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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555
April 27, 1988

DOCKETED
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'88 MAY -5 P1:06

MEMORANDUM FOR: Chairman Zech
Commissioner Roberts
Commissioner Bernthal
Commissioner Carr
Commissioner Rogers

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

FROM: John C. Bradburne, Director
Congressional Affairs, GPA

John C. Bradburne

SERVED MAY -5 1988

SUBJECT: ITEMS OF INTEREST FROM FEMA APPROPRIATIONS HEARING

On Tuesday, April 26, FEMA director Julius Becton appeared before the Senate Appropriations Subcommittee on HUD-Independent Agencies to discuss FEMA's FY89 budget request. There is no FY89 FEMA appropriations bill at this time and working drafts have not been made available.

A statement in the Report of the Conference managers on FEMA's previous appropriation, which was part of the December, 1987 Continuing Resolution, allowed FEMA to seek reimbursement from NRC for certain expenses associated with FEMA's evaluation of offsite radiological emergency plans. There was no discussion of this issue at yesterday's hearing.

Senator D'Amato (R-NY), a member of the Subcommittee, asked Director Becton a series of questions about FEMA's position on NRC's November, 1987 emergency planning rule change. His questions centered on FEMA's May 7, 1987 testimony before Senator Breaux and FEMA's formal comments on the emergency planning rule change. He asked why FEMA has since "reversed course" and agreed to evaluate a drill of the LILCO emergency plan for Shoreham scheduled (at that time) for June 13, 1988.

In response, Director Becton said that NRC had given FEMA three guidelines or assumptions to follow in evaluating exercises of emergency plans developed by utilities. These were:

- that State and local governments would participate in the event of a real emergency,
- that State and local governments will follow the utility emergency plan in the event of a real emergency, and
- that State and local governments will provide adequate resources to accomplish the goals of the plan.

Senator D'Amato stated that he was not familiar with these guidelines. He then informed Director Becton that he was sending a letter to him requesting answers to questions regarding communications among NRC, FEMA, DOE and LILCO. A copy this letter is attached.

Contact: J.DelMedico, x2-1693

Attachment: As stated

cc: OGC
SECY
EDO

8806280365 880427
PDR ADOCK 05000322
P PDR



United States Senate

WASHINGTON, DC 20510

April 25, 1988

The Honorable Julius W. Becton, Jr.
Director
Federal Emergency Management Agency
500 C Street, S.W.
Washington, D.C. 20472

Dear General Becton:

I am writing to object to FEMA's recent decision to review LILCO's emergency plan for nuclear accidents at the Shoreham Nuclear Power Plant in Suffolk County, New York.

It is my understanding that this review is based upon the NRC's new emergency planning rule, under which the NRC presumes that in the event of a nuclear accident state and local agencies will exercise their best efforts to comply with the utility's plan. As you undoubtedly know, the legality of this rule is currently being challenged by New York State, Suffolk County and others in an action pending in the United States Court of Appeals for the First Circuit.

Furthermore, both the Governor of New York and the County Executive for Suffolk County have stated, unequivocally and under oath, that under no circumstances will their governments participate in LILCO's emergency planning charade. I have attached copies of their affidavits. Both Governor Cuomo and County Executive Halpin have explained in detail the governments' reasons for concluding that it is not possible to provide for the public's safety in the event of a nuclear accident at Shoreham. FEMA's review of LILCO's plan, on the basis of the NRC's erroneous presumption, is an arrogant declaration that FEMA believes that the Governor of New York and the County Executive for Suffolk County have simply lied with respect to their governments' intentions.

The NRC's baseless presumption makes a mockery of state and local views about emergency planning and a mockery of the NRC's and FEMA's responsibilities to assure the public's safety in the event of a nuclear accident. I find it

appalling that FEMA is willing to participate in this charade.

I am also dismayed that FEMA would decide to conduct a review of an emergency plan without state and local participation, that FEMA expressly assured Congress, and further advised the NRC, that FEMA could not make a determination of the adequacy of an emergency plan without state and local participation.

Specifically, on May 7, 1987, FEMA testified before the Subcommittee on Nuclear Regulation of the Senate Committee on Environment and Public Works. During that testimony, David McLoughlin, FEMA's Associate Deputy Director for State and Local Programs and Support, assured Congress that FEMA had warned the NRC that FEMA "had great concern about the absence of State and local government involvement in the preparation of emergency plans." Mr. McLoughlin concluded, "without that (State and local participation) we would not be in a position to make adequate judgement on the reasonable assurance of off-site safety."

FEMA's written submission to the NRC made the same point. "As a result, the conclusions that FEMA would be called upon to make (in evaluating a plan and exercise) about the probable response of state and local governments, would be based largely on conjecture. FEMA is very reluctant to certify that adequate protective measures can be taken where any finding would be based on such a degree of conjecture."

Finally, I am surprised to learn that the LILCO plan which your agency intends to review was devised by LILCO prior to NRC's decision of February 1, 1988, ruling that LILCO's prior plan was substantially flawed in several key respects. Surely, it makes no sense for FEMA to squander resources reviewing a plan that fails to effectively address the significant flaws found by the NRC in LILCO's earlier plan.

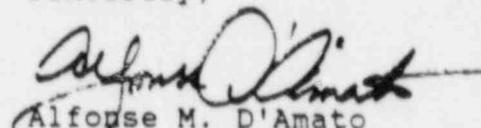
In view of these concerns, I ask that you reconsider FEMA's ill-advised and irresponsible decision to review LILCO's emergency plan. At a minimum, you should postpone the review until your agency has had an opportunity to fully assess whether a plan without State and local participation can be based on anything other than conjecture; until the conclusion of the court battle over the legality of the NRC's new rule; and until LILCO has submitted a new plan that takes into account the fundamental flaws identified in LILCO's earlier plan.

Further, I ask that you provide me with written responses to the following questions:

1. FEMA testified before congress that it could not make an adequate judgement regarding off-site safety without state and local participation in the emergency planning process. Has FEMA changed its conclusion? If so, identify specific events or developments that caused FEMA to change its conclusion.
2. Please describe all communications between the NRC and FEMA regarding FEMA's decision to conduct the review and grade the exercise, and please provide me with copies of all correspondence and other documents relating to such written or oral communications.
3. Did Department of Energy officials communicate with FEMA regarding FEMA's decision to review LILCO's plan or grade the exercise and, if so, please describe any oral communications, and please provide me with copies of all correspondence and other documents relating to such oral or written communications.
4. Did LILCO officials communicate with FEMA regarding FEMA's decision to review LILCO's plan or grade the exercise and, if so, please describe any oral communications, and please provide me with copies of all correspondence and other documents relating to such oral or written communications.
5. Please estimate the direct and indirect costs for FEMA, including personnel costs, of reviewing LILCO's plan and conducting and grading the exercise.

I look forward to your immediate response.

Sincerely,


Alfonse M. D'Amato
United States Senator

AMD/koh