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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
	)	
(Shoreham Nuclear Power Station, Unit 1)	)	
	)	

APPLICANT'S OPPOSITION TO SOC'S
REQUESTS FOR RENOTICING AND INTERVENTION

I.

On January 24, 1980, a so-called "Shoreham Opponents Coalition" (SOC) filed a 55-page document entitled "Petition of . . . SOC to Suspend Construction Permit for the . . . Shoreham Nuclear Power Station (Unit 1) and to Renotice Hearings in Docket No. 50-322, or in the Alternative, to Permit Late Intervention of SOC Pursuant to 10 CFR Part 2, Section 2.714." SOC's petition was sent to this Board and to the Commission itself, but not to the Director of Nuclear Reactor Regulation.

It appears that SOC wants either (a) the suspension of Shoreham's CP and (b) a renoticing of Shoreham's operating license proceeding, or (c) late intervention for itself in the OL proceeding. Thus, SOC says that objectives (a) and (b) are "in the alternative" to (c). Such an "in the alternative" is illogical, of course. If Shoreham's CP merits suspension, it

should be suspended irrespective of what happens to SOC's intervention petition. The same is true of any renoticing of the OL proceeding. The illogic of SOC's alternatives does, however, make apparent their motivation. Objectives (a) and (b) have been advanced, not because they are well founded, but simply as strawmen to make "late intervention" seem to be the lesser evil.

In our judgment, this Board has jurisdiction over SOC's renoticing and intervention requests. The Applicant opposes them for reasons noted below. The CP suspension request, on the other hand, should have been submitted to the Director of Nuclear Reactor Regulation. See 10 CFR § 2.206(a). The Applicant opposes such suspension in an attached, separate filing to the Director.

II.

Renoticing

SOC's arguments for renoticing Shoreham's OL proceeding center on the accident at Three Mile Island and the regulatory response to it. See Petition at 7-10. As such, the arguments are generic in nature. They have nothing specifically to do with Shoreham.[1/] No NRC adjudicatory body, including the Commission, has found that TMI and its aftermath justify a generic, across-the-board renoticing of pending licensing proceedings. And

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1/ As to the Shoreham specifics on page 17 of the Petition, see page 19 and note 12 below.

there has been ample occasion since TMI for such a finding if the Commission, Appeal Board or an ASLB had felt it necessary.

The renoticing of Three Mile Island Unit 1 does not assist SOC. It was premised on utility and site specific considerations. As the Commission stated:

> In addition to the other items identified for B&W reactors [which Shoreham is not], the unique circumstances at TMI require that additional safety concerns identified by the NRC staff be resolved prior to restart. These concerns result from (1) potential interaction between Unit 1 and the damaged Unit 2, (2) questions about the management capabilities and technical resources of Metropolitan Edison, including the impact of the Unit 2 accident on these, (3) the potential effect of operations necessary to decontaminate the Unit 2 facility on Unit 1, and (4) recognized deficiencies in emergency plans and station operating procedures.

Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-79-8, 10 NRC 141, 143-44 (1979) (emphasis added).

In the Shoreham context, then, SOC may not resort to renoticing to avoid the more demanding remedies available to it under 10 CFR §§ 2.206 and 2.714. If SOC thinks that TMI and its aftermath provide a pretext to suspend Shoreham's CP or to justify untimely intervention in Shoreham's OL proceeding, petitioner is free to so argue. Renoticing, however, is not an available means of absolution for SOC's untimeliness.

III.

Intervention

SOC wants to become a full participant in Shoreham's OL

proceeding 45 months -- over 3-1/2 years -- late.[2/] As indicated below, this desire cannot be reconciled with § 2.714's criteria for untimely intervention. We discuss petitioner's failure to meet each criterion, in turn.

Before beginning, the nature of the § 2.714 balancing process is usefully reviewed to emphasize the centrality of the first element in the balance -- good cause. Where no good cause is given for the untimeliness of an intervention request, "the petitioner's demonstration on the other factors must be particularly strong." Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-431, 6 NRC 460, 462 (1977) [hereinafter cited as Perkins]; see also Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975). In a situation such as this one, where the intervention request comes grossly out of time, the petitioner's burden is particularly great. Even though all of the factors of § 2.714(a) must be considered, "[i]n the instance of a very late petition, the strength or weakness of the tendered justification may thus prove crucial." Puget Sound Power and Light Co. (Skagit Nuclear Power Project, Units 1 and 2), ALAB-552, 10 NRC 1, 5 (1979). In a subsequent opinion, the Skagit Appeal Board reiterated that "petitioners for intervention who inexcusably miss the filing deadline by not merely months, but by several years, have an enormously heavy burden to meet."

2/ The time for intervention ran on April 19, 1976. See 41 Fed. Reg. 11367 (1976).

Puget Sound Power and Light Co. (Skagit Nuclear Power Project, Units 1 and 2), ALAB-559, 10 NRC 162, 172 (1979) (emphasis added).

(i) Good cause, if any, for failure to file on time

Petitioner has no good cause for its untimeliness. In an attempt to generate an excuse, SOC implies that not until the accident at TMI and its aftermath did petitioner's members sufficiently grasp Shoreham's dire implications to bestir themselves to seek intervention. See, e.g., Petition at 13-14. This strains belief.

A.

