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OFFICE OF THE
SECRETARY

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

April 20, 1992

MEMORANDUM FOR: Board and Parties
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322-DCOM

SUBJECT: SECY-92-140

On the advice of the NRC Office of General Counsel, copies of SECY-92-140 entitled "Shoreham Nuclear Power Station Decommissioning Order" are being served on the Licensing Board and the parties to this proceeding.

Emile L. Julian

Emile L. Julian, Chief
Docketing and Service Branch

Attachment: SECY-92-140

D502

POLICY ISSUE

(Notation Vote)

April 17, 1992

SECY-92-140

For: The Commissioners

From: James M. Taylor
Executive Director for Operations

Subject: SHOREHAM NUCLEAR POWER S..TION DECOMMISSIONING ORDER

Purpose: To request the Commission's approval of the issuance of an order approving the licensee's plan for the decommissioning of the Shoreham Nuclear Power Station.

Background: On December 29, 1990, the licensee, Long Island Power Authority (LIPA), submitted a proposed decommissioning plan for the Shoreham Nuclear Power Station for approval pursuant to 10 C.F.R. § 50.82. (By letter dated January 2, 1991, Long Island Lighting Company (LILCO), at that time the licensee, requested that the plan be docketed.) The plan was supplemented on August 26, November 27, and December 6, 1991. The decommissioning alternative selected by the licensee is the DECON alternative, which calls for the removal or decontamination of equipment, structures and radioactively contaminated portions of the facility shortly after operations are terminated such that the property can be released for unrestricted use. *See*, Supplementary Information, General Requirements for Decommissioning Nuclear Facilities, 53 FR 24018. At present, the SNPS possession-only license does not expressly authorize decommissioning activities. The licensee's request for approval of the decommissioning plan does not request the issuance of any amendments which would change the provisions of the existing possession-only license.

On December 23, 1991, the staff published a notice in the *Federal Register*, stating that it was considering the issuance of an order approving the decommissioning plan and soliciting public comment on it. 56 FR 66459. The notice also advised that anyone whose

NOTE: TO BE MADE PUBLICLY AVAILABLE IMMEDIATELY

interest was affected could file a petition for leave to intervene in accordance with 10 C.F.R. § 2.714.

No comments on the proposed issuance were received in response to the notice. Two petitions for leave to intervene were, however, filed by the Shoreham-Wading River Central School District (SWRCSD) and Scientists and Engineers for Secure Energy (SE2) on January 22, 1992. By Order issued on April 3, 1992, the petitions were referred to an Atomic Safety and Licensing Board.

The *Federal Register* notice published on December 23, 1991, does not indicate that the proposed issuance of a decommissioning order would be treated as a license amendment nor does it propose to make a No Significant Hazards Consideration determination. Such determination is used to support the issuance of a license amendment prior to conducting a hearing if one were requested and granted. Rather, the notice was drafted in the form of an order conventionally issued under the provisions of 10 C.F.R. Part 2, Subpart B. In recognition of this, LIPA, by letter dated January 13, 1992, requested that, following the transfer of the license from the former licensee, the Long Island Lighting Company, LILCO, the NRC amend the license to authorize LIPA to implement the SNPS Decommissioning Plan. In support of its request, LIPA submitted an analysis of the No Significant Hazards Consideration factors. *See* 10 C.F.R. § 50.92. LIPA's request was supplemented on January 22, 1992. The No Significant Hazards Consideration determination was supported by LILCO. (It should be noted that the staff agrees with LIPA's No Significant Hazards Consideration determination.) Pending evaluation of a number of approaches, the staff has not republished a notice in response to LIPA's January 13 request.

It is argued by SWRCSD and SE2 in their request for a hearing, that such hearing must be held prior to the issuance of the order. The petitioners argue that the traditional "Sholly" procedures that might otherwise be available to amendments to operating licenses under Section 189 of the Atomic Energy Act are not

available to actions which might amend a possession-only license such as that for SNPS.

Discussion: Approval of a decommissioning plan is to be given in the form of an order. 10 C.F.R. § 50.82(e). In pertinent part, 10 C.F.R. § 50.82(e) provides:

> If the decommissioning plan demonstrates that the decommissioning will be performed in accordance with the regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public, and after notice to interested persons, the Commission will approve the plan subject to such conditions and limitations as it deems appropriate and necessary and issue an order authorizing the decommissioning.

Neither the rule itself, nor the Supplementary Information accompanying its promulgation is dispositive, however, as to the nature of the process to be used in issuing the order, in particular, whether issuance of such order is an action for which a pre-effectiveness hearing, if requested, is necessary. *See* 53 FR 24018.

