

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Elizabeth S. Bowers, Chairman  
Dr. Oscar H. Paris  
Frederick J. Shon

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

ORDER RULING ON PETITION  
OF SHOREHAM OPPONENTS COALITION

On January 24, 1980, Shoreham Opponents Coalition (SOC) filed a petition (SOC Petition) requesting (1) suspension of the construction permit for Shoreham and (2) issuance of a new notice of hearing, or, alternatively, (3) admission of SOC as a late Intervenor in the proceeding. On February 6, 1980, Intervenor Suffolk County (Suffolk) filed an answer (Suffolk Answer) supporting SOC's petition. On February 7, 1980, Intervenor North Shore Committee Against Nuclear and Thermal Pollution (Committee, also referred to in this proceeding as Consolidated Intervenors, CI), answered (Committee Answer) in support of the petition. On February 8, 1980, Long Island Lighting Company (LILCO) filed a response (LILCO Answer) opposing the petition. On February 13, 1980, the NRC Staff (Staff) filed its answer (Staff Answer) supporting the admission of SOC but suggesting that certain limitations be imposed on SOC's participation.

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With regard to SOC's request to suspend the construction permit (CP) and renotice a hearing, Staff and LILCO argue that we lack jurisdiction to suspend the construction permit and that SOC has not shown sufficient cause for this Board to renotice a hearing. We agree that the request to suspend the CP is outside our jurisdiction, and we need not, at this time, find with respect to renoticing a hearing, because we find that, with one exception, SOC has met the requirements for intervention.

A. Showing of Interest

SOC is represented to be an association of civic and environmental organizations with a membership in excess of 10,000 individuals, many of whom reside within 60 miles of the Shoreham Nuclear Plant (SOC Petition at 5, 28). SOC seeks to protect the health and safety of its members. (Id. at 12). Its petition, however, fails to identify any of the Coalition's members who live in the vicinity of the reactor, nor does it show that SOC is duly authorized to represent the legitimate interest of any members. It is well established that an organization asserting standing to intervene as the representative of its members must show that it has at least one member with the requisite personal interest; in addition there must be some concrete indication that the member wishes to have his interest represented by the organization [see Houston Lighting and Power Company, [(Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377 (April 4, 1979)].<sup>1/</sup>

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<sup>1/</sup> See page 3

We agree with Staff that this defect would appear to be readily curable (Staff Answer at 8). Staff suggests that SOC be required to submit "affidavits from several members indicating their proximity to the Shoreham nuclear facility, and their membership in appropriate organizations which constitute SOC." (Staff Answer at 8, emphasis added). We believe, however, that it is established that SOC must identify at least one individual who is a member of one of the organizations which has authorized SOC to represent it in this proceeding. That individual must confirm that he or she has authorized SOC to represent his or her interest, and the organization to which he or she belongs must confirm that it has authorized SOC to represent it in this proceeding.

In addition, it appears that SOC advances, as part of the foundation for its standing, the claim that it represents 20 civic and environmental groups with a combined membership of over 10,000 individuals, "virtually all of whom reside within sixty miles of 1/ (see page 2)

In Allens Creek the Appeal Board opined that for organizations whose sole or primary purpose was to oppose nuclear power in general or the facility at bar in particular "it might reasonably be inferred that by joining the organization, the members were implicitly authorizing it to represent any personal interest which might be affected by the proceeding." (p. 396, footnote omitted). In that case a specific representational authorization by a member might not be required.

While it is clear that SOC was organized to oppose the Shoreham facility, it is not clear that all of its adherent groups were organized for that purpose. (SOC Petition at 5) We cannot, therefore, presume that SOC has blanket authorization to represent the members of those organizations.

the Shoreham nuclear plant." (SOC Petition at 5). We believe that SOC should provide the Board and the parties to this proceeding reasonable verification that it is the bona fide representative of these organizations.

Accordingly, we direct SOC to (1) submit an affidavit from at least one member of an organization which has authorized SOC to represent it, which affidavit shall describe the location of the member's residence, work, or recreational activity in relation to the Shoreham reactor, shall confirm that the member has authorized SOC to represent his or her interest in this proceeding, and shall identify the organization to which the member belongs and confirm that SOC is authorized to represent the organization; (2) identify by name all of the organizations which it claims to represent and submit documentation from each of them to show that the organization has authorized SOC to represent it in this proceeding. The foregoing information shall be submitted as soon as possible but no later than 30 days from the date of this order.

