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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Appeal Board

In the Matter of

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power Station, Unit 1)

) OFFICE OF SECRETARY
) DOCKETING & SERVICE
) BRANCH

) Docket No. 50-322 (OL)

) (Offsite Emergency Planning)

BRIEF OF CITIZENS FOR AN
ORDERLY ENERGY POLICY, INC.
IN SUPPORT OF ITS APPEAL

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APPENDICES

1. Petition of the Citizens for an Orderly Energy Policy, Inc. to Intervene in the Emergency Planning Hearing, dated June 14, 1983
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3. Draft Contentions Submitted by the Citizens for an Orderly Energy Policy, Inc., dated June 22, 1983

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On July 28, 1983, the Atomic Safety and Licensing Board presiding over this proceeding denied the Petition to Intervene filed by appellant, Citizens for an Orderly Energy Policy, Inc. (Citizens). The basis for the Board's denial of Citizens' petition was that the petition was untimely and did not meet the test for late-filed petitions set forth in 10 C.F.R. § 2.714(a)(1)(i)-(v) (1982). See Memorandum and Order Denying Petition to Intervene of Citizens for an Orderly Energy Policy, Inc. (Order), dated July 28, 1983, at 13. In this appeal, Citizens asserts that the Board applied these tests incorrectly and, in addition, failed to reach the issue of discretionary intervention put before it. Therefore, Citizens asks this Appeal Board to reverse the July 28, 1983 decision and to grant its petition to intervene as a party to the proceeding.

I

BACKGROUND

The original notice of hearing on the question of whether an operating license should be issued for the Shoreham Nuclear Power Station was published in the Federal Register in 1976. Prior to

that time, during the construction permit phase of hearings, the Suffolk County government supported the construction and eventual operation of Shoreham. In fact, until early 1982, Suffolk County did not actively oppose the operation of the facility. With respect to emergency planning, Suffolk County did not refuse to participate in the process until February, 1983.

In February, 1983, the Suffolk County Legislature passed Resolution No. 111-1983, which declared that no radiological emergency response plan could protect Suffolk County residents and that Suffolk County would neither adopt nor implement such a plan. Shortly thereafter, the county filed a motion with another Atomic Safety and Licensing Board with jurisdiction over the Shoreham proceeding to dismiss the entire operating license proceeding in light of Resolution No. 111-1983. That licensing board denied Suffolk County's motion and established this emergency planning hearing on April 20, 1983. The present Board was established on May 11, 1983, to hear all emergency planning issues.

Citizens filed its petition to intervene on June 14, 1983. In its petition, a copy of which is attached as Appendix No. 1, Citizens asserted that it had standing to intervene as of right because of its members' proximity to the facility and their interests in having clean, safe, efficient energy sources available in their community. See Petition at 4-5. Citizens also asserted that its interest in having an electric facility generated by nuclear power was cognizable under the Atomic Energy Act, 42 U.S.C. §§ 2011, et seq. See Petition at 6.

In addition to seeking to intervene as of right, Citizens sought to intervene in the proceeding as a discretionary matter. See Petition at 7-12. Finally, Citizens argued that its petition was timely, or in the alternative, that it met the standards for late filing. See Petition at 13-14.

Long Island Lighting Company (LILCO) and Suffolk County did not oppose Citizens' petition. The Nuclear Regulatory Commission (NRC) Staff and the Town of Southampton did object to Citizens' petition. Citizens filed a reply to the Staff's objections on July 12, 1983.¹ See Reply of the Citizens for an Orderly Energy Policy, Inc. to the Nuclear Regulatory Commission Staff Response to Petition to Intervene (Reply), a copy of which is attached as Appendix No. 2.

II

DECISION OF THE LICENSING BOARD

In ruling on Citizens' petition, the Board looked only to the timeliness of the petition because it found that issue "dispositive." Order at 5. First, the Board found that Citizens' petition was late. Id. at 6-7. Second, upon balancing the five factors set forth in the NRC's Rules of Practice, it found no compelling reason to consider the late-filed petition. Specifically, the Board found that: (1) Citizens had failed to demonstrate good cause for its late filing, (2) there were no other means available to protect Citizens' interests, (3) Citizens had failed to establish

¹ Citizens had not yet received the response filed by the Town of Southampton when it submitted its reply.

that its intervention could be expected to assist in developing a sound record, (4) Citizens had not established why LILCO would not represent Citizens' interests, and (5) Citizens' participation would delay the proceeding and broaden the issues. These findings by the Board are addressed below.

III

DISCUSSION

A. Citizens Has Demonstrated Good Cause for Late Filing

Although the Board recognized that the original notice of hearing on the operating license for the Shoreham facility was published in 1976 (see Order at 6), the Board also acknowledged that the events leading up to the current emergency planning hearing did not occur until February, 1983. See Order at 9. Thus, if Citizens' petition is to be considered untimely, it is at most four months, not seven years, late. Citizens, however, has demonstrated good cause for not filing its petition at an earlier time.

In examining whether Citizens had demonstrated good cause for filing late, the Board applied the standards recently enunciated by the Commission in Duke Power Company (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC _____ (June 30, 1983). See Order at 4-5, 7-9. In that case, an intervenor sought to add new contentions after the time for filing had passed. The new contentions were allegedly based on previously unavailable licensing documents. The Commission found that the "institutional unavailability of a licensing-related document does not establish

good cause for filing a late contention if information was available early enough to provide the basis for the timely filing of that contention." Catawba, slip op. at 11-12.

To begin, the Commission's decision in Catawba is inapposite here. Citizens has not asserted that its petition or its contentions are based upon previously unavailable licensing documents.² Moreover, Citizens has not asserted that it was unable to file its petition because of the unavailability of certain documents.

The basis for Citizens' assertion of good cause is this: it simply did not know that a hearing would be held on the adequacy of the emergency plan developed and implemented by LILCO, with no assistance from Suffolk County, until a decision was issued on April 20, 1983. While Citizens could have filed its petition between February and April, 1983, Suffolk County's motion to dismiss the licensing proceeding was pending at that time and there was the possibility that there would be no emergency planning hearing in which to intervene. Prior to February, 1983, Suffolk County gave every indication that it was proceeding to develop an emergency plan for the Shoreham facility. Thus, the possibility that no license would issue because of the absence of a local government emergency plan had not yet arisen. Since Citizens does not seek to justify its petition or its contentions on the basis of any previously

² Contrary to the Board's finding, (see Order at 9), Citizens has not asserted that the LILCO emergency plan, filed on May 26, 1983, is the basis of its petition or is the reason it did not file its petition at an earlier time.

unavailable documents, neither the Catawba decision nor its three-part test for the admission of a contention based on unavailable documents applies.

Even if the Catawba decision is analogized to Citizens' petition, that decision supports a finding of good cause in this instance. As noted above, in that decision the Commission held that the "institutional unavailability" of a document does not establish good cause for the late filing of a contention if other information was available to provide the basis for the timely filing of the contention. However, the unavailability of a document could establish good cause if other information were not available to provide the basis for the proposed contention.

Analogizing the "institutional unavailability" of a document to circumstances or events which have not yet occurred, the Catawba decision suggests that the occurrence of unknown events does not establish good cause if other information was available for the petitioner to act upon. In the instant situation, however, no other information was available to Citizens upon which to act--Citizens did not know when, or if, a hearing on ILCO's emergency plan would

be held until April 20, 1983. Thus, in the absence of such other information, Citizens has demonstrated good cause under the standards outlined by the Commission in its Catawba decision.³

B. Citizens Was Not Provided an Opportunity To Establish Its Ability To Develop a Sound Record

Another factor used by the Board in ruling against Citizens' petition was that Citizens' statements concerning its ability to contribute to the proceeding were "vague and insufficient" and thus that Citizens failed to make the requisite showing on this point. Order at 11. The Board cited an earlier Appeal Board decision in Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2) (ALAB-704, 16 NRC _____

³ In addition, Citizens asserts that the emergency planning hearing established on April 20, 1983, is essentially a new proceeding and thus that Citizens' petition was timely filed. Under the April 20, 1983 decision, contentions on LILCO's emergency plan were to be filed two weeks after service of the revised emergency plan and a new discovery phase was discussed. The schedule for filing contentions was later extended and Citizens filed its petition prior to the time when contentions were due. Citizens also filed its proposed contentions on time.

