BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of	USNRC Docket No. 50-322
Long Island Lighting Company	License No. NPF-82 (Application for License Transfer)
(Shorham Nuclear Power Station, Unit 1)	(56 Fed. Reg. 11768, 11781, March 20, 1991)

SCIENTISTS AND ENGINEERS FOR SECURE ENERGY, INC.'S
COMMENT ON PROPOSED NO SIGNFICIANT HAZARDS CONSIDERATION
AND
PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR PRIOR HEARING

On March 20, 1991, the Nuclear Regulatory Commission ("NRC") published notice in the Federal Register that the Long Island Lighting Company ("LILCO"), full-power license of the Shoreham Nuclear Power Station ("Shoreham"), had filed an application to transfer its license to the Long Island Power Authority ("LIPA"). 56 Fed. Reg. 11768, 11781 (1991).

That notice describes the transfer application as a license "amendment request" to allow transfer of "ownership of the Shoreham license" to LILCO "upon or after amendment of the license to a non-operating status." Id. The notice then set forth the alleged basis for a proposed no significant hazards consideration determination. Id. at 11781-82.

The March 20, 1991 notice seeks public comment on the proposed determination and provides that "any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written

petition for leave to intervene" by April 19, 1991. Id. at 11786, Col. 2.

COMMENT ON PROPOSED NO SIGNIFICANT HAZARDS DETERMINATION

Scientists and Engineers for Secure Energy, Inc. ("SE_2") hereby submits this comment in opposition to the proposed no significant hazards determination made in connection with the proposed license transfer.

The so-called "Sholly" procedure whereby the Commission make a proposed no significant hazards consideration determination on a proposed license amendment and then makes that amendment immediately effective prior to a hearing upon issuance of a final determination does not apply to a license transfer application for a facility license issued pursuant to Section 103 or 104 of the Atomic Energy Act of 1954, as amended ("AEA"). First, it is clear that this Sholly procedure applies only in a case of an "amendment to an operating license. " 42 U.S.C. § 2239(a)(2) Second, Section 189 of the AEA recognizes a distinction between proceedings for "the granting, suspending, revoking or amending of any license or construction permit" and proceedings involving an "application to transfer control" of a license. See 42 U.S.C. § 2239(a)(1). This distinction is further recognized in the Commission's regulations which distinguish between applications for amendment of a license and applications to transfer control of a license. Compare 10 C.F.R. § 50.90 (amendment) with 10 C.F.R. § 50.80 (transfer of

licenses). In particular, the transfer of a license requires that the intended transferee "shall include as much of the information described in §§ 50.33 and 50.34 of this part with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license . . . ." 10 C.F.R. § 50.80(b). Further, the Commission's regulations state that "if the license to be issued is a Class 103 license, the information required by § 50.33a" shall also be included with the application. No such information has been provided on the antitrust aspects of the license transfer.[1/] Id.

Among the basic standards to be applied by the Commission in issuing a Part 50 license is a determination that the "applicant is technically and financially qualified to engage in the proposed activities in accordance with the regulations in this Chapter." 10 C.F.R. § 50.40(b).[2/] This conclusion is further reinforced by the Commission's Statement of Consideration on the Commission's Final Sholly Rule. Final Procedures and

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1/ This language in Section 50.80 further reinforces the fact that transfer is not truly a license amendment, but involves a "license to be issued."

2/ It is clear that consideration of LIPA's financial qualifications is necessary in this case, because LIPA is not "an electric utility applicant" since it neither "generates or distributes electricity [and does not recover] the cost of this electricity, either directly or indirectly through rates established by the entity itself or by a separate regulatory authority." Compare 10 C.F.R. § 50.40(b) with 10 C.F.R. § 2.4 ("electric utility").

Standards on No Significant Hazards Considerations, 51 Fed. Reg. 7744 (March 6, 1986). In giving examples of amendments that are considered "not likely" to involve significant hazards considerations, the Commission identified "A change to a license to reflect a minor adjustment in ownership shares among co-owners already shown in the license." 51 Fed. Reg. at 7751col 2 (emphasis added). Keeping in mind that these examples are examples only of "amendments" that are "considered not likely to involve" such a consideration, i.e., they may involve such a consideration, the obverse is surely true: When there is more than a "minor adjustment" in shares, or the ownership change is not "among co-owners already shown in the license," then the "amendment" should be "considered likely to involve significant hazards considerations." In this case, not only is LIPA not currently "shown in license," but the adjustment is not "minor", but total. The proposed no significant hazards determination is inappropriate in this case.

Previously, in assessing whether a license transfer involves significant hazards consideration when the ownership of the facility would remain unchanged, but the control and operational responsibilities were to be shifted from one named licensee to another, the NRC Staff found it essential to its decermination that the transfer "does not increase the probability or consequences of an accident previously evaluated" that there would be "no significant changes in the technical

qualifications of the site and corporate staffs to be provided for the operation of the [facility] since virtually the entire onsite plant operating staff and virtually the entire corporate technical and managerial staffs of [operator] previously associated with the [facility] will transfer to [the new operator]. Mississippi Power and Light Co., Middle South Energy, Inc., South Mississippi Electric Power Association; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing, 51 Fed. Reg. 39927, 39928col. 1 (November 3, 1986). The Staff's finding there that the license transfer would not "create the possibility of a new or different kind of accident from any accident previously evaluated" also depended on the fact that because the new operator would "operate the plant as its own agent using virtually the entire staff from [operator] previously involved in the operation of the" facility. Id. at 39928col. 2-3. The Staff also determined "the plant site and corporate staff in [the former operator's] nuclear production department will be transfered virtually intact to [the new operator], thus there will no significant reduction of base of experience of those operating the plant." Id. at col. 3. Not one of these determinations can be made with respect to the jerry-rigged management and operating staff that would be responsible for the Shoreham license if the application to transfer it to LIPA is approved. The proposed management and

staffing of Shoreham with LIPA as the license present new safety issues not assessed by the NRC previously.

At a minimum no final no significant hazards consideration determination may be made before the New York State Court of Appeals decides whether the agreements pursuant to which the transfer is being sought are valid. If the NRC allows transfer to occur before the New York Court of Appeals decides that the transfer is legally valid, the NRC could be in the position of having no licensee responsible for the Shoreham plant and its operation or decommissioning. That is, if the Court of Appeals decides the agreements are legally void that would nullify the transfer to LIPA and thus, the NRC license issued to LIPA would be void, since the Court would have decided that LIPA lacked the authority to seek that license. And at the same time, LILCO would no longer be the processor of an NRC license for Shoreham. The Shoreham plant would be an "orphan" facility with no one legally or financially responsible for it. The NRC simply cannot run that risk constant with its responsibilities for the health and safety of the public and the common defense and security.

