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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE
CHIEF ADMINISTRATIVE JUDGE B. PAUL COTTER, JR.

DOCKETED

84-503-01 P437

In the Matter of:

SUFFOLK COUNTY AND STATE OF NEW YORK
MOTION FOR DISQUALIFICATION OF
CHIEF ADMINISTRATIVE JUDGE COTTER

(Shoreham Nuclear Power Station,
Unit 1)

SERVED AUG 6 1984

ASLBP DOCKET NO.
84-503-01 Misc.

DOCKET NUMBER 50-322-01-4
PROB. & UTIL. TAG.....

MEMORANDUM AND ORDER

On June 22, 1984, the captioned county and state moved that the undersigned "disqualify himself from participating in any matters concerning the Long Island Lighting Company's ("LILCO") Shoreham Nuclear Power Station ("Shoreham")." Movants allege that a series of events during the two weeks ending March 30, 1984 (the date I appointed an Atomic Safety and Licensing Board to consider a motion filed by the Long Island Lighting Company), established grounds for concluding that I had "in some measure adjudged the facts as well as the law of [this] case in advance of hearing it" (emphasis in original), citing Cinderella Career and Finishing Schools, Inc. v. FTC, 425 F.2d 583, 591 (D.C. Cir. 1970) quoting with approval from Gilligan, Mill & Co. v. SEC, 267 F.2d 461 (2d Cir.). The NRC Staff filed a response on July 12, 1984.

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The motion is anomalous and is devoid of basis or apparent precedent. Motions for disqualification or recusal are normally directed to a presiding judicial official who has responsibility for deciding a contested issue or issues. See Withrow v. Larkin, 421 U.S. 35 (1975). The rules governing such motions and their resolution are generally the same for the administrative judiciary as for the judicial branch itself, and this Commission has followed that practice. Houston Lighting and Power Co., 15 N.R.C. 13 , 63, 1366 (CLI-82-9, 1982). In the instant case, I have no adjudicatory responsibilities in connection with the Shoreham proceeding. I am not a member of the Atomic Safety and Licensing Board hearing the case nor do I serve as an alternate member, a special master, a special assistant, or in any other quasi-adjudicatory position in connection with the case. See 10 C.F.R. §§ 2.704, 2.721 and 2.722 (1984). Consequently, I have no authority to decide any issue pending in the Shoreham proceeding and no adjudicatory responsibility from which to recuse myself.

To the extent the motion may be intended to address my role as the principal administrative officer of the Atomic Safety and Licensing Board Panel, it is equally without foundation. I did appoint the members of three licensing boards which are hearing various aspects of the Shoreham proceeding, and, because of conflicts in workload, have had to reconstitute at least one of those Boards. See notices published at 47 Fed. Reg. 6510 (reconstitution); 48 Fed. Reg. 22235-36 (emergency planning board); and 49 Fed. Reg. 13611-12 (low power board). Those

appointment actions were taken pursuant to administrative responsibilities imposed upon me as Chief Administrative Judge of the Atomic Safety and Licensing Board Panel by the Atomic Energy Act and the Commission. 42 U.S.C. § 2011 (1982), as amended; 10 C.F.R. §§ 2.704, 2.721 (1984). I do not have the authority myself to refuse to perform such duties. See Boyle v. U.S., 515 F.2d 1397, 1402 (Ct. Cl. 1975) and Nagel v. Department of Health and Human Services, 707 F.2d 1384, 1387 (Fed. Cir. 1983). Even if I did, I would not take any such action on the basis of the instant motion. The motion consists of a collection of unfounded accusations, unsupported allegations, distortions of events, hearsay, and omissions of significant facts (for example, the omission of the complete February 22, 1984 ruling of the Shoreham licensing board) concocted in an effort to create an appearance of impropriety or bias that does not exist. It does not warrant further discussion and will be dismissed.*

Nevertheless, the aggregate effect of the accusations and omissions is to inject a spurious dispute into the Shoreham proceeding and to impugn my own integrity. The latter result has broader effect because it has the potential to cast a shadow over other proceedings conducted

*Section 2.704(c) of 10 C.F.R. Part 2 provides that the denial of a motion to disqualify "shall be referred to the Commission or the Atomic Safety and Licensing Appeal Board as appropriate, which will determine the sufficiency of the grounds alleged." By its terms, § 2.704(c) applies to a presiding officer or a member of a licensing board and therefore does not appear, on its face, applicable to the instant decision.