(December 8, 1982)), for the proposition that a petitioner should set out the precise issues it plans to cover, its prospective witnesses, and their proposed testimony. Id.⁴

In its response in opposition to Citizens' petition, the NRC staff raised a similar point and asserted that Citizens needed to provide a "bill of particulars" to demonstrate what expertise it could provide. Citizens, in replying to this argument, explained that this requirement had never been imposed on a potential intervenor and that a "bill of particulars" in this context is nowhere defined. In any event, Citizens agreed to provide additional information on its expertise in a "bill of particulars" if the Board determined this information was needed. See Reply at 6-7. No request from the Board was received.

Moreover, the facts surrounding the Appeal Board's decision in Grand Gulf are quite different than those surrounding Citizen's petition. In the Grand Gulf case, the State of Louisiana filed a petition to intervene in an untimely manner. Although it sought to meet the standards for acceptance of a late petition, Louisiana did not attempt to demonstrate any special expertise it possessed and merely indicated it would express its views on the subjects it wished to raise. See Memorandum and Order Denying State of

⁴ Citizens notes that the Appeal Board's ruling in Grand Gulf regarding a showing of expertise is not a new pronouncement. Rather, the Appeal Board's discussion of what information a petitioner must present in order to demonstrate its expertise is based on earlier NRC case law. See Grand Gulf, slip op. at 10, citing South Carolina Electric and Gas Company (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 894 (1981) and Detroit Edison Company (Greenwood Energy Center, Units 2 and 3), ALAB-476, 7 NRC 759, 764 (1978). Citizens provided the information required by these cases.

Louisiana's Petition for Intervention, LBP-82-92, 16 NRC (October 20, 1982). These "vague assertions" are what the Appeal Board found to be "insufficient." Grand Gulf, slip op. at 10.

In its petition, however, Citizens set forth the information concerning its members' expertise which it believed was required by NRC's Rules of Practice and applicable case law. See Petition at 8-9. Further, Citizens set forth in its contentions the precise issues it seeks to litigate in the proceeding. The proposed contentions submitted by Citizens are not brief declaratory statements but are, in fact, outlines of what Citizens intends to demonstrate in the emergency planning hearing if admitted. A copy of the draft contentions submitted is attached as Appendix No. 3.

In contrast, the NRC staff stated its belief that an intervenor supporting a nuclear facility in a licensing hearing had responsibilities different than those set out in the regulations. Citing Nuclear Energy Company (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 n.5 (1978), the staff stated that Citizens was only required to take a position on the contentions submitted by the intervenors opposing the Shoreham facility which had been filed in draft form on June 23, 1983.⁵

Although Citizens sought guidance from the Board as to what role was expected of it, Citizens was told that its obligations and responsibilities with respect to contentions would be set forth if Citizens were to be admitted. See Transcript of July 13, 1983

⁵ Final contentions were submitted by the intervenors on July 26, 1983.

Prehearing Conference (Tr.) at 68. Taking into account the confusion in this area and Citizens' efforts and willingness to specify its intentions in this proceeding in accordance with NRC's regulations, the Board's determination that Citizens failed to make a proper showing on its ability to make a valuable contribution to the record was inappropriate.

C. Citizens Has Demonstrated that
No Other Party Will Represent Its Interests

The Board ruled that Citizens failed to show that the utility would not represent its interests. Order at 11. In its petition, however, Citizens explained that the utility does not have the same interest or perspective as does Citizens. See Petition at 10-11. LILCO is an organizational entity with organizational interests and goals. Citizens, however, is seeking to intervene on behalf of its members who are individuals with an interest in seeing rational energy development on Long Island and an interest in emergency planning for the protection of themselves, their homes, and their families. Id. This divergence of interests demonstrates that LILCO could not adequately represent Citizens' interests. In addition, an independent group voicing certain expert opinions would offer a different perspective and could carry substantial weight in the determination of the adequacy of LILCO's emergency plan. See Petition at 9.

More importantly, the Board appears to have assumed that any applicant for an operating license would represent the interests of any potential party which supported the issuance of that license. Such an assumption, however, precludes the possibility

that a group which favors the operation of a nuclear facility could ever successfully intervene in a licensing proceeding. This result is not intended or sanctioned by the Atomic Energy Act or NRC regulations.

D. Citizens' Intervention Will Not
Delay or Broaden the Proceeding

In deciding that Citizens' participation in the hearing will delay the proceeding and broaden the issues, the Board relied on statements of counsel at the July 13, 1983 prehearing conference. See Order at 12.⁶ Specifically, counsel stated:

"We intend to present witnesses on the contentions that we did file. We would also participate in the cross-examination of not all witnesses but those witnesses that we believed, or on those issues that we believed we could present aid in developing the record.

"The members of Citizens do have a strong background not only in nuclear energy but also in emergency planning. A major portion of Suffolk County's contentions deal with accident assessment. They allege that accident assessment is not adequate or that it can't be done.

"Members of Citizens could be able to address that in a lot of detail, and I think that is an important point that we would be able to address." Tr. 34-35.

In making this statement, however, counsel was explaining how Citizens could contribute to the emergency planning hearing. In

⁶ The Board also relied on the ruling in Detroit Edison Company (Greenwood Energy Center, Units 2 and 3), ALAB-476, 7 NRC 759, 762 (1978) which stated that the later petition is, the greater the potential that the petitioner's petition will delay the proceeding. See Order at 12-13. After concluding that Citizens' petition was several years late, the Board seemed to assume, not the potential for delay, but that delay would necessarily occur. Id.

essence, the Board ruled that any effective participation would involve delay. Under this reasoning, only intervenors who intended to do nothing at the proceeding would be admitted.

Such a result is incongruous. Citizens submits that any meaningful participation by any intervenor must involve some expenditure of time. For example, if, as Citizens indicated, it presented witnesses and conducted cross-examination on certain issues, then a few extra hours of hearing time would be consumed. On the other hand, if Citizens presented no witnesses and asked no questions on cross-examination, no extra expenditure of time would occur. In such a situation, however, Citizens would not be helping to develop a sound record and would be serving no purpose by its intervention.

The resolution of this dilemma is to use the rule of reason, an approach ignored by the Board. As counsel for LILCO explained, any "delay" occasioned by Citizens' participation "would be slight." Tr. 42.⁷ Further, Citizens favors the issuance of an operating license for Shoreham at the earliest possible time and would not be attempting to intervene if it believed its participation would delay the outcome of the hearing. See Petition at 11 and Tr. 36. As Citizens stated at the prehearing conference, its testimony would be presented in as expeditious a manner as possible, with the result that no significant delay would occur. Tr. 36.

⁷ This statement is particularly apt when one compares the almost 200 pages of contentions Suffolk County seeks to litigate with the 8 pages of contentions submitted by Citizens.

Contrary to the Board's ruling, Citizens' participation would not broaden the issues. The contentions which Citizens seeks to raise are all within the scope of the proceeding. In fact, the Board did not point to any issues which Citizens advanced which the Board believed would broaden the proceeding. See Order at 12-13.

On balance, Citizens did demonstrate that it had met the requisite standards for late filing. The Board erred in its determination that Citizens had failed to establish that its petition should be granted. Consequently, the Board's decision should be reversed.

E. The Board Erred in Not Ruling on Citizens' Request To Intervene as a Discretionary Matter

In addition to its arguments regarding intervention as of right, Citizens sought permission to intervene under the Board's discretionary authority. See Petition at 7-12. The Board found, without explanation, that its ruling on the timeliness of the petition was dispositive of the issue of discretionary intervention. Order at 13. Citizens disagrees. As is shown below, the question of the timeliness of Citizens' petition is not dispositive of its request for discretionary intervention.

In Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976), the Commission set down several factors to be examined in determining whether to grant discretionary intervention. Id. at 616. While most are similar to the factors to be considered for a late-filed petition, one important factor is different: whether the petitioner

has a property or financial interest which would be greatly affected. Citizens addressed this standard in detail in its petition and made a strong showing as to the interests it had at stake should the Shoreham facility not be licensed. See Petition at 9-10. The Board, however, did not consider these interests in its decision to deny Citizens' petition. Had it done so, then its balancing of all the factors might well have produced a different outcome. The Board's failure to examine whether Citizens should be granted discretionary intervention was in error.

F. This Appeal Board Should Also
Determine the Question of Standing

Believing the issue of timeliness to be dispositive of all the issues raised in Citizens' petition, the Board declined to rule on the important question of whether Citizens has standing to intervene in this proceeding. Should, however, this Appeal Board reverse the decision, Citizens urges it to also decide the question of standing in order to avoid time-consuming remands and possible further appeals. The parties' views on Citizens' standing have already been presented (see, e.g., Petition at 2-6 and Reply at 1-4), and this course of action would conserve agency resources as well as substantially reduce the possibility of delay.

IV

CONCLUSION

For the reasons stated above, Citizens asks that the Board's July 28, 1983 decision denying its petition to intervene be reversed and that the timeliness issue be resolved in favor of

Citizens. Should this Appeal Board reverse the Board's decision, then Citizens requests that it proceed to review the question of Citizens' standing to intervene in this proceeding and grant the intervention petition filed by Citizens on June 14, 1983.

DATED: August 9, 1983.

Respectfully submitted,

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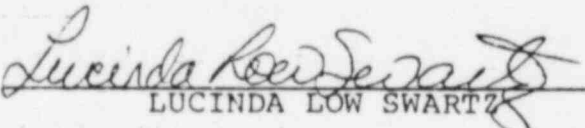
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APPENDIX 1

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power Station, Unit 1)

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Docket No. 50-322 (OL)

(Offsite Emergency Planning)

PETITION OF THE CITIZENS FOR
AN ORDERLY ENERGY POLICY, INC.,
TO INTERVENE IN THE EMERGENCY PLANNING HEARING

Pursuant to 10 C.F.R. § 2.714 (1982), the Citizens for an Orderly Energy Policy, Inc. (Citizens) hereby seeks leave to intervene in this special proceeding in support of the emergency plan submitted by the applicant. As discussed below, Citizens and its members are persons whose interests are affected by this proceeding and Citizens desires to participate as a party. Citizens seeks expedited consideration of this petition so that it can develop and file its contentions pursuant to the established schedule.

I

CITIZENS IS ENTITLED TO INTERVENE
IN THE PROCEEDING AS OF RIGHT

Under the Nuclear Regulatory Commission's (NRC) Rules of Practice, one who seeks to intervene in a proceeding must

"set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in paragraph (d) of this section, and the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene." 10 C.F.R. § 2.714(a)(2).

The "factors in paragraph (d)" are:

"(1) The nature of the petitioner's right under the Act to be made a party to the proceeding.

"(2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

"(3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest." 10 C.F.R. § 2.714(d).

A. Citizens Has Sufficient Interest To Intervene

1. Applicable NRC Case Law Regarding Intervention

NRC case law has interpreted the intervention regulations to require the satisfaction of judicial tests of standing in order to demonstrate "interest." See Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976). Thus, one must show the possibility of actual injury and an interest "arguably within the zone of interest" protected by the Atomic Energy Act, as amended (42 U.S.C. §§ 2011, et seq.). See Pebble Springs, 4 NRC at 613; see also Sierra Club v. Morton, 405 U.S. 727 (1972), and Warth v. Seldin, 422 U.S. 490 (1975).

In general, a petitioner must show that he has a personal interest in the proceeding and that this interest will be adversely affected. See Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-73-10, 6 AEC 173 (1973).¹ "Interest" may be demonstrated by one's proximity to the plant. Id.

¹ While the Peach Bottom case also required the submission of contentions, new regulations make it clear that a petitioner need not state his contentions until 15 days prior to the first prehearing conference. 10 C.F.R. §2.714(b); see also Wisconsin Electric Power Company (Point Beach Nuclear Plant, Units 1 and 2), LBP-78-23, 8 NRC 71, 74 (1978).

Interest is typically demonstrated where the petitioner lives or works within 50 miles of a nuclear power plant. See, e.g., Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 n.4 (1977); Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 8 NRC 73 (1979); Houston Lighting and Power Company (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 443-44 (1979); and Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-79-18, 9 NRC 728, 730 (1979); Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 NRC 175, 178 (1981).

In addition, corporate environmental groups have been found to have standing to represent their members' interest. Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-322, 3 NRC 328, 330 (1976). In fact, an organization having general concerns in the subject matter could be allowed to participate as long as there is at least one member who can demonstrate "injury in fact." See Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420 (1973).

Along similar lines, it has been held that a petitioner supporting an application must particularize a specific injury that it, or its members, would or might sustain should the application be denied. The test is "whether a cognizable interest of the

petitioner might be adversely affected if the proceeding has one outcome rather than another." Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 (1978). Citizens meets all these tests for standing to intervene in this proceeding.

2. Specification of Citizens' Interest in This Proceeding

Citizens is a corporation founded under the laws of New York State in January, 1983. It has approximately 50 dues-paying, non-voting members, most of whom are engineers, physicians, and scientists working on various projects involving nuclear power. Most of the members live within 20 miles of the Shoreham Nuclear Power Station.

The organization was formed for several purposes, including the establishment, coordination, and implementation of programs designed to promote the development of a rational energy policy for Long Island. Citizens favors the issuance of an operating license to the Long Island Lighting Company (LILCO) for the Shoreham Nuclear Power Station, subject to the fulfillment of all appropriate NRC rules and regulations.

In support of this petition, several members of Citizens have signed affidavits stating that they live within 20 miles of the station, that they favor the operation of the station, and that they wish Citizens to represent them in the special NRC offsite emergency planning hearing. Their names and addresses are also set forth in

these affidavits, copies of which are attached to this filing. Thus, Citizens has met the tests typically required of intervenors: proximity of its members to the Shoreham Nuclear Power Station, the general interest of the organization in energy issues, and the identification of members with the necessary interest who wish to be represented by Citizens.

As a proponent of LILCO's application for an operating license, Citizens also asserts that its interests and those of its members will be adversely affected if the Shoreham Nuclear Power Station is not permitted to operate. These interests are cognizable under the Atomic Energy Act.

Citizens and its members have a strong interest in the availability of clean, safe, efficient energy sources on Long Island, the community in which its members and their families live and work. The uniqueness of Long Island's location makes it difficult to supply electricity to residents. For example, Long Island must generate 80% of its needed power because of the limited interconnection from the New York Power Pool to the island. The existing generation facilities on Long Island are aging and will need to be replaced in the near future. While LILCO could build coal-fired facilities, new harbors would have to be dredged to accommodate coal barges, or new railway lines would have to be built to accommodate the daily transportation of coal to the facility. Coal-fired plants also generate enormous amounts of solid waste

products on a daily basis and can contribute to air pollution problems. Thus, a nuclear powered generation facility offers the best alternative for providing needed electrical power on Long Island.

Citizens was specifically founded to promote the development of a rational energy policy for Long Island and is generally supportive of nuclear power as an important energy source. In furtherance of these organizational goals, Citizens now seeks to intervene in this proceeding on behalf of itself and its members. Citizens desires to protect its interest in the availability of a nuclear power source by supporting the issuance of an operating license for the Shoreham Nuclear Power Station.

The availability of nuclear power is a recognizable interest under the Atomic Energy Act. The congressional declaration of policy, findings, and statement of purpose in the Atomic Energy Act make it clear that Congress intended to promote the development of nuclear power as an energy source. See 42 U.S.C. §§ 2011-13.² Thus, by intervening in this proceeding, Citizens hopes to protect its own interest, and that of its members, in accordance with the stated intention of Congress to promote nuclear power.

