UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of	:	Docket No. 50-322
LONG ISLAND LIGHTING COMPANY	:	
(Shoreham Nuclear Power Station, Unit No. 1)	:	AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NASSAU)

EDWARD J. WALSH, JR., being duly sworn, deposes and says:

1. I am an attorney-at-law admitted to practice in the State of New York, am familiar with the facts and circumstances of this proceeding and am the attorney in charge thereof for the applicant, Long Island Lighting Company. I have read the moving papers of the Intervenor, The Lloyd Harbor Study Group, Inc., seeking the disqualification of the Atomic Energy Commission, the individual Commissioners of the Commission, the Atomic Safety and Licensing Appeal Board, individual members of said Board, the Atomic Safety and Licensing Board, the individual members of that Board and the Advisory Committee on Reactor Safeguards, and submit this Affidavit in opposition.

2. An analysis of the moving papers establishes that the basis of the present motion rests upon the Intervenor's claim that the various individual members of the Commission, Atomic Safety and Licensing Appeal Board, the Atomic Safety and Licensing

3. It is clear therefore that the strategy of The Lloyd Harbor Study Group, Inc. is to take every possible action it can to delay the Shoreham application. Such conduct, in view of its President, William Carl's statement that the only purpose in intervening here is to prevent the construction of a plant in Lloyd Harbor, not only seriously injures the consumers of electric power on Long Island by delaying the construction of an essential plant, but appears to constitute a misuse of the judicial process.

4. That the present motion is merely a continuation of this delaying strategy is also evidenced by the timing of the motion. It is made more than six months after the Petition to Intervene was filed in which Intervenor set forth (Para. 36 of the Petition to Intervene) that it was making the claims now set forth. It is also significant in this connection that the present motion to disqualify the members of the Atomic Safety and Licensing Appeal Board and the Atomic Safety and Licensing Board is made more than six months after these Boards were appointed. It is even more significant that the motion is made after three pre-hearing conferences have been held, innumerable motions made and decided, and several appeals taken and decided.

I recognize that the foregoing recitation of facts is not directly responsible to the instant motion but have included such recitation in some detail herein because I believe it places the motion in its proper perspective. The delay of this proceeding has already seriously jeopardized the timely completion

the Atomic Energy Commission. Moreover, it is relevant in considering this claim of a dual capacity that the Atomic Energy Commission, in carrying out the responsibility delegated to it by Congress, has maintained separate staffs to process applications for licenses to construct atomic electric generating stations so as to clearly delineate its promotional functions from its regulatory functions.

In light of the history of the Congressional intention and the action of the Atomic Energy Commission in carrying out its responsibilities, the Intervenor's contentions are specious. As a matter of fact, it seems clear that the Atomic Energy Commission has no power to disqualify itself for carrying out the express mandate of the Congress of the United States.

6. The claim that the various Board members have been drawn from the nuclear industry or from scientific laboratories funded by the Atomic Energy Commission or are professors teaching nuclear subjects in universities is clearly not a sufficient ground for disqualification. In the absence of any facts showing that such Board members will not be impartial or objective in carrying out their functions as a member of the Board in the Shoreham proceeding or that such Board members have a personal bias, there is no valid legal basis for this motion. The Memorandum of Law submitted herewith establishes that it is not enough to show that a Board member "may have a propensity to favor nuclear power. There are no facts set out in the moving papers other than speculative conclusions and assumptions that the Board members cannot be objective.

7. The attached Memorandum of Law also shows that the Congress intended that two members of the Atomic Safety and Licensing Board, notwithstanding the provisions of Sections 7(a) and 8(a) of the Administrative Procedure Act (42 U.S.C.A. Section 2241) should be technical members. Since almost every expert in the atomic energy field would fall within the ambit of the Intervenor's claim of having a personal interest in the field of atomic energy development, there would be no technical experts available for the regulatory boards. This would clearly frustrate the Congressional intention since it must be presumed that Congress was well aware of the fact that most technical experts would have relationships with the Atomic Energy Commission during the course of their career or would be interested in the development of nuclear power.

There is also no valid basis for the claim that the members of the Boards should be disqualified because they are not representative of the environmental life sciences as required by the National Environmental Policy Act. There is no language in this Act, which would serve as a basis for this claim. Furthermore, there is no evidence in the moving papers which would support any claim that the members of the Boards are not interested in the environment or are not qualified to pass upon issues concerning the environment.

In view of all of the foregoing, it is respectfully requested that the instant motion be denied.

Edward J. Walsh, Jr.
EDWARD J. WALSH, JR.

Sworn to before me this
7th day of August, 1970.

