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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	
LONG ISLAND LIGHTING COMPANY	Docket No. 50-322 -OLA
(Shoreham Nuclear Power Station, Unit 1)	(Offsite Emergency Preparedness License Condition Amendment)

NRC STAFF'S RESPONSE TO PETITIONS TO INTERVENE AND REQUESTS FOR HEARING ON PROPOSED OFFSITE EMERGENCY PREPAREDNESS LICENSE CONDITION AMENDMENT, FILED BY SCIENTISTS AND ENGINEERS FOR SECURE ENERGY, INC. AND BY SHOREHAM-WADING RIVER CENTRAL SCHOOL DISTRICT

Sherwin E. Turk
Senior Supervisory
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On December 15, 1989, the Long Island Lighting Company ("LILCO" or the "Licensee") filed an application to amend the license conditions for its Shoreham Nuclear Power Station, in connection with certain offsite emergency preparedness requirements imposed therein ("Application"). Notice of receipt of the Application was published in the Federal Register on March 30, 1990 (55 Fed. Reg. 12076). 1/ As set forth in the Notice, LILCO seeks to adopt a new License Condition 2.C(14), which would render

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1/ LILCO's request of December 15, 1989, generally sought Commission approval "to (1) cease all offsite emergency planning and preparedness activities and (2) implement the attached Defueled Emergency Preparedness Plan (DEPP), in place of LILCO's current onsite plan." Id. at 1. Specifically, with regard to offsite emergency planning and preparedness, LILCO requested an exemption, under 10 C.F.R. § 50.12, from the emergency preparedness requirements of 10 C.F.R. § 50.54(q); and it requested the instant amendment to its license conditions, pursuant to 10 C.F.R. § 50.90. The Notice published in the Federal Register provided an opportunity for hearing only in connection with the proposed license condition amendment.

License Conditions 2.C(9) through (13) inoperative when (a) "[t]he reactor is void of all fuel assemblies," and (b) "[t]he spent fuel, with a burnup of approximately two effective full-power days, is stored in the spent fuel storage pool or other approved storage configuration." Id. 2/ As further described in the Notice:

> This request for license amendment, coupled with the licensee's request for exemption from the requirements of 10 C.F.R. 50.54(q) and proposed changes to its Shoreham Nuclear Power Station Emergency Preparedness Plan, would allow the licensee to cease its offsite emergency preparedness activities.

55 Fed. Reg. at 12076-077.

In considering the Application, the NRC Staff made a proposed determination that the amendment does not involve a significant hazards consideration. Id. Accordingly, the Notice afforded the Licensee an opportunity to request a hearing, and provided that "any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding" must file a written petition for leave to intervene in accordance with the provisions of 10 C.F.R. § 2.714. Id. at 12077. Any such petitions were required to "set forth with particu-

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2/ In principal part, License Condition (9) requires shutdown in the event of a strike by LILCO employees involved in its offsite Local Emergency Response Organization (LERO); (10) requires shutdown in the event that a hurricane warning is issued by the National Weather Service; (11) requires a LILCO representative to be available to serve as a liaison and to assist Suffolk County officials upon the declaration of an Alert or higher emergency classification; (12) requires a trained individual to be present at the Brentwood emergency operations center at all times during plant operation above 5% rated power; and (13) requires quarterly training drills with partial or full participation by LERO. These operating license conditions, summarized in part above, are reproduced in full in the Attachment hereto.

larity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding," to address the factors listed in 10 C.F.R. § 2.714(d), and to identify the aspects of the proceeding as to which the petitioner wishes to intervene. Id. at 12077-78.