B. Citizens Wishes To Intervene on the Issue of the Adequacy of LILCO's Emergency Plan

In addition to stating a sufficient interest, a petitioner must state on which aspects of the proceeding it seeks to intervene. 10 C.F.R. § 2.714(a)(2). The special emergency planning hearing

² The Atomic Energy Act seeks to promote nuclear energy as well as to regulate it. Thus, an interest in the availability of nuclear energy is no less cognizable under the Act than is an interest in health and safety.

scheduled by the Licensing Board in its Order dated April 20, 1983, indicated that only offsite emergency planning concerns would be heard. With this in mind, Citizens wishes to intervene in support of the emergency plan submitted by LILCO, especially the validity of the assumptions used by the utility in developing its plan. Citizens will draft its specific contentions and the bases therefor and will submit them in accordance with the Licensing Board's April 20, 1983 Order.

Based on the foregoing, Citizens has met the requisite tests for intervention in this proceeding under 10 C.F.R § 2.714. Therefore, Citizens requests this Licensing Board to grant its intervention petition.

II

ALTERNATIVELY, CITIZENS SHOULD BE PERMITTED TO INTERVENE UNDER THE LICENSING BOARD'S DISCRETIONARY AUTHORITY

While Citizens believes that it is entitled to intervene in this proceeding as of right, in the alternative, Citizens asks this Licensing Board to admit it to this proceeding under the Board's discretionary authority. Although not specifically set forth in the Rules of Practice, an additional method of intervention is with the discretion of the licensing board. See Pebble Springs, 4 NRC at 614-17. In Pebble Springs, the Commission held that even

if a petitioner for intervention could not satisfy the strict judicial standing test, intervention could be allowed as a matter of discretion. Id. at 616.

The factors to be considered by a licensing board in making this determination are: (1) whether the petitioner would make a valuable contribution to the proceeding, (2) whether the petitioner has a property or financial interest which would be greatly affected, (3) whether there are other means available to protect the petitioner's interest, (4) whether the petitioner's interest might be represented by existing parties, and (5) whether intervention would delay or broaden the proceeding. Id. Each of these factors is discussed below.

The petitioner's ability to contribute to the development of a sound record is the principal consideration in determining whether to allow intervention as a matter of discretion. Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-470, 7 NRC 473, 475 n.2 (1978). In this particular instance, Citizens would be able to make a valuable contribution to the proceeding. Most members of Citizens are recognized authorities in the field of nuclear power and could address the adequacy of an emergency plan with respect to specific radiological events which could occur at the Shoreham Nuclear Power Station. Some members of Citizens work professionally in radiological emergency planning, participate in emergency planning drills in the northeastern United States, and/or are members of federal radiological emergency response teams. With

this special expertise, Citizens would be able to make an important contribution to the record regarding the adequacy of LILCO's emergency plan.

Finally, Citizens has no employment or financial ties to LILCO. Citizens' members do, however, have an understandably strong interest in having an adequate emergency plan in place for any possible event which could affect them or their families. These two considerations, together with Citizens' position generally supportive of the Shoreham Nuclear Power Plant, will allow it to present to this Licensing Board a perspective not currently available from any other party. Citizens also desires to challenge, if necessary, any attempt by Suffolk County to profit in this proceeding by its refusal to participate with LILCO in emergency planning efforts.

With respect to the interests at stake in this proceeding, Citizens has a keen interest in the continued availability of a reliable energy source on Long Island, an interest which would be greatly affected if the station were not allowed to operate. Citizens' members believe that having an electrical power source such as the Shoreham Nuclear Power Station in the area would contribute to the quality of community life. The operation of the station would add to the reliability of electrical service throughout LILCO's service area on Long Island. Having a reliable power source available would attract business and industry to the area, further adding to the tax revenues and to the general welfare of the community. For example, Brookhaven National Laboratory on

Long Island is the largest employer in Suffolk County, produces a significant amount of revenue for the County, and depends upon a reliable electrical energy source for its research work. Its new facilities are particularly energy-intensive. Without a reliable source of power, the laboratory could not maintain its international prominence and would not continue to draw highly skilled and educated individuals to the community.

In addition, the utility provides revenues for approximately two-thirds of the Shoreham-Wading River School District budget. Should the station not operate, those revenues will be lost and the local school system will go from being one of the best in New York State to one of the worst. Having good quality schools for their children is a high priority for Citizens' members.

These are some of the property and financial interests which Citizens' members have in the operation of the Shoreham Nuclear Power Station. These interests demonstrate the depth of the members' concern for the start-up, at the earliest possible time, of the Shoreham Nuclear Power Station.

With respect to the factors which would weigh against discretionary intervention, no other party to the proceeding can adequately protect Citizens' interests. While LILCO and Citizens both favor the operation of the facility, the utility does not have the same interest or perspective as does Citizens. Because its members live in the community, Citizens has an interest in seeing rational energy development on Long Island, such as the Shoreham

Nuclear Power Station, and in having safe, clean energy sources available in the area. At the same time, Citizens' members have an interest in protecting their homes and families.

While Suffolk County purports to represent county residents' interests, it is not representing the interests of Citizens or its members in this instance. Rather, by refusing to participate in the emergency planning process, the county is refusing to provide prudent and reasonable services to all residents of the county, including Citizens and its members. Suffolk County will not be representing Citizens' interests in the special NRC emergency planning hearing.

In addition, no other means exist, at the present time, for Citizens to protect its interests. Because it is this proceeding which will initially decide the fate of the Shoreham Nuclear Power Station, it is vital that Citizens be able to protect and advance its interests at this early administrative stage.³

Finally, Citizens' intervention will not broaden or delay the proceeding. Citizens does not intend to introduce any concerns outside the scope of the hearing. Moreover, Citizens believes that the Shoreham Nuclear Power Station should be permitted to begin operation as soon as is feasible, and does not wish to pursue any action which would delay the hearing or the operation of the station.

³ Citizens must be able to assert its interests now in order to be able to assert those interests in later administrative or judicial proceedings.

On balance, the factors to be weighed for discretionary intervention favor Citizens' participation. Citizens can make a valuable contribution to the proceeding, one which no other party is in a position to make. Citizens' members have significant property and financial interests at stake which cannot be advanced elsewhere and they do not seek to broaden or delay the proceeding by means of their intervention. For these reasons, Citizens asks that this Licensing Board, in its discretion, grant Citizens' petition.

III

CITIZEN'S PETITION TO INTERVENE IS TIMELY

A. This Proceeding Was Only Recently Convened

Although the operating license proceeding for the Shoreham Nuclear Power Station has been going on for quite some time, this petition is not untimely. Rather, the events leading up to this special emergency planning proceeding have only recently occurred and the threat that the station may never be allowed to operate, because of Suffolk County's stance on emergency planning, has only recently come to light.

Moreover, the schedule established by the Licensing Board indicates that this emergency planning hearing is, in fact, a new hearing. This schedule calls for the filing of contentions, provides for discovery, and states that a prehearing conference will be held. See Memorandum and Order Denying Suffolk County's Motion

to Terminate the Shoreham Operating License Proceeding, at 60-65 (April 20, 1983). These are all the markings of a newly-convened hearing. Because Citizens is filing this petition well in advance of the date on which contentions are due and has stated its willingness to meet the established schedule, Citizens believes this petition is timely filed.

B. In the Alternative, This Petition
Meets the Requirements for Late Filings

Even if this petition is considered as a late filed request, Citizens meets the tests for the acceptance of such a petition as stated in 10 C.F.R. § 2.714(a)(1)(i)-(v). This regulation allows a licensing board to balance five factors to determine whether to grant a late filed petition: (1) good cause for failure to file on time; (2) the availability of other means to protect the petitioner's interests; (3) the extent to which the petitioner's participation may assist in developing the record; (4) the extent to which the petitioner's interest will be represented by other parties; and (5) the extent to which the petitioner's participation will broaden the proceeding.