On June 17, 1988, the Commission issued a Final Rule amending its decommissioning regulations. See, General Requirements for Decommissioning Nuclear Facilities, 53 Fed. Reg. 24018 (June 27, 1988). In the Statement of Consideration of that rule, the Commission addresses the "Licensing scheme for

decommissioning." Id. at 24024. Responding to commenters' queries regarding the type of license in effect during decommissioning, the Commission stated that it

> will follow its customary procedures, set out in 10 CFR Part 2 of the NRC Rules of Practice, in amending Part 50 licenses to implement the decommissioning process. . . . according to the amendments [of the decommissioning regulations], the overall approach to decommissioning must now be approved shortly after the end of operation rather than an amended "possession only" Part 50 license being issued without plans for ultimate disposition.

Id. (emphasis added) Thus, the Commission has interpreted its own rules to require approval of a decommissioning plan "shortly after the end of operation" and to preclude issuance of a "possession-only" in the absence of an approved plan for the "ultimate disposition" of the facility in question.

LILCO has repeatedly emphasized in its communications to the Commission that LILCO will never again operate Shoreham. LILCO has repeatedly alleged that it is legally prevented from operating the plant under the terms of the Settlement Agreement with New York State. LILCO has also repeatedly explained that it plans to transfer the plant to the Long Island Power Authority ("LIPA") or some other entity of New York State which will effect

the final decommissioning of the plant.[3/] LILCO has, therefore, clearly and repeatedly announced that it considers Shoreham to have permanently ended operation and that LILCO is working with LIPA to effectuate a surrender of the license and the decommissioning of the plant. The NRC regulation governing the implementation of this scheme is 10 C.F.R. § 50.82.

Section 50.82 provides that an application "for authority to surrender a license voluntarily and to decommission the facility "must be made within two years following permanent cessation of operations" and "(e)ach application for termination of license must be accompanied, or proceded, by a proposed decommissioning plan." 10 C.F.R. § 50.82(a) (1990). The exact date on which LILCO permanently ceased operations may be subject to dispute, but a conservative designation would have to be the point at which reactor defueling began in July 1989. Thus, the two year clock has been ticking for a year and three quarters now, but LILCO has not yet submitted a decommissioning plan.[4/]

Subsection (e) of Section 50.82 states that:

> If the decommissioning plan demonstrates that the decommissioning will be performed in accordance with the regulations in this chapter and will not be inimical to the

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3/ This bleating by LILCO should not be taken very seriously, because LILCO is merely making the noises which the agreements (illegally imposed on it) require LILCO to make and the legality of those agreements is now before the highest court of the State of New York.

4/ The LIPA submission is irrelevant because it is not the "licensee" plan.

> common defense and security or to the health and safety of the public, and after notice to interested persons, the Commission will approve the plan subject to such conditions and limitations as it deems appropriate and necessary and issue an order authorizing the decommissioning.

10 C.F.R. § 50.82(e) (1990)(emphasis added). Thus, a decommissioning order follows, or is contemporaneous with, approval of the decommissioning plan.

As noted above, the Commission has explained that "the overall approach to decommissioning must now be approved shortly after the end of operation rather than after an amended 'possession only' Part 50 license being issued without plans for ultimate disposition." Section 50.82 effectuates this "overall approach." The issuance of a proposed no significant hazards determination does not allow the Commission ignore the dictates of its own duly established regulations.

The "ultimate disposition" of the Shoreham facility has not yet been determined; and any such determination would be invalid unless made after preparation, and proper consideration, of a final EIS on the overall decommissioning proposal. There can be little doubt but that allowing a transfer of Shoreham to LIPA prior to completion of the NEPA process is forbidden by the NRC's own regulations because such a transfer would not only have adverse environmental impact, but it would also limit the choice of reasonable alternatives, since LIPA is forbidden by its statute from operating Shoreham and, is complied its statute to

decommission Shoreham. See 10 C.F.R. § 51.101(a)(1) & 51.100(a)(1) (1991).

Rather, because Shoreham has not reached the end of its useful life or suffered an accident, an EIS must be prepared in this case which evaluates the environmental impacts of, and alternatives to the plan to decommission Shoreham, and not just those of the method of of finally accomplishing decommissioning.

A final determination that the license transfer poses no significant hazards, therefore, is also fatally premature. The amendment itself cannot even be considered until the ultimate disposition of the plant has been formally proposed and approved. And the ultimate disposition of the plant cannot be approved without the preparation of an EIS evaluating the impacts of the proposed disposition and the alternatives to that disposition including operation or preservation.

Should the NRC once again ignore commenters' arguments, and choose to issue a final determination of no significant impact, commenters will not hesitiate to seek relief in the U.S. Court of Appeals for the District of Columbia Circuit. No lack-of-finality arguments will be tenable. Nor will it be unclear whether or not such a determination constitutes a "final order" under the Hobbs Act. The Court should have no difficulty recognizing the illegality of the Commission's actions should it render any part of the instant amendment request immediately effective. The Commission has repeatedly represented that it is

awaiting a request for approval of a decommissioning plan to trigger NEPA review; to now allow LILCO and LIPA to so blatantly sidestep submitting such a plan for Commission review when approval of such a plan is a prerequisite to license transfer would rise to the level of complete abdication of its responsibilities under the Atomic Energy Act and NEPA.

Other matters relevant to the no significant hazards consideration determination are discussed below.

PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR PRIOR HEARING

Scientists and Engineers for Secure Energy, Inc. ("SE_2" or "Petitioner") and its members would be adversely affected by this proposed license transfer and, therefore, pursuant to Section 2.714 of the Commission's Rules, SE_2 requests that it be granted leave to intervene as a party and that a hearing be held to consider the merits of the proposed amendment.

SE_2 views this license transfer as one part of the larger proposal to decommission Shoreham. Each step in the decommissioning proposal that moves Shoreham closer to a fully decommissioned state and further away from full-power operational status violates the dictates of the Atomic Energy Act of 1954 as amended ("AEA"), 42 U.S.C. §§ 2011 et seq. (1988), and the National Environmental Policy Act of 1969 as amended ("NEPA"), 42 U.S.C. §§ 4331 et seq. (1988). Thus, while the issues presented herein directly relate to the application for license transfer,

they necessarily include other unlawfully segmented actions taken and/or proposed[5/] by LILCO, and approved the NRC Staff, in furtherance of the decommissioning scheme.

5/ In Kleppe v. Sierra Club, the Supreme Court states that "when several proposals . . . that will have a cumulative or synergistic impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together." 427 U.S. 390, 410, 96 S.Ct. 2718, 2730 (1976).

I. STANDING OF PETITIONER TO INTERVENE

As the NRC Staff has stated the applicable law: To determine whether a petitioner has sufficient interest to intervene in a proceeding, the Commission has held that a licensing board may apply judicial concepts of standing. A petitioner must show that the action sought in the proceeding will cause an injury in fact and that the violation causing that injury is a violation of an interest protected by the AEA and/or the NEPA. Dellums v. NRC, 863 F.2d 968, 971-80 (D.C. Cir. 1988).