In response to the published Notice, on April 30, 1990, petitions for leave to intervene and requests for hearing were filed by Scientists and Engineers for Secure Energy, Inc. ("SE 2") and the Shoreham-Wading River Central School District ("District"). 3/ Therein, the Petitioners argued that their interests would be adversely affected by the Application, based on their view that it constitutes merely one part of Shoreham's decommissioning:

> [Petitioner] views this Amendment as one part of the larger proposal to decommission Shoreham. Each step in the decommissioning proposal that moves Shoreham closer to a fully decommissioned state and further away from full-power operational status is in violation of the dictates of the Atomic Energy Act of 1954 as amended ("AEA") and the National Environmental Policy Act of 1969 as amended ("NEPA"). Thus, while the issues presented herein directly relate to the proposed Amendment allowing the cessation of LILCO's certain emergency prepardeness activities, they necessarily include other unlawfully segmented actions taken and/or proposed by LILCO and the NRC Staff in furtherance of the decommissioning scheme.

3/ "Shoreham-Wading River Central School District's Petition for Leave to Intervene and Request for Hearing", filed April 30, 1990 ("District Petition"); and "Scientists and Engineers for Secure Energy, Inc.'s Petition for Leave to Intervene and Request for Hearing", filed April 30, 1990 ("SE 2 Petition"). The two Petitions appear to be largely identical, except insofar as they describe the identity of each Petitioner and the impacts each would allegedly experience as a result of the proposed amendment.

(District Petition at 2-3; SE 2 Petition at 2-3) (footnote omitted). A single response in opposition to the Petitions was filed by LILCO on May 15, 1990. 4/

The NRC Staff ("Staff") hereby responds to SE 2 and the District's Petitions. The Staff submits that the Petitions fail to demonstrate that the Petitioners' interests' will be adversely affected by a proceeding on the Application, or that the Petitioners are entitled to a hearing thereon. The proposed amendment would be effective only while the plant is in a defueled condition, and the Petitioners have failed to show that any injury might result from the reduced level of emergency preparedness which would exist while the plant is in this condition. Further, the Petitioners' allegations concerning injuries that might result if the plant should someday resume full power operation are far too vague and speculative to demonstrate the requisite "injury-in-fact". For these reasons, as more fully set forth below, the Staff opposes the Petitions and recommends that they be denied.

DISCUSSION

A. Lack of Adverse Impact Upon Petitioners' Interests.

An evaluation of the Petitions under the legal standards governing petitions to intervene in Commission adjudicatory proceedings shows that the Petitioners have failed to demonstrate they possess interests which may be adversely affected by a proceeding on the subject Application.

4/ "Long Island Lighting Company's Opposition to Intervention Petitions and Requests for Hearing on Amendment to Emergency Preparedness License Conditions," dated May 15, 1990 ("LILCO's Opposition").

1. Legal Standards.

Section 189(a)(1) of the Atomic Energy Act provides, in pertinent part, as follows:

> In any proceeding under this chapter, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, . . . the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to the proceeding.

Id., 42 U.S.C. § 2239(a)(1) (emphasis added). Under 10 C.F.R. § 2.714(a)(1), "any person whose interest may be affected by a proceeding and who desires to participate as a party shall file a written petition for leave to intervene." Any such petition must satisfy the following requirements:

> The petition shall set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in paragraph (d)(1) of this section, and the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene.

10 C.F.R. § 2.714(a)(2) (emphasis added). 5/

5/ 10 C.F.R. § 2.714(d)(1) provides that, in considering petitions for leave to intervene, the Commission or presiding officer shall consider, among other matters, the following factors:

> (i) The nature of the petitioner's right under the Act to be made a party to the proceeding.
>
> (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
>
> (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

The Commission has long held that judicial concepts of standing will be applied in determining whether a petitioner has sufficient interest in a proceeding to be entitled to intervene as a matter of right under Section 189 of the Act. See, e.g., Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983), citing Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976). The Commission has further held that these judicial concepts require a showing (a) that the action will cause "injury in fact," and (b) that the injury is "arguably within the zone of interest" protected by the statutes governing the proceeding. TMI, 18 NRC at 332; Pebble Springs, 4 NRC at 613. Further, in order to establish standing, the petitioner must show (1) that he has personally suffered a distinct and palpable harm that constitutes injury-in-fact; (2) that the injury fairly can be traced to the challenged action; and (3) that the injury is likely to be redressed by a favorable decision in the proceeding. Dellums v. NRC, 863 F.2d 968, 971 (D.C. Cir. 1988). Cf. Nuclear Engineering Co. (Sheffield, Ill. Low Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 (1978) (there must be a concrete demonstration that harm could flow from the result of a proceeding).

