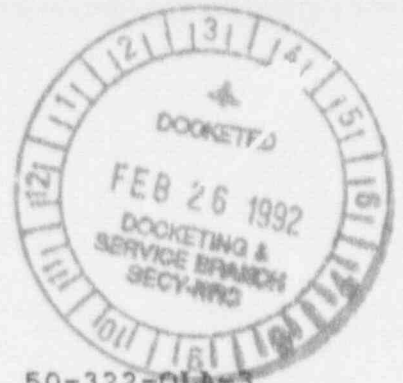


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION



In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station,
Unit 1)

)
) Docket No. 50-322-OLA-5
)
)
)

) (Application for
) License Transfer)
)
)
)

NOTICE OF STATE TAXPAYER COMPLAINT
AND CORRECTION

Undersigned counsel for the Shoreham-Wading River Central School District ("School District") and Scientists and Engineers for Secure Energy, Inc. ("SE₂") herewith furnishes the U.S. Nuclear Regulatory Commission ("NRC") with a copy of the complaint served by New York State taxpayers for declaratory and injunctive relief pursuant to Article 7-A of the New York State Finance Law to have the Long Island Power Authority ("LIPA") declared to have been terminated by operation of law and to enjoin all continued appropriations to, and expenditures by, LIPA.

In filing "Petitioners' Notice of LILCO/LIPA Exaggeration and a Commencement of State Court Action" in the above-captioned proceeding yesterday, undesigned counsel incorrectly assumed that the School District was a party to that action due to the commonality of counsel. The School District is not a party to this taxpayers' action. However, that has no effect on the importance of the action or its pendency calling

for this Commission to stay its hand pending decision in the New York State Courts.

The School District and SE₂ are also in receipt of yet another letter (an impermissible form of pleading) to the Commission from counsel for the Long Island Lighting Company ("LILCO") and the Long Island Power Authority alleging that "whatever the size of the property tax liability for Shoreham at the beginning of the 10-year ramp-down, the ramp is still 10 years long" LILCO/LIPA Letter at 1 (February 26, 1992); (served by telecopy at 12:09 p.m.). This totally ignores a principal point made in yesterday's filing by the School District and SE₂, namely that the assessed value of the Shoreham Plant "in a non-operative state" is 93.33% of its value in an operational state. Compare \$146,134,908 ("non-operative state") with \$156,579,980 (assessed value after receipt of full power operating license).

Thus, the "assessed value" of the plant relevant to LIPA's obligations pursuant Public Authorities Law § 1020-q subd. 1 would not be able to be reduced by even 10% and there would be no further reductions after the first year. Section 1020-q makes no reference to a "10-year ramp-down."

Moreover, since the taxing jurisdictions are free to change their tax rates from year to year (for example, the School District increased its "tax rate" from 18.32% for 1990-91 to 20.55% for 1991-92, an increase of 12.17%), it would be highly

speculative to assume that there would be any resulting decreases in the amount of payments due under the in lieu of tax payments.

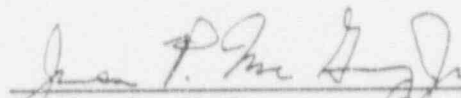
Further, LILCO and LIPA assert that litigation to determine LIPA's demise by operation of law should have been initiated earlier. However, the School District and SE₂ sought to have the NRC require LIPA to pursue an action to remove doubts as to its continued existence as a part of LIPA's burden as an applicant before the NRC. It was only the issuance by the NRC Staff of an Environmental Assessment and Finding of No Significant Impact on Monday, February 24, 1992 which gave notice that the Commission was probably preparing to approve the fullness of the Staff recommendation in SECY-92-041 without requiring LIPA to remove doubt as to its existence. Undersigned counsel suggests that it was prudent for the plaintiff taxpayers (neither the School District nor SE₂ are plaintiffs in this action) to have expected the Commission to require LIPA to go forward and to have acted promptly when issuance of the EA gave notice that the NRC was probably not going to require LIPA to initiate such an action. Those taxpayers commenced their action promptly within 48 hours after issuance of the EA gave notice that such an action would probably be necessary.

CONCLUSION

WHEREFORE, the School District and SE₂ once again urge the Commission to stay its hand in approving the application for license transfer as a matter of comity pending resolution of the question as to LIPA's continued existence in the New York State Courts.

Respectfully submitted,

February 26, 1992



James P. McGranery, Jr.
DOW, LOHNES & ALBERTSON
Suite 500
1255 Twenty-Third Street, N.W.
Washington, D.C. 20037
(202) 857-2929

Counsel for the Petitioners
Shoreham-Wading River Central
School District and Scientists and
Engineers for Secure Energy, Inc.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NASSAU

-----X
 KULKA CONSTRUCTION MANAGEMENT CORP.,
 OMNIBUZZ INC., and NASSAU SUFFOLK
 CONTRACTORS' ASSOCIATION, INC.,

SUMMONS

Plaintiffs,

- against -

Index No. _____

EDWARD V. REGAN, as Comptroller of
 the STATE OF NEW YORK, PATRICK J.
 BULGARO, as Director of the Budget
 of the STATE OF NEW YORK, RICHARD
 M. KESSEL, as Chairman of the LONG
 ISLAND POWER AUTHORITY, IRVING LIKE,
 NORA BREDES, DR. FRANK CIPRIANI,
 SHELDON SACKSTEIN, THOMAS TWOMEY,
 STEPHEN LISS, "JANE DOE", "RICHARD ROE",
 the names of the defendants in the
 quotation marks being fictitious,
 the true names being unknown to the
 plaintiffs, and LONG ISLAND POWER
 AUTHORITY,

Defendants.

