BY THE STAFF OF THE ISSUES OF THE SHOREHAM PROCEEDING, I DO NOT RECALL THE STAFF IN ANY WAY STATING OR INTIMATING HOW THOSE ISSUES SHOULD BE RESOLVED. I AM CONFIDENT THAT IF THE STAFF HAD DONE THAT, OR IF ANY OTHER IMPROPRIETY HAD BEEN COMMITTED, ONE OR MORE OF THE SEVERAL TOP AGENCY LAWYERS PRESENT WOULD HAVE RAISED A WARNING FLAG. LIKewise, I RECALL THE STAFF ADVISING THAT THEY UNDERSTOOD THAT LILCO PLANNED TO APPEAL THE DENIAL OF ITS LOW POWER REQUEST. BUT AGAIN, THERE WAS NO DISCUSSION, TO THE BEST OF MY RECOLLECTION, OF THE MERITS OF THAT REQUEST.

AT THE MARCH 16 MEETING, AS WAYS OF LESSENING THE PROJECTED 9 MONTH TIME GAP FOR SHOREHAM WERE DISCUSSED, AMONG THE SUGGESTIONS MADE -- AS I RECALL, BY OUR OFFICE OF GENERAL COUNSEL -- WAS THAT AN EXPEDITED HEARING COULD BE HELD ON THE DIESEL GENERATOR ISSUE. AT THAT MEETING, OGC WAS ASKED TO PREPARE AN OPTIONS PAPER FOR THE COMMISSION. MY MEMORANDUM OF MARCH 20, 1984 TO THE OTHER COMMISSIONERS REPORTED ON THAT MEETING.

MARCH 22 WORKING PAPERS AND MARCH 23 DRAFT ORDER

FOLLOWING THE MEETING, I CONTINUED TO BE QUITE CONCERNED ABOUT THE 9 MONTH DELAY FORECAST FOR SHOREHAM. FRANKLY, I WAS CONCERNED THAT THE FATE OF THE SHOREHAM FACILITY MIGHT BE DETERMINED NOT BY THE MERITS OF THE CASE, ONE WAY OR THE OTHER, BUT INSTEAD BY THE NRC'S INABILITY TO RUN ITS PROCESSES EFFICIENTLY. I THEREFORE FELT A NEED AS CHAIRMAN TO CONSIDER DOING MORE. I HAD OTHER CONVERSATIONS WITH MY STAFF AND, AT ONE POINT I BELIEVE, WITH THE EDO AS WELL, SEARCHING FOR OPTIONS.

THESE CONVERSATIONS CONFIRMED THAT, OTHER THAN AFFECTING THE STAFF'S REVIEW TIME, FURTHER OPTIONS WOULD HAVE TO BE DEVELOPED AT THE COMMISSION LEVEL.

AT MY REQUEST, AND BASED ON OGC'S ROUGH ESTIMATES OF THE TIME THAT AN EXPEDITED HEARING SUCH AS SUGGESTED BY OGC MIGHT TAKE, MY STAFF PREPARED A ONE-PAGE CONCEPTUAL DRAFT DIRECTIVE FROM THE COMMISSION TO THE CHAIRMAN OF THE LICENSING BOARD PANEL. I WAS CONSIDERING THE POSSIBILITY OF CIRCULATING SUCH A DRAFT TO THE OTHER COMMISSIONERS FOR REVIEW AS A POSSIBLE CONCEPT FOR EXPEDITING THE PROCESS. HOWEVER, I HAD NO BASIS TO ESTIMATE WHETHER THE ROUGH ESTIMATES OF A SCHEDULE WERE REASONABLE OR EVEN FEASIBLE.

ON MARCH 22 A WORKING PAPER CONTAINING THE SUBSTANCE OF THAT POSSIBLE DRAFT DIRECTIVE WAS SENT TO JUDGE COTTER. JUDGE COTTER MONITORS AND PERIODICALLY REPORTS TO THE COMMISSION ON THE STATUS

OF ACTIVITIES IN THE MANY LICENSING CASES PENDING BEFORE LICENSING BOARDS. I WAS INTERESTED IN HIS OPINION ON THE POSSIBLE SCHEDULE IN THE DRAFT WORKING PAPER BECAUSE OF HIS EXPERIENCE IN COMPLEX LITIGATION AND HIS FAMILIARITY WITH THE SHOREHAM CASE.

