

7601

KIRKPATRICK & LOCKHART

SOUTH BRYANTH - 9TH FLOOR
1800 M STREET, N.W.
WASHINGTON, D.C. 20036-5891

TELEPHONE (202) 778-9000
TELEX 44209 KL DC LT
TELECOPIER (202) 778-9100

EXCHANGE PLACE
51 STATE STREET
BOSTON, MA 02109
(617) 227-6000

1429 BRICKELL AVENUE
MIAMI, FL 33131
(305) 374-8112

1300 OLIVER BUILDING
PITTSBURGH, PA 15222-5179
(412) 355-6500

KARLA J. LETSCHE
(202) 778-9364

December 1, 1988

BY TELECOPIER

Christine N. Kohl, Chairman
Alan S. Rosenthal
Dr. W. Reed Johnson
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555



Re: Docket No. 50-322-OL-6 (25% Power)

Dear Madam Chairman and Gentlemen:

The Governments bring to the Board's attention that ALAB-905, which vacated and remanded in part the OL-3 Licensing Board's decision on the adequacy of LILCO's reception centers (LBP-88-13, 27 NRC 509 (1988)), supports the Governments' pending Motion for Stay of the November 21, 1988 Licensing Board Order. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-905, 28 NRC ____ (November 29, 1988).

One primary premise of the November 21 Order was the Licensing Board's assertion that "there are no contentions relevant to [LILCO's 25% power] request before this Board." November 21 Order at 8. See also id. at 3 ("LBP-88-24 resulted in . . . resolution of all contentions pending before [the OL-3 Board]").^{1/} That Licensing Board premise was, in turn, the apparent basis for the Board's conclusion that it was "required by [Section 50.57(c)] to issue an order authorizing the Director of Nuclear Reactor Regulation to make appropriate findings on LILCO's application and to issue the license requested." Id. at 7.

In light of ALAB-905, the November 21 Order is clearly erroneous. ALAB-905 not only vacated a Licensing Board finding that a material portion of LILCO's proposed emergency plan is

^{1/} As noted in the Governments' Stay Motion, in authorizing issuance of a 25% power license, the OL-6 Board erroneously ignored the pendency of the Governments' contentions in the OL-5 proceeding.

8812140113 881201
PDR ADOCK 05000322
G PDR

D503

KIRKPATRICK & LOCKHART

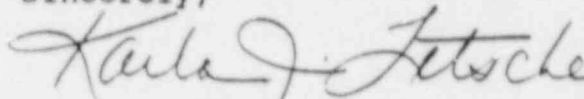
Christine N. Kohl, Chairman
Alan S. Rosenthal
Dr. W. Reed Johnson
December 1, 1988
Page 2

adequate, but it established the need for additional Licensing Board proceeding; before the required adequacy finding can be made in the future. See ALAB-905, slip op. at 4, 6, 12-13, 41, 42, n.75.

Accordingly, the November 21 Order should be stayed pending full appellate review of its merits, in light of ALAB-905 and for the other reasons set forth in the Governments' Stay Motion.^{2/} Indeed, ALAB-905 would support summary reversal of the November 21 Order.

The State of New York and the Town of Southampton join in the views expressed herein.

Sincerely,



Karla J. Letsche

cc: By Telecopier:

Donald P. Irwin, Esq.
Edwin J. Reis, Esq.
William R. Cumming, Esq.
Docketing and Service Section
Fabian G. Palomino, Esq.

By Federal Express:

Dr. W. Reed Johnson
Stephen B. Latham, Esq.

^{2/} In their Stay Motion, the Governments cited the recent New York Supreme Court decision enjoining the use of LILCO's proposed Bellmore reception center, and the pendency of the reception center appeal, as facts supporting the need for a stay of the November 21 Order authorizing issuance of a 25% power license, because they evidence the inadequacy of LILCO's proposed emergency plan. See the Governments' Stay Motion, at page 11-12. The rulings in ALAB-905 confirm the Governments' position.