An application of the above principles to the instant Petitions demonstrates that the Petitions should be denied.

2. Petitoners' Stated Interests.

The Petitioners assert, without explanation or support, that "the proposed cessation of offsite emergency preparedness activities would unacceptably increase the risk of radiological injury and hence adversely affect the radiological health and safety of [the District], its students

[and] its employees, [SE 2 and its members], and their property" (Distict Petition at 6; SE 2 Petition at 6). The Petitioners further contend that the Application will have these adverse effects upon their interests:

1. The threat of (unspecified) "distinct injuries in fact as a direct consequence of the proposed amendment" (SE 2 Petition at 6; District Petition at 6);

2. The alleged "endanger[ment of] the health and safety of Petitioners' members [sic] during this unapproved decommissioning," resulting from "LILCO's efforts to save money by shutting down all operations, slashing staff and defueling the reactor" (SE 2 Petition at 7; District Petition at 7);

3. "[S]everely increased . . . radiological health and safety risks" to the District, SE 2 and SE 2's members, allegedly caused by LILCO's "continuous refusal to abide by the terms of its Operating License" (SE 2 Petition at 7; District Petition at 7);

4. SE 2 and its members' "interest in the radiologically safe and environmentally benign operation of Shoreham to provide them with reliable electricity and to avoid the substitution of fossil fuel plants," which would pose adverse effects on the environment, the trade deficit, the nation's energy security, and the adverse health consequences of air pollution (SE 2 Petition at 9);

5. The District's purported interest in "the health and environment of almost 2000 students and 500 employees, who live and/or work in close proximity to the Shoreham facility, from both the possible radiological impacts of the proposed amendment and the adverse health and other environmental consequences of non-operation of Shoreham" such as would be caused by fossil fuel replacement plants (District Petition at 9);

6. Petitioners' reliance upon LILCO to meet their energy needs, and their "interest in ensuring that an adequate and reliable supply of electricity will be available to meet their needs and that the electricity provided is available at reasonable rates" -- which interest would be adversely affected by "[a]ctions to dismantle the facility and build substitute oil or gas burning plants" (SE 2 Petition at 10; District Petition at 9-10);

7. The District's economic interest in preserving Shoreham's value as an operating plant, in that it allegedly provides "approximately ninety percent of the School District's tax base" (District Petition at 10); and

8. SE 2's interest in opposing agency actions which interfere with that organization's "informational purposes", due to the Staff's purported refusal to conduct an environmental impact study, which

allegedly deprives SE 2 of its ability to comment upon a draft Environmental Impact Statement (EIS), to advise its members of the environmental risks of alternative actions considered, and to report the findings to its members and to political leaders (SE 2 Petition at 11-12). 6/

In sum, SE 2 and the District's interests are asserted to include (a) protecting the radiological health and safety of their members, students, and/or employees -- both from the alleged increased risk of radiological injury resulting from the proposed amendment as well as generally; (b) protecting the environment from the effects of Shoreham's operation; (c) protecting the environment from the effects of fossil fuel replacement plants; (d) ensuring the availability of an adequate, reliable and inexpensive energy supply; (e) preserving Shoreham's tax value as an operating plant; and (f) protecting SE 2's informational capabilities.

On their face, some of Petitioners' stated interests (such as their various economic, ratepayer and tax interests in the plant's operation) appear to outside the zone of interests protected by the Atomic Energy Act and the National Environmental Policy Act (NEPA). See, e.g., Public

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6/ In addition, the Petitioners contend that a hearing is required to determine (1) whether a grant of the Application "would be arbitrary, capricious and/or an abuse of discretion"; (2) whether, if a decision is made to operate Shoreham at full power, "the proposed amendment would provide reasonable assurance that such full power operation would or could be conducted with reasonable assurance of [protecting] the public health and safety and the national defense and security"; and (3) whether, if a decision is made to decommission Shoreham, the proposed amendment "would provide reasonable assurance that such decommissioning will be conducted in accordance with the public health and safety and the national defense and security" (SE 2 Petition at 13-14; District Petition at 11-12). Further, the Petitioners contend that the Application constitutes part of Shoreham's "de facto decommissioning"; and they request a "full and fair NEPA consideration [of] the decommissioning proposal" (SE 2 Petition at 15; District Petition at 13).

