

*Release -
already public*

STATEMENT OF
COMMISSIONER JAMES K. ASSELSTINE
U.S. NUCLEAR REGULATORY COMMISSION
BEFORE THE
SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
MAY 17, 1984

Mr. Chairman, I had not planned to make a prepared statement this morning. However, after reading Chairman Palladino's individual statement last night, I thought that a few comments would be in order. I will try to be brief.

This Agency has not distinguished itself in its handling of the Shoreham low-power operating license proceeding. I agree with Commissioner Gilinsky's concerns about the conduct of the NRC staff in this proceeding, which were contained in his separate views on the Commission Order issued yesterday. And I have expressed some concerns of my own regarding the conduct of the Licensing Board, and particularly its Chairman, in the Shoreham low-power proceeding. But I am most disappointed and disturbed by the conduct of Chairman Palladino and the Commission in this proceeding. After all, errors committed by the staff or an individual Licensing Board can be easily corrected by the Commission through the exercise of its supervisory functions. But misconduct by individual Commissioners or by the Commission as a whole is a different matter. We

set the standard, whether good or bad, for acceptable behavior in all of our proceedings. And more than anything else, our actions form the basis for judging the integrity of our licensing process and the fairness of our administrative proceedings.

The questionable actions undertaken by Chairman Palladino in this case can be summarized fairly quickly. On March 16, 1983, Chairman Palladino met privately with the NRC staff, one of the parties in the Shoreham proceeding, and with Judge Cotter, the Chairman of our Atomic Safety and Licensing Board Panel. Judge Cotter appoints the members of individual Licensing Boards and is responsible for their administrative direction and management. The other parties to the Shoreham proceeding were not notified of the meeting and were not permitted to attend or comment on the matters discussed in the meeting.

Although the purpose of this meeting has been described as obtaining information on the schedules of individual cases, it became much more than that for Shoreham. As I understand it, the Chairman was told that, as a result of the Licensing Board's rejection of the applicant's first motion for a low-power operating license, a decision on the issuance of an operating license for the Shoreham plant would have to await the resolution of the emergency diesel generator contentions currently being litigated in the full-power operating license hearing. The Chairman was informed that a final decision was expected by the end of the year. The Chairman has told me that he responded to this information by saying that this situation was unacceptable to him and that a decision on a

low-power license should be expedited. The Chairman went on to discuss the issues that would have to be considered in an expedited hearing on a low-power license application. Keep in mind that on March 16, the applicant had neither filed a formal appeal of the Licensing Board's denial of its first low-power motion, nor had it filed a new motion for a low-power license. The ball was in the applicant's court and until it decided what course of action to pursue, further steps by the Commission or the Boards were neither necessary nor appropriate.

On March 20, the Chairman issued a memorandum that, among other things, advocated Commission issuance of an Order directing an expedited hearing on a low-power motion for the Shoreham plant. A new low-power motion was submitted by the applicant later that day.

On March 22, the Chairman issued a verbal directive to Judge Cotter to conduct an expedited proceeding on the low-power motion, with the objective of having a Licensing Board decision by May 9. Time periods for the various stages of the pre-hearing and hearing process were included in this directive for planning purposes. I might add that this directive from the Chairman was stated as a Commission directive even though, as far as I can determine, no other member of the Commission was aware of its existence until April 4.

In response to the Chairman's March 22 directive, Judge Cotter prepared a draft Commission Order, which he submitted to the Chairman on March 23. That draft order not only set out an expedited hearing schedule for

the low-power motion but also framed the issues to be considered in the hearing. The manner in which those issues were framed effectively ruled out the question of whether low-power operation of Shoreham without a qualified onsite power system was an impermissible violation of General Design Criterion 17. This draft order, although never issued by the Commission, appears to have been the basic blueprint for the new Board's conduct of the proceeding. The denial of fundamental fairness to the parties to the proceeding by this expedited approach led a United States District Court judge to take the unprecedented step on April 25 of issuing a temporary restraining order halting the Licensing Board's hearing on the applicant's low-power motion.