Counsel for SOC spoke for numerous anti-nuclear interests during the Jamesport proceeding, which ended long before TMI. While the present petition gives no meaningful indication of who SOC's members are, they very likely include many of the people represented by SOC counsel during the Jamesport hearings.3/ Significantly, these people opposed nuclear power per se, not

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3/ The recent formation of SOC, of course, in no way justifies late intervention. Good cause is not established by a showing that a group was not in existence prior to the deadline for filing. Boston Edison Co. (Pilgrim Nuclear Power Station, Unit 2), LBP-74-63, 8 AEC 330, 332-36, aff'd, ALAB-238, 8 AEC 656, 657 (1974); see also Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), ALAB-526, 9 NRC 122, 124 (1979).

[footnote continued]

simply nuclear power at Jamesport. It is well to quote a few passages from SOC counsel's October 26, 1977 and December 16,

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[footnote continued]

Moreover, it is well to note that press reports of SOC's imminent move to intervene circulated on Long Island for almost 4 months before the present petition was actually filed. See, e.g., Suffolk Times of Oct. 4, 1979:

> ISLAND COALITION SEEKS TO ENTER SHOREHAM CASE
>
> A coalition of Long Island environmental organizations is preparing to seek to enter upcoming federal licensing hearings on the Long Island Lighting Company's Shoreham nuclear plant project to demand that the plant not be allowed to operate.
>
> . . . .
>
> The coalition has retained the Riverhead law firm of Twomey, Latham and Schmitt, which specializes in public interest law.
>
> Stephen Latham, a partner in the firm, said: "We are convinced that the Shoreham plant has been poorly constructed and the defects in significant safety and other systems would lead to a nuclear catastrophe if the plant goes on line."
>
> Shoreham as a nuclear plant would be "a health, safety and economic hazard," he said. "We will work to see that the Shoreham plant never goes on line and that any one of the numerous alternatives to nuclear power be put in its place. We will be retaining leading experts in the field of reactor safety, waste disposal, nuclear economics and so forth, including MHB Technical Associates, with whom we have reached agreement to work with us on the intervention."

Apparently, no urgency attached to the filing of the petition in SOC's mind even after a decision to proceed had been made.

1977 briefs in the New York State Siting Board's Jamesport proceeding. Bear in mind that these briefs were filed at <u>least 15 months before TMI</u>. According to the October 26, 1977 document:

> Emerging truths slowly seep from the 30,000 pages of testimony: Lack of need, serious health effects, the compromised integrity of these supposedly failsafe nuclear reactors, and ultimately, the hidden financial and social costs that the residents of New York State will have to bear. Dr. John Gofman, PhD. and M.D. and Dr. Helen Caldicott, M.D. explained in layman's terms through their Limited Appearances in this proceeding (see appendix) just what such social costs would tally.

<u>Id</u>. at 4.

> A decision to certify nuclear power is unsupportable on any number of grounds.

<u>Id</u>. at 5.

These themes were developed further in the December 16, 1977 document:

> The record in these proceedings is replete with a variety of misrepresentations and naive assumptions regarding the economic and social costs of nuclear power. In our Initial Brief, we highlighted for the Board some of the more flagrant examples of this, such as unresolved design and operational problems; unresolved problems with the back end of the nuclear fuel cycle; absurd predictions of nuclear power plant capacity factors and the like . . . . The debate surrounding the comparative economic costs of nuclear power with other forms of electrical generation are critical issues, but they are no more critical than the potentially catastrophic health impacts attributable to radioactivity.
>
> In recognition of the seriousness of radiation health effects, the Farm Bureau offered the testimony of five experts in this field:

> Dr. Marvin Resnikoff, Dr. Irwin D. J. Bross, Dr. Arthur R. Tamplin, Dr. Jan Beyea, and Mr. Dale G. Bridenbaugh.

Id. at 63-64.

> The penalties for failing to adequately assess low-level radiation health effects will be severe: approximately 95% of the NRC's exposure reports occur in the so-called "safe" range under criticism by Dr. Bross, Dr. Tamplin and numerous other experts. Ultimately, the decision facing the Board in this case transcends questions of energy supply and the usual environmental considerations. Certification of nuclear power in the case will subject this and future generations to needless exposure to the perils of radiation.

Id. at 74-75.

> [T]he unresolved problems surrounding the waste disposal issue are themselves sufficient to preclude the licensing of nuclear facilities in New York State. But we urge the Board to go farther in its rejection of the nuclear option since there is a litany of reasons to support that conclusion. Whether the Board is primarily concerned with the waste disposal problem, health impacts, comparative economics of nuclear with other energy alternatives, or engineering design, the nuclear option cannot be justified.

Id. at 83.

SOC counsel's 1977 briefs covered a total of 362 pages, approximately half of them devoted to anti-nuclear arguments. Such arguments were given extensive coverage in the Suffolk County media from the fall of 1974 through the end of the Jamesport Siting Board hearings in September 1977 -- and thereafter. It is probable that no other place in this country, indeed on earth, was as bombarded with hardcore anti-nuclear rhetoric during the period in question as was Suffolk County. Under the

circumstances, it can scarcely be that SOC's moving forces developed their aversion to nuclear power only after TMI. Rather, they simply chose not to involve themselves in the Shoreham proceeding until it suited their convenience.

B.