Citizens has addressed its position with respect to four of these five factors in its discussion of discretionary intervention at Page Nos. 8-12 supra. There, Citizens asserts and explains that its participation will assist in developing the record, that its interest cannot be protected by other parties, that no other means exist to protect its interest, and that its participation will not broaden or delay the proceeding.

With respect to the good cause requirement, as noted above the events leading up to this proceeding have only recently occurred. Suffolk County in February of this year passed its resolution denying the adequacy of any emergency plan and shortly thereafter filed its motion to terminate the licensing proceeding. The Licensing Board on April 20, 1983, filed its Order denying that motion and establishing a schedule for this new hearing on the adequacy of LILCO's plan. LILCO, on May 26, 1983, filed its interim emergency plans on which intervenors are to prepare contentions. Thus, Citizens could not have acted any more quickly to prepare its petition to intervene in this proceeding. Citizens has shown good cause for not filing its petition at an earlier time.⁴

CONCLUSION

For the reasons stated above, Citizens requests that this Licensing Board grant its petition to intervene in the special offsite emergency planning hearing. Because this hearing was only recently convened, this petition is timely filed. In the event the Licensing Board determines that Citizens' petition is late, Citizens

⁴ Many NRC cases have held that satisfaction of the good cause requirement reduces a petitioner's burden with respect to the other four factors. See, e.g., Florida Power and Light Company (St. Lucie Nuclear Power Plant, Unit 2), ALAB-420, 6 NRC 8, 22 (1977); Wisconsin Public Service Corporation (Kewaunee Nuclear Power Plant), LBP-78-24, 8 NRC 78, 83 (1978). Citizens, however, has more than amply satisfied the other factors set out in 10 C.F.R. § 2.714(a)(1), as well as the good cause requirement.

asserts that it meets the standards for the acceptance of a late filed intervention petition. In addition, Citizens asks for expedited consideration of its petition in order that it may submit its contentions in accordance with the schedule established by the Licensing Board.

DATED: June 14, 1983.

Respectfully submitted,

RONALD A. ZUMBRUN

SAM KAZMAN

LUCINDA LOW SWARTZ

Pacific Legal Foundation

1990 M Street, N.W., Suite 550

Washington, D.C. 20036

By Lucinda Low Swartz
LUCINDA LOW SWARTZ

Attorneys for the Citizens for
an Orderly Energy Policy, Inc.

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
)
LONG ISLAND LIGHTING COMPANY) Docket No. 50-322 (OL)
) (Offsite Emergency Planning)
(Shoreham Nuclear Power Station, Unit 1))_

AFFIDAVIT OF VANCE L. SAILOR

Under penalty of perjury, I, Vance L. Sailor, do
hereby state and affirm as follows:

1. I am a member of the Citizens for an Orderly Energy Policy, Inc. (Citizens).
2. One of the purposes for which Citizens was founded was to establish, coordinate, and implement programs designed to promote the development of a rational energy policy for Long Island.
3. As a member of Citizens and a resident of Suffolk County, I have a sincere and long-standing interest in the availability of safe, clean, efficient energy sources for Long Island such as the Shoreham Nuclear Power Station.
4. I live within 15 miles of the Shoreham Nuclear Power Station. My home address is 100 Durkee Lane, E. Patchogue, NY 11772
5. My business/profession is nuclear physicist
6. I favor the operation of the Shoreham Nuclear Power Station, in accordance with all appropriate Nuclear Regulatory Commission rules and regulations.
7. I authorize Citizens to represent my interests in the special NRC offsite emergency planning hearing.

Vance L. Sailor
NAME:

Subscribed and sworn before me
this 12 day of June, 1983.

Wanda Renee Flack
Notary Public

My Commission expires 3/30/85
WANDA RENEE FLACK
Notary Public, State of New York
No. 216646 Suffolk County
Term Expires March 30, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
)
LONG ISLAND LIGHTING COMPANY) Docket No. 50-322 (OL)
) (Offsite Emergency Planning)
(Shoreham Nuclear Power Station, Unit 1))

AFFIDAVIT OF ANDREW P. HULL

Under penalty of perjury, I, Andrew P. Hull, do
hereby state and affirm as follows:

1. I am a member of the Citizens for an Orderly Energy Policy, Inc. (Citizens).
2. One of the purposes for which Citizens was founded was to establish, coordinate, and implement programs designed to promote the development of a rational energy policy for Long Island.
3. As a member of Citizens and a resident of Suffolk County, I have a sincere and long-standing interest in the availability of safe, clean, efficient energy sources for Long Island such as the Shoreham Nuclear Power Station.
4. I live ^{at} within one ^{four} miles of the Shoreham Nuclear Power Station. My home address is 9 Howard Rd, Shoreham NY 11781.
5. My business/profession is Health Physicist.
6. I favor the operation of the Shoreham Nuclear Power Station, in accordance with all appropriate Nuclear Regulatory Commission rules and regulations.
7. I authorize Citizens to represent my interests in the special NRC offsite emergency planning hearing.

NAME:

Andrew P. Hull C.H.P.

Director, Citizens for
Orderly Energy Policy

Subscribed and sworn before me
this 16 day of June, 1983.

Andrew P. Hull
Notary Public - Suffolk County
4654226
My Commission expires 3/26/83

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
)
LONG ISLAND LIGHTING COMPANY) Docket No. 50-322 (OL)
) (Offsite Emergency Planning)
(Shoreham Nuclear Power Station, Unit 1))_

AFFIDAVIT OF Robert P. Miltenberger

Under penalty of perjury, I, Robert P. Miltenberger do hereby state and affirm as follows:

1. I am a member of the Citizens for an Orderly Energy Policy, Inc. (Citizens).
2. One of the purposes for which Citizens was founded was to establish, coordinate, and implement programs designed to promote the development of a rational energy policy for Long Island.
3. As a member of Citizens and a resident of Suffolk County, I have a sincere and long-standing interest in the availability of safe, clean, efficient energy sources for Long Island such as the Shoreham Nuclear Power Station.
4. I live within 4 miles of the Shoreham Nuclear Power Station. My home address is 42 Old Saddle Rd
Ridge New York 11961.
5. My business/profession is Health Physicist
at Brookhaven National Laboratory.
6. I favor the operation of the Shoreham Nuclear Power Station, in accordance with all appropriate Nuclear Regulatory Commission rules and regulations.
7. I authorize Citizens to represent my interests in the special NRC offsite emergency planning hearing.

Robert P. Miltenberger
NAME:

Subscribed and sworn before me
this 10 day of June, 1983.

James P. Carlson
Notary Public - Suffolk County
My Commission expires 3/30/85

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
LONG ISLAND LIGHTING COMPANY) Docket No. 50-322 (OL)
(Shoreham Nuclear Power Station, Unit 1)) (Offsite Emergency Planning)

AFFIDAVIT OF EUGENE V. WEINSTOCK

Under penalty of perjury, I, Eugene V. Weinstock, do hereby state and affirm as follows:

1. I am a member of the Citizens for an Orderly Energy Policy, Inc. (Citizens).
2. One of the purposes for which Citizens was founded was to establish, coordinate, and implement programs designed to promote the development of a rational energy policy for Long Island.
3. As a member of Citizens and a resident of Suffolk County, I have a sincere and long-standing interest in the availability of safe, clean, efficient energy sources for Long Island such as the Shoreham Nuclear Power Station.
4. I live within 12 miles of the Shoreham Nuclear Power Station. My home address is 14 Beaver Brook Drive, Brookhaven, NY 11719.
5. My business/profession is nuclear physicist.
6. I favor the operation of the Shoreham Nuclear Power Station, in accordance with all appropriate Nuclear Regulatory Commission rules and regulations.
7. I authorize Citizens to represent my interests in the special NRC offsite emergency planning hearing.

Eugene V. Weinstock
NAME:

Subscribed and sworn before me
this 10 day of June, 1983.

