

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL PANEL

Alan S. Rosenthal, Chairman

'83 APR 26 P3:36

\_\_\_\_\_  
In the Matter of )  
LONG ISLAND LIGHTING COMPANY )  
(Shoreham Nuclear Power Station, )  
Unit 1) )  
\_\_\_\_\_

Docket No. 50-322 OL

SERVED APR 26 1983

ORDER

April 26, 1983

On April 20, 1983, the Licensing Board entered two orders in this operating license proceeding involving the Shoreham facility located in Suffolk County, New York. In one of those orders,<sup>1/</sup> the Board denied the motion of that County (an intervenor) to terminate the proceeding. In the other order,<sup>2/</sup> the Board both (1) referred its ruling on the motion to us for interlocutory appellate review under 10 CFR 2.730(f) and (2) certified (through us) a related issue to the Commission for its interlocutory consideration (see 10 CFR 2.718(i)).

\_\_\_\_\_  
1/ LEP-83-22, 17 NRC \_\_\_\_\_.  
2/ LBP-83-21, 17 NRC \_\_\_\_\_.  
\_\_\_\_\_

DS02

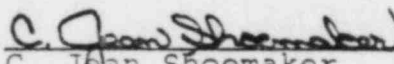
In ordinary circumstances, an appeal board would have been promptly established for the purpose of examining the referred ruling and, if satisfied that interlocutory review of it was warranted, then passing judgment on it. It appears, however, that, some six days before the Licensing Board issued the two orders and in response to specific questions posed by a Senate committee, the Commission itself addressed in large measure the very legal issues encompassed by the referred ruling. See Commission response to multipart Question 7, furnished in connection with "Prepared Testimony Submitted by Nunzio J. Palladino, Chairman, United States Nuclear Regulatory Commission, to the Subcommittee on Nuclear Regulation, Committee on Environment and Public Works, United States Senate, Concerning Emergency Preparedness," dated April 14, 1983. As the Licensing Board noted in a memorandum issued earlier today in which it served the response to Question 7 upon the parties to the proceeding, at the time it entered its orders it was not aware of either the existence of the congressional testimony or the substance of the Commission's views expressed therein.

Had it known on April 20 that the Commission had spoken on the subject (albeit in a non-adjudicatory context), the Licensing Board likely would not have referred its ruling on the County's motion -- at least not to an appeal board. Be

that as it may, no good reason exists for the expenditure of appeal board time and resources in the examination of issues that have previously received both Commission attention and a response now a matter of public record. Rather, the proper course is simply to transfer the referral to the Commission for whatever further consideration, if any, it might deem justified. As contemplated by the Licensing Board, the related certified question is also passed on to the Commission for such disposition as may be warranted.

It is so ORDERED.

FOR THE APPEAL PANEL  
CHAIRMAN

  
C. Jean Shoemaker  
Secretary to the  
Appeal Panel

This action was taken by the Appeal Panel Chairman  
under the authority of 10 CFR 2.787(b).