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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

LBP-91-1

ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:

Morton B. Margulies, Chairman
Dr. George A. Ferguson
Dr. Jerry R. Kline

OFFICE OF SECRETARY
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In the Matter of	Docket No. 50-322-OLA
LONG ISLAND LIGHTING COMPANY	ASLBP No. 91-621-01-OLA
(Shoreham Nuclear Power Station, Unit 1)	(Confirmatory Order Modification, Security Plan Amendment and Emergency Preparedness Amendment)
	January 8, 1991

MEMORANDUM AND ORDER
(Ruling On Requests For Intervention)

I. INTRODUCTION

On March 29, 1990, NRC Staff (Staff) issued a "Confirmatory Order Modifying License (Effective Immediately)," which modified the Shoreham Nuclear Power Station (Shoreham) full power operating license held by Long Island Lighting Company (LILCO). The Order prohibited LILCO from placing any nuclear fuel in the Shoreham reactor vessel without prior approval from the NRC. The Federal Register Notice of the action provided an opportunity for hearing to adversely affected persons. 55 Fed. Reg. 12758, 12759 (April 5, 1990). On April 18, 1990, Scientists and Engineers for Secure Energy (Secure Energy) and Shoreham-Wading River School

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District (School District) filed separately a "Petition to Intervene and Request For Hearing" in response to the Notice. This matter will be referred to as the Confirmatory Order Modification.

LILCO on January 5, 1990, filed an application for an amendment to the Shoreham operating license that would allow changes in the physical security plan for the plant and a reduction in the security forces. A Federal Register Notice of this application filing was published together with Staff's proposed finding that the amendment did not involve a significant hazards consideration. The Notice provided an opportunity for hearing to affected persons. 55 Fed. Reg. 10528, 10540 (March 21, 1990). In response, both Secure Energy and School District filed a separate "Petition to Intervene and Request for Hearing" on April 20, 1990. This matter will be referred to as the Security Plan Amendment.

Staff, on March 30, 1990, published a Federal Register Notice advising of a December 15, 1989 LILCO request for an amendment to its Shoreham license removing certain license conditions regarding offsite emergency preparedness activities and of a Staff proposed finding of "No Significant Hazards Consideration." The Notice offered an opportunity for hearing to affected persons. 55 Fed. Reg. 12076-12078 (March 30, 1990). Secure Energy and School District filed separate requests to intervene and for a hearing to be held. This matter will be referred to as the Emergency Preparedness Amendment.

The full power operating license for Shoreham, to which all of the changes relate, was issued to LILCO on April 21, 1989. LILCO and the State of New York had reached an agreement on February 28, 1989, that LILCO would not operate Shoreham. Licensee would sell Shoreham to the Long Island Power Authority, which under New York State law is prohibited from operating Shoreham.

Pursuant to the agreement, LILCO has removed the nuclear fuel from the reactor vessel along with in-core instrumentation, core internals, and control rod guide tubes. Water has been removed from the reactor vessel. It is attempting to sell the nuclear fuel which was used for startup activities and low-power testing. The Licensee has disbanded a portion of its technical staff and has begun training the remaining staff for defueled operation only. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-90-08, 32 NRC ___ (slip op. October 17, 1990).

In CLI-90-08, the Nuclear Regulatory Commission (NRC or Commission) took up the six petitions and, inter alia, found:

> In summary, the broadest NRC action related to Shoreham decommissioning will be approval of the decision of how that decommissioning will be accomplished. Thus, it follows that NRC need be concerned at present under NEPA only with whether the three actions which are the subject of the hearing requests will prejudice that action. Clearly they do not, because they have no prejudicial effect on how decommissioning will be accomplished. Therefore, because decommissioning actions are directed solely at assuring safe and environmentally sound decommissioning, it follows that alternatives to the decision not to operate the plant are beyond the scope

of our review and need not be considered under NEPA. See NRDC v. EPA, 822 F.2d 104, 126-31 (D.C. Cir. 1987). Slip op. at 9, 10.

The Commission concluded that the Staff need not file an Environmental Assessment or an Environmental Impact Statement reviewing and analyzing resumed operations of Shoreham as a nuclear power plant as an alternative under the National Environmental Policy Act (NEPA). It forwarded the six petitions for handling by an Atomic Safety and Licensing Board (Board) with directions to "review and resolve all other aspects of these hearing requests in a manner consistent with this opinion."

Staff and LILCO filed timely responses to each of the six petitions requesting intervention and hearing. LILCO, who agreed to the Confirmatory Order Modification and seeks the Security Plan and Emergency Preparedness Amendments, opposes Petitioners' requests as does Staff.

Petitioners, in a joint petition to the Commission dated October 29, 1990, requested that CLI-90-08 be reconsidered and vacated insofar as that order precludes the consideration of the alternative of renewed operation of Shoreham in the context of the proposal to decommission the plant. LILCO and Staff oppose the request.[1]

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[1] On November 8, 1990, the Board wrote to the participants in these three matters inquiring of their views on whether the Board should not proceed with review of the petitions taking into consideration the request for reconsideration in CLI-90-08. Having considered their responses, we have decided to proceed with the review because the pendency of the request for reconsideration provides no sound reason for suspending review of

In this Memorandum and Order, the Board rules on the petitions requesting intervention and hearing. We find that in all instances Petitioners have failed to meet the requirements of 10 CFR 2.714(a)(2) to permit intervention. In accordance with Commission practice, Petitioners are given the opportunity to file amended petitions that may cure the defects that the Board has found.

II. SCOPE OF PROCEEDINGS

A. Hearing Notices

1. Confirmatory Order Modification

The "Confirmatory Order Modifying License (Effective Immediately)," 55 Fed. Reg. 12758, 12759, recites that consistent with LILCO's agreement not to operate Shoreham it has completed defueling the reactor and reduced staff. It states that LILCO is proceeding with plans to discontinue maintenance for systems Licensee considers unnecessary to support operations when the reactor is defueled.

The Confirmatory Order asserts that the NRC has determined that the public health and safety require that the Licensee not return fuel to the reactor vessel without prior NRC approval because (1) the reduction in the Licensee's onsite support staff is below that necessary for plant operations; and (2) the absence of NRC approved procedures for returning to an operational status

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the petitions.

systems and equipment that the Licensee has decided to deactivate and protect rather than maintain until ultimate disposition of the plant is determined.

It further asserts that on January 12, 1990, LILCO submitted a letter to NRC which stated that it would not place nuclear fuel back into the Shoreham reactor without prior NRC approval.

