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July 13, 1989

Dear Mr. Chairman:

This is to request that the Nuclear Regulatory Commission (NRC) conduct an environmental assessment prior to allowing any further increase in the level of operations of the Pilgrim nuclear power plant in Plymouth, Massachusetts.

I make this request because NRC's own regulations (10 CFR 51.22), issued pursuant to the National Environmental Policy Act of 1969 (NEPA), require it to conduct such an assessment. As you know, these regulations require environmental assessments for all proposed NRC actions except those that are categorically excluded. Orders authorizing the resumption of operations at a nuclear power plant are excluded only "provided the basis for the authorization rests solely on a determination or redetermination by the Commission that applicable emergency planning requirements are met."

Clearly, the problems that caused the shutdown at Pilgrim extended well beyond emergency planning, and an environmental assessment is therefore required.

In making this request, I am aware of a letter dated April 7, 1989 and signed by Joseph Scinto of the NRC staff which appears to suggest that the NRC does not have, and has not had, a formal role in determining Boston Edison's right to resume operations at the Pilgrim nuclear power plant, and that the provisions of NEPA do not therefore apply.

This assertion rests on a transparent bureaucratic fiction that bears little relation to the facts of the situation. The fact is that Pilgrim could not resume operations at any level of power without NRC consent. That consent, conditionally granted last December, constituted a Federal action by the NRC under NEPA and should have been preceded by an environmental assessment under that law and its implementing regulations. No further increase in power at Pilgrim should be permitted until that illegality is remedied and an environmental assessment is prepared.

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PDR COMMS NRCC
CORRESPONDENCE PDC

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As you know, my views on this subject were supported by a recent decision affecting Pilgrim issued by the U.S. Court of Appeals for the First Circuit. The Court explicitly rejected the contentions of both the NRC and Boston Edison that NRC approval was not necessary prior to restart:

"The fact that the NRC did not call its decision to restart a 'reinstatement' of the license is not controlling...The substance of the NRC's action was that Edison could not operate Pilgrim pursuant to its license until the NRC allowed it to do so."

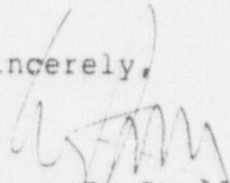
(Commonwealth of Mass. v. NRC, Civil No. 88-2211 (First Cir., June 29, 1989))

In summary, I believe that an environmental assessment should have been conducted before the NRC voted to allow Pilgrim to resume operations at all, and that one must be conducted before permission is granted to increase power beyond the current levels. I ask your assurance that such an environmental assessment will be conducted.

Thank you for your attention.

With kind regards.

Sincerely,


Gerry E. Studds
Chairman
Subcommittee on Fisheries and
Wildlife Conservation and the
Environment

Mr. Kenneth M. Carr, Chairman
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