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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:

Morton B. Margulies, Chairman
Dr. George A. Ferguson
Dr. Jerry R. Kline

OFFICE OF SECRETARY
DOCKETING & RECORDS
BRANCH

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| In the Matter of |) | Docket No. 50-322-OLA-2 |
| LONG ISLAND LIGHTING COMPANY |) | |
| (Shoreham Nuclear Power Station, |) | (Possession Only License |
| Unit 1) |) | Amendment) |

SHOREHAM-WADING RIVER CENTRAL SCHOOL DISTRICT
AMENDMENT TO ITS REQUEST FOR HEARING AND
PETITION TO INTERVENE

Pursuant to the Atomic Safety and Licensing Board's ("ASLB") Memorandum and Order of March 6, 1991 ("March 6 Order") in the above-captioned proceeding, Shoreham-Wading River Central School District ("Petitioner") amends, by counsel, its request for hearing and petition to intervene in that proceeding by providing an affidavit from the President of its School Board and the person requesting representation by Petitioner addressing the injury in fact to its organizational interests and the interests of the person who has authorized it to act for him (attached) as well as detailing further herein contentions to be raised in this proceeding, as specified below.^{1/}

^{1/} Neither the Petitioner nor the person whom it represents allege an injury of a "political or ideological nature"; rather they allege injuries to their health and safety under the Atomic Energy Act ("AEA") and aesthetic and environmental injuries including an injury to the right to have their comments

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Petitioner agrees with the ASLB's March 6 Order that the overarching issue in this Shoreham proceeding is "whether the proposed amendment should be granted under the applicable law and regulation[s]." March 6 Order at 8. Petitioner also asserts that the specific aspects identified in its original petition and request for hearing in the above-captioned matter are subsidiary issues to the overarching issue identified by the Board.

When the Board issued its March 6 Order, it did not have the benefit of the Commission's decision in Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-91-04, 33 NRC ____ (April 3, 1991) ("CLI-91-04") where the Commission determined that "a claim that the amendments at issue are inseparable segment of an NRC action on something else -- such as the approval of a decommissioning plan -- and that approval of such a decommissioning plan requires an EIS, would normally be within the scope of the proceeding." CLI-91-04 at 4. The Commission further instructed the Board that "we did not intend to preclude the Licensing Board, as a matter of law and jurisdiction, from entertaining properly supported contentions

1/ (...continued)
considered in a NEPA review of the proposed actions. See Dellums v. U.S. Nuclear Regulatory Comm'n., 863 F.2d 968, 972 (D.C. Cir. 1988). Unless a hearing is held on the proposed license amendments and a NEPA review conducted and completed before any decision is made, the scientific and educational interests of the Petitioner and the person it represents as well as their health and safety interests will be harmed. Id. It should also be noted that the right to a reliable supply of electricity from the non-air polluting source of Shoreham will also be injured if the license amendments are approved. Those interests could be protected if the license amendments are denied.

that allege that an EIS must be prepared for the license amendment actions." CLI-91-04 at 4-5 (footnote omitted). The National Environmental Policy Act requires

that a federal agency contemplating a major action prepare such an environmental impact statement [to serve] NEPA's 'action forcing' purpose in two important respects. . . . It insures that the agency, in reaching its decision, will have available and will carefully consider detailed information considering significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision. . . . Publication of an EIS, both in draft and final form, also serves a larger informational role. It gives the public the assurance that the agency 'has indeed considered environmental concerns in its decisionmaking process,' . . . and, perhaps more significantly, provides a spring board for public comment,

Robertson v. Methow Valley Citizens Council, ___ U.S. ___, ___, 109 S.Ct. 1835, 1845 (1989) (citations omitted). Thus, the right to comment on the draft and final EIS is an interest protected by NEPA and since CEQ regulations require that comments on draft EIS be sought from, among other, "interested or affected persons or organizations," the Petitioner and the person whom it represents are persons whose interest in commenting is to be protected. 40 C.F.R. § 1503.1; Methow Valley, 109 S.Ct. at 1845 n.13. If the EIS process is not initiated at this point, the agency "may no longer have a meaningful opportunity to weigh the benefits of the project versus the detrimental effects on the environment. . . ." See Marsh v. Oregon Natural Resources Council, ___ U.S. ___,

_____, 109 S.Ct. 1851, 1858 (1989). Thus, the rights of Petitioner and the person it represents may be extinguished. These rights would be protected by starting the NEPA process now.

It is well established that the scope of the EIS is "not limited to on-site effects, but also, as required by Council on Environmental Quality ("CEQ") regulations, see 40 C.F.R. § 1502.16(b) (1987), [must address] 'off-site impacts that each alternative might have on the community facilities, socioeconomic and other environmental conditions in [Long Island].'" Methow Valley, ___ U.S. at ___, 109 S.Ct. at 1840. The effects required to be included here encompass also the "indirect effects" of the construction of fossil plants and transmission lines to replace Shoreham, including their effects on air and water quality, the health of citizens (including the person the School District represents), and the pattern of land use on Long Island. See 40 C.F.R. § 1508.8(b). The nexus between these effects and the proposal to decommission Shoreham is established by the Settlement Agreement of February 28, 1989 and the subsidiary agreements implementing it.^{2/} Without an environmental review at

^{2/} This NEPA review is required before issuance of the POL because (1) the NRC's Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG-0586 (August 1988)) does not cover facilities which have not reached "end of life" by age or accident, such as Shoreham, (2) the CEQ has rendered its opinion that an EIS is necessary before issuance of a POL and, as the Supreme Court has determined, CEQ's opinion is due "substantial deference", (Methow Valley, ___ U.S. at ___, 109 S.Ct. at 1849), and (3) it is clear that the decommissioning of Shoreham constitutes a "major Commission action significantly affecting the quality of the human environment." 10 C.F.R. § 51.20(b)(14). The Commission has not limited the need for an EIS to a situation where Petitioners show that alternatives would be
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this time, the Petitioner's rights to comment (and the Commission's duty to "have available and . . . carefully considered detailed information concerning significant environmental impacts" before decisions are made) would be violated. Methow Valley, __ U.S. at ___, 109 S.Ct. at 1845.

