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Congress of the United States
House of Representatives
Washington, D.C. 20515

COMMITTEE ON
WAYS AND MEANS
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SELECT COMMITTEE ON AGING

April 11, 1983

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

Dear Chairman Palladino:

We are aware of the pending controversy in the Shoreham nuclear power plant proceeding concerning offsite emergency preparedness. Following an exhaustive nine-month emergency planning study, Suffolk County on February 17 determined that it would not adopt or implement a local radiological emergency response plan. The county, acting under its constitutional mandate to assure the well-being of its citizens, resolved that the public health, safety and welfare could not be protected if there were a serious nuclear accident at Shoreham.

We are writing to emphasize that the NRC not take undue liberties with the authority granted by Congress in Section 5 of the NRC's 1982 Authorization Act. In particular, we refer you to our colloquy during the final consideration of Section 5. The colloquy provides:

The reference to a State or local plan is clearly intended to apply only to a plan which has been officially submitted by a State or local government. A utility, therefore, cannot submit a local government plan. NRC consideration of a utility plan is a last resort and is not intended to preempt a State or local plan. This legislation does not in any way affect the authority of the Federal Emergency Management Administration with respect to authority and requirements regarding emergency management plans. (Congressional Record, Page H 8823, December 2, 1982, enclosed.)

In light of this, we wish to bring your attention to the following:

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PDR COMMS NRCC
CORRESPONDENCE PDR

1. It would be against the law if the NRC were to consider a local government plan which was developed by a utility and not "officially submitted" by the local government. The law is clear, and our colloquy further emphasizes, that a utility, devoid of any manner of enforcing compliance with plans pertaining to actions of non-utility personnel, cannot submit a plan on behalf of a local government against the wishes of that local government.

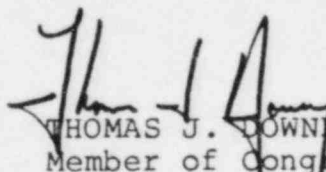
2. Section 5 specifically was "not intended to preempt" a local plan. Therefore, where a local government has made determination that the public well-being cannot be protected through a local emergency plan, a utility plan cannot be considered under Section 5. Otherwise, the utility plan would "preempt" the local plan, which is contrary to the legislative intent of Section 5.

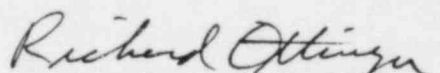
3. We wish to stress the importance of the NRC's adhering to its own regulations. The NRC's regulation in section 50.47, which in subsection (a) requires both State and local government emergency plans, was promulgated after a thorough NRC rulemaking proceeding in which the public, states, local governments, and utilities participated. That rulemaking process established the regulations to which the NRC is bound in all cases, including Shoreham, and the NRC now has no discretion to ignore those regulations. If the Commission wishes to reconsider section 50.47, it may do so through another rulemaking proceeding where the public and others affected are given fair opportunity to assert their views. Short of that, however, we can perceive no basis on which the NRC could depart from the clear force of its own properly promulgated regulation in section 50.47.

4. Section 5 "does not in any way" affect the authority and responsibility of FEMA with respect to offsite emergency preparedness. The NRC therefore may not ignore or shortcut FEMA's involvement in the Shoreham case.

Finally, we request your assurances that Congress's intent in Section 5, quoted above, is not being treated casually by the NRC, particularly in the Shoreham case where a first-of-its-kind issue is pending. If the NRC views any of the four points addressed above differently from how we presented them, we would appreciate your providing us with a most expeditious explanation.

Very truly yours,


THOMAS J. DOWNEY
Member of Congress


RICHARD L. OTTINGER
Member of Congress

Mr. DOWNEY. Mr. Speaker, I thank the chairman for yielding this time to me.

I would like to have a colloquy with my colleague, the gentleman from New York (Mr. OTTINGER).

Mr. Speaker, the temporary operating license provision passed last year by the House and contained in the conference report was intended to authorize the Commission in its discretion, to issue a limited operating license to a utility prior to the conduct or completion of any required hearing in order to prevent completed nuclear powerplants from standing idle pending the completion of such hearings. A temporary operating license could not be issued unless, in all other respects, the requirements of law are met, and the Commission determines that there is reasonable assurance that the operation of the reactor will not adversely affect the public health and safety and the environment. Am I correct to conclude, therefore, that there is nothing in this provision which would allow the Commission to short-circuit its required safety review, or, in any way, to require a less stringent safety standard for a reactor which receives a temporary operating license?

Mr. OTTINGER. Mr. Speaker, if the gentleman will yield, that is correct. This bill does not affect the standards and requirements to be applied before a plant goes into operation. The standards the NRC must apply for a plant undergoing temporary operating license review and review for a "regulator" operating license are exactly the same.

Mr. DOWNEY. The Commission currently makes a distinction in its emergency plan requirements based on authorized reactor power levels. Is there any provision in this act which would allow the Commission to make a distinction, for purposes of emergency plan requirements, based on power levels authorized by a temporary operating license and levels authorized by a "regular" operating license?

Mr. OTTINGER. The answer is "No." There is no provision in this act which allows the Commission to make any distinction in requirement for reactor operations authorized by temporary or regular operating licenses.

Mr. DOWNEY. The conference report allows the NRC to issue an operating license if it determines that a State, local or utility plan exists which would provide reasonable assurance that the public health and safety

would not be endangered. Is this a change from current regulations?

Mr. OTTINGER. Yes. Currently, the NRC requires an approved State or local government plan. This provision allows the NRC to consider a utility plan only in the absence of a State or local government plan. The reference to a State or local plan is clearly intended to apply only to a plan which has been officially submitted by a State or local government. A utility, therefore, cannot submit a local government plan. NRC consideration of a utility plan is a last resort and is not intended to preempt a State or local plan. This legislation does not in any way affect the authority of the Federal Emergency Management Administration with respect to its authority and requirements regarding emergency management plans.

Mr. DOWNEY. I thank the gentleman.