

NOTATION VOTE

RESPONSE SHEET

TO: SAMUEL J. CHILK, SECRETARY OF THE COMMISSION

FROM: CHAIRMAN CARR

SUBJECT: SECY-89-247 - SHOREHAM STATUS AND DEVELOPMENTS

APPROVED w/comment DISAPPROVED _____ ABSTAIN _____

NOT PARTICIPATING _____ REQUEST DISCUSSION _____

COMMENTS:

The staff should document the positions outlined in this paper to the licensee and obtain a written commitment to maintain the facility in the manner described.

The staff should also take comparable actions with respect to the Rancho Seco facility.

I agree with the last paragraph of Chairman Roberts vote.

The staff should ensure that NUCO maintains the required emergency preparedness capability until their license has been amended.

With respect to the staff's question of "when does decommissioning start?", in my opinion that decommissioning starts ^{at least} when the owner of the plant states that the plant will never operate. The staff should investigate amending the decommissioning rule as appropriate.

SIGNATURE

Kenneth M. Carr

8.24.89

DATE

ENTERED ON "AS" YES NO _____

9101160164 900904
PDR FDIA
MCGRAN90-A-30 PDR

NOTATION VOTE

RESPONSE SHEET

TO: SAMUEL J. CHILK, SECRETARY OF THE COMMISSION

FROM: COMMISSIONER ROBERTS

SUBJECT: SECY-89-247 - SHOREHAM STATUS AND DEVELOPMENTS

APPROVED X w/cmts rd DISAPPROVED _____ ABSTAIN _____

NOT PARTICIPATING _____ REQUEST DISCUSSION _____

COMMENTS: SEE ATTACHED COMMENTS rd



SIGNATURE

8/16/89

DATE

ENTERED ON "AS" YES _____ NO _____

COMMISSIONER ROBERTS' COMMENTS ON SECY-89-247 *TR*

This paper does not succinctly define the point at which in the Staff's view decommissioning starts. However, the Staff appears to believe that it does not start until by a licensee's actions or failures to act a facility begins to become degraded to such an extent that it is not "capable of being returned to service without untoward resource expenditure." In the case of Shoreham this would allow LILCO to reduce its plant personnel as long as it retains "an adequate number of properly trained staff to ensure plant safety in the defueled mode, including the ability to cope with malfunctions accidents, and unforeseen events."

The Staff's position provides no objective standard for differentiating a plant that is "capable of being returned to service without untoward resource expenditure" from a plant for which decommissioning has started. Nor does it provide an objective standard for determining types, qualifications and numbers of personnel who must be retained on the Shoreham plant staff.

The Staff appears to recognize that as long as LILCO does not violate the minimum requirements of its operating license for "operation" in the defueled mode or NRC regulations, the NRC has no obvious public health and safety basis for imposing additional duties on LILCO. Nevertheless, the Staff intends to prohibit Shoreham from "decommissioning itself" by requiring all systems needed for full-power operation to be preserved from degradation even if they are not required for safety in the defueled mode. To the extent that LILCO agrees with the NRC Staff on the maintenance and custodial services necessary to prevent excessive degradation of these systems and provides them, no challenge to our legal authority to require them is likely. However, should the New York State regulators threaten to disallow the costs of preserving systems not required for safety in the defueled mode, a different situation might arise.

Because LILCO has stated that Shoreham will never become commercially operable under LILCO ownership, I believe we should require LILCO to submit staffing, maintenance and funding plans for preventing degradation of Shoreham pending its transfer to other ownership or its decommissioning. Moreover, should that transfer not occur prior to July 26, 1990, LILCO, in accordance with 10 CFR 50.33k(2), is required to submit plans for decommissioning Shoreham and to provide reasonable assurance that funding for decommissioning will be available.