Staff found that the commitment as set forth in the letter to be acceptable and necessary and that with the commitment plant safety is reasonably assured. It further determined that the health and safety require that the commitment be confirmed by the Confirmatory Order.

Pursuant to 10 CFR 2.204, Staff also determined that the public health and safety require that the Confirmatory Order be effective immediately which was then ordered.

Persons adversely affected by the Confirmatory Order were given the opportunity to request a hearing. The Order defined the hearing issue to be "whether the Confirmatory order shall be sustained." 55 Fed. Reg. 12758, 12759 (April 5, 1990).

2. Security Plan Amendment

By amendment request filed January 5, 1990, LILCO seeks changes in the Shoreham Security Plan that would result in the reclassification of certain portions of the plant designated as "Vital Areas" or "Vital Equipment." The changes would also eliminate, or modify, certain other safeguards commitments that reflect the reclassification. One of the modifications would be

to reduce the security force to be consistent with the objectives of the revised security program.

The Federal Register Notice of the requested amendment contained a no significant hazards determination by Staff. Staff found, in support of the no significant hazard determination, that the proposed Security Plan change does not involve a significant increase in the probability, or consequences, of an accident previously evaluated; does not result in any physical changes to the facility affecting a safety system; and does not involve a reduction in any margin of safety. Licensee was offered the opportunity to file a request for hearing and any person whose interest may be affected by the proceeding could file a written petition for leave to intervene.[2] 55 Fed. Reg. 10528, 10540 (March 21, 1990).

3. Emergency Preparedness Amendment

In response to a proposed amendment of the Shoreham Emergency Preparedness Plan requested by LILCO, a Federal Register Notice containing a Staff proposed no significant hazards determination and an opportunity for hearing was published. 55 Fed. Reg. 12076-12078 (March 30, 1990).

The amendment would allow the licensee to cease certain offsite emergency preparedness activities if the reactor were void of all fuel assemblies and the spent fuel, with a burnup of

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[2] Amendment No. 4 was issued June 14, 1990 changing the Security Plan for a defueled Shoreham.

approximately two effective full power days, was stored in the spent fuel storage pool or other approved storage.

Staff found that the proposed amendment would (1) not involve a significant increase in the probability or consequences of an accident previously evaluated; nor (2) create the possibility of a new or different kind of an accident from any accident previously evaluated; nor (3) involve a significant reduction in a margin of safety.

Licensee was permitted to file a request for a hearing and any person whose interest may be affected by the proceeding was given the opportunity to file a petition to intervene.[3] 55 Fed. Reg. 12076 (March 30, 1990).

B. The Hearing Notice Defines The Scope Of The Proceeding

The Commission follows the rule in licensing matters that the hearing notice published by the Commission for the proceeding defines the scope of the proceeding and binds the Licensing Board. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear 1), ALAB-619, 12 NRC 558, 565 (1980); Commonwealth Edison Co. (Carroll County Site), ALAB-601, 12 NRC 18, 24 (1980).

The hearing notices in the three matters before the Board define the scope of the proceedings as follows:

(1) Should the Confirmatory Order be sustained.

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[3] Amendment No. 6 was issued July 31, 1990, changing the Emergency Preparedness Plan for a defueled Shoreham.

(2) Should the amendment of the Shoreham Security Plan be sustained.

(3) Should the amendment of the Shoreham Emergency Preparedness Plan be sustained.

Petitioners, in each of the six petitions filed, state that they view each respective order as one part of the larger proposal to decommission Shoreham. They assert that each step in the decommissioning proposal that moves Shoreham closer to a fully decommissioned state and further away from the full power operational status is in violation of the Atomic Energy Act of 1954 (AEA), as amended, and NEPA. They take the position that while the issues presented in the petitions directly relate t the respective Orders permitting modifications to the Shoreham license, the petitions "necessarily include other unlawfully segmented actions taken and/or proposed by LILCO and the NRC Staff in furtherance of the decommissioning scheme."

Much of the petitions are given over to the issue that the modifications of the Shoreham license are individual actions in the proposal to decommission Shoreham and that injury results from this inchoate decommissioning for which standing should be afforded and relief granted.

LILCO and Staff take the position that the issue of decommissioning and its ramifications are beyond the scope of the proceeding and therefore should not be considered.

The Board agrees with the position of LILCO and Staff. A reading of the hearing notices for each of the modifications

fails to indicate that any decommissioning of Shoreham, in whole or in part, is at issue in any of them.

The hearing notices are published to afford prospective participants of notice of the matters at issue. If the Commission reviewed the modifications as part of any decommissioning of Shoreham, it would have said so. In the absence of any declaration by the Commission in the notices, inferred or expressed, that decommissioning of Shoreham is an issue in the requested hearings, we shall respect the orders and consider decommissioning outside of the scope of the proceedings.

The Commission provided additional guidance that the scope of the proceedings did not involve decommissioning in its finding in CLI-90-08 cited above. It considered the question as to whether the three actions that are the subject of the hearing requests, will prejudice decommissioning.[4] It answered the question by stating "Clearly they do not, because they have no prejudicial effect on how decommissioning will be accomplished." Slip op. at 9. The Commission looked upon the modifications of the Shoreham license as not constituting a part of decommissioning because they do not determine how decommissioning is to be performed.

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[4] 10 CFR 50.2 defines decommissioning as follows: "Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license.

For the reasons given, the Board will not consider any alleged injuries or claims for relief by Petitioners based upon the assertion that the license modifications are part of the decommissioning of Shoreham.

III. LEGAL REQUIREMENTS FOR INTERVENTION

Section 189(a)(1) of the Atomic Energy Act, which provides for a hearing to any person whose interest may be affected by the amending of a license, is implemented in 10 CFR 2.714. 10 CFR 2.714(a)(1) states that "any person whose interest may be affected by a proceeding and who desires to participate as a party shall file a written petition to intervene."

Requirements for such petitions are contained in 10 CFR 2.714(a)(2), which provides:

> 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.

To determine whether a petitioner has sufficient interest to intervene in a proceeding, the Commission has held that a licensing board may apply judicial concepts of standing. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976).

Judicial concepts of standing require a showing that (a) the action sought in a proceeding will cause injury in fact and (b)

the injury is arguably within the zone of interests protected by statutes covering the proceeding. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983). A petitioner should allege, in an NRC proceeding, an injury in fact that is within the zone of interests protected by the AEA or NEPA. Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), LBP-83-45, 18 NRC 213, 215 (1983).

