

July 17, 1984SECY-84-290

**POLICY ISSUE**  
**(Commission Meeting)**

**FOR:** The Commissioners

**FROM:** William J. Dircks  
Executive Director for Operations

**SUBJECT:** NEED AND STANDARDS FOR EXEMPTIONS

**PURPOSE:** To request Commission guidance on the need and standard for exemptions from the regulations in light of the Commission's Shoreham decision, CLI-84-8.

**DISCUSSION:** The staff, in its recent review of an operating license application for purposes of issuing a license for loading fuel and conducting precritical testing, has become aware of substantial difficulties in both issuance of operating licenses and the continued operation of ORs which will arise from a strict application of the Commission's May 16, 1984 decision in Shoreham, CLI-84-8. The Shoreham decision, involving compliance with NRC regulations during the early stages of operation, the need for exemptions from the regulations and the standards for granting exemptions under 10 CFR § 50.12, establishes practices and requirements for licensing which differ significantly from prior regulatory interpretation and practice. Because of this and the difficulties in licensing which result, further Commission guidance is requested on the need and standards for exemptions in connection with initial and subsequent licensing of power reactor operation.

Prior to the Commission's May 16, 1984 decision in Shoreham, the staff had viewed the requirements of the regulations as being reasonably flexible, with various regulatory requirements applicable or important from a health and safety standpoint only for certain modes of operation and operation at certain times and power levels. For a typical power reactor under OL review, the staff normally would recognize that, while the plant was ready for low power operation, power ascension or even initial full power operation, the plant might not fully comply with each and every NRC regulation at full power at the time it was otherwise ready for initial licensing. In these circumstances, "non-compliances" typically were dealt with by license conditions requiring completion of installation, testing, or further analyses before a particular power level ("Prior to exceeding 5% power . . .") or by a particular time ("By the

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first refueling outage . . ."). The effect on safety of such temporary "non-compliances" was evaluated by the Staff and discussed and justified in the Staff safety evaluation report or supplement thereto. In such typical situations where the regulatory noncompliances were temporary, would be corrected in a relatively short time and did not prevent a finding of adequate safety, the staff would condition the operating license so as to mandate that requirements be met at a later time or before a particular power level<sup>1/</sup> but would not expressly consider or grant an explicit exemption from the regulations for the period of operation prior to reaching the time or power level at which the deficiency was required to be corrected. In issuing operating licenses, the staff only considered and explicitly granted exemptions from the regulations in instances of licensee's long-term or permanent non-compliance with the regulations and where, of course, the staff could find that the standards for granting an exemption in 10 CFR § 50.12(a) were satisfied.

In Shoreham, CLI-84-8, the Commission had occasion to examine the matter of the applicability of General Design Criteria (GDC) 17 to fuel loading and low power operation. Therein, the Commission ruled that GDC 17 does apply to such operations below full power and at least implicitly found that an exemption from GDC 17 must be granted if Shoreham is to be licensed for fuel loading or low power operation prior to compliance with GDC 17.

In that decision, the Commission further ruled that, for an exemption to be issued under 10 CFR § 50.12, there must be a determination not only that the standards of Section 50.12(a)<sup>2/</sup> are met, but that:

[i]n addressing the determinations to be made under 10 CFR 50.12(a), the applicant should include a discussion of the following:

1. The 'exigent circumstances' that favor the granting of an exemption under 10 CFR 50.12(a) should it be able to demonstrate that, in spite of its noncompliance with GDC 17, the health and safety of the public would be protected.

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<sup>1/</sup> A wide range of examples of such conditions from recent operating licenses was provided in the "NRC Staff Response to Commission Questions of May 2, 1984," filed in the Shoreham proceeding May 15, 1984.

<sup>2/</sup> 10 CFR § 50.12(a) provides that the Commission may grant such exemptions as it determines "are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest."

2. Its basis for concluding that, at the power levels for which it seeks authorization to operate, operation would be as safe under the conditions proposed by it, as operation would have been with a fully qualified onsite A/C power source.

CLI-84-8, slip op. at 2-3 (footnote omitted). In the context of exemptions related to plant operations, these determinations regarding "exigent circumstances" and "as safe as" are wholly new requirements going beyond anything explicitly required by 10 CFR § 50.12. (The concept of "exigent circumstances" had previously been considered a factor only in exemptions granted pursuant to 10 CFR § 50.12(b), issuing limited work authorizations.)

