

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

DOCKETED
USNRC

'85 APR -8 A11:09

In the Matter of)
)
LONG ISLAND LIGHTING COMPANY)
)
(Shoreham Nuclear Power Station,)
Unit 1))

OFFICE OF SECRETARY
DOCKETING & SERVICE
Docket No. 50-322-OLM

SUFFOLK COUNTY AND NEW YORK STATE MOTION FOR
COMMENCEMENT OF INDEPENDENT INVESTIGATION OF DEPARTMENT
OF ENERGY INFLUENCE ON SHOREHAM PROCEEDINGS

Documents described in the attached New York Times article, dated March 27, 1985, disclose efforts of the Department of Energy to influence the outcome of NRC proceedings concerning the Shoreham Nuclear Power Plant. Among other things, these documents reveal DOE's effort to:

- "Lobby NRC and FEMA to amend, interpret, issue opinions, or adopt presumptions regarding their regulations and rules which are favorable to DOE's policies."
- "Force NRC and FEMA to accept (change rule?) utility exercise of EP without local cooperation or presumption that local authority will act in a real emergency."

Such approaches of DOE to "lobby" and "force" the NRC to take actions which affect the outcome of the Shoreham proceeding are repugnant to the NRC's adjudicatory process and, particularly, are unlawful under the governing Administrative Procedure Act,

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Atomic Energy Act, and NRC regulations. The Shoreham proceeding is an on-the-record adjudication. DOE's off-the-record initiatives with the NRC to alter the established legal framework and to sway the direction and context of NRC decisionmaking are an obstruction of the lawful regulatory processes.

Moreover, the documents described in the Times article reveal DOE's approach to influence actions of the Federal Emergency Management Agency. For example, in a March 8, 1985 letter from DOE Secretary Herrington to FEMA Director Giuffrida, DOE urges FEMA to conduct an exercise of LILCO's offsite emergency plan. The conduct of such an exercise is a contested issue in the Shoreham proceedings. Secretary Herrington does not even reveal that the New York State Supreme Court on February 20, 1985 declared LILCO's plan to be illegal. Thus, DOE is urging FEMA to join with LILCO to attempt to achieve an unlawful objective.

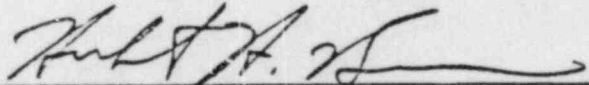
FEMA, as the NRC's evaluator of offsite emergency preparedness, plays a significant role in the adjudicatory process as a purportedly impartial participant. The apparent efforts of DOE behind-the-scenes to influence FEMA's on-the-record representations and opinions undercut the integrity of the Shoreham adjudicatory proceedings. At this point, it is therefore not clear if the NRC and FEMA have been acting for themselves or, at times, as the surrogates of DOE and DOE's undisclosed agenda for the outcome of the Shoreham proceedings.

Accordingly, to bring fully to public light the extent of DOE's involvement at the NRC and the influence of DOE on the content and direction of the NRC's Shoreham proceedings, and to

establish the foundation on which action might be taken to
cleanse any taint which has resulted from DOE's activities,
Suffolk County and New York State hereby move the NRC immediately
to commence an independent investigation of DOE's activities.
This investigation should be aimed at disclosing DOE's lobbying,
forcing, influencing, or any other actions which might affect
or already have affected the content, direction, or outcome of
the NRC's Shoreham proceedings.

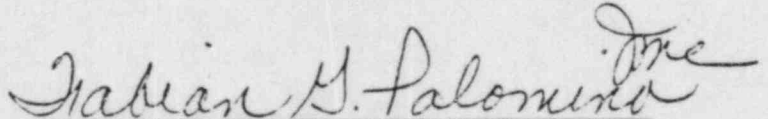
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April 1, 1985

Reports Show U.S. Role In Dispute at Shoreham

By MATTHEW L. WALD

Officials of the United States Department of Energy have been actively conferring with each other and counterparts at other departments to find ways to help license the Shoreham nuclear power plant, according to department documents.

The Secretary of Energy, John S. Herrington, testified recently that the department was doing nothing about the dispute over emergency planning at Shoreham.

He said he supported a pledge by President Reagan in October not to impose a Federal solution on the licensing problem over the objections of state and county governments.

But the newly released documents indicate that the department has been looking for ways to help Shoreham's builder, the Long Island Lighting Company, overcome the refusal of Suffolk County and New York State to participate in emergency planning.

That issue threatens to block licensing of the \$4.2 billion reactor, which is on the North Shore of Long Island, 55 miles east of New York City.

No Comment From Energy Dept.

Phillip D. Kief, deputy press secretary of the department, said yesterday afternoon that the department would have no immediate comment on the situation.

The documents were released by the energy conservation and power subcommittee of the House Energy and Commerce Committee, which questioned the Secretary closely earlier this month on the department's activities.

