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WASHINGTON, DC 20515

October 28, 1986

Administrative Judge B. Paul Cotter, Jr.
Chairman
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
4350 East-West Highway
Bethesda, Maryland 20814

Dear Judge Cotter:

I am deeply troubled by your decision to reconstitute the Shoreham Licensing Board by removing two of its three members -- Judges Morton Margulies and Jerry Kline. This decision has sparked outrage among State and local government officials. Their replacement at this critical time in the Shoreham licensing process would mean that the extensive knowledge of the issues that they have gained over the lengthy proceedings of the past months will not be brought to bear on matters of vital importance to all parties and to the public.

In order to assist the Subcommittee to determine whether to hold a hearing on this matter, please provide answers to the following questions by November 4, 1986.

Please note that for the purpose of this request, the word "record" or "document" includes all handwritten or typed communications, documents, drafts, memoranda, notes, "route slips," briefing and appointment logs, word processing recordings and audio tapes. The word "discussion(s)" includes all conversations between any two or more persons, including all meetings, telephone calls, and so forth. To the extent that any person asked to provide records is aware of such records that are not in their possession or have been destroyed or for other reason cannot be provided, please identify whether or not such documents existed, in whose files they existed, the reasons why such records are unavailable, and, if destroyed, who destroyed them and/or ordered their destruction. For example, such records which are unavailable should be identified by title, author, date, etc.

1. With regard to the October 7 "NOTICE OF RECONSTITUTION OF BOARD" (hereinafter "NOTICE") and the October 17 "NOTICE OF RECONSTITUTION OF BOARD: CLARIFICATION" (hereinafter "CLARIFICATION"), please provide to the Subcommittee all records pertaining to (a) the NOTICE, (b) the CLARIFICATION, and (c) the reconstitution of the Shoreham Board.
2. With reference to your October 7, 1986 NOTICE:
 - (a) What are the "schedule conflicts" to which you refer?
 - (b) Why is it believed that such "schedule conflicts" may be alleviated by replacing Judges Margulies and Kline?
 - (c) When did you first learn that there were "schedule conflicts" that might require reconstitution of the Shoreham Board? How and from whom was this information communicated?
 - (d) Who first suggested that these "schedule conflicts" might be alleviated by reconstituting the Board? When?
 - (e) Please provide to the Subcommittee all records pertaining to any "schedule conflict" in the Shoreham litigation on the part of Judge Kline or Judge Margulies, and all records pertaining to a reconstitution of the Shoreham Boards as a way to alleviate such conflicts.
3. Was your first communication with Judges Margulies and/or Kline regarding scheduling difficulties and/or replacing either or both of them and/or reconstituting the Board initiated by you, by either Margulies and/or Kline, or by a third party? Please provide the date, time, persons participating, substance of the communication, and all records pertaining thereto.
4. Prior to October 7, 1986, did you discuss or participate in any written or verbal communications regarding (a) the removal of Judges Margulies and Kline and/or (b) the reconstitution of the Board with any of the parties or with Chairman Zech or with any other NRC Commissioner or with any member of the Commissioners' staff(s) or the NRC staff or with any Administrative Judge? If so, please provide a detailed chronology specifying the date, with whom you communicated, names of other persons present or participating, substance of the communication, and provide any records pertaining to such communication.
5. With regard to the October 17, 1986 CLARIFICATION: Between October 7 and October 17, did you discuss or participate in any written or verbal communications regarding (a) the removal of Judges Margulies and Kline, (b) the reconstitution of the Board, and/or (c) the form or content of the CLARIFICATION with any of the parties or with Chairman Zech or with any other NRC Commissioner or member of the Commissioners' staff(s) or member of the NRC Staff? If so, please provide a detailed chronology

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specifying the date, with whom you communicated, names of other persons present or participating, the substance of the communication, and provide any records pertaining to such communication.

6. On October 17, 1986 you wrote to Herbert H. Brown, Esq. regarding your issuance of the October 17, 1986 "NOTICE OF RECONSTITUTION OF BOARD: CLARIFICATION." In that letter you stated that "It was my determination, in consultation with the members of the existing Board, that the expanding emergency planning-related Shoreham cases could not reasonably be handled in a timely manner by a single board....The reconstitution will assure that all issues can be heard thoroughly without undue delay (emphasis added)."

- (a) What is meant by the phrases "a timely manner" and "without undue delay"? What precisely would constitute "an untimely manner" or "undue delay"? Has the Board or any of its members established a target date for issuing a decision? If so, (i) what was this target date or dates, (ii) when was such a date established, (iii) by whom, and (iv) for what reason(s)?
- (b) Do you and/or the Board believe that it has a responsibility to expedite licensing? If so, why? Is it expected that reconstituting the Board will expedite the hearing process and/or the licensing process? If so, how? Why does the Board feel that such expedition is necessary or desirable?

7. With regard to the reconstitution of the Board and/or expediting the licensing process for Shoreham and/or removing Judges Kline and/or Margulies from the Board, please provide a complete chronology and description of all communications, including but not limited to meetings, discussions, documents, telephone calls, and conversations of any kind, between yourself and/or Judge Kline and/or Judge Margulies and/or Judge Frye and/or Judge Paris and:

- (a) Chairman Zech;
- (b) Any other NRC Commissioner(s);
- (c) NRC Staff, including but not limited to any member of the Commissioners' staffs, the Office of the General Counsel, and the Office of the Executive Director for Operations; and
- (d) Any employee of (i) the White House, (ii) the Department of Energy, (iii) Federal Emergency Management Agency (FEMA), or (iv) any party to the Shoreham proceedings.

Please provide all records pertaining to such communications.

8. On October 3, 1986, the Board made several rulings regarding the emergency planning issues at Shoreham. At any time did either you or any of the other Judges discuss or communicate regarding

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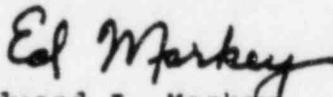
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the October 3 Board rulings or hearing and/or possible reconstitution of the Board with each other or any NRC Commissioner or Commissioners' staff or NRC Staff or any employee of the White House, DOE, or FEMA? If so, please specify the person(s), date, place, type of communication, and substance thereof. Please provide all records pertaining to such communication.

9. Why did you leave Judge Frederick Shon to serve on the original Board and the new Board? What factors went into the decision to remove Judges Kline and Margulies from the original Board and leave Judge Shon? Did either Judge Kline or Judge Margulies request that the original Board be reconstituted? Please provide a chronology of such communications describing the persons involved, dates, place, substance of the communication, and all records pertaining thereto.

Thank you for your prompt attention to this matter. I look forward to receiving your responses by November 4, 1986.

Sincerely,



Edward J. Markey
Chairman