Even then they dallied. SOC relies heavily on the accident at TMI as a "new development" justifying late intervention See, e.g., Petition at 20. But that accident occurred in late March 1979 -- almost 10 months prior to the filing of SOC's petition. Petitioner's members were undoubtedly aware of the accident from its inception. Still they delayed after TMI almost 10 times the period normally allowed for the filing of intervention petitions. In Perkins, above, a petitioner attempted to establish good cause by relying on the change of circumstances created by a United States Court of Appeals decision that significantly affected the Perkins site. The Appeal Board affirmed the Licensing Board's finding that there was no justification for untimely filing because the petitioner offered no explanation for waiting 9 months after the decision before filing his petition. 6 NRC at 462.

Seven other "new developments" are listed on page 20 of the Petition. Like TMI, they do SOC no good. The Lessons Learned Task Force (development 2) was formed in May 1979 and its initial report, NUREG-0578, was issued in July 1979. The Interagency Review Group Report on Radioactive Waste Management

(development 5) was published in March 1979. The "Lewis Report" (development 6) was published in September 1978. Table S-3 issues have circulated for years (development 7). Far too much time elapsed between these events and SOC's petition for the events to excuse petitioner's delinquency.[4/]

Nor do developments 3 and 4 assist SOC. Number 3 concerns Class 9 accidents. As the records of the Shoreham CP case and the Jamesport proceedings (federal and state) make clear, certain intervenors on Long Island have always (1) assumed the existence of Class 9 accidents, (2) dwelt in detail on the worst imaginable environmental, health, safety and other costs that might flow from such accidents, (3) factored these costs into the intervenors' overall cost-benefit judgments, (4) pressed these judgments on the decision-makers, and (5) either (a) flatly ignored the NRC conclusion that Class 9 risks are slight, given the low probability of the events in question, or (b) cited 10 CFR § 2.758[5/] as justification for disregarding this NRC conclusion on Long Island. Against this background, it is silly for SOC to pretend that its interest in litigating Class 9 matters is a post-TMI phenomenon. And, of course, SOC's implication that Class 9 matters have been inserted into the Shoreham proceeding by a NRC Staff statement about TMI is wrong. NRC policy on Class 9 matters will be resolved definitively in

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4/ SOC's factual errors in describing the "new developments" on page 20 of its Petition need not be corrected for present purposes.

5/ Cf. Petition at 55.

a reactivated rulemaking.[6] In the interim, existing Commission policy on Class 9 accidents remains in effect.[7] Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, ___ NRC ___, slip op. at 31 (Dec. 7, 1979).

Development 4 concerns emergency planning. As was true with Class 9 accidents, emergency planning is a traditional intervenor issue on Long Island. It was litigated at length during the Shoreham CP case and Jamesport proceedings (federal and state). At Jamesport, evacuation zones of the sort now contemplated by the NRC were considered. Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 and 2), LBP-78-17, 7 NRC 826, 853-55 (1978). Again, it is nonsense for SOC to suggest that recent regulatory flux has spawned its interest in emergency planning. More important, if mere changes in regulations were to be deemed good cause for late intervention, the requirement for timely participation would become meaningless

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6/ See 36 Fed. Reg. 22851 (1971) (proposed Annex to 10 CFR Part 50, App. D). The Commission has indicated that this rulemaking will be completed. See, e.g., Offshore Power Systems (Floating Nuclear Plants), CLI-79-9, 10 NRC ___, slip op. at 10 (Sept. 14, 1979).

7/ Existing NRC policy on Class 9 accidents is summarized in the 1971 proposed Annex to 10 CFR Part 50, App. D. That policy has not barred consideration of Class 9 accidents in individual licensing cases if special circumstances justified their consideration. See, e.g., Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 347 (1973); Long Island Lighting Co. (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831, 835 (1973); Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 209-23 (1978).

given the constant ebb and flow of NRC requirements.

Finally, the eighth event cited by SOC can scarcely be called a "new development." Suffolk County was admitted as an intervenor in 1977 with many contentions involving unresolved "generic" safety considerations. See Board Order of Mar. 8, 1978 (admitting County Contention 3a for discovery purposes). There is nothing new whatsoever about the consideration of relevant generic safety issues in individual licensing cases. See Virginia Elec. and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245, 247-49 (1978).

C.

Two other related points bear mention. If, as SOC alleges, "new developments" excuse petitioner's untimeliness, it would be reasonable to expect that SOC's proposed contentions would be closely related to these new developments. The discussion in Part IV below, however, makes abundantly clear that no such relationship exists. Rather, SOC's contentions closely resemble those filed by Suffolk County in 1977.[8/] Perhaps MHB Technical Associates wrote the factual aspects of both sets. In reality, SOC's concerns are not rooted in "new developments"

8/ It is striking that paragraphs 1-3 of SOC's reservation of rights, Petition at 54-55, are identical, except for the substitution of "Petitioners" for "Intervenors" and one clause at the end of paragraph 3, to the reservations included in paragraphs 28-30 of Suffolk County's Amended Petition to Intervene of September 16, 1977, at 31-32.

at all. They are Suffolk County's 1977 contentions reclothed in post-TMI language. SOC wants to recycle them because it dislikes the County's current experts and potential counsel. But distaste for the nature of a governmental entity's participation as a representative of the public interest does not excuse an untimely filing any more than reclothing old contentions in new verbiage does. See Duke Power Co. (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-440, 6 NRC 642, 645 (1977); see also Gulf States Util. Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 796-97 (1977), and pages 21-22 below.