Since the Confirmatory Order, the amendments reducing in emergency planning and physical security, and the proposed POL are "all interdependent parts of a larger action and depend on the larger action for their justification" (i.e., the proposal to decommission) and since they are all cumulative actions "which when viewed with other proposed actions have cumulatively significant impacts," and "when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together," all of these individual licensing actions should be considered with in the "scope" of a single EIS on the proposal to decommission Shoreham. 10 C.F.R. § 1508.25 adopted in 10 C.F.R. § 51.14(b).

Further, since the Commission has decided that the Licensing Board, "as a matter of law and jurisdiction," should entertain and decide whether Petitioner has a right to an EIS in

2/ (...continued)
actually foreclosed; that situation was only used as an "example". Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-91-01, Slip Op. at 8; 33 NRC at ___ (January 24, 1991).

these circumstances,^{3/} this Board concomitantly has the responsibility to protect that jurisdiction by issuing an order forbidding the Staff from issuing any "decision on a proposed action, including the issuance of permit, license, or other form of permission," until the Board has issued that decision.^{4/} See 10 C.F.R. § 51.100(a)(1). Of course, if the Board should determine that an EIS is required, it should continue such an order in effect for the period required under 10 C.F.R. § 51.100(a). Petitioner requests such relief on behalf itself, its students, faculty, other employees and the person it represents.

Under the Atomic Energy Act ("AEA"), Petitioner also asserts the right to have assurance of the health and safety of its students, faculty and other employees for which it is responsible, including the person who has authorized Petitioner to represent him, Petitioner asserts that the removal of the requirements currently in the license with respect to the emergency diesel generator, county liaison, Brentwood Staffing, quarterly drills, physical security, and other technical

^{3/} Even if the Commission is correct in its limitation of the alternatives that an EIS could consider, no such limitation applies to the four other categories of consideration in an EIS: (1) environmental impact of the proposal, (2) unavoidable adverse environmental effects, (3) the relationship between local short-term uses man's environment and the maintenance and enhancement of long-term productivity, and (4) irreversible and irretrievable commitments of resources in the proposed action. 42 U.S.C. § 4332(2)(C). Thus, the principal purposes of an EIS can still be served and the Board should direct the NRC Staff to begin the process.

^{4/} The Staff appears to agree that 10 C.F.R. § 51.100(a)(1) applies to issuance of a POL. Staff Response at 11 (October 24, 1990).

specifications previously found necessary (whether the reactor was in an operating or non-operating mode) due among other things to the presence of large quantities of special nuclear material on the site would significantly increase the radiological risk to person and property represented and from that special nuclear material in derogation of personal and institutional health and safety. Petitioner further asserts that this injury to radiological health and safety (increased risks from evaluated and unevaluated accidents) would be remedied by a favorable decision denying the license amendments.

When the Shoreham license was originally issued, it was contemplated that there would, or at least could, be periods of time during the term of the full-power operating license when there would be no fuel in the reactor, as is the case with all power reactors. Nonetheless, the license did not contemplate that any of its conditions of the license or the technical specifications and environmental protection plan would not be operative during such defueled periods while special nuclear materials was onsite. The proposal of 22 license amendments (including total replacement of the technical specifications as a single license amendment) thus constitutes a "significant amendment which would involve an obvious potential for offsite consequences" by virtue of the significant reductions in safety margins to protect, among other things, against fuel pool and fuel handling accidents as well as sabotage through the

elimination of protection systems and procedures for onsite and offsite (e.g., emergency planning) safety.^{5/}

Petitioner also contends on its own behalf and that of its represented employee that, when combined with the increased risk of a radiological incident due to the reduced physical security and emergency plans, the elimination of license conditions and the Technical Specification requirements destroys LILCO's ability to assure a safe evacuation of the emergency planning zone in the event of a radiological incident, including an incident of radiological sabotage.

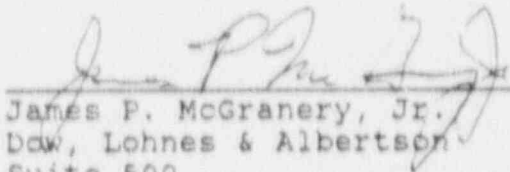
Finally, Petitioner specifies the issues of (a) whether the licensee furnished the Commission with a reasoned analysis about the issue of no significant hazards consideration complying with Commission's standards, (b) whether the 10 C.F.R. § 50.91(b) procedures were followed and in either case, if not, whether the amendment should be barred.

^{5/} The Board errs when it says that Shoreham "has not been used commercially." March 6 Order at 27. Shoreham has supplied electricity to 10,000 homes.

WHEREFORE, Petitioner renews its request for the remedies noted in the original petition, contends that the injuries resulting from the action which is the subject of this proceeding are likely to be remedied by a favorable decision granting the relief sought (including such other relief as the ASLB deems appropriate), and requests that the action be set down for hearing after a pre-hearing conference and appropriate discovery.

Respectfully submitted,

April 8, 1991


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