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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'88 OCT -6 P3:53

BEFORE CHIEF ADMINISTRATIVE JUDGE:
B. Paul Cotter, Jr.

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SERVED OCT -6 1988

In the Matter of:

LONG ISLAND LIGHTING COMPANY
MOTION TO RECONSTITUTE LICENSING
BOARD

ASLBP No. 89-580-01 Misc.

(Shoreham Nuclear Power Station,
Unit 1)

October 6, 1988

MEMORANDUM AND ORDER

By Motion dated October 3, 1988, the Long Island Lighting Company ("LILCO") moved the Chief Administrative Judge to reconstitute the Licensing Board designated on remand to conduct proceedings in connection with the 1988 emergency exercise related to LILCO's Shoreham facility. Long Island Lighting Company, 28 NRC ___ (ALAB-901, September 20, 1988). LILCO's motion notes that the remand decision states that the Licensing Board in Docket 50-322-OL-5 "may be reconstituted by the Chairman of the Atomic Safety and Licensing Board Panel in his discretion". Id., Slip Opinion, at p. 10. Relying on this language, LILCO has asked the Chief Administrative Judge to exercise his discretion and reconstitute that Board with certain specified members of the Licensing Panel.

In support of its request LILCO argues that the members it seeks to have appointed are most knowledgeable about the emergency plan and are

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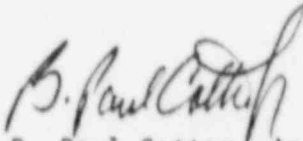
available for work. LILCO recites the six-year history of the Shoreham proceeding and the boards that have heard issues during that period.

The motion is denied for two reasons. First, on September 23, 1988 a decision was issued which dismissed all intervenors from the Shoreham case. Long Island Lighting Company, 28 NRC ____ (LBP-88-24, September 23, 1988). Although that decision has been appealed, there is, at this juncture, no proceeding pending for which to appoint a board. It would ill serve the interests of efficient litigation and the efficient administration of the limited personnel resources of the Atomic Safety and Licensing Board Panel to appoint a board of judges to hear a case which does not exist. See "Statement of Policy on Conduct of Licensing Proceedings," 13 NRC 452 (CLI-81-8, 1981).

Secondly, the appointment of individual licensing board members to a particular proceeding "is committed to the discretion of the ... Chairman of the Licensing Board Panel. See 10 CFR §§ 1.15, 2.704, 2.721, 2.785". Long Island Lighting Company (ALAB-901), supra, slip opinion at 7; Suffolk Co. and State of New York Motion to Rescind Reconstitution of Board By Chief Administrative Judge Cotter, 24 NRC 726, 728-29 (LBP-86-37A, 1986). Under the Administrative Procedure Act and our regulations, the judges of this agency, within their legal, safety and environmental disciplines, are fungible. Assignments to individual cases must remain within the Chief Administrative Judge's discretion in order to maximize the efficient administration of all

litigation before this Panel, particularly in light of the conflicting demands of budget, personnel resources, and the needs of a particular case in the context of all pending litigation. That discretion and judgment will be exercised only if and when there are matters to be adjudicated in connection with the Shoreham plant within the jurisdiction of this Panel, but not on motion of the parties in this or any other proceeding.

Accordingly, the motion is denied.


B. Paul Cotter, Jr.
CHIEF ADMINISTRATIVE JUDGE

October 6, 1988

Bethesda, Maryland