NOTATION VOTE

RESPONSE SHEET

TO: SAMUEL J. CHILK, SECRETARY OF THE COMMISSION

FROM: COMMISSIONER ROGERS

SUBJECT: SECY-89-247 - SHOPEHAM STATUS AND DEVELOPMENTS

APPROVED ^{WITH} COMMENTS _{KCH} DISAPPROVED _____ ABSTAIN _____

NOT PARTICIPATING _____ REQUEST DISCUSSION _____

COMMENTS:

I believe that it is important for LICCO to commit in writing to the staff's requirements for a safe diminution of licensal activities at Shopeham and to the oral commitments they have given to the staff. KCR

Kenneth C. Rogers
SIGNATURE

August 24, 1989
DATE

ENTERED ON "AOC" Yes _____ " " _____

NOTATION VOTE

RESPONSE SHEET

TO: SAMUEL J. CHILK, SECRETARY OF THE COMMISSION

FROM: COMMISSIONER CURTISS

SUBJECT: SECY-89-247 - SHOREHAM STATUS AND DEVELOPMENTS

APPROVED X In Part* DISAPPROVED X In Part* ABSTAIN _____

NOT PARTICIPATING _____

REQUEST DISCUSSION _____

COMMENTS:

* See attached comments.

John R. Curtiss
SIGNATURE

8/18/89

DATE

ENTERED ON "AS" YES ✓ No _____

Commissioner Curtiss' comments on SECY-89-247:

Under the terms of the Shoreham operating license, LILCO is legally entitled to engage in those activities permitted by the license, so long as those activities conform to the Commission's regulations and ensure adequate protection of the public health and safety when considering the particular mode or condition that the plant might be in at a given time. For this reason, and in view of the assurances that we have received from the licensee that it does not intend to operate this plant, it is not clear to me that we have a legal basis under the existing license to require LILCO to preserve "all systems required for full-power operation" from degradation, so as to ensure that "the plant is preserved as a physical entity capable of being returned to service without untoward resource expenditure" -- the second condition proposed by the staff in SECY-89-247.¹

At the same time, in view of the requirements in the Commission's decommissioning rule, the licensee should not be permitted to take any steps that would have a material and demonstrable impact on any aspect of the decommissioning of this plant, prior to the submittal and approval of a decommissioning plan in accordance with the requirements of this rule.

For the foregoing reasons, I would direct the staff to take only those actions that are necessary to ensure that LILCO:

1. complies with the requirements of its operating license and the regulations applicable to whatever mode or condition the plant might be in at a given time (i.e., since the plant is currently defueled,

¹ The fact that a licensee has been granted an operating license that permits full power operation does not in my judgment mean that the licensee must, in all circumstances and at all times, preserve all systems required for full-power operation in a non-degraded condition. Indeed, there are numerous examples where, for a plant with a full power operating license, we have allowed some degradation or diminution in the systems, components, or staffing necessary to operate at full power because we recognize that the licensee either has no intent of operating the plant at full power or is legally foreclosed from doing so (e.g., plants shut down for refueling, plants in extended shutdown). We have permitted instances such as these so long as all systems necessary to ensure that the plant is maintained in a safe condition given the mode or condition of the plant are operable. Of course, we would not and should not permit resumption of plant operation if the systems, components, or staffing necessary for resuming operation are not in place or fully operable; and we have procedural options at our disposal to ensure that a plant in this condition is not operated, such as a voluntary understanding with the licensee, a confirmatory action letter, or an order.

the staff should ensure that all systems required to ensure plant safety in the defueled mode are maintained in a fully operable status and that an adequate number of properly trained staff to ensure plant safety in this mode are available); and

2. 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, even though the operating license might otherwise permit such actions, prior to the submission and approval of a decommissioning plan in accordance with the requirements of the Commission's decommissioning rule.



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

RESPONSE TYPE	
FINAL	<input checked="" type="checkbox"/> PARTIAL
DATE MAY 18 1990	
DOCKET NUMBER(S) (if applicable)	

REQUESTER
James P. McGranery, Jr.