The Commission's Shoreham decision, although rendered in the context of a consideration of the need for onsite AC power sources for low power operation, appears to have broad ramifications. That decision, we believe, can be read as establishing that:

- (1) for the issuance of any operating license, regardless of power level or mode of operation authorized, there must be either full compliance with the letter of all NRC regulations (assuming reactor operation at full power), or an explicit exemption from those regulations for which full compliance at full power has not yet been achieved;
- (2) for granting any exemption from the regulations pursuant to 10 CFR § 50.12, related not only to initial licensing but also to subsequent operations after achieving full power, it must be established that
  - (a) the traditional standards of Section 50.12(a) are met and
  - (b) exigent circumstances or exceptional circumstances or the equities of the situation warrant the exemption and
  - (c) operation with the exemption, at the particular power level authorized, will be as safe as operation with full compliance with the regulation from which the exemption is sought.

The requirement (i) that, before and after licensing, the facility must be found to comply with all NRC regulations assuming plant operation at full power for a relatively long

period of time (regardless of safety significance or apparent applicability for the mode or manner of operation to be permitted under the license) or (ii) be granted an explicit exemption based upon the wholly new and more restrictive standards, is a substantial departure from past staff interpretation and practice and would vastly expand not only the number of exemptions needed in connection with initial and post licensing,<sup>3/</sup> but at the same time raise significantly the threshold for granting the newly needed exemptions.

Taken together, these newly-imposed requirements (if, indeed, they are intended by the Commission to be applicable to all regulations) pose significant difficulties for the staff and for the industry. The difficulties arise not only from the time and effort required to identify those regulations for which there is not precise compliance, but also from the difficulty in making the additional findings which have little or no safety significance but nevertheless are required under the Commission's Shoreham decision. These difficulties already have resulted in over one week delay in the issuance of a license to load fuel and conduct precritical testing for one facility for which construction was completed at the end of June. Further, we expect that the near term schedules for licensing decisions on all other OL's will also be delayed about two weeks. Moreover, the need to make the "as safe as" finding before granting exemptions which encompass reactor operation at low power or above will likely result in the denial of some exemptions for these plants that would have otherwise been granted under the standards of 50.12, and which would present no undue risk to the health and safety of the public. The effect of such denials on the industry would be substantial.

Thus, the staff seeks further guidance from the Commission on the intended reach of the Shoreham decision. Specifically:

- (1) Is it the Commission's intent that the Shoreham decision and the standards set forth therein for the granting of exemptions apply to exemptions from 10 CFR Part 50, Appendix A, GDC 17 alone or does the Commission intend that they apply to exemptions from all NRC regulations? Are they intended to apply, for example, to substantive exemptions from emergency planning or fire protection regulations for operating reactors, or for schedular exemptions from emergency planning and fire protection regulations, requests for which have become numerous.

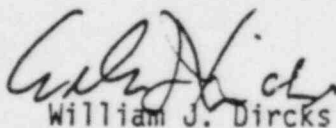
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<sup>3/</sup> For example, most of the license conditions contained in the "NRC Staff Response to Commission Questions of May 2, 1984," filed in the Shoreham proceeding on May 15, 1984, are conditions imposed because of noncompliance with the regulations.

- (2) Is it the Commission's intent from the Shoreham decision to require full compliance with all NRC regulations (or exemptions granted in accordance with the Shoreham decision) only for reactor operation involving criticality and power operation (low power to full power) or does the Shoreham decision and the standards for exemptions set forth therein also extend to reactor operations limited to fuel loading and precritical testing where the reactor is not authorized to go critical or operate at any power level?
- (3) Is it the Commission's intent that the Shoreham decision and the standards set forth therein for the granting of exemptions apply to temporary exemptions (where there will be eventual compliance with the regulation for which a temporary exemption is sought) only, to permanent exemptions for the life of a facility or to both?
- (4) Is it the Commission's intent that the Shoreham decision and the standards set forth therein for the granting of exemptions apply to all exemptions or only those with some safety significance? If applicable only to those exemptions with some safety significance, can the Commission clarify the nature or degree of such safety significance?
- (5) Does the Commission intend, by its Shoreham decision, to modify those regulatory standards for granting exemptions set forth explicitly in 10 CFR § 50.12(a) by adding the standards on "exigent circumstances" and "as safe as" which are raised in CLI-84-8?
- (6) Is it the Commission's intent that the "as safe as" standard be read literally or is there some de minimis reduction in safety that would be acceptable in granting an exemption under the Commission's standards in Shoreham?

RECOMMENDATION:

That the Commission provide further guidance on the intended reach of the Commission's Shoreham decision, CLI-84-8 with regard to the need for exemptions and the standards for granting such exemptions under 10 CFR § 50.12.



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This paper is tentatively scheduled for discussion at an Open Meeting on Wednesday, July 25, 1984. Please refer to the appropriate Weekly Commission Schedule, when published, for a confirmation of the specific date and time.

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