Service Co. of New Hampshire (Seabrook Station, Unit 2), 19 NRC 975, 978 (1984). Certain other interests alleged by the Petitioners, however (in particular, those involving the radiological impacts of the proposed amendments) are within the protected zone of interests. See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-83-25, 18 NRC 327, 332 (1983). Petitioners' allegation of these latter interests might suffice to confer upon them standing to participate in a Shoreham license amendment proceeding, upon a demonstration of how those interests may be adversely affected by the proposed license amendment. 7/ As

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7/ Of course, a petitioner may only represent its own interests in an NRC proceeding -- and not the interests of others, unless it has been expressly authorized to do so. In this regard, the District has failed to show that it is authorized to represent its "students" or employees" in this proceeding. Indeed, having failed to show that it has any personal interest within the "protected zone" that may be affected by the proceeding, its Petition appears to be valid, if at all, based upon its assertion that it has been authorized to represent Albert G. Prodell, President of the District's Board of Education, who apparently resides and works within the vicinity of the plant (District Petition at 9.

Similarly, SE 2, as a membership organization, may represent only its own interests or the interests of its members who have expressly authorized it to do so; and those interests must be germane to the organization's purpose. See Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 393-97 (1979); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), LBP-87-7, 25 NRC 116, 118 (1987); Combustion Engineering Inc. (Hematite Fuel Fabrication Facility), LBP-89-23, 30 NRC 140, 149 (1989); Duquesne Light Co. (Beaver Valley Power Station, Unit 2), LBP-84-6, 19 NRC 393, 411 (1984); Houston Power & Light Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 447, aff'd, ALAB-649, 9 NRC 644 (1979). SE 2's stated "informational" interest is not within the zone of interests protected by statute, nor has SE 2 shown any other protected personal interest which may be affected by the outcome of the proceeding. Cf. Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 1), LBP-82-52, 16 NRC 183, 185 (1982). Accordingly, SE 2's Petition

(Footnote continued on next page)

discussed below, however, the Petitioners have failed to make this required showing. 8/

3. Lack of Adverse Impact.

As set forth above, pursuant to 10 C.F.R. § 2.714(a)(2), a petition must "set forth with particularity the interest of the petitioner . . . and how that interest may be affected by the results of the proceeding." The instant Petitions generally fail to satisfy this requirement, in that they fail to identify the impacts that the proposed amendment, by itself, may be expected to have upon their interests. Most of the impacts which are alleged to affect Petitioners' interests relate not to the proposed license condition amendment, but to the decommissioning of Shoreham -- an action which is not the subject of the instant Application. Those alleged impacts cannot properly be addressed or redressed in this proceeding, and they do not confer standing upon the Petitioners to participate herein.

In addition to their claims concerning decommissioning, the Petitioners assert that:

> This proposed amendment, in particular, would allow the cessation of certain emergency planning activities including the exercise or drill of those plans . . . . Such cessation of practice would greatly reduce the effectiveness of the 3000 person LERO organization and thus greatly delay and prejudice the ability of LILCO to return to full power operation with the same degree of reasonable assurance of the public health and safety

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(Footnote continued from previous page)

would be valid, if at all, based on its assertion that five of its members who have authorized it to represent them in this proceeding would be injured by a grant of the Application (see SE 2 Petition at 9-10).

8/ The Commission has observed that "the burden is on the petitioner" to satisfy the requirements of 10 C.F.R. § 2.714(a). Three Mile Island, supra, CLI-83-25, 18 NRC at 331.

