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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

'92 JUN -3 P5:13

Thomas S. Moore, Chairman
Dr. George A. Ferguson
Dr. Jerry R. Kline

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)	Docket No. 50-322-OLA-3
)	
LONG ISLAND LIGHTING COMPANY)	ASLBP No. 91-622-10-OLA-3
)	
(Shoreham Nuclear Power Station,)	(License Transfer
Unit 1))	Proceeding)
)	

PETITIONERS' CONSENTED MOTION TO DISMISS

Pursuant to 10 C.F.R. § 2.730 (1991), Petitioners Shoreham-Wading River Central School District ("School District") and Scientists and Engineers for Secure Energy, Inc. ("SE₂"), by counsel, move the Atomic Safety and Licensing Board to dismiss the School District and SE₂ as petitioners for leave to intervene and their request for a hearing in this proceeding with prejudice and with each party to bear its own costs and attorney fees.

Counsel for the Nuclear Regulatory Commission Staff, Long Island Lighting Company and Long Island Power Authority have authorized undersigned counsel to represent that their clients consent to the granting of this motion.

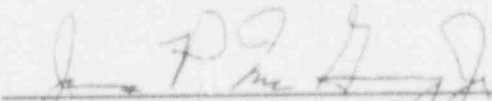
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This motion is being submitted pursuant to the School District's and SE₂'s obligations pursuant to certain Agreements, copies of which are attached. An original of each of these Agreements will be furnished on request.

WHEREFORE, the School District and SE₂ urge the Atomic Safety and Licensing Board to enter an order dismissing the School District and SE₂ as petitioners in this proceeding and the School District and SE₂'s request for a hearing with prejudice and with each party to bear its own costs and attorney fees.

Respectfully submitted,

June 3, 1992


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

SETTLEMENT AGREEMENT

WHEREAS, SHOREHAM-WADING RIVER CENTRAL SCHOOL DISTRICT ("SWRCSD"), SCIENTISTS AND ENGINEERS FOR SECURE ENERGY ("SEI") and THE LONG ISLAND POWER AUTHORITY ("LIPA"), being the "parties," acknowledge that under the Long Island Power Authority Act, Public Authorities Law § 1020 et seq. (the "Act"), LIPA as owner of the Shoreham Nuclear Power Station ("Shoreham") is obligated to make certain payments in lieu of taxes ("PILOT") with respect to Shoreham to municipalities and school districts, including SWRCSD, in which Shoreham is located; and

WHEREAS, LIPA is in possession of a tax bill indicating the amounts which would have been received by the taxing jurisdictions from the Long Island Lighting Company ("LILCO") for Shoreham (and certain property surrounding Shoreham which LILCO continues to own) if Shoreham had not been acquired by LIPA, and LIPA intends to utilize the amounts and the May 31, 1992 payment date indicated in that bill as the basis for payment, without prejudice to either party and subject to the conditions and reservation of rights stated in paragraphs "3" and "4" below; and

WHEREAS, LIPA had been considering and had under advisement whether to withhold the May 31, 1992 payment to SWRCSD in response to certain conduct of SWRCSD including the litigation referenced in paragraph "1" below; and

WHEREAS, all Parties consider it in the best interest of the people of Long Island and each Party to terminate all litigation between and among the Parties both in view of the extraordinary small likelihood that Shoreham can ever operate as a nuclear power plant again without formidable further investment and in view of the fact that each of the Parties should be allowed to pursue its respective responsibilities on the basis of mutual respect from the other Parties and without interference from the other Parties;

NOW, THEREFORE, IN CONSIDERATION OF THE REPRESENTATIONS AND MUTUAL AGREEMENTS HEREIN, SWRCSD, SE2 AND LIPA HEREBY AGREE AND STIPULATE AS FOLLOWS:

1. SWRCSD and SE2 agree, as soon as possible but in no event later than five (5) days after the execution of this Agreement, to file all necessary papers to seek dismissal with prejudice in all the NRC and Court of Appeals actions in which all Parties are engaged, and with each Party agreeing to bear its own costs and attorney fees. LIPA represents and warrants that it will, as soon as possible but in no event later than five (5) days after the Effective Date of this Agreement, obtain the consent of all defendants and file the Stipulation Discontinuing Action with Prejudice previously executed by plaintiff's attorney in Kulka Construction Management Corp., et al. v. Edward V. Regan, et. al., Index No. 9191/1992, pending in New York Supreme Court, County of Nassau, and that each party agrees to bear its own costs and attorney fees. No party admits or concedes any facts or legal

questions at issue in the actions to be discontinued and/or dismissed. Counsel for all parties shall use their best efforts to ensure that these matters are dismissed expeditiously.