Lilco has developed an emergency plan using meter readers, linemen, and other employees of the utility in the roles usually filled by police, fire and other emergency personnel, and Lilco would like to test the plan.

Among other activities, the Department of Energy appears from the documents to have been active in supporting Lilco's request, and in exploring strategies to lend Federal authority to the utility's plan.

For example, the documents show continuing contact between the department and the Federal Emergency Management Agency, which is responsible for evaluating emergency plans, grading emergency drills, and advising the Nuclear Regulatory Commission on the state of preparedness.

In a March 8 to the Director of the Emergency Management Agency, Louis O. Giuffrida, the Energy Secretary, Mr. Herrington, wrote, "The Department of Energy will continue to support the testing of the Shoreham plan as soon as possible."

Need for Test Seen

An internal Energy Department memorandum dated May 4, 1984, said, "The clear gap at this time is the need for a test of the Lilco plan."

If the Federal Emergency Management Agency were to help develop the plan and test it, the document said, "there is a high probability that it would be a sufficient basis for licensing Shoreham."

"We encourage FEMA to develop and test the plan," the memo said.

Another memo included a draft of a proposed executive order intended to solve the problem of Lilco's legal authority to put the plan into effect.

It described an interagency task force — directed by the President's science advisor and including officials of the Emergency Management Agency, the Nuclear Regulatory Commission and the Department of Energy — which was studying plans "held hostage" by local objections to emergency planning.

After the Three Mile Island accident, in March 1979, the N.R.C. insisted that all new plants had to have emergency plans before they opened.

Challenge by Judge

A justice of New York State Supreme Court ruled in March that Lilco did not have the legal authority to exercise the plan, because employees of a private utility could not assume police powers and governmental functions like directing traffic, blowing emergency sirens, or deciding when to declare an emergency and advise the public to take shelter or flee an area.

The documents indicated that the department knew it was acting against the position of the county and state.

An Energy Department summary of Shoreham's status that appeared to have been written in late December or January speculated that the state or county "might attempt to enjoin the conduct of such an exercise on the basis that Lilco would be violating some state law."

Another department memo, undated but evidently written after May of last year, listed "short term" tasks for the agency, including "Lobby NRC and FEMA to amend, interpret, issue opinions, or adopt presumptions regarding their regulations and rules which are favorable to DOE's policies."

Complaint From the House

The subcommittee chairman, Representative Edward J. Markey, a Massachusetts Democrat, complained in a letter sent yesterday to Mr. Herrington that the department's activities were "at odds with President Reagan's and your own pronouncements on this issue."

"It raises a serious concern as to whether the task force is out of control," he said.

Mr. Herrington, testifying before the energy conservation subcommittee on March 13 — five days after his letter to the head of the Emergency Management Agency — was asked by Representative Markey, "What, if anything, is D.O.E. doing with respect to Shoreham's emergency plans?"

Mr. Herrington replied, "I don't think we are doing anything."

Mr. Markey, pressing the new Secretary for details, asked him to submit documents describing the department's involvement in Shoreham's emergency plans if any were discovered later.

The department's response was to allow the committee staff access to its files. The documents it released were taken from the department's task force on nuclear construction projects.



Visiting Inland Waters

A pair of sea gulls basking in the sun, 10 ye expected to enjoy mostly sunny skies again to

For a Historic

By JOYCE PURNICK

The talk was of callery pear trees and pleached limes, of fluted columns and bluestone concrete, of "leafy motifs," street lamps and the probable intent of an architectural sketch dating back 72 years.

And so it went for nearly an hour yesterday — detailed, sometimes dense discussion as members of the city's Landmarks Preservation Commission weighed an ambitious plan to rehabilitate the Grand Army Plaza, on Fifth Avenue near the Plaza Hotel.

That bit of near placidity in midtown, which stretches from 58th Street to 60th Street and includes the Pulitzer Fountain and the General Sherman Monument, is up for its first major rehabilitation since 1913, and since Grand Army Plaza is a city landmark, the commission's approval is required before any changes can be made.

Hence yesterday's hearing at the commission's headquarters in lower Manhattan, an otherwise routine event that provided an insight into the workings of a city agency dedicated as much to style as to substance.

Greenery and Growth

"It's not just a stage set we are selecting, but something that can be sustained," one commissioner, Barbara Lee Diamonstein-Spielvogel, said after commission members had devoted time to talking about one kind of greenery versus another, and even their growth rates. The width of trees changes every year, somebody said.

Trees became an issue in the hearing room on Vesey Street because a double row of trees once bordered the plaza and the proposal to return to the original design could create problems, according to a Central Park horticulturist, who said the outer row, nearer the

street, might be in "On rather dense ter & comm suggest pleac An street new! salt-able. Sa Butt turn the he v to t Au tion that the of t The firm 0

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BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of Suffolk County and New York State Motion for Commencement of Independent Investigation of Department of Energy Influence on Shoreham Proceedings have been served on the following this 1st day of April, 1985, by U.S. mail, first class, except as otherwise noted.

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DATE: April 1, 1985

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