

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board

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



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

MEMORANDUM AND ORDER RELATING TO
RESPONSE OF SOC TO BOARD ORDER DATED MARCH 5, 1980
(May 1, 1980)

On April 3, 1980 the Shoreham Opponents Coalition (SOC) filed a response^{1/} to our Order of March 5, 1980.^{2/} In its Response SOC (1) presents material relating to its standing pursuant to our Order, (2) reargues certain issues already decided by us, and (3) requests that we schedule a prehearing conference to hear oral argument on the matters it raises. The Applicant replied to SOC's Response on April 15, 1980, and the N.R.C. Staff filed a reply on April 23, 1980.^{3/} In its pleading SOC fails to appropriately characterize the relief sought with either the term "motion" or "request for reconsideration", and the Applicant suggests, inter alia, that such a failure to meet basic procedural requirements should be fatal

- 1/ Response of the Shoreham Opponents Coalition (SOC) to Board Order Dated March 5, 1980 (Response).
- 2/ Order Ruling on Petition of Shoreham Opponents Coalition (Order).
- 3/ Respectively, "Applicant's Reply to SOC Pleading of April 3, 1980" (Applicant Reply) and "NRC Staff's Reply to Response of SOC to Board Order Dated March 5, 1980" (Staff Reply).

to the pleading. We see little merit to Applicant's argument, however, because it is quite clear what SOC is requesting. We shall, therefore, treat so much of SOC's Response as requests relief as a motion for reconsideration. But before turning to those requests, we shall first deal with the information relevant to standing which SOC supplied pursuant to our Order dated March 5, 1980.

A. Standing

In our Order we directed SOC to submit an affidavit from at least one member of an organization which has authorized SOC to represent it, describing the location of that member's residence, place of work, or recreational area in relation to the Shoreham reactor, and confirming that SOC is authorized to represent his or her interest. In addition, we directed SOC to identify by name all of the organizations which it claims to represent and to submit documentation from each of them to show that the organization has authorized SOC to represent it. In its Response SOC provided the affidavit of Michael J. Madigan, who lives 2 miles from the Shoreham Plant and who has authorized SOC to represent him and his organization, of which he is president. Additionally, SOC provided affidavits from appropriate officials of 18 other organizations which have authorized SOC to represent them.

We find that SOC has satisfied the requirements which we set forth to show that it has representational standing and

therefore is admitted as an intervenor in this proceeding.

B. Request to Renotify the Shoreham Hearing

In our Order of March 5, 1980 we said that we need not reach the question of whether to renotify a hearing in this proceeding, as SOC requested in its petition for leave to intervene,^{4/} because we were expecting to grant the alternative SOC requested, namely, late intervention. Now SOC complains, "The Board apparently believes that by granting late intervenor status to SOC, it need not reach the broader question of renoticing. We disagree." (Response at 9). In fact, we did so believe, and for good reason. In its Petition, SOC sought the following relief:

- a. That the Commission of the Atomic Safety [and] Licensing Board (Board), as appropriate, issue a new Order and Notice of Hearing for the Shoreham Operating Licensing (sic) Proceedings (Docket No. 50-322) to permit intervention by interested and qualified parties in those proceedings;
- b. That the Board grant, in the alternative, the petition of SOC for late intervention pursuant to 10 C.F.R. § 2.714. (SOC Petition at 1; second emphasis supplied).

We had decided to grant the alternative, (b).

From the complaint SOC makes in its Response, it appears that in its Petition SOC either did not say what it meant to say

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Petition of the Shoreham Opponents Coalition (SOC) to Suspend Construction Permit for the Long Island Lighting Company's Shoreham Nuclear Power Station (Unit 1) and to Renotify 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 Petition; emphasis supplied).

or did not say what it now wishes it had said. But be that as it may, we shall act on SOC's request to reconsider by deciding the request to renotice here.