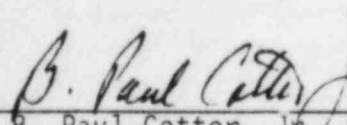
by atomic safety and licensing boards that I have appointed in the past and will appoint in the future. Consequently, to remove those potentially harmful effects, attached to this memorandum and incorporated herein by reference as if set forth at length is my statement concerning the events resulting in the appointment of a board to hear LILCO's Supplemental Motion for Low Power Operating License filed March 20, 1984.

ORDER

For all the foregoing reasons, it is this 1st day of August, 1984

ORDERED

That the Suffolk County and State of New York Motion for Disqualification of Chief Administrative Judge Cotter is denied.


B. Paul Cotter, Jr.
ADMINISTRATIVE JUDGE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE
CHIEF ADMINISTRATIVE JUDGE B. PAUL COTTER, JR.

DOCKETED
USING

'84 100-3 P437

In the Matter of: :

SUFFOLK COUNTY AND STATE OF NEW YORK :
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ASLBP DOCKET NO. :
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(Shoreham Nuclear Power Station, :
Unit 1) :
_____ :

STATEMENT
OF
B. PAUL COTTER, JR.

1. I was appointed Chairman of the Atomic Safety and Licensing Board Panel (the Panel), on November 3, 1980. The Chairman, or Chief Administrative Judge, is the principal administrator and representative of the Panel responsible for appointing atomic safety and licensing boards to hear and decide cases, furnishing support for such licensing boards, and representing the Panel through self-initiated or responsive contacts with the Chairman of the Commission, other Commissioners, government officers such as chief administrative judges, agency administrators and office directors, and members of congressional offices.

2. The Chief Administrative Judge also serves as a member or chairman of licensing boards pursuant to 10 C.F.R. Part 2 (1984). The

undersigned does not now and never has served in any adjudicatory capacity in connection with an operating license proceeding titled In the Matter of Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), Nuclear Regulatory Commission Docket No. 50-322-OL.

3. The Chief Administrative Judge is charged with appointing licensing boards promptly when a case is filed, insuring that no proceeding is delayed by virtue of a conflict in work assignments on the part of individual administrative judges or licensing boards, and generally making sure that cases on the Panel docket proceed in a timely manner consistent with administrative due process.

4. In May 1981 the Commission issued a Statement of Policy on Conduct of Licensing Proceedings, 13 NRC 452 (CLI-81-8, 1981), to emphasize its concern that proceedings progress in a timely manner and to give the licensing boards guidance in that regard. The policy statement was issued in part because of Congressional concern which had earlier led to a requirement, commencing in 1980, that the Commission file a monthly report on the status of all nuclear power plant applications with the House Subcommittee on Energy and Water Development ("the Bevill Report"). Panel hearings were given special attention in the Bevill Report from the outset.

5. Since approximately January 1981 I have reviewed all case schedules to insure that no case otherwise ready for hearing or decision

was delayed because of a conflict or potential conflict in the schedule of any individual Board member or the Board as a whole. Consequently, some 75 board members were replaced during the period January 1981 through May 1984. For example, on February 12, 1982 Judge Lawrence Brenner was appointed Chairman of the Shoreham board in place of Judge Louis J. Carter who had a schedule conflict. 47 Fed. Reg. 6510 (1982). Also during that period, additional boards were appointed to hear separate issues in Shoreham, Comanche Peak, and Catawba, and Special Masters were appointed in TMI-1 Restart, Indian Point, and UCLA. Those additional boards and Special Masters were appointed so that the original licensing board in those cases could proceed to hear and decide primary issues without delay.

