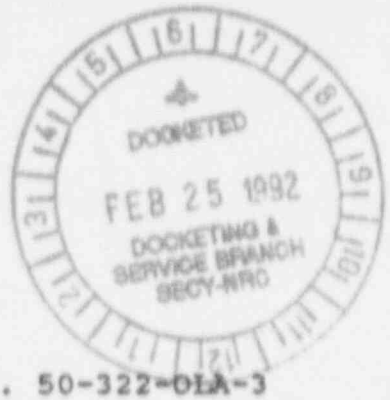

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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' NOTICE OF
LILCO/LIPA EXAGGERATION AND OF
COMMENCEMENT OF STATE COURT ACTION

Petitioners Shoreham-Wading River Central School District ("School District") and Scientists and Engineers for Secure Energy, Inc. ("SE_2") hereby give the Commission notice of the exaggeration by LILCO/LIPA of the impact for payments in lieu of taxes of the transfer of the license for the Shoreham Nuclear Power Station Unit 1 ("Shoreham") to LIPA and notice of the School District's commencement of an action in the New York State Supreme Court to confirm that LIPA automatically ceased to exist as a matter of law on January 15, 1992 pursuant to New York Public Authorities Law § 2828.

EXAGGERATION OF TAX
IMPACT OF LICENSE TRANSFER

By letter of February 14, 1992 LILCO/LIPA informed the Commission that transfer of the Shoreham possession only license to LIPA by March 1, 1992 would avoid "an additional year of Shoreham tax payments, currently $82 million per year, of which $29.2 million goes to SWRCSD". LILCO/LIPA joint letter at 2

(February 14, 1992). This was a gross exaggeration of the impact of the transfer.

The controlling section of the LIPA Act is New York Public Authorities Law § 1020-q, subd.1 which states:

> Each year after property theretofore owned by LILCO is acquired by the authority by any means authorized by this title and, as a consequence, is removed from the tax rolls, the authority shall make payments in lieu of taxes to municipalities and school districts equal to the taxes and assessments which would have been received from year to year by each such jurisdiction if such acquisition had not occurred, except for such taxing jurisdictions which tax the Shoreham plant, in which case the in lieu of tax payments shall in the first year after the acquisition be equal to one hundred percent of the taxes and assessments which would have been received by such taxing jurisdictions. In each succeeding year such in lieu of tax payments shall be decreased by ten percent until such time as such tax payments equal taxes and assessments which would have been levied on such plant in a nonoperative state.

In order to appropriately calculate the in lieu of tax savings, if any, to LILCO/LIPA as a result of the transfer one must first determine the assessed value of Shoreham "in a nonoperative state". That value is its value when Shoreham held only a construction permit and before it received its initial facility operating license NPF-36 on July 3, 1985. See 50 Fed. Reg. 28129 (July 10, 1985). While Shoreham had only a construction permit (i.e., was "in a nonoperative state"), its assessed value for 1985-86 was $146,134,908 determined as of the assessment date of June 1, 1985. That assessed value remained

the same until LILCO received its full power operating license on April 21, 1989. See 54 Fed. Reg. 18371 (April 1989).

On June 1, 1989, the assessed value of the $5.5 billion Shoreham plant with a full operating license was increased to $156,579,980 for the 1989-90 tax year and has remained at that level since then. Thus, whenever license transfer would occur the assessed value of Shoreham for purposes of payments in lieu of taxes may decrease but would never drop below $146,134,980.

Addressing only the case of the School District and without mention of the payments in lieu of tax due the Town of Brookhaven or the County of Suffolk, Petitioners note that the applicable School District tax rate for 1990-91 was 18.32% of assessed value resulting in a levy of approximately $28.68 million, as LILCO and LIPA have recognized. If the same tax rate were applied to the assessed value of Shoreham in a "nonoperative state", the levy would be approximately $26.77 million or $1.9 million less than the levy on an operational Shoreham.