2. SWRCSD and SE2 agree to waive any right they or any affiliated entity or entities have had, presently have, or may have in the future, to bring any judicial or administrative action which seeks to or will have the effect of preventing or delaying LIPA's decommissioning of Shoreham including but not limited to LIPA's disposition of low level radioactive waste and spent nuclear fuel; provided that no action by SWRCSD or any taxing jurisdiction with respect to taxes or PILOT related to Shoreham shall be considered to have the effect of preventing or delaying LIPA's decommissioning of Shoreham.

3. LIPA agrees, subject to the conditions and reservation of rights set forth in this paragraph and in paragraph "4" below, and subject to the terms of the Agreement between LIPA, SWRCSD, the Town of Brookhaven ("Brookhaven") and the County of Suffolk, dated June 1, 1992 ("agreement to pay"), that it will pay the amounts indicated in that Agreement under protest and subject to the provisions of the agreement to pay. The tendering, acceptance and treatment of those payments shall not constitute a waiver of or prejudice any parties' position or right to seek court intervention to resolve any issue related to that payment or any future payments to be made by LIPA. Some of the specific issues which are reserved for future resolution are listed below in paragraph "4".

4. The parties acknowledge and understand that they may disagree as to the particularities of any payments LIPA makes to municipalities and school districts in which Shoreham is located and that nothing contained in this Agreement, particularly LIPA's agreement to pay Brookhaven, and Brookhaven's acceptance and treatment of that payment, constitutes a waiver of or will prejudice any position or claim any party (or any taxing jurisdiction representing a party) may assert or seek to have adjudicated regarding the parties' rights and obligations under the Act, including but not limited to:

a. whether LIPA's payment, referenced in paragraph "3," constitutes a payment of taxes or a PILOT pursuant to the Act; and

b. the extent to which that payment is attributable to any portion of the property surrounding Shoreham which continued to be owned by LILCO after February 29, 1992; and

c. the due date(s), amount(s) and method of payment of the subject payment or any future payment(s) made by LIPA to SWRCSD pursuant to the Act; and

d. whether any change, by any means, in the assessed value of all or any portion of Shoreham and/or the property surrounding Shoreham which continued to be owned by LILCO after February 29, 1992, or any tax rate applicable to Shoreham and/or the property surrounding Shoreham which continued to be owned by LILCO after February 29, 1992, for any past, present or future years will result in the change of LIPA's obligations under

the Act and/or refunds of payments made or to be made by LIPA under the Act.

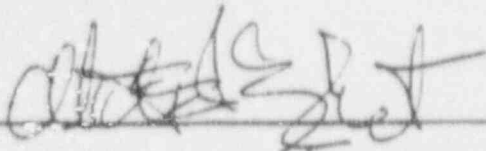
5. LIPA agrees that it will not interfere with the conduct of SWRCSD's activities, including any claim to financial entitlement or other benefit, or initiate a public campaign which criticizes the conduct of SWRCSD's or SE₂'s activities including their conduct of the various legal proceedings subject to this Agreement, provided that LIPA shall not be precluded from responding to press or media inquiries which relate to SWRCSD's or SE₂'s activities in relation to Shoreham, and that it is expressly understood that any claim or defense by LIPA or LILCO in any legal action(s) related to any change(s) in the amount(s), date(s), method and/or characterization of payments to the municipalities and SWRCSD or in the underlying assessment pursuant to paragraph "4" of this Agreement and/or other payments of taxes or PILOT shall not be deemed to be "interference" nor be considered to "initiate" as these terms are used herein.

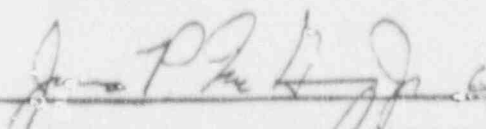
6. Each Party releases and discharges jointly and severally all other Parties and third-party beneficiaries (such third-party beneficiaries defined as all parties in the case of Kulka Construction Management Corp., et al. v. Edward V. Regan, et al., Index No. 9191/1992), as releasee(s), the releasee(s), releasee's and/or releasees' directors, officers, heirs, executors, agents, employees, successors, attorneys, and assigns from all actions, causes of actions, suits, debts, dues, sums of money, accounts, recording, bonds, bills, specialties, covenants,

