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BRANCH February 14, 1992
BY FAX

The Hon. Ivan Selin, Chairman
Commissioner Kenneth C. Rogers
Commissioner Forrest W. Remick
Commissioner James W. Curtiss
Commissioner E. Gail de Planque
United States Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852

Long Island Lighting Company
(Shoreham Nuclear Power Station)
NRC Docket 50-322: - *OCA-3*
Request for Transfer of Facility License

Dear Chairman Selin and Members of the Commission:

We write, as counsel for the Long Island Lighting Company (LILCO) and the Long Island Power Authority (LIPA), concerning the urgent need for Commission action on the long-standing joint request of LILCO and LIPA for transfer to LIPA of the license for the Shoreham Nuclear Power Station (Shoreham). This letter updates and supplements our letter of January 31, 1992.

As the Commission is aware, the application for license transfer has been on file since June 28, 1990 and was noticed in the Federal Register on March 20, 1991. See 56 Fed. Reg. 11781 (1991). The staff has provided the Commission with SECY-92-041 recommending that the license transfer be approved. It is now even more important than before that the Commission's approval be granted and made effective during the month of February.

One important consequence of license transfer will be a phase-down, over 10 years, of tax obligations on the Shoreham facility. See New York Public Authorities Law § 1020-q (McKinney 1991 Supp.). Attached hereto is a copy of an article appearing in yesterday's Newsday, entitled "Shift On Shoreham Is Urged." In that article, New York counsel (Mr. Lou Lewis) for one of the would-be intervenors in this case, the Shoreham-Wading River Central School District (SWRCSD), is quoted as saying that the phase-down will not begin until 1993-94 if LILCO "has not

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transferred Shoreham to the state by March 1, the date on which tax rolls are finalized in Suffolk [County]" for 1992-93. LILCO and LIPA dispute this assertion, but if it is sustained by New York courts, this position would burden LILCO's ratepayers with an additional year of Shoreham tax payments, currently \$82 million per year, of which \$29.2 million goes to SWRCSD. This risk will be averted if the license transfer occurs in February 1992.

These circumstances make it imperative that the Commission approve -- and make effective -- license transfer during February 1992. If the Commission has concluded its review of license transfer and found it in accord with NRC requirements, as appears to be the case, then no public purpose is served by exposing Long Island ratepayers to the risk of additional tax payments on a facility that will never operate again. SWRCSD plainly has sought delay in the transfer precisely to protect its streams of revenues from LILCO tax payments. Indeed, transfer might already have occurred but for SWRCSD's action in filing on December 19, 1991, a frivolous pleading contending that LIPA would "expire" on January 15, 1992, an eventuality that has not come to pass and as to which SWRCSD has not instituted legal proceedings in the State of New York.

In our January 31 letter, LILCO and LIPA questioned whether an administrative stay of an order approving license transfer would be warranted at all but expressed a willingness to accede to a brief administrative stay, provided that transfer could still occur in February. It now appears, however, that SWRCSD will seek to take advantage of such a stay unjustly to burden Long Island ratepayers with an additional year of tax-related costs. Accordingly, LILCO and LIPA urge the Commission to approve the license transfer promptly and to do so without allowing any administrative stay. Only prompt action, not subject to an administrative stay, will allow transfer of the plant during the month of February and assure that Long Island's ratepayers will not be exposed to the threat of this additional burden.

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LILCO and LIPA stand ready to provide any assistance to the Commission to facilitate transfer of the plant this month.

Sincerely yours,

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Attachment

- cc: James P. McGranery, Jr., Esq. (by fax)
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- Charles E. Mullins, Esq. (by fax)
- Samuel J. Chilk
- Nicholas S. Reynolds, Esq.
- Stanley B. Klimberg, Esq.
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LONG ISLAND

Shift On Shoreham Is Urged

*NRC staff tells panel:
Let NY take over plant*

By Kinsey Wilson

STAFF WRITER

The staff of the Nuclear Regulatory Commission has recommended that New York be allowed to take formal possession of the Shoreham nuclear power plant, setting the stage for the commission's approval of the transfer and eventual decommissioning of the plant.

The decision comes three years after Gov. Mario Cuomo and the Long Island Lighting Co. announced they had negotiated an agreement that would rescue LILCO from bankruptcy while ensuring that the \$6.5-billion plant, though fully built, would never open.

In making its recommendation, the commission's staff found the state-run authority designated to take over Shoreham technically and financially up to the task. The commission is widely expected to endorse the staff recommendation, possibly this month.

The decision, however, may come too late to avert another year of property-tax payments on the plant that would cost LILCO, and by extension its ratepayers, at least \$82 million next year.

That prospect led to renewed charges yesterday that the Shoreham-Wading River Central School District — which will receive \$29.2 million in taxes from the plant this year — was seeking to delay the transfer for purely mercenary reasons. The district has waged a persistent legal battle against shutdown.

"They are using the smokescreen of opening Shoreham to line the pockets of that district with more money," said Richard Kessel, chairman of the Long Island Power Authority, the agency that is slated to assume control of the plant. "They don't care about saving Shoreham. All they care about is soaking the ratepayers on Long Island."

Lou Lewis, a Poughkeepsie attorney representing the school district, defended its efforts to avert Shoreham's destruction, saying there were important policy questions that were never addressed in the rush to prevent the plant from coming on line.

Kessel scoffed at those claims and said the authority may attempt to whittle down the amount the district receives if efforts to delay the transfer continue.

Both the Shoreham settlement and the 1986 statute authorizing the creation of the Long Island Power Authority call for the authority to make payments to the school district, Suffolk County and Brookhaven Town in lieu of taxes on the Shoreham plant for 10 years after the transfer takes effect. The first annual payment in lieu of taxes would be equal to LILCO's final property-tax payment, and each annual payment thereafter would be reduced by 10 percent.

Lewis said yesterday that LILCO would be obligat-

NRC Staff OKs Shoreham Shift

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ed to pay the 1992-93 taxes on the plant if it has not transferred Shoreham to the state by March 1, the date on which tax rolls are finalized in Suffolk. Payments in lieu of taxes would then begin in 1993-94.

While not directly contesting that claim, Kessel suggested that the last tax payment would be treated as the

first payment in lieu of taxes, effectively preventing the district from receiving an extra year's tax revenue. "We believe the March 1st date means nothing at all," Kessel said.

Lewis, however, said Kessel had no legal basis for his threat. "I'm afraid what we have here is a severe case of posturing by Mr. Kessel," Lewis said. "Mr. Kessel seems to think he's able to do whatever he wants."