> offered by the regular practice and training currently required. Such increased vulnerability to radiological harm, by definition, significantly increases the risk of such harm [sabotage] and, hence, unavoidably and significantly increases the direct and/or indirect endangerment of [Petitioners and/or their members, students and employees'] radiological health and safety.

(District Petition at 13; SE 2 Petition at 14-15) (emphasis added). Further elaboration upon this assertion is provided in Petitioners' discussion of the aspects of the proceeding in which they seek to participate (District Petition at 19-24; SE 2 Petition at 20-25). However, as these statements make clear, the Petitioners do not contend that the public health and safety would be endangered by granting the instant amendment -- which would only suspend emergency planning activities while the plant remains in a defueled condition. 9/ On the contrary, the Petitioners claim that the amendment would lessen emergency preparedness, and result in increased costs, only at such time (if ever) that the licensee seeks to begin full power operation. Accordingly, the

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9/ In its proposed no significant hazard consideration finding, the Staff concurred in the Licensee's finding that the amendment "will not increase the risk of radiological exposure to the offsite general public," since it only allows for the cessation of offsite emergency preparedness activities while the plant remains in a defueled and non-operating condition. 55 Fed. Reg. at 12077. Further, the Staff found that the amendment would have no adverse effect upon the public health and safety in the event that the plant should later resume full power operation, since fuel could not be placed in the reactor vessel without prior Commission approval and reestablishment of "an offsite emergency response organization comparable in effectiveness to LERO." In sum, the Staff proposed a determination that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated; do not create the possibility of a new or different kind of accident from any accident previously evaluated; and do not involve a significant reduction in a margin of safety. Id.

Petitioners have altogether failed to set forth "with particularity" how the proposed amendment, itself, could adversely affect their interests.

Petitioners' bare allegation of adverse impacts is simply insufficient to demonstrate a potential adverse effect upon their interests, and does not afford them standing to participate in a proceeding on this Application. In this regard, in Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325 (1989), the Commission denied a petition to intervene filed by an individual living 40 miles from the site, who contended that a proposed exemption involving the use of certain respirators by onsite personnel would result in increased risk to workers and in waste disposal with offsite environmental consequences. The Commission determined, inter alia, that the petitioner could not represent the interests of plant workers absent express authorization, and that the petitioner's allegations of offsite environmental consequences were insufficient to confer standing upon him. The Commission stated:

> It is true that in the past, we have held that living within a specific distance from the plant is enough to confer standing on an individual or group in proceedings for construction permits, operating licenses, or significant amendments thereto such as the expansion of the capacity of a spent fuel pool. However, those cases involved the construction or operation of the reactor itself, with clear implications for the offsite environment, or major alterations to the facility with a clear potential for offsite consequences. Absent situations involving such obvious potential for offsite consequences, a petitioner must allege some specific "injury-in-fact" that will result from the action taken: here, the granting of the exemption. In this case, the Petitioner has not alleged any "injury-in-fact" that he will suffer because of the accumulation of used sorbent cannisters at the plant. Thus, we find that he has not satisfied the Commission's "interest" requirements.

Id., 30 NRC at 329-30 (citations omitted; emphasis added). In the instant proceeding, as in St. Lucie, Petitioners' failure to do more than simply provide bare allegations of radiological health and safety (and other, less cognizable) impacts warrants the denial of their Petitions. 10/

In sum, Petitioners have failed to show that the proposed amendment may reasonably be found to have some adverse impact, i.e., some "injury in fact", upon any interest they have identified; and they have failed to show that such injury fairly can be traced to the challenged action or that such injury could be redressed by a favorable decision in this proceeding (i.e., by denial of the Application).