SOC's reasons for seeking intervention 45 months late fail, both individually and collectively, to amount to a showing of good cause. The failure is gross. This, of course, does not preclude consideration of the other factors of 10 CFR § 2.714(a), Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-292, 2 NRC 631, 635 (1975), but it does place an "enormously heavy burden" on SOC to sustain its burden of proof on the remaining elements of the balance.

(ii) The availability of other means whereby the petitioner's interest will be protected

"Other means" do, in fact, exist. They are of two sorts: (1) means that are effective without the need for SOC to have party status in this proceeding and (2) SOC's association with one or both of the other two private intervenors in the proceeding who are opposed to Shoreham's receipt of an operating

license.

As to the first sort of means, SOC need not be a party to the OL proceeding in order to inform (a) the NRC's I&E Office and (b) this Board of any safety problems that SOC believes may exist at Shoreham. SOC may do so in whatever detail it wishes, and it may relentlessly pursue I&E and this Board to see that its concerns are investigated.9/

Moreover, much of what SOC is apparently interested in -- e.g., emergency planning, site criteria and Class 9 accidents -- are or will be the subject of rulemaking activity by the

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9/ E.g., under 10 CFR § 19.16, "any worker or representative of workers who believes that a violation of the Act, the regulations in the chapter, or license conditions exists . . . may request an inspection . . . ." (emphasis added). The regulations, require the Director of Inspection and Enforcement or Regional Office Director to review the complaint and take appropriate action. Section 19.17 provides for an appeal to the Executive Director for Operations. See also a recent amendment to 10 CFR Part 2, App A, § VIII (b):

> In an operating license proceeding the board will determine the matters in controversy among the parties, and where the board determines that a serious safety, environmental, or common defense and security matter was not raised by the parties, the board will determine such matter as being among the issues to be decided. Those issues will be specified in the notice of a hearing issued by the Commission, or in a prehearing conference order issued by the board in the exercise of its discretion during the hearing.

44 Fed. Reg. 67089 (1979) (emphasis added).

Commission.[10/] If SOC seriously wants to engage these issues, involvement in the rulemakings would be the most direct, effective course.

Turning now to Shoreham's OL proceeding itself, SOC's absurdly late bid for intervention need not be tolerated in order for its members, money, experts, lawyers and energy to be directly involved in the OL case. There are two private participants in the Shoreham case. Both intervened on time and both are opposed to Shoreham. They are the North Shore Committee against Nuclear and Thermal Pollution (NSC) and the Oil Heat Institute of Long Island, Inc. (OHILI).

According to NSC's intervention petition of April 9, 1976, the group --

> was formed in 1968 and is a chapter of the Lloyd Harbor Study Group Inc. [which opposed Shoreham's construction permit]. The North Shore Committee Against Nuclear And Thermal Pollution has in excess of 100 members, all of whom are residents of the Shoreham-Wading River area, in near proximity to the proposed Shoreham Nuclear Power Station. The North Shore Committee Against Nuclear And Thermal Pollution is acting on behalf of its members, their families and all other persons within the vicinity of the proposed Shoreham Nuclear Power Station . . . .

OHILI, in turn, in its petition of the same date, described

10/ See, e.g., 44 Fed. Reg. 75167 (1979) (proposed emergency planning rules); note 6 above (Class 9 rulemaking); Action Plans for Implementing Recommendations of the President's Commission and Other Studies of the TMI-2 Accident, NUREG-0660, Task II.A (Draft, Dec. 10, 1979) (proposing rulemaking on siting policy).

itself as --

> a trade association which represents more than three hundred home heating oil dealers maintaining their businesses within the counties of Nassau and Suffolk.

OHILI's alleged objective in this proceeding is --

> to protect the economic interest of its member-dealers and also . . . to protect its member-dealers and their employees and customers from the unresolved problems associated with the increasing use of nuclear power.

There is obviously a community of interest among SOC, NSC and OHILI, particularly between SOC and NSC. Indeed, NSC (with its membership drawn from Shoreham's immediate vicinity and its organic link to the Lloyd Harbor Study Group, Shoreham's oldest opponent) would seem quintessentially to involve the sort of people that SOC purports to represent. In fact, SOC claims that "many of [its] members reside within a mile or two of [the] plant." Petition at 28.

What are SOC's reasons for disregarding these groups? Petitioner simply ignores OHILI with no explanation, and it dismisses NSC for "not [having] taken the active role" that SOC envisages for itself. Petition at 16. SOC also expresses concern that the range of NSC's contentions is inadequate. There are two short answers to SOC's fears about NSC's alleged inactivity and its skimpy contentions.

First, SOC's members can surely associate themselves with NSC and pour any money, experts, lawyers and energy that SOC commands into the prosecution of NSC's opposition to Shoreham.

In other words, whatever SOC thinks it has to offer this proceeding can almost certainly be offered via an existing, timely intervenor.

Second, SOC argues that its intervention and its proposed contentions should be accepted because of "new developments." E.g., Petition at 20. But if these "new developments" are sufficient to give SOC even a colorable excuse for its grotesque untimeliness, then the developments would overwhelmingly provide a timely intervenor such as NSC with good cause to advance the contentions itself. That is, the prospect that a timely intervenor can successfully introduce additional contentions based on "new developments" is far greater than the likelihood that an inexcusably delinquent petitioner can do so. In this regard, during prior negotiations with LILCO and the NRC Staff, NSC has indicated an intent to attempt to supplement its existing contentions.

