

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



BEFORE THE NUCLEAR REGULATORY COMMISSION  
AND THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of

LONG ISLAND LIGHTING COMPANY

Docket No. 50-322

(Shoreham Nuclear Power Station,  
Unit 1)

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ANSWER OF INTERVENOR NORTH SHORE COMMITTEE AGAINST  
NUCLEAR AND THERMAL POLLUTION IN SUPPORT OF THE  
PETITION OF SHOREHAM OPPONENTS COALITION

CAMMER & SHAPIRO, P. C.  
Attorneys for North Shore Committee  
Against Nuclear and Thermal Pollution  
9 East 40th Street  
New York, N. Y. 10016  
(212) 683-6790

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## I.

Pursuant to §2.714(c), Rules of Practice for Domestic Licensing Proceedings ("Rules"), Intervenor North Shore Committee Against Nuclear and Thermal Pollution (the "Committee") submits its answer in support of the petition to intervene of the Shoreham Opponents Coalition ("SOC"), dated January 24, 1980.

The Committee urges the Nuclear Regulatory Commission ("NRC") or the Board to grant SOC's application to intervene and either to re-notice the hearing or, in the alternative, to permit SOC to intervene as a party to this proceeding.

The Committee especially supports the request (SOC petition III) to suspend, or to initiate appropriate proceedings which may lead to the suspension of, the construction permit heretofore issued pending a thorough inspection of the serious and substantial allegations of shoddy and defective construction practices which jeopardize the safety of the plant.

## II.

Before showing that the petition fully meets the criteria in Rules §2.714(d)(1), (2), (3), the Committee wishes to comment on its apparent inactivity and to show why, given that inactivity, intervention by SOC is critical to insure the safety and well-being of the residents of Eastern Long Island

and to be certain that the Applicant complies with the new standards and regulations already adopted and proposed for adoption in the wake of Three Mile Island.

By order dated February 22, 1977, the Board granted the Committee's petition to intervene and allowed eight of the ten contentions set out in the petition. The Committee, however, then lacked the technical and financial resources to respond adequately and timely to interrogatories and other discovery requests from the Staff and the Applicant and to the Board orders relating thereto. Those defaults, which occurred long before the Committee retained its present counsel, resulted in the dismissal of all but the following two contentions: (i) the adequacy of the safeguards against terrorist and saboteur attacks on the plant, and (ii) the quality and substance of the procedures to notify and, if necessary, evacuate the residents of the communities near the Shoreham plant in case of an emergency.

The accident at Three Mile Island destroyed many conceptions of the nuclear power industry, the regulatory agencies, including NRC, and, most important, the general public about the safety of nuclear plants. The investigations into the causes and effects of that accident, some of which are referred to in SOC's petition, establish beyond argument that pre-Three Mile Island standards for the safe operation of

nuclear plants must be drastically revised. Indeed, it is not hyperbole to suggest that those standards are obsolete and that the lessons of Three Mile Island mandate considerably more stringent and exacting standards of safety than theretofore thought necessary by the experts.

The Committee is aware of these developments but lacks the technical and financial resources to develop and present these newly available crucial issues in this proceeding. SOC has the resources to do so and, on the face of the petition, it is the only party with the desire and ability to do so. The Committee therefore welcomes its intervention and urges the NRC or Board to grant its petition.

We add that the Committee does not intend to abandon its two remaining contentions and, subject to its ability to procure the resources, intends to pursue them at the licensing hearing.

### III.

Rules §2.714(c) directs a party which files an answer to a petition to intervene to consider the three factors enumerated in ¶(d) of that section. Such consideration establishes beyond doubt the merits of the petition.

The petition details the nature of petitioner's right to be made a party to this proceeding. SOC speaks for a

substantial group of organizations comprising residents of the area who will be directly, immediately, and drastically affected by the Shoreham plant. It presents contentions which directly and profoundly affect their safety, health, and well-being. The twenty contentions in its petition present issues which, in the light of Three Mile Island, require thorough airing and appropriate action by the NRC and the Board. SOC alleges that it has retained experts of national stature who are ready to testify on these contentions and its counsel represent that they are prepared to proceed expeditiously.

Petitioner's property, financial, and other interests in this proceeding are self-evident. The petition recites that the overwhelming majority of the members of the groups which comprise SOC are home-owners residing in Eastern Long Island. The value of their homes, frequently a family's major asset, will be directly affected by the standards which NRC will impose on the Applicant, the degree to which the safety of the Shoreham plant is improved and, above all, by the public perception of the steps taken by NRC to meet the public concerns about safety. If the questions of safety and freedom from nuclear plant accidents brought to the fore by Three Mile Island are not resolved, the prejudicial effect to the homes and other property of the members of the groups comprising SOC is likely to be disastrous.

Moreover, many of these members are employed in the eastern end of Long Island. Their livelihood may be jeopardized by the failure of NRC to impose adequate safety standards. If SOC's petition to intervene is denied, it will signal to the residents of the area and to the members of the Committee that the regulatory agency charged by Congress with protecting their safety has abandoned its obligation.

