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February 14, 1985

B. Paul Cotter, Jr., Esq.  
Chief Administrative Judge  
Atomic Safety and Licensing Board Panel  
United States Nuclear Regulatory Commission  
Washington, D.C. 20555

DOCKET NUMBER 50-322  
PROC. & UTIL. FAC.                     

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Herzel Plaine, Esq.  
General Counsel  
United States Nuclear Regulatory Commission  
Washington, D.C. 20555

Gentlemen:

We are writing on behalf of our client, Suffolk County, and have also been authorized by the Special Counsel to Governor Cuomo to write on New York State's behalf.

By an Order dated January 31, 1985, the Licensing Board for the Shoreham emergency planning proceeding was reconstituted: Judge Laurenson, who resigned from the NRC, was replaced by Judge Margulies. No reason was provided to explain why Judge Laurenson resigned. He had presided over the emergency planning proceeding for the past twenty months, and the issues heard by his panel are pending decision. At the time of Judge Laurenson's resignation, the NRC Staff had predicted an emergency planning decision to be issued in March.

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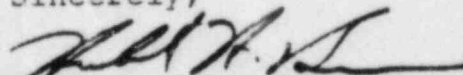
B. Paul Cotter, Jr., Esq.  
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The credibility and demeanor of witnesses who testified at the emergency planning hearing would seem to be pertinent to the Licensing Board's decision. While Judge Laurenson heard the testimony and observed the witnesses, Judge Margulies did not. This may raise questions as to whether it is appropriate for Judge Margulies to decide pending emergency planning issues. Furthermore, we refer you to Section 2.721(d) of the NRC's regulations, particularly the portion dealing with the qualification for a quorum.

Would you kindly provide us with information as to the following: the circumstances of Judge Laurenson's resignation and replacement; whether you or others at the NRC had advance notice of Judge Laurenson's resignation; and whether, prior to the appointment of Judge Margulies, you or others at the NRC considered, in writing or otherwise, the effect of a change of Judges on the Board's ability to assess the credibility and demeanor of witnesses.

Should you believe a meeting with the parties would be useful, the County and State would be available.

Sincerely,

  
Herbert H. Brown

cc: Service List