In addition, a petitioner must establish that the injury is likely to be remedied by a favorable decision granting the relief sought ("redressability"). Dellums, 863 F.2d at 971.

The Court has recognized, in the context of NRC proceedings, "that widely-held, non-quantifiable aesthetic and environmental injuries are sufficient to satisfy" the injury in fact test." Dellums, 863 F.2d at 972. Also, the Dellums' Court recognized that an organization satisfies standing requirements by showing

> that '(a) its members would otherwise have standing to sue in their own right, (b) the interests that it seeks to protect are germane to the organization's purpose, and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.' Hunt v. Washington State Apple Advertising Comm'n., 432 U.S. 333, 343, 97 S.Ct. 2434, 2441, 53 L.Ed.2d 383 (1987).

863 F.2d at 972.

In this case, SE_2 attaches hereto affidavits of Professor Miro M. Todorovich (its Executive Director), and its members Dr. John L. Bateman, Eena-Mai Franz, Dr. Stephen V. Musolino, Joseph Scrandis, and Dr. John R. Stehn, in which those members elect to have their interests represented by the SE_2 and allege violations of their rights under the AEA and NEPA together with allegations of how approval of the transfer application prior to completion of the NEPA process would injure their rights and the rights of SE_2 under NEPA to participate in the development of, and have the benefit of, an FEIS on the proposal to transfer the license, especially as part of the entire proposal to decommission Shoreham, and how approval of the transfer application would injure their rights under the AEA to have reasonable assurance of their individual health and safety, and SE_2's rights and responsibilities to assure the reasonable assurance of the health and safety of its members, because of affiants' beliefs that LIPA has neither the financial, technical nor managerial qualifications to become the licensee of Shoreham.

It should also be noted that if this transfer application is approved, many of SE_2's members will suffer great losses of services by Suffolk County and/or the Town of Brookhaven and increases in real estate taxes due to the loss of taxes on the Shoreham facility, which would be large and palpable harm to those members. Such economic injuries have been

recognized as independently satisfying the "injury in fact test" in the context of NRC licensing decisions. Dellums, 863 F.2d at 973 (a single individual's "inability to find work"). Further, it is clear that the conduct of the development of an EIS pursuant to Part 51 of the Commission's regulations, would avoid the injury to affiants' and SE_2 s rights under NEPA since it would afford them the opportunity to participate in that process and the benefit of the resulting FEIS. It is also clear that the denial of the application to transfer the license would protect affiants' rights to adequate assurance of health and safety under the AEA. And it is equally clear denial of that application for license transfer would avoid the above-mentioned loss of significant services and increases in taxes on SE_2 members.

Given these facts, SE_2 and its members satisfy the requirements for organizational standing, since affiants would otherwise have standing to intervene in their own right. The interests that SE_2 and its members seek to protect are germane to the SE_2's purposes and neither the claim asserted nor the relief requested requires the participation of the affiant members personally in the proceeding.

A key point here is that Shoreham's decommissioning is not a foregone conclusion. While LILCO and the State of New York wish to steer Shoreham towards decommissioning, the NRC has yet to formally approve any decommissioning plan and before any such approval (even of this unlawfully segmented application) may

issue, the NRC must complete an Environmental Impact Statement ("EIS") which includes consideration of the alternative of operating Shoreham.

Because the operation of Shoreham is a viable alternative, the consideration of which is essential to an informed decision, approval of this application before a final NRC decision on the decommissioning proposal would also increase the health and safety risk posed by the plant should the alternative of operation ultimately be pursued. Thus, the proposed transfer would adversely affect the radiological health and safety of Petitioner, and its members, and their property.

Petitioner's interests, as detailed below, will be protected, and the requirements and purposes of the AEA met, if Petitioner is allowed to intervene in a prior hearing held on this matter and the remedies sought by Petitioner are granted as a result of that proceeding.

LILCO's efforts toward de facto decommissioning without an approved decommissioning plan are a per se violation of the AEA and a direct health and safety violation. Until a properly informed decision on decommissioning has been reached, consideration of transfer of the license is premature and a violation of the health and safety provisions of the AEA.

LILCO has failed to maintain the reactor at a full operational level from the moment LILCO decided to decommission Shoreham, and this continuous refusal to abide by the terms of

its Operating License has severely increased the Petitioner's radiological health and safety risks. And the instant proposed transfer would only compound these present and future risks.

NEPA mandates preparation of an Environmental Impact Statement ("EIS") prior to agency decisionmaking on major federal actions significantly affecting the quality of the human environment. The EIS must consider, inter alia, the environmental impacts of, and the reasonable alternatives to, the proposal. Thus, NEPA ensures that agency decisionmaking not only includes environmental consideration, but also is structured in such a way that environmental consideration is meaningful.

SE_2 has determined that its responsibilities demand that it seek intervention in this instance in order to protect the interests of SE_2 and its members and their property.

SE_2's affiant members live and/or work within both the ten and fifty mile limitations used by the Commission to determine whether an intervenor expressing contentions under the health and safety provisions of the Atomic Energy Act has an interest sufficient to allow intervention.

SE_2 has an interest in protecting the health and environment of its members, who live and/or work in close proximity to the Shoreham facility, from both the possible radiological impacts of the proposed amendment and the adverse health and other environmental consequences of non-operation of Shoreham cognizable under NEPA, for example, the air pollution

produced by the oil and/or gas burning plants which would be necessary substitutes for Shoreham.

Furthermore, the SE_2's affiant members depend on LILCO to meet their electric energy needs. SE_2 has a vital interest in ensuring that an adequate and reliable supply of electricity will be available to meet its members' needs and that the electricity provided is available at reasonable rates. As a completed and fully licensed plant, Shoreham is presently capable of meeting the growing electric energy needs of the Long Island area. Actions to decommission the facility and build substitute oil or gas burning plants, on the other hand, delay any increase in the Region's electric energy production capacity, and also generate significant expenses which will inevitably be passed on to Long Island's ratepayers, including Petitioner and those whose interests it seeks to protect.

II. PETITIONER'S INTERESTS WOULD BE GREATLY AFFECTED BY THE TRANSFER

The proposed transfer violates the requirements of the AEA at the expense of the Petitioner's members right to reasonable assurance of radiological health and safety and circumvents their NEPA rights to timely environmental consideration of the decommissioning proposal, including its reasonable alternatives. Petitioner wishes to participate in each and every aspect of the hearing which touches and concerns these interests as well as the specific aspects identified below and in any amendment of this petition hereafter filed.

