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OUR FILE NUMBER  
516,527-001

90 NOV 15 P2:31  
November 14th 1990  
OFFICE OF SECRETARY OF ENERGY  
DOCKETING & SERVICE BRANCH

The Honorable Samuel J. Chilk  
The Secretary of the Commission  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: Corrected Page for LIPA Response

Dear Mr. Chilk:

I have enclosed the original and two copies of a corrected page 22 of LIPA's Response to (1) Joint Petition for Reconsideration of CLI-90-08 and (2) Comments by DOE and CEQ, filed November 13, 1990.

I appreciate your attention to this matter.

Sincerely,

*Carl R. Schenker, Jr.*  
Carl R. Schenker, Jr.  
of O'Melveny & Myers

Enclosure

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Further, even if operation of Shoreham were considered the no-action alternative to some proposed federal action, there still would be no occasion for considering operation of Shoreham. Whether characterized as action or the no-action alternative, operation of Shoreham would be excluded from NEPA consideration under the "rule of reason." DOE contends otherwise, claiming that "analysis of the 'no-action' alternative is always appropriate, even if an agency is under a judicial or legislative command to act." (DOE Comments at 15-16.) But this is incorrect. Like other alternatives, the no-action alternative need not be discussed in an EIS when it lies outside the range of alternatives established by the rule of reason. Kilroy v. Ruckelshaus, 738 F.2d at 1453.

2. In another new argument, DOE contends that in applying the rule of reason, a federal agency may only consider hurdles to an alternative rooted in federal law. Thus, according to DOE, the NRC must pay no attention to the state-law obstacles noted in CLI-90-08. (DOE Comments at 18-19.) For this proposition, DOE cites NRDC v. Morton, 458 F.2d 827 (D.C. Cir. 1972). DOE is flatly wrong.

NRDC v. Morton did not hold that only federal policies or statutes could rule out an alternative under the rule of reason. To the contrary, Morton criticized the trial court's indication that the agency must study

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'90 NOV 15 P2:31

OFFICE OF SECRETARY  
OF ENERGY  
U.S. DEPARTMENT OF ENERGY  
WASHINGTON, D.C. 20585

I hereby certify that copies of the foregoing substitute page 22 of the Response of the Long Island Power Authority to (1) Joint Petition for Reconsideration of CLI-90-08 and (2) Comments by DOE and CEQ, have been served upon the following persons by U.S. mail first class.

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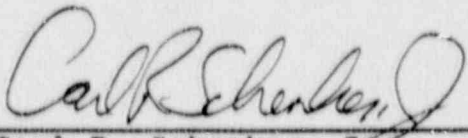
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DATED: November 14, 1990