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WASHINGTON, D.C. 20515

April 12, 1984

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The Honorable Nunzio J. Palladino  
Chairman  
U.S. Nuclear Regulatory Commission  
1717 H Street, N.W.  
Washington, D.C. 20555

Dear Mr. Chairman:

Thank you for your prompt response to my March 8, 1984 letter to you about perceived "licensing delays." I continue to think that your March 20, 1984 memorandum to the other Commissioners on this subject and other subsequent actions that you have taken strongly imply that you have pre-judged aspects of the Shoreham licensing proceeding.

Regardless of your initial intent, certain events have transpired which create the appearance that your statements and views have been treated as a mandate by members of the NRC's Atomic Safety and Licensing Board (ASLB). Your March 20, 1984 memorandum states that you convened a meeting with B. Paul Cotter, Jr., Chief Administrative Judge of the ASLB and members of the NRC staff (a party to the proceeding) on March 16, 1984 to discuss potential licensing delays at Shoreham and other plants. Apparently, as an outgrowth of that meeting, and your subsequent memoranda, Judge Cotter appointed a new board to consider on an expedited basis the Long Island Lighting Company's (LILCO) March 20, 1984 "Supplemental Motion for [a] Low Power Operating License."

Over the unanswered objections of Suffolk County and New York State, the newly appointed licensing panel issued an order on April 6, 1984 that states: "...the expedited schedule set forth below will not prejudice any party to this proceeding." In reaching such a decision, I am concerned that the board did not: (a) specifically resolve or even respond to the arguments of intervenors that an expedited schedule would prejudice their right to a full and fair hearing; and, (b) state why it apparently

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PDR COMMS NRCC  
CORRESPONDENCE PDR

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believes an expedited hearing is necessary. I respectfully request that the Commission formally ask the board to respond to these two issues.

It would appear that in the absence of any specifically stated rationale by the licensing board, that it has declined to respond to the arguments of intervenors and decided to oblige LILCO because of the utility's perceived financial problems. Apparently, the board is in agreement with the rationale stated by LILCO in the first two sentences of its Supplemental Motion:

The Shoreham Nuclear Power Station represents both a huge commitment of economic resources and Long Island's only power plant not dependent on foreign oil. Thus, there are compelling reasons for the station's early operation.

I am unaware of any statutes which provide the ASLB with the authority to expedite a proceeding on this basis without hearing from and resolving the views of all parties. Because of the appearance of impropriety in the board's actions, I believe the Commission should request the board to explain why it believes - an expedited hearing is necessary.

With respect to your involvement in this case, I understand that on April 4, 1984 you circulated a follow-up memorandum to the other Commissioners that included a proposed order drafted by Judge Cotter and a paper written by your own staff that would have set forth an expedited schedule in which the Shoreham low power licensing proceeding would be completed in thirty to sixty days.

Your memorandum and the draft order, apparently written prior to the April 4, 1984 licensing board hearing to decide the merits of LILCO's request for an expedited proceeding, was circulated without obtaining or representing the views of all parties. As the ultimate decision-maker in this proceeding, your actions create the appearance that you have pre-judged the merits of LILCO's request and did so in an unorthodox and inappropriate fashion.

The present "licensing delay" at Shoreham is not attributable to the NRC licensing process. The delay is not a licensing delay per se, but rather, is directly attributable to the use of defective and unqualified equipment used to supply on-site power. Hence, actions taken to expedite review of this issue could impact upon the consideration of the merits and substance of the proceeding itself.

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In order that public confidence can be restored, if possible, to what has become an unseemly and confused process, I think that it is essential that you explain why you believe the Shoreham proceeding should be expedited as well as your reason for circulating the draft order prepared prior to hearing from and resolving the views of all parties. In this context, I also think you should reconsider recusing yourself from voting on either the low power or full power license for Shoreham.

Additionally, I would like to be provided with all documents and memoranda on this issue that have been written or circulated subsequent to your March 20, 1984 memorandum. I would appreciate receiving these documents within five working days.