6. During the period January 1981 to May 1984, I met periodically with the Chairmen of the Nuclear Regulatory Commission during that time (Joseph Hendrie, John Ahearne, or Nunzio Palladino), either alone or with members of the Staff and other Commission officers, to review case schedules and other administrative matters, frequently in connection with reports to, or testimony before, Congressional committees or subcommittees. At no time during these meetings was there any discussion of a substantive issue in an active proceeding before an atomic safety and licensing board. All discussions related solely to scheduling or other Panel management matters.

7. Commencing around September 1983, the Deputy Chief Administrative Judge and I became concerned that the Shoreham and Limerick Boards were headed for a major schedule conflict because the same two Administrative Judges, Lawrence Brenner and Peter A. Morris, were on both boards and the Bevill Report indicated that both cases were scheduled for hearing and decision in approximately the same time frames. We deferred action but reviewed the situation every four to six weeks, periodically checking with Judge Brenner on the schedule for both cases as is the customary practice in the office.

8. In late February 1984, I became aware that a bench ruling had been issued in the Shoreham proceeding. At that time over 100 days of hearing had been held and virtually all issues, except emergency diesel generators and emergency planning had been resolved. The licensing board had ruled on February 22, 1984 that it would not approve issuance of a low power license for the Shoreham plant until the Board had decided three pending contentions concerning the emergency diesel generator problems or some alternate solution to the problem of emergency backup was found. The transcript reports the following language in the ruling at pages 21,616-21,617:

What we have said so far would not preclude LILCO from proposing other methods by which LILCO believes the standards of 50.57(c) could be met, short of litigation of Contentions 1, 2, and 3 on the merits. Or possibly seeking some sort of waiver under 2.758 or other procedures.

But, that is up to LILCO. After giving it thought on our own and listening to the other parties, we agree it is difficult to deal with an abstract proposition. And while someone could imagine different things in combination, we do not know what is feasible or what LILCO would seek to propose.

But whatever LILCO would propose, it would have to meet our present finding. That unless we consider Contentions 1, 2, and 3 on the merits, we do not presently have reasonable assurance that the TDI diesel generators can reliably be depended upon to start and generate electricity.

9. On or about March 14, 1984, I was notified by telephone that a scheduling session would be held in Chairman Palladino's conference room on March 16, 1984 at 1:30 P.M. I had my Legal Counsel check on the scheduling status of our proceedings and went to the meeting with him. At the session, the Staff presented anticipated schedules for some 14 or 15 plants. Seven of the plants addressed were not in litigation before an atomic safety and licensing board. There was no discussion of any substantive issue before any atomic safety and licensing board.

10. The Shoreham proceeding schedule was discussed first. There was passing reference to newspaper and trade press reports of Shoreham's financial condition. Someone from the Staff commented that he had been told that LILCO was planning to file a supplemental motion seeking low power authorization pursuant to Judge Brenner's ruling on February 22, 1984. There was a brief discussion as to whether such a motion could be handled on an expedited basis. I made a note to myself about the Shoreham-Limerick conflict the Deputy Chief Administrative Judge and I

had been discussing. The discussion then moved on to 13 or 14 other cases and the problem presented by late filed allegations.

