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November 16, 1983

Guy H. Cunningham, III
Executive Legal Director
US Nuclear Regulatory Commission
Washington, D. C. 20555

Dear Mr. Cunningham:

I am in receipt of your reply, on behalf of President Reagan to my letter of September 26, 1983. My objections to the current licensing process remain, and given recent events concerning the emergency diesel generator at the Long Island Lighting Company's Shoreham nuclear reactor, they have become even stronger.

Regardless of technicalities, the issue of Shoreham remains the adequacy of off-site emergency preparedness. It is true that the NRC now has the authority to issue low-power operating licenses for nuclear reactors before they have met all safety requirements. It must be remembered however that such a decision is under the statutory discretion of the agency and is not a mandated course of action. To the best of my knowledge, section 50.47 (d) does not require that the low-power license be granted, but only that one may be granted if specific minimum requirements are met.

In this instance, there is considerable doubt as to whether off-site emergency planning can be implemented for the Shoreham reactor. Section 50.47 (d) was intended not as a blanket waiving of certain licensing restrictions but to streamline the regulatory process where warranted. In its decision supporting the Atomic Licensing Boards' approval of a low-power license for Shoreham, the Commission stated that, "the language of the regulation requires no predictive finding of reasonable assurance with regard to off-site emergency planning prior to low-power operation and none was intended or otherwise". (order CLI-83-17)

However, neither does this regulation forbid or prevent contemplation of "reasonable assurance". Good laws and regulations are those that are flexible and can be applied creatively and usefully while still maintaining their statutory integrity.

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In many ways, Shoreham is unique and such applications are not just preferable, but necessary. It is my opinion that once LILCO loads Shoreham with nuclear fuel and begins limited operation under a low-power license, Suffolk County will be presented with a fait accompli with regard to full-power operation. It will be both costly and dangerous to permit such operation prior to resolution of the emergency planning issue.

If the NRC has already determined that Shoreham will open, then it should say so. The granting of a low-power license implies that the NRC views the evacuation issue as resolvable.

Under present law, the NRC can refuse LILCO a low-power operating license and, in my opinion, has been derelict in its responsibility to the people. The NRC regulates nuclear power in the United States and should not act as an advocate. There is substantial question as to whether emergency planning can be implemented for the Shoreham nuclear power station and in Commissioner Gilinskys words "the common sense and responsible view is that a low-power license should not be issued when there is substantial question that full-power operation of the reactor will ever be permitted". The situation does not warrant the approval of a low-power license under section 50.47 (d) and to so justify it flies in the face of responsibility and reason. The NRC was not compelled to act as it did and, therefore, cannot hide behind regulation as reason for action.

It was recently announced by LILCO that the faulty emergency diesel generators may prevent the completion of the plant until 1986, at a future cost to the ratepayer of \$1 million a day. The decision to abandon must be made now, we can no longer afford the luxury of further study.

The county has stated that evacuation planning for Shoreham is an impossibility and therefore, will no longer participate in the planning process. In an unprecedented move, LILCO has been allowed to draft and submit its own plan to the Federal Emergency Management Agency. FEMA rejected the initial draft of the plan, stating that LILCO could not substitute its workers for government personnel (e.g. police) in the event of a nuclear accident at Shoreham. This is a major flaw, which no utility sponsored plan can correct.

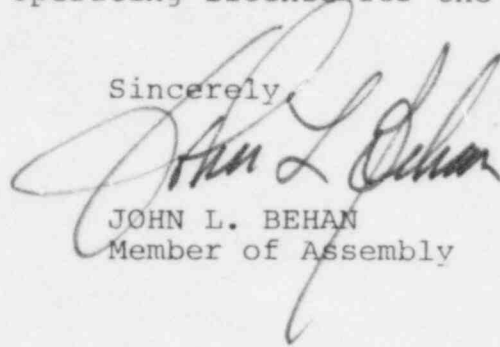
As such, I respectfully request that you review the Commissions position in this matter and address the concerns I have raised with

Guy H. Cunningham, III
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regard to the granting of a low-power operating license for the
Shoreham Nuclear Power Station.

Sincerely,

A handwritten signature in dark ink, appearing to read "John L. Behan", written over the word "Sincerely,".

JOHN L. BEHAN
Member of Assembly

JLB:msm

cc: President Ronald Reagan
Honorable Peter Cohalan, Suffolk County Executive
NRC Commissioners -
Nunzio J. Palladino, Chairman
Victor Gilinsky
John F. Ahearne
Thomas M. Roberts
James K. Asselstine

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STAMPS



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