For all of the above reasons, it follows that any order entered in this proceeding will affect petitioner's interests and that the petition should be granted.

#### IV.

SOC's petition to intervene is a litmus paper test of the NRC's post-Three Mile Island attitude about the safe operation of nuclear plants. We anticipate that the Applicant's objections to the petition to intervene will center about untimeliness and lack of a proper interest.\* We do not wish to repeat the arguments in the petition that it is timely and that authorizing SOC to intervene will neither delay nor obstruct the proceedings. To the contrary, any possible merit in those objections must yield to the overriding necessity to be absolutely certain that the Shoreham facility presents no danger to the community of an accident, let alone a Class 9

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\* Given the concerns expressed in the petition, it would be inappropriate for the Staff to present such objections.

accident. The substance of the contentions presented by the petition may not and should not be left hanging unanswered because of a formalistic adherence to rules of procedure, important as they may be to orderly procedures. This is especially so where, as here, there will be no delay in the licensing hearing if SOC becomes a party to this proceeding. However, a delay, assuming one should occur, is a small price to pay for the assurance that the Shoreham plant will be a safe plant and one whose construction, safety, and design reflects what has been learned from Three Mile Island.

#### V.

NRC should suspend, or institute proceedings, which may lead to the suspension of, the construction permit which it has issued to the Applicant and conduct a thorough, painstaking and meticulous investigation into the allegations of faulty and dangerous construction practices of the Shoreham plant.

If the serious allegations of defective and flaw-laden construction practices which may jeopardize the health and safety of the residents are not investigated now, in all probability they never will be. The Applicant will be in a position to resist correction because of the length of time that has passed and the cost overruns which repairs may entail.

Suspension of construction at this juncture is the most prudent and, in the long run, the most effective course to follow.

In this connection, the melancholy history of The Lloyd Harbor Study Group Inc. v. United States Nuclear Regulatory Commission (U.S.C.A., D.C. Cir. No. 73-2266) is instructive. This litigation sought review of the order of the then Atomic Energy Commission granting Applicant's application for a construction permit to build the Shoreham plant on the grounds that the Commission (1) did not adequately consider the environmental impact of a Class 9 accident and (2) did not give adequate consideration to the incremental effects on the environment of the nuclear fuel cycle.

By order dated November 9, 1976, the Court of Appeals dismissed the first objection and remanded the second one to NRC for further consideration relying on NRDC v. NRC, 547 F.2d 633 (D.C. Cir., 1976), and Aeschlimar v. NRC, 547 F.2d 622 (D.C. Cir., 1976), decided earlier that year.

A subsequent controlling decision by the Supreme Court (Vermont Yankee Nuclear Power Corp. v. National Resources Defense Council, 435 U.S. 519 (1978)), overruled those precedents. The Supreme Court vacated the above-cited judgment of the Court of Appeals and remanded the action to that Court for further consideration in light of Vermont Yankee. Thereafter, and by order dated November 29, 1978, the Court of Appeals concluded that Vermont Yankee was consistent with its dismissal of the Class 9 accident allegation of the petition to review.

On the second objection, it directed NRC to promulgate a final fuel cycle rule and deferred its decision on the petition to review pending completion of the rule-making process.

On August 2, 1979, NRC promulgated a final fuel cycle rule (44 FR 45362). We understand that NRC has filed the rule with the Court of Appeals and that the petition to review is still sub judice.

We have reviewed the course of that litigation, although undoubtedly known to all concerned, because the Applicant proceeded with construction of the plant not knowing what changes in design or construction might be required to comply with standards, then unknown to it, now established by the final fuel cycle rule. Obviously, it must meet the revised impact values established by the rule irrespective of cost or delay.

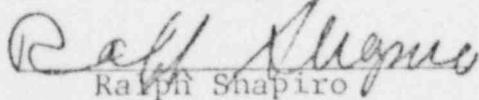
No less should be required for the assurance that there are no construction flaws. Considerations of cost or delay must yield to the overriding and compelling safety needs of the plant. These can best be met by granting the request of the Petitioner either to suspend the construction permit or to initiate proceedings which may lead to its suspension.

February 7, 1980.

Respectfully submitted,

CAMMER & SHAPIRO, P. C.

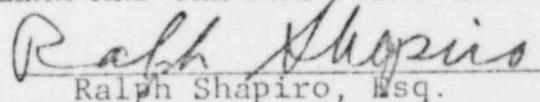
By:

  
Ralph Shapiro

Attorneys for the Committee  
9 East 40th Street  
New York, N. Y. 10016  
(212) 683-6790

NORTH SHORE COMMITTEE AGAINST  
NUCLEAR AND THERMAL POLLUTION

By:

  
Ralph Shapiro, Esq.

P. O. Box 231  
Wading River, N. Y. 11792