11. On March 22, 1984, I received a telephone call from Chairman Palladino's Legal Assistant, C. W. Reamer. Mr. Reamer stated that the Chairman was considering proposing to the Commission an order that would direct a licensing board to hold an expedited hearing on any LILCO motion for a low power license based on alternate energy sources. Mr. Reamer then asked if I had any comments on the first draft of a proposed order he had prepared for the Chairman's consideration. I stated that I would prefer to see the order before commenting, and he agreed to send it to me. Upon receiving the Reamer draft, I noted that the proposed timetable was impossible to meet because it called for a decision in five weeks but proposed a seven-week schedule. See Attachment 1. I was also concerned that, should the Commission agree with any such proposal Chairman Palladino might make, any such order they might issue should be clearly stated and capable of implementation by a licensing board without further clarifying instructions from the Commission.

12. On March 22, 1984, I obtained a copy of the March 20 LILCO Supplemental Motion for Low Power Operating License (the LILCO motion). The motion asked the licensing board to refer the motion to the Commission or to rule on the motion "as quickly as is feasible" and certify its decision to the Commission. Thus, the motion appeared to present two questions, one procedural and one substantive, viz.:

(1) whether the subject matter of the motion should be given expedited handling; and (2) whether LILCO's supplemental request for a low power license should be granted or denied.

13. Pursuant to my concerns outlined in paragraphs 11 and 12, above, I began drafting a proposed Commission order that would clearly state the issues raised by LILCO's motion and provide that they be heard on a reasonably expedited schedule. My draft order proposed the appointment of a separate board because I knew that Judges Morris and Brenner would be in hearing for the next two or three months in the Limerick case and would then have to write a decision. My final draft was sent to Mr. Reamer late Friday afternoon, March 23, 1984. See Attachment 2. Judges Brenner and Morris were in a Limerick prehearing conference in Philadelphia on that date.

14. On Monday, March 26, Mr. Reamer called to tell me he had referred my draft to the Office of General Counsel. On the same day Judge Brenner returned to the office and advised me that he was concerned about his Board's ability to act on the March 20, 1984 LILCO motion because of his and Judge Morris' commitments in April and May to hearings in the Limerick proceeding.

15. On March 27 Judges Brenner and Morris gave me a memorandum asking for relief in the Shoreham proceeding because of their

commitments in the Limerick case. See Attachment 3. I checked with Mr. Reamer who expressed doubt that the Commission could take any action with respect to the LILCO low power motion before April 5 and more likely not before April 12, 1984. I expressed my concern to him about waiting for any Commission action for that length of time because it would mean that a motion in our hearing process would not even receive consideration for three weeks to a month after it was filed. Thus, LILCO's request for expeditious consideration of its motion would be mooted by the passage of the time taken to decide how to consider it. It would then effectively be denied by that delay.

16. On March 28 I began to consider appointing a separate board myself in view of the Shoreham Board's schedule conflict and the fact that the Commission apparently would not even reach the question for some time. That same day I so advised Mr. Reamer.

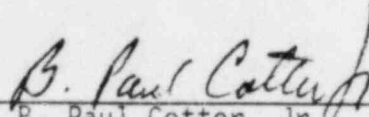
17. On March 29 I verified that Judge Brenner's Board was still convinced that it would be unable to consider the motion and after reviewing all pending work assignments, I asked Judge Marshall Miller whether he would be able to consider the motion. He said that his schedule was such that he would be available.

18. On March 30, 1984 after thoroughly considering the matter, I decided to appoint a board consisting of Administrative Judges Marshall Miller, Glenn Bright, and Elizabeth Johnson to consider the motion. I

issued the order and advised Mr. Reamer that I had taken the action. I also called Mr. Malsch of the General Counsel's Office to notify him the board had been appointed because of my concern that a motion that had been pending for 10 days had not yet been even considered. I pointed out that there was no need for Commission action because the new board could decide whether the motion should or should not receive expedited treatment, and then, in either event, whether the substantive request should be granted or denied.

19. At no time during the two-week period ending March 30, 1984 did I have any communication with Chairman Palladino concerning appointing the Miller Board other than as an observer at the March 16 scheduling meeting. Chairman Palladino himself never asked me either to appoint a board to hear the LILCO low power motion or to have the motion given expedited treatment. Nor, so far as I have been able to discern, did the Chairman or any other Commissioner even suggest, either directly or indirectly, through Mr. Reamer or anyone else, that I should take either action. My sole reason for appointing the Miller Board was to insure that a party to one of our proceedings received administrative due process.

