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1800 M STREET, N. W.
WASHINGTON, D. C. 20036

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RAMSAY D. POTTS, P.C.
STUART L. PITTMAN, P.C.
GEORGE F. TROWBRIDGE, P.C.
STEPHEN D. POTTS, P.C.
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ROBERT B. ROBBINS
STEVEN M. LUCAS
DAVID M. RUBENSTEIN
LYNN WHITTLESEY WILSON
MATIAS F. TRAVIESO-DIAZ
VICTORIA J. PERKINS

(202) 822-1000

TELECOPIER

(202) 822-1099 & 822-1199

TELEX

89-2693 (SHAWLAW WSH)

CABLE "SHAWLAW"

WRITER'S DIRECT DIAL NUMBER

(202) 822-1051

JOHN H. O'NEILL, JR.
JAY A. EPSTEN
RAND L. ALLEN
TIMOTHY B. MCBRIDE
ELISABETH M. PENDLETON
PAUL A. KAPLAN
HARRY H. GLASSPIEGEL
THOMAS H. MCCORMICK
WILLIAM P. BARR
SUSAN M. FREUND
JOHN L. CARR, JR.
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BONNIE S. GOTTLIEB
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DEBORAH B. SAUSER
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CAMPBELL KILLEFER
SETH H. HOOGASIAN
SHEILA McC. HARVEY
DELISSA A. RIDGWAY
KENNETH J. HAUTMAN

DAVID LAWRENCE MILLER
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FREDERICK L. KLEIN
GORDON R. KARPOFSKY
JEFFREY S. ZIANGOLA
HANNAH E. M. LIEBERMAN
SANDRA E. FOLSOM
MARCIA R. NIRENSTEIN
JUDITH A. SANDLER
EDWARD D. YOUNG, III
ROBERT L. WILLMORE
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STANLEY M. BARG
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LESLIE K. SMITH
VIRGINIA S. RUTLEDGE
KATHERINE P. CHEEK
JANICE LEHRER-STEIN
TRAVIS T. BROWN, JR.
GAIL E. CURREY
RICHARD H. KRONTHAL
STEPHEN B. HEIMANN

October 18, 1982

Sheldon J. Wolfe, Esq.
Administrative Judge
Chairman, Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Re: Louisiana Power & Light Company
(Waterford Steam Electric Station,
Unit 3), Docket No. 50-382

Dear Judge Wolfe:

This letter will serve as minutes of the conference call convened in the above referenced proceeding on October 13, 1982, at 3:20 p.m. EDST.

Chairman Wolfe convened the conference call to amplify and clarify the discussion of the Board and the parties on October 12, 1982, with respect to the procedures for the appeal of licensing board action. The Staff was represented on the call by Mr. Treby (in Mr. Turk's absence), the Joint Intervenors were represented by Mr. Groesch, and Mr. Churchill and Ms. Ridgway represented Applicant. Counsel for Applicant was directed to memorialize the October 13 conference call. */

*/ The Board and the parties also discussed the procedure for memorializing the October 12 conference call. Although (continued next page)

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Judge Wolfe initially explained that he had reflected overnight on the Board's comments, in the course of the October 12 conference call, in response to Mr. Groesch's remarks concerning a stay of certain of the Board's rulings. Judge Wolfe directed the parties' attention to 10 C.F.R. § 2.788, "Stays of decisions of presiding officers and Atomic Safety and Licensing Appeal Boards pending review," then noted that the Board's October 12 rulings would appear to be "a decision or action" by the Licensing Board, and thus would appear to come within § 2.788.