PART I - AGENCY RECORDS RELEASED OR NOT LOCATED (See checked boxes)

<input type="checkbox"/>	No agency records subject to the request have been located.
<input type="checkbox"/>	No additional agency records subject to the request have been located.
<input type="checkbox"/>	Requested records are available through another public distribution program. See Comments Section.
<input type="checkbox"/>	Agency records subject to the request that are identified on Appendix(es) _____ are already available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC 20555.
<input checked="" type="checkbox"/>	Agency records subject to the request that are identified on Appendix(es) <u>A</u> are being made available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.
<input type="checkbox"/>	The nonproprietary version of the proposal(s) that you agreed to accept in a telephone conversation with a member of my staff is now being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.
<input type="checkbox"/>	Agency records subject to the request that are identified on Appendix(es) _____ may be inspected and copied at the NRC Local Public Document Room identified in the Comments Section.
<input type="checkbox"/>	Enclosed is information on how you may obtain access to and the charges for copying records placed in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.
<input checked="" type="checkbox"/>	Agency records subject to the request are enclosed.
<input type="checkbox"/>	Records subject to the request have been referred to another Federal agency(ies) for review and direct response to you.
<input type="checkbox"/>	You will be billed by the NRC for fees totaling \$ _____.
<input type="checkbox"/>	In view of NRC's response to this request, no further action is being taken on appeal letter dated _____ No _____.

PART II. A - INFORMATION WITHHELD FROM PUBLIC DISCLOSURE

Certain information in the requested records is being withheld from public disclosure pursuant to the exemptions described in and for the reasons stated in Part II, sections B, C, and D. Any released portions of the documents for which only part of the record is being withheld are being made available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.

COMMENTS

With regard to Item (c) of your request, there are no records referenced in SECY-89-247 which have not already been placed in the NRC Public Document Room.

SIGNATURE, DIRECTOR, DIVISION OF FREEDOM OF INFORMATION AND PUBLICATIONS SERVICES

Donna H. Hambley

966084477 (28)

Re: FOIA-90-206

APPENDIX A
DOCUMENTS BEING PLACED IN THE PDR

NUMBER	DATE	DESCRIPTION
1.	8/14/89	SECY-89-247, entitled: Shoreham Status And Developments. (7 pages) (Item (a) of request)
2.	3/22/90	Memo from Commissioner James Curtiss to James Taylor, subject: Shoreham Nuclear Power Station - Status and Developments. (1 page) (EDO-5285, Item (d) of the request.)



POLICY ISSUE

SECY-89-247

(Notation Vote)

August 14, 1989

For: The Commissioners

From: James M. Taylor
Acting Executive Director for Operations

Subject: SHOREHAM STATUS AND DEVELOPMENTS

Purpose: To inform the Commission of the current status of activities at the Shoreham Nuclear Power Station, in accordance with an April 21, 1989 SRM and to inform the Commission of certain procedural issues raised in connection with the current activities and proposed staff positions concerning these matters.

Discussion: Material Developments Regarding the Agreement Between LILCO and New York State

The LILCO shareholders' vote on June 28, 1989 approved the settlement agreement that would transfer Shoreham to Long Island Power Authority for decommissioning. The shareholders' approval was the last action, except for NRC approval of a license transfer, needed to complete the sale of Shoreham to New York State.

Plant Status

LILCO is proceeding with plans to establish a "minimum posture" consistent with the terms of the settlement agreement which prohibits further operation of the Shoreham facility.

Defueling activities began on June 30, 1989. The vessel head was detensioned and removed on July 8, 1989. Fuel movement began on July 13, 1989. Defueling was completed on August 9, 1989. The reactor vessel will be reassembled and normal water level will be restored as the next activity.

Contact:
Stewart Brown, NRR
45-21444

~~8908160237~~ (18)

A/1

Meetings With LILCO

On June 30, and July 28, 1989, at public meetings held at the request of the NRC staff, LILCO briefed the staff on its defueling activities and its plans to prepare the Shoreham facility for transfer to New York State under its agreement.