However, for the tax year 1991-92, the School District tax rate has increased to 20.55% which would yield an in lieu of top payment levy of approximately $30.03 million on the assessed value of Shoreham "in a nonoperative state" or about $1.35 million more than taxes on Shoreham with a full power operating license for 1990-1991.

In short, the in lieu of tax payment savings alleged by LILCO/LIPA by early transfer of the license simply do not exist.

NOTICE OF SCHOOL DISTRICT
COMMENCEMENT OF STATE COURT ACTION

The attached letter from School District New York State counsel is self-explanatory in informing me that the School District is commencing an action in New York State Court to confirm that LIPA ceased to exist as a matter of law on January 15, 1992 pursuant to Public Authorities Law § 2828. The School District has asked that I inform the NRC of this development.

In these circumstances, the School District respectfully submits that it would be arbitrary and capricious to issue an NRC license to an applicant that may soon be determined to be defunct by the New York State Courts. Well established judicial precedent demands that the Commission stay its hand in these circumstances and await the prompt decision of New York State on a matter within its special jurisdiction.

Respectfully submitted,

February 25, 1992

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Shoreham-Wading River Central
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February 25, 1992

BY FACSIMILE

James P. McGranery, Jr.
DOW, LOHNES & ALBERTSON
1255 Twenty-Third Street
Washington, DC 20037-1194

Re: Termination of Long Island Power Authority; Obligation to Repay Appropriations to the State of New York

Dear Mr. McGranery:

In your recent filing before the Nuclear Regulatory Commission (NRC), entitled "Suggestion of Mootness Due to the Long Island Power Authority's Imminent Demise", you exposed the fundamental and profound illegality of LIPA's acquisition of the Shoreham Nuclear Power Station (Shoreham). In light of the Sunset Provisions of the LIPA Act and the Public Authorities Law, it is indeed incumbent upon LIPA to establish its continued existence by seeking recourse in state court. In fact, New York explicitly authorizes an applicable procedure for such recourse -- the declaratory judgment action.

With LIPA continuing to function, and no such declaratory judgment action forthcoming we have become increasingly disturbed by the flagrant illegality of the situation. LIPA has been terminated by operation of law, yet continues to act purportedly on the State's behalf. Moreover, LIPA has never developed <u>any</u> source of revenue to repay state appropriations, all of which must be repaid according to State law. Instead, LIPA continues to spend taxpayer dollars as if further appropriations are a certainty, and as if repayment will never be made.

The same considerations are shared by several state taxpayers, and we now believe it imperative to protect their interests through formal legal process. We have therefore resolved to commence an action for declaratory and injunctive relief pursuant to Article 7-A of the State Finance Law. The action will seek to have LIPA declared to be terminated as a matter of law, and

to enjoin all continued appropriations to, and expenditures by, LIPA.

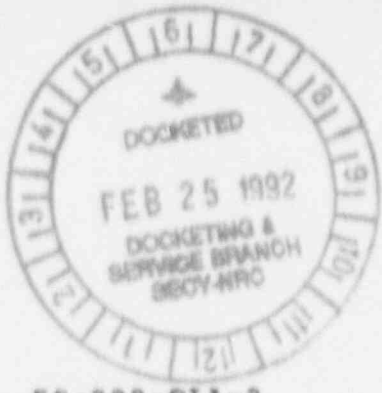
To brief you on the procedural side of this, we will commence the action on Wednesday, February 26, 1992, and advise as developments unfold. Of course, you have explained the "mootness" issue to the NRC, but since this is entirely a matter of state law, we request that you advise the commission of the pendency of the action.

Very truly yours,

LEWIS & GREER, P.C.

LOU LEWIS

LL/ser



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)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the Petitioners' Notice of LILCO/LIPA Exaggeration And Commencement of State Court Action 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 25th day of February, 1992:

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Thomas S. Moore, Chairman
Administrative Judge
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
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Jerry R. Kline
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School District and Scientists and
Engineers for Secure Energy, Inc.