In sum, SOC does have "other means" for meaningful involvement with Shoreham that do not require discrete party status for its own organizational entity. These "other means" provide concrete, effective ways in which SOC may present and pursue its concerns. In some instances these "other means" provide better forums than the OL proceeding to engage SOC's claims -- e.g., resort to the NRC's I&E Office regarding alleged construction defects and resort to NRC rulemakings regarding emergency planning and the like. And for those issues best approached in the operating license proceeding, SOC can

join forces with NSC/OHILI, supplementing their resources with its own and relying on their superior capacity to seek the untimely acceptance of additional contentions.11/

(iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record

SOC says that it has already hired MHB Technical Associates and will employ other unnamed experts. If so, and assuming hypothetically that these people prove to be knowledgeable about Shoreham, they can bring their knowledge to bear as advisers to, and witnesses for, the existing private intervenors. See pages 15-18 above.

11/ According to the Appeal Board,

> the inquiry on the . . . ["other means"] factor is not whether other parties will adequately protect the interest of the untimely petition. Rather, it is whether there are other available means whereby that petitioner can itself protect its interest.

Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-292, 2 NRC 631, 647 (1975). Pages 22 and 27-31 below do indicate that SOC's concerns have been, and will continue to be, advanced by existing parties to the OL proceeding. That reality, however, bears on § 2.714(a)'s criterion (iv), not its criterion (ii). The latter is at issue here. Thus, it is well to repeat that pages 15-18 above do not suggest that SOC should rely on "other parties to adequately protect [its] interest," but rather that SOC can merge its resources with those of NSC/OHILI and thereby bring its money, experts, lawyers and passion directly to bear on the OL proceeding.

Petitioner also promises to "submit testimony of individuals with construction experience at the Shoreham plant in order to bring to the Board's direct attention the existence of safety defects and poor construction practices." See Petition at 25. But if SOC has such testimony, it should IMMEDIATELY present it to the NRC's I&E Office, as well as lay it before this Board.12/ SOC needs no party status to take remedial steps, as petitioner is perfectly well aware. To the extent that any such issues remain when hearings begin, again, they can be addressed via witnesses sponsored by NSC/OHILI with SOC's assistance.

Petitioner suggests as well that its "aggressive participation" is crucial to public confidence in Shoreham's safety. Id. As with all things, that is conceivable. The opposite is far more likely, however. Based on past experience, SOC would probably try its case principally in the media, in a fashion prone to create public fear via misleadingly selective or flatly erroneous use of the facts. Public confidence is rarely built

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12/ Page 17 of the Petition sets out what SOC seems to have in mind -- the Shoreham E&DCR's found in a dump last spring and testimony given during the trial of one of the trespassers at Shoreham last June. For reasons well known to this Board, the E&DCR's in the dump established nothing about the safety of Shoreham, though a good bit about the tactics of its opponents. See Applicant's Response of May 29, 1979; NRC Staff Response of June 12, 1979; Board Memorandum of Aug. 8, 1979 (summarizing E&DCR correspondence). The trial testimony, in turn, has been received by the NRC's I&E Office and witnesses have been interviewed by I&E inspectors. In our judgment, none of this testimony credibly indicates the existence of safety problems.

when people who are bitterly biased against an institution "investigate" its adequacy. Senator McCarthy's search in the early 1950's for communists at the State Department had numerous effects. Not included among them was heightened public confidence in that Department.

(iv) The extent to which petitioner's interest will be represented by existing parties

A.

To the extent that SOC actually has resources and vigor not possessed by the existing private intervenors and to the extent that its would-be contentions go beyond the present contentions of these intervenors, SOC properly questions whether its interests would be adequately represented by them. But the question has an answer. As noted on pages 15-18 above, SOC can join its resources and vigor with NSC/OHILI[13/] and rely on their superior capacity to create new contentions out of recent events. As previously noted, even if it is found that changed conditions do justify the admission of new contentions, an existing party, admitted in a timely manner, is a far more appropriate proponent than a stranger to the proceeding:

> The crux of public interest group intervention is not whether the interven[or's] interest

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13/ These parties are already a consolidated entity for purposes of the CL proceeding. See Board Order of Feb. 22, 1977, at 9.

> is adverse to that of existing parties, but whether its legitimate interests deserving recognition in the agency's decisional process are otherwise represented adequately in the hearing. If they are, the intervenor should be encouraged to assist the existing parties; to allow intervention in this situation may otherwise be wasteful, duplicative and unnecessarily burdensome on the hearing process . . . .

Boston Edison Co. (Pilgrim Nuclear Power Station, Unit 2), LBP-74-63, 8 AEC 330, 336-37 [quoting Gellhorn, Public Participation in Administrative Proceedings, 2 Recommendations and Reports of the Admin. Conf. of U.S. 376 (1971)], aff'd, ALAB-238, 8 AEC 656 (1974).

B.

