



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

March 21, 1989

James T. McFarland, Commissioner  
State of New York Public Service Commission  
Ellicott Square Building  
295 Main Street  
Room 814  
Buffalo, N.Y. 14203

Dear Commissioner McFarland:

Your letters of March 7 and March 9, 1989, to Chairman Zech informed the Nuclear Regulatory Commission that a hearing will be held by the New York State Public Service Commission to consider approval of the agreement between the Long Island Lighting Company (LILCO) and the Long Island Power Authority (LIPA) to transfer the Shoreham nuclear plant to LIPA. Your letter of March 9, 1989 requested that the NRC provide a staff member to testify at the PSC hearing concerning the safety of the Shoreham facility.

As you may know the NRC is presently in the process of finalizing its licensing determination concerning authorizing the Shoreham facility to operate at power levels higher than the presently authorized 5% of full power. The timing of the PSC hearing is such that we are not able to respond to your request for an NRC Staff witness. However, we are enclosing, under separate cover, copies of the NRC Staff Safety Evaluation Report, NUREG 0420 and its nine Supplements which address all safety issues associated with operation of the Shoreham facility. The NRC has held extensive adjudicatory hearings on issues placed in contention by the parties to the licensing proceeding. The NRC Atomic Safety and Licensing Boards and the Atomic Safety and Licensing Appeal Boards have determined that the facility can be operated without endangering public health and safety with respect to the safety issues raised in these proceedings.

The Nuclear Regulatory Commission has not yet completed its review of the issues not decided in the formal adjudication. The NRC staff's determination and recommendations will be presented to the Commission in a public meeting. The State of New York will be informed of the time and place of such public meeting.

Although the NRC staff has not yet completed review of certain remaining emergency planning matters, the Federal Emergency Management Agency has completed its review of emergency planning and the 1988 emergency planning exercise for the Shoreham facility and has reached a finding of reasonable assurance (that emergency plans are adequate and that there is reasonable assurance that they can be implemented). Enclosed are a copy of the FEMA report dated September 9, 1988 and a copy of FEMA's March 17, 1989 report on certain LILCO responses to prior FEMA comments.

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While we are not able to provide the witness you requested, I hope that the enclosed information will be sufficient to make clear to the PSC the thorough evaluation of the safety of the Shoreham nuclear power facility carried out by the NRC.

Your letter of March 7, 1989 also raised a number of questions concerning the NRC licensing process and the potential effects of the proposed agreement between New York State and Long Island Lighting Company concerning the Shoreham facility.

1. "Does the NRC have to approve any transfer of ownership? Assuming Shoreham is licensed?"

Sec. 101 of the Atomic Energy Act of 1954, as amended, requires a license from NRC in order for any person to "...transfer, acquire, possess, use..." a nuclear facility. Accordingly, any transfer of the Shoreham facility from the Long Island Lighting Company to any other person (legal entity) requires license approval from the NRC both for LILCO to transfer and for the transferee to acquire, possess, or use the facility. Ordinarily such approval would be reflected in a single amendment to the outstanding license. The obligation for NRC licensing approval is true under the present licensing status (authorized to operate not in excess of 5% of full power) and would not be changed by the issuance by NRC of a license authorizing higher power operation.

2. "On the basis of the foregoing [description of LIPA in your letter], could you tell whether there is any likelihood LIPA could be granted a license to decommission the Shoreham nuclear plant?"

Activities involved in operating or decommissioning the plant would require technical expertise in safe operation of nuclear facilities and in the safe handling of radioactive materials. If an organization without prior nuclear experience were to request a license to operate or to undertake decommissioning of Shoreham, the NRC would have to be satisfied that the organization has obtained sufficient technical expertise to safely carry out the licensed activities, is properly organized to safely control such operation, and has provided a quality assurance program which satisfies the NRC's strict standards.

At this stage we can make no judgement about what qualifications and technical resources LIPA might be able to marshal in connection with any application it may file for an NRC license.

3. Your letter noted that the New York Power Authority already holds a license to operate the Fitzpatrick plant and Indian Point Unit 3. You asked whether if "LIPA would not be eligible to own the Shoreham plant for decommissioning purposes, would NYPA be so eligible?"



The same basic standards discussed above under items 1 and 2 would apply to a transfer of Shoreham to NYPA. The NRC would have to determine that the proposed activities would be carried out safely in compliance with Commission regulations. However, since the NRC is already familiar with the technical and managerial competence of NYPA, the NRC staff may be able to complete its review of these matters more expeditiously than in the case of an organization with no prior nuclear experience.

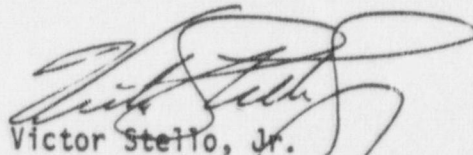
4. "Is it possible for LILCO, if it gets an operating license to move to change the license from an operating license to a permit to decommission the plant and/or store nuclear fuel?"

It is possible for LILCO to request that its operating license be modified to start decommissioning activities at any time that LILCO determines that it intends to permanently cease operation. That would not be changed by the issuance by the NRC of a license authorizing operation at a higher power level.

5. You also asked whether "this chain of events" will prevent the NRC from granting LILCO a license?

It is not clear from your letter, which of the "events" postulated in your letter you mean. Nonetheless, LILCO may obtain an NRC license authorizing operation at a higher power level, up to full power, upon a determination by the NRC that LILCO has satisfied the NRC's licensing requirements. If LILCO no longer qualifies for a license to operate the plant because it has transferred the plant to another person, that could affect NRC licensing. However, if LILCO continues to possess (and own) the facility, as presently reflected in the current operating license and the license application (for a full power license), and satisfies applicable Commission regulations, LILCO would continue to qualify for a Commission operating license, including a license authorizing operation at a higher power level, up to full power.

Sincerely,



Victor Stello, Jr.  
Executive Director for Operations

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