In addition, the petitioner must establish (1) that it personally has suffered, or will suffer, a distinct and palpable harm that constitutes an injury in fact; (2) that the injury can be traced to the challenged action; and (3) that the injury is likely to be remedied by a favorable decision granting the relief sought. Dellums v. NRC, 863 F.2d 968, 971 (D.C. Cir. 1988); see also Nuclear Engineering Co., Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 (1978).

For an organization to have standing, it must show injury in fact to its organizational interests or to the interest of members who have authorized it to act for them. If the organization is depending upon injury to the interests of its members to establish standing, the organization must provide with its petition identification of at least one member who will be injured, a description of the nature of that injury, and an authorization for the organization to represent that individual in the proceeding. Philadelphia Electric Co. (Limerick

Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1437 (1982).

A petitioner may base its standing upon a showing that an organization or its members are within the geographic zone that might be affected by an accidental release of fission products. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 443 (1979). Close proximity under those circumstances has been deemed standing alone, to establish the requisite interest for intervention. In such a case, the petitioner need not show that the concerns are well founded in fact. Distances of as much as 50 miles have been held to fall within the zone. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979); Duquesne Light Co. (Beaver Valley Power Station, Unit 2), LBP-84-6, 19 NRC 393, 410, 429 (1984).

The Commission does not allow the presumption to be applied to all license amendments. It only does so in those instances involving an obvious potential for offsite consequences. Those include applications for construction permits, operating licenses or significant amendments thereto such as the expansion of the capacity of a spent fuel pool. Those cases involve the operation of the reactor itself, or major alterations to the facility with a clear potential for offsite consequences. Absent situations with obvious potential for offsite consequences, a petitioner must allege some specific injury in fact that will result from

the action taken. Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325 329 (1989).

Economic interest as a ratepayer does not confer standing in NRC licensing proceedings. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 n. 4 (1983). Those economic concerns are more properly raised before state economic regulatory agencies. Public Service Co. of New Hampshire (Seabrook Station, Unit 2) CLI-84-6, 19 NRC 975, 978 (1984); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-789, 20 NRC 1443, 1447 (1984).

Assertions of broad public interest in (a) regulatory matters, (b) the administrative process, and (c) the development of economical energy resources do not establish the particularized interest necessary for participation by an individual or group in the nuclear regulatory adjudicatory process. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983).

IV. CONFIRMATORY ORDER MODIFICATION

A. Secure Energy's Position On Intervention

Secure Energy asserts it meets all criteria for standing. It describes itself as an organization dedicated to correcting misunderstandings on fundamental scientific and technological issues permeating the "national energy debate." Petitioner offers its views, based on the expertise of its members, to the

public and to governmental agencies with responsibility for the resolution of energy issues.

Many of its members are said to live, work and have property interests in the vicinity of the nuclear plant. Secure Energy claims that the organization and its members have a special 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 and their adverse effects, i.e., relying on imported gas and oil which have adverse effects on the physical environment, the trade deficit and national energy security.

Secure Energy seeks organizational standing asserting, inter alia, that the Commission interferes with its informational purposes by its refusal to conduct a NEPA study which deprives the organization of its ability to carry out its organizational purposes.

Secure Energy asserted that it is injured by Staff's refusal to prepare an environmental impact statement on the decommissioning of Shoreham because that deprives Petitioner of the ability to: (1) comment directly on the environmental report prepared by LILCO and the Draft Environmental Impact Statement prepared by the Staff; (2) advise its members of the environmental risks involved with each alternative explored by the environmental studies; and (3) report the findings and recommendations based upon the environmental evaluations to the

public and political leadership as set forth in Secure Energy's charter.

Petitioner cites in support of its position Competitive Enterprise Inst., et al. v. National Highway Traffic Safety Admin., 901 F.2d 107 (D.C. Cir. 1990) for the proposition that organizational standing is established whenever the agency's action interferes with the organization's informational purposes to the extent that it interferes with the organization's activities.

Representational standing is sought on the basis of five named individuals with mailing addresses in Shoreham, Port Jefferson and Westbury, New York. They are said to live and/or work and have property interests within a 50 mile radius of Shoreham and have an interest in whether the Confirmatory Order provides reasonable assurance of their radiological health and safety under AEA and whether the decision on the Confirmatory Order and the larger proposal, of which it is a part, is made in accordance with NEPA.

Members have an interest in obtaining sufficient amounts of electricity at reasonable rates. They are concerned that dismantling Shoreham and building substitute oil or gas burning plants will delay any increase in energy production capacity and increase costs which will be passed on to the ratepayers. Secure Energy seeks to protect its members from adverse health consequences that would result from the substitute oil burning plants.

Secure Energy views the Confirmatory Order Modification as an effort toward de facto decommissioning of Shoreham without an approved decommissioning plan, which it alleges is a per se violation of the AEA and a direct health and safety violation. It contends that LILCO's efforts to save money by shutting down the operation, eliminating staff and permanently defueling the reactor endanger the health and safety of its members during the unapproved decommissioning.

Secure Energy further asserts that LILCO has failed to maintain the reactor at a full operational level and that the continuous refusal to abide by the terms of the full power operating license has severely increased risk to the radiological health and safety of its members. It also states that NEPA mandates that an Environmental Impact Statement be prepared prior to agency decision making on major federal actions significantly affecting the quality of the human environment, such as the de facto decommissioning of Shoreham that is taking place.

The specific aspects under NEPA that Secure Energy Security wishes to intervene on are: (1) whether the Confirmatory Order is arbitrary, capricious, and/or an abuse of discretion and/or not supported by substantial evidence; (2) whether, if a decision is made to go to full power operation at Shoreham, the Confirmatory Order gives reasonable assurance that such full power operation would be conducted with reasonable assurance of protecting the public health and safety and national defense and security; and (3) whether, if a decision is made to decommission

Shoreham, the Confirmatory Order gives reasonable assurance that such decommissioning will be conducted in accordance with the public health and safety and the national defense and security.

As to NEPA, Petitioner expects a full environmental review which must address all aspects of what it considers the de facto decommissioning of Shoreham.

Petitioner seeks 14 remedies in the proceeding. The first two involve requesting an order permitting Petitioners' intervention and directing a hearing on the issues presented. The other remedies requested range from requesting an order vacating the Confirmatory Order pendente lite to a final decision and order finding that the Confirmatory Order must be permanently vacated. The Executive Director of the organization is a signer of the petition.