ON OR ABOUT MARCH 23, I WAS INFORMED OF A PAPER RECEIVED BY MY OFFICE FROM JUDGE COTTER WHICH WAS TAKEN TO BE HIS COMMENTS ON THE BRIEF WORKING PAPER WHICH MY STAFF HAD SENT TO HIM. IT WAS IN THE FORM OF A DRAFT COMMISSION ORDER DIRECTING THAT AN EXPEDITED HEARING BE CONDUCTED BEFORE A NEWLY APPOINTED LICENSING BOARD. ON MARCH 27 MY OFFICE GAVE A COPY OF THE DRAFT ORDER TO OGC, WHICH WAS PREPARING A PAPER ON OPTIONS FOR COMMISSION ACTION IN SHOREHAM.

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APPOINTMENT OF THE MILLER BOARD

AS STATED IN MY EARLIER TESTIMONY, ON MARCH 30, 1984 JUDGE COTTER APPOINTED A NEW LICENSING BOARD, WITH JUDGE MARSHALL MILLER THE PRESIDING OFFICER, TO CONSIDER LILCO'S LOW POWER MOTION. IN HIS ORDER ESTABLISHING THE NEW BOARD, JUDGE COTTER STATED THAT HE HAD BEEN ADVISED BY THE EXISTING SHOREHAM BOARD THAT TWO OF ITS MEMBERS WERE HEAVILY COMMITTED TO WORK ON ANOTHER OPERATING LICENSE PROCEEDING. A COPY OF JUDGE COTTER'S APPOINTMENT ORDER WAS PROVIDED TO ALL COMMISSIONERS.

JUDGE COTTER INFORMED MY OFFICE, BEFORE MAKING THE APPOINTMENT, THAT THE DECISION WAS HIS OWN AND THAT ITS BASIS WAS THE QUESTIONABLE AVAILABILITY OF THE PREEXISTING BOARD'S PERSONNEL. HOWEVER, SUCH ACTION WAS CONSISTENT WITH MY EXPRESSED CONCERN THAT WE USE OUR RESOURCES AS EFFICIENTLY AS POSSIBLE TO PROVIDE THE PARTIES REASONABLY PROMPT RESOLUTION OF THE ISSUES. I BELIEVE THAT JUDGE COTTER'S ACTION WAS CONSISTENT WITH COMMISSION POLICY TO ELIMINATE UNWARRANTED DELAY.

APRIL 2 AND APRIL 4 MEMORANDA

ON APRIL 2, I ALONG WITH MY FELLOW COMMISSIONERS RECEIVED FROM THE GENERAL COUNSEL A MEMORANDUM, PREPARED AT MY REQUEST, DISCUSSING POSSIBLE MEANS FOR COMMISSION ACTION TO EXPEDITE THE LOW POWER PROCEEDING. THE COMMISSION PROVIDED A COPY OF THAT MEMORANDUM TO THE HOUSE INTERIOR COMMITTEE IN EXECUTIVE SESSION ON MAY 2, 1984. THE MEMORANDUM DESCRIBED SEVERAL OPTIONS FOR COMMISSION CONSIDERATION.

INASMUCH AS NO REFERENCE WAS MADE IN THE APRIL 2 MEMORANDUM TO JUDGE COTTER'S DRAFT ORDER, ON APRIL 4 I CIRCULATED TO MY FELLOW COMMISSIONERS AND TO THE GENERAL COUNSEL THE DRAFT ORDER OF MARCH 23, TOGETHER WITH THE ONE-PAGE WORKING PAPER OF MARCH 22. IN MY COVER MEMORANDUM, I MENTIONED THAT FURTHER ACTION ON THIS OR ANY OTHER DRAFT ORDER WILL DEPEND ON THE NATURE OF COMMISSIONER COMMENTS ON OGC'S APRIL 2 MEMORANDUM.

IN MY VIEW, NEITHER MY MEMORANDUM OF APRIL 4, NOR THE GENERAL COUNSEL'S MEMORANDUM OF APRIL 2, CONSTITUTED ANY ATTEMPT TO MANIPULATE THE OUTCOME OF THE PROCEEDING, OR SUGGESTED ANY JUDGEMENT AS TO THE TECHNICAL MERITS OF THE SHOREHAM CASE. IN THE ABSENCE OF OBJECTIONS TO THE APRIL 4 MEMORANDUM, INCLUDING ANY FROM THE MANY LAWYERS WHO RECEIVED IT, I HAD NO REASON TO BELIEVE THAT ANYONE WOULD SUPPOSE THAT ANY IMPROPRIETY HAD BEEN COMMITTED BY THE ACTIONS COVERED IN THE APRIL 4 MEMORANDUM.

