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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	Docket No. 50-322-OLA-3
LONG ISLAND LIGHTING COMPANY	(Application for License Transfer)
(Shoreham Nuclear Power Station, Unit 1)	

PETITIONERS' OPPOSITION TO
LETTER REQUEST FOR DISMISSAL OF PAGES

Petitioners Shoreham-Wading River Central School District ("School District") and Scientists and Engineers for Secure Energy, Inc. ("SE_2") hereby oppose the "request" by the Long Island Lighting Company ("LILCO") and the Long Island Power Authority ("LIPA") for the U.S. Nuclear Regulatory Commission ("Commission" or "NRC") to dismiss "pages" Petitioners' comments on SECY-92-041 which were furnished to the Commission and the parties by hand or telecopy on February 20, 1992 for the reasons stated herein.[1/]

Since most of Petitioners comments focus on issues raised by SECY-92-041 and attachments which were not at an earlier point in this proceeding, it is disingenuous of LILCO and LIPA argue that those comments "could and should have been argued earlier." LILCO/LIPA Letter at 1 (February 21, 1992).

1/ Petitioners are somewhat confused by the LILCO and LIPA use of pejorative language to describe Petitioners' responsive filings with the Commission in proper form, while LILCO and LIPA feel free to bombard the Commission with letters.

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The LIPA and LILCO suggestion that Petitioners' February 20 comments were inappropriate is misfounded. With respect to SECY-91-129 (May 13, 1991) containing the Staff's recommendation to approve the possession only license amendment, the Commission wrote: "The Staff served a copy of that paper on all interested parties, including Petitioners. See 10 C.F.R. § 2.781(a)(2). The Petitioners have had an opportunity to file comments in response to the Staff's recommendation." Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-91-8, 33 NRC 461, 471 (June 12, 1991). In the instant matter also, the Chief of the NRC Docketing and Service Branch served a copy of SECY-92-041 on the Atomic Safety and "Licensing Board and the parties to this proceeding" by memorandum of February 12, 1992. In these circumstances, it is appropriate for the Petitioners to consider that the furnishing of the SECY Paper was also to give them "an opportunity to file comments in response to the Staff's recommendation." Those comments were filed in a timely manner.

Additionally, Petitioners point to a few of the errors and repr entations made by LILCO and LIPA in their "Response of LILCO and LIPA to Petitioners' Opposition to NRC Staff Recommendation for License Transfer Approval" (February 21, 1992) ("Response").[2/]

2/ Petitioners note that this LILCO/LIPA document was served on Petitioners by telecopy about 9:00 p.m. on a Friday evening, without prior or subsequent notice to Petitioners' counsel which would have allowed for a quicker response.

First, LILCO and LIPA state that "petitioners do not even dispute that LIPA's funding for decommissioning activities would be adequate." Response at 5. This is not the case. Petitioners have pointed strongly to circumstances indicating that LIPA will not have adequate funds to support an adequate management organization, and circumstances indicating that reliance on a letter from the New York Public Service Commission General Counsel does not give adequate assurance especially in view of the fact that Mr. Richard Kessel, as Executive Director of the New York Consumer Protection Board and as Chairman of LIPA, continuously attacks the rate increases sought by LILCO for decommissioning expenses among other things. Petitioners Opposition at 13-16.

Second, LIPA and LILCO mischaracterized Petitioners' argument by saying that "Petitioners have announced they do not themselves intend to commence" a proceeding to prove that LIPA had ceased exist by operation of law. Response at 7 & n.10. That simply is not true. The referenced source states the opposite, namely, "[t]he School District's New York State counsel currently has such an action under advisement . . . ." See Response at 7 n.10.

Third, in trying to avoid the significance of the fact that LIPA is not a "going concern," LILCO and LIPA argue that since "that language does not appear in Section 2828 itself, [it] obviously was not contemplated as a term of art. . . ." Response at 7 n.11. This is an attempt to reject the whole concept of

"legislative history." For example, specific reference to the ›ncept of "going concern" was made by state officials rec ›mending approval of current § 2828 by the Governor. See attached Letter from State Comptroller to the Governor (April 17, 1957).

Fourth, as to Petitioners' arguments on the insufficiency of the Environmental Assessment ("EA"), LILCO and LIPA state that "the regulations upon which they rely simply do not support their argument." Response at 8. This argument is as conclusory and unsupported as the EA itself. LILCO and LIPA offer not a single citation to regulation, judicial decision or other authority for their conclusion.

Fifth, contrary to LILCO and LIPA assertion, Petitioners do not argue that "a draft FONSI would be required for every proposed license amendment. . . ." Response at 10 (emphasis in original). Hearings are not requested for every license amendment and, therefore, no draft FONSI would be required for such license amendments.

And sixth, Petitioners are not aware that LILCO has furnished the NRC with the Federal Energy Regulatory Commission required order approving the transfer of Shoreham. See 16 U.S.C. § 824b(a)(1988). The NRC should not aut rize transfer without assurance of the prior approval of the Federal Energy Regulatory Commission.

CONCLUSION

For these reasons and the reasons previously submitted, Petitioners suggest that transfer of the Shoreham license to LIPA is inappropriate, at least at this time.

Respectfully submitted,

February 24, 1992

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STATE OF NEW YORK
DEPARTMENT OF AUDIT AND CONTROL
ALBANY

S. 2433

ARTHUR LEVITT
STATE COMPTROLLER

IN REPLYING REFER TO

April 17, 1957

His Excellency Averell Harriman
Governor of the State of New York
Executive Chamber
Albany, New York

Sir: Re: Senate Bill Int. 2433, Pr. 2566, 4068
By Mr. Hults

This memorandum has been prepared at the request of your Counsel.

Under the terms of this bill the life of every public authority, hereafter created, is to terminate at the end of five years from the date of its creation, provided it has no outstanding liabilities other than moneys advanced by the State or any political subdivision thereof. This bill has been recommended by the Temporary Commission on Coordination of State Activities.

This bill seems aimed at those authorities that do not commence operations within a reasonable time after their creation. The five year period set forth in the statute seems reasonable and should stimulate the authority to become a going concern.

The bill could have one result not intended by its sponsors. It may encourage the creation of trial authorities on the theory that they will come to an automatic end if not productive.

This bill would take effect immediately.

This Department recommends that the bill be approved.

Very truly yours,

ARTHUR LEVITT
State Comptroller

By Alfred W. Haight
Alfred W. Haight
Counsel to the Comptroller

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CERTIFICATE OF SERVICE

I hereby certify that copies of the Petitioners' Opposition to Letter Request for Dismissal of Pages in the above-captioned proceeding have been served on the following by hand, telecopy, or first-class mail, postage prepaid (as indicated below) on this 24th day of February, 1992:

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