

COMMITTEE ON INTERIOR
AND INSULAR AFFAIRS

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

March 28, 1984

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The Honorable Nunzio J. Palladino
Chairman
U.S. Nuclear Regulatory Commission
1717 E 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:

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

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 yet 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.

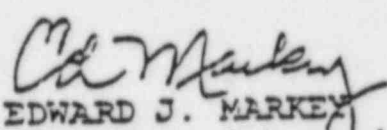
While I am aware that the advice of the licensing board was subsequently rejected by the Commission in a June 30, 1984 decision (with Commissioners Gilinsky and Asselstine dissenting), I am at a loss to understand why. Since the logic of the board is apparent, and the Commission's position is less than 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.

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

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