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JAMES P. McGRANERY, JR.

DIRECT DIAL NO.

857-2929

U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attn: Document Control Desk

Re: U.S. NRC Docket No. 50-322;
Long Island Power Authority Letter
LSNRC-1936 (April 16, 1992)

Dear Sir/Madam:

On behalf of Scientists and Engineers for Secure Energy, Inc. ("SE₂"), I wish to inform you that SE₂ opposes the Long Power Authority's ("LIPA") request in the above referenced letter to "replace LILCO with LIPA" as the "licensee" named in the Indemnity Agreement No. 87 and LIPA's request to eliminate the required participation in the secondary financial protection program.

First, LIPA incorrectly represents that it is the "holder of NRC License NPF-82" by virtue of "the February 29, 1992 NRC order approving transfer of license." That February 29 Order was issued pursuant to Long Island Lighting Company (Shoreham Nuclear Power Station, Unit One), CLI-92-04, NRC (February 26, 1992) where the Commission authorized only transfer of "control of" the Shoreham license to LIPA (CLI-92-04 at 10 & 13) and expressly recognized that the Shoreham license is still in the name of the Long Island Lighting Company ("LILCO") and will remain in LILCO's name until and unless LILCO and LIPA successfully survive the post-effectiveness hearing process at which time "the transfer is finalized [and] there remains the need -- for administrative purposes -- to have the license changed to reflect the name of the new licensee," i.e., LIPA. CLI-92-04 at 10 n.6 (emphasis added). Since the Price-Anderson Act allows the Commission to execute and maintain an indemnification agreement only with the "licensee" pursuant to Shoreham's Section 103 license, LILCO must remain a party to the indemnification agreement and LIPA is not permitted to be substituted as the party to that indemnification agreement because LILCO's name is on that license and LIPA's name is not on that license. 42 U.S.C. § 2210(a) (1988).

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Moreover, the Price-Anderson Act asserts an identity between "the licensee" required to maintain financial protection for a Section 103 license and "the licensee" which executes and maintains an indemnification agreement. 42 U.S.C. § 2210 (a) (1988). In the Initial Joint LILCO/LIPA Contingency Plan (required by NRC Order Approving Transfer of License dated February 29, 1992) which was submitted to Dr. Thomas E. Murley, Director of the Office of Nuclear Reactor Regulation by LIPA's LSNRC-1916 (March 27, 1992), LILCO and LIPA recognize that "LILCO remains the policyholder for all insurance coverages at Shoreham, including nuclear liability, general liability, and property coverages required by 10 CFR Parts 140; 50.54 (w); and 50.75(e). (LIPA is presently a named insured on all LILCO insurance policies at Shoreham)". Joint Contingency Plan at IV (emphasis added). Thus, for so long as LILCO "remains the policyholder," LIPA may not "replace LILCO" on the indemnity agreement.

Finally, LIPA may not rely on LILCO's SNRC-1809 (April 29, 1991) for the rationale to relieve LILCO and/or LIPA from the obligation to participate in the secondary financial protection program. That letter relied on the proposition that the Confirmatory Order constituted a revocation of Shoreham's Operating License. That is simply not true. It is well established that such orders, and the removal of restrictions imposed by such orders, do not affect the character of the existing license under the Atomic Energy Act and/or the Administrative Procedure Act. And, while a Possession Only License may form an appropriate basis for the requested relief, the legality of the issuance of the Possession Only License for Shoreham is currently pending before the U.S. Court of Appeals. Therefore, it does not yet provide the necessary basis for that aspect of the relief requested.

Very truly yours,


James P. McGranery, Jr.