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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'85 JUL 19 A10:34

Before the Atomic Safety and Licensing Appeal Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

_____)	
In the Matter of)	
)	
LONG ISLAND LIGHTING COMPANY)	Docket No. 50-322-OL-3
)	(Emergency Planning)
(Shoreham Nuclear Power Station,)	
Unit 1))	
_____)	

STATUS REPORT AND MOTION
FOR EXTENSION OF TIME

The purpose of this filing is to advise the Appeal Board of the status of attempts to resolve the "representation" issue pertaining to Suffolk County counsel and, in light of that status, to request a further extension of time to file the emergency planning brief presently scheduled for filing on August 2, 1985.

I. Status Report

On Tuesday, July 9, 1985, the New York Court of Appeals affirmed the Appellate Division decision of June 24, 1985, which invalidated Executive Order 1-1985. (The Appellate Division, in turn, had affirmed a June 10 decision of the New York Supreme Court (Justice Doyle) that Executive Order 1-1985 was invalid.) On Wednesday, July 10, 1985, Mr. Irving Like, counsel for two-thirds of the Suffolk County Legislators, spoke with Mr. Calica, counsel for Mr. Cohalan, to ascertain whether the position of the

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County Executive on the status of Kirkpatrick & Lockhart as counsel to the County had been altered in view of the Court of Appeals' affirmance. Mr. Calica expressed the preliminary opinion that it had not, and Mr. Ashare, the Suffolk County Attorney, later wrote a letter to Mr. Like in which he explicitly stated that in his view Kirkpatrick & Lockhart had been terminated as counsel to the County.

On July 11, the petitioners in the original proceeding before Justice Doyle (two-thirds of the County Legislators in one action and four East End towns in the other) moved for enforcement of Justice Doyle's June 10 Order. Petitioners urged, inter alia, that the County Executive's termination of Kirkpatrick & Lockhart was directly related to Executive Order 1-1985 and that since the Executive Order was invalid, the termination was likewise invalid. The petitioners sought a ruling that Kirkpatrick & Lockhart had never been validly terminated as counsel to the County and an order forbidding interference with Kirkpatrick & Lockhart's efforts to represent the County pursuant to the County Legislature's resolutions. Kirkpatrick & Lockhart moved to intervene in the proceeding to obtain a definitive statement of its status.¹ —/

¹ —/ In response to the Appeal Board's June 26 letter to Messrs. Ashare and Brown, we will explain why judicial relief on the representation issue was not pursued by Kirkpatrick & Lockhart prior to July 11. On June 19, when the Appellate Division lifted the automatic stay of Justice Doyle's Order effected by Mr. Cohalan's appeal of that order, the Appellate Division declined to address the representation issue. An expedited appeal was
(footnote continued)

On July 15, 1985, counsel for Mr. Cohalan and LILCO filed pleadings with the Supreme Court which opposed the motion to enforce. The bases for the opposition included: (a) that the termination of Kirkpatrick & Lockhart was independent of Executive Order 1-1985; (b) that a motion to enforce Judge Doyle's June 10 Order was not the appropriate procedure to use to resolve the representation issue; and (c) that a factual evidentiary hearing is required before the representation dispute could be resolved. Mr. Cohalan and LILCO also opposed Kirkpatrick & Lockhart's intervention motion.

On July 15, 1985, Justice Harry Richard Brown, New York Supreme Court, heard approximately four hours of argument on the intervention and enforcement motions. Argument was heard from counsel for the Legislators, the towns, Mr. Cohalan, LILCO, and Kirkpatrick & Lockhart. Justice Brown granted the Kirkpatrick & Lockhart intervention motion and reserved decision on the enforcement motion. Additional briefs on the representation

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pursued in the New York Court of Appeals, and argument was heard on June 27, 1985. Since in the view of Kirkpatrick & Lockhart, the Legislators and the four towns, the validity of the Kirkpatrick & Lockhart termination was linked to the legality of Executive Order 1-1985, it was appropriate to await the Court of Appeals' final decision on that issue before raising the representation issue before the Supreme Court. As noted by the chronology set forth above, relief on the representation issue was sought just two days after the Court of Appeals had ruled and one day after the County Executive's counsel had informed Mr. Like that the County Executive's position on the representation issue had not changed.

issue are due to be filed by 10:00 a.m., on July 18, 1985. Justice Brown stated on July 15 that he would attempt to issue a decision expeditiously.

II. Motion for Extension of Time

Pursuant to the Appeal Board's June 20 Memorandum and Order, the County and State must file briefs on their appeal of the April 17 Emergency Planning PID by August 2, 1985. The briefs will require a major commitment of resources, due to the extensive record which underlies the PID and the numerous issues which were decided adversely to the State and County. In this regard, preparation of these briefs is a much more extensive undertaking than any of the other filings which have been made since June 3, 1985, the date when the representation issue first emerged.

We have been authorized by the Suffolk County Attorney's office to represent on its behalf as well as on behalf of the undersigned, that the dispute over representation has made it impossible for either Kirkpatrick & Lockhart or the County Attorney's office to make significant progress toward the completion of the August 2 brief. It is accordingly requested by both the County Attorney's office and Kirkpatrick & Lockhart that the Appeal Board extend the schedule for filing the emergency planning brief until August 30. The State of New York also joins in this request and asks that its appeal brief also be due on

August 30, since if Kirkpatrick & Lockhart is found to be the County's counsel, the County and State intend to file a joint brief.

We submit that the extension of time requested herein is not likely to prejudice any other party, particularly since we have not asked for any extensions of time related to the matters which are the subject of LILCO's appeal. However, on the County's emergency planning appeal, a great deal of work remains to be done in order to address the various issues presented by the PID. Since resolution of the representation issue should be obtained in the relatively near future, and since it is certainly preferable for this Board to receive a single brief on behalf of the County, we believe that the grant of the requested extension will permit a more focused and efficient appellate procedure, with no substantial prejudice to other parties.

We have spoken with counsel for LILCO and the NRC Staff on this matter. The NRC Staff does not object to the grant of the motion, provided that the Appeal Board at the appropriate time provide them with an equivalent extension in their response time.² / LILCO indicated that once it received a copy of this pleading, it would respond promptly (by tomorrow) to the extension request.

² / From the Appeal Board's June 20 Memorandum and Order, it appears that the Board will set the times after the filing of the appellant brief(s) and after the parties then confer.

Respectfully submitted,

A handwritten signature in cursive script, reading "Karla J. Letsche". The signature is written in dark ink and is positioned above the typed name.

~~Herbert H. Brown~~
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July 17, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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I hereby certify that copies of STATUS REPORT AND MOTION FOR EXTENSION OF TIME have been served on the following this 17th day of July 1985, by U.S. mail, first class, except as otherwise noted.

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Date: July 17, 1985

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