20. I have not and would not ever in any way directly or indirectly attempt to compromise the independence of any Administrative Judge of the Atomic Safety and Licensing Board Panel.



B. Paul Cotter, Jr.
CHIEF ADMINISTRATIVE JUDGE

3/22/84

NTP Office

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The EDO has recently provided the Commission an assessment for Shoreham that projects a nine-month licensing delay due to, I am told, the Shoreham Licensing Board's requirement to litigate the diesel-generator question before allowing operation at low power.

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The Commission would like this matter litigated on an expedited basis with a target date of receiving the Board's decision on this matter by May 9, 1984. Would you please look into what steps are required to meet such a date and inform the Commission on these steps as soon as possible, but not later than March 30, 1984.

For planning purposes, you could assume the following steps:

r/l. k

- A two week staff review of the proposal by LILCO;
- A one week discovery period;
- A two week period for filing testimony and holding a hearing;
- A two week period to issue the Board's decision

Final Commission guidance on the expedited hearing on this matter would be based on your submittal and follow up discussions. If you have any questions, please let me know.

3/23/84

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ORDER

On March 20, 1984, LILCO filed with the Licensing Board a "Supplemental Motion for Low Power Operating License". LILCO has requested the Board either to refer the motion immediately to the Commission for decision or to decide the motion on an expedited basis and to certify its decision to the Commission pursuant to 10 C.F.R. § 2.730(f) (1983). As discussed below, the Commission has reviewed LILCO's motion and has concluded that referral at this time would be inappropriate. We agree, however, that a decision on certain issues raised by the Applicant should be expedited to the extent possible consistent with the development of a sound record. In the exercise of the Commission's inherent authority over the conduct of our adjudicatory proceedings, we hereby grant that portion of LILCO's motion that requests an expedited proceeding. To that end, we direct the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, in consideration of the existing schedule and caseload of the Panel's members, to appoint an Atomic Safety and Licensing Board to hear and decide LILCO's supplemental motion in accordance with the procedures and schedule outlined below.

I. LILCO's Motion

LILCO asserts that the Shoreham plant is essentially complete and, by its motion, seeks authority to conduct four phases of low power activities, namely:

Phase I: fuel load and precriticality testing;

Phase II: cold criticality testing;

Phase III: heatup and low power testing to rated pressure/temperature conditions (approximately 1% rated power); and

Phase IV: low power testing (1-5% rated power).

Despite pending litigation concerning the emergency diesel generators' reliability, LILCO asserts in its motion: (1) the generators are not needed to protect the public health and safety for Phases I and II; (2) the generators have been tested and are adequate to protect the public health and safety during Phases III and IV, even though litigation of their reliability has not been completed; and (3) ample alternate sources of AC power are available sufficient to assure no undue risk to the public health and safety from low power operation of the plant during Phases III and IV.

II. Background

Of some 122 safety contentions originally filed in this proceeding all but three have been resolved (The settlement of a fourth issue has been presented to the Board for approval). The three remaining

contentions concern the reliability of emergency diesel generators at the facility.

LILCO's motion supplemented a June 3, 1983 motion for a low power license. After the motion was filed, however, additional problems developed with the emergency diesel generators, and the hearing on their reliability scheduled to commence August 29, 1983 was deferred pending completion of LILCO's assessment and the NRC Staff safety evaluation. In a partial initial decision issued September 21, 1983, the Licensing Board decided a number of safety issues in favor of operation up to 5% of rated power but declined to authorize fuel load and low power operation until the then pending diesel generator contention was resolved. The Staff SER is presently scheduled for issuance in June 1984. Litigation of the three diesel generator contentions is scheduled to commence in July 1984, and an initial decision is projected for issuance in December 1984.