-----X
 TO THE ABOVE NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiffs' attorneys(s) within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty [30] days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Poughkeepsie, New York
 February 26, 1992

LEWIS & GREER, P. C.
 Attorneys for Plaintiffs
 11 Raymond Avenue
 P. O. Box 2990
 Poughkeepsie, NY 12603
 Telephone: 914-454-1200

Plaintiffs designate Nassau
County as the Place of Trial

The basis of the venue is:
The County wherein the action took place.

Defendant's address:

Edward V. Regan, Comptroller
John Black, Esq.
Governor Smith State Office Building
11th Floor, Legal Department
Albany, NY

Patrick J. Bulgaro, Director of the Budget
State Capital Building
Room 113
Albany, NY

Richard M. Kessel, Chairman of the Board of Trustees
(and all Trustees of LIPA)
Long Island Power Authority
200 Garden City Plaza
Suite 201
Garden City, NY 11530

Long Island Power Authority
200 Garden City Plaza
Suite 201
Garden City, NY 11530

Attorney General for the State of New York
County of Nassau
190 Willis Avenue, Room 220
Mineola, NY 11501

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
KULKA CONSTRUCTION MANAGEMENT CORP.,
OMNIBUZZ, INC., and NASSAU SUFFOLK
CONTRACTORS' ASSOCIATION, INC.

VERIFIED COMPLAINT

Plaintiffs,

Index No. _____

- against -

EDWARD V. REGAN, as Comptroller of
the STATE OF NEW YORK, PATRICK J.
BULGARO, as Director of the Budget
of the STATE OF NEW YORK, RICHARD M.
KESSEL, as Chairman of the LONG ISLAND
POWER AUTHORITY, IRVING LIKE, NORA BREDES,
DR. FRANK CIPRIANI, SHELDON SACKSTEIN,
THOMAS TWOMEY, STEPHEN LISS, "JANE DOE",
"RICHARD ROE", the names of the defendants
in the quotation marks being fictitious,
the true names being unknown to the
plaintiffs, and LONG ISLAND
POWER AUTHORITY,

Defendants.

-----X
Plaintiffs, Kulka Construction Management Corp., Omnibuzz Inc., and
Nassau Suffolk Contractors' Association, Inc., by their attorneys, Lewis
& Greer, P.C. complain of the defendants and allege as follows:

PARTIES

1. Plaintiff Kulka Construction Management Corp. (KULKA) is a
corporation duly organized under the laws of the state of New York, with
its principal offices located in Hauppauge, Suffolk County, New York,
and a citizen taxpayer as defined in Article 7-A of the State Finance
Law.

2. Plaintiff Omnibuzz Inc. (OMNIBUZZ) is a corporation duly

organized under the laws of the State of New York, with its principal offices located in South Hampton, Suffolk County, New York, and a citizen taxpayer as defined in Article 7-A of the State Finance Law.

3. Plaintiff Nassau Suffolk Contractors' Association, Inc. (NASSAU SUFFOLK) is a not-for-profit membership corporation duly organized under the laws of the State of New York, with its principal offices located in Commack, Nassau County, New York, and a citizen taxpayer as defined in Article 7-A of the State Finance Law.

4. For simplicity and brevity, the plaintiffs will be referred to collectively as the CITIZEN TAXPAYERS.

5. Defendant Edward V. Regan is an officer of the State of New York as defined in Pub. O. 2, and as specified in St. Fin. 123-b(1), to wit: The Comptroller of the State of New York (The COMPTROLLER) as set forth in Exec. 40.

6. Defendant Patrick J. Bulgaro is an officer of the State of New York as defined in Pub. O. 2, and as specified in St. Fin. 123-b(1), to wit: The Director of the Budget of the State of New York (The BUDGET DIRECTOR) as set forth in Exec. 180.

7. Defendant Richard M. Kessel is an officer of the State of New York as defined in Pub. O. 2, and as specified in St. Fin. 123-b(1), to wit: The Chairman of the Board of Trustees of LIPA.

8. Defendants Irving Like, Nora Bredes, Dr. Frank Cipriani, Sheldon Sackstein, Thomas Twomey, Stephen Liss, "Jane Doe", and "Richard Roe" are officers of the State of New York as defined in Pub. O. 2, and

as specified in St. Fin. 123-b(1), to wit: members of the Board of Trustees of the Long Island Power Authority (LIPA).

9. For purposes of simplicity, defendants Richard M. Kessel, Irving Like, Nora Bredes, Dr. Frank Cipriani, Sheldon Sackstein, Thomas Twomey, Stephen Liss, "Jane Doe" and "Richard Roe" will be referred to collectively as the Trustees of LIPA.

10. Defendant Long Island Power Authority (LIPA), is a corporate municipal instrumentality of the State of New York, established January 15, 1987 pursuant to Chapter 517 of the Laws of 1986, Pub. A. 1020-a et. seq., the Long Island Power Authority Act (the LIPA Act), having its offices and principal place of business at 200 Garden City Plaza, Garden City, Nassau County, New York.