B. Staff's Response To Secure Energy's Petition On Confirmatory Order Modification

Staff submits that the petition fails to demonstrate that the Petitioner's interests will be adversely affected by the Confirmatory Order, or that Secure Energy is entitled to a hearing. It recommends that the petition be denied.

Staff asserts that Secure Energy does not directly identify any impacts that the Confirmatory Order may be expected to have upon its interest. Petitioner is said to be concerned with nonrelevant matters as full power operation and the alleged de facto decommissioning of Shoreham. Staff asserts that Secure

Energy has failed to demonstrate their capacity to represent their members.

It is Staff's position that the Confirmatory Order does not authorize LILCO to take any actions that would affect the public health and safety or in any way alters the present status of the plant. Staff states that the Confirmatory Order merely recognizes that certain actions, already taken by LILCO, could have an adverse impact on public health and safety if the Licensee should later decide to refuel the reactor vessel and the order requires prior NRC approval for such an action. It does not consider this a de facto decommissioning of the plant. Staff asserts it only provides that the plant may not be refueled absent the adoption of approved steps to assure the protection of the public health and safety.

Staff considers the environmental aspects of Petitioner's concerns to be beyond the scope of any proceeding on the Confirmatory Order. Its asserts the Confirmatory Order neither permits plant operation, nor forbids it, nor does it constitute part of a decommissioning of the plant. The issue at any hearing to be held has been defined as to whether the Confirmatory Order should be sustained.

C. LILCO's Response To Secure Energy's Petition On Confirmatory Order Modification

LILCO views the petition as an attempt to keep Shoreham operating; that although Secure Energy alleges that the Confirmatory Order results in a violation of law, it does not

suggest that there is a significant safety issue associated with the Confirmatory Order. Secure Energy's allegations are said to depend on its view that the Confirmatory Order Modification is part of an eventual decommissioning.

LILCO views Secure Energy as attempting to require Licensee to maintain Shoreham in full readiness to operate regardless of circumstances, unless and until a decommissioning plan meeting all regulations is approved. LILCO states this would prevent the NRC from granting various kinds of relief routinely available to facilities in extended shutdown and inflicts totally avoidable costs on Licensee and its ratepayers. LILCO considers the Secure Energy petition as looking to block implementation of its settlement agreement with the State of New York not to operate the facility.

Licensee asserts that Petitioner seeks to use a hearing on the Confirmatory Order to raise the issue of LILCO's alleged de facto decommissioning of Shoreham which is beyond the scope of the proceeding. It also asserts that Secure Energy is attempting to expand the scope of the proceeding to require NRC to take enforcement action against LILCO for supposed violation of the AEA, Commission regulations and the terms of the Shoreham license because of Shoreham not being maintained in operational readiness.

Licensee claims Petitioner only feebly connects the Confirmatory Order with the harms that are said to result from LILCO's alleged illegal actions. LILCO questions whether Secure

Energy's asserted interest in protecting the health and safety of its members are germane to its organizational interests, which appear primarily educational and informational in nature and are not directed toward advocacy against perceived health and safety threats from any specific nuclear plant.

LILCO claims Petitioner cannot credibly argue that the Confirmatory Order should not be sustained. To do so would in effect be arguing that LILCO should be allowed to place fuel back in the reactor which would undercut the Secure Energy position. LILCO argues that if the current situation is unsafe as Petitioner argues, refueling the reactor would make it more unsafe.

Licensee also argues that the environmental harms Petitioner perceives if Shoreham does not operate would not stem from any action by the NRC, much less by the issuance of the Confirmatory Order. LILCO asserts the Confirmatory Order is not the reason Shoreham will not operate. It is solely a matter of a LILCO decision.

LILCO requests that the petition for leave to intervene, and requests for hearing, should be denied.

D. School District's Petition On The Confirmatory Order

The School District petition differs from that of Secure Energy insofar as the description of the petitioner including its organizational purpose, whom it seeks to represent and the nature of their interest.

School District alleges it seeks intervention in order to protect the interests of School District, its students and employees.

The School District is reported to be about 12 square miles in size with the Shoreham facility located within its boundaries. Petitioner asserts that it is located within the 50 mile limitation used by the Commission to determine whether an intervenor expressing contentions under the health and safety provisions of the Atomic Energy Act has an interest sufficient to allow intervention.

Petitioner depends on LILCO to meet the energy needs of its physical plant which includes five schools. School District's stated interest is to ensure an adequate supply of electricity at reasonable rates. In its view, any actions to dismantle the facility, and to build substitute oil burning plants, will harm the regions electric energy production capacity and increase rates. Another economic interest of the School District is that the property taxes paid by LILCO for Shoreham constitutes approximately 90 percent of School District's tax base.

School District also claims it has an interest in protecting the health and environment of almost 2000 students and 500 employees, who live and/or work in close proximity to the Shoreham facility, from the radiological impacts of the Confirmatory Order and the adverse health and other environmental consequences of nonoperation of Shoreham. These are said to be air pollution produced by substitute oil and gas plants. The

harm is said to be cognizable under NEPA. It seeks representational status for the President of the Board of Education who resides in Wading-River, New York. The petition was signed by the Superintendent of Schools of School District.

E. Staff's And LILCO's Responses To School District's Petition

Staff filed a single response to the petitions of Secure Energy and School District and there is no distinction made as to the two petitions.

LILCO, in response to the School District petition, asserted that it was not immediately apparent that an entity whose primary purpose is the operation of facilities for the education of school children has an organizational interest in protecting persons from the adverse radiological and environmental impacts stemming from the nonoperation of a nuclear plant. It claimed School District's only real interest is an economic one, which is inadequate to establish standing.

F. Board's Ruling On Secure Energy's Petition On Confirmatory Order Modification

The Board finds that Secure Energy has failed to satisfy the requirements of 10 CFR 2.714(a)(2) to establish standing.

Secure Energy, as an organization, has not established that it will suffer a distinct and palpable harm that constitutes an injury in fact. Its organizational interest is educational and informational in nature on the subject of the "national energy debate." Although it may view the Confirmatory Order Modification as being in conflict with its views, this fact does

not constitute a distinct and palpable harm which satisfies the interest requirement for intervention.

Secure Energy's organizational status is not unlike that of a petitioner whose "interests lie in the development of economical energy resources, including nuclear, which have the effect of strengthening the economy and increasing the standard of living." The Commission found that such broad public interest does not establish the particularized interest necessary for participation by a group in agency adjudicatory processes. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983). See also Sierra Club v. Morton, 405 U.S. 727, 739 (1972) where the Supreme Court said that "a mere interest in a problem no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization adversely affected or aggrieved within the meaning of the APA."