SE_2, on behalf of itself and its members, seeks leave to intervene and request a hearing to determine whether the transfer should be denied or deferred under the AEA. The specific aspects of the proposed action as to which SE_2 wishes to intervene are: (1) whether a grant of the proposed transfer would be arbitrary, capricious and/or an abuse of discretion pursuant to the Atomic Energy Act and the Commission's regulations, and subsidiary guidance thereunder; (2) whether, if a decision is made to operate Shoreham, the proposed transfer would totally frustrate or significantly delay and increase the cost of returning the plant to an operational mode; (3) whether the proposed transfer would constitute an irreversible and irretrievable commitment of the Shoreham resource; and (4) whether the transfer would allow deterioration and dismantling of

the facility, thereby undermining the reasonable assurance that full power operation, should it ultimately be pursued, would or could be conducted with consonant with the public health and safety and national defense and security, particularly the reasonable assurance of the Petitioner's protection (including their real and personal property) from the radiological hazards of operating the facility.

In deciding whether or not such steps should be allowed, the NRC is obligated to consider not only the immediate health and safety implications of proposed decommissioning actions, but also future such implications, the public interest in the plant as an operational entity, the national security and common defense interest in the operational plant, and finally, the environmental impacts of, and alternatives to, allowing a plant to be prematurely decommissioned. Until the NRC makes a final decision on the proposal to decommission Shoreham which includes a discussion of all of these issues and a fully articulated explanation of the reasons for the decision, license transfer is illegal under both the AEA and NEPA.

SE_2 also wishes to have full and fair NEPA consideration given the decommissioning proposal (of which the instant application is an interdependent part), including the need for power, the cost-benefit analysis of decommissioning, and the operation and near-term operation alternatives for Shoreham. Any actions in furtherance of the de facto decommissioning

proposal, including this proposed transfer, prejudice consideration of such mandatory NEPA analysis by, among other things, making the alternatives further away in time, more costly, and less likely in fact.

NEPA, as implemented in regulations issued thereunder by the Council on Environmental Quality ("CEQ") and the NRC, mandates that no major Federal action significantly affecting the quality of the human environment will be implemented without first receiving a full environmental review. As more fully detailed below, Petitioner's interests under NEPA will be protected, and the purposes and requirements of NEPA served, to the extent that such a NEPA review is conducted under the NRC Rules (including a hearing) and the remedies sought by Petitioner are granted in the proceeding. Petitioner's interests will be adversely affected should this petition or the relief sought herein be denied.

The remedies sought by Petitioner specifically include the correction of this presumptuous "decision" that the reactor will never return to full power operation, as well as a return to the mandates of the NRC's regulations under the AEA and NEPA which require maintenance of the full power license obligations until an informed decision is made with all appropriate environmental and economic considerations.

If a full NEPA environmental review is conducted, it may be that the factors which first led to the construction of

this $5.5 billion dollar reactor would lead relevant decisionmakers at the NRC and elsewhere to favor the continued utilization of this brand new facility and reject the decommissioning proposal. But issuance of a license for Shoreham to an unqualified licensee, such as LIPA, would constitute a failure to properly maintain and protect the facility in accordance with the full power Operating License during this interim period and could further erode the alternative of full-power operation by, among other things, increasing the costs, in time and money, of returning to full power operation.

The increased risks of radiological harm to Petitioner, its members, as discussed above, also constitute adverse environmental impacts and would also increase the risk that the choice of reasonable alternatives would be limited. The application to transfer the license presents the issue of an irreversible and irretrieveable effect starkly because LIPA is forbidden by its statute from operating Shoreham, and there is no provision for re-transfer of the facility to LILCO in the event that the New York Court of Appeals voids the agreement under which the transfer is taking place, or relevant decision-makers later decide that it would be appropriate under the AEA and NEPA for that facility to resume full power operation. As a result, approval of the proposed transfer is barred by 10 C.F.R. § 51.101(a) (1990) until a record of decision is issued following

completion of the required NEPA review of the decommissioning proposal. See also, 10 C.F.R. § 51.100(a)(1) (1990).

Intervention and a hearing on this proposed transfer, prior to its approval, addressing the aspects identified in this Petition, is the only avenue available to Petitioner before the NRC for protecting not only its own vital interests but also those of its members as to this NRC licensing issue at this time. The Petitioner must address each incremental, segmented step proposed by the licensee and the NRC Staff which would further advance the de facto decommissioning by the licensee in violation of the AEA and NEPA.

The violations of the AEA, by definition, increase the risk of radiological harm to those whose interests SE_2 seeks to protect, its members.

The violations of NEPA also deny Petitioner its rights to information on, and to participate in, the formulation of an environmental review of the impact of, and alternatives to, the ongoing decommissioning of the Shoreham facility.

Petitioner must address the de facto decommissioning at this time because LILCO obviously seeks to abrogate its obligations under its operating license before the NRC issues a final and fully informed decision on the decommissioning proposal, thereby both endangering the health and safety and other interests of Petitioner, its members, under the AEA, and jeopardizing the future viability of the reactor, and thereby

avoiding a meaningful environmental analysis pursuant to NEPA. Without Petitioner's active involvement, the NRC Staff and the licensee would simply continue to circumvent the law and regulations and thereby deny Petitioner, which is interested in the development of a complete record, the opportunity to have such full AEA and NEPA consideration before significant alternatives are, for all practical purposes, foreclosed.

Obviously, neither the NRC Staff nor the licensee appear to be in the least bit interested in representing the Petitioner's valid interests by complying with the requirements of the AEA and/or NEPA. Petitioner will bring to light the significant regulatory, health, safety and environmental issues which form the bases for its challenge to the proposed transfer and for all of the licensee's actions toward de facto decommissioning. These essential issues are required by law to be addressed, and by addressing them now in this action the Petitioner will hasten their examination and appropriate resolution by the Commission.

III. SPECIFIC ASPECTS AS TO WHICH PETITIONER SEEKS TO INTERVENE

A. Specific Aspects of the Subject Matter As To Which Petitioner Seeks to Intervene Under the AEA

Sections One, Two, and Three of the AEA set out the Declarations, Findings and Purpose of that Act which must guide the Commission's decisions pursuant to its substantive provisions. 42 U.S.C. §§ 2011-2013 (1988).

Section 2(e) of the Act explains that "utilization facilities are affected with the public interest." 42 U.S.C. § 2012 (1988). Petitioner submits that utilization facilities, such as Shoreham, are licensed to serve the public interest. In obtaining the benefits that result from the license to operate a plant, a licensee also shoulders the burden of maintaining the plant operational for so long as the licensee holds the license and the NRC determines that the public interest is best served by an operable plant.

