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October 17, 1988

By Telecopy

Christine N. Kohl, Chairperson
Alan S. Rosenthal
Howard A. Wilber
Atomic Safety & Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: LILCO's Request for Stay of ALAB-902;
Docket 50-322-OL-3

Dear Madam Chairperson and Members of the Board:

Late on October 14, counsel for Suffolk County received via telecopy LILCO's Request for Stay of ALAB-902 ("LILCO's Request"). Among other things, LILCO urges the Appeal Board to grant the requested stay on a temporary basis without even waiting for other parties to respond. See LILCO's Request at 9.

The County will respond to LILCO's Request in accordance with 10 CFR § 2.788(d), unless otherwise directed by the Appeal Board. In this letter, the County briefly notes certain reasons why LILCO's request for a temporary stay is without basis.

- 10 CFR § 2.788(g) permits the Board to grant temporary stays in extraordinary cases only "where prompt application is made" (emphasis added). LILCO had ALAB-900 for seven days prior to filing its Request. If the need for such extraordinary relief really existed, why did LILCO wait so long to file? LILCO's Request provides no explanation.
- A Section 2.788(g) temporary stay can be issued only "to preserve the status quo" LILCO's Request seeks to alter the status quo. Thus, it would undo the Appeal Board's tolling order (and

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Christine N. Kohl, Chairperson
Alan S. Rosenthal
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Atomic Safety & Licensing Appeal Board
October 17, 1988
Page 2

have the bizarre effect of requiring the Governments to seek a stay of LBP-88-24 only days after the Appeal Board tolled the need for any such motion)^{1/} and would also undo the OL-5 Board's Order of October 12, 1988, which established October 24, 1988, as the date for submitting Exercise contentions.^{2/} Such a radical restructuring of the status quo is directly contrary to the purpose and the requirements of Section 2.788(g). LILCO's Request fails to address this issue.

-- When the rhetoric is stripped away, LILCO never explains why the extraordinary action of a temporary stay of ALAB-902 is necessary in this case. It appears, however, that LILCO seeks to have this Board take action which LILCO hopes would have the effect of forcing the Office of General Counsel to resume its immediate effectiveness review of the full power license erroneously authorized by LBP-88-24. It is absurd to suggest, however, that the so-called "injury" arising out of the halting of that review (and Suffolk County does not concede that LILCO has suffered any "injury" whatsoever) would justify an extraordinary stay during the period required to respond to LILCO's Request.

^{1/} See ALAB Memorandum and Order, October 12, 1988. LILCO had filed a response on October 11 to the Governments' tolling motion. See LILCO's Response to Intervenors' Tolling Motion, Oct. 11, 1988. LILCO never mentioned that it would seek a stay of ALAB-902, although LILCO must have been working on or at least considering its ALAB-902 stay request at that time.

^{2/} ASLB Memorandum and Order, October 12, 1988. If ALAB-902 were stayed, that would, in effect, reinstate Judge Frye's Order of October 6, 1988, (to the effect that no contentions are to be filed until the Appeal Board decided whether the Governments were properly excluded from the OL-5 proceeding). On October 11, LILCO filed papers with the OL-5 Board regarding the contentions schedule, and never hinted that it would seek a stay of ALAB-902. See LILCO's Answer to Intervenors' Motion for Extension of Time, Oct. 11, 1988.

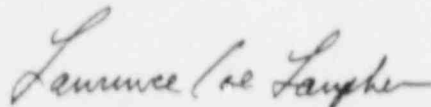
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Christine N. Kohl, Chairman
Alan S. Rosenthal
Howard A. Wilber
Atomic Safety & Licensing Appeal Board
October 17, 1988
Page 3

Under the rules, the responses to LILCO's Request are due to be filed October 24, 1988. See 10 CFR § 2.788(d). We respectfully request the Appeal Board to advise us if any different filing date is required.

The undersigned is authorized to state that New York State and the Town of Southampton join in these views.

Sincerely,



Lawrence Coe Lanpher

cc: Donald P. Irwin, Esq. (By Telecopy)
Edwin J. Reis, Esq. (By Telecopy)
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