SOC argues that good cause for renoticing the hearing derives from the accident at Three Mile Island, Unit 2 (TMI-2). SOC believes that the TMI-2 accident has discredited the N.R.C.'s prior review of safety and environmental issues, as a result of which a new proceeding is warranted. But as we clearly indicated in our Order dated March 5, 1980, SOC is being admitted to this proceeding 3-1/2 years late because it has come to us with TMI-related issues it wishes to litigate. We have opened this proceeding to a new intervenor (SOC) and new issues because of the accident at TMI-2, as SOC asked us to do. Thus SOC's argument, that only through a new notice of hearing can qualified and interested parties be afforded an opportunity to litigate safety and environmental issues called into question by the TMI-2 accident, is without merit. Consequently, SOC's request to renotice the hearing is denied.

C. Request for Admission of Contentions Without Particularization

In our Order of March 5, 1980 SOC was granted leave to cure the defect of inadequate particularization in Contentions 2(vii), 6(a)(i), 7(a)(ii), 8, 10, 11, 12 (second part), and 19.

SOC now requests that we admit these contentions^{5/} for the purposes of discovery and further particularization, on the grounds that discovery may be necessary in order to adequately particularize certain of them. SOC also argues that it should be afforded the same treatment in this regard as Suffolk County, which was allowed, much earlier in this proceeding, to particularize certain contentions during discovery. SOC fails to appreciate or acknowledge, however, that a late intervenor may be admitted only at the discretion of the Board and may not necessarily be allowed all of the rights and privileges of a timely intervenor. Indeed, in the interest of fairness to all parties and because of our duty to conduct this proceeding without unnecessary delays, pursuant to 10 C.F.R. § 2.718, we have imposed some reasonable limitations on SOC's participation [see, our Order dated March 5, 1980; also see, Nuclear Fuel Services, Inc., et al. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273 (1975)]. Moreover, a late intervenor must demonstrate an ability to contribute to the development of a sound record pursuant to 10 C.F.R. § 2.714(a)(1)(iii), without engaging in a fishing trip.

We have granted SOC a 60-day extension of time in which to particularize the contentions listed, supra, in our Order Granting Extension of Time dated April 21, 1980. The requirement to

^{5/} Contention 11 was omitted from list given by SOC on p. 6 of the Response. We assume that this omission was unintentional and have therefore included 11 here. But whether it is included or not is of no significance in view of the result which we reach below.

adequately particularize is not so burdensome that SOC should have difficulty in achieving this goal during the allotted period.

For the foregoing reasons, SOC's request for us to admit the contentions listed, supra, without adequate particularization is denied. Should SOC require an additional extension or wish to amend a contention after discovery, it may so move, but it must be able to show good cause.

D. Request to Litigate Dismissed Contentions

In our Order of March 5, 1980 we dismissed SOC's 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), 13, 14, all of 16 except the part referring to NUREG-0630, 18 and 20. Several of these were dismissed because they duplicate issues already raised in contentions of existing parties or otherwise attempt to replot old ground. SOC now requests that it be allowed to litigate each of the contentions submitted in its Petition dated January 24, 1980, on the ground that there is no basis on which this Board may exclude a contention "simply because the same general issue has been raised by another party to the proceeding." (Response at 11).

SOC either overlooks or ignores the reason we set forth in our March 5, 1980 Order for dismissing duplicative and old contentions and limiting SOC's direct participation to new issues.

we said,

***formal discovery was set in motion long ago and has followed a tortuous path. If we were to allow SOC to retrace those steps, significant delay would almost certainly result. Therefore, ***SOC's direct participation will be limited to new issues relating to the accident at TMI or to recently discovered construction defects.

(Order at 12; footnotes and citations omitted.)

In our Order we found that factor (v) under 10 C.F.R. § 2.714(a)(1), which had to be considered in our deliberations on whether to admit SOC to this proceeding 3-1/2 years out-of-time, weighed against admission: SOC's participation will broaden the issues and will probably delay the proceeding. To mitigate delay and thus further justify admitting SOC, we decided to limit its participation as described, supra.