The decision as to whether a plant shall be rendered inoperable then is not strictly for the licensee to make. While the plant may be privately owned, it was constructed based on strict regulations established on behalf of the public and with the understanding that it would serve the public for the duration of the plant's useful life unless the proper Federal authorities determine that it is in the public interest that the plant prematurely cease operation. Any such determination would have

to be based on proper health and safety, environmental, and common defense and security factors. Thus, the fact that LILCO and the State of New York may have determined[6/] that they wish Shoreham decommissioned is not the last word on the matter. The Commission must make a proper determination of the public interest, from local, state, and national perspectives weighing the environmental, economic, and other impacts and the alternatives before any operable nuclear plant is decommissioned. Such a determination has yet to be made in this case.

The particular aspects of the proposed amendment as to which Petitioner wishes to intervene under the AEA are, inter alia, as follows:

1. May the Commission approve transfer of the Shoreham licensee before submittal by the licensee, and approval by the Commission, of the "decommissioning plan" required by 10 C.F.R. § 50.82 (1990)? In this respect, Petitioner notes that the Statement of Consideration for the General Requirements for Decommissioning Nuclear Facilities (53 Fed. Reg. 24018, 24024 (June 27, 1988)) states that: "according to the amendments, the overall approach to decommissioning must now be approved shortly after the end of operation, rather than an amended 'possession-only' Part 50 license being issued without plans for ultimate disposition".

6/ Petitioner notes again that the issue of whether the LILCO agreements with various New York State entities are legally effective is currently before the highest court of that state.

2. May the Commission make a determination that LIPA is financially qualified without a prior hearing? In this respect, Petitioner notes that LIPA is not an "electric utility" thus requiring Commission consideration of its financial qualifications.[7/] Compare 10 C.F.R. § 2.4 with 10 C.F.R. § 50.40(b). Petitioner further notes that as of March 1991, LIPA had only $2.5 million but was spending $500,000 to study the conversion of Shoreham to natural gas, had commissioned a $300,000 study of "cost-effective energy savings on Long Island" and had "earmarked another $600,000 for energy efficiency demonstration projects in public buildings on Long Island." Further, reliance on LILCO as a source of funds for LIPA may not meet a reasonable assurance standard, because LIPA is currently opposing three LILCO rate increases and has announced its intention to oppose any LILCO cost recovery for decommissioning expenses which LIPA does not consider to be "reasonable".[8/] If LIPA is successful in its opposition to rate increases and cost recovery by LILCO, as it has been in the past, LILCO may not be a reliable source of funding for LIPA. Further, even LIPA's existence is in doubt, given the State's decision not to

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7/ Even a specific license for special nuclear material possession requires a finding by the Commission that "the applicant appears to be financially qualified to engage in the proposed activities in accordance with the regulations in this part; . . . ." 10 C.F.R. § 70.23(a)(5).

8/ It should be noted that LIPA was a party to the set of agreements which indicated prospective approval of the rate increases which LIPA now opposes.

appropriate any funds for LIPA this year and the reported movement in the New York State Legislature to abolish LIPA. See K. Wilson, "Heat on Alley Power Authority", Newsday (Long Island ed.) at 6, (March 11, 1991) (attached).

3. Is LIPA technically qualified to be the transferee of the Shoreham license? In this respect, Petitioner notes, among other things, that LIPA as of two months ago had no nuclear personnel on its nine person staff, but was attempting to obtain "some" such personnel from the Power Authority of the State of New York ("NYPA") on a "co-employee" basis where such personnel would be subject to direction from and the control of LIPA management, which is totally unschooled in any matters relevant to the health, safety or environmental issues vital to this Commission concern under the AEA.

4. Is LIPA managerially qualified to be the transferee of the Shoreham license? It is well established that NRC "enforcement action may be taken regarding matters that raise issues of integrity, competence, fitness for duty, or other matters that may not necessarily a violation of specific Commission requirements." 10 C.F.R. Part 2, App. C. (1991). A recent newspaper report states:

> Kessel says LIPA will oppose LILCO's rate request. Yet when federal regulators asked LILCO officials at a recent meeting in Washington whether anyone had opposed the company's rate hike request, Kessel, who was seated next to LILCO's lawyers said nothing, an omission he explains by noting that the

> question was not directed at him. 'There are times when you walk a very difficult line,' Kessel said 'and that was one of them'. Newsday at 28 (March 11, 1991) (attached).

This material omission seriously calls into question the integrity of LIPA's management and the NRC Staff's ability to rely on disclosures and assertions made by LIPA that are not made under an oath that the disclosure is the "truth, the whole truth, and nothing but the truth." E.g., Hudson Lighting and Power Co., (South Texas Project, Units 1 and 2), LBP-86-15, 23 NRC 595 (June 13, 1986) ("the duty of all parties (including the NRC Staff) to disclose to adjudicatory boards and parties information that may be relevant and material"). This demonstrated lack of candor with the NRC Staff on the admittedly important issue of LIPA's financial responsibility to be the Shoreham transferee demands a thorough examination of all other representations made by LIPA in connection with the transfer application in the course of a hearing prior to any approval of that application.

5. Would the transfer of the Shoreham license to LIPA and LIPA's activities under that transfered license create or maintain a situation inconsistent with the antitrust laws as specified in Subsection 105.a of the AEA? 42 U.S.C. § 2135(a). It is clearly established that § 105 of the AEA applies to license transfers even when the transfer results from a mere merger of the license holder with another entity. E.g., Pacific Power & Light Co.; Request for Public Comment on Antitrust

Concerns Pursuant to the Proposed Merger Between Pacific Power & Light Co. and Utah Power & Light Co., 53 Fed. Reg. 27,913 (July 25, 1988). Further, the Commission in making its determination on this issue is to consider, among other things, "such evidence as may be provided during the proceedings in connection with such subject matter" and, if its determination is "in the affirmative, the Commission shall also consider, in determining whether the license should issued or continued, such other factors, including the need for power in the affected area, as the Commission in its judgment deems necessary to protect the public interest." 42 U.S.C. § 2135(c)(5)&(6). Petitioner contends that the transfer of the license to LIPA would create a situation inconsistent with the antitrust laws specified in AEA § 105.a, would deny needed electric power in the affected area, and would be contrary to the public interest.

6. Does 10 C.F.R. § 50.80(b) require the submission of the report described in 10 C.F.R. § 50.75 as part of the transfer application? See, 10 C.F.R. § 50.33(k)(1). And if so, can the Commission approve the transfer application prior to its receipt and acceptance of the decommissioning report.

7. Are there factual issues as to whether the transfer would be inimical to the common defense and security or to the health and safety of the public?

8. Will the proposed activities serve a useful purpose proportionate to the quantities of special nuclear material or source material to be utilized and/or possessed?

B. Specific Aspects of the Subject Matter As to Which Petitioner Seeks To Intervene Under NEPA.

The proposed license transfer is one segmented part in implementation of a proposed major Federal action which, if approved, will significantly affect the quality of the human environment. Because preparation of an EIS and a final decision is required before any part of the decommissioning proposal may be implemented, the proposed license transfer is in direct violation of Section 102(2)(C) of NEPA and Petitioner's right to such NEPA review. Therefore, it cannot be approved prior to NEPA review of the whole decommissioning proposal.