LILCO emphasized that it intended to comply with the requirements of its full-power license and the Commission's regulations and that it would submit requests for NRC approval in accordance with Commission regulations that required such approval. LILCO discussed its plans to adopt a "minimum posture" consisting mainly of defueling the reactor, reducing staff, and discontinuing customary maintenance for systems considered unnecessary to support operation with all the fuel placed in the spent fuel pool. Defueling of the reactor vessel is an activity permissible under a reactor operating license, and defueling at Shoreham presents no safety concern.

LILCO emphasized that under the agreement LILCO did not plan to decommission the Shoreham facility but to turn the facility over to New York State and that the decision on what to do with the plant thereafter will be up to New York State.

The staff pointed out that LILCO presently possessed a full-power operating license from the NRC and LILCO was expected to comply with all conditions of the license and Commission regulations, and that any changes in those requirements would require NRC approval in accordance with NRC regulations. LILCO was also to comply with all provisions of the FSAR and if it intended to change those provisions, LILCO was obliged to follow the process set forth in 10 CFR 50.59. LILCO asserted that it recognized its responsibility to follow the 50.59 process and acknowledged its commitment to NRC to provide a description of the process it had followed in evaluating the proposed "minimum posture" condition. The staff will review whether LILCO has followed the required process steps. The staff indicated that the approach outlined does not give the staff near-term concerns--but that it was not clear that in the longer term the posture LILCO outlined would be satisfactory.

At the meeting, the staff took a firm position that even though there was not a specific technical specification governing operability or surveillance of particular systems in the shutdown mode, it was not acceptable to us to permit the plant condition to deteriorate. We indicated that we

would not accept "de facto" decommissioning. LILCO assured us that it did not intend to permit the condition of plant systems, including "non-safety" systems, to deteriorate.

Another important point that came up during the discussions was the reduction in staffing at the plant. LILCO indicated it was in the process of reducing operating staff from 356 to 269 and support staff from some 230 to about 180 (not including training staff). LILCO indicated that it believed it could accomplish much of this reduction under its present license and Technical Specifications as they applied to the current shutdown condition. To the extent that staff reduction entailed modification of license requirements, LILCO would request license amendments from the NRC before such reductions were permitted. Although LILCO asserted that it would ensure adequate staffing to conform to the requirements of the license for the shutdown condition, staffing would be below that needed to permit the plant to return to an operating or standby mode.

LILCO asserted that it would continue to have significant staff at the facility and would be budgeting some \$45 to \$55 million for the Shoreham facility for the coming year.

A copy of the transcript of the July 28, 1989 meeting is enclosed.

Procedural Questions

Although LILCO's plans would appear to be adequate to ensure adequate facility safety in the defueled condition, the plans raise novel procedural questions involving the start of decommissioning. Under Commission regulations, a decommissioning plan must be authorized by NRC. The approval of decommissioning requires an environmental assessment and, in this case, may well require an environmental impact statement. If a prior hearing is held, it would require completion of the hearing process before decommissioning can be authorized (or authorized in connection with the hearing process).

Commission regulations do not define the point at which decommissioning starts. However, basic NEPA law imposes some constraint: The Commission cannot permit NEPA evaluation requirements to be circumvented by segmentation of a major action with significant impacts and authorizing the segments individually before (or without) completing the NEPA review of decommissioning. Thus, the question of when "decommissioning" starts becomes very important.

It might be argued that any reduction from a condition of "fully ready to operate" with the intent of not returning to operation, is the commencement of decommissioning. But this would require that a plant be kept at full ready (fully staffed, fully operable, and fully surveillanced) until decommissioning is approved. How would this apply to a situation in which it was unclear whether the plant would be returned to operation, a situation that existed for some period at Dresden 1 and currently exists at Rancho Seco?

The other end of the spectrum might also be argued: that decommissioning does not commence while the licensee carries out activities not prohibited by the operating license, and conforms to the minimum requirements of the operating license and Commission regulations (including the requirements of 10 CFR 50.59 and 50.71), and continues to ensure adequate safety for the plant mode (i.e., adequate safety in a defueled condition).