Suffolk County filed four amended contentions on the generators, and on February 22, 1984, the Board admitted three of them in a ruling on the record. Tr. 21,612 et seq. Although the Board could not find, on the state of the record at that time, that the generators could reliably perform their needed function even as to low power, the Board noted that LILCO was not precluded from proposing other methods by which the standards of 10 C.F.R. 50.57(c) could be met short of litigating the contentions, or seeking a waiver under Section 2.758, or any other

procedure. Tr. 21,616, 21,630-633. Apparently in response to that ruling LILCO filed its March 20, 1984 supplemental motion.

As noted, Applicant has requested that its supplemental motion be referred directly to the Commission for decision. The Commission is fully apprised of the contents of that motion and is of the opinion that certain issues presented require a factual evaluation that can be accomplished more promptly and efficiently by a licensing board than by the Commission directly. Accordingly, referral to the Commission at this time would be inappropriate. However, the present schedule for litigation of contentions related to the TDI diesel generators does present the potential for delay inimical to the public interest given the apparent physical completion of the Shoreham facility within the meaning of 10 C.F.R. § 50.57(a) (1983) and the enormous financial investment involved. If the alternatives proposed by Applicant in its motion are sufficient to permit low-power operation and testing with assurance that the public health and safety are adequately protected, that matter ought to be determined as expeditiously as possible.

The Commission has inherent supervisory authority over the conduct of its adjudicatory proceedings, including specific authority under its rules to establish reasonable adjudication time tables. See The U.S. Energy Research and Development Administration, Project Management Corporation, Tennessee Valley Authority (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67 (1976), and 10 C.F.R. § 2.711 (1983).

III. Issues to be Heard

Accordingly, absent settlement, we direct that the following issues be adjudicated on an expedited basis:

1. Whether the work described in Phases I and II of LILCO's motion can be performed without the need for the presently installed onsite emergency diesel generators;
2. Whether the alternate sources of AC power available to Shoreham are adequate to protect the public health and safety by performing the function that the presently installed onsite emergency diesel generators would have performed during any or all of Phases I, II, III, or IV;
3. What requirements for testing or other demonstration of the availability and effectiveness of the Shoreham alternate power sources should be required as a precondition to the issuance of any license permitting operation at up to 5% of rated power.
4. Whether, in consideration of the Board's findings on the above issues and assuming all other regulatory requirements have been satisfied, LILCO should be granted a low power license to

perform the work described in any or all of Phases I, II, III, or IV.

The licensing board constituted pursuant to this order is authorized to conform the statement of the above issues to the evidence relevant to LILCO's motion and this order. The licensing board shall not consider the operability and reliability of the TDI diesel generators currently onsite. These matters are presently the subject of an extensive Staff review and will be fully adjudicated when the results of the Staff's review are available.

IV. Proceeding Schedule

The Licensing Board constituted pursuant to this order is directed to certify its Initial Decision on these questions to the Commission 60 calendar days after the Staff files its SER on the technical aspects of the LILCO motion. To that end, the following expedited schedule is recommended to the Board and the parties:

Day -7	Commission Order
Day 1	Staff and parties file response to substantive aspects of LILCO's motion
Day 1	Staff files SER on technical aspects of LILCO Supplemental Motion for Low Power Operating License and serves the SER on the parties
Day 2	Discovery commences

Day 18	Discovery is completed
Day 25	Testimony is filed
Day 30	Hearing commences
Day 40	Hearing concludes
Day 60	Board issues decision

The Licensing Board constituted pursuant to this order is authorized to adopt, take official notice, or otherwise incorporate any portion of the existing record in this proceeding as it sees fit. The Board shall closely monitor and assist in the discovery process, limit the number of pages in any filing if necessary, alter, revise or modify any of the intermediate dates or sequences set out above, and otherwise facilitate the expedited completion of the proceeding in the full exercise of its authority. See, e.g., Statement of Policy on Conduct of Licensing Proceedings, 13 NRC 452 (CLI-81-8, 1981).