Section 102(2)(C) of NEPA provides that, prior to making a decision to implement a "proposal" for a "major federal action significantly affecting the quality of the human environment," administrative agencies shall prepare an Environmental Impact Statement ("EIS") which evaluates, among other things, the "environmental impacts of" and the "alternatives to" the proposed action. 42 U.S.C. § 4332 (1982).

The Council on Environmental Quality ("CEQ") regulations, which are "binding on all federal agencies," further clarify the NEPA responsibilities of federal agencies. 40 C.F.R. § 1500.3 (1988). Among other things, those regulations (a)

mandate application of NEPA "at the earliest possible time to insure that planning and decisions reflect environmental values," (b) require that actions which are "interdependent parts of a larger action" be discussed in a single impact statement, and (c) prohibit actions which "limit the choice of reasonable alternatives" until the NEPA process is complete. 40 C.F.R. §§ 1501.2, 1508.25, & 1506.1. The NRC's own NEPA regulations, which closely parallel those of the CEQ, also prohibit any "decision on a proposed action" or actions, especially one tending to "limit the choice of reasonable alternatives," pending completion of the NEPA process. 10 C.F.R. §§ 51.100 and 51.101 (1989).

While the decommissioning proposal has been advanced by LILCO, a non-federal entity, the NRC's on-going supervision of that licensee's activities and the need for NRC approval of the various aspects of the decommissioning process make what otherwise might be a private action in another industry into a "major federal action." The NRC controls whether the decommissioning proposal may proceed and, therefore, has a non-discretionary duty under NEPA to ensure that neither the Shoreham facility, itself, as the relevant part of the environment under the supervision of the NRC, nor the alternatives to its decommissioning, are adversely affected by premature implementation of the decommissioning proposal. See 40 C.F.R. § 1506.1(b) (1988).

To date, the NRC Staff has failed to recognize this duty and, instead, has given LILCO tacit and explicit permissions to implement an ever increasing number of steps in the decommissioning proposal which have no utility independent of that proposal.

LILCO and the NRC Staff claim that no steps have been taken at Shoreham which are irreversible or constitute irretrievable commitments of resources. This claim is subject to significant doubt in view of the judicial interpretation of these concepts in the context of NEPA and the facts of this case. See Commonwealth of Massachusetts v. Watt, 716 F.2d 946, 953 (1st Cir. 1983) ("each of these events represents a link in a chain of bureaucratic commitment that will become increasingly harder to undo the longer it continues"); Sierra Club v Marsh, 872 F.2d 497, 500 (1st Cir. 1989) ("the harm at stake is a harm to the environment, but the harm consists of the added risk to the environment that takes place when governmental decisionmakers make up their minds without having before them an analysis (with prior public comment) of the likely effects of their decision on the environment").

For example, if the concepts of "irreversible" and "irretreivable" are stretched to their theoretical definitional limits, the same claim could be made even if the plant had been razed but "could be" rebuilt. The issue is not whether the plant, its equipment and its staff could someday be put back

together again, but rather over what duration and at what cost could the feat be achieved. That is: would approval of the proposed transfer increase the risk that the currently available alternative of operation might not be reasonably available when the federal decisionmaker finally addresses the question of whether or not to authorize decommissioning of Shoreham?

The farther away in time and expense LILCO and the NRC move the reestablishment of operational capability, the less likely it becomes that the alternative of operating Shoreham will be pursued. In the Spring and early Summer months of 1989, when LILCO made its intention to cooperate with New York State in a plan to decommission Shoreham plainly known to the NRC, the Shoreham plant sat ready for immediate full-power operation. As a fully licensed plant with a complete staff and fully functional equipment and systems, Shoreham constituted a valuable resource for the Long Island area in that it was capable of <u>immediately</u> generating electric energy.

The proposed transfer is another in a series of actions instigated by LILCO, to be approved by the NRC Staff, in furtherance of the decommissioning proposal. As such, the proposed transfer would make the intended benefit and purpose of Shoreham (the supply of 805 MWe in full power operation) more remote in time and less likely in fact. It would, therefore, violate NEPA and the Commission Rules (in particular, 10 C.F.R. § 51.101(a)(1) (1989)) if approved at this time.

The Petitioner first urged maintenance of the status quo (that is, full operational readiness at the Shoreham plant), pending preparation of an EIS and a final decision on the proposal to decommission the facility, in its Section 2.206 request filed in July 1989. Petitioner has reiterated the need for the Commission to take such action in supplements to the initial request and at meetings between the NRC Staff and LILCO management. The NRC Staff's response has continually been that, although an EIS will have to be prepared before decommissioning can take place, no proposal for decommissioning has yet been presented to the Commission.[9/] Petitioner disagrees with this proposition advanced by the NRC, and supported by LILCO, that the Commission's NEPA responsibilities are not triggered until the Commission receives a formal written application phrased as a license amendment application to allow "decommissioning."

At the heart of this disagreement is the definition of the term "decommission." The more limited the set of actions that constitute "decommissioning," the more actions LILCO can

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9/ The NRC has stated that while:

> decommissioning of a facility requires a license amendment necessitating the preparation of an EIS, such an amendment has not yet been applied for in this case. If the Commission issues a license amendment authorizing the decommissioning of the Shoreham facility, an environmental review will be performed . . . .

Interim Reply to the initial Section 2.206 Request (dated July 20, 1989) (emphasis added).

take which do not satisfy the definition and, therefore, do not trigger NEPA review. LILCO and the NRC ultimately premise their delay in initiating the NEPA process on the position that the licensee's current activities are "consistent with" its full-power license and that the term "decommission" only encompasses some narrow, but undefined, set of actions which will not be undertaken until appropriate authorization is given pursuant to a "formal" application to decommission some time in the future. This position ignores both the reality of the present situation and the definition of "decommission" found in Part 50 of the Commission's own Rules. 10 C.F.R. § 50.2 (1989).

The CEQ definition of "proposal" includes the statement: "A proposal may exist in fact as well as by agency declaration that one exists." 40 C.F.R. § 1508.23 (1988) (explicitly adopted by the Commission at 10 C.F.R. § 51.14(b) (1989)). A hard look at the reality of the present situation makes it abundantly clear that a decommissioning proposal exists "in fact" in this instance.

LILCO has entered into a Settlement Agreement, of unsettled validity, with various entities of the State of New York that represents a decommissioning proposal. The Agreement (which may be terminated by its own terms or voided by pending suits currently before the in state Court of Appeals) provides that LILCO will not operate the plant but will take steps to remove the plant from service in an effort to both reduce costs

and facilitate the transfer of the plant to an entity of New York State which will, in turn, take the final steps in the decommissioning process.