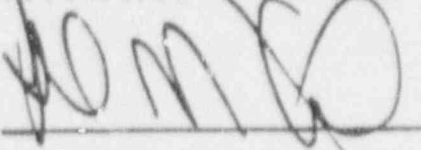
contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever in law, admiralty or equity which against the releasee Party and/or Parties the releasor Party and/or Parties, the releasor(s), releasor's and/or releasor's directors, officers, heirs, executors, agents, employees, successors, attorneys, contractors and assigns ever had, now has, or hereafter can, shall or may, have for, upon, relating to, arising from or by reason of any matter, cause or things whatsoever from the beginning of the world to the Execution Date of this Agreement relating to or arising from any or all of the legal actions before the NRC, the Court of Appeals, or State Supreme Court identified in this Agreement; provided that, nothing herein constitutes waiver(s) or prejudice to any Party's right to assert a claim or defense or counterclaim relating to or arising from alleged tax obligations of LILCO and/or alleged payment in lieu of taxes obligations of LIPA; and provided further that, this release does not allow any releasor(s) to make any claim(s), assert any counterclaims(s), or bring any other action(s) arising from or relating to the institution of any action before the NRC, the Court of Appeals, or State Supreme Court against any releasee(s) who are not named plaintiff(s) and/or petitioners or otherwise voluntarily involved in any institution of such action concerning the decommissioning of Shoreham.

7. LIPA, SWRCSD and SE₂ separately warrant and represent that the designated signatory to this Agreement on its behalf is

duly authorized by the relevant Party to execute this Agreement and bind that Party to this Agreement.

 6/1/92
SHOREHAM-WADING RIVER CENTRAL SCHOOL DISTRICT

 6/1/92
SCIENTISTS AND ENGINEERS FOR SECURE ENERGY

 6-1-92
THE LONG ISLAND POWER AUTHORITY

AGREEMENT

WHEREAS, LONG ISLAND POWER AUTHORITY ("LIPA") is the owner of the SHOREHAM NUCLEAR POWER STATION ("SHOREHAM") which is identified as District 0200, Section 0400.00 Block 01.00, Lot 001.000, and is located within the taxing jurisdictions of the COUNTY OF SUFFOLK ("SUFFOLK"), the TOWN OF BROOKHAVEN ("BROOKHAVEN"), and the SHOREHAM-WADING RIVER CENTRAL SCHOOL DISTRICT ("SWRCSD"), and

WHEREAS, LIPA is obligated to make payments in lieu of taxes on said properties to BROOKHAVEN, SUFFOLK and SWRCSD pursuant to Public Authorities Law §1020, et seq. ("the Act"), and

WHEREAS, Section 1020-p(2) of the Act provides that "the authority shall be required to pay no taxes nor assessment upon any of the property acquired or controlled by it...", and

WHEREAS, LIPA believes that any payment it may owe to the taxing jurisdictions in which SHOREHAM is located on any date may only constitute a payment in lieu of taxes ("PILOT") pursuant to the Act, and

WHEREAS, SUFFOLK, BROOKHAVEN and SWRCSD contend that on May 31, 1992, real estate taxes totalling \$61,033,349.56 are due and owing to BROOKHAVEN as the second half real estate tax payment on the SHOREHAM real property for the 1991-92 tax year, and

WHEREAS, SUFFOLK, in anticipation of the receipt of its portion of the tax proceeds has borrowed in the public market, and

WHEREAS, SUFFOLK is suffering severe cash shortages in its day-to-day operations and is in dire need of the receipt of anticipated revenues from the SHOREHAM facility, and

WHEREAS, the BROOKHAVEN Receiver of Taxes, under the Suffolk County Tax Act is the legally designated recipient of all tax revenues for all taxing jurisdictions entitled to collect revenues on the SHOREHAM property, and

WHEREAS, LIPA, BROOKHAVEN, SUFFOLK and SWRCSD have been unable to agree as to whether the May 31, 1992 payment would be a tax payment as BROOKHAVEN, SUFFOLK and SWRCSD contend or PILOT as LIPA contends, and

WHEREAS, LIPA desires to cooperate with SUFFOLK at a time of difficult financial circumstances for SUFFOLK, and to avoid any further downgrading of SUFFOLK's bonds and notes and

WHEREAS, the parties to this Agreement will attempt to negotiate a settlement of their legal differences or in the alternative, seek judicial interpretation of the rights and obligations of the parties under the Act, and

WHEREAS, to assure that there is no interruption of vital services to the taxpayers of the taxing jurisdictions wherein SHOREHAM is located during the pendency of the negotiations or any legal actions, and

WHEREAS, the parties to this Agreement have concurred that a second payment will be made by LIPA on or before January

10, 1993 in the sum of \$40,891,509.59 and a third payment will be made by LIPA on or before May 31, 1993 in the sum of \$36,802,358.00, with LIPA reserving the right to make said payments to the taxing jurisdictions entitled to collect revenues on the SHORERAN property and subject to reservation of rights in paragraph "4" below;