The staff intends to follow a middle ground, permitting the plant to be put into a "caretaker" non-degraded status while adequate decommissioning plans are developed and are being reviewed by the NRC. Such status would require that:

- (1) All systems required for safety in the defueled mode are maintained in fully operable status.
- (2) All systems required for full-power operation of the facility are to be preserved from degradation, with such maintenance or custodial services and appropriate documentation as may be necessary to ensure such preservation.
- (3) There shall be an adequate number of properly trained staff to ensure plant safety in the defueled state, including the ability to cope with malfunctions, accidents, and unforeseen events.

With assurance that the plant is preserved as a physical entity capable of being returned to service without untoward resource expenditure (similar to the effort needed to return a plant to service after an extended outage), the staff believes that this provides a reasonable middle ground, permitting some reduction in expenditure from the "fully ready to operate" condition, while not permitting the licensee to de facto decommission the facility (take irretrievable actions or permit irretrievable degradation; for example, action or degradation which is very difficult to undo) without NRC approval of the decommissioning plan.

Even if the physical facility were preserved, it would take some extended period of time to return the plant to operation after the loss of the full complement of licensed operators. Nonetheless, the staff does not believe that the loss of the licensed operator staff should be treated as the equivalent of de facto decommissioning. Provided there is an adequate number of properly trained staff to ensure safety of the facility in the defueled condition, the staff does not intend to require that additional staff sufficient to operate the plant at full power be maintained while the decommissioning plan is under development and under NRC review and approval.

The staff will continue to monitor and evaluate the licensee's activities on an ongoing basis and if necessary will take appropriate action to ensure plant safety and to ensure that the facility is preserved pending the development and NRC review of decommissioning plans. The staff plans to meet with LILCO again in about a month.

10 CFR 2.206 Request

On July 14, 1989, the Shoreham-Wading River School District filed a request, pursuant to 10 CFR 2.206, that the staff institute a proceeding to require LILCO to cease the defueling and destaffing of the facility. On July 20, 1989, the staff denied the request for an immediately effective cease and desist order. This 2.206 request was supplemented by letters dated July 19, July 21, July 26, and July 31, 1989. In the July 26, 1989 supplement, Scientists and Engineers for Secure Energy, Inc. joined with the school district in the 10 CFR 2.206 request. The staff is reviewing these requests. On August 4, 1989, the Long Island Association filed a petition to suspend LILCO's minimum posture activities.

DOE Letter

On July 27, 1989, Admiral Watkins, Secretary of Energy, wrote to Chairman Carr expressing support for the issuance of an immediately effective order prohibiting LILCO from taking defueling and destaffing actions. This, in effect, would halt LILCO's present course of action for Shoreham until NRC permission is sought and granted. In the July 27th letter, Admiral Watkins also urged that a prior hearing be held, in connection with LILCO's proposed transfer of the Shoreham facility. The staff will be drafting an appropriate response.

Procedural Status

There is presently pending no adjudicatory proceeding relating to decommissioning or transfer of the Shoreham facility. Thus, the separation of functions restrictions are not applicable at this time. However, there is little doubt that this matter will involve hearing requests and litigation in connection with any application that may be filed requesting such authority.

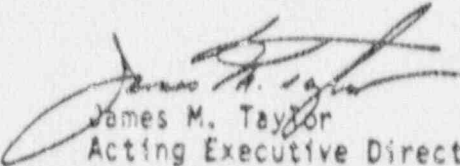
In this connection it should be noted that the portions of this paper discussing procedural questions may qualify for withholding under 10 CFR Part 9. Accordingly the staff recommends that the paper not be made public at this time. If a request for disclosure is submitted, a redacted version will be prepared.