Yvonne Renee Black
Notary Public

My Commission expires 2/30/85
YVONNE RENEE BLACK
Notary Public, State of New York
No. 3124488, Suffolk County
Term Expires March 20, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
LONG ISLAND LIGHTING COMPANY) Docket No. 50-322 (OL)
(Shoreham Nuclear Power Station, Unit 1)) (Offsite Emergency Planning)

AFFIDAVIT OF Thomas W. Morris

Under penalty of perjury, I, Thomas W. Morris, do hereby state and affirm as follows:

1. I am a member of the Citizens for an Orderly Energy Policy, Inc. (Citizens).
2. One of the purposes for which Citizens was founded was to establish, coordinate, and implement programs designed to promote the development of a rational energy policy for Long Island.
3. As a member of Citizens and a resident of Suffolk County, I have a sincere and long-standing interest in the availability of safe, clean, efficient energy sources for Long Island such as the Shoreham Nuclear Power Station.
4. I live within 3 miles of the Shoreham Nuclear Power Station. My home address is Gridley Road
Shoreham, N.Y. 11786
5. My business/profession is Physicist
6. I favor the operation of the Shoreham Nuclear Power Station, in accordance with all appropriate Nuclear Regulatory Commission rules and regulations.
7. I authorize Citizens to represent my interests in the special NRC offsite emergency planning hearing.

Thomas W. Morris
NAME:

Subscribed and sworn before me
this 16 day of June, 1983.

Patsy Dragone, Jr.
Notary Public

My Commission expires _____

PATSY DRAGONE, JR.
Notary Public, State of New York
No. 52-6094805
Qualified in Suffolk County
Term Expires March 30, 1984 ✓

APPENDIX 2

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
)
LONG ISLAND LIGHTING COMPANY) Docket No. 50-322 (OL)
) (Offsite Emergency Planning)
(Shoreham Nuclear Power Station, Unit 1))

REPLY OF THE CITIZENS FOR AN
ORDERLY ENERGY POLICY, INC. TO
THE NUCLEAR REGULATORY COMMISSION
STAFF RESPONSE TO PETITION TO INTERVENE

On June 29, 1983, the Nuclear Regulatory Commission (NRC) staff filed its response to the petition to intervene filed by the Citizens for an Orderly Energy Policy, Inc. (Citizens). The NRC staff concluded that the Citizens' petition should not be granted. Staff Response at 1.¹

In opposing Citizens' petition, the NRC staff asserted that: (1) no injury in fact has been demonstrated, (2) the interest asserted by Citizens is not cognizable under the Atomic Energy Act, and (3) that Citizens has not met the requirements for a late-filed petition. As is shown below, each of these arguments is without merit.

I

CITIZENS HAS DEMONSTRATED A PARTICULARIZED INJURY

Citizens agrees that a petitioner seeking to intervene in a licensing proceeding must demonstrate injury in fact. The NRC

¹ The Long Island Lighting Company (LILCO), the applicant for an operating license in this proceeding, and Suffolk County, an intervenor in this proceeding, did not oppose Citizens' petition. Citizens has received no other responses to its petition to intervene.

staff, however, argues that Citizens' petition to intervene asserts no more than a mere generalized interest in the issue of nuclear power. The staff has misread Citizens' petition.

Citizens, as an organization, does indeed have a general interest in the promotion of nuclear power as an energy source. As was discussed in Citizens' petition, the organization was formed for the purpose of establishing, coordinating, and implementing programs designed to promote the development of a rational energy policy for Long Island. See Citizens' Petition at 4. The members of Citizens share this interest. The basis for Citizens' standing to intervene in this proceeding, however, is not this general interest, but rather the specific injury the members of the organization will suffer should the Shoreham Nuclear Power Station not be allowed to operate. These specific injuries include the loss of an important and needed energy source, one which could be replaced by a less clean or a less environmentally sound facility. A discussion of Citizens' potential injuries was presented in its petition. See Citizens' Petition at 5-6.

The NRC staff also claims that proximity to a nuclear power plant demonstrates an "interest" only if one alleges he will be injured by radiation released from the facility. Staff Response at 5. The staff then states that living within close proximity of a proposed facility does not, in and of itself, indicate that a failure to license the facility will cause one harm. Id. Citizens disagrees. One who lives near a proposed nuclear facility can demonstrate the requisite interest by asserting a need and a desire

for clean, safe, and efficient energy sources in the vicinity. It is this interest which Citizens has asserted. See Citizens' Petition at 4-5.

II

THE PROMOTION OF NUCLEAR ENERGY
IS COGNIZABLE UNDER THE ATOMIC ENERGY ACT

Although the NRC staff claims that Citizens has not demonstrated a particularized injury, it later asserts that Citizens' interest is not within the "zone of interests" created by the Atomic Energy Act. Staff Response at 6. The staff states that allegations of economic interest as ratepayers and property owners would not confer standing. Staff Response at 7.²

The interest asserted by Citizens, however, is not economic, but rather that of having a nuclear power facility in the area to generate electricity. The promotion of nuclear energy as a power source is an interest cognizable under the Atomic Energy Act. The congressional findings and purposes as stated in the Atomic Energy Act make it clear that Congress intended not only to regulate nuclear power for the public health and safety but also to promote it as a power source. See 42 U.S.C. §§ 2011-13. Contrary to the staff's position, the Appeal Board has stated that avoidance of a threat to health and safety as a result of radiological releases

² Again the NRC staff has misread Citizens' petition. Neither Citizens nor its members have asserted, for the purposes of standing to intervene in this proceeding, an interest based on their ratepayer or property owner status.

is only one of the interests encompassed by the Atomic Energy Act. See Virginia Electric Power Company (North Anna Power, Units 1 and 2), ALAB-342, 4 NRC 98, 105 (1976).

The staff agrees that if a petitioner supporting a nuclear power plant alleges a particularized harm stemming from a failure to license a nuclear power plant and that the harm is within the zone of interests protected by the Atomic Energy Act, then that petitioner would have standing to intervene. Staff Response at 6 n.l. As discussed in its petition to intervene and above, Citizens has shown that it and its members would, in fact, be injured should the Shoreham Nuclear Power Station not be licensed to operate. This interest in having a nuclear power source available in the community for the generation of electricity is cognizable under the Atomic Energy Act. Consequently, Citizens has standing to intervene in this proceeding.³

III

CITIZENS' PETITION IS TIMELY

The NRC staff argues that Citizens' petition to intervene in this proceeding is untimely because the first notice of

³ If it is determined, based on its petition and this reply, that Citizens has no standing to intervene, then no petitioner could ever demonstrate standing to intervene in a licensing proceeding in support of a nuclear facility. The staff states its belief that a petitioner in support of a plant could satisfy the standing requirement, yet the theories the staff uses operate strongly against this eventuality. There is no basis in the Atomic Energy Act or the regulations which justifies the one-sided intervention process advocated by the staff.

opportunity for a hearing on the application for an operating license for Shoreham was published in 1976. Staff Response at 7.⁴ The staff does acknowledge, however, that the order establishing the instant hearing regarding the adequacy of LILCO's emergency plan in the absence of participation by Suffolk County was issued on April 20, 1983.

The NRC staff ignores Citizens' argument that because this special proceeding was established so recently, it could not have acted in a more expeditious fashion. While other intervenors may have indicated a desire to litigate emergency planning since the inception of the operating license proceeding, Citizens has not expressed a desire to litigate emergency planning contentions in general. Rather, Citizens wants to participate in the litigation of the issue of whether LILCO's plan, in light of Suffolk County's refusal to participate in the emergency planning process, is adequate. The need to litigate this particular issue did not arise until late April, 1983.

Even if Citizens' petition to intervene is considered to be a late-filed petition, Citizens has demonstrated that its petition should be granted based on the factors set forth in 10 C.F.R. § 2.714(a)(1). Although the NRC staff claims that the first factor of "good cause" was not addressed, Citizens did specifically discuss this factor in its petition. See Citizens' Petition at 14. To paraphrase its earlier discussion, Citizens has shown good cause for not filing earlier for the simple reason that

⁴ LILCO and Suffolk County also allege that Citizens' petition was late-filed.

the events leading up to this special emergency planning proceeding have only recently occurred. Moreover, the threat that the station may never be allowed to operate, because of Suffolk County's stance on emergency planning, has only recently come to light.

