

MORRIS K. UDALL, ARIZ., CHAIRMAN

PHILIP BURTON, CALIF.
 ABRAHAM RABEN, JR., TEX.
 JOHN F. EDGERLING, OHIO
 ANTONIO BORJA WON PAT, GUAM
 JAMES WEAVER, OREG.
 JAMES J. FLORIO, N.J.
 PHILIP R. SHARP, IND.
 EDWARD J. MARKEY, MASS.
 BALTASAR CORRADE, P.R.
 AUSTIN J. MURPHY, PA.
 NICK JOE CAHILL, E. W. VA.
 BRUCE F. VENTO, MINN.
 JERRY NUCKLARY, LA.
 JERRY M. PATTERSON, CALIF.
 RAY KOGONSKI, COLO.
 DALE E. KILDEE, MICH.
 TONY COELHO, CALIF.
 S. VENLY S. BYRON, MD.
 RON DE LUCA, V.I.
 EMUEL GILJOHNSON, CONN.
 WILLIAM PATMAN, TEX.
 PETER H. ESTIMAYER, PA.
 JAMES MOODY, WIS.
 ALAN S. MOLLOHAN, W. VA.
 JAMES MCCLURE CLARK, N.C.
 JAMES F. MOULTY, JR., ARIZ.
 RICHARD K. LEBMAN, CALIF.

MANUEL LUNA, JR., N. MEX.
 DON YOUNG, ALASKA
 ROBERT J. LADOMARINO, CALIF.
 DAN MARRIOTT, UTAH
 RON MARLENEE, MONT.
 RICHARD E. CHENEY, WYO.
 CHARLES PASHAYAN, JR., CALIF.
 LARRY CRAIG, IDAHO
 MARK BROWN, COLO.
 DENNY SMITH, OREG.
 JAMES V. HANSEN, UTAH
 BILL BRIDGEMAN, MD.
 JOHN MCCAIN, ARIZ.
 BARBARA VUCANOVICH, NEV.

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

U.S. HOUSE OF REPRESENTATIVES
 WASHINGTON, D.C. 20515

March 28, 1984

STANLEY SCOVILLE
 STAFF DIRECTOR
 AND COUNSEL

ROY JONES
 ASSOCIATE STAFF DIRECTOR

LEE MC ELVAIN
 GENERAL COUNSEL

TIMOTHY W. GLIDDEN
 REPUBLICAN COUNSEL

The Honorable Nunzio J. Palladino
 Chairman
 U.S. Nuclear Regulatory Commission
 1717 H Street, N.W.
 Washington, D.C. 20555

Dear Mr. Chairman:

I read with interest your March 20, 1984 memorandum to the other Commissioners regarding perceived "licensing delays." While I understand your concern about unnecessary licensing delays, I believe that the Commission must adhere strictly to the requirements of the Administrative Procedure Act.

Your memorandum suggests that you are willing to advocate a course of action that could circumvent the procedural and substantive requirements which have been established to guide the Commission's decision-making process. The licensing process serves all parties, Congress and the general public. It would be inappropriate to streamline that process in a way which constrains or eliminates the due consideration of genuine public health and safety issues. To do so, I believe, would make a mockery out of the licensing process and raise legitimate doubts as to whether any operation of the affected nuclear power plants will in fact be consistent with the Commission's responsibility of protecting the public health and safety.

Prior to taking actions that could vitiate the licensing process, I believe the Commission should review the cause(s) of potential delays. In each of the cases mentioned in your memorandum (i.e., Shoreham, Limerick, Waterford, Comanche Peak, Diablo Canyon, Byron, Midland, Palo Verde and Grand Gulf), I am aware of delays resulting from serious safety problems that were actually caused by the utility and/or its contractors. So, for example, it is difficult for me to understand why you apparently believe the licensing process for Byron should be "expedited" given the findings of the NRC's own Atomic Safety and Licensing Board in that case.