Another defect in the Secure Energy petition is that it has failed to identify any injury that can be traced to the challenged action. Dellums v. NRC, 863 F.2d 968, 971 (D.C. Cir. 1988)

The action that can be challenged in the Confirmatory Order Modification proceeding is whether the agency was correct in determining that the public health and safety require that the Licensee not return fuel to the reactor vessel without prior NRC

approval. Secure Energy did not identify any injury stemming from this determination.

The cause of Secure Energy's alleged injury is stated by Petitioner to result from the Commission permitting the de facto decommissioning of Shoreham which also involves the agency's failure to require LILCO to maintain a full power operational status under the Shoreham full power license. This alleged de facto decommissioning is said by Petitioner to be violative of AEA and NEPA. The Confirmatory Order Modification is never treated by Secure Energy to be more than incidental to the action cited as the proximate cause of Petitioner's injury.

As discussed previously, under II.B., the matter of the alleged de facto decommissioning of Shoreham and what it is said to entail is beyond the scope of this proceeding. This places Secure Energy in the position of having failed to link the subject challenged action to any resulting injury.

Petitioner's reliance on Competitive Enterprise Inst. v. National Highway Traffic Safety Admin., supra., does not bolster Secure Energy's case. The Court held that "Allegations of injury to an organization's ability to disseminate information may be deemed sufficiently particularized for study purposes where that information is essential to the injured organizations activities." Furthermore, "to sustain informational standing, organizations must point to concrete ways in which their programmatic activities have been harmed." They must show how the lack of an assessment has significantly harmed their ability

to educate and inform the public about a zone of interest protected by NEPA whose purpose is to protect the environment.

Secure Energy has not made the necessary showing. Its focus has been on decommissioning and restart, two matters not at issue in this proceeding. Petitioner has not shown how, in a concrete way, the lack of an environmental assessment of the Confirmatory Order Modification would injure its ability to disseminate information that is essential to its programmatic status and is in the zone of interest protected by NEPA.

As to representational standing, Secure Energy has not stated that its organizational purpose provides authority to represent members in adjudicatory proceedings such as this one. Even if this can be inferred from the fact that its Executive Director is a signator to the Petition, Secure Energy has not satisfied the requirements for representational standing.

Petitioner states that the five members whom it seeks to represent have authorized it to do so. Their interests were not broken down individually but were stated collectively by Petitioner.

For an organization to rely upon injury to the interests of its members, it must provide, with its petition, identification of at least one of the persons it seeks to represent, a description of the nature of injury to the person and demonstrate that the person to be represented has in fact authorized such representation. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1437 (1982).

No supporting statement containing that information was submitted from any member sought to be represented, as is required.

Although the members are said to live and/or work and have property interests within a 50 mile radius of Shoreham, this does not create a presumption of standing because it is not a proceeding for a construction permit, an operating license or a significant amendment which would involve an obvious potential for offsite consequences. Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, (1989).

Shoreham is a defueled nuclear power plant that has not been used commercially. To satisfy standing requirements, it would have to be shown by Secure Energy that a member's particularized injury in fact results from the Confirmatory Order which requires that LILCO not refuel Shoreham without prior NRC approval. Petitioner has failed to make this showing.

Member interest, in part, is described as obtaining sufficient amounts of electricity at reasonable rates. It is very well settled in Commission practice that a ratepayer's interest does not confer standing in NRC licensing proceeding.

As to Secure Energy wanting to protect its members from adverse health consequences that would result from substitute oil burning plants, there was no nexus shown between the Confirmatory Order and the alleged resultant construction of substitute oil burning plants and the harm that would be created. Absent such connection, no purpose would be served in discussing whether

construction of oil burning plants is a cognizable harm that the Commission can overcome.

Secure Energy has not established the requisite interest for standing, organizationally or representationally.

As to the specific aspects on which Petitioner seeks to intervene, the one relating to whether the Confirmatory Order is supported by substantial evidence, is relevant. Those alleged aspects that relate to decommissioning and operating Shoreham at full power are not issues in this proceeding and are therefore irrelevant.

G. Board's Ruling On School District's Petition On Confirmatory Order Modification

The Board finds that School District has failed to satisfy the requirements of 10 CFR 2.714(a)(2) to establish standing.

School District's organizational interest is that of a ratepayer and a tax recipient. These are economic concerns which are outside of the Commission's jurisdiction. The Commission has no regulatory responsibility for rates and tax distribution. They do not confer standing in NRC licensing proceedings and therefore School District has no basis for organizational standing.

As to its representational standing, School District wishes to protect the health and environment of its employees, one of whom has been identified as the President of the Board of Education. No supporting statement was received stating that the person had in fact authorized such representation. Such a

statement is required before representational standing can be granted.

Again, the fact that the individual may reside and work in close proximity to the nuclear facility does not create a presumption of standing. There is no obvious potential for offsite consequences where the action complained of requires that the Licensee not refuel a defueled reactor without prior NRC approval.

The School District's petition fails to particularize any injury that it traces to the Confirmatory Order. Although the School District claims it wants to protect the health and safety of employees from the radiological impacts of the Confirmatory Order, it does not identify what those radiological impacts are. This is a defect in its claim for representational standing.

As for its claim to want to protect its employees from alleged adverse health and other environmental consequences of nonoperation of Shoreham, it is beyond the scope of the proceeding and cannot provide a basis for standing. Nonoperation of Shoreham is not at issue.

School District has failed to establish the requisite interest for standing organizationally or representationally.

The Board similarly rules on School District's specific aspects and request for relief as it did for Secure Energy for the reasons given.

V. SECURITY PLAN AMENDMENT

A. Secure Energy's Position On Intervention

Secure Energy's "Petition To Intervene And Request For Hearing," dated April 20, 1990, fundamentally is a repeat of its petition to intervene on the Confirmatory Order Modification. To avoid repetition, we will discuss the petition to intervene on the Security Plan Amendment to the extent it differs from that previously considered and decided.

Petitioner asserts that the proposed reduction in physical security of vital plant systems, with a reduction in on-site security personnel, would unacceptably increase the risk of radiological sabotage and hence adversely affect the radiological health and safety of Petitioner, its employees and their property. Secure Energy also claims that the action interferes with the organization's informational purposes.

Petitioner asserts that to reclassify equipment and areas deemed vital for Shoreham as not vital would deprive that equipment and those areas of the degree of physical security that was deemed essential for protection against radiological sabotage in the granting of Shoreham's full-power operating license. Secure Energy states that such increased vulnerability to radiological sabotage, by definition, would significantly increase the risk of such sabotage and, hence, unavoidably and significantly increases the direct and/or indirect endangerment of Petitioner members' radiological health and safety.

