

12887

BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

COMMISSIONERS:

Ivan Selin, Chairman
Kenneth C. Rogers
James R. Curtiss
Forrest J. Remick
E. Gail de Planque

'92 MAY -6 P4:08

OFFICE OF SECRETARY
DOCKETING & SERVICE
FRANCH

In the Matter of	)	Docket No. 50-322 - <i>Decon</i>
)	
LONG ISLAND POWER AUTHORITY	)	"Long Island Lighting Co.,
	)	Consideration of an Order
(Shoreham Nuclear Power Station,	)	Authorizing Decommissioning
Unit 1)	)	a Facility and Opportunity
	)	for Hearing," 56 Fed. Reg.
	)	66459 (December 23, 1991))

SUPPLEMENT TO
JOINT OPPOSITION TO THE NRC STAFF'S RECOMMENDATION
FOR ISSUANCE OF A DECOMMISSIONING ORDER
PRIOR TO HEARING AND CONTINGENT MOTION FOR STAY

The Shoreham-Wading River Central School District ("School District") and Scientists and Engineers for Secure Energy, Inc. ("SE2"), Petitioners in the above-captioned proceeding, hereby supplement their Joint Opposition to the NRC Staff's Recommendation for Issuance of a Decommissioning Order Prior to Hearing to identify an additional mischaracterization of the instant proceeding by the NRC Staff and an apparent typographical error in the Commission's Scheduling Order.

THE MISCHARACTERIZATION

In Policy Issue (Notation Vote) Paper SECY-92-140 (April 17, 1992) ("SECY-92-140"), the NRC Staff mischaracterized the Federal Register notice of the above-captioned proceeding as having been "drafted in the form of an order conventionally used

9205110091 920505
PDR ADDOCK 05000322
G PDR

DS 3

under the provisions of 10 C.F.R. Part 2, Subpart B." And then, said that LIPA's January 13, 1992 letter was "[i]n recognition of this." SECY-92-140 at 2. Without trying to divine the Staff's motivation for this mischaracterization, the School District and SE2 submit that it is a totally unsupportable characterization for three reasons.

First, 10 C.F.R. Part 2, Subpart B consists 10 C.F.R. §§ 2.200-2.206 (1991) which describe particular circumstances "in cases initiated by the staff, or upon a request by any person, to impose requirements by order, or to modify, suspend or revoke a license, or to take any other action as may be proper, against any person subject to the jurisdiction of the Commission." 10 C.F.R. § 2.200(a) (1991) (emphasis added). There is no hint in the above-captioned notice that it was to "impose requirements by order or to modify, suspend, or revoke a license or to take other action as may be proper, against" the Long Island Power Authority ("LIPA") or Long Island Lighting Company ("LILCO").^{1/} Moreover, the NRC Staff's exercise of power pursuant to Subpart B is limited to situations where there is an "alleged violation of any provision of the Act or this chapter or the conditions of the license" (10 C.F.R. § 2.201(a) (1991)) or where there are "potentially hazardous conditions or other facts deemed to be

^{1/} Subpart B also prescribes procedures for civil penalties under the Atomic Energy Act and the Energy Reorganization Act of 1974. 10 C.F.R. §§ 2.200(b) & 2.205 (1991). Although the School District and SE2 may consider that penalties would be appropriate for LILCO and LIPA, there is nothing in the above-captioned notice to indicate that it was proposing such civil penalties.

sufficient ground for the proposed action" (10 C.F.R. § 2.202(a)(1) (1991)). There is nothing in the above-captioned notice that indicates any violations or allegations of potentially hazardous conditions. Further, there is nothing in Subpart B that indicates that there should be a notice in the Federal Register, such as the above-captioned notice. And, if this were a "notice of violation," it would have "require[d]" the licensee to respond, which it did not. See 10 C.F.R. § 2.201(a). And if it were an "order to show cause," it would have specified that the licensee's responsive filing would have to be "under oath or affirmation," and the notice would have specified the issues, and would have stated the effective date of the order; the above-captioned order did none of these things. 10 C.F.R. § 2.202(a)(2), (4), (5) & (b) (1991). In short, the Staff's characterization of the above-captioned notice as a Part 2, Subpart B notice is totally specious.