In response to the Board's request for comments, Mr. Churchill stated that he had never considered § 2.788 in the instant procedural context, since a § 2.788 stay is by definition a stay pending appeal. Mr. Churchill observed that 10 C.F.R. § 2.730(f) prohibits interlocutory appeals, and expressed his belief that an appeal taken from the Board's October 12 rulings would be an interlocutory appeal. Since a successful applicant for a stay must show "that it is likely to prevail on the merits" in its appeal, see 10 C.F.R. § 2.788(f), and since an interlocutory appeal is unlikely to be successful, Mr. Churchill said he did not believe that an application for a stay would be appropriate in the instant circumstances, though he could not say that § 2.788 was inapplicable.

Judge Wolfe observed that he had advised Mr. Groesch in the course of the October 12 call that he did not know whether an appeal would lie from the Board's rulings. Mr. Groesch sought clarification of his understanding that the thrust of the comments of Judge Wolfe and counsel for Applicant was that §. 2.788 was only applicable to the Appeal Board, and stated that he would appeal the Board's orders directly to the Commission. Mr. Churchill noted that any appeal would be to the Appeal Board, not the Commission.

Judge Wolfe explained that the Board will be issuing two separate Memoranda and Orders, pursuant to the October 12 conference call. He agreed with counsel for Applicant that

*/ (footnote continued from page one)

Mr. Groesch taped that conference call, he expressed concern that it would be excessively burdensome for him to memorialize such a long call. Accordingly, the Board directed Mr. Groesch to send the tape of the call to counsel for Applicant, who agreed to memorialize the October 12 call as well.

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Sheldon J. Wolfe, Esq.

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10 C.F.R. § 2.730(f) prohibits interlocutory appeals. He noted that Mr. Groesch is free to appeal the two orders, but ruled that Mr. Groesch must await the Board's written orders before appealing the Board's decision. He further noted that the Board would not refer its rulings to the Commission.

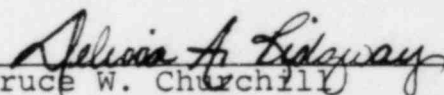
Judge Wolfe further noted that, if Mr. Groesch decided to take an appeal, he could also elect to apply for a stay of the Board's decision. Judge Wolfe confirmed that he was only clarifying Mr. Groesch's options and procedural rights for him, not modifying the provisions of the Commission's Rules of Practice.

Judge Wolfe inquired whether an application for a stay would be filed before the Licensing Board or the Appeal Board. Mr. Treby said that the choice is left to the applicant for the stay, though the usual practice is to file before the licensing board. Mr. Churchill agreed that the choice is left to the applicant for the stay, but also noted that filing with both the licensing board and the appeal board is prohibited. Further, Mr. Churchill stated that he did not understand that it was necessarily a preferred practice to file with the licensing board. Judge Wolfe agreed that, should Mr. Groesch elect to take an appeal, he would be free to apply to either the Licensing Board or the Appeal Board for a stay of the Board's decision.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By


Bruce W. Churchill
Delissa A. Ridgway

Counsel for Applicant

cc: Service List

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
)
LOUISIANA POWER & LIGHT COMPANY) Docket No. 50-382
)
(Waterford Steam Electric)
Station, Unit 3))

SERVICE LIST

Sheldon J. Wolfe, Esquire
Administrative Judge
Chairman, Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. Harry Foreman
Administrative Judge
Director, Center for
Population Studies
Box 395, Mayo
University of Minnesota
Minneapolis, MN 55455

Dr. Walter H. Jordan
Administrative Judge
881 West Outer Drive
Oak Ridge, TN 37830

Sherwin E. Turk, Esquire
Office of the Executive
Legal Director
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Brian Cassidy, Esquire
Federal Emergency Management
Agency
Region I
422 J. W. McCormack
Boston, MA 03109

Mr. Gary Groesch
2257 Bayou Road
New Orleans, LA 70119

Luke B. Fontana, Esquire
824 Esplanade Avenue
New Orleans, LA 70116

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Docketing & Service Section (3)
Office of the Secretary
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Spence W. Perry, Esquire
Federal Emergency Management
Agency
Office of General Counsel
500 C Street, S.W., Room 840
Washington, D.C. 20472