To the extent that SOC suggests that the three public parties to the proceeding -- Suffolk County, the New York State Energy Office and the NRC Staff -- will prove either incompetent or venal, thereby ignoring crucial issues and sacrificing public safety, SOC merely underscores its pervasive bias. Very probably, nothing that these parties could do would be "adequate" in SOC's eyes other than action shaped in SOC's mirror image. In the real world, however, there is scant prospect after Three Mile Island that Suffolk County, the State Energy Office or the NRC Staff -- whoever their lawyers and experts are -- will not do their best to identify and pursue all significant safety issues. In this regard, it is well to remember that the State Energy Office as a § 2.715(c) party, has the

right to raise new issues without making the showings required by § 2.714(a), as of course does the NRC Staff and this Board itself.

C.

Finally, as Part IV below shows, SOC's would-be contentions overlap with those of existing parties, Suffolk County in particular. Thus, even if petitioner were to refuse to make common cause with NSC/OHILI, it is reasonable to assume that SOC's concerns would be litigated.

(v) The extent to which petitioner's participation will broaden the issues or delay the proceeding

SOC ignores the fact that the environmental, or NEPA, phase of this case has long since been completed. See Board Orders of Apr. 19, July 25 and Aug. 4, 1978.

SOC erroneously claims that only "informal discovery" has occurred so far in the case. Petition at 4. Formal discovery was set in motion during the second prehearing conference on October 11, 1977. The process has been lengthy. It has required frequent adjudication. See Board Orders of Feb. 28, Mar. 2, 8, Apr. 4, 19, 25, June 14, 19, July 7, 17, 24, Aug. 23, Oct. 12 and Dec. 12, 1978; Mar. 9 and June 20, 1979. Since SOC's consultant, MHB Technical Associates, was involved in much of this discovery, petitioner's disregard of it is particularly

disturbing. SOC's implication that real discovery will begin only after the SER appears is indicative of its near total disregard for the course of the proceeding since 1976.

Beyond the formal discovery just noted, much time and effort have also been devoted to informal discovery, negotiations and stipulations among LILCO, Suffolk County and the NRC Staff. Similar but more limited exchanges have occurred among LILCO, NSC and the Staff.

These exchanges have centered on the particularization of some contentions for litigation and on the resolution of others. Since the OL proceeding began in 1976, extensive work by the parties and significant adjudication by the Board have, in fact, gone into the definition of issues. See, e.g., Board Orders of Feb. 22, 1977; Jan. 27, Mar. 8, 29, Apr. 19, July 25, Aug. 4 and Oct. 27, 1978; June 28, Aug. 8 and Nov. 16, 1979; Jan. 7, 1980.

Now comes SOC, over 3-1/2 years late, and wants to (1) reopen the NEPA phase of the case and (2) proceed as if the definition of health-and-safety issues, discovery and particularization really have yet to get underway. True, some discovery and particularization of preexisting contentions may follow the SER's issuance. There may also be the identification of a few issues that could not reasonably have been known prior to that document's appearance. But this residual discovery and particularization will be the end of a long prior process, not the beginning.

Quite clearly petitioner would have it otherwise. See, e.g., SOC's "reservations" on pages 54-55 of its Petition. SOC has plans to spin out the prehearing process with every "new development" that it may claim to exist. So far as the hearings themselves are concerned, petitioner "reserve[s] the right to participate by offering evidence and cross-examining . . . in connection with contentions raised or placed into issue by other parties . . . ." Petition at 54. Although there is no such "right,"[14/] its blatant "reservation" by SOC speaks eloquently about petitioner's designs for the duration of the hearings.

Delay is inevitable because of SOC.[15/] Pointless disruption and redundancy can be minimized, however, by having SOC pursue the "other means" for vindicating its interests described on pages 13-18 above. Whatever SOC's desires to start the

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14/ To avoid possible misunderstanding, it should be stressed that we do not hold here that an intervenor may adduce affirmative evidence (or do anything else during the course of the hearing other than conduct cross-examination) with regard to an issue placed in contest by another party.

Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-244, 8 AEC 857, 869 n.17 (1974) (emphasis in original); see also Board Order of Jan. 20, 1976 in Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 and 2), Docket Nos. 50-516, -517, slip op. at 3-4 (denying discovery on issues not raised in a party's own contentions).

15/ A broadened scope for the proceeding is not, since SOC's proposed issues largely track those of existing parties. See Part IV below.

proceeding anew and extend its duration, petitioner's capacity to do so would be moderated by reliance on these means.

For the reasons set out in Part III, we believe that SOC has failed to make a persuasive case that it satisfies any of the § 2.714 criteria. And petitioner has utterly failed to make the powerful showing under criteria (ii) to (v) that it must make to sustain the "enormously heavy burden" imposed by its inexcusably late petition. Given these circumstances, there is no way to admit SOC as a party to this proceeding under even the most flaccid interpretation of NRC procedure. As spelled out above, however, there are "other means" by which SOC can meaningfully involve whatever resources and vigor it commands in the regulatory review of Shoreham.

IV.

Contentions

SOC has advanced twenty contentions, some of them multi-part. These contentions are unacceptable for one or more of the following reasons: failure to show any real relationship between the contentions and "new developments" that might justify their untimely acceptance; pointless duplication of contentions already raised by existing parties; inadequate particularization.