Beverly Anne Royce

BEVERLY ANNE ROYCE
NOTARY PUBLIC, State of New York
No. 30-3365215
Qualified in Nassau County
Commission Expires March 30, 1971

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

MEMORANDUM OF LONG ISLAND LIGHTING COMPANY IN OPPOSITION TO THE MOTION TO DISQUALIFY THE ATOMIC ENERGY COMMISSION, THE ATOMIC SAFETY AND LICENSING APPEAL BOARD and THE ATOMIC SAFETY AND LICENSING BOARD

STATEMENT

Intervenor, The Lloyd Harbor Study Group, Inc., by Notice of Motion dated July 28, 1970 has requested that the Atomic Energy Commission disqualify itself and dismiss the instant proceedings; and also that some of the individual members of the Atomic Safety and Licensing Appeal Board and the Atomic Safety and Licensing Board should be disqualified from sitting in this proceeding.

The thrust of the Intervenor's motion appears to be that the Commission should be disqualified because it has been given the responsibility for the development of peaceful uses of atomic power and also the responsibility for regulating such peaceful use.

POINT II

MERE SPECULATION AND SUSPICIONS CONCERNING THE UNDERLYING PHILOSOPHY OF INDIVIDUAL MEMBERS OF THE BOARDS IS NOT A SUFFICIENT BASIS FOR THEIR DISQUALIFICATION

It is well settled that Intervenor must present evidence to show that the individual members of the Boards are not men of conscience and intellectual discipline capable of judging the Shoreham proceedings fairly on the basis of the merits. It is not sufficient to assume that a member of an agency enters a proceeding with advance views of an economic matter (Skelly Oil Company v. Federal Power Commission, 375 F.2d 6, 18, 1967) or has an underlying philosophy in approaching a specific case (United States v. Morgan, 313 U.S. 409, 421 1941; Federal Trade Commission v. Cement Institute, 333 U.S. 683, 701).

In the Skelly Oil Company case, it was urged that two of the Federal Power Commissioners had prejudged the issue of whether substantial competition existed among gas producers. The court at 375 F.2d 18 rejected this argument and said:

> No claim is made that either commissioner prejudged the ultimate issue of a just and reasonable rate. In our opinion no basis for disqualification arises from the fact or assumption that a member of an administrative agency enters a proceeding with advance views on important economic matters in issue. Nothing in the record disturbs the assumption that the two commissioners are "men of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances."

There is nothing in the papers which asserts anything more than a suspicion that the individual technical members of the Atomic Safety and Licensing Appeal Board and Atomic Safety and Licensing Board may have a "philosophic and professional bias in favor of atomic power projects." As shown above, this is not a sufficient basis for disqualification and the motion should be denied.

It should be noted that 42 U.S.C.A. Section 2241 expressly provides that Atomic Safety and Licensing Boards shall be composed of two technical members irrespective of any contrary provisions in the Administrative Procedure Act. It must be presumed that Congress was aware of the fact that all technical members of this Board would be interested in the development of atomic power and would be employed at some time by the Atomic Energy Commission, a nuclear related industry or have some connection with either such agency or such industry. Nevertheless the Congress realizing the complex technical questions which would be raised before such Boards mandated that two technical members be appointed.

It also seems clear that practically all potential members of the Atomic Safety and Licensing Boards would fall within the ambit of Intervenor's complaint. Thus, it would be near impossible to obtain technical members and the Congressional intent would be wholly frustrated and there would be no one to conduct the public hearings required by law. This would be an absurd result and Congress has not provided for such a contingency.

Federal Trade Commission v. Cement Institute
333 U.S. 683 at p. 701.

POINT III

THE NATIONAL ENVIRONMENTAL POLICY ACT DOES NOT REQUIRE THE DISQUALIFICATION OF THE ATOMIC SAFETY AND LICENSING APPEAL BOARD OR THE ATOMIC SAFETY AND LICENSING BOARD

The Intervenor claims in this motion that the National Environmental Policy Act mandates the inclusion of Board members who are representative of the environmental life sciences and that the failure to include such representatives requires disqualification of the Boards appointed herein. There is nothing in the Environmental Policy Act to warrant the Intervenor's conclusion.

The regulations promulgated by the Commission fully comply with the mandate of the National Environmental Policy Act. The claim of the Intervenor is therefore without legal substance.

CONCLUSION

THE MOTION SHOULD BE DENIED

Respectfully submitted,

DAVID K. KADANE
Attorney for Applicant
Long Island Lighting Company
250 Old Country Road
Mineola, New York 11501

By Edward J. Walsh, Jr.
Edward J. Walsh, Jr.
Attorney

August 7, 1970