



OFFICE OF THE
COMMISSIONER

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

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Dear Len:

Thank you for your February 27 and March 25, 1987 letters regarding my February 25, 1987 response to Congressman Markey. I appreciate the fact that this is a matter of considerable concern to you, and I regret that my response to your letters was delayed by the press of other business. As you know, in the interest of fairness I provided you with a draft copy of this letter and I met with you to discuss it on April 20. This letter reflects the comments which you made during our April 20 meeting.

I have carefully reexamined my recollection of our discussions on emergency planning as you requested. Your February 27 letter was particularly helpful to me in this endeavor. Based upon my review, I find that our recollections are quite similar in most respects but differ on a few points.

You are quite correct that we had three contacts on the subject of emergency planning. My recollection agrees with yours that our August 1984 discussion focused on my description of my own interpretation of certain aspects of the Commission's emergency planning rule. My recollection is that this discussion was general in nature and my position was essentially the same position which I had expressed in Congressional hearings during that time period. I recall your noting at the time that you thought we had somewhat different views on emergency planning and the Commission's rule.

Our recollections are also quite similar concerning the February 1985 contact. On that occasion you asked for the opportunity to discuss with me the Commission's proposed response to a Congressional inquiry. That inquiry concerned the Commission's position on the question of the legal authority of other Federal agencies to implement an offsite emergency preparedness plan. My sense at the time was that you were proposing a more detailed discussion focused on this issue and that you had a position or proposal which you wanted to present to me concerning how the Commission should respond to this inquiry. By this time, it was apparent that the State of New York and Suffolk County did not intend to participate in offsite emergency planning and preparedness for the Shoreham plant and that questions concerning the adequacy of offsite emergency response plans involving actions by entities other than the state and local government would probably come before the Commission for decision in the Shoreham

adjudication. As your February 27 letter acknowledges, I declined your request because I was concerned that such a discussion could involve issues that the Commission could be called upon to decide in the Shoreham, or other pending, adjudication.

As to the October 1986 contact, our recollections also agree in several respects. I recall that you began the conversation by noting that I had declined your earlier request to discuss emergency planning issues but that you would like to discuss an emergency planning proposal with me if I felt comfortable in doing so. I also accept the clarification in your February 27 letter that the proposal you were seeking to discuss in October 1986 differed from the idea that you wanted to discuss in February 1985. Since we did not discuss either idea, I did not know whether or how they differed. In addition, as your February 27 letter states, you did advise me that you had informed the Office of the General Counsel that you would be requesting meetings with each Commissioner and that you had worked out guidelines satisfactory to OGC for these meetings. You did not, however, describe what these guidelines or ground rules were. Finally, you are quite correct that my response to your October 1986 request was that I would have to think about it before I could agree to such a meeting and that I would get back to you. After conferring with my legal assistant, I decided that I would not agree to such a meeting for the same reason that I declined your February 1985 request. My previous concerns that such discussions could involve issues which the Commission must ultimately decide in pending adjudications were heightened by your statement that a presentation of your proposal necessitated a discussion of the NRC staff's position in pending cases, a point I discuss in greater detail below. Because my position remained the same as it was in February 1985 and I did not intend to agree to such a meeting, I did not talk with you again on the subject. I accept the statement in your February 27 letter that, if I had misunderstood what you were proposing, a further conversation might have identified and resolved the misunderstanding.

Although our recollections agree on many aspects of our October 1986 conversation, they disagree on one point. After careful reflection, I clearly recall your statement that the presentation of your proposal necessitated a discussion of the NRC staff's position in pending proceedings. I share the views expressed in your February 27 letter on the propriety of such a discussion. In fact, shortly after our conversation I related our conversation to my legal assistant and expressed considerable surprise that you would suggest such a discussion and that any OGC guidelines for these meetings would permit it. I also recall being perplexed about the need to discuss the NRC's position in licensing cases during a discussion of a proposed rule change. I cannot rule out the possibility that I simply misunderstood what you were proposing. However, when I described this aspect of our conversation recently to the Commission's Deputy General Counsel he told me that he recalled having a similar conversation with you. During our April 20 meeting, you acknowledged requesting the opportunity to discuss pending cases with the Commission's Deputy General Counsel as part of your discussion with him on your rule-making proposal. You also noted that the Deputy General Counsel declined your request on the ground that such a discussion would be improper.

However, you stated that you did not believe your request to the Deputy General Counsel was corroborative of my recollection of our October 1986 discussion. This was the case in your view because you had deliberately sought such a discussion with the Deputy General Counsel whereas, for the reasons set forth in your February 27 letter, you had sought to avoid such discussions with Commissioners.

I do not dispute the statement in your February 27 letter that your discussions with other Commissioners and their assistants on your proposal did not involve a discussion of pending proceedings. Obviously, I have no first-hand knowledge of any such discussions. However, I continue to believe that it would not have been appropriate to meet and discuss your proposal. There are only a few cases, two of them pending NRC licensing proceedings, in which state and local governments have refused to participate in offsite emergency planning and preparedness. The consequences of that lack of participation, and the ability of the utilities to develop adequate compensating measures sufficient to justify license issuance are central issues in those proceedings. Whether or not the words Shoreham and Seabrook are mentioned, there is at best a fine line between an explanation of the rationale for rulemaking proposals pertaining to this question and the issues under adjudication in those proceedings. In fact, the Commission's recent public meeting on the NRC staff rulemaking proposal demonstrates the difficulty in having any detailed discussion of the rulemaking proposal without also discussing the issues in those pending cases. Moreover, there existed another, and in my view, more appropriate, procedure for bringing your rulemaking proposal on this subject to the Commission's attention. That procedure is to submit a petition for rulemaking to the Commission. Such an approach has the benefit of obtaining public comment on the proposal, thereby providing the Commission with a full range of views on the subject.

As a final matter, you expressed some concern in your February 27 and March 25 letters about correcting any misimpressions that might have been created by my response to Congressman Markey. Since our exchange of correspondence provides a much more complete and detailed account of our discussions, I intend to forward a copy of our correspondence to Congressman Markey.

I hope that this letter addresses at least some of your concerns.

Sincerely,



James K. Asselstine