Secure Energy claims the increased risk of sabotage and risk to the Shoreham equipment constitute adverse environmental impacts and would increase the risk that the choice of reasonable alternatives under NEPA would be limited.

Specific aspects on which Secure Energy seeks intervention under the AEA include whether the Settlement Agreement prohibits further operation of the Shoreham facility and matters relating to LILCO's compliance with its Shoreham full power operating license. Another issue raised is whether NRC should take action on increasing physical security requirements at Shoreham because of an October 16, 1989 License Events Report stating that two whiskey bottles were found inside the protected area.

An aspect Secure Energy wants considered under NEPA is its allegation that the change in the physical security plan is another step in the decommissioning process and that before this step can be taken that there be an environmental evaluation of the decommissioning plan as a whole. It also raises as an aspect the obligation of LILCO to conform to its full power operating license and the imposition of remedial measures to accomplish it.

B. Staff's and LILCO's Responses To Secure Energy's Petition On Security Plan Amendment

Staff's response to the new matters introduced by Secure Energy in its petition on the Security Plan Amendment is as follows:

Staff claims Petitioner has failed to set forth with particularity how the proposed amendment could have any adverse

impacts upon its interests. Petitioner asserts that Staff had determined that despite the proposed changes to the physical security plan, the plan will continue to have a level of protection that is adequate to meet a test of radiological sabotage. Petitioner has failed to confront this determination, in terms of demonstrating with particularity, that the proposed reductions in physical security could adversely affect its interests. Staff states that Petitioner's bare allegation of adverse impacts is simply insufficient to afford it standing to participate in a proceeding on the application.

Staff asserts that many of the purported aspects Secure Energy seeks to participate in are beyond the scope of any proceeding on the proposed amendment.

LILCO filed a single response to Secure Energy's petitions for intervention on the Confirmatory Order Modification and the Security Plan Amendment. It answered the new material in the petition to intervene on the Security Plan Amendment as follows.

LILCO states that its security plan was better than that required by regulation and that the plan's relative effectiveness in the context of a nonoperative and defueled reactor was not affected by the revision which meets NRC regulation.

LILCO claims that the amended security plan will still be in compliance with applicable NRC requirements. Licensee asserts that Staff has made such a finding and that Petitioner's bare allegation, that the proposed amendment is not in compliance with the AEA and implementing regulations and that there is a lack of

reasonable assurance of the protection of health and safety and the national defense and security, merely begs the question.

Licensee further claims that Petitioner's generalized allegation of harm is insufficient. It states that a conclusory assertion of danger is totally inadequate to establish any injury in fact. This is said to be particularly true since Shoreham is not operating and is in a defueled configuration.

LILCO also argues that under NEPA implementing regulations, NRC need not perform an environmental review before approving the amendment. It cites 10 CFR 51.14(a) and 51.22 which set forth categorically excluded actions. Specifically listed under 10 CFR 51.22(c)(12) is the

> [i]ssuance of an amendment to a license pursuant to parts 50...of this chapter relating solely to safeguards matters (i.e., protection against sabotage or loss or diversion of special nuclear material) or issuance of an approval of a safeguards plan submitted pursuant to Parts 50, 70, 72, and 73 of this chapter. provided that the amendment does not involve any significant construction impacts. These amendments and approvals are confined to (i) organizational and procedural matters, (ii) modifications to systems used for security and/or materials accountability, (iii) administrative changes, and (iv) review and approval of transportation routes pursuant to 10 CFR 73.37.

Licensee asserts that its proposed amendment to the physical security plan is of an organizational and procedural nature, and that the NRC need not perform an environmental review before approving the amendment.

C. School District's Petition On Security Plan Amendment

School District's petition to intervene on the Security Plan Amendment, like that of Secure Energy, fundamentally repeats its petition to intervene on the Confirmatory Order Modification and is virtually identical to Secure Energy's petition on the Security Plan Amendment.

No purpose would be served in repeating the positions taken by the Petitioner that have already been decided in regard to the Confirmatory Order Modification or again restating the new material Secure Energy has presented in its petition on the Security Plan Amendment which School District reiterates.

New matter that the School District's petition raises is that the organization seeks to represent the interest of the Superintendent of Schools of the School District, who resides in Centerport, New York. This differs from its Confirmatory Order Modification petition in which it seeks to represent the interest of the President of the School District's Board of Education.

D. Staff and LILCO's Responses To School Board's Petition On Confirmatory Order Modification

Staff and LILCO treated the School Board's and Secure Energy's petitions as identical and did not submit a different response to the School Board's petition.

E. Board's Ruling On Secure Energy And School Board's Petitions On Security Plan Amendment

As with the petitions on the Confirmatory Order Modification, which the subject petitions essentially duplicate,

Secure Energy and School District have failed to satisfy the requirements of 10 CFR 2.714(a)(2) to establish standing.

For the reasons stated under IV.F., Secure Energy has not established that it is entitled to organizational standing because it has not shown itself to have suffered an injury in fact recognized in law. It has not established how, in a concrete way, the lack of an environmental assessment on the Security Plan Amendment would injure its ability to disseminate information that is essential to its programmatic activities and is in the zone of interest protected by NEPA.

As to representational standing, it has not submitted the supporting statement required for such representation, as specified in Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1437 (1982). The petition is therefore deficient.

Furthermore, Secure Energy has the burden of showing that a member's particularized injury in fact results from the Security Plan Amendment. Secure Energy has failed in this requirement.

Secure Energy's claims of injury are alleged to emanate from the de facto decommissioning of Shoreham and LILCO's failure to maintain a full power operational status under the Shoreham full power license. As previously discussed, those are not the issues in this proceeding. The issue in this proceeding is the Security Plan Amendment for a defueled plant and its ramifications. There was no nexus shown between Secure Energy's alleged adverse health consequences to its members that are said would result from the

construction of substitute oil burning plants and the changes in Shoreham's security plan. No meritorious claim of possible injury in that area was presented.

Similarly, Secure Energy has not otherwise established that any of its members will suffer a distinct and palpable harm constituting an injury in fact resulting from the amendment to the security plan.

Petitioner's assertion, that to reclassify as not vital, equipment and areas deemed vital to Shoreham under its full power operating license would deprive the equipment and areas of physical security, which in turn would increase vulnerability to radiological sabotage and the risk of such sabotage and result in an increase in danger to members' radiological health and safety, does not satisfy the requirements of showing a particularized injury in fact.