I find your statement pertaining to the Shoreham case particularly disturbing. You recommend that:

...the Commission consider a proposal from OGC for an expedited hearing on the diesel problem,

8407310189 840713
 PDR COMMS NRCC
 CORRESPONDENCE PDR

March 28, 1984

Page Two

or proposals for other possible actions so that at least a low power decision might be possible while awaiting resolution of the emergency planning issue.

Clearly, this statement presents the reasonable inference that you have pre-judged the merits of this regulatory proceeding in three critical respects: (1) that the plant should receive a low power license regardless of its use of diesel generators that are known to be defective; (2) that there will be a "resolution of the emergency planning issue" and the plant will eventually receive a full power license; and, (3) that the procedural rights and substantive comments of the intervenors do not have to be met and heard.

If you have made these pre-judgements, I believe that it is imperative that you immediately recuse yourself from voting on either the low power or full power license for Shoreham. If your intention was different, then I think you should clarify your views and reconsider your request for an "expedited" process. My request is not meant to suggest any judgement upon how the Commission resolves these issues or what its final determination should be, but rather, to assure all parties that the matters before the Commission will be determined on the basis of a fair and full record. I am certain that you will agree it would be highly inappropriate and unfair for these important proceedings to be questioned because of the appearance that the Chairman of the NRC had reached a determination of disputed matters prior to hearing from all parties and via an artificially truncated deliberative process.

Aside from the unfortunate appearance created by your memorandum, I would like to note one procedural question that I have with your remarks concerning the Shoreham case. If accepted by a majority of the Commission, your proposal could result in a situation in which fuel loading and low power operation is authorized, even though the issuance of a full power license remained profoundly in doubt.

As you are aware, the licensing board in this case recommended on April 20, 1983 that the Commission,

...not permit the loading of fuel at Shoreham unless and until the impending factual inquiry can support a finding of reasonable assurance that the level of offsite emergency preparedness required for a full power license can and will be developed.

At the same time, the licensing board stated that it could not find that there was reasonable assurance that emergency preparedness would ever be found sufficient to issue an operating license for Shoreham. The board concluded:

It is our view that even if the explicit emergency planning requirements of Section 50.47(d) for issuance of a low power license for Shoreham are met, as a matter of sound public policy the Commission should not apply that section so as to permit the irradiation of fuel in a commercial nuclear power plant in circumstances where there is no reasonable assurance that the power plant will in the future be permitted to engage in the normal contemplated full power operation, or for that matter in any operation above five percent. Stated differently, there are special circumstances in this particular proceeding such that application of Section 50.47(d) would not serve the purposes for which the rule was adopted....

The apparent and proper purpose of the rule is to avoid unnecessary delay after the issuance of a full power license which would result if fuel loading and low power testing had not already been accomplished. These first stages of fuel loading and operation up to five percent of rated power typically take several months, but could take longer if problems arise. We believe that avoidance of this period of delay, which would occur only if and when a full power operating license is issued for Shoreham, does not outweigh the irreversible change in the status quo of Shoreham which would obtain if fuel were to be irradiated in the reactor in circumstances where, at present, we cannot find there is reasonable assurance that Shoreham will ever be permitted to operate at power levels above five percent.

It is worth noting that the board's doubt about the resolution of the emergency planning issue pre-dates the active involvement of New York Governor Mario M. Cuomo in the intervention process and state court in this case.

While I am aware that the advice of the licensing board was subsequently rejected by the Commission in a June 30, 1984 decision (with Commissioners Gilinsky and Asselstine dissenting), I am at a loss to understand why. Since the logic of the board is apparent, and the Commission's position is less than apparent, I would request the Commission's clarification as to why it apparently believes that making a determination on a low power license in this case is desirable prior to an actual "resolution" of the emergency planning issue.