Two things can be said regarding the Chairman's actions. First, any reasonable outside observer would conclude that, by his actions, the Chairman had abandoned his role as the ultimate judge in this proceeding and had instead become an advocate for a particular outcome in the case -- the issuance of a low-power decision within an unreasonably short time period. In this manner, the Chairman has created the appearance of improper judicial conduct whether or not he believes that he has actually prejudged the issues in the proceeding.

Second, his direct personal involvement in setting in motion the low-power license hearing hindered the Chairman's ability to deal effectively with the procedural problems in this case when they became apparent. Thus, when our Office of General Counsel informed the Chairman on April 20 that the procedural problems in this proceeding,

including, among a number of other things, the Chairman's personal involvement, created an appearance of impropriety that was not likely to survive judicial review, he was unwilling or unable to take the action needed to correct these problems. Nor was a majority of the Commission. Only after the District Court issued its temporary restraining order on April 25 and the case reached crisis proportions with the possibility of further direct judicial review of the procedural misconduct in the case, was the Chairman willing to support direct Commission involvement in the proceeding.

It is fair to say that this has not been a good year for nuclear power, and the financial woes of the industry, including this utility, are widely publicized. Moreover, the NRC, and in some instances the Chairman, have been criticized -- unfairly, in my view, for causing these difficulties. It is perhaps understandable in these circumstances that the Chairman would want to try to do something to help LILCO out of its financial difficulties and to support the industry that he helped to create. But this is not what being a judge is all about. Perhaps the most disturbing aspect of this situation is the Chairman's continued unwillingness to recognize the problems associated with his actions in this case, and the unfortunate consequences they can have for the credibility of our licensing hearings and the integrity of our entire regulatory program. If left uncorrected, this situation can have far-reaching consequences for the future. Thank you.



Nuclear Information and Resource Service

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June 1, 1984

James M. Felton, Director
Division of Rules and Records
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-84-470

Rec'd 6-5-84

FREEDOM OF INFORMATION ACT REQUEST

Previous Related Request: FOIA 84-208 (BELL)

To whom it may concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. 522, as amended, the Nuclear Information and Resource Service requests the following documents regarding the enclosed memorandum from Chairman Nunzio Palladino to the Commissioners, on the subject of Licensing Delays, dated March 20, 1984. Please consider "documents" to include reports, studies, test results, correspondence, memoranda, meeting notes, meeting minutes, working papers, graphs, charts, diagrams, notes and summaries of conversations and interviews, computer records, and any other forms of written communication, including internal NRC Staff memoranda. The documents are specifically requested from, but not limited to, the Office of Policy Evaluation (OPE); Office of General Counsel (OGC); Office of the Executive Director of Operations; the Office of the Executive Legal Director (OELD); Office of Nuclear Reactor Regulation (NRR); and the Operating Reactors Branches of the Division of Licensing. In your response, please identify which documents correspond to which requests below.

Pursuant to this request, please provide all documents prepared or utilized by, in the possession of, or routed through the NRC related to:

1. The enclosed March 20, 1984 memorandum from Chairman Palladino to the Commissioners Re: Licensing Delays, including, but in no way limited to, the "briefing sheets" alluded to in paragraph two of the memo; and
2. The legal authority, and justification for, expedited hearings held by Atomic Safety and Licensing Boards, Atomic Safety and Licensing Appeals Boards, and the Commission.

In our opinion, it is appropriate in this case for you to

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waive copying and search charges, pursuant to 5 U.S.C. 552(a)(4)(A) "because furnishing the information can be considered as primarily benefiting the general public." The Nuclear Information and Resource Service is a non-profit organization serving local organizations concerned about nuclear power and providing information to the general public.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nina Bell".

Nina Bell
Nuclear Safety Analyst

cc: File