That which Petitioner has presented is an abstract argument that is unconnected to the legal and factual issues in the proceeding. The issue in this proceeding is whether the security changes for a defueled plant that has never been in commercial operation can result in harm. This issue was never addressed by Petitioner.

Furthermore, there is no factual predicate to Petitioner's claim of increased risk to members' radiological health and safety. Secure Energy arrives at its claim of increased radiological health and safety risk by building inference on inference which does not result in a supportable conclusion.

There was no information provided to show that the changes in the security plan for a defueled plant that was never in commercial operation will result in increased vulnerability to sabotage or the risk of such sabotage. Even if it were shown that there were such increased vulnerability and risk of sabotage, there was no showing that it could result in radiological harm. How would the sabotage translate into radiological harm? For example, would tne theft of spent fuel with a burnup of approximately two effective full power days or its destruction in storage result in radiological harm to offsite members?

Secure Energy had the burden of providing such information which it failed to do. The Commission has held that absent situations with obvious potential for offsite consequences, a petitioner must allege some specific injury in fact that will result from the action taken. Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989).

Whether the changes in the security plan are categorically excluded from an environmental review as LILCO contends cannot be decided by the Board at this time. Insufficient information was provided to the Board to make that determination.

Secure Energy has not established the requisite interest for standing, organizationally or representationally.

The aspects of the subject matter of the proceeding as to which Petitioner wishes to intervene relate to Secure Energy's

allegations of decommissioning of Shoreham, the failure of LILCO to operate the facility at full power or the need for increasing security requirements, none of which are issues in this proceeding.

Petitioner has failed to establish standing.

School District's petition on the Security Plan Amendment is virtually identical to that of Secure Energy except as to organizational purpose and does not differ in any material respect. We make the same rulings on the School District's petition as we did on Secure Energy's. Petitioner has also failed to establish standing.

VI. EMERGENCY PLAN AMENDMENT

A. Secure Energy Position On Intervention

The subject amendment would release LILCO from complying with five licensing conditions on offsite emergency preparedness if (1) the reactor is void of all fuel assemblies; and (2) the 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.

The five licensing conditions in LILCO's full power operating license NPF-82 require LILCO to: shutdown Shoreham at least 24 hours prior to commencement of a strike by its workers, 2.C.(9); place Shoreham into shutdown in the event of a hurricane in the Long Island area, 2.C.(10); modify its offsite emergency

plan so as to provide that a knowledgeable LERO[5] representative will be sent to the Suffolk County Emergency Operations Center (EOC) upon the declaration of an alert or higher Emergency Classification Level (ECL), 2.C.(11); have a trained person available 24 hours a day, whenever Shoreham is operating above 5% rated power, to expedite conversion of LILCO's Brentwood facility into a LERO EOC upon declaration of an alert or higher ECL, 2.C.(12); and conduct quarterly training drills, with full or partial participation by LERO, 2.C.(13).

In its petition, Secure Energy again repeats what is contained in its two petitions we previously reviewed. There is no need to repeat those matters here.

New material presented is Petitioner's claim that the amendment would allow the cessation of certain emergency planning activities including required exercises or drills. It asserts that such cessation of practice would greatly reduce the effectiveness of LERO "and thus greatly delay and prejudice LILCO to return to full power operation with the same degree of reasonable assurance of the public health and safety offered by the regular practice and training currently required." It states that such vulnerability to radiological harm, significantly increases the risk of such harm and, hence, unavoidably increases the threat to members' radiological health and safety. Secure

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[5] LERO is an organization created by LILCO and staffed by some 3,000 of its own employees and contractors in order to provide an offsite emergency response capability that is adequate to meet the regulatory standards.

Energy also alleges that these increased risks of radiological harm also constitute adverse environmental impacts and would also increase the risk that the choice of reasonable alternatives would be limited.

Again, most of the specific aspects of the subject matter Petitioner seeks to intervene on deal with full power operations and LILCO's obligation to adhere to the Shoreham full power license, both of which are not relevant to this proceeding. It also raises the questions of whether the Emergency Plan Amendment should not be heard with the Security Plan Amendment; whether Federal Emergency Management Agency findings are required on the subject issue; and whether the license amendment, which permits discontinuance of quarterly drills, involves a significant reduction in the margin of safety and increase the probability of radiological harm.

In addition to making its previous arguments on NEPA aspects, based on the contention that this is but a step in a de facto decommissioning, Secure Energy raises the matter of whether an environmental assessment is required if, assuming arguendo, the Emergency Plan Amendment is a discrete action. Secure Energy asserts that the proposed action is not among those listed in 10 CFR 51.20(b) that require preparation of an Environmental Impact Statement or is it listed in 10 CFR 51.22(c) or (d) which provides for categorical exclusions and other actions not requiring environmental review. It claims that then under 10 CFR 51.21, an environmental assessment is required. It states that

the environmental assessment will provide a basis for discussion whether the proposed action merits preparation of an Environmental Impact Statement or a finding of no significant impact.

B. Staff's and LILCO's Response To Secure Energy's Petition On Emergency Plan Amendment

Staff responds to new matters introduced by Secure Energy as follows:

Staff asserts that the amendment would only be effective while the plant is in a defueled condition and that Petitioner has failed to show that any injury might result from the reduced level of emergency preparedness which would exist while the plant is in this position. It claims that Petitioner does not contend that it would be endangered by granting the subject amendment, which would only suspend emergency planning activities while the plant remains in a defueled condition. Staff asserts Petitioner's claim is only concerned with lessened emergency preparedness at such time that the Licensee seeks to began full power operation. Staff states that under these circumstances, Petitioner has failed to set forth "with particularity" how the proposed amendment could adversely affect its interests.

Staff alleges that Petitioner's list of specific aspects are more related to decommissioning and are beyond the scope of a proceeding on the proposed amendment.

LILCO alleges that Petitioner does not confine itself to the Emergency Plan Amendment but extends itself to a request by

Licensee for an exemption under 10 CFR 50.12 whereby LILCO would cease offsite emergency preparedness activities and disband LERO. It cites Petitioner's claim that the "proposed license amendment...effectively eliminates the offsite Emergency Response Plan and disperses the organization which is charged with implementation of that Plan...."

Licensee asserts that Secure Energy never confronts the fact that Shoreham is shutdown and defueled and that no credible accident requiring an offsite emergency response can occur. It claims Petitioner's assertions are legalistic rather than factual and that no showing was made of a connection between the amendment and any specific injury.