The four other factors should also be resolved in favor of Citizens. As the NRC staff acknowledged, when a petition to intervene has been filed late, the most important factor is whether the participation will broaden or delay the proceeding. Staff Response at 10, citing Detroit Edison Company (Greenwood Energy Center, Units 2 and 3), ALAB-476, 7 NRC 759, 761-62 (1978). In the Greenwood case, the Appeal Board found that the petitioner who filed late would not broaden or delay the proceeding, and that it would be "patently inequitable" to bar its participation on the basis of lateness unless "the three other factors weigh heavily in favor of rejecting the petition." Id. at 763. The staff did agree that the admission of Citizens as an intervenor would not delay the proceeding. Staff Response at 10.

The NRC staff also states that Citizens should provide "a bill of particulars" in support of its statement that it can provide expertise in its proceeding. Staff Response at 9-10. While it is unclear as to what a "bill of particulars" consists of in this context, Citizens is unaware of any case in which a potential intervenor was required to present such evidence. In fact, in the Greenwood case cited by the staff, the Appeal Board merely acknowledged that no "bill of particulars" had been filed

and that in a different situation "we might well have found that consideration dispositive." 7 NRC at 764. Should the Licensing Board decide, however, that a "bill of particulars" should be provided, Citizens will do so.

Next, the NRC staff argues that LILCO will advocate its plan to the fullest extent possible and therefore Citizens' position will not go unrepresented. Staff Response at 10. As discussed in Citizens' petition, however, the utility does not have the same interest or perspective as does Citizens. See Citizens' Petition at 10-11. With respect to other means which may exist for Citizens to protect its interest, the staff suggests that Citizens can argue its position on Shoreham offsite emergency planning directly to the Suffolk County government. Staff Response at 10. Citizens has taken this approach in the past to no avail. It therefore seeks to take the next step and to argue its position before the Licensing Board.

On balance then, if its petition is considered late, Citizens can demonstrate that it meets the requirements set forth for late intervention. It has demonstrated good cause for not filing at an earlier time, the absence of other means whereby the petitioner's interest will be protected, the ability of petitioner to assist in developing a sound record, the absence of other parties to further petitioner's interest, and the willingness of petitioner to "take this proceeding as it finds it." See 10 C.F.R. § 2.714(a)(1) and Petition at 13-14.

IV

CITIZENS' CONTENTIONS ARE WITHIN THE SCOPE OF THIS PROCEEDING

The NRC staff states that the Appeal Board has ruled that a petitioner in support of a license application can fulfill the contention requirement by merely asserting that the application is meritorious and should be granted, and later taking a position on the contentions posed by intervenors opposing the operation of the facility. Staff Response at 13. While this approach in no way challenges its position on intervention and is generally satisfactory, Citizens is willing and able to draft and litigate specific contentions.

With respect to this proposal, however, Citizens notes that in setting forth this scheme, the Appeal Board was speaking hypothetically and stated only in dicta its belief that if a petitioner who supports the license application were permitted to intervene, that petitioner could be allowed to merely take a position on contentions filed by other parties. Nuclear Energy Company (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 n.5 (1978). Citizens also notes that the intervention regulations which outline the one admissible contention requirement do not differentiate between parties which support and parties which oppose a facility. See 10 CFR § 2.714(b).

The contentions which Citizens has drafted, contrary to the staff's position (Staff Response at 13 n.3), are admissible in this proceeding. Citizens' Contention No. 1 primarily deals with the adequacy of a ten-mile emergency planning zone. The definition of an emergency planning zone is set forth in 10 C.F.R. § 50.4'(c)(2).

That regulation states that the emergency planning zone is "generally" ten miles in radius but can be modified on a case-by-case basis. In this contention, Citizens is merely arguing that the ten-mile emergency planning zone established by LILCO is adequate. This contention is not a challenge to the regulations. Similarly, Contention No. 2 challenges neither the adequacy of the source term nor the regulations. Rather, Citizens would attempt to show that by having a plan which assumes a particular source term, the public is well protected because the source term is quite conservative, i.e., the emergency plan which assumes this conservative source term is more than adequate to protect the public health and safety.

Contention No. 3 does not attempt to litigate the adequacy of Suffolk County's civil defense plan. The purpose of this contention is to challenge Suffolk County's erroneous conclusion that no radiological emergency plan can be prepared. Whether the civil defense plan is adequate in the event of an attack is indeed outside the scope of this proceeding, but is not the substance of Contention No. 3.

Finally, NRC argues that Contention Nos. 4 and 5 are "covered by Suffolk County's contentions." Response at 13 n.3. Citizens is at a loss to see how its contentions, which support the emergency plan, and Suffolk County's contentions, which seek to impugn the plan, can be considered as one. In essence, Citizens' contentions challenge the basis for Suffolk County's contentions and as such must be considered apart from Suffolk County's allegations.

For the reasons stated in its petition to intervene filed on June 14, 1983, and in this reply, Citizens respectfully requests that its petition to intervene be granted and that it be admitted as a party in this special proceeding to litigate the adequacy of LILCO's emergency plan.

DATED: July 12, 1983.

Respectfully submitted,

RONALD A. ZUMBRUN

SAM KAZMAN

LUCINDA LOW SWARTZ

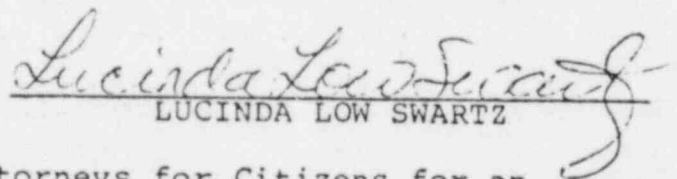
Pacific Legal Foundation

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Telephone: (202) 466-2686

By


LUCINDA LOW SWARTZ

Attorneys for Citizens for an
Orderly Energy Policy, Inc.

APPENDIX 3

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



Before the Atomic Safety and Licensing Board
In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station, Unit 1))

) Docket No. 50-322 (OL)
) (Offsite Emergency Planning)

DRAFT CONTENTIONS SUBMITTED BY THE
CITIZENS FOR AN ORDERLY ENERGY POLICY, INC.

Pursuant to 10 C.F.R. § 2.714(b) (1982) and the Licensing Board's Order dated April 20, 1983, the Citizens for an Orderly Energy Policy, Inc. (Citizens) hereby sets forth the contentions it seeks to have litigated in this proceeding. Citizens filed its petition to intervene on June 14, 1983, and although it has not yet been made a party, Citizens files these contentions now so as not to cause any delay in the proceeding.

Contrary to contentions set forth by Suffolk County and other intervenors opposing the Shoreham Nuclear Power Station, Citizens asserts that an emergency plan for the station can be developed to meet Nuclear Regulatory Commission (NRC) and Federal Emergency Management Agency (FEMA) standards, and to adequately protect the public health and safety in the event of an emergency at the facility. Citizens further asserts that the Long Island Lighting Company (LILCO) has, in fact, developed such a plan.

8306270280

This emergency plan developed by the utility and at issue in this proceeding will be referred to as the LILCO transition emergency plan.

Specifically, Citizens contends:

Contention No. 1:

The assumptions used by LILCO in developing the LILCO transition emergency plan are valid:

- (a) there are no unique geographical, meteorological, or population density features on Long Island which preclude the development of an offsite radiological emergency response plan that will adequately meet the requirements of the FEMA/NRC emergency planning guidelines;
- (b) the unique characteristics of the ten-mile emergency planning zone (EPZ) simplify, rather than complicate, the emergency planning process. For example:
 - (i) the 180° sector to the north is the open water of Long Island Sound;
 - (ii) most of the area in the Southeast and Southwest quadrants within five to seven miles of the station is relatively open land consisting of undeveloped parklands,

farmland, the Brookhaven National Laboratory (BNL) site, the Grumman Airport, and undeveloped pine barrens set aside in perpetuity;

- (iii) residential areas within five to seven miles of the station are characterized by low population densities--mostly single family homes on large plots interspersed with undeveloped plots or farms; and
- (iv) the more densely populated area generally lie close to the outer boundaries of the ten-mile EPZ.