B. Justification for Out-of-time Petition

SOC's petition for leave to intervene was submitted more than 3-1/2 years late.<sup>2/</sup> In considering untimely petitions, Boards must apply the criteria set forth in 10 CFR § 2.714(a)(1).

2/

The time for filing petitions to intervene expired on April 19, 1976. See 41 Fed. Reg. 11367 (1976).

We proceed now to that task.

The first factor (i) to be considered is whether the petitioner has shown good cause for the late filing. In this regard, SOC argues, inter alia, that developments within the past 12 months raise issues which it wishes to litigate, thus justifying its late filing. Among the developments listed are several related to the accident at Three Mile Island (TMI), viz., items 1-4 on p. 20 of SOC's petition. LILCO argues that the accident at TMI occurred more than 10 months ago and that SOC should have filed within 30 days of the accident.<sup>3/</sup> (LILCO Answer at 9). Staff, on the other hand, believes that TMI-related issues are sufficiently fresh to establish good cause. (Staff Answer at 12). Intervenors Suffolk and Committee likewise believe that issues arising from the TMI accident provide good cause for allowing SOC's late intervention. (Suffolk Answer at 3-4, Committee Answer at 3-4).

We agree with Staff and the Intervenors. LILCO's argument that SOC is 9 months late with its TMI-related issues is specious. Many of the documents concerning the TMI accident were not published until late 1979 or 1980, including the "TMI-2 lessons Learned Task Force Final Report", NUREG-0585 (to identify some others, NUREG/CR-1219, NUREG/CR-1270, NUREG-0632, and NUREG-0616). Indeed, cold shutdown of TMI-2, which might reasonably<sup>3/</sup> The accident at TMI began on March 28, 1979.

be considered to mark the end of the accident, was not achieved until April 27, 30 days after the accident started. Certainly the study groups which analyzed the accident were just beginning their work by the end of April, 1979. For these reasons we believe that the TMI-related issues which have been raised by SOC are sufficiently new to provide a basis for a showing of good cause for the late filing.

There is another issue which is fresh enough to contribute to good cause for late filing, although SOC has not so argued. SOC contends that safety-related construction defects which have been discovered at Shoreham in the past 12 months should be litigated (SOC Petition at 17, 25, and 46). LILCO argues that any evidence of construction defects should be presented to NRC's Office of Inspection and Enforcement (I&E) and pursued there rather than in this proceeding (LILCO Answer at 17). Staff, on the other hand, believes that this information is "sufficiently fresh to sustain an argument of good cause\*\*\*". (Staff Answer at 20). We agree with Staff. Construction defects which might affect the safe operation of Shoreham are cognizable in the OL proceeding, and any defects discovered in the past 12 months contribute to good cause for SOC's late petition.

Finally, two other elements in SOC's argument of good cause, the fact that half of its member groups have come into existence only during the past 12 months (SOC Petition at 19) and that it is dissatisfied with the performance of existing intervenors

(SOC Petition at 13), are successfully countered by Staff (Staff Answers at 9-10). Staff very adequately set forth the reasons for rejecting these arguments, and we need not repeat them here.

To conclude our discussion of the first factor, SOC has advanced contentions in two areas which are fresh for litigation: (1) TMI-related issues, and (2) recently discovered construction defects. These new developments provide an adequate basis for SOC's showing of good cause for its out-of-time petition. We find that factor (i) weighs in favor of the Petitioner.

The second factor (ii) to be considered in case of a late petition to intervene is the availability of other means whereby petitioner's interest may be protected. SOC's arguments on this factor mistakenly address the extent to which its interest will be protected by other parties to the proceeding (SOC Petition at 23), whereas the question is whether there are other means whereby the petitioner can itself protect its interest [see Long Island Lighting Company (Jamesport Nuclear Power Station, Units 1 & 2), ALAB-292, 2 NRC 631 (1975)]. LILCO argues that SOC can obtain relief by informing I&E of safety problems that it believes exist at Shoreham, by participating in rulemaking proceedings that are being or will be held on appropriate concerns, or by convincing this Board to raise the SOC issues sua sponte. (LILCO Answers at 13-15). The NRC Staff, on the other hand, simply

says, "\*\*\*there do not appear to be other means by which Petitioner's interest may be protected." (Staff Answers at 12). The Intervenors are silent with regard to this factor.