C. School District's Petition On Emergency Plan Amendment And Staff's And LILCO's Response

The School District's petition on the Emergency Plan Amendment does not differ in any significant way from that of Secure Energy, except as to organizational purpose. Staff and LILCO each filed single responses to both petitions and made no distinction between the petitions.

D. Board's Ruling On Secure Energy And School Board's Petitions On Emergency Plan Amendment

As with the other petitions, which they essentially duplicate, the Secure Energy and School District petitions on the Emergency Plan Amendment fail to satisfy the requirements of 10 CFR 2.714(a)(2) to establish standing.

Secure Energy has not established that it is entitled to organizational standing because it has not shown itself to have

suffered an injury in fact recognized in law. This matter was fully discussed under IV.F. on the Confirmatory Order Modification.

As to representational standing, Secure Energy has not submitted the supporting statement required for such representation, as discussed in Limerick. Like its other two petitions, this petition is similarly deficient.

Again, Secure Energy's claims of injury are alleged to emanate from the de facto decommissioning of Shoreham and LILCO's failure to maintain a full power operational status under the Shoreham full power license. They are matters not at issue in this proceeding. At issue is the Emergency Plan Amendment which releases LILCO from complying with five emergency planning license conditions when the reactor is void of all fuel assemblies and the spent fuel, which had limited use, is stored in the spent fuel pool or in other approved storage.

Secure Energy's claims of injury are unconnected with this situation which is a condition precedent to the lifting of the license conditions.

Secure Energy's claims of injury are not organizationally and representationally related in any way to a plant which will be defueled and will have its spent fuel in storage before any of the conditions can be removed. No particularized injury was identified that can be traced to the challenged action.

Again, Petitioner presented an abstract argument that is unconnected with the legal and factual issues in the proceeding.

Secure Energy complains that the amendment will reduce the effectiveness of LERO and will cause delay in returning LILCO to full power operation. Full power operation is not at issue. How effective does LERO have to be for a defueled plant and what radiological consequences can be expected from a less effective ERO when the facility is defueled and not operating? These critical questions are not addressed by Secure Energy although it is its responsibility to do so if it is to obtain standing.

There was no credible showing that the amendment would increase the risk of radiological harm to members' health and safety. There was no factual basis offered to support the bare argument.

Because Petitioner's claim of injury is premised on the erroneous belief that the issues in the proceeding are the decommissioning of Shoreham and Licensee's failure to maintain its operational status at full power as authorized by its license, which are not at issue, it has failed to show an injury in fact to itself or to its members that is protected by the AEA or NEPA.

LILCO's claim that Petitioner's erroneously extended the scope of the proceeding to include a separate request by LILCO to cease all offsite emergency preparedness activities is not a significant matter. We agree that the 10 CFR 50.54(q) exemption request by LILCO which would allow it to cease its offsite emergency preparedness activities is not within the scope of this matter. However, Security's basic claim is that the amendment

will render LERO less effective. That is the issue the Board has considered.

Those specific aspects of the subject matter of the proceeding as to which Petitioner seeks to intervene include matters in issue as well as those which are outside the scope of the proceeding. The latter include those dealing de facto decommissioning and requiring LILCO to operate at full power. Certainly, whether the license amendment which permits discontinuance of quarterly drills involves a significant reduction in the margin of safety and increase the probability of radiological harm would be a valid subject of a hearing.

Security Energy has provided no authority to support the issue it raises as to whether Federal Emergency Management Agency findings are required on the issue. 10 CFR 50.47 calls for such agency findings prior to issuing an operating license for a nuclear power reactor. That is not the nature of this proceeding.

At this time, there is no basis to consider on hearing the Emergency Plan Amendment with the Security Plan Amendment. No standing has been established by Secure Energy in either proceeding.

If a hearing were granted, the aspect Petitioner would participate in, whether under 10 CFR 51.21 an environmental assessment is required of the proposed amendment, appears to be a matter at issue.

For the reasons given, Secure Energy has not established the requisite interest for standing, organizationally or representationally.

School District's petition on the Emergency Plan Amendment is virtually identical to that of Secure Energy. We make the same rulings as to both petitions. Petitioner also has failed to establish standing.

V. CONCLUSION

The Board having reviewed each "Petition To Intervene And Request For Hearing" has determined that Petitioners have failed to establish standing in each of the three matters, as required by 10 CFR 2.714(a)(2). Also, in the case of the Security Plan Amendment, they have not identified a specific aspect relevant to the subject matter of the proceeding, as provided for in 2.714(a)(2). The deficiencies that have been found to exist have been discussed in detail in this Memorandum.

Petitioners have basically predicated their cases on the claim that these matters are part of the de facto decommissioning of Shoreham and are concerned about resumed operation of the facility.

The Commission's ruling in CLI-90-08 did not find Petitioners' position to be meritorious. The Commission found that resumed operation of Shoreham is not to be considered as an alternative in an environmental review of decommissioning under NEPA. It further found that the license changes that we are to

consider do not foreclose any NEPA alternative that must be considered in that assessment. The three license changes now before this Board are not an impermissible segmentation of any decision to decommission. The Commission's decision stripped away Petitioners' main arguments for standing.

Petitioners did not have the benefit of the Commission's precedental decision on decommissioning in CLI-90-08 at the time they filed their various petitions to intervene. Their petitions focused on matters that the Commission subsequently determined to be beyond the scope of consideration under NEPA in any proceeding on reactor decommissioning. The Board concludes that because of these circumstances Petitioners should be afforded the opportunity to amend their petitions to intervene to take into account the recent Commission decision and the deficiences in their petitions that are specified in this order.

This conclusion is predicated in part on the Commission being rather liberal in permitting petitioners the opportunity to cure defective petitions to intervene. It has done so on the bases that, "the participation of intervenors in licensing proceedings can furnish valuable assistance to the adjudicatory process." Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631, 633 (1973).

ORDER

Based upon all of the foregoing, Petitioners are afforded the opportunity to amend their petitions to cure the defects found by the Board.

Amended petitions are required to be filed within twenty (20) days after service of this Order. LILCO shall file its response within ten (10) days of service of the amended petitions and Staff shall have an additional five (5) days within which to respond.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Morton B. Margulies

Morton B. Margulies, Chairman
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland
January 8, 1991

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (RULING ON REQUESTS...) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Docket No.(s)50-322-OLA
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Dated at Rockville, Md. this
8 day of January 1991

Patty Henderson
Office of the Secretary of the Commission