FURTHER, I HAD NO REASON TO BELIEVE THAT ANY COMMISSIONER THOUGHT I HAD OVERSTEPPED MY ROLE AS CHAIRMAN AT THAT TIME. IF ANY COMMISSIONER HAD BELIEVED THAT THE APRIL 4 MEMORANDUM WAS IMPROPER, OR OTHERWISE SAW ANY IMPROPRIETY IN MY EXPLORATION OF MEANS OF EXPEDITING THE DECISIONAL PROCESS, I BELIEVE IT WAS INCUMBENT ON THAT PERSON TO SPEAK UP AS SOON AS POSSIBLE, SO THAT THE COMMISSION MIGHT CONSIDER PROMPTLY THE NEED FOR ACTION TO

ADDRESS ANY ALLEGED COMPROMISE IN THE INTEGRITY OF THE
PROCEEDING.

MAY 2 REPORT TO CONGRESS

ON APRIL 24, 1984 THE COMMISSION MET ON LICENSING DELAYS IN
PUBLIC SESSION. FOLLOWING THAT MEETING A QUARTERLY REPORT WAS
SENT TO THE CONGRESS. THE REPORT, DATED MAY 2, PROJECTED A TOTAL
LICENSING DELAY OF 17 MONTHS: 2 MONTHS FOR SHOREHAM, 5 MONTHS FOR
LIMERICK, 7 MONTHS FOR COMANCHE PEAK, 1 MONTH FOR WATERFORD, AND
2 MONTHS FOR BYRON. THE REPORT ALSO STATED THAT THE ADDITIONAL
TIME IT WILL TAKE TO COMPLETE THE NECESSARY REVIEWS AND THE
POTENTIAL FOR FURTHER LITIGATION OF FINANCIAL QUALIFICATION
ISSUES AT INDIVIDUAL HEARINGS COULD RESULT IN SIGNIFICANT
ADDITIONAL DELAYS.

I WOULD LIKE TO NOTE THAT THE 2 MONTH DELAY PROJECTED FOR
SHOREHAM WAS REDUCED FROM THE PREVIOUS 9 MONTH ESTIMATE ON THE

PRESUMPTION THAT A DECISION AUTHORIZING LOW POWER OPERATION IN EARLY JUNE, 1984 WOULD BE POSSIBLE. HOWEVER, THAT DATE NOW APPEARS HIGHLY UNLIKELY.

CLOSING REMARKS

THIS COMPLETES THE HISTORY FOR MY ROLE IN THE SHOREHAM PROCEEDING, EXCEPT FOR MY PARTICIPATION IN THE COMMISSION ACTIONS DESCRIBED IN MY EARLIER TESTIMONY.

UNQUESTIONABLY, I TRIED TO BRING SOME MEASURE OF EFFICIENCY AND EXPEDITION TO THIS PROTRACTED LICENSING PROCEEDING, AS I HAVE ATTEMPTED TO BRING GREATER EFFICIENCY AND EXPEDITION TO THE AGENCY AS A WHOLE. I WOULD BE FAILING IN MY DUTY TO THE PUBLIC IF I DID NOT, IN MY CAPACITY AS CHAIRMAN OF THE AGENCY, DO JUST THAT. PEOPLE SOMETIMES FORGET THAT, IN A MULTI-MEMBER COMMISSION, ULTIMATELY THE RESPONSIBILITY FOR INITIATING ACTION RESTS WITH THE CHAIRMAN. AND IT RIGHTLY SHOULD REST WITH THE CHAIRMAN, AS THE NRC REORGANIZATION PLAN MAKES CLEAR, SUBJECT TO

THE CONSTRAINTS FIRST, THAT THE CHAIRMAN'S ACTIONS BE CONSISTENT WITH THE POLICIES OF THE COMMISSION, AND SECOND THAT THE CHAIRMAN BRING TO THE COMMISSION'S ATTENTION MATTERS THAT BEAR UPON THE COMMISSION'S FUNCTIONS.

I BELIEVE THAT MUCH OF WHAT IS AT ISSUE HERE GOES TO THE HEART OF THE ABILITY OF THE CHAIRMAN OF THE NRC TO PERFORM HIS FUNCTIONS IN THE MANNER WHICH THE NRC REORGANIZATION PLAN MANDATED. I SUBMIT THAT NO NRC CHAIRMAN CAN AFFORD TO STAND BACK AND SIMPLY OBSERVE THE AGENCY'S FUNCTIONING WITH ALOOF DETACHMENT. HE MUST BE INVOLVED IN ASSURING THAT THE AGENCY IS RUNNING EFFICIENTLY. HE MUST BE ASSURING THAT THE AGENCY'S 3,300-PERSON STAFF IS PERFORMING ITS FUNCTIONS SOUNDLY AND EXPEDITIOUSLY. HE MUST BE KEEPING HIMSELF INFORMED, THROUGH THE NRC STAFF, OF THE STATUS OF ALL IMPORTANT MATTERS PENDING BEFORE THE AGENCY.