Applicant is correct in suggesting that SOC could address its concerns, at least in part, to I&E, but such a course of action does not offer SOC the participational rights it would have as an intervenor in this proceeding. SOC could also participate in rulemaking proceedings, but few of its concerns are subject to current or proposed rulemaking proceedings. Finally, while it is true that a Board has the authority and responsibility to ensure that any serious safety, environmental, or national security matter not raised by the parties are among the issues to be decided, we believe that this Board will be greatly aided in discharging its responsibility with respect to the matters raised by SOC if SOC is a full participant. Further, only by participating can SOC ensure that its views are adequately presented to the Board. For these reasons there appears to be no other means whereby SOC can adequately protect its interest. Consequently, we find that factor (ii) weighs in favor of Petitioner.

The third factor (iii) to be applied in considering a late petition to intervene is the extent to which the petitioner's participation may reasonably be expected to contribute to the development of a sound record. In this connection, SOC represents that

it has retained the firm of MHB Technical Associates to litigate certain contentions in this proceeding and says, further, that other experts will be retained depending on the nature of the contentions admitted. Petitioner also says that it will introduce testimony of individuals with direct knowledge of construction defects at the Shoreham facility. (SOC Petition at 24-25). LILCO answers by saying that representatives of MHB Technical Associates with knowledge about Shoreham could provide advice to or appear as witnesses for existing intervenors, though financed by SOC. (LILCO Answers at 18). With regard to construction defects, Applicant suggests that SOC should present any such testimony to I&E immediately as well as lay it before the Board, where it could be sponsored by existing intervenors with SOC's assistance. (Id. at 19). Staff believes that SOC has effectively argued that its participation will contribute toward development of a sound record through its presentation of expert witnesses. (Staff Answers at 12-13). Intervenors Suffolk and Committee agree. (Suffolk Answer at 5, Committee Answer at 5).

The parties to this proceeding, including LILCO, are in agreement that SOC has demonstrated that it will be able to contribute to the development of a sound record--although the Applicant would have them do so in some capacity other than as an intervenor. We reject the latter suggestion as irrelevant to our consideration of factor (iii). We, too, believe that it is

reasonable to expect SOC to contribute to the development of a sound record in this proceeding. Therefore we find that the third factor weighs in SOC's favor.

The fourth factor (iv) to be considered is the extent to which existing parties will represent the interest of the petitioner. SOC argues inter alia, that it intends to pursue new contentions in this proceeding which existing parties lack the resources or inclination to advocate. (SOC Petition at 24). LILCO argues that SOC can join its resources with CI (i.e., Committee) and suggests, further, that if new contentions are admitted it would be more appropriate for them to be sponsored by an existing party than by a stranger to the proceeding (LILCO Answers at 20). Staff argues that to some degree SOC's interest will be represented by existing parties, because other parties seek the same goal as SOC, i.e., assurance that Shoreham will be operated safely (Staff Answers at 13). Staff acknowledges, however, that SOC's interest is of necessity unique to some extent, as a consequence of which its interest cannot be precisely represented by existing parties. (Id. at 14). Intervenor Suffolk does not directly address the question of whether SOC's interest can be represented by the existing parties. (Suffolk Answer at 10). Intervenor Committee says it lacks the technical and financial resources to litigate TMI-related issues. (Committee Answer at 4).

Considering the foregoing, we believe that SOC's interest will not be adequately represented by the existing parties. Consequently factor (iv) weighs in favor of Petitioner.