B. Many of Petitioners' Concerns Are Beyond the Scope of the Proceeding.

The Petitioners argue that they are entitled to a hearing in order "to determine whether the amendment should be granted, denied, or a different amendment made under the AEA" (SE 2 Petition at 13; District Petition at 11). In this regard, they identify four principal aspects of the proceeding as to which they seek to intervene:

10/ The Petitioners have not provided any reason to believe that the plain words of 10 C.F.R. § 2.714 -- requiring a demonstration "with particularity" that the proposed action could adversely affect petitioner's interests -- should not be applied in this license amendment proceeding. The Commission has, likewise, insisted upon such a showing "with particularity" in enforcement proceedings, recognizing that enforcement actions are taken to reduce risks and that petitioners will have greater difficulty showing adverse effects on their interests in such situations. See, e.g., Boston Edison Co. (Pilgrim Nuclear Power Station), CLI-82-16, 16 NRC 44, 45 (1982); Florida Power & Light Co. (Turkey Point Plant, Units 3 & 4), CLI-81-31, 14 NRC 959, 960 (1981); Consumers Power Co. (Big Rock Point Plant), CLI-81-32, 14 NRC 962, 963 (1981); Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 439 (1980); but see Armed Forces Radiobiology Research Institute (Cobalt-60 Storage Facility), ALAB-682, 16 NRC 150, 153-54 (1982).

(1) "whether a grant of the proposed amendment would be arbitrary, capricious and/or an abuse of discretion";

(2) "whether if a decision is made to go to full power operation at Shoreham, the proposed amendment would provide reasonable assurance . . . [of protecting] the public health and safety and the national defense and security";

(3) "whether, if a decision is made to decommission Shoreham, the proposed amendment would provide reasonable assurance that such decommissioning will be conducted in accordance with the public health and safety and the national defense and security"; and

(4) they request a "full and fair NEPA consideration of the decommissioning proposal." (SE 2 Petition at 13-15; District Petition at 11-13).

Further, the Petitioners identify a long list of issues concerning the proposed license amendment change, the requested exemption, and other issues more related to decommissioning, which they would seek to explore in hearings on the Application (SE 2 Petition at 21-25 and 41-43); District Petition at 20-24 and 40-42). These include such issues as whether the settlement agreement between LILCO and the State of New York prohibits operation of the facility; whether LILCO has a sufficient number of trained emergency response personnel if it were to again place fuel in the reactor vessel; and whether the proposed amendment, insofar as it would authorize a reduced level of emergency preparedness, is in compliance with NEPA.

The Federal Register Notice limited the issues to be addressed in this proceeding to "matters within the scope of the amendments under

consideration," and did not include other matters such as LILCO's request for an exemption from other emergency preparedness requirements. 55 Fed. Reg. at 12078. 11/ Notwithstanding Petitioners' lengthy enumeration of purported aspects of the proceeding in which they would seek to participate, it is apparent that many of those concerns are impermissibly beyond the scope of a proceeding on the proposed amendment. First, while the proposed amendment relates to emergency preparedness, it addresses only the proposed suspension of the five enumerated license conditions, and nothing more; other emergency preparedness requirements from which LILCO has requested an exemption are not properly within the scope of this proceeding. Similarly, the proposed amendment does not give rise to a proceeding broad enough to consider many of the other issues raised by Petitioners here, such as the environmental and safety impacts resulting from Shoreham's eventual decommissioning.

With regard to Petitioners' decommissioning arguments, it is clear that the proposed amendment does not preclude LILCO from operating the

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11/ The Commission has previously held that Section 189(a) of the Atomic Energy Act strictly limits the right to a hearing to certain types of proceedings, and does not require hearings on exemption requests unless those requests are "part of a proceeding for the granting, suspending, revoking, or amending of any license or construction permit under the Atomic Energy Act." United States Department of Energy (Clinch River Breeder Reactor Plant), CLI-82-23, 16 NRC 412, 421 (1982). See generally, id., CLI-81-35, 14 NRC 1100 (1981) (reviewing the Commission's historical treatment of requests for hearings on exemption requests). Moreover, because the exemption at issue here would only suspend emergency preparedness activities so long as the plant remains in a defueled condition -- and would not apply in the event the plant should resume full power operation -- no hearing right would seem to apply thereto. See Commonwealth of Massachusetts v. NRC, 878 F.2d 1516, 1521 (1st Cir. 1989) (finding no right to a hearing on an exemption request, where the exemption was temporary in nature, lasting only while the plant remained shutdown and for 120 days thereafter, and thus did not amount to a license amendment).

