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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD '91 FEB 19 P3 21

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of	)	Docket No. 50-322-OLA
LONG ISLAND LIGHTING COMPANY	)	(Confirmatory Order
(Shoreham Nuclear Power Station,	)	Modification, Security Plan
Unit 1)	)	Amendment and Emergency
	)	Preparedness Amendment)

PETITIONERS JOINT RESPONSE TO LILCO MOTION  
TO DISMISS AS MOOT PETITIONERS' REQUEST  
FOR A STAY OF LBP-91-01

Petitioners Shoreham-Wading River Central School District and Scientists and Engineers for Secure Energy, Inc. (jointly "Petitioners") hereby respond to, and oppose, the Long Island Lighting Company ("LILCO") Motion to Dismiss as Moot Petitioners' Request for a Stay of LBP-91-01 for the reasons stated below, noting that the Nuclear Regulatory Commission Staff ("NRC Staff") filed a response to Petitioners' Application in support of LILCO's motion to dismiss on February 7, 1991.

Petitioners observe that (a) their motion for stay was unopposed by LILCO, (b) the NRC Staff failed to file any opposition until after the time for filing amendments elapsed, and (c) the Atomic Safety and Licensing Board ("ASLB") also failed to deny or grant Petitioners' motion until after the time for filing amendments to the petitions passed. In these circumstances, Petitioners had no alternative but to file a form of amended petition on February 4, 1991. If Petitioners had not

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filed, they could have lost all opportunity to amend their petition since the Commission's rules do not normally ("[u]nless otherwise ordered") allow the filing of a motion to stay or extend the time for the performance of any act. 10 C.F.R. § 2.730(g); but see, 10 C.F.R. § 2.714(a)(1) (1990).

Under these circumstances, Petitioners had no alternative but to file an amended petition on or before February 4, 1991. Nevertheless, the filing of that amended petition does not moot the purposes to be served by Petitioners' motion insofar as the Board's granting of that motion could still prevent the waste of Commission (both ASLB and NRC Staff) and licensee resources as recognized in the LILCO motion (at 2). Such a stay would also allow for the further amendment of the petition pursuant to the Commission's decision on Petitioners' appeal of LBP-91-01, thus requiring only a single response by LILCO and the Commission's Staff to the amended petition, and a single review by this ASLB.

WHEREFORE, since a large part of the purposes to be served by Petitioners' motion for a stay can still be served, Petitioners urge the Atomic Safety and Licensing Board to deny the LILCO motion to dismiss and grant Petitioners' motion for a stay of LBP-91-01 and further proceedings in this matter until twenty (20) days after the Commission's decision on the pending appeal.

Respectfully submitted,

February 14, 1991

  
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UNITED STATES OF AMERICA  
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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'91 FEB 19 P3:21

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of	)	Docket No. 50-32_-OLA
LONG ISLAND LIGHTING COMPANY	)	(Confirmatory Order
(Shoreham Nuclear Power Station,	)	Modification, Security Plan
Unit 1)	)	Amendment and Emergency
	)	Preparedness Amendment)

CERTIFICATE OF SERVICE

I hereby certify that copies of the Petitioners' Joint Response to LILCO Motion to Dismiss as Moot Petitioners' Request for a Stay of LBP-91-01 in the above-captioned proceeding have been served on the following by first-class mail, postage prepaid on this 14th day of February, 1991:

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U.S. Nuclear Regulatory Commission  
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February 14, 1991

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