The fifth factor (v) to be considered in evaluating a late petition is the extent to which admitting the petitioner would broaden the issues or delay the proceeding. SOC argues that the issues would not be broadened if it is admitted as an intervenor because the Commission, itself, has already raised the TMI-related issues. (SOC Petition at 25). SOC says, further, that it will not delay the proceeding, because the SER has not yet been issued, and it will follow the discovery schedule established after issuance of the SER. (Id. at 26). The parties to the proceeding seem to be in basic agreement that admitting SOC would broaden the issues and may delay the proceeding, but they differ with respect to the significance of these matters. (LILCO Answer at 22-25, Staff Answer at 14, Suffolk Answer at 5, Committee Answer at 7). We believe that Staff accurately summarized the situation when it said, "\*\*\*it is clear that Petitioner's participation in this proceeding will broaden the issues. It is also quite likely that this participation could delay the proceeding." (Ibid.). Staff goes on to suggest how the Board could mitigate delay by requiring Petitioner to take the proceeding as it finds it and restricting its participation to contentions which flow from fresh events. (Id. at 15).

We agree with Staff. Factor (v) cannot weigh in favor of Petitioner, but the Board can control SOC's participation so as to mitigate delay.

In conclusion, we have found that factors (i), (ii), (iii) and (iv) weigh in favor of and (v) weighs against Petitioner. The balance favors granting SOC's petition to intervene.

C. Contentions of SOC

In considering SOC's contentions we have accepted the suggestion of Staff on a means for mitigating delay. As LILCO correctly points out, formal discovery was set in motion long ago and has followed a tortuous path. (LILCO Answer at 22). If we were to allow SOC to retrace those steps, significant delay would almost certainly result. Therefore, assuming Petitioner successfully cures the defect in its petition and is admitted to intervene, SOC's direct participation will be limited to new issues relating to the accident at TMI or to recently discovered construction defects.<sup>4/</sup> Contentions which duplicate those of existing parties or otherwise replot old ground, or which relate to matters that properly could have been raised at the onset of this proceeding, will be denied.

4/

By "direct participation" we mean the presentation of a direct case. SOC retains the right, of course, to engage in cross-examination on issues placed in controversy by other parties pursuant to and as limited by Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 & 2). ALAB-244, 8 AEC 857, (1974); reconsideration denied, ALAB-252, 8 AEC 1157, (1974); affirmed, CLI-75-1, 1 NRC 1 (1975)

1. Site Suitability (SOC Petition at 37)

This contention relates to a number of matters which require separate determination. The issues relating to the "NRC Seismic Qualification Review", "the Long Island water table", and "population density" are old and are therefore not acceptable. The issue of "Emergency Planning" for evacuation duplicates an issue raised in Contention 2 and is dealt with, infra, by us.

For the foregoing reasons, Contention 1 is dismissed in its entirety.

2. Emergency Planning (SOC Petition at 37)

This contention focuses on a number of matters related to emergency planning, only one of which is sufficiently fresh to warrant consideration for acceptance. The acceptable element is (vii), "Adequacy of emergency planning zones including the area encompassed by (theoretical) class 9 accidents". We interpret this portion of the contention as relating to the NRC Policy Statement, "Planning Basis for Emergency Responses to Nuclear Power Reactor Accidents". [see 44 Fed. Reg. 61123 (October 23, 1979)]. As Staff points out, an adequately particularized contention in this area would be litigable. (Staff Answer at 18). The other elements in this contention are either redundant or concern matters that should have been raised long ago.

For the reasons given, supra, SOC is granted leave to

adequately particularize element (vii) of Contention 2. The remaining elements of Contention 2 are dismissed.

3. Accident Monitoring (SOC Petition at 39)

This contention relates to an issue which was thrust into prominence by the accident at TMI. It is, therefore, an acceptable issue for SOC to litigate. In Staff's view, however, it is inadequately particularized. (Staff Answer at 19). We disagree; we believe that the second portion of the contention is acceptable in its present form.

We accept Contention 3, stated as follows:

The recent revision 2 of Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident" details the needed devices and qualifications of instruments, many of which are not presently part of the Shoreham design."

4. Human Factors (SOC Petition at 39)

This contention, which relates to operator training, raises an old issue and overlaps a contention advanced by an existing party, Suffolk. It is, therefore, unacceptable.

Contention 4 is dismissed.

5. ALARA (SOC Petition at 40)

SOC contends that Shoreham is not designed to comply with the ALARA concept in 10 CFR Part 20. This issue is not new. Petitioner's attempt to relate it to the TMI-2 accident fails because

the ALARA concept applies to routine operational exposure, not to accident situations.