The staff does not believe that a pre-effectiveness hearing is mandated by the Atomic Energy Act or the Commission's regulations in connection with the issuance of a decommissioning order. As pointed out by the Commission in its recent decision on the transfer of the Shoreham license from LILCO to LIPA:

> The requirements for a pre-effectiveness or "prior" hearing are found in the second and third sentences of Section 189a(1). There, the AEA requires the Commission to hold a pre-effectiveness or "prior" hearing on certain applications for a construction permit (second sentence), and to offer a pre-effectiveness hearing on certain applications for an amendment to a construction permit, an operating license, or an amendment to an operating license (third and fourth sentences). Where applications for

> actions which do not fall into the four categories described above are involved, the Commission has construed Section 189a(1) as not requiring the offer of a pre-effectiveness or "prior" hearing.

Shoreham, CLI-92-04 (Slip op. at 9, February 26, 1992).

The approval of a decommissioning plan may be viewed as an agency action for which a hearing must be provided if requested, in accordance with the first sentence of Section 189 of the Atomic Energy Act. Such a hearing, however, is not necessarily a pre-effectiveness hearing. As the Commission determined in CLI-92-04, *supra*, only certain types of actions are subject to a requirement that a pre-effectiveness hearing is or may be necessary: a construction permit, an operating license or amendments to a construction permit or operating license. (Slip op. at 8-10., February 26, 1992). Approval of the decommissioning order does not, itself, constitute an operating license or an amendment of the outstanding possession-only license, but permits the conduct of activities which are ancillary to the possession-only license which was recently transferred to LIPA in accordance with the license transfer authorization dated February 29, 1992; the fundamental provisions governing the possession and use of SNPS which are set forth in the operating license are unaffected by approval of the decommissioning plan.

Considered in this light, an order approving the decommissioning plan may be issued, effective upon issuance, notwithstanding the pendency of the petition for a hearing before the Commission, subject to completion of its review of the plan. Of course, any amendments to the possession-only license that may be necessary in order to implement the decommissioning plan would be processed using the traditional license amendment process.

On the other hand, the Supplementary Information accompanying the rule states that:

> decommissioning is carried out under an amended Part 50 license in accord

> with a decommissioning order. . . . The Commission will follow its customary procedures, set out in 10 CFR Part 2 of the NRC Rules of Practice, in amending Part 50 licenses to implement the decommissioning process.

53 FR at 2402 [illegible]t may be argued, therefore, that the decommissioning order is to be treated as another type of license amendment, issuance of which should be in accordance with the "Sholly" process including the associated No Significant Hazards Consideration determination. Following this approach, then, the staff could proceed to reissue a notice of the proposed action, this time making a proposed No Significant Hazards Consideration determination, and providing another 30-day period in which comments on the determination could be submitted. *See* 10 C.F.R. § 50.91(a). A further opportunity for the submission of requests for a hearing need not be provided since the action proposed, the issuance of an order approving the SNPS decommissioning plan, is unaffected. The order could be issued at the closure of the 30-day period after addressing any comments submitted and making a final No Significant Hazards Consideration determination (since a hearing has been requested).

Under an approach that would equate the issuance of a decommissioning order with a license amendment action, the question of irreversibility arises. *See* 10 C.F.R. § 50.92(b). Quite clearly, approval of the SNPS decommissioning plan will permit irreversible actions to be taken inasmuch as the licensee's method of decommissioning is the DECON alternative, and could affect the ability to select another decommissioning alternative.[1] At the same time, it should be recognized that actions already taken by the former licensee, permissible under the existing license, for example, drilling holes in the reactor vessel

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[1] In a meeting held March 23, 1992, the licensee indicated to the NRC staff that it intended to start dismantling of the reactor pressure vessel and internals promptly after approval of the decommissioning plan, which it hoped would be in May, in order to be able to ship to offsite disposal before the end of 1992.

and severing all pipes to the vessel, have effectively foreclosed any action other than decommissioning by one alternative or another. In view of §50.92(b), the staff has been particularly sensitive to the potential irreversibility of actions that might be taken once the decommissioning plan is approved, and is fully satisfied that its No Significant Hazards Consideration determination is well founded. *See* 51 FR 7744 at 7750 (March 6, 1986). The staff's review of the proposed decommissioning plan is documented in a Safety Evaluation Report and an Environmental Assessment, which conclude, respectively, that the proposed decommissioning plan can be implemented safely and that there will be no significant environmental impact.

The staff proposes to follow the first approach described above, that is, it would issue an order approving the SNPS decommissioning plan supported by its Safety Evaluation Report and Environmental Assessment. In addition, although it would not solicit public comment on a proposed No Significant Hazards Consideration determination, the staff would include a No Significant Hazards Consideration determination to document its determination in order to assure that the staff's assessment of the request is documented even though not required by the form of the approval.