NATURE OF ACTION

11. This Complaint alleges causes of action for declaratory and injunctive relief pursuant to Article 7-A of the State Finance Law, on the grounds that Edward V. Regan, Patrick J. Bulgaro, LIPA and the Trustees of LIPA have caused, are causing, and are about to cause wrongful expenditures, misappropriations, misapplications, or illegal or unconstitutional disbursements of state funds.

12. LIPA is joined as a defendant pursuant to St. Fin. 123-b(2), as the recipient and intended recipient of said state funds, to wit: appropriations from the State of New York.

13. LIPA may sue and be sued in all courts pursuant to Pub. A. 1020-f(a).

VENUE

14. This action is commenced in Supreme Court, Nassau County, pursuant to CPLR 503 on the grounds that NASSAU SUFFOLK has its principal place of business in Nassau County.

15. This action is commenced in Supreme Court, Nassau County, pursuant to St. Fin. 123-c(1) on the grounds that wrongful expenditures, misappropriations, misapplications, or illegal or unconstitutional disbursements of state funds occurred, are occurring, and are about to occur in Nassau County, in which LIPA and the Trustees of LIPA have their principal place of business.

16. This action is commenced in Supreme Court, Nassau County, pursuant to Pub. A. 1020-y(1), on the grounds that LIPA has its principal place of business in Nassau County.

PREFERENCE

17. This action is entitled to a preference over all other causes in all courts. St. Fin. 123-c(4).

18. This action is entitled to a preference over all civil causes in all courts of the state, except elections matters, and shall be heard and determined in preference to all other civil business pending therein, except election matters, irrespective of position on the calendar. Pub. A. 1020-y(1).

BACKGROUND FACTS

19. In 1986, the State Legislature enacted the LIPA Act, Chapter 517 of the Laws of 1986, Pub. A. 1020-a, et. seq.. That Act created

LIPA as a public power authority on Long Island, and authorized LIPA to acquire LILCO and transform it from a private, investor-owned utility to a public power authority.

20. LIPA became a state public authority on January 15, 1987.

21. On February 28, 1989, LIPA, LILCO, Governor Cuomo and other parties executed an agreement (the SETTLEMENT), pursuant to which LILCO will remain the supplier of electricity on Long Island.

22. Under the SETTLEMENT, LIPA will acquire a single LILCO asset, the Shoreham Nuclear Power Station (SHOREHAM), for purposes of closure and decommissioning.

23. Since LIPA's inception, LIPA has undertaken numerous activities purportedly pursuant to the LIPA Act, including studying ways to decommission SHOREHAM, studying energy efficiency and conservation, and supervising the activities and expenditures of LILCO.

24. Since LIPA's inception, LIPA has not sold a single watt of electricity. Instead, LIPA is entirely dependent upon state appropriations for funding, has no revenue or prospective revenue to repay the appropriations, as required by law, and has failed to repay any appropriations.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS EDWARD V. REGAN, PATRICK J. BULGARO, LIPA AND THE TRUSTEES OF LIPA, THE CITIZEN TAXPAYERS ALLEGE AS FOLLOWS:

25. The CITIZEN TAXPAYERS repeat and reallege each and every allegation previously set forth, as though set forth fully at length herein.

26. The COMPTROLLER is charged with supervising the accounts of every public corporation, including LIPA, pursuant to Article X, section 5 of the State Constitution.

27. The COMPTROLLER is charged with, inter alia, the following statutory duties:

- A. Superintending the fiscal concerns of the state.
- B. Examining, auditing, and settling the accounts of all public officers and other persons indebted to the state, and certifying the amount or balance due thereon.
- C. Drawing warrants on the treasury for the payments of monies directed by law to be paid out of the treasury.

St. Fin. 8(1), 8(3), 8(8).

28. The BUDGET DIRECTOR is charged with the responsibility of evaluating and approving the expenditure or proposed expenditure of state appropriations by LIPA and the Trustees of LIPA, prior to each fiscal year in which the expenditures are to be made.

29. The BUDGET DIRECTOR is charged with the responsibility of issuing certificates of approval of expenditures, or proposed expenditures of state appropriations made or to be made by LIPA and the Trustees of LIPA.

30. The Trustees of LIPA are charged with the responsibility of spending, appropriating, applying and disbursing state funds to their various purposes in accordance with LIPA's powers and duties under the LIPA Act.

31. Upon information and belief, from January 15, 1987 to the present, the Trustees of LIPA authorized the expenditure of, and then

spent, state appropriations at an annual rate of \$2,673,219.00

12. On or about October 30, 1991, LIPA submitted to New York State a budget request for \$1,540,000.00 in additional appropriations for the fiscal period 4/1/92-3/31/93.

13. The Trustees of LIPA are planning to spend \$3,186,000.00 during the fiscal period 4/1/92-3/31/93.

14. LIPA, a state public authority, was created for a preliminary and provisional period of five (5) years:

Every authority or commission hereafter created by this chapter shall terminate at the end of five years from the date of its creation if at the end of such period it has outstanding no liabilities; provided, however, that any appropriation made to such authority or commissioned by the State of New York or by any political subdivision thereof shall not be deemed a liability for the purposes of this section.

Pub. A. 2828.

15. The LIPA Act expressly states that LIPA shall continue as a lawful state public authority only until terminated by law:

The Authority and its corporate existence shall continue until terminated by law, provided, however, that no such law shall take effect so long as the Authority shall have bonds, notes, or other obligations outstanding, unless adequate provision has been made for the payment thereof.

