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KIRKPATRICK & LOCKHART

1900 M STREET, N.W.  
WASHINGTON, D.C. 20036  
TELEPHONE (202) 452-7000  
TELEX 440209 HHPH UI  
TELECOPIER (202) 452-7052

ONE BOSTON PLACE  
BOSTON, MA 02108  
(617) 973-5400  
1428 BRICKELL AVENUE  
MIAMI, FL 33131  
(305) 374-8112  
1500 OLIVER BUILDING  
PITTSBURGH, PA 15222  
(412) 355-6500

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BY HAND

Morton B. Margulies, Esq.  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
East-West Tower, Room 461A  
4350 East-West Highway  
Bethesda, Maryland 20814

Dr. Jerry R. Kline  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
East-West Tower, Room 427  
4350 East-West Highway  
Bethesda, Maryland 20814

Mr. Frederick J. Shon  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
East-West Tower, Room 430  
4350 East-West Highway  
Bethesda, Maryland 20814

Re: Docket No. 50-322-OL-3

Dear Administrative Judges:

Enclosed you will find the Answer of Suffolk County and State of New York in Opposition to LILCO's Renewed Motion for Summary Disposition. The Answer makes clear that this Board should summarily reject the Renewed Motion (Answer, §§ I and II), but that if the Board decides to address the merits of the preemption issue, further briefing is required (Answer, § III).

After the enclosed Answer was prepared, the Honorable Frank X. Altamari (E.D.N.Y.) issued a decision in Citizens for An Orderly Energy Policy, Inc. v. Suffolk County. LILCO was an intervenor-plaintiff in the action. A copy of Judge Altamari's decision is attached.

Judge Altamari ruled that "the conduct of the defendant has not in fact amounted to a regulation of nuclear power production" and thus rejected plaintiffs' contention that the County's

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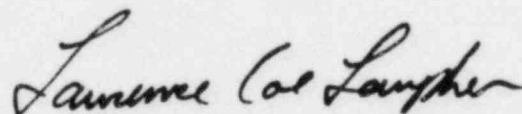
KIRKPATRICK & LOCKHART

Morton B. Margulies, Esquire  
Dr. Jerry R. Kline  
Mr. Frederick J. Shon  
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actions were preempted.<sup>1/</sup> This holding supports our view that LILCO's preemption argument has no merit.

If the merits of the Renewed Motion are considered by this Board, the enclosed U.S. District Court ruling will need to be addressed in further briefing by the parties.

Sincerely yours,



Lawrence Coe Lanpher

LCL:me  
Enclosures

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<sup>1/</sup> See Decision at 24. We note also that LILCO has several times relied upon the Brenner Board's discussion of preemption in LBP-83-22, 17 NRC 608 (1983). See LILCO's August 6 Brief at 28-29; LILCO's October 15 Brief at 19, 29. The Citizens Decision rejects the grounds upon which the Brenner Board found that preemption might have occurred.