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February 8, 1991

Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

In the Matter of
Sacramento Municipal Utility District
(Rancho Seco Nuclear Generating Station)
Docket No. 50-312-OLA

Dear Administrative Judges:

On January 30, 1991, the Commission forwarded to the Atomic Safety and Licensing Board an intervention petition that had been filed on November 8, 1990 by the Environmental Conservation Organization (ECO) related to Sacramento Municipal Utility District's (Licensee) application to amend the Rancho Seco license to a possession-only license. ECO's petition is currently opposed by both the Licensee and the NRC Staff, because ECO seeks a hearing on issues that are not cognizable and because ECO lacks standing. Licensee's Answer to Environmental Conservation Organization's Petition (November 30, 1990); NRC Staff Response In Opposition to Petition to Intervene Filed By The Environmental Conservation Organization on Proposed License Amendment (Dec. 5, 1990). We expect that the Board may soon rule on this matter, and are writing to notify the Board of a recent Commission decision that is relevant.

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In identifying the supposed aspects of the subject matter of the proceeding with respect to which ECO seeks to intervene, and in its endeavor to demonstrate a cognizable interest that might be affected, ECO has identified the following issues it wishes to be heard. ECO contends that the NRC must determine whether the public interest is best served by an operable plant; that the NRC may not issue a possession-only license until the NRC approves a final decommissioning plan; and that NEPA requires the NRC, before approving any proposal to decommission Rancho Seco, to prepare an environmental impact statement evaluating continued operation as an alternative to decommissioning.

As discussed in the responses of Licensee and of the NRC Staff to ECO's petition, the Commission's October 17, 1990 decision in the Shoreham proceeding ruled that a licensee's decision to cease plant operation is not subject to NRC approval, and that NEPA does not require the NRC to consider continued operation as an alternative to decommissioning. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-90-8, 32 N.R.C. 201, 207-09 (1990). On January 24, 1991, the Commission issued another decision in the Shoreham proceeding, ruling that no preliminary or final decommissioning information is required before a possession-only license may be issued. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-91-01, 33 N.R.C. ____ (slip op. Jan. 24, 1991). Thus, each of the issues advanced by ECO to define its intervention and standing has been explicitly rejected by the Commission.

In light of the Commission's decisions, ECO's petition should be denied without further ado.^{1/} Raising matters that go

^{1/} In Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-91-1, 33 N.R.C. ____ (slip op. Jan. 8, 1991), a Licensing Board found that petitions similar to ECO's failed to establish standing, but afforded the petitioners an opportunity to amend because they had not had the benefit of the Commission's precedential decision in CLI-90-08 at the time the petitions were filed. Id., slip op. at 47. In this case, ECO was fully aware of CLI-90-08 when it filed its petition and has had ample opportunity (two months) to amend its petition in light of Licensee's and the Staff's arguments.

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entirely beyond legal requirements and the NRC's jurisdiction, ECO has neither identified cognizable aspects of the subject matter of the proceeding upon which intervention may be granted nor established injury in fact causally related to the proposed issuance of a possession-only license.

Sincerely,



David R. Lewis
Counsel for the Sacramento
Municipal Utility District

DRL:ch

cc