SOC's attempt to suggest that its contentions are inextricably tied to new developments is not successful. In addition to repeating arguments previously made to try to excuse its untimely petition, SOC also supports its contentions with a laundry list of "Recent NRC Documents and Studies." See Petition at 34-36. Heaviest reliance is placed on responses to the accident at TMI. But the alleged relationship between these responses and SOC's contentions is shadow not substance. SOC has simply taken issues that were readily identifiable several years ago and added TMI references to them. As to non-TMI items in petitioner's recent-document category, most have been available for a number of months at least. They span a period of two years (e.g., NUREG-0410, Jan. 1978). Moreover, with few exceptions, SOC's "recent documents" are relevant to Shoreham only in a general sense, since most of them are generic in nature.

SOC's contentions are also unacceptable because they copy contentions raised by existing parties. In other words, SOC could have raised its issues in 1976-77, like these parties did. By the same token, the addition of SOC's contentions to the issues already pending in this proceeding would produce little other than confusion and delay. The extent of the duplication between SOC's issues and the contentions of Suffolk County and NSC/OHILI is shown in the following table:

SOC Contention	Overlapping Contentions of Existing Parties[16/]	Comments
1. Site suitability	SC 4a(xiii) (interaction of structures and soil); SC 6b (site suitability); SC 16a (evacuation); SC 17a (site suitability); NSC/OHILI 7j (evacuation and emergency plan).	
2. Emergency Planning		
(i) operator action		Though not specifically raised by an existing party, covered generally by SC 8a(i) (control room arrangement and human error).
(ii) existing plans	SC 15a(ii) (federal, state & local agreements and plans); SC 16a (evacuation); NSC/OHILI 7j (evacuation and emergency plan).	
(iii) effective emergency action		Not a novel idea and no meaningful indication of relationship to new information; could have been timely raised.
(iv) adequacy of instrumentation	SC 4a(xiv) (monitoring during accidents); SC 15a(v), (vi) (post-accident monitoring).	
(v) public safety		Though not specifically raised by an existing party, covered generally by NSC/OHILI 7j (evacuation and emergency plan) and SC 15a(ii) (federal, state & local agreements and plans).

16/ For present purposes, it is not necessary to indicate the disposition of these contentions to date. The point here is that the existing parties in 1976-77 raised the same concerns that SOC waited until 1980 to advance. Moreover, if "new developments" suggest the propriety of reshaping (or in some instances, resurrecting) the contentions initially proposed by existing parties, these parties will have a far greater capacity to establish the requisite "good cause" than would SOC as regards its untimely contentions.

SOC Contention	Overlapping Contentions of Existing Parties	Comments
(vi) agreements	SC 15a(ii) (federal, state & local agreements and plans).	
(vii) emergency planning zones	SC 16a (evacuation); SC 17a(ii) (determination of exclusion area, low population zone and population center distance).	
(viii) health treatment	SC 15a(iv) (radiation treatment and decontamination facilities).	
(ix) public training program	SC 15a(viii) (public training and drills).	
(x) alarm and initiating system	SC 15a(ix) (offsite notification).	
(xi) medical supplies		Though not specifically raised by an existing party, covered generally by SC 15a(iv) (radiation treatment and decontamination facilities).
3. Accident Monitoring	SC 4a(vii) (compliance with Design Criterion 19); SC 4a(xiv) (monitoring during accidents); SC 15a(v), (vi) (post-accident monitoring).	Repetitive contention, see SOC 2(iv).
4. Human Factors	SC 8a(i), (ii) (control room arrangement and human error).	
5. ALARA	SC 5a(i) (equipment qualification); SC 20a(i), (ii) (ALARA).	
6. QA/QC		
(i) construction deficiencies	SC 5a(ii) (inspection and construction supervision); SC 5a(iii) (late implementation of quality program); SC 5a(xiv) (construction problems); NSC/OHILI 7b (technical qualifications).	
(ii) QA for non-safety items		Not a novel idea and no meaningful indication of relationship to new information; could have been timely raised.
(iii) design verification	SC 2a(i)-(vi) (design verification); SC 5a(i) (equipment qualifications); SC 5a(xvii) (design revisions); SC 5a(xviii) (suppliers).	
(iv) NDE/NDT records review	SC 5a(vi) (internal audits); SC 5a(xv) (test records); SC 5c(i) (10 CFR, Part 50, App. B compliance).	
(v) construction corrective action	SC 5a(xiii), (xiv) (non-conforming items); SC 5a(xvi) (construction problems).	

SOC Contention	Overlapping Contentions of Existing Parties	Comments
(vi) disposition of non-conformances	SC 5a(xiii), (xiv) (non-conforming items).	
(vii) vendor reporting & disposition of non-conformances	SC 5a(vi) (internal audits); SC 5a(vii) (welders records); SC 5a(xi) (incoming equipment); SC 5a(xvi) (construction problems); SC 5a (xvii) (design document revision); SC 5a(xviii) (suppliers).	
(viii) safety classification		Not a novel idea and no meaningful indication of relationship to new information; could have been timely raised. To the extent that safety classification is made in procurement of equipment, SC 5a(xix) (procurement documents) applies.
(ix) in-service inspection	SC 5c(i)-(iv) (in-service inspection); SC 13b (inspections).	
(x) design verification for safety/non-safety interface		Not novel idea and no meaningful indication of relationship to new information; could have been timely raised.
7. General Technical Issues		
a(i) pre-1979 issues	SC 3a(i)-(iii) (generic safety issues); SC 4a(i)-(xvii) (generic safety issues).	
a(ii) issues identified in 1979		New generic issues might provide good cause for new contentions if an existing party had previously raised generic issue contentions. But where a petitioner could have timely raised generic concerns and did not, mere additions to the list of generic issues provide little or no good cause.
b inadequate coverage of generic issues in FSAR	SC 3a(i)-(iii) (generic safety issues); SC 4a(i)-(xvii) (generic safety issues).	

