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January 10, 1994

VIA TELECOPY AND REGULAR MAIL

Samuel J. Chilk
Secretary to the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Re: January 5, 1994 Letter on Behalf of the New Jersey
Department of Environmental Protection and Energy

Dear Mr. Chilk:

On Wednesday, January 5, 1994, the undersigned, counsel to the Long Island Power Authority ("LIPA"), received via telecopy a January 5, 1994 letter to you from counsel to the New Jersey Department of Environmental Protection and Energy ("DEPE"). The DEPE letter constitutes a request that the Nuclear Regulatory Commission ("NRC") review and reverse the December 23, 1993, denial by Robert M. Bernero, Director, NRC Office of Nuclear Material Safety and Safeguards, of a DEPE 10 C.F.R. § 2.206 request that the NRC halt LIPA's shipments of slightly irradiated nuclear fuel, and amend or issue additional regulatory approvals for the fuel shipments. See DEPE Petition to the NRC dated October 8, 1993 at 5 ("DEPE Petition").

Director Bernero's December 23, 1993 denial constituted initial action on the DEPE Petition by the NRC Staff pursuant to 10 C.F.R. § 2.206(b). Director Bernero made clear in his December 23, 1993 decision that his ruling would be filed with the Secretary of the Commission for review in accordance with 10 C.F.R. § 2.206(c)(1). As that provision explicitly states, the Commission may on its own motion decide to review the Director's decision in whole or in part to determine if the Director has abused his discretion. Id.

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I am writing on LIPA's behalf to request that the NRC reject the DEPE's January 5, 1994 letter. The DEPE letter is directly contrary to 10 C.F.R. § 2.206(c)(2) which states:

No petition or other request for Commission review of a Director's decision under this section will be entertained by the Commission.

Consistent with this provision, it is LIPA's understanding that the DEPE letter cannot and will not be considered.

The DEPE's January 5, 1994 letter constitutes the second time the DEPE impermissibly has urged the NRC to review a decision of Director Bernero in direct contravention of 10 C.F.R. § 2.206(c)(2). Previously, the DEPE sought NRC review of Director Bernero's October 22, 1993 denial of its request for immediate action on the DEPE Petition. See DEPE Letter to Samuel J. Chilk dated November 5, 1993. The NRC properly denied that request under 10 C.F.R. § 2.206(c)(2) and determined that it would not undertake a formal review of Director Bernero's decision. The NRC should act similarly here.

In the event the January 5, 1994 letter is considered by the NRC, the DEPE's request for NRC review of the December 23, 1993 decision should be denied. First, one of the grounds on which the DEPE seeks to have the decision reversed has already been decided against it by the United States Court of Appeals for the Third Circuit. The Third Circuit found, in direct contravention of the claims made in the DEPE's January 5, 1994 letter, that the NRC did not violate the Coastal Zone Management Act, 16 U.S.C. §§ 1451 et seq. ("CZMA"), by failing to require a certification from the state of New Jersey that the fuel shipments complied with the policies of New Jersey's Coastal Zone Management program. See State of New Jersey, Department of Environmental Protection and Energy, et al. v. Long Island Power Authority, et al., Civ. Action No. 93-4269 (3rd Cir. Dec. 1, 1993) (transcript of oral ruling at pages 10-12).

Second, if the January 5, 1994 letter is considered, the DEPE's request should be denied insofar as it claims that the NRC's environmental assessment ("EA") is defective because it fails to consider transportation alternatives. The DEPE argues that the NRC's EA should consider each alternative separately, and that reliance on Table S-4 was improper. This argument is an impermissible attack on the NRC's regulations. E.g., Potomac Elec. Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), LBP-76-9, 3 N.R.C. 205, 207 (1976) (intervenor may not challenge Table S-4 absent application for and issuance of a waiver). Further, the DEPE has failed to demonstrate any basis

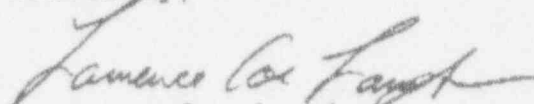
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to believe that Table S-4 does not properly address the alleged impacts of LIPA's fuel shipments -- and, indeed, with great conservatism.

In sum, because DEPE's January 5, 1994 letter is an impermissible challenge to Director Bernero's decision under 10 C.F.R. § 2.206(c)(2), the NRC must refuse to consider its contents. In the event the letter is considered, its arguments must be rejected on substantive and procedural grounds.

Sincerely,


Lawrence Coe Lanpher

cc: Richard P. Bonnifield,
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