Contention 5 is dismissed, for the reasons stated.

6. Quality Assurance/Quality Control (SOC Petition at 41-43)

This contention consists of many parts, only one of which is fresh. Element (a)(i), which concerns construction deficiencies described by Shoreham workers, is an acceptable issue for litigation when considered in light of SOC's earlier statements that such defects were recently discovered. (SOC Petition at 5, 17). As stated, however, the contention is not adequately particularized. All other elements of 6 are either old or are redundant and consequently do not qualify for acceptability.

SOC is granted leave to further particularize Contention 6(a)(i). All other elements of Contention 6 are dismissed.

7. Generic Technical Issues (SOC Petition at 42)

Again, most of this contention attempts to plow old ground. One element, however, makes a vague reference to TMI: (a)(ii) refers to "[a]dditional generic issues\*\*\*identified as a result of the TMI-2 accident". With adequate particularization, this portion of Contention 7 could constitute a litigable issue. The remaining elements of Contention 7 deal with old issues, at least some of which have been raised by existing parties.

SOC is granted leave to amend Contention 7(a)(ii) by providing adequate particularization. The other elements of Contention 7 are dismissed.

8. Instrumentation (SOC Petition at 43)

It appears to us that SOC is here contending that the Shoreham reactor will not be equipped to permit direct measurement of the temperature of fuel rods in the core and that this fact poses a threat to the public health and safety. Staff believes that this contention plows old ground, inasmuch as General Design Criterion 13 and IEEE 279 § 4.8 have existed for many years. (Staff Answer at 21). We believe, however, that the contention might be litigable if properly related to the TMI-2 accident and adequately particularized.

Accordingly, SOC is granted leave to further particularize Contention 8.

9. Operator Indicators (SOC Petition at 44)

This contention concerns whether the Shoreham facility is equipped with indicators that will inform the operators that a safety system has been disabled, such as the auxiliary feedwater system with closed valves at TMI-2, and the concern is referenced to compliance with Regulatory Guide 1.47. It is acceptable in its present form.

Contention 9 is accepted as stated.

10. Qualification of Non-safety Equipment (SOC Petition at 45)  
and

11. Qualification of Non-safety Systems (SOC Petition at 45)

These contentions call for the reclassification of equipment and system which are presently categorized as non-safety, on the grounds that such equipment and systems are important to safety. Both refer to the TMI-2 accident. Petitioner has failed to adequately specify the equipment and systems of concern or to indicate how the TMI accident indicated that equipment and systems are improperly classified.

SOC is granted leave to particularize its concerns with respect to non-safety equipment and systems in Contentions 10 and 11, respectively.

12. Mark II Containment (SOC Petition at 46)

This contention consists of three parts, which must be dealt with separately. The first part expresses concern about quality control during construction of the containment building and duplicates SOC's Contention 6(a)(i). The second part refers to the need for additional downcomer bracing at another Mark II facility and suggests that additional bracing is also needed at Shoreham. This part of Contention 12 lacks adequate specificity. The last part of the Contention refers to the "unresolved issue of hydrogen generation" during a loss of coolant accident (LOCA), such as occurred at TMI-2, and suggests that containment inerting,

venting, or strengthening may be needed at Shoreham.

The first part of Contention 12 which deals with quality control is dismissed because it duplicates Contention 6(a)(i), which Petitioner has been granted leave to particularize further. The second part of Contention 12 which deals with downcomer bracing may be litigable if made sufficiently specific. SOC is granted leave to further particularize this portion of Contention 12. The third part of Contention 12 which deals with hydrogen generation during a LOCA is a challenge to the Commission's regulations contained in 10 CFR § 50.44, "Standards for Combustible Gas Control System in Light Water Cooled Power Reactors", and as such is not acceptable. A more specific contention relating to this area was raised before the Licensing Board in the TMI-1 Restart Proceeding, and that Board certified to the Commission the question of whether the regulation should be waived to permit the contention to be litigated in that proceeding. [Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), LBP-80-1, 11 NRC \_\_\_ (January 4, 1980)]. We believe that we, too, need Commission guidance in dealing with this issue here. Consequently, pursuant to the authority granted us in 10 CFR § 2.718(i) and Commission policy set forth in "Suspension of 10 CFR § 2.764 and Statement of Policy on Conduct of Adjudicatory Proceedings", this Board will certify to the Commission the question of waiver

of the regulation, in order to permit litigation of the contention in this proceeding.