plant at some future date, should it decide to do so, although it may then be necessary to reestablish and train its emergency preparedness organization. That effect can hardly be said to constitute "de facto decommissioning" of the plant. Nor does any cost that may then have to be incurred to reestablish and train the LERO organization result in an irreversible commitment to decommission; indeed, some similar (or even greater) cost would have to be incurred simply to maintain LERO in a state of readiness pending the adoption and implementation of a decommissioning plan. Similarly, the proposed amendment does not authorize a decommissioning of the plant, or even constitute a necessary step in any decommissioning plan; it only provides for the cessation of emergency preparedness activities while the plant is in its present defueled condition.

It is elemental that hearings are properly restricted to those matters which are embraced by the notice issued for the particular proceeding. See, e.g., Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear 1), ALAB-619, 12 NRC 558, 565 (1980); Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-616, 12 NRC 419, 426 (1980); Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976). Indeed, the Commission has clearly indicated that it may limit and define the scope of an action which it initiates. Boston Edison Co. (Pilgrim Nuclear Power Station), CLI-82-16, 16 NRC 44, 46 (1982), aff'd, Bellotti v. NRC, 725 F.2d 1380 (D.C. Cir. 1983); see also, Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), CLI-80-10,

11 NRC 438, 441-42 (1980). In these latter cases, the Commission denied third party petitions for hearings and intervention on enforcement orders modifying the facilities' licenses, on the ground that the petitions presented concerns outside the scope of the proceedings. In approving the Commission's authority to define the scope of its proceedings, that is, their agenda and substance, the Court in Bellotti stated, "[w]e have no doubt that as a general matter, such authority must reside in the Commission". Bellotti, supra, 725 F.2d at 1381.

In sum, in order to succeed in their request for a hearing, the Petitioners must demonstrate that their interests may be affected by the scope of the proceeding as defined by the Commission; and Petitioners' right to a hearing must be evaluated only in the context of the specific action effectuated by the Application. As set forth above, any hearing on the proposed amendment would be limited to considering whether it should be granted or denied. Accepting, arguendo, that the Petitioners' interests are affected by the issues they propose for hearing, many of those issues are nonetheless outside the scope of this proceeding as defined by the Notice. 12/

Accordingly, although the Staff believes that the Petitions fail to satisfy the "interest" and "adverse effects" requirements set forth in 10 C.F.R. § 2.714(a), should the Commission find otherwise and decide to grant Petitioners' request for hearing, any such hearing should be limited

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12/ Indeed, the correctness of this conclusion is demonstrated by the "remedies" sought by Petitioners, most of which exceed the scope of the proceeding noticed in the Federal Register (see SE 2 Petition at 44-47; District Petition at 43-46).

to those aspects of the proceeding identified by Petitioners which fall within the scope of the proposed amendment, as noticed in the Federal Register.

CONCLUSION

For the reasons more fully set forth above, the Petitions should be denied for failure to demonstrate how the Petitioners' interests may be affected by the Application and for failing to demonstrate that the Petitioners are entitled to a hearing thereon.

Respectfully submitted,

Sherwin E. Turk
Senior Supervisory
Trial Attorney

Dated at Rockville, Maryland
this 21st day of May, 1990.

(9) Strike Shutdown License Condition (Section 13.3.5.7 SSER 10)

Since the licensee relies on an offsite emergency response organization consisting entirely or primarily of the licensee's employees, in anticipation of the commencement of any strike by such employees, the licensee shall bring the facility to cold shutdown condition using normal operating procedures. The licensee shall commence bringing the facility to cold shutdown condition 24 hours prior to the commencement of such strike, or immediately upon receipt of less than 24 hours' notice of the impending commencement of a strike, with the goal of having the plant in cold shutdown condition by the time the strike commences. The licensee shall maintain the facility in a cold shutdown condition until the strike is over and review by the Federal Emergency Management Agency and the NRC Staff has given assurance that the Local Emergency Response Organization capability is fully restored. During a strike-occasioned shutdown, with the prior approval of the NRC Staff upon review of written application by the licensee, the licensee shall be permitted to take the reactor to a refueling mode to conduct refueling or other operations requiring access to the reactor core if it is shown that such operations cannot result in the occurrence of any events requiring offsite emergency response capability. This condition shall be terminated only in accordance with the regulatory procedures for amendment of an operating license.