NOW, THEREFORE, IN CONSIDERATION OF THE REPRESENTATIONS AND MUTUAL AGREEMENTS HEREIN, LIPA, SUFFOLK, BROOKHAVEN and SWRCSD AGREE AND STIPULATE AS FOLLOWS:

1. LIPA will on June 1, 1992, issue a check in the sum of \$40,891,509.59 made payable to the "Town of Brookhaven" with the understanding that the LONG ISLAND LIGHTING COMPANY ("LILCO") contemporaneously tender a check for \$141,839.87, which LILCO believes to be its tax liability for the portion of SHORERAN that it retained;

2. BROOKHAVEN intends to deliver said checks to the Receiver of Taxes, Town of Brookhaven, an independently elected official of said town, for the purpose of depositing said check with a bank or trust company or a designated depository of BROOKHAVEN Receiver of Taxes.

3. BROOKHAVEN in recognition of the county's current cash crisis will distribute the proceeds in accordance with the provisions and requirements of the Suffolk County Tax Act;

4. The parties acknowledge and understand that they disagree as to the particularities of the payment being made by LIPA to BROOKHAVEN and that nothing contained in this Agreement, particularly LIPA's agreement to pay funds to BROOKHAVEN in

behalf of SUFFOLK and BROOKHAVEN's acceptance of these funds, constitutes a waiver of or will prejudice any position or claim either party may assert or seek to have adjudicated regarding the parties' rights and obligations under the Act, including but not limited to:

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a. whether LIPA's payments, set forth in paragraph "1" ^{of paragraph "6"} constitutes a payment of taxes or a PILOT pursuant to the Act; and

b. the extent to which that LIPA's payments are attributable to any portion of the property surrounding Shoreham which continued to be owned by LILCO after February 29, 1992; and

c. the due date(s), amount(s) and the method of the subject payments and the treatment of the subject payments or any future payment(s) made by LIPA to any taxing jurisdictions pursuant to the Act; and

d. whether any change, by any means, in the assessed value of all or any portion of Shoreham and/or the property surrounding Shoreham which continued to be owned by LILCO after February 29, 1992, or any tax rate applicable to Shoreham and/or the property surrounding Shoreham which continued to be owned by LILCO after February 29, 1992, for any past, present or future years will result in the change of LIPA's obligations under the Act and/or refunds of payments made or to be made by LIPA under the Act.

e. That said first payment to BROOKHAVEN is without prejudice to LIPA's right to make future payments

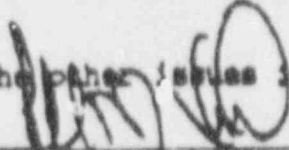
directly to any of the taxing jurisdictions in which the SHOREHAM property is located.

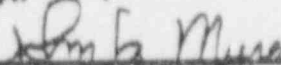
5. That simultaneously with the execution of this agreement, SWRCSD and LIPA, along with SCIENTISTS AND ENGINEERS FOR SECURE ENERGY, INC. ("SE₁") will enter into an agreement, in which all of the parties agree to promptly dismiss all judicial and administrative action and waive any future actions which seek to or will have the effect of preventing or delaying LIPA's decommissioning of SHOREHAM, including but not limited to LIPA's disposition of low level radioactive waste and spent nuclear fuel. The instant agreement shall not become effective, despite the signature of the parties, unless and until the referenced agreement between LIPA, SWRCSD and SE₁ is executed by all the parties thereto.

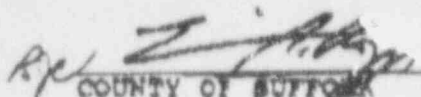
6. Subject to LIPA's reservation of rights in paragraph "4" above, LIPA will on or before January 10, 1993 issue checks totalling \$40,891,509.59 made payable to the taxing jurisdictions wherein the SHOREHAM property is located and LIPA will on or before May 31, 1993 issue checks totalling \$36,802,358.00 made payable to the taxing jurisdictions wherein the SHOREHAM property is located.

7. The parties agree and understand that the making of these payments, the acceptance and treatment of same, shall not be used by any party in any future action or proceeding as presumptive, circumstantial or probative evidence of whether the payments constitute a PILOT payment or tax payment or on any of

the other issues identified in paragraph "4".


LONG ISLAND POWER AUTHORITY

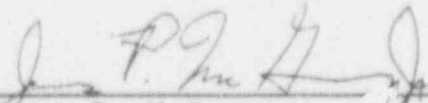

TOWN OF BROOKHAVEN


COUNTY OF SUFFOLK


SHOLEMAN-WADING RIVER CENTRAL
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