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

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September 16, 1988

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Christine N. Kohl, Chairman
Administrative Judge
Atomic Safety and Licensing Appeal
Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Alan A. Rosenthal
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Dr. W. Reed Johnson
Administrative Judge
Atomic Safety and Licensing Appeal
Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322-OL-5 (Emergency Planning)

Dear Administrative Judges:

In its haste to file the "NRC Staff Response to Intervenors' Motion for Appointment of Licensing Board To Hear 1988 Exercise Results" with the Appeal Board today, the Staff overlooked three typographical errors. The dates for the issuance of Chairman Cotter's first order implementing CLI-86-11 was June 10, 1986 (Attachment 2) and the date for the order creating docket number 50-322-OL-5 was July 24, 1986 (Attachment 3). The citation for the realism rule on page 5 should be 52 Fed. Reg. 42078. For the Appeal Board's convenience, the Staff encloses substitutes for pages 3 and 5 to correct these errors.

The Staff regrets any inconvenience or confusion caused by this matter.

Sincerely,

Mitch A. Young
Mitch A. Young
Counsel for NRC Staff

Enclosures as stated
cc w/enclosure: Service List

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to CLI-86-11, Intervenors and LILCO only suggested that procedures relevant to litigation of the results of the February 1986 exercise be prescribed. See Motion of Suffolk County, the State of New York, and the Town of Southampton for Ruling Concerning Proceedings Related to the Shoreham Exercise, March 7, 1986, at 1, 2; Long Island Lighting Company's Motion for Establishment of Licensing Board and Institution of Expedited Procedures for Litigation of Shoreham Emergency Planning Exercise Issues, And Response to Intervenors' March 7, 1986 "Motion Concerning Proceeding Relating to the Shoreham Exercise," March 13, 1986, at 1, 10 ("LILCO Motion for ASLB Panel"). There is nothing in CLI-86-11 to suggest that the Commission was requesting that a proceeding be instituted to consider any matter other than the specific matters raised by the motions which only involved the February 13, 1986 exercise.

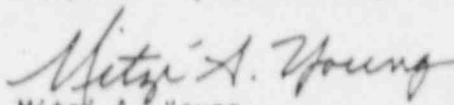
The Chairman of the ASLB Panel clearly indicated that the OL-5 Board was established for that limited purpose. The OL-3 Board was first designated pursuant to the provisions of CLI-86-11 "regarding motions from the Applicant and Intervenors concerning litigation of emergency planning exercise results." Establishment of Atomic Safety and Licensing Board [OL-3], June 10, 1986, at 1 (J. Cotter) (Attachment 2). At that time, there was only one exercise and the order could thus have referred only to the February 13, 1986 exercise which was addressed in CLI-86-11. Subsequently, ASLB Panel Chairman assigned litigation of the 1986 exercise proceeding a new docket number "[f]or more effective docket management." Change of Docket Number, July 24, 1986 (J. Cotter) (Attachment 3). The

(1981). Therefore, the OL-3 Board should preside over litigation of the 1988 exercise. ^{5/}

III. CONCLUSION

The Appeal Board should deny the instant motion to designate a licensing board to preside over litigation of the 1988 exercise since, under the May 11, 1983 designation, the OL-3 Licensing Board has jurisdiction to consider matters stemming from the June 7-9, 1988 emergency planning exercise.

Respectfully submitted,


Mitzi A. Young
Counsel for NRC Staff

Dated at Rockville, Maryland
this 16th day of September, 1988

^{5/} The referral of possible future litigation on the 1988 exercise to another Board would most likely delay the ultimate resolution of the emergency planning issues in Shoreham. The OL-3 Board has before it all remaining admitted issues concerning the adequacy of emergency planning for Shoreham and, as a result, is cognizant of various revisions to the LILCO Plan. In light of the amendment of the Commission's emergency planning rule (52 Fed. Reg. 42078, November 3, 1987) and considerations of judicial economy, the 1988 exercise should be evaluated in conjunction with the consideration of the adequacy of state and local government best-efforts responses. Thus, the OL-3 Board is best suited to preside over litigation of the 1988 exercise.

If the Appeal Board determines that the OL-3 remanded emergency planning issues do not encompass matters raised by the recent full-scale exercise, see Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-526, 9 NRC 122, 124 n.3 (1979), or that it has jurisdiction to grant Intervenor's Motion, Duke Power Co. (Perkins Nuclear Station, Units 1, 2, and 3), ALAB-591, 11 NRC 741, 742 (1980), the licensing board should consist of the OL-3 Board members because that Board is charged with evaluating the adequacy of the LILCO emergency plan in accordance with the Realism Rule. If the Appeal Board determines that it has neither jurisdiction nor authority, it should refer this matter to the Commission.