(10) Hurricane Shutdown License Condition (NRR Director's Finding Re: EP Dated 4/17/89)

If the National Weather Service issues a hurricane watch for the Long Island, New York area, the licensee, within 1 hour, shall begin to make necessary preparations to place the reactor into a HOT SHUTDOWN condition. The licensee shall continue to monitor the National Weather Service advisories hourly until the watch is cancelled. If the National Weather Service issues a hurricane warning for the Long Island, New York area, the licensee will take action to ensure that the reactor is in a HOT SHUTDOWN condition within the next 24 hours, unless the warning is cancelled. The licensee shall maintain the reactor in this condition until the National Weather Service has cancelled its hurricane warning.

(11) County Liaison License Condition (NRR Director's Finding Re: EP Dated 4/17/89)

The licensee shall modify its offsite emergency plan to require that a LILCO representative, knowledgeable of the offsite emergency plan, upon declaration of an Alert, Site Area Emergency or General Emergency at the Shoreham site, transport the offsite emergency plan, appropriate support information and necessary communications equipment to the Suffolk County Emergency Operations Center (EOC) or to a location designated by the Suffolk County Executive. This person shall be available to aid and assist the County Executive in responding to the emergency condition at Shoreham.

(12) Brentwood Staffing License Condition (NRR Director's Finding Re: EP Dated 4/17/89)

The licensee shall modify its offsite emergency plan to designate at least one trained person who shall be at the Brentwood facility at all times during plant operations above 5 percent rated power. This person will begin the conversion process of the Brentwood facility into the Local Emergency Response Organization (LERO) Emergency Operations Center (EOC) when an Alert or higher emergency class is declared.

(13) Quarterly Drills License Condition (NRR Director's Finding Re: EP Dated 4/17/89)

The licensee shall conduct training drills such that its offsite emergency plan is drilled quarterly with full or partial participation by the Local Emergency Response Organization (LERO).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
LONG ISLAND LIGHTING COMPANY	)	Docket No. 50-322
	)	
(Shoreham Nuclear Power Station, Unit 1)	)	(Offsite Emergency Preparedness License Condition Amendment)

NOTICE OF APPEARANCE

Notice is given that I hereby enter my appearance in the above captioned proceeding. Pursuant to 10 C.F.R. § 2.713(b), the following information is provided:

Name:	Sherwin E. Turk
Address:	Office of the General Counsel U. S. Nuclear Regulatory Commission Washington, D.C. 20555
Telephone:	(301) 492-1575
Admissions:	United States Supreme Court United States Court of Appeals for the District of Columbia District of Columbia State of New Jersey
Name of Party:	NRC Staff

Respectfully submitted,

Sherwin E. Turk

Sherwin E. Turk
Senior Supervisory
Trial Attorney

Dated at Rockville, Maryland
this 21st day of May, 1990

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
LONG ISLAND LIGHTING COMPANY	)	Docket No. 50-322
(Shoreham Nuclear Power Station, Unit 1)	)	(Offsite Emergency Preparedness License Condition Amendment)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO PETITIONS TO INTERVENE AND REQUESTS FOR HEARING ON PROPOSED OFFSITE EMERGENCY PREPAREDNESS LICENSE CONDITION AMENDMENT, FILED BY SCIENTISTS AND ENGINEERS FOR SECURE ENERGY, INC. AND BY SHOREHAM-WADING RIVER CENTRAL SCHOOL DISTRICT" and "NOTICE OF APPEARANCE" for Sherwin E. Turk in the above captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 21st day of May, 1990:

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Washington, D.C. 20555

Sherwin E. Turk
Counsel for NRC Staff