Pub. A. 1020-z

16. On January 15, 1992, adequate provision was made for the payment of all of LIPA's outstanding liabilities, bonds, notes, and other obligations, with the exception of state appropriations.

17. On January 15, 1992, LIPA was terminated by operation of law as a lawful entity.

38. Every dollar appropriated to and spent by LIPA and the Trustees of LIPA after January 15, 1992, constitutes a wrongful expenditure, misappropriation, misapplication, or illegal or unconstitutional disbursement of state funds.

39. Because LIPA terminated as a lawful entity on January 15, 1992, an injunction is necessary (1) to prohibit the COMPTROLLER from drawing warrants on the treasury for the payment of any state appropriations to LIPA; (2) to prohibit the BUDGET DIRECTOR from approving and/or issuing any certificate of approval of expenditures, or proposed expenditures, to be made by LIPA and the Trustees of LIPA; and (3) to prohibit LIPA and the Trustees of LIPA from spending, appropriating, applying or disbursing any state appropriations.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS EDWARD V. REGAN, PATRICK J. BULGARO, LIPA AND THE TRUSTEES OF LIPA, THE CITIZEN TAXPAYERS ALLEGE AS FOLLOWS:

40. The CITIZEN TAXPAYERS repeat and reallege each and every allegation previously set forth, as though set forth fully at length herein.

41. From LIPA's inception on January 15, 1987 until the present, the State Legislature appropriated, and the COMPTROLLER drew warrants on the treasury for the payment of, at least \$14,203,300.00 to LIPA in the following fashion:

<u>Dates</u>	<u>Appropriation</u>
1/15/87 through 3/31/88	\$ 4,699,978.00
4/01/88 through 3/31/89	6,300,005.00
4/01/89 through 3/31/90	2,800,000.00
4/01/90 through 3/31/91	403,317.00

4/01/91 through 3/31/92 .00

\$14,203,300.00 TOTAL

42. From LIPA's inception on January 15, 1987 to the present, the Trustees of LIPA and the BUDGET DIRECTOR approved the expenditure of at least \$14,203,300.00 in state appropriations by LIPA.

43. From January 15, 1987 to the present, the BUDGET DIRECTOR issued certificates of approval of all expenditures of state appropriations made by LIPA and the Trustees of LIPA.

44. From LIPA's inception on January 15, 1987 to the present, LIPA and the Trustees of LIPA spent at least \$14,203,300.00 in state appropriations.

45. LIPA is a state public authority, and as such LIPA is obligated by statute to repay all state appropriations.

Notwithstanding any inconsistent provision of this chapter or any other chapter, special or local law, every appropriation from state funds hereafter made as an advance to or on behalf of any agency, authority, fund or corporation continued or created by the Public Authorities Law or by any other act or law shall be identified as an advance, and shall provide that in any event, and notwithstanding a repayment schedule, the unpaid balance of any monies appropriated as an advance shall be repaid to the state out of the proceeds of the first bonds issued by such agency, authority, fund or corporation subsequent to the effective date of such appropriation.

St. Fin. 40-a(1). (Emphasis added).

Repayment of amounts expended from appropriations as advances by the state shall be received by the state comptroller and deposited in the treasury. Such repayment shall, in total, be sufficient to fully reimburse the state for the advances.

St. Fin. 40-a(4) (Emphasis added).

46. The LIPA Act (Pub. A. 1020-a et. seq.) specifically states that LIPA is not exempt from the repayment obligations of state agencies, authorities, funds or corporations.

All appropriations made by the state to the authority shall be treated as advances by the state to the authority, and shall be repaid to it without interest either out of the proceeds of bonds issued by the authority pursuant to the provisions of this title, or by the delivery of non-interest bearing bonds of the authority to the state for all or any part of such advances, or out of excess revenues of the authority, at such times and on such conditions as the state and the authority mutually may agree upon.

Pub. A. 1020-r. (Emphasis added).

47. LIPA has failed to repay any state appropriations made since LIPA's inception, leaving a total balance due and owing of at least \$14,203,300.00.

48. By appropriating state funds to an authority that has failed to repay any such funds, and by spending those funds, defendants Edward V. Regan, Patrick J. Bulgaro, LIPA and the Trustees of LIPA caused, are causing, and are about to cause wrongful expenditures, misappropriations, misapplications, or illegal or unconstitutional disbursements of state funds.

49. LIPA's failure to repay any state appropriations, all of which must be repaid, makes a declaratory judgment necessary to state that LIPA must repay all state appropriations, as required by law. In addition, an injunction is necessary, until LIPA repays all outstanding appropriations, (1) to prohibit the COMPTROLLER from drawing warrants on the treasury for the payment of any state appropriations to LIPA; (2) to

prohibit the BUDGET DIRECTOR from approving and/or issuing any certificate of approval of expenditures, or proposed expenditures to be made by LIPA and the Trustees of LIPA; and (3) to prohibit LIPA and the Trustees of LIPA from spending, appropriating, applying or disbursing any state appropriations.

AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS EDWARD V. REGAN, PATRICK J. BULGARO, LIPA AND THE TRUSTEES OF LIPA, THE CITIZEN TAXPAYERS ALLEGE AS FOLLOWS:

50. The CITIZEN TAXPAYERS repeat and reallege each of the allegations previously set forth, as though set forth fully at length herein.

51. LIPA has not sold a single watt of electricity, and therefore has not generated any revenues from investment activity, from operations, or from any source since LIPA's inception on January 15, 1987.