Basis for Contention No. 1:

Other intervenors, particularly Suffolk County, have alleged that an adequate emergency plan cannot be developed for the Shoreham Nuclear Power Station or its environs. However, the distribution of the population in the ten-mile EPZ is advantageous to emergency planning, and contradicts the assertion that emergency planning is impossible. Moreover, Suffolk County's assertions regarding the impossibility of developing an adequate emergency plan for the county is contradicted by its own consultants' report.

NRC regulations provide for approximately a ten-mile plume exposure pathway EPZ, depending upon such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries. 10 C.F.R. § 50.47(c)(2). Citizens intends to show

that the plume exposure pathway EPZ used in the LILCO transition emergency plan is sufficient to protect the public health and safety. See Shoreham Nuclear Power Station Local Offsite Radiological Emergency Response Plan at page nos. 1.2-1 and 1.2-2 and Appendix A (Evaluation Plan) at Figure No. 3.

Contention No. 2:

The LILCO transition emergency plan is sufficient to protect the health and safety of Suffolk County residents. Over the past four years, the overwhelming body of scientific analysis has led to the conclusion that the source term used as the basis for emergency planning in the NRC guidelines is grossly overestimated. In turn, the consequences of class nine accidents have been overestimated and, in fact, the emergency planning requirements may not have to be as far-ranging as under present regulations. LILCO, however, has based its emergency planning assumptions, including the ten-mile plume exposure pathway EPZ, on the existing NRC guidelines. Consequently, the ten-mile EPZ used in the LILCO transition emergency plan is more than adequate to protect the public health and safety.

Basis for Contention No. 2:

Recent studies by the American Nuclear Society, the Electric Power Research Institute, the national laboratories, and the nuclear community indicate that the actual release of radioactive iodine gas and particulates from a degraded core accident would be considerably lower than the values that are currently assumed for emergency planning. NRC is also studying this

matter. Confirmation and application of these new data could significantly ease NRC requirements for emergency public alerting, logistic support, and protective actions. A ten-fold reduction in the assumed releases of radioiodines and radioactive particulates might be justified by current knowledge and additional reductions may be warranted by ongoing research. For the purposes of this proceeding, however, Citizens intends to show that the ten-mile EPZ used by LILCO (see Shoreham Nuclear Power Station Local Offsite Radiological Emergency Response Plan at page nos. 1.2-1 and 1.2-2 and Appendix A (Evacuation Plan) at Figure No. 3) is more than adequate to protect the public health and safety by demonstrating that the source term predictions have been overestimated.

Contention No. 3:

While Suffolk County claims that no emergency plan can be developed, the county has, in fact, developed a civil defense plan which is currently in place. One element of this plan involves preparing for a radiological emergency. Communication centers already exist which provide effective shelter, filtered ventilation, and emergency supplies to permit their uninterrupted functioning during radiological fallout incidents of far greater magnitude than could plausibly occur from a nuclear power plant accident. The Civil Defense force has trained police units, volunteer fire departments, and other volunteer groups in the use of radiation dosimeters and in decontamination procedures. Periodic drills have been held to test the Civil Defense Plan. Thus, Suffolk County has already demonstrated that adequate planning for a radiological emergency can be done.

Basis for Contention No. 3:

The existence of Suffolk County's civil defense plan demonstrates that planning for radiological emergencies is not only possible but actually is already in place, and needs only small modification to be made applicable to the Shoreham Nuclear Power Station.

Contention No. 4:

The volunteers used to implement the LILCO transition emergency plan are trained and available for mobilization in the event of an emergency at the Shoreham Nuclear Power Station. In addition, there are within Suffolk County many emergency volunteer forces which Citizens maintains could be trained, drilled, and mobilized in the event of a radiological emergency. Among these available volunteers are:

- (a) many qualified BNL staff members who are not regularly assigned to existing response teams but who are willing to provide volunteer services, on their own time, to train other volunteer forces, to participate in drills, and to respond in the event of emergencies; and
- (b) emergency units in Suffolk County such as fire departments, ambulance companies, Coast Guard Auxiliary units, National Guard units, and the American Red Cross. In the prior stages of emergency

planning for Shoreham, such units indicated their willingness to participate in emergency planning and drills for Shoreham. These units are frequently mobilized for non-radiological emergencies such as hurricanes and large forest fires, and have frequently demonstrated their ability to respond quickly, effectively, and reliably to public disasters.

Basis for Contention No. 4:

The LILCO transition emergency plan relies on volunteers in certain instances. See, e.g., Shoreham Nuclear Power Station Local Offsite Radiological Emergency Response Plan at Figure Nos. 2.2.1 and 2.1.2 and at page nos. 2.2-1 through 2.2-4.

The emergency response volunteer forces available on Long Island are numerous and effective. Such emergency personnel will be available to effectively implement the LILCO transition emergency plan for Shoreham. The inferences by Suffolk County officials that these volunteer units would fail to perform assigned emergency duties is without basis in fact.

Contention No. 5:

The Shoreham Nuclear Power Station enjoys a unique advantage in emergency planning because of the presence of BNL within the EPZ. BNL staffs the Department of Energy's Federal Radiological Monitoring and Assessment Plan (FRMAP) which provides

support for local radiological emergency response plans. The Department of Energy has specifically agreed to provide this support as part of Shoreham's Local Emergency Response Organization (LERO).

The nationally recognized FRMAP personnel located at BNL will perform radiological surveys and accident dose assessments, will serve as coordinators and team members for the environmental assessments and environmental surveys, and will fill the post of Radiation Health Coordinator under the terms of the LILCO transition emergency plan. This personnel would come to the LERO with specialized training and experience, including emergency duty at Three Mile Island and participation in emergency drills at other nuclear stations. LILCO can depend upon the BNL personnel to perform their assigned tasks as required in the event of an emergency at the facility.

Basis for Contention No. 5:

Other intervenors have alleged that LILCO will not be able to implement its plan in the event of an emergency. LILCO intends to rely in part on BNL personnel for support in an emergency. See Shoreham Nuclear Power Station Offsite Radiological Emergency Response Plan, Attachment No. 2.2.1 and Implementing Procedure No. 2.1.1. Citizens intends to demonstrate that LILCO can reasonably rely on BNL personnel.

Citizens is prepared to develop testimony and to fully litigate the contentions set forth above. These contentions are

within the scope of the proceeding and have been set forth with reasonable specificity as required by 10 C.F.R. § 2.714(b). Thus, Citizens respectfully asks this Licensing Board to admit these contentions.¹

DATED: June 22, 1983.

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¹ In accordance with the Licensing Board's orders, Citizens intends to discuss these contentions with LILCO and the NRC Staff. Final contentions will be filed in a timely manner.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

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Before the Atomic Safety and Licensing Appeal Board

In the Matter of)	OFFICE OF SECRETARY
)	DOCKETING & SERVICE
LONG ISLAND LIGHTING COMPANY)	BRANCH
)	Docket No. 50-322 (OL)
(Shoreham Nuclear Power Station, Unit 1))	(Offsite Emergency Planning)

CERTIFICATE OF SERVICE

I hereby certify that copies of "Notice of Appeal," "Brief of Citizens for an Orderly Energy Policy, Inc. in Support Of Its Appeal," and "Motion to Expedite Appeal" were served upon the following by first-class mail or, as indicated by an asterisk, by hand delivery on August 9, 1983:

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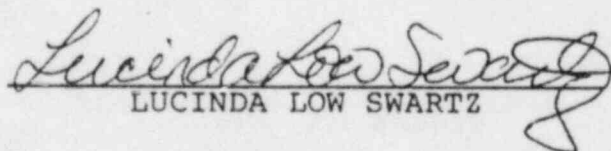
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