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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING APPEAL BOARD

JUN 20 10:26

Administrative Judges:

Alan S. Rosenthal, Chairman
Gary J. Edles
Howard A. Wilber

June 19, 1984

OFFICE OF THE SECRETARY
GENERAL INVESTIGATIVE
DIVISION

SERVED JUN 20 1984

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

DOCKET NUMBER
PROD. & UTIL. FAC. 50-322-01-4
Docket No. 50-322 OL
(Low Power)

MEMORANDUM AND ORDER

On the automatic referral provided for in 10 CFR 2.704(c), we summarily affirm the Licensing Board's telegraphic order of this date. That order dismissed for want of a supporting affidavit the June 18, 1984 motion of Suffolk County and the State of New York seeking the disqualification of all three members of the Licensing Board.

Section 2.704(c) specifically requires that disqualification motions "be supported by affidavits setting forth the alleged grounds for disqualification." Although acknowledging this requirement, the movants insisted that "[s]uch an affidavit is unnecessary here, because all facts set forth herein and in the Attachment are matters of public

record contained in NRC and other public documents."¹ In advancing this claim, the movants obviously overlooked our holding over 10 years ago that an affidavit is required

even if the [disqualification] motion is based wholly upon matters of public record (e.g., rulings of the Licensing Board or statements made by a Board member which are reflected in the official transcript). In such circumstances, the affidavit requirement still serves a salutary purpose: given the solemnity of an attestation under oath, it reduces the likelihood of an irresponsible attack upon the probity or objectivity of the Board member or members in question. It is doubtless for this reason that Section 2.704(c) mandates that all disqualification motions be supported by affidavit.²

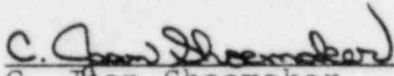
This being so, the Licensing Board was clearly correct in dismissing the motion at hand subject to its possible renewal in compliance with the Section 2.704(c) affidavit requirement.

¹ Suffolk County and State of New York Motion for Disqualification of Judges Miller, Bright, and Johnson (June 18, 1984) at n.1.

² Duquesne Light Co. (Beaver Valley Power Station, Units 1 and 2), ALAB-172, 7 AEC 42, 43 n.2 (1974) (emphasis in original). See also Detroit Edison Co. (Greenwood Energy Center, Units 2 and 3), ALAB-225, 8 AEC 379, 380 (1974).

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jan Shoemaker
Secretary to the
Appeal Board

Mr. Edles did not participate in this order.