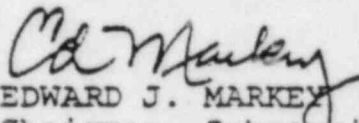
To facilitate the Subcommittee's further consideration of these issues, I would also appreciate receiving all documents leading to or resulting from your March 20, 1984 memorandum. Specifically requested are those documents referred to in your memorandum.

The Honorable Nunzio J. Palladino
March 28, 1984
Page Four

I look forward to the Commission's response to the issues and concerns stated in this letter. In particular, I would appreciate your careful consideration of my question regarding whether you have effectively pre-judged the merits of certain aspects of the Shoreham proceeding.

Thank you for your attention to this matter.

Sincerely,


EDWARD J. MARKEY
Chairman, Subcommittee on
Oversight and Investigations

EJM:rau

MORRIS K. UDALL, ARIZ., CHAIRMAN

PHILIP BURTON, CALIF.
 ABRAHAM KAZEN, JR., TEX.
 JOHN F. SEIBERLING, OHIO
 ANTONIO FORJA WOX PAT., GUAM
 JAMES WEAVER, OREG.
 JAMES J. FLORIO, N.J.
 PHILIP R. SHARP, IND.
 EDWARD J. MARKEY, MASS.
 BALTASAR CORRADA, P.R.
 AUSTIN J. MURPHY, PA.
 NICK JOE RAHALL, S. W. VA.
 BRUCE F. VENTO, MINN.
 JERRY HUCKABAY, LA.
 JERRY M. PATTERSON, CALIF.
 RAY KOGOVSEK, COLO.
 DALE E. KILDEE, MICH.
 TONY COELHO, CALIF.
 BEVERLY B. BYRON, MD.
 RON DE LUCCO, V.I.
 SAMUEL GILDENSON, CONN.
 WILLIAM PATMAN, TEX.
 PETER H. KOSTMAYER, PA.
 JAMES MOODY, WIS.
 ALAN B. MOLLOHAN, W. VA.
 JAMES MCCLURE CLARK, N.C.
 JAMES F. MCJULTY, JR., ARIZ.
 RICHARD H. LEHMAN, CALIF.

MANUEL LUJAN, JR., N. MEX.
 DON YOUNG, ALASKA
 ROBERT J. LAGOMARSINO, CALIF.
 DAN MARRIOTT, UTAH
 RON MARLENEE, MONT.
 RICHARD B. CHENEY, WYO.
 CHARLES PASHAYAN, JR., CALIF.
 LARRY CRAIG, IDAHO
 HANK BROWN, COLO.
 DENNY SMITH, OREG.
 JAMES V. HANSEN, UTAH
 BILL EMERSON, MO.
 JOHN MCCAIN, ARIZ.
 BARBARA VUCANOVICH, NEV.

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

U.S. HOUSE OF REPRESENTATIVES
 WASHINGTON, D.C. 20515

STANLEY SCOVILLE
 STAFF DIRECTOR
 AND COUNSEL

ROY JONES
 ASSOCIATE STAFF DIRECTOR

LEE MC ELVAIN
 GENERAL COUNSEL

TIMOTHY W. GLIDDEN
 REPUBLICAN COUNSEL

April 12, 1984

The Honorable Nunzio J. Palladino
 Chairman
 U.S. Nuclear Regulatory Commission
 1717 H Street, N.W.
 Washington, D.C. 20555

Dear Mr. Chairman:

Thank you for your prompt response to my March 28, 1984 letter to you about perceived "licensing delays." I continue to think that your March 20, 1984 memorandum to the other Commissioners on this subject and other subsequent actions that you have taken strongly imply that you have pre-judged aspects of the Shoreham licensing proceeding.

Regardless of your initial intent, certain events have transpired which create the appearance that your statements and views have been treated as a mandate by members of the NRC's Atomic Safety and Licensing Board (ASLB). Your March 20, 1984 memorandum states that you convened a meeting with B. Paul Cotter, Jr., Chief Administrative Judge of the ASLB and members of the NRC staff (a party to the proceeding) on March 16, 1984 to discuss potential licensing delay at Shoreham and other plants. Apparently, as an outgrowth of that meeting, and your subsequent memoranda, Judge Cotter appointed a new board to consider on an expedited basis the Long Island Lighting Company's (LILCO) March 20, 1984 "Supplemental Motion for [a] Low Power Operating License."