Steps

1. 3/26: Commission issues brief notice to parties suspending parties response time to LILCO's motion
2. 3/26: Commission orders Staff to prepare SER by April 7
3. 3/30: Commission issues expedited hearing order
4. ca. 6/7: Board decision

Some Considerations

1. Excellent Staff SER is critical to success of this expedited proceeding: Total systems analysis required or Boards and Commission will look bad
 - a. Staff should be formally notified to begin work immediately
 - b. Staff SER issuance on day 1 assumes they have already commenced to prepare it, and this order won't issue until March 30
2. Sixty day schedule is brutally tight. Definitely not recommended but possibly achievable
3. Very important to give Licensing Board flexibility to reformulate issues within overall guidance should evidence shift the nature or emphasis of the issue.
4. Boards committed to hearings or partial or initial decision writing in April and May include Catawba, Comanche Peak, Shearon Harris, Limerick, Midland, Shoreham, and Wolf Creek

-- Need to avoid Commission debate on Board membership (cf.
Indian Point)

5. Phase I and II issue may be resolved by agreement of parties which would make possible PID authorizing that work

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UNITED STATES
 NUCLEAR REGULATORY COMMISSION
 ATOMIC SAFETY AND LICENSING BOARD PANEL
 WASHINGTON, D.C. 20555

March 27, 1984

NOTE TO: Judge B. Paul Cotter, Jr.
 Chief Administrative Judge

SUBJECT: LILCO SUPPLEMENTAL MOTION FOR LOW POWER OPERATING LICENSE
 (dated March 20, 1984)

The subject motion, among other things, asks the Shoreham operating license board presiding over the diesel issues to refer the motion to the Commission. We understand that the Commission is aware of the motion and is considering whether to take action in the immediate future on its own.

In anticipation of imminent Commission action, we have not taken further action beyond scheduling the preliminary procedural answers to the motion by the parties. (Suffolk County's answer was received on March 26. New York State will file an answer on March 28. The NRC Staff's answer is scheduled for March 30.) Unless the Commission issues at least preliminary guidance that the licensing board should hold matters in abeyance pending further Commission orders, we intend to proceed on or about April 2, 1984, to implement some combination of a conference call, prehearing conference and written order to establish with the parties procedures and a schedule for consideration of LILCO's motion.

Depending on the schedule established (by us or the Commission), the Shoreham Licensing Board on which we sit may have to be reconstituted by you due to our heavy schedule for the Limerick evidentiary hearing in April and May.

Lawrence Brenner

Lawrence Brenner, Chairman
 ADMINISTRATIVE JUDGE

Peter A. Morris

Dr. Peter A. Morris
 ADMINISTRATIVE JUDGE

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CERTIFICATE OF SERVICE

In the Matter of
SUFFOLK COUNTY AND STATE OF NEW YORK
MOTION FOR DISQUALIFICATION OF
CHIEF ADMINISTRATIVE JUDGE COTTER
(Shoreham Nuclear Power Station, Unit 1)
ASLBP Docket No. 84-503-01 Misc.

I hereby certify that copies of the attached Memorandum and Order and Statement of B. Paul Cotter, Jr. were served this date upon the following by U.S. mail, first-class, postage prepaid or by NRC interoffice mail.

Chairman Nunzio J. Palladino
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Washington, DC 20555

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United States Nuclear
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Washington, DC 20555

Commissioner James K. Asselstine
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Commissioner Frederick M. Bernthal
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Commissioner Lando W. Zech, Jr.
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Alan S. Rosenthal, Chairman
Atomic Safety and Licensing
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Judge Marshall E. Miller
Chairman, Atomic Safety
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Carolyn K. Ecker

August 2, 1984