52. LIPA's only source of "income" is earnings on the investment of state appropriations.

53. Earnings on the investment of state appropriations do not constitute revenue for LIPA because all such earnings must be returned to the State of New York.

54. LIPA does not own any productive assets with which to generate revenue or investment income from the sales of goods or services.

55. LIPA has no prospective source of revenue to repay state appropriations.

56. LIPA chairman Richard M. Kessel has written explicitly that a

conversion of SHOREHAM to a gas-fired facility will not generate any revenue for LIPA.

LIPA's review of a Shoreham conversion has absolutely nothing to do with generating a revenue source for the authority. In fact, I have seen no proposals that would generate any revenue for LIPA. Any profits garnered from a Shoreham conversion would be passed on to LILCO ratepayers -- not LIPA.

Newsday, June 28, 1991, editorial by Richard M. Kessel.

57. LIPA is entirely dependent upon state appropriations for funding.

58. None of LIPA's activities have any potential to generate revenue with which LIPA might repay state appropriations. Besides spending approximately \$500,000.00 to determine whether SHOREHAM should be converted to a gas-fired facility, LIPA has also commissioned a \$300,000.00 study to examine the potential for cost effective energy savings on Long Island and to encourage LILCO to undertake more aggressive demand side management programs. Newsday, March 11, 1991. Additionally, LIPA has recommended a new construction program to offer design assistance, training and performance incentives to foster energy efficiency design and construction techniques for developers and builders. In a related initiative for 1991, LIPA plans to implement a program to work with towns on Long Island to upgrade building codes and practices so that new construction and major renovations are more energy efficient. LIPA has also recently participated in a proceeding before the PSC by mildly opposing LILCO's request for three successive 5% increases in electric rates. Newsday, April 4, 1991, editorial by

Richard M. Kessel.

In short, LIPA is capable of spending taxpayer money, but incapable of generating revenue to repay state appropriations.

59. LIPA has an accumulated deficit of at least \$11,890,277.00. LIPA financial report for 4/1/90-3/31/91.

60. By appropriating state funds to an authority that has no ability to repay, and by spending those state funds, defendants Edward V. Regan, Patrick J. Bulgaro, LIPA and the Trustees of LIPA caused, are causing, and are about to cause wrongful expenditures, misappropriations, misapplications, or illegal or unconstitutional disbursements of state funds.

61. Because LIPA has no ability to repay state appropriations, any additional expenditures will cause irreparable injury to state taxpayers. An injunction is therefore necessary: (1) to prohibit the COMPTROLLER from drawing warrants on the treasury for the payment of any state appropriations to LIPA; (2) to prohibit the BUDGET DIRECTOR from approving and/or issuing any certificate of approval of expenditures, or proposed expenditures, to be made by LIPA and the Trustees of LIPA; and (3) to prohibit LIPA and the Trustees of LIPA from spending, appropriating, applying or disbursing any state appropriations.

AS AND FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANTS EDWARD V. REGAN, PATRICK J. BULGARO, LIPA AND THE TRUSTEES OF LIPA, THE CITIZEN TAXPAYERS ALLEGE AS FOLLOWS:

62. The CITIZEN TAXPAYERS repeat and reallege each and every allegation previously set forth, as though fully set forth at length herein.

63. Before any state appropriations are available for expenditure, LIPA is obligated to execute a written repayment agreement with the BUDGET DIRECTOR:

No part of any appropriation made as an advance pursuant to this section shall be available for expenditure until a written repayment agreement is entered into by the agency, authority, fund or corporation to which the appropriation is made (LIPA) and the Director of the Budget. Each and every such repayment agreement shall include a repayment schedule which states the date or dates on which the amount of each part or all of the appropriation made as an advance shall be repaid to the state and meets such other terms and conditions as determined by the director of the budget.

St. Fin. 40-a(2).

64. The BUDGET DIRECTOR may not approve the expenditure of any state appropriations by LIPA until the BUDGET DIRECTOR and LIPA have executed a written repayment agreement:

The Director of the Budget shall not issue any certificate of approval until the authority has entered into a written agreement with the Director of the Budget providing for repayment by the authority to the state of an amount equal to the total amount expended by the state from such appropriation, on terms to be determined by the Director of the Budget, and a copy of such agreement shall be filed with the State Comptroller, the Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and

Means Committee.

1986 New York Laws Ch. 517 9(e).

65. By enacting St. Fin. 40-a(2) and 1986 New York Laws Ch. 517 9(e), the Legislature intended that the BUDGET DIRECTOR and LIPA execute a repayment agreement to provide state taxpayers with adequate and meaningful assurances that all state appropriations to LIPA will be repaid.

66. On August 20, 1987, LIPA and the BUDGET DIRECTOR executed a Repayment Agreement, purportedly pursuant to St. Fin. 40-a(2) and 1986 New York Laws Ch. 517 9(e).

67. The Repayment Agreement governs the first \$11,000,000.00 appropriated to LIPA by the State of New York.

68. On or about October 28, 1987, the COMPTROLLER approved and ratified the Repayment Agreement.

69. The Repayment Agreement fails to include a repayment schedule showing the date or dates when all state appropriations are to be repaid by LIPA, in violation of St. Fin. 40-a(2).