Over the unanswered objections of Suffolk County and New York State, the newly appointed licensing panel issued an order on April 6, 1984 that states: "...the expedited schedule set forth below will not prejudice any party to this proceeding." In reaching such a decision, I am concerned that the board did not: (a) specifically resolve or even respond to the arguments of intervenors that an expedited schedule would prejudice their right to a full and fair hearing; and, (b) state why it apparently

~~8404240247~~

6pp.

The Honorable Nunzio J. Palladino
April 12, 1984
Page Two

believes an expedited hearing is necessary. I respectfully request that the Commission formally ask the board to respond to these two issues.

It would appear that in the absence of any specifically stated rationale by the licensing board, that it has declined to respond to the arguments of intervenors and decided to oblige LILCO because of the utility's perceived financial problems. Apparently, the board is in agreement with the rationale stated by LILCO in the first two sentences of its Supplemental Motion:

The Shoreham Nuclear Power Station represents both a huge commitment of economic resources and Long Island's only power plant not dependent on foreign oil. Thus, there are compelling reasons for the station's early operation.

I am unaware of any statutes which provide the ASLB with the authority to expedite a proceeding on this basis without hearing from and resolving the views of all parties. Because of the appearance of impropriety in the board's actions, I believe the Commission should request the board to explain why it believes an expedited hearing is necessary.

With respect to your involvement in this case, I understand that on April 4, 1984 you circulated a follow-up memorandum to the other Commissioners that included a proposed order drafted by Judge Cotter and a paper written by your own staff that would have set forth an expedited schedule in which the Shoreham low power licensing proceeding would be completed in thirty to sixty days.

Your memorandum and the draft order, apparently written prior to the April 4, 1984 licensing board hearing to decide the merits of LILCO's request for an expedited proceeding, was circulated without obtaining or representing the views of all parties. As the ultimate decision-maker in this proceeding, your actions create the appearance that you have pre-judged the merits of LILCO's request and did so in an unorthodox and inappropriate fashion.

The present "licensing delay" at Shoreham is not attributable to the NRC licensing process. The delay is not a licensing delay per se, but rather, is directly attributable to the use of defective and unqualified equipment used to supply on-site power. Hence, actions taken to expedite review of this issue could impact upon the consideration of the merits and substance of the proceeding itself.

The Honorable Nunzio J. Palladino
April 12, 1984
Page Three

In order that public confidence can be restored, if possible, to what has become an unseemly and confused process, I think that it is essential that you explain why you believe the Shoreham proceeding should be expedited as well as your reason for circulating the draft order prepared prior to hearing from and resolving the views of all parties. In this context, I also think you should reconsider recusing yourself from voting on either the low power or full power license for Shoreham.

Additionally, I would like to be provided with all documents and memoranda on this issue that have been written or circulated subsequent to your March 20, 1984 memorandum. I would appreciate receiving these documents within five working days.

Further, please identify and provide a description of all communications that you, the other Commissioners, OGC, EDO, or members of the NRC staff have had in 1984 that related to or concerned the matter of licensing Shoreham with employees or officials of LILCO, representatives of LILCO (including but not limited to members of the firm Hunton and Williams), organizations composed of or representing the nuclear industry, the Secretary of Energy or members of the Department of Energy staff, the Director or Associate Director of the Federal Emergency Management Agency (FEMA) or members of the FEMA staff, or other Executive Branch offices or members of the White House staff. To the extent that any such communication was written, please provide all relevant documents.

Thank you for your prompt attention to this matter.

Sincerely,



Edward J. Markey
Chairman
Subcommittee on Oversight
and Investigations