



ADJUDICATORY ISSUE
(Information)

February 9, 1990

SECY-90-044

FOR: The Commissioners
FROM: John F. Cordes, Jr.
Solicitor
SUBJECT: LITIGATION REPORT 1990-08

Shoreham-Wading River Central School District and
Scientists and Engineers for Secure Energy, Inc.
v. NRC, No. 89-1633 (D.C. Cir.)

This litigation was dismissed on January 22, 1990. The petitioners had sought judicial review of the Director of NRR's denials of their requests under 10 CFR 2.206 that the EDO immediately order Long Island Lighting Company to stop all activities related to the defueling and destaffing of Shoreham. The petitioners claimed that, before allowing defueling or destaffing, the NRC should do an environmental impact statement on decommissioning Shoreham, that the EIS should consider full-power operation as an alternative, and that the environmental review was being prejudiced because defueling and destaffing were making the alternative of full-power operation more costly. Without taking a stand on the NEPA issues, the NRC moved for dismissal of the petition on the grounds that a Director's denial of a 2.206 request for emergency relief was not final agency action, and that denials of 2.206 petitions were not judicially reviewable anyway.

On January 22, 1990, in a two-page per curiam order (attached), the Court dismissed the litigation for lack of a reviewable final order. Although the Court did not reach the NEPA issues, it did "note the absence of any showing of imminent irreparable injury". The petitioners have until March 12, 1990 to petition for rehearing or to suggest rehearing en banc, but if

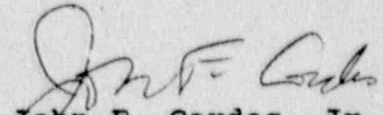
NOTE: TO BE MADE PUBLICLY AVAILABLE
IN 10 WORKING DAYS FROM THE
DATE OF THIS PAPER

9002220049 900209
FDR SECY
90-044 PDC

DF02
~~DF02~~
11

the Director issues his final decision on the petitioners' 2.206 petitions before March 12, they may simply seek judicial review of his final decision.

CONTACT:
Steve Crockett
x21600


John F. Cordes, Jr.
Solicitor

Attachment: Court Order

DISTRIBUTION:
Commissioners
OGC
OIG
LSS
GPA
REGION I
EDO
ACRS
ACNW
ASLBP
ASLAP
SECY

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 89-1633

September Term, 19 89

Shoreham-Wading River Central District and
Scientists and Engineers for Secure Energy,
Inc.,

Petitioners

v.

U.S. Nuclear Regulatory Commission and
United States of America,

Respondents

Long Island Lighting Company,

Intervenor

BEFORE: Ruth B. Ginsburg, Williams and Sentelle,
Circuit Judges

United States Court of Appeals
For the District of Columbia Circuit

FILED JAN 22 1990

CONSTANCE L. DUPRE
CLERK

ORDER

Upon consideration of petitioners' motion for leave to file out of time unified petitioners' response and reply, and the response thereto of intervenor Long Island Lighting Company ("LILCO"), and the reply; respondents' and LILCO's motions to dismiss, the response thereto and the replies; and petitioners' motion for reconsideration of the denial of expeditious consideration, it is

ORDERED that petitioners' motion for leave to file out of time be granted. The Clerk is directed to file the lodged pleadings. It is

FURTHER ORDERED that the motions to dismiss be granted for lack of a reviewable final order. See Honicker v. U.S. Nuclear Regulatory Comm'n, 590 F.2d 1207, 1209 (D.C. Cir. 1978), cert. denied, 441 U.S. 906 (1979). The court notes the absence of any showing of imminent irreparable injury. It is

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 89-1633

September Term, 19 89

FURTHER ORDERED that petitioners' motion for reconsideration of the denial of expeditious consideration be dismissed as moot.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 15.

Per Curiam