Summary:

1. NRC approval is required before the facility is transferred or decommissioned and before any modification of license requirements. Before approving decommissioning the NRC would offer an opportunity for hearing and would prepare an EIS. Before any other transfer is authorized, NRC would offer an opportunity for hearing and review safety and environmental issues. The nature and extent of such review would depend on the purpose of the transfer (e.g., decommissioning, mothballing, other). Before approving modifications of specific license conditions, the NRC staff would offer an opportunity for hearing. Depending on its safety significance, the proposed change in license conditions may involve "no significant hazards considerations."
2. Pending NRC approval of decommissioning, the staff will require all systems needed for safety in the defueled mode be maintained in fully operable status and that all systems required for full power operation are to be preserved from degradation.
3. Pending NRC approval of decommissioning, the licensee should maintain an adequate number of properly trained staff to ensure safety in the defueled state and to cope with malfunctions, accidents and unforeseen events.

Recommendations: Unless the Commission otherwise directs within 10 days from the date of this paper:

1. The staff positions outlined above will be reflected in public materials prepared by the staff, including meetings with the licensee and others, correspondence and in preparing responses to 2.206 petitions.
2. The paper will be withheld from public disclosure at this time.


James M. Taylor
Acting Executive Director
for Operations

Enclosure:
Transcript

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Tuesday, August 29, 1989.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Tuesday, August 15, 1989, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

SECY NOTE: We have issued this paper as a notation vote per the request of Commissioner Roberts.

DISTRIBUTION:
Commissioners
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REGION I & V
EDO
SECY



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

March 22, 1990

OFFICE OF THE
COMMISSIONER

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

FROM: James R. Curtiss *J.R. Curtiss*

SUBJECT: SHOREHAM NUCLEAR POWER STATION - STATUS AND
DEVELOPMENTS (SECY-90-84)

I do not object to the course of action proposed by the staff in the subject SECY paper. I would ask, however, that you advise me in the event that LILCO proposes to take any actions that, in the staff's judgment, would materially and demonstrably affect the methods or options available for decommissioning or that would substantially increase the costs of decommissioning.

cc: Chairman Carr
Commissioner Roberts
Commissioner Rogers
Commissioner Remick
SECY
OGC

~~9006280080~~

A/D

FOIA - 90-206

RESPONSE TYPE

FINAL PARTIAL

DATE

APR 9 9 1990

DOCKET NUMBER(S) (if applicable)



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

REQUESTER

James P. McGranery, Jr.

PART I - AGENCY RECORDS RELEASED OR NOT LOCATED (See checked boxes)

No agency records subject to the request have been located.

No additional agency records subject to the request have been located.

Requested records are available through another public distribution program. See Comments Section.

Agency records subject to the request that are identified on Appendix(es) _____ are already available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC 20555.

Agency records subject to the request that are identified on Appendix(es) _____ are being made available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.

The nonproprietary version of the proposal(s) that you agreed to accept in a telephone conversation with a member of my staff is now being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.

Agency records subject to the request that are identified on Appendix(es) _____ may be inspected and copied at the NRC Local Public Document Room identified in the Comments Section.

Enclosed is information on how you may obtain access to and the charges for copying records placed in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.

Agency records subject to the request are enclosed.

Records subject to the request have been referred to another Federal agency(ies) for review and direct response to you.

You will be billed by the NRC for fees totaling \$ _____.

In view of NRC's response to this request, no further action is being taken on appeal letter dated _____ No _____.

PART II - INFORMATION WITHHELD FROM PUBLIC DISCLOSURE

Certain information in the requested records is being withheld from public disclosure pursuant to the exemptions described in and for the reasons stated in Part II, sections B, C, and D. Any released portions of the documents for which only part of the record is being withheld are being made available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.

COMMENTS

SIGNATURE, DIRECTOR, DIVISION OF FREEDOM OF INFORMATION AND PUBLICATIONS SERVICES

James P. McGranery

90-280108 (3P)

PART II B - APPLICABLE EXEMPTIONS

Records subject to the request that are described on the enclosed Appendix(es) B are being withheld in their entirety or in part under the Exemptions and for the reasons set forth below pursuant to 5 U.S.C. 552(b) and 10 CFR 9.17(a) of NRC Regulations.