Recommendation: That the Commission approve issuance by the staff of the order approving LIPA's decommissioning plan including a No Significant Hazards Consideration determination.

Coordination: The staff of the Office of the General Counsel advising the Executive Director for Operations contributed to the development of this paper and concurs in its recommendation.

James M. Taylor
Executive Director for
Operations

Enclosure: Minutes of
Meeting held March 23, 1992

NOTE: A COPY OF THIS PAPER WILL BE PROVIDED TO THE LICENSING BOARD AND TO THE PARTIES WHEN SUBMITTED TO THE COMMISSION

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Friday, May 1, 1992.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Friday, April 24, 1992, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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

April 16, 1992

Docket No. 50-322

L[illegible]: Long Island Power Authority

[illegible]oreham Nuclear Power Station

[illegible]UMMARY OF MEETING WITH THE LONG ISLAND POWER AUTHORITY TO DISCUSS [illegible]HE SHOREHAM DECOMMISSIONING PLAN, 10 CFR 50.59 ACTIVITIES, AND CONTINGENCY PLAN

A [illegible] was held with the Long Island Power Authority (LIPA) and Long Island Lighting Company personnel on March 23, 1992, at the NRC office located in Rockville, Maryland. This meeting was held at LIPA's request to discuss matters related to LIPA's proposed decommissioning plan, 10 CFR 50.59 activities, and joint LIPA/LILCO license reversion contingency plan. A list of meeting attendees is provided as Enclosure 1.

Decommissioning Plan

LIPA informed the staff of its desire that the Shoreham decommissioning order be issued by May 15, 1992, based on LIPA's current schedule of site activities. LIPA further indicated that this schedule might be improved by at least a week, which would advance the date by which LIPA would desire the Shoreham decommissioning order to be issued to the first week of May. LIPA stated that at this point the site work force would consist of about 1000 persons and that the costs that LIPA would incur for any delay of issuance of the Shoreham decommissioning order could be as high as $320,000 per day. Additionally, LIPA pointed out that any delay of approval of its DP may also increase LIPA's cost of radwaste disposal. The cost increase associated with Shoreham radwaste disposal would be as a result of the potential closure of the low-level radwaste repositories to out-of-region shipments of low-level radwaste. The potential LLWR closure could occur by the end of this calendar year.

10 CFR 50.59 Activities

LIPA informed the staff that it was presently evaluating the potential of segmentating of four contaminated sytems (CRD, RHR, core spray, and sampling systems) under 10 CFR 50.59 prior to NRC approval of LIPA's DP.

Contingency Plan

LIPA informed the staff that the license reversion contingency plan would be submitted within the time period specified in the order approving the Shoreham license transfer, dated February 29, 1992.

Stewart W. Brown, Project Engineer
Non-Power Reactors, Decommissioning and
Environmental Project Directorate
Division of Advanced Reactors
and Special Projects
Office of Nuclear Reactor Regulation

cc: See next page

MEETING SUBJECT: SHOREHAM - LIPA TO DISCUSS 1) DECOM ORDER, 2) SO. SIT PLANS, AND 3) LILCO/LIPA CONST. PLANS.

MEETING DATE: March 23, 1992

LIST OF ATTENDEES:

NAME	ORGANIZATION
Stewart Brown	NRC/NRR/DRP
S Weiss	"
Richard Dudley	NRR/PDNP
Ed Reis	OGC/NRC
L. M. Hill	LIPA
S. Schoenwiesner	LIPA
Larry Britt	LIPA
John Holm	Cole, Raywid & Braverman / LIPA
Stanley Klimberg	LIPA
Donald P. Irwin	Hunton & Williams / LILCO/LIPA
Mitzi Young	OGC
Kirby Wilson	Newsday
Barry Norris	NRC/R.I.
Larry Bell	NRR/NRC
Bill Herin	Winston & Strawn
James P. McGranery, Jr	DL+A

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power Station, Unit 1)

Docket No.(s) 50-322-DCOM

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMO JULIAN TO BD & PARTIES have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Thomas S. Moore, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Jerry R. Kline
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
George A. Ferguson
ASLBP
5307 Al Jones Drive
Shady Side, MD 20764

Mitzi A. Young, Esq.
John T. Hull, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Donald P. Irwin, Esq.
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219

Carl R. Schenker, Jr., Esq.
O'Melveny and Myers
555 13th Street, N.W.
Washington, DC 20004

James P. McGranery, Jr., Esq.
Dow, Lohnes & Albertson
1255 23rd St., N.W., Suite 500
Washington, DC 20037

Docket No.(s)50-322-DCOM
MEMO JULIAN TO BD & PARTIES

Dated at Rockville, Md. this
20 day of April 1992

Helen R. Byrd
Office of the Secretary of the Commission