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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judge:

Alan S. Rosenthal, Chairman

DOCKETED
USNRC

June 18, 1985

In the Matter of

'85 JUN 19 A10:46

LONG ISLAND LIGHTING COMPANY

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Docket No. 50-322-OL

(Shoreham Nuclear Power Station,
Unit 1)

SERVED JUN 19 1985

MEMORANDUM AND ORDER

Yesterday, this Board received a motion for a stay of the effectiveness of the Licensing Board's June 14, 1985 partial initial decision,¹ in which the Director of the Office of Nuclear Reactor Regulation was authorized to issue a license permitting the operation of the Shoreham nuclear facility at levels up to five percent of rated power. The motion was filed in the name of intervenors Suffolk County and State of New York. It was signed on behalf of the County by attorneys in the Washington, D.C. office of the law firm of Kirkpatrick & Lockhart. Upon its receipt, I promptly entered an ex parte stay to preserve this Board's jurisdiction over the request for relief contained therein

¹ LBP-85-18, 21 NRC ____.

pending the receipt of the responses due to be filed tomorrow morning.²

This morning, we received a document entitled "Suffolk County's Notice of Appeal and Request for Stay," filed on the County's behalf by its County Attorney. As justification for the stay relief requested, the document states simply that:

In view of the complexity of the issues raised during these proceedings, Suffolk County hereby further requests the Appeals Board to issue a stay of the [five percent] license or, should the license be issued, to stay its effectiveness pending the Appeals Board review of the County's appeal of the merits of the June 14, 1985 ASLB decision. The County is especially concerned that, pending review of the various matters referred to, the Plant not be unnecessarily irradiated or contaminated by radiation.

The County Attorney goes on to request that we disregard the stay motion previously filed on the County's behalf by Kirkpatrick & Lockhart for the reason that that firm no longer represents the County in this proceeding.

1. We are fully aware of the existing dispute between the Suffolk County Attorney and the Kirkpatrick & Lockhart firm respecting whether the latter still represents the County in this proceeding or, instead, that representation is now in the hands of the County Attorney exclusively. As

² Order of June 17, 1985 (unpublished). In the absence of a Board quorum, I took this action under the authority of 10 C.F.R. 2.787(b) (1).

should scarcely require extended discussion, the resolution of that controversy must be undertaken in a forum better equipped than are we to pass an informed judgment on the matter. Accordingly, for the time being, we will accept papers on behalf of the County from either the firm of Kirkpatrick & Lockhart or the County Attorney (or, as in this instance, both). We will expect, however, a definitive resolution of the existing disagreement by a competent authority prior to August 12, 1985, the date upon which oral argument is to be heard on the applicant's appeal from the Licensing Board's April 17, 1985 partial initial decision on emergency planning issues.³

2. Although we therefore have accepted for filing the notice of appeal and stay request submitted on the County's behalf by the County Attorney, the stay request must be, and hereby is, summarily denied. This is because, as seen above, the County Attorney did not even attempt to address in his motion the four criteria which must be considered by

³ LBP-85-12, 21 NRC _____. Until such resolution, the County Attorney is to serve upon Kirkpatrick & Lockhart copies of all papers filed by him with this Board. Similarly, Kirkpatrick & Lockhart is to serve the County Attorney with copies of all papers it files with us.

us in determining whether to grant or deny an application for a stay.⁴

It is so ORDERED.⁵

FOR THE APPEAL BOARD

C. Jean Shoemaker
C. Jean Shoemaker
Secretary to the
Appeal Board

This action was taken by the Appeal Board Chairman under the authority of 10 C.F.R. 2.787(b) (1).

⁴ Those criteria, set forth in 10 CFR 2.788(e), are:

(1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;

(2) Whether the party will be irreparably injured unless a stay is granted;

(3) Whether the granting of a stay would harm other parties; and

(4) Where the public interest lies.

⁵ This action has, of course, no bearing upon the pending stay motion filed on behalf of the County by the Kirkpatrick and Lockhart firm. That motion, which did address the Section 2.788(e) stay criteria, will be decided following receipt of the responses to it.