13. Anticipated Transient Without Scram (ATWS) (SOC Petition at 47)

The ATWS issue is not new; moreover, it has been raised by an existing party, Suffolk. Therefore it is not acceptable for litigation by SOC.

Contention 13 is dismissed, for the reasons given.

14. Reactor Coolant Relief and Safety Valves (SOC Petition at 48)

This contention, which raises the question of whether the coolant system relief and safety valves have been subjected to the appropriate qualification testing, covers old ground which is the subject of a contention of an existing party, Suffolk. Consequently it is unacceptable for litigation by SOC.

For the foregoing reasons, Contention 14 is dismissed.

15. Control Rod Life (SOC Petition at 48)

SOC contends that the reactor control rods at Shoreham do not meet the design criteria set forth in 10 CFR Part 50, Appendix A. The newness of this issue, upon which acceptability of the contention depends, is based on the recently issued NRC Inspection and Enforcement Bulletin 79-26.

Contention 15, limited to the subject of I&E Bulletin 79-26, is accepted.

16. Emergency Core Cooling System (ECCS) (SOC Petition at 49)

SOC is contending that the ECCS to be used at Shoreham does not meet the requirement of 10 CFR Part 50, for several reasons. Those portions of the contention which refer to the GE core spray test program and GE two-loop-test program attempt to replot old ground and are therefore unacceptable. That portion which contends that the TMI-2 accident raises uncertainty with regard to peak clad temperature is inappropriate, because at TMI-2 the ECCS was intentionally and inappropriately interdicted. If this portion of the contention, on the other hand, is intended to challenge the requirements of 10 CFR Part 50, Appendix K, it is a challenge to the regulations and therefore unacceptable. Finally, the portion of the contention which refers to NUREG-0630 is sufficiently fresh to warrant our consideration, because that report, entitled "Cladding Swelling and Rupture Models for LOCA Analyses", was issued in November, 1979.

For the foregoing reasons, part of Contention 6 is accepted and is stated as follows:

The ECCS at Shoreham may not meet the requirements of 10 CFR Part 50, because of clad swelling and flow blockage. New test results obtained by the NRC Staff and reported in NUREG-0630 show that modeling of clad swelling and flow blockage is inadequate.

All other portions of Contention 6 are dismissed, for the reasons discussed, supra.

17. Protection System Functioning (SOC Petition at 50)

This contention relates to the compliance of the Shoreham protection system with the requirement of 10 CFR § 50.55a(h), which states that the protection system must meet requirements set forth in IEEE 279. SOC contends that the TMI-2 accident shows that operators can shut off the ECCS, thus preventing the system from going to completion once initiated. This issue is TMI-related and adequately particularized.

Contention 17 is accepted as stated.

18. Fire Protection (SOC Petition at 51)

This contention attempts to raise an old issue, based on test results which are 2-1/2 years old. Therefore it is not an acceptable contention for litigation by SOC.

Contention 18 is dismissed.

19. Applicability of Regulatory Guides (SOC Petition at 52)

SOC contends that the Shoreham Unit 2<sup>5/</sup> design does not meet all safety requirements contained in recent regulatory guides and as a consequence unduly endangers the public health and safety. Petitioner says, further, that the TMI-2 accident was aggravated or caused by factors which were incorporated into

5/

SOC's Contention 19 referred to Shoreham Unit 2, not Unit 1. This proceeding concerns only Unit 1. Petitioner should clarify, in its answer to this Order, whether this contention is intended to refer to Unit 1.

the design of TMI-2, although not the subject of Regulatory Guides. Staff believes that this contention fails to state an issue and therefore should be dismissed. (Staff Answer at 25-26). We believe, however, that it would be appropriate for the Board to consider whether the standards or goals of recent Regulatory Guides have been met. SOC must, however, specify which recent Regulatory Guides it believes have not been met, and why it believes they should be met.