- 1. The withheld information is properly classified pursuant to Executive Order (EXEMPTION 1)
 - 2. The withheld information relates solely to the internal personnel rules and procedures of NRC. (EXEMPTION 2)
 - 3. The withheld information is specifically exempted from public disclosure by statute indicated (EXEMPTION 3):
 - Sections 141-146 of the Atomic Energy Act which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165)
 - Section 147 of the Atomic Energy Act which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167)
 - 4. The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated (EXEMPTION 4):
 - The information is considered to be confidential business (proprietary) information.
 - The information is considered to be proprietary information pursuant to 10 CFR 2.790(d)(1).
 - The information was submitted and received in confidence pursuant to 10 CFR 2.790(d)(2).
 - 5. The withheld information consists of interagency or intraagency records that are not available through discovery during litigation (EXEMPTION 5). Applicable Privilege:
 - Deliberative Process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
 - Attorney work product privilege (Documents prepared by an attorney in contemplation of litigation.)
 - Attorney-client privilege (Confidential communications between an attorney and his/her client.)
 - 6. The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy (EXEMPTION 6)
 - 7. The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated (EXEMPTION 7):
 - Disclosure could reasonably be expected to interfere with an enforcement proceeding because it could reveal the scope, direction, and focus of enforcement efforts and thus could possibly allow them to take action to shield potential wrongdoing or a violation of NRC requirements from investigators (EXEMPTION 7(A))
 - Disclosure would constitute an unwarranted invasion of personal privacy (EXEMPTION 7(C))
 - The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources (EXEMPTION 7(D))
- OTHER

PART II C - DENYING OFFICIALS

Pursuant to 10 CFR 9.25(f) and 9.25(g) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure and that its production or disclosure is contrary to the public interest. The persons responsible for the denial are those officials identified below as denying officials and the Director, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL	
			SECRETARY	EDO
John C. Hoyle	Assistant Secretary of the Commission	App. B	X	

PART II D - APPEAL RIGHTS

The denial by each denying official identified in Part II.C may be appealed to the Appellate Official identified in that section. Any such appeal must be in writing and must be made within 30 days of receipt of this response. Appeals must be addressed as appropriate to the Executive Director for Operations or to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision."

APPENDIX B
DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY

NUMBER	DATE	DESCRIPTION
1.	8/24/89	Chairman Kenneth Carr's Notation Vote Sheet for SECY-89-247. (1 page) Exemption 5
2.	8/16/89	Commissioner Thomas Roberts' Notation Vote Sheet for SECY-89-247. (2 pages) Exemption 5
3.	8/24/89	Commissioner Kenneth Rogers' Notation Vote Sheet for SECY-89-247. (1 page) Exemption 5
4.	8/18/89	Commissioner James Curtiss' Notation Vote Sheet for SECY-89-247. (3 pages) Exemption 5.

NOTE: These documents are responsive to Item (b) of the request.

DOW, LOHNES & ALBERTSON

INCLUDING Ingersoll and Bloch 1228 TWENTY-THIRD STREET WASHINGTON, D.C. 20037-1104

TELEPHONE (202) 887-2900 TELECOPIER (202) 887-2900

WANTED DIRECT DIAL NO (202) 857-2929

May 3, 1990

- Vertical list of names and initials on the left side of the page, including names like 'DOW, LOHNES & ALBERTSON' and various initials.

- Vertical list of names and initials on the right side of the page, including names like 'DOW, LOHNES & ALBERTSON' and various initials.