70. The Repayment Agreement provides that LIPA will repay all state appropriations as follows:

- A. First, from the proceeds of the first issuance of Bonds (other than Repayment Bonds);
- B. Second, from the authority's excess revenues;
- C. Third, if sufficient Bond proceeds or excess revenues are not available, then by the delivery of Repayment Bonds to the COMPTROLLER;
- D. Fourth, if LIPA fails to satisfy the Repayment Bonds within 15

days prior to their date of maturity (five years from the date of issuance), then by delivery of Replacement Repayment Bonds to the COMPTROLLER, which also mature five years from the date of issuance.

71. LIPA's lack of revenue and potential revenue makes provisions "A" and "B" of the Repayment Agreement illusory and meaningless. Potential investors would not invest in LIPA, given LIPA's history of financial losses, lack of productive assets, and outstanding debt of more than \$14 million owed to New York State.

72. Neither Repayment Bonds nor Replacement Repayment Bonds are "non-interest bearing bonds" within the meaning of Pub. A. 1020.

73. The delivery of Repayment Bonds or Replacement Repayment Bonds is nothing more than a pledge or promise to repay state appropriations when, or if, LIPA issues revenue bonds or generates excess revenues.

74. LIPA could not have delivered, pursuant to the Repayment Agreement, Repayment Bonds or Replacement Repayment Bonds that would mature before LIPA became subject to termination by operation of law.

75. The Repayment Agreement fails to state how LIPA will repay state appropriations after 10 years' time.

76. The Repayment Agreement provides that Repayment Bonds and Replacement Repayment Bonds are non-interest bearing, and are without recourse to the assets of LIPA, except to the extent that LIPA has sources of funds available from the proceeds of the first issuance of LIPA bonds or from any excess revenues derived from LIPA's operations and/or investments.

77. The Repayment Agreement provides no assurances to state

taxpayers that any appropriations will be repaid by LIPA, and offers state taxpayers no recourse in the event that LIPA shall fail to repay state appropriations.

78. The Repayment Agreement is an illusory promise to repay, and offers state taxpayers nothing beyond LIPA's pre-existing statutory obligations to repay state appropriations.

79. By executing the Repayment Agreement, the BUDGET DIRECTOR and LIPA reduced to a nullity LIPA's statutory obligations to repay state appropriations.

80. At the time that LIPA and the BUDGET DIRECTOR executed the Repayment Agreement, both parties knew that it did not provide state taxpayers with adequate or meaningful assurances of repayment.

81. At the time that LIPA and the BUDGET DIRECTOR executed the Repayment Agreement, both parties knew that there was a possibility that LIPA would terminate as a lawful entity before any Repayment Bonds matured.

82. Upon information and belief, at the time that LIPA and the BUDGET DIRECTOR executed the Repayment Agreement, both parties expected and intended LIPA to terminate as a lawful entity before any Repayment Bonds matured.

83. By executing and approving a repayment agreement that is illusory and meaningless, the BUDGET DIRECTOR, LIPA, the COMPTROLLER, and the trustees of LIPA caused, are causing, and are about to cause wrongful expenditures, misappropriations, misapplications, or illegal or

unconstitutional disbursements of state funds. A declaratory judgment is therefore necessary to require the BUDGET DIRECTOR and LIPA to execute a Repayment Agreement which provides state taxpayers with adequate and meaningful assurances of repayment of all appropriations. In addition, an injunction is necessary, until the BUDGET DIRECTOR and LIPA execute a repayment agreement which provides state taxpayers with adequate and meaningful assurances of repayment: (1) To prohibit the COMPTROLLER from drawing warrants on the treasury for the payment of any state appropriations to LIPA; (2) to prohibit the BUDGET DIRECTOR from approving and/or issuing any certificate of approval of expenditures, or proposed expenditures, to be made by LIPA and the Trustees of LIPA; and (3) to prohibit LIPA and the Trustees of LIPA from spending, appropriating, applying or disbursing any state appropriations.

AS AND FOR AN FIFTH CAUSE ACTION AGAINST DEFENDANTS EDWARD V. REGAN, PATRICK J. BULGARO, LIPA AND THE TRUSTEES OF LIPA, THE CITIZEN TAXPAYERS ALLEGE AS FOLLOWS:

84. The CITIZEN TAXPAYERS repeat and reallege each and every allegation previously set forth.

85. LIPA has failed to repay any state appropriations from the proceeds of the issuance of any bonds.

86. LIPA has failed to issue any bonds. Transcript of LIPA Board Meeting held December 18, 1991, p. 111.

87. LIPA has not capitalized any costs attributable to the issuance of bonds.

88. Upon information and belief, LIPA has never attempted to issue

bonds.

89. Upon information and belief, LIPA has no plans to issue bonds.

90. Upon information and belief, LIPA has no intention of issuing bonds.

91. LIPA lacks the financial ability required by Pub A. 1070-k to issue bonds.

92. LIPA has failed to repay any state appropriations from the proceeds of excess revenues.

93. LIPA has failed to repay any state appropriations by the delivery of Repayment Bonds or Replacement Repayment Bonds.

94. The Repayment Agreement requires LIPA to deliver Repayment Bonds to the COMPTROLLER on the first business day of the first fiscal year after LIPA acquires state appropriations but fails to repay them by issuing bonds or generating excess revenues.

95. LIPA failed to deliver any Repayment Bonds or Replacement Repayment Bonds to the COMPTROLLER on the first business day of the first fiscal year after LIPA acquired state appropriations but failed to repay them.