SOC Contention	Overlapping Contentions of Existing Parties	Comments
c & d generic issue deadlines in FSAR and SER		Not a novel idea and no meaningful indication of relationship to new information; could have been timely raised. Even if raised in a timely manner, this contention would have been inappropriate since asbolute deadlines for resolution are not required. See NUREG-0410 at 5; Virginia Elec. and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245, 248 (1978).
8. Instrumentation	SC 4a(xiv) (monitoring during accidents).	
9. Operator Indicators	SC 4a(vii) (compliance with Design Criterion 19); SC 7a(ii) (remote shutdown); SC 8a(i) (control room arrangement and human error).	
10. Qualification of Non-Safety Equipment	SC 5a(i) (equipment qualification).	
11. Qualification of Non-Safety Systems	SC 5a(i) (equipment qualification).	To the extent that safety classification is made in procurement of equipment, SC 5a(xix) (procurement documents) applies; repetitive contention, see SOC 10.
12. Mark II Containment	SC 9a(i)-(iv) (Mark II); SC 9b(i)-(iv) (Mark II); SC 10a(i)-(v) (Mark II); NSC/OHILI 7g (Mark II).	
13. Anticipated Transient Without Scram (ATWS)	SC 7a(iv) (ATWS).	
14. Reactor Coolant Relief and Safety Valves	SC 12a(iv) (safety relief valves).	
15. Control Rod Life	SC 4a(xv) (control system failure); SC 12a(i) (control rod life); SC 13a(iv) (control rod drive materials).	
16. Emergency Core Cooling System	SC 11a(i)-(v) (ECCS).	
17. Protection System		Though not specifically raised by an existing party, covered generally by SC 8a(i), (ii) (control room arrangement and human error).
18. Fire Protection	SC 7a(i) (fires and explosions).	

SOC Contention	Overlapping Contentions of Existing Parties	Comments
19. Applicability of Regulatory Guides		Regulatory Guides have never been mandatory. Gulf States Util. Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 772 (1977). In any event, this issue could have been timely raised.
20. New Final Environmental Statement	NSC/OHILI 7a(i) (load growth); NSC/OHILI 7a(ii) (energy conservation); NSC/OHILI 7a(iii) (alternative sources); NSC/OHILI 7d (cost estimates); NSC/OHILI 7e (aquatic impacts); NSC/OHILI 7f (radioactive releases); NSC/OHILI 7h (fuel storage and transportation); SC 25; cf. SC 6a and SC Memorandum of October 6, 1977 at 5-7 (regarding how the NRC must comply with NEPA) and 9-12 (regarding the cost-benefit significance of alleged safety problems, including Class 9 accidents).	

Finally, SOC has not adequately particularized its contentions.17/ A petitioner who comes over 3-1/2 years late bears a heavy burden to arrive with well defined contentions. Broadly stated allegations that might be minimally tolerable in a timely filing will not suffice 45 months later. To admit such vague contentions would further aggravate the prejudice inherent in a petition filed so utterly out of time.

17/ See, e.g., Contention No. 1. General references to specified and unspecified documents give no indication of the Shoreham-specific issues that SOC wants to litigate. Contention No. 7. Reference to NUREG documents constitutes an attempt to incorporate contentions by reference, thereby "frustrat[ing] the requirement of § 2.714 for particularity." See Board Order of Jan. 27, 1978 at 18. This is an especially blatant example, since a number of generic issues apply only to PWR's. Contention No. 10. There is no specification of the "numerous systems" mentioned. Contention No. 12. It is not clear whether the new facts alleged are used merely to justify the contention or to limit the scope of the issue to be litigated. Contention No. 19. There is no indication of the Regulatory Guides with which Shoreham allegedly fails to comply.

V.

For all of the reasons above, SOC's petition for intervention should be denied.

Respectfully submitted,

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DATED: February 8, 1980

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

CERTIFICATE OF SERVICE

I hereby certify that copies of APPLICANT'S OPPOSITION TO SOC'S REQUESTS FOR RENOTICING AND INTERVENTION and APPLICANT'S OPPOSITION TO SOC'S REQUEST THAT THE SHOREHAM CONSTRUCTION PERMIT BE SUSPENDED were served upon the following by first-class mail, postage prepaid, on February 8, 1980:

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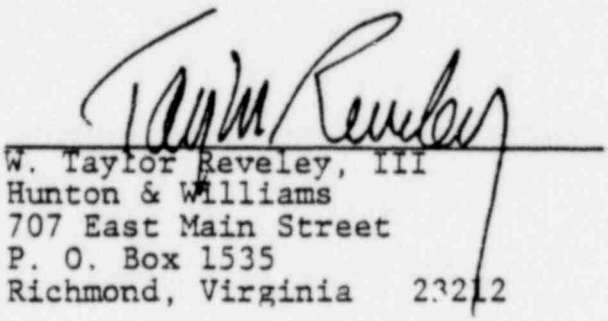

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