VIA TELECOPY

Mr. Donnie H. Grimsley Director Division of Freedom of Information and Publications Services Office of Administration U.S. Nuclear Regulatory Commission Washington, D.C. 20555

FREEDOM OF INFORMATION ACT REQUEST

FOI 90-206 Rec'd 5-4-90

FREEDOM OF INFORMATION ACT REQUEST

Dear Mr. Grimsley:

Pursuant to 10 C.F.R. § 9.23(b) (1989), I hereby request one (1) copy of (a) SECY-89-247 relating to proposed actions regarding the Shoreham Nuclear Power Station and which is probably dated between July 1, 1989 and August 25, 1989, (b) the related vote sheets, (c) documents referred to within SECY-89-247 which have not yet been placed in the Public Document Room, and (d) EDO-5285.

INTENT TO PAY FEE

I do not believe that the search for the requested records should exceed two hours or that the records are in excess of 100 pages and, therefore, I do not believe that there will be any charge for the requested search and records, pursuant to 10 C.F.R. § 9.39(b)&(c) (1989). However, if there are fees to be charged, I hereby indicate my willingness to pay such fees in accord with 10 C.F.R. § 9.40(a) (1989) so that the search for the records and their release may proceed as expeditiously as possible.

ONE AA - 4 DRIVE SUITE 1500 ATLANTA, GEORGIA 30340-2102 TELEPHONE (404) 295-8800

421 WOODLOR AVENUE NEW YORK, NEW YORK 10022-7200 TELEPHONE (212) 279-2900 TELECOPIER (212) 279-2222

11275 FOX HARTER AVENUE IRVING, CALIFORNIA 92714 TELEPHONE (714) 787-0233 TELECOPIER (714) 788-0499

80 WEST STREET ANNAPOLIS, MARYLAND 21401-2400 TELEPHONE (410) 343-0043

9006280073 (3R)

Mr. Donnie H. Grimsley
May 3, 1988
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REQUEST FOR FEE WAIVER

If fees would otherwise be charged, I also request waiver or reduction of the fees, pursuant to 10 C.F.R. § 9.41 (1989), on the basis that the records will be used to further the public understanding of the Commission's actions in connection with Shoreham and to aid the participation of the Shoreham-Wading River Central School District (which is a state created entity) and Scientists and Engineers for Secure Energy, Inc. (which is a 501(c)(3) tax exempt organization) in participation in proceedings related to the Shoreham Plant. It is difficult to describe precisely the likely impact on the public understanding of the subject without seeing the records themselves; however, their availability will surely improve public understanding. The public affected here are all of the people of Long Island who would benefit from the supply electricity from Shoreham and whose electric supply and reliability may be damaged by the absence of the Shoreham Plant. The intended means for dissemination to the general public includes the furnishing of the records to NRC Licensing Boards and the Federal Courts considering various proceedings on the question of whether Shoreham should be decommissioned. Public access to the information would be provided free of charge. There is no commercial or private interest which I, the School District, or SE₂, have in those records.

RECORDS NOT EXEMPT

I do not believe that the requested records are exempt from public disclosure pursuant to 10 C.F.R. § 9.17(a) (1989). I also suggest that these records should be made available to the public in accordance with the memorandum from Samuel J. Chilk, Secretary, to the Commissioners on the Subject: "Public Release of Staff Requirements, Memoranda, Commissioner's Votes, and SECY Papers" dated December 13, 1989, because more than ten (10) days have passed since the related SRM was issued (August 25, 1989) and placed in the Public Document Room (September 20, 1989).

NEED FOR EXPEDITION

Given the press of matters before the NRC and impending litigation in Federal Court, it is respectfully requested that the release of the requested records be expedited by telecopy to me at (202) 857-2787.

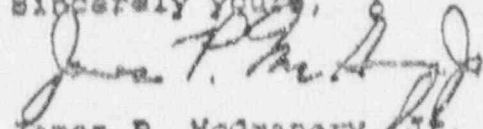
Mr. Donnie H. Grimsley
May 3, 1990
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COMMUNICATIONS

If any clarification or additional information is required, please call me at (202) 857-2929.

With many thanks for your attention to this matter, I am,

Sincerely yours,


James P. McGranery, Jr.

JPM:ymb

cc: Joseph F. Scinto, Esq.
Steven F. Crockett, Esq.