SOC is granted leave to further particularize Contention 19.

20. New Final Environmental Statement (SOC Petition at 53)

SOC contends that the Final Environmental Statement (FES) prepared for the Shoreham Nuclear Power Station, Unit 1 fails to adequately assess a number of significant environmental issues. Petitioner lists ten general areas in which it considers the FES to be deficient. As Staff points out, however, all but two of those areas of concern are either old and were dealt with in the FES, or are old and concern matters not appropriate to the FES. (Staff Answer at 26-27). The two areas of concern which can be considered to be new are related to the TMI accident; they are "(d) Failure to assess the consequences of a Class 9 accident" and "(g) The environmental impacts of plant clean-up in the event of a serious accident".

With regard to 20(d), we are bound by the long standing Commission policy set forth in the proposed Annex to Appendix D to 10 CFR Part 50, which holds that the consequences of a Class 9 accident need not be considered for land based reactors. (see Offshore Power Systems [(Floating Nuclear Power Plants), CLI-79-9, 10 NRC 257 (1979)]). The Commission, however, has announced its intention to re-examine its policy with regard to Class 9 accidents and has asked Staff, pending rulemaking, to advise it concerning how the policy might be modified, and to bring to the Commission's attention any individual cases in which the consequences of a Class 9 accident should, in Staff's opinion, be considered. (Ibid.).

In light of the foregoing consideration, Contention 20(d) is dismissed without prejudice to renewal of an adequately particularized contention regarding Class 9 accidents, in the event Staff elects to advise the Commission that Class 9 accidents should be considered in this proceeding. Staff is requested to inform the Board and the parties of its position on the consideration of Class 9 accidents in this case, as promptly as possible.

With regard to 20(g), it is Staff's view that SOC is referring to clean up following a Class 9 accident, which we cannot consider. (Staff Answer at 28). Whether Petitioner is referring to Class 9 accidents or not, in our view the contention is too speculative and vague to be litigated in this proceeding. We see no reasonable way to assess the environmental impact of

cleaning up an accident absent more particular information about the nature of the accident.

For the foregoing reasons Contention 20(g) is dismissed.

#### Summary

SOC's Contention 3, 9, 15 (as limited), 16 (limited to NUREG-0630), and 17 have been accepted as stated by the Petitioner or restated by us. SOC has been granted leave to cure the defects in Contentions 2(vii), 6(a)(i), 7(a)(ii), 8, 10, 11, 12 (second part), and 19. Contentions 1, all of 2 except (vii), 5, all of 6 except (a)(i), all of 7 except (a)(ii), 12 (first and third parts-- third part to be certified to the Commission), 13, 14, all of 16 except the part referring to NUREG-0630, 18, and 20 have been dismissed.

SOC has satisfied the contention requirement set forth in 10 CFR § 2.714(b).

#### Conclusions

Petitioner SOC may be admitted as an intervenor in this proceeding upon a showing that it has representational standing as proscribed, supra, p. 4. In the filing which attempts to cure this defect in its petition, SOC shall include any amendments to petitions which it wishes to submit in response to the leave to do so granted herein. Finally, because it comes to this proceeding 3-1/2 years late, if admitted SOC must take the proceeding as it finds it and accept schedules currently in place, including those relative to discovery.

Petitioner shall file its response to this Order as soon as possible and in any case no later than 30 days from date of the Order.

New Board Question

In view of the TMI-2 experience with hydrogen release in containment, the Board is concerned about just what measures for hydrogen control should be taken. We note that NUREG-0578, "TMI-2 Lessons Learned Task Force Status Report and Short-term Recommendations", says (at pp. A-19, A-20), that BWR plants with Mark II containment structures "\*\*\*now in the operating license review process\*\*\*" will not be required to inert their containments, but "\*\*\*all new Mark I and Mark II\*\*\*" plants should be inerted. We would like the parties to address the following Board Question:

Why is inerting for the Shoreham containment not recommended as a result of the TMI-2 accident while inerting is recommended for later plants of similar design?

IT IS SO ORDERED

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

*Oscar H. Paris, Member*  
for Elizabeth S. Bowers, Chairman

Dated at Bethesda, Maryland  
this 5th day of March, 1980