Further, please identify and provide a description of all communications that you, the other Commissioners, OGC, EDO, or members of the NRC staff have had in 1984 that related to or concerned the matter of licensing Shoreham with employees or officials of LILCO, representatives of LILCO (including but not limited to members of the firm Hunton and Williams), organizations composed of or representing the nuclear industry, the Secretary of Energy or members of the Department of Energy staff, the Director or Associate Director of the Federal Emergency Management Agency (FEMA) or members of the FEMA staff, or other Executive Branch offices or members of the White House staff. To the extent that any such communication was written, please provide all relevant documents.

Thank you for your prompt attention to this matter.

Sincerely,



Edward J. Markey  
Chairman  
Subcommittee on Oversight  
and Investigations



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

March 20, 1984

CHAIRMAN

MEMORANDUM FOR: Commissioner Gilinsky  
Commissioner Roberts  
Commissioner Asselstine  
Commissioner Bernthal

FROM: Nunzio J. Palladino *NJP*

SUBJECT: LICENSING DELAYS

On March 9, 1984, the EDO notified us that potential licensing delays, as of the end of February, are 9 months for Shoreham and 5 months for Limerick. On March 16, I had a status and scheduling meeting with the staff, OGC, OPE, and Tony Cotter to discuss these and other possible delays.

It turns out that, beyond Shoreham and Limerick, delays may arise for Waterford and Comanche Peak. These possible delays are in addition to the difficulties being experienced at Diablo Canyon, Byron, Midland, Palo Verde, and Grand Gulf. Briefing sheets were provided on allegations and on the problems at a number of plants, and these were distributed to your offices to assist in understanding the problem and preparing for the Bevill hearing.

I suggest that the Commission hold a special meeting to discuss the problems associated with the foregoing plants. I believe it is important that we have such a meeting in the near future so we can focus better on the issues. We can address this at agenda planning. Identified below are some thoughts that we might discuss at the meeting.

So that we can take steps to both (a) reduce the delays at Shoreham and Limerick that have been officially reported to us by the EDO, and (b) reduce the possibility that delays at other plants may arise or, if they arise, be extensive, I propose the following:

-- For Shoreham, have the Commission consider a proposal from OGC for an expedited hearing on the diesel problem, or proposals for other possible actions so that at least a low power decision might be possible while awaiting resolution of the emergency planning issue. I have asked the OGC to provide a paper on this subject soon. In preparing this paper, the OGC should work with other offices within NRC as necessary.



For Limerick, have the staff determine whether the licensee will seek a low power authorization, and have OGC (again working with others as necessary) determine whether there are any other steps that might be taken to expedite the hearing.

For Waterford and Comanche Peak, the EDO informed us that he has placed one senior executive in charge of identifying the problems and laying out solutions and schedules for getting to a licensing decision at each plant. In addition, I would like the EDO to determine how what we are doing relates to the Board. I also want to ensure that we are taking action with the licensee to correct, either by consultation or enforcement, as appropriate, any problems having merit that come to our attention.

For Diablo Canyon, I suggest that we give careful consideration to the staff's proposal yesterday morning to proceed without going deeply into the other allegations unless a review shows serious problems not already dealt with.

For Byron, we probably need to wait to see what the Appeal Board says. However, if a hearing is reopened, OGC (again working with others as necessary), should prepare options for Commission consideration to expedite it.

We have a review by the Commission of the Midland plant now scheduled for April 2, 1984; I suggest that the review include options prepared by the staff for subsequent agency action.

For Palo Verde and Grand Gulf, the staff should keep the Commission informed of actions planned or needed. In any event, staff review of the diesel generators should be completed on an expedited basis.

For the general problem of last minute allegations that affect a number of plants, I recommend that the Commission consider developing a policy for handling last minute allegations. Such a policy might include a deadline after which the threshold for allowing allegations to hold up a licensing action is very high. For example, that threshold might be something like the following: new information, supported by signed affidavits, and presented in a

disciplined way through established channels. By copy, I would like OGC to explore this and other possible approaches in a paper for Commission review and decision.

By copy, I would also like the EDO to respond to the specific matters raised above and provide a paper to the Commission outlining the steps for dealing with potential delays. This paper would be in preparation for a Commission meeting on this general subject at the earliest possible time.

In keeping with my suggestion for a Commission meeting in the near future, I propose that papers be prepared within the next couple of weeks (at least by April 5) so that the Commission could meet about mid-April.

SECY, please track the above action items.

cc: SECY  
OGC  
OPE  
OLA  
EDO ✓