SOC's argument for reconsideration misses the point.^{6/} We can see no reason to modify our March 5, 1980 ruling. Therefore SOC's request for leave to litigate contentions which have been dismissed is denied. The limitations on SOC's participation set forth in our Order on March 5, 1980 shall stand, for the reasons

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SOC also argues that its right of discovery and cross examination may be prejudiced by other parties entering into a stipulated settlement of contentions. We remind SOC that the Board must approve any stipulation. We shall take a close look at any proposal to stipulate and consider carefully comments that SOC may make with regard to the proposed settlement. With regard to SOC's participation beyond cross examination in the litigation of contentions of other parties, we would observe that SOC is free to cooperate with other parties in the preparation of their case, to the extent that such cooperation is mutually agreeable.

set forth supra and in the Order.

E. Request for Consideration of Class 9 Accidents in the FES

In our Order dated March 5, 1980 we dismissed a contention which called for the assessment of the environmental impact of a Class 9 accident in the Final Environmental Statement (FES) for the Shoreham facility, but it was dismissed without prejudice to SOC renewing such a contention in the event that the N.R.C. Staff takes the position that Class 9 accidents should be considered in this proceeding. SOC raises this issue again in its Response. Since our March 5, 1980 Order was issued, the Appeal Board has said "it is now settled that the Commission has reserved for itself the right to decide whether the consequences of Class 9 accidents at land-based reactors are to be considered in any given case." [Public Service Electric and Gas Company (Salem Nuclear Generating Station, Unit 1), ALAB-588, Slip Op. at 9 (April 1, 1980)]. Thus Class 9 accidents cannot be considered in this proceeding unless the Commission directs us to do so.^{7/} Therefore SOC's request for reconsideration of our March 5, 1980 ruling on this contention is denied.

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We note that in response to our request to the Staff in our March 5, 1980 Order, Staff sent a letter to the Board on April 8, 1980, advising us that its evaluation of circumstances which might require consideration of Class 9 accidents at Shoreham was not yet complete. It said we would be informed of the Staff position as promptly as possible. Presumably the Commission will be guided by the Staff's advice.

F. Request for Prehearing Conference

SOC requests, in its Response, that a prehearing conference be convened to provide an opportunity for oral argument on SCC's request for reconsideration of contentions that have been dismissed and the request for a supplement to the FES. It has failed to show that a prehearing conference is either necessary or advisable to deal with these matters. With regard to considering Class 9 accidents in the FES, there can be no argument at this time. With regard to the contentions which we have dismissed, as we have said, we continue in the view that our earlier action was justified and necessary considering the fact that SOC is being admitted to intervenor status 3-1/2 years late and that we have a clear duty to conduct this proceeding so as to avoid unnecessary delay. It would be unwarranted to subject the parties and the public to the expense of convening a prehearing conference to discuss these issues. SOC's request for a prehearing conference is denied.

G. Site Visit by SOC Representatives

In its Response SOC reported that it had attempted to arrange for one of its experts to visit the Shoreham Plant, but that LILCO declined. Apparently SOC attempted, by telephone, to get the Chairman of the Board to direct LILCO to allow such a visit.^{8/} It is customary for applicants and licensees to extend

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SOC complains that the Chairman refused to accept a conference call concerning this matter. We would note that the exact nature of the business which SOC wished to discuss was not made clear to the Chairman. She understood that SOC wished to discuss simply "discovery matters" and therefore directed SOC to put it in writing. In any case, the result would have been the same if the conference call had been held.

this courtesy to the parties in a proceeding, subject to appropriate timing and arrangements. In any case, it is our intention to ask the Applicant to allow the Board and any parties who wish to accompany it to make a site visit later in this proceeding. We have never known an applicant to refuse such a request, and therefore we assume that SOC's representative(s) will be able to visit the Shoreham plant at that time, if not sooner.

SUMMARY

SOC has complied with the requirements of our March 5, 1980 Order to document its representational standing and has been admitted to intervenor status. Its requests to renotece the hearing, to admit certain contentions without further particularization, to litigate dismissed contentions, to require that Class 9 accidents be considered in the FES, and for a prehearing conference to consider these matters, have been denied, for the reasons given.

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 1st day of May, 1980