On several occasions, LILCO has made the terms of the Settlement Agreement known to the NRC. Furthermore, since Shoreham was removed from service, LILCO has sought NRC permissions in various forms including license amendment applications (some of which have been granted). Petitioner contends that those permissions implement stages of the decommissioning proposal outlined in the Settlement Agreement.

LILCO began by transferring the fuel from the reactor to the spent fuel pool. The NRC Staff found that this was not inconsistent with the terms of the operating license despite the fact that LILCO had no plans to replace the fuel and thus was defueling, an activity that is not anticipated in the Operating License, as opposed to refueling which is an activity addressed by the Technical Specifications. LILCO has also presented a plan to discontinue upgrading, maintenance, and operator training programs, and to drastically reduce the staff at the Shoreham plant, among other things. Despite the fact that Petitioner has argued that these actions are clearly inconsistent with the purpose and terms of the Operating License, the NRC Staff has made findings of consistency and allowed LILCO to go forward with these actions.

Following implementation of the destaffing plan, LILCO presented a plan for "system layup" of equipment and systems that make up the plant. Although LILCO holds a full-power Operating License and is, therefore, committed to maintaining the plant in safe and operational condition, the NRC gave LILCO explicit permission to pursue the layup plans.

In addition to these activities, LILCO has submitted several applications for relief from various requirements contained in the license, in the Technical Specifications, and in the NRC Regulations. All of these proposals are inconsistent with the terms of LILCO's full-power Operating License and various parts (including Parts 50, 51 and 73) of the NRC's regulations. The Settlement Agreement and LILCO's actions in pursuit of that Agreement have clearly put the NRC on notice that a decommissioning proposal exists "in fact" in this case. Thus, the NRC position (that it will not consider a proposal to decommission to exist until the licensee submits a formal application for a license amendment to allow decommissioning) is not tenable.

Aside from the reality of the situation which makes it abundantly clear that a proposal for decommissioning presently exists and is being prematurely implemented at the Shoreham plant, the Commission's own definition of the term "decommission" supports Petitioner's contention that LILCO's actions to date constitute decommissioning. The Commission Regulations define

"decommission" as meaning "to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits the release of the property for unrestricted use." 10 C.F.R. § 50.2 (1989)(emphasis added). Thus, under the Commission's definition, decommissioning is a continuing process beginning with actions to remove a facility safely from service and continuing through to actions to reduce the level of residual radioactivity at the site until it is released for unrestricted use.

The NRC Staff's argument that it has not yet received a decommissioning proposal is inconsistent with its own definition in that, although the licensee has not yet submitted an application for a license amendment explicitly denominated as a "Application to Decommission", LILCO has submitted several applications which are intended to further confirm[10/] the removal of the facility from service and which have no utility independent of decommissioning. Thus, an unauthorized decommissioning has, in fact, begun.

In the typical situation, when a plant is at the end of its useful life, by age or accident, there is no question whether the plant shall be operated further, and thus no decision whether

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10/ Among the considerations listed by the CEQ as indicative of the "significance" of the impacts of an action is "[t]he degree of which the action . . . represents a decision in principle about a future consideration." 40 C.F.R. § 1508.27(6) (1988). The proposed amendment, which implicitly rests on the premise that decommissioning is a foregone conclusion, therefore, represents such a "decision in principle."

to safely remove the plant from service. That occurrence is nothing more than a ministerial recognition of a fact which then initiates all licensee duties as to the "actual" decommissioning.

The Shoreham situation is anything but typical. Shoreham is at the beginning of its useful life and the initial step in decommissioning (safely removing the plant from service) cannot be ignored as inconsequential or unrelated to the process of decommissioning.

Moreover, the Settlement Agreement between LILCO and New York State exactly parallels the Commission's definition of "decommissioning" in that it outlines a plan for decommissioning that begins with LILCO's actions to remove the plant from service and anticipates that an entity of New York State shall take the final actions necessary to complete decommissioning of the plant, while LILCO is supposed to remain financially liable for those actions. The NRC Staff's present position, that the NEPA process is not triggered until a licensee submits an application explicitly denominated as an "Application to Decommission", ignores the fact that LILCO is presently taking actions further confirming the removal of Shoreham from service and, therefore, has not only begun decommissioning, but is aggressively implementing that proposal.

The proposed transfer violates Petitioner's rights under NEPA, and the NEPA regulations promulgated by the CEQ and

the NRC, both (a) to have decisions on interdependent parts of a proposal for a major federal action informed by a Final EIS evaluating the proposal as a whole and also (b) to have alternatives to a proposed action preserved pending the preparation of an FEIS and the issuance of a final decision on the proposal as a whole.

The proposed transfer is another step in the decommissioning process in that it not only implies that LILCO and the NRC view Shoreham's decommissioning as inevitable, but also makes the alternative of operation further away in time since refitting and requalification of the Shoreham facility could take considerable time and money.

The fully licensed and functioning Shoreham plant is not just the sum of its equipment and systems. Rather, Shoreham is the hardware and the personnel and procedures which allow it to operate and operate safely. Decisions which place such a resource at risk of adverse impacts and tend to limit reasonable alternatives cannot be made until the NEPA process is complete and, thus, the proposed transfer should be denied, or at least deferred, in accordance with NEPA's mandates.

Before this further step in the decommissioning plan is taken, an environmental evaluation of the decommissioning plan as a whole must be undertaken. The D.C. Circuit has stated that "NEPA creates a right to information on the environmental effects of government actions; any infringement of that right constitutes

a constitutionally cognizable injury . . ." Competitive Enterprise Inst., et. al. v. Nat'l Highway Traffic Safety Admin., No. 89-1278, slip op. at 28 (D.C. Cir. Jan. 19, 1990). Until an EIS has been prepared on the total decommissioning proposal, no part of that plan, including this proposed transfer, may be implemented.

In addition to failing to recognize this proposed transfer as yet another step in the inching implementation of the larger decommissioning proposal, the NRC has failed to prepare an environmental assessment for this amendment. Section 51.21 of the Commission's regulations states that "[a]ll licensing . . . actions subject to this subpart require an environmental assessment except those identified in § 51.20(b) as requiring an environmental impact statement, those identified in § 51.22(c) as categorical exclusions, and those identified in Section 51.22(d) as other actions not requiring environmental review." 10 C.F.R. § 51.21 (1989).

Assuming arguendo, that the proposed transfer may be considered a discrete action, distinct from the larger decommissioning proposal, it is not among those actions listed in Section 51.20(b) which require preparation of an EIS. Likewise, the proposed amendment is not among the actions listed in subsections (c) or (d) of Secton 51.22 which constitutes categorical exclusions from environmental review. Thus, Section 51.21 mandates proparation of at least an environmental

assessment ("EA") addressing the environmental impacts of, and alternatives to, this licensing action. Further, Petitioner requests an EA and also asserts that the proposed transfer involves unresolved conflicts concerning alternative uses of available resources. See 10 C.F.R. § 51.22(b) (1989). Even when the license transfer is only a "technical" transfer resulting from a corporate reorganization, such a transfer requires at least an environmental assessment. E.g., Philadelphia Electric Co., Public Service Electric & Gas Co., Demarva Power and Light Co., and Atlantic City Electric Co.; Environmental Assessment and Finding of No Significant Impact, 52 Fed. Reg. 12274 (April 15, 1987).

