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

MARKET NUMBER 50-322-OL-3/OL-6
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USNRC

December 29, 1987

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OFFICE OF SECRETARY
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BRANCH

Herbert H. Brown, Esquire
Kirkpatrick & Lockhart
South Lobby - 9th Floor
1800 M Street, N.W.
Washington, D.C. 20036-5891

SERVED DEC 31 1987

Dear Mr. Brown:

I am deeply concerned by your note of December 23, 1987 resubmitting your letter of November 25, 1987, the substance of which was answered by my letter to you of November 13, 1987. You continued in your November 25, 1987 letter to take exception to my appointing Judge Gleason to replace Judge Margulies (who resigned for health reasons) without first obtaining the advice and consent of Suffolk County and the State of New York. You might also have acknowledged that I did not solicit the views of the applicant, the NRC Staff or any other interested party. As I have told you repeatedly, neither I nor my predecessors have ever done so in similar circumstances in the past, and I can envision no reason why I or my successors would do so in the future. See In the Matter of Suffolk County, et al., 20 NRC 385 (LBP-84-29A, 1984).

I have repeatedly attempted to make it clear to you that I am not the presiding officer in the Shoreham proceeding. If you have a legally cognizable claim that my appointment of Judge Gleason has prejudiced your clients or has in some other way undermined the fairness or objectivity of the hearing process, you may present your arguments to the licensing board. If you do not like the Board's decision, you may take your case to the Appeal Board, the Commission and the courts, if necessary.

If you wish to pursue this matter further, please do so in the appropriate forum.

Sincerely yours,

B. Paul Cotter, Jr.
B. Paul Cotter, Jr.
Chief Administrative Judge

cc: Service List

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