Second, there is nothing in LIPA's letter of January 13, 1992 that indicates that LIPA recognizes the above-captioned notice as a Part 2, Subpart B notice. See U.S.N.R.C. Docket No. 50-322 LSNRC-1883 (January 13, 1992). The only reference to the above-captioned notice in that letter is the statement that "the NRC published notice of its intent to approve the Shoreham decommissioning plan. See 56 Fed. Reg. 66459 (1991). The requested amendment would allow LIPA, after it has become the licensee, to implement that Shoreham Decommissioning plan." Id. at 1. The concepts of "intent to approve" and "would allow LIPA

. . . to implement" indicate the granting of a LIPA request, rather than "impose[ing] requirements . . . against" LIPA. See 10 C.F.R. § 2.200(a) (1991). Moreover, in LSNRC-1883 (at 2-3) LIPA seeks approval of the decommissioning plan pursuant to 10 C.F.R. § 50.91(a)(4) after publication of a No Significant Hazards Consideration determination in the Federal Register. No such procedure is required for an order pursuant to Part 2, Subpart B. Finally, the licensee's characterization of the notice (even if it had been as the NRC Staff said) is irrelevant.

Third, if there were any doubt as to the character of the above-captioned notice, it was resolved by this Commission in referring the School District and SE2 petitions to intervene and requests for hearings to the Atomic Safety and Licensing Board ("ASLB") Panel where the Commission noted that this was a proceeding notice pursuant to 10 C.F.R. § 2.105 (1991). And in appointing ASLB in this proceeding, the ASLB Panel also explicitly recognized that this was a proceeding notice pursuant to § 2.105. Long Island Power Authority; "Establishment of Atomic Safety and Licensing Board," 57 Fed. Reg. 12949 (April 14, 1992). Neither the ASLB Panel nor this Commission characterized the notice as being pursuant to 10 C.F.R. §§ 2.201(a) or 2.202(a) (1991).

NOTICE OF TYPOGRAPHICAL ERROR

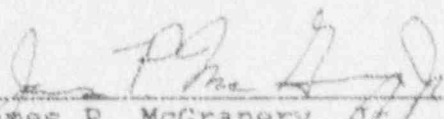
In issuing the Scheduling Order of April 30, 1992 in the above-captioned matter, the Secretary noted that "the licensee may file" The School District and SE2 hope that

LILCO will not consider itself barred from participation in this matter by this typographical error, which should have read "the licensees." It is clear from the Commission's decision in Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-92-04 at 10 & n.6, ___ NRC ___ (February 26, 1992) that there are two licensees: While LILCO remains the licensee with sole possession of the Shoreham POL ("possess, use by not operate"), control of that license was transferred to LIPA making LIPA also an NRC licensee.

This supplement is being telecopied to LILCO, LIPA and the NRC Staff on May 5, 1992 in the event that they may wish to address it tomorrow.

Respectfully submitted,

May 5, 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 Petitioners
Shoreham-Wading River Central
School District and Scientists and
Engineers for Secure Energy, Inc.

BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

FILED
USNRC

'92 MAY -6 P4:08

COMMISSIONERS:

Ivan Selin, Chairman
Kenneth C. Rogers
James R. Curtiss
Forrest J. Remick
E. Gail de Planque

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

_____	)	Docket No. 50-322
In the Matter of)	
	)	("Long Island Lighting Co.,
LONG ISLAND POWER AUTHORITY	)	Consideration of an Order
	)	Authorizing Decommissioning
(Shoreham Nuclear Power Station,	)	a Facility and Opportunity
Unit 1)	)	for Hearing," 56 Fed. Reg.
_____	)	66459 (December 23, 1991))

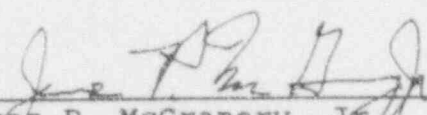
CERTIFICATE OF SERVICE

I hereby certify that a copy of the Petitioners' Supplement to their Joint Opposition to the NRC Staff's Recommendation for Issuance of a Decommissioning Order Prior to Hearing and Contingent Motion for Stay in the above-captioned proceeding have been served on the following by telecopy and first-class mail, postage prepaid on this 5th day of May, 1992:

Edwin J. Reis, Esq.
Mitzi A. Young, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

W. Taylor Reveley, III, Esq.
Donald P. Irwin, Esq.
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074

Carl R. Schenker, Jr., Esq.
O'Melveny & Myers
555 15th Street, N.W.
Washington, D.C. 20004



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