I DO NOT SUBSCRIBE TO THE VIEW THAT, WHEN WE ARE TALKING ABOUT ADJUDICATORY ACTIVITIES, THE COMMISSION AND ITS CHAIRMAN MUST AT ONCE ABANDON ANY CONCERN FOR EFFICIENCY AND TIMELINESS. LIKE ANY JUDGE, WE HAVE A LEGITIMATE INTEREST IN THE EFFICIENT RUNNING OF THE ADJUDICATORY PROCESS. I THINK IT'S MORE THAN JUST AN INTEREST; IT'S ALSO AN OBLIGATION. I BELIEVE PARTIES DESERVE PROMPT ATTENTION TO THE ISSUES THEY RAISE, AND I AM REMINDED OF THE STATEMENT THAT "JUSTICE DELAYED IS JUSTICE DENIED." JUST AS A JUDGE MAY BE INTERESTED IN SEEING CASES MOVED ALONG, MY CONCERN FOR EXPEDITION IMPLIES NO JUDGMENT WHATSOEVER AS TO THE MERITS OF A PARTICULAR CASE. I INTEND TO MAKE ANY DECISION ON ANY REQUEST FOR A LICENSE FOR SHOREHAM ON THE ADJUDICATORY RECORD WHICH WILL BE PRESENTED TO US.

I HAVE NOT PREJUDGED THE ISSUES IN DISPUTE IN THIS PROCEEDING. I DO NOT PLAN TO RECUSE MYSELF FROM IT BECAUSE I HAVE NEITHER PREJUDGED THE MERITS OF THE CASE NOR HAVE I COMMITTED ANY

IMPROPRIETIES OF WHICH I AM AWARE. ON THE CONTRARY, I BELIEVE THAT MY EFFORTS REFLECT MY DETERMINATION TO DISCHARGE MY DUTIES TO THE PUBLIC, THE CONGRESS, AND THE COMMISSIONERS WITH COMPETENCE AND INTEGRITY.

AS A RESULT OF ACCUSATIONS MADE IN LETTERS FROM MEMBERS OF CONGRESS ON SHOREHAM, WHICH ACCUSATIONS ARE BEING AIRED TODAY, A CLOUD HAS BEEN CAST OVER THE CHAIRMAN'S AUTHORITY TO MONITOR THE STATUS OF LICENSING CASES, COLLECT THE FACTS SURROUNDING THE STATUS, AND BRING THEM TO THE ATTENTION OF THE COMMISSION.

I BELIEVE THAT THIS CLOUD MUST BE LIFTED BECAUSE IT IS IN DIRECT CONTRADICTION TO THE RESPECTIVE ROLES ASSIGNED TO THE CHAIRMAN AND THE COMMISSION BY THE NRC REORGANIZATION PLAN OF 1980. I ALSO BELIEVE IT SHOULD BE LIFTED IN ORDER TO ENSURE THE COMMISSION'S ABILITY TO DO ITS BUSINESS IN A TIMELY FASHION.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I WOULD LIKE TO CLOSE WITH THE FOLLOWING OBSERVATIONS.

I BELIEVE THIS NATION IS AT A CROSSROADS WITH RESPECT TO ITS ABILITY TO BRING NEW NUCLEAR POWER PLANTS INTO OPERATION. I BELIEVE THAT THE AMERICAN PEOPLE ARE ENTITLED TO HAVE DECISIONS ON NEW NUCLEAR PLANTS MADE ON THE MERITS OF THE ISSUES INVOLVED -- NOT MADE BY DEFAULT THROUGH GOVERNMENTAL INEFFICIENCY. WE OWE THE PUBLIC SOUND SAFETY DECISIONS; WE ALSO OWE THE NATION EFFICIENCY IN OUR PROCESSES. THAT IS WHERE MY EFFORTS HAVE BEEN DIRECTED.

SINCE I HAVE BEEN CHAIRMAN, CONGRESSIONAL DIRECTION AS WELL AS COMMISSION POLICY HAVE SENT A CLEAR SIGNAL THAT IT IS IN THE PUBLIC INTEREST TO MAKE LICENSING DECISIONS ON NUCLEAR POWER PLANTS EXPEDITIOUSLY, SO LONG AS THEY ARE SAFE. I SUBMIT THAT IF

THE CONGRESS OR THE COMMISSION WISH TO CHANGE THAT SIGNAL, THEN
THE CONGRESSIONAL DIRECTION AND POLICY SHOULD BE CHANGED.

I WILL NOW ANSWER ANY QUESTIONS YOU MAY HAVE.