96. LIPA failed to file, and could not have filed, certification of delivery of any Repayment Bonds, or Replacement Repayment Bonds, on the first business day of the first fiscal year after LIPA acquired state appropriations but failed to repay them.

97. On December 18, 1991, more than 4 fiscal years after LIPA first acquired state appropriations but failed to repay them, the

Trustees of LIPA authorized the delivery of Repayment Bonds to the COMPTROLLER, pursuant to the Repayment Agreement.

98. On December 20, 1991, LIPA drafted and executed a Repayment Bond, purportedly pursuant to the Repayment Agreement, covering \$ 13,799,983.00 in state appropriations and \$ 607,691.27 in investment income earned on state appropriations.

99. The Repayment Bond dated December 20, 1991 will mature on December 20, 1996, more than 9 fiscal years after LIPA first acquired state appropriations but failed to repay them.

100. If LIPA delivers Replacement Repayment Bonds when the Repayment Bond dated December 20, 1991 matures, the Replacement Repayment Bonds will mature on December 20, 2001, more than 14 fiscal years after the first year in which LIPA acquired state appropriations but failed to repay them.

101. By authorizing state appropriations to LIPA notwithstanding LIPA's failure to comply with the Repayment Agreement, and by spending such state appropriations, defendants Edward V. Regan, Patrick J. Bulgaro, LIPA and the Trustees of LIPA caused, are now causing, and are about to cause wrongful expenditures, misappropriations, misapplications, or illegal or unconstitutional disbursements of state funds.

102. Because LIPA has no ability, present or prospective, to repay state appropriations, LIPA will be unable to comply with any Repayment Agreement which LIPA might execute with the BUDGET DIRECTOR. For the

same reason, any additional expenditures by the Trustees of LIPA will cause irreparable injury to state taxpayers. An injunction is therefore necessary (1) to prohibit the COMPTROLLER from drawing warrants on the treasury for the payment of any state appropriations to LIPA; (2) to prohibit the BUDGET DIRECTOR from approving and/or issuing any certificate of approval of expenditures, or proposed expenditures, to be made by LIPA and the Trustee of LIPA and (3) to prohibit LIPA and the Trustees of LIPA from spending, appropriating, applying or disbursing any state appropriations.

AS AND FOR A SIXTH CAUSE OF ACTION AGAINST DEFENDANTS EDWARD V. REGAN, PATRICK J. BULGARO, LIPA AND THE TRUSTEES OF LIPA, THE CITIZEN TAXPAYERS ALLEGE AS FOLLOWS:

103. The CITIZEN TAXPAYERS repeat and reallege each and every allegation previously set forth.
104. LIPA and the BUDGET DIRECTOR have failed to execute any repayment agreement governing appropriations in excess of the first \$11,000,000 appropriated to LIPA.
105. New York State appropriated at least \$3,700,000.00 to LIPA beyond the first \$11,000,000.00 in appropriations to LIPA.
106. Upon information and belief, LIPA has spent substantially all of the foregoing \$3,700,000.00.
107. The Repayment Bond dated December 20, 1991 is null and void insofar as it promises to repay any appropriations beyond the first \$11,000,000.00.
108. Every dollar appropriated to, and spent by LIPA, beyond the

first \$11,000,000.00 in appropriations to LIPA, was and will be a wrongful expenditure, misappropriation, misapplication or illegal or unconstitutional disbursement of State funds.

109. By failing to execute any repayment agreement to govern appropriations and expenditures in excess of the first \$11,000,000.00 appropriated to LIPA, the BUDGET DIRECTOR, LIPA, the COMPTROLLER and the Trustees of LIPA caused, are causing, and are about to cause wrongful expenditures, misappropriations, misapplications, or illegal or unconstitutional disbursements of state funds. An injunction is therefore necessary (1) to prohibit the COMPTROLLER from drawing warrants on the treasury for the payment of any state appropriations to LIPA; (2) to prohibit the BUDGET DIRECTOR from approving and/or issuing any certificate of approval of expenditures, or proposed expenditures, to be made by LIPA and the Trustees of LIPA; and (3) to prohibit LIPA and the Trustees of LIPA from spending, appropriating, applying or disbursing any state appropriations.

NO SIMILAR RELIEF

110. No other action has been commenced that addresses the issues raised in this action, or that requests the same or similar relief.

WHEREFORE, the CITIZEN TAXPAYERS respectfully request that this Court grant the following declaratory and injunctive relief against defendants Edward V. Regan, as COMPTROLLER, Patrick J. Bulgaro, as

BUDGET DIRECTOR, LIPA and the Trustees of LIPA:

A. On the first cause of action, pursuant to Article 7-A of the State Finance Law, against Edward V. Regan, Patrick J. Bulgaro, LIPA and the Trustees of LIPA, an injunction prohibiting the COMPTROLLER from drawing warrants on the treasury for the payment of any state appropriations to LIPA; prohibiting the BUDGET DIRECTOR from approving and/or issuing any certificate of approval of expenditures, or proposed expenditures, to be made by LIPA and the Trustees of LIPA; and prohibiting LIPA and the Trustees of LIPA from spending any state appropriations;

B. On the second cause of action, pursuant to Article 7-A of the State Finance Law, against Edward V. Regan, Patrick J. Bulgaro, LIPA and the Trustees of LIPA, the following relief:

1. A declaratory judgment stating that LIPA must repay all state appropriations; and
2. An injunction, until LIPA repays all outstanding appropriations, prohibiting the COMPTROLLER from drawing warrants on the treasury for the payment of any state appropriations to LIPA; prohibiting the BUDGET DIRECTOR from approving and/or issuing any certificate of approval of expenditures, or proposed expenditures, to be made by LIPA and Richard M. Kessel and prohibiting LIPA and the Trustees of LIPA from spending any state appropriations;

C. On the third cause of action, pursuant to Article 7-A of the State Finance Law, against Edward V. Regan, Patrick J. Bulgaro, LIPA and the Trustees of LIPA, an injunction prohibiting the COMPTROLLER from drawing warrants on the treasury for the payment of any state appropriations to LIPA, prohibiting the BUDGET DIRECTOR from approving

and/or issuing any certificate of approval of expenditures, or proposed expenditures, to be made by LIPA and the Trustees of LIPA, and prohibiting LIPA and the Trustees of LIPA from spending any state appropriations;

D. On the fourth cause of action, pursuant to Article 7-A of the State Finance Law, against Edward V. Regan, Patrick J. Bulgaro, LIPA and the Trustees of LIPA, the following relief:

1. A declaratory judgment stating that the BUDGET DIRECTOR and LIPA must execute a repayment agreement which provides state taxpayers with adequate and meaningful assurances of repayment; and
2. An injunction, until the BUDGET DIRECTOR and LIPA execute said repayment agreement, prohibiting the COMPTROLLER from drawing warrants on the treasury for the payment of any state appropriations to LIPA; prohibiting the BUDGET DIRECTOR from approving and/or issuing any certificate of approval of expenditures, or proposed expenditures, to be made by LIPA and the Trustees of LIPA; and prohibiting LIPA and the Trustees of LIPA from spending any additional state appropriations;

E. On the fifth cause of action, pursuant to Article 7-A of the State Finance Law, against Edward V. Regan, Patrick J. Bulgaro, LIPA and the Trustees of LIPA, an injunction prohibiting the COMPTROLLER from drawing warrants on the treasury for the payment of any state appropriations to LIPA; prohibiting the BUDGET DIRECTOR from approving and/or issuing any certificate of approval of expenditures, or proposed expenditures, to be made by LIPA and the Trustees of LIPA; and prohibiting LIPA and the Trustees of LIPA from spending any state appropriations;

F. On the sixth cause of action, pursuant to Article 7-A of the

State Finance Law, against Edward V. Regan, Patrick J. Bulgaro, LIPA and the Trustees of LIPA, an injunction prohibiting the COMPTROLLER from drawing warrants on the treasury for the payment of any state appropriations to LIPA; prohibiting the BUDGET DIRECTOR from approving and/or issuing any certificate of approval of expenditures, or proposed expenditures, to be made by LIPA and the Trustees of LIPA; and prohibiting LIPA and the Trustees of LIPA from spending any state appropriations;

All together with the costs and disbursements of this action, reasonable attorneys fees, and such other and further relief as may be just, proper, and equitable.

Dated: February 26, 1992
Poughkeepsie, New York

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Attorneys for Plaintiffs
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11 Raymond Avenue
P.O. Box 2990
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ATTORNEY VERIFICATION

STATE OF NEW YORK)
)
 COUNTY OF DUTCHESS)


I, the undersigned, an attorney duly admitted to practice law in the Courts of the State of New York state that I am a member of the law firm of LEWIS & GREER, P. C., the attorneys of record for KULKA CONSTRUCTION MANAGEMENT CORP., OMNIBUZZ, INC. and NASSAU SUFFOLK CONTRACTOR'S ASSOCIATION INC., the Plaintiffs in the within action; I have read the foregoing Complaint and know the contents thereof; the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters I believe them to be true.

The grounds of my belief as to all matters not stated upon my own knowledge are based upon review of correspondence, records and reports in my possession.

The reason this verification is made by me and not by the KULKA CONSTRUCTION MANAGEMENT CORP., OMNIBUZZ, INC. OR NASSAU SUFFOLK CONTRACTORS' ASSOCIATION INC. is that the said Plaintiffs reside outside of Dutchess County.

I affirm that the foregoing statements are true, under penalties of perjury.

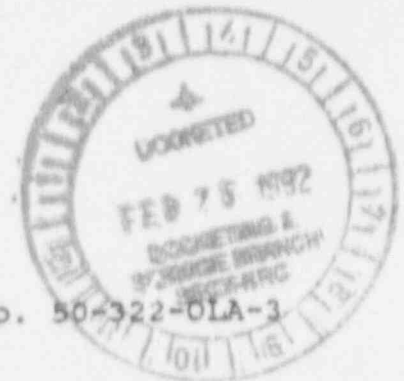
Dated: Poughkeepsie, New York
 February 26, 1992



 LOU LEWIS, ESQ.
 Attorney at Law

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION



In the Matter of)
)
LONG ISLAND LIGHTING COMPANY)
)
(Shoreham Nuclear Power Station,)
Unit 1))

Docket No. 50-322-OLA-3
(Application for
License Transfer)

CERTIFICATE OF SERVICE

I hereby certify that copies of the Petitioners' Notice of State Taxpayer Complaint and Correction 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 26th day of February, 1992:

Chairman Ivan Selin
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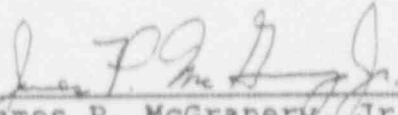
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