An environmental assessment is intended to provide a basis for a decision whether a proposed action merits preparation of an EIS or a finding of no significant impact. This determination hinges on whether the proposed action will or will not "have a significant effect on the quality of the human environment." 10 C.F.R. § 51.32(a)(3) (emphasis added); see also 42 U.S.C. § 4372(2)(c).

Thus, the level of environmental scrutiny a proposed action must undergo is determined by the "significance" of the action's environmental effects.

The CEQ regulations provide guidance as to the meaning of "'significantly' as used in NEPA." 40 C.F.R. § 1508.27 (1988). Among the factors listed by the CEQ to be considered by

an agency in evaluating whether a proposed action will "significantly affect the quality of the human environment" is:

> Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

40 C.F.R. § 1508.27(b)(7) (1988) (emphasis added). An environmental assessment of this proposed transfer must, therefore, consider the cumulative impacts of the proposed transfer and the other related actions which have or will be taken in furtherance of the decommissioning scheme.

Furthermore, the CEQ defines "cumulative impact" as:

> the impact on the environment which results from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7 (1988) (emphasis added). The proposed transfer cannot be isolated from the continuum of "past, present, and reasonable foreseeable future actions" in furtherance of decommissioning. Rather, a proper environmental assessment will necessarily consider the proposed transfer in the context of the decommissioning proposal which has been, and continues to be, implemented in a segmented fashion. Such consideration must

inevitably yield the conclusion that the piecemeal implementation of the individual steps in the decommissioning process cannot continue until an EIS evaluating the environmental impacts of, and alternatives to, the decommissioning scheme as a whole has been prepared and a final decision on that proposal made.

Petitioner has thus shown an injuries in fact that will result from the proposed transfer, including injuries which are within the zone of interests protected by NEPA, and that can be redressed by a decision not to approve the transfer and by granting the other remedies sought.

The particular aspects of the proposed transfer as to which Petitioner wishes to intervene under NEPA are, inter alia, as follows:

1. Does a proposal to decommission the Shoreham Plant exist "in fact"?

2. Would issuance of the proposed transfer prior to publication of an FEIS and a record of decision thereon violate the Commission's NEPA regulations, including without limitation, 10 C.F.R. §§ 51.100 & 51.101 (1989)?

3. Do NEPA, and the CEQ and NRC regulations promulgated thereunder, require that the licensee maintain all full power license conditions in full accord with readiness for operation at full power pursuant to its full-power Operating License, the Technical Specifications and licensee commitments thereunder, as well as the Atomic Energy Act, the regulations and

other normal NRC Staff requirements of a full power licensee, until such time as full NEPA review of the decommissioning proposal is completed and published and a decision on that proposal is subsequently made?

4. Does the proposed transfer require an environmental assessement ("EA") prior to becoming effective?

5. If the proposed transfer does require an EA prior to approval, what is the proper scope of that EA? That is, (a) should the EA be limited to the transfer as defined in the Notice, (b) should the scope of the EA also include all other pending and/or approved requests by the licensee for amendments to, exemptions from, and other permissions sought with respect to its full-power Operating License, which are pending at this time, or (c) should the scope of the EA include all other proposals in fact, currently pending before the NRC (for example, the decommissioning report, submitted by the licensees' SNRC-1713 dated April 16, 1990)?

6. Is the Staff's determination that an EIS is necessary for the decommissioning of Shoreham in its response to Petitioner's counsel dated July 20, 1989 determinative of the need for an EIS?

7. If the NRC Staff's July 20, 1989 determination of the need for an EIS is binding on the Staff, does NEPA require initiation of the EIS process at this time?

8. Does the Commission's apprcval of SECY-89-247 require the initiation of the preparation of an EIS beginning now?

IV. REMEDIES

The Petitioner seeks the following remedies:

1. An order permitting the Petitioner's intervention as to the subject of the captioned notice.

2. An order directing a hearing on the issues presented by the captioned notice as detailed in this petition as it may be amended.

3. An order requiring the NRC Staff not to issue the proposed transfer pendente lite to allow for an independent assessment by the Atomic Safety and Licensing Board of the issues identified herein.

4. An order consolidating this petition with the petition of Scientists and Engineers for Secure Energy, Inc. insofar as the two petitioners have common interests.

5. An order consolidating this matter with related matters pending before the Commission for which notices of an opportunity for hearing have been and/or will be issued with respect to Shoreham.

6. An order finding that there exists a proposal for the decommissioning of Shoreham, which is a major federal action significantly affecting the quality of the human environment and, therefore, ordering the licensee to prepare and submit an Environmental Report on the scope of that proposal (including, inter alia, the alternatives relating to full-power operation); and, further ordering, that all Shoreham proceedings not related

to enhancing full-power operation be held in abeyance pending the submission of that Environmental Report, the subsequent preparation and publication of a Draft Environmental Impact Statement by the NRC Staff and further proceedings culminating in the Final Environmental Impact Statement and hearings thereon.

7. An order requiring the NRC Staff and the licensee to furnish the petitioner's attorney with all future communications and/or governmental filings originated by those parties or either of them, by telecopy, express mail, or overnight courier, which communications relate to Shoreham and/or issues affecting Shoreham.

8. An order denying the transfer application.

9. If the Commission decides to issue a final determination of no significant hazards consideration, Petitioner requests the Commission to stay the effectiveness of the issuance of approval of the transfer application for fifteen (15) business days after publication of that final determination in the Federal Register to allow the Petitioner to seek relief pursuant to the Hobbs Act.

10. Order(s) granting such other relief deemed necessary and/or appropriate.

CONCLUSION

WHEREFORE, for the above-stated reasons, the Petition for Leave to Intervene should be granted, a hearing should be held prior to approval of the proposed Shoreham license transfer and the other remedies herein sought should be granted.

Respectfully submitted,

April 18, 1991

Professor Miro M. Todorovich
Executive Director

Scientists and Engineers for
Secure Energy, Inc.
Suite 1007
570 Seventh Avenue
New York, New York 10018

April 19, 1991

By:

James P. McGranery, Jr., Esquire
Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Suite 500
Washington, D.C. 20037
(202) 857-2929

Attorney for Petitioner
Scientists and Engineers for
Secure Energy, Inc.

In accordance with 10 C.F.R. §§ 2.708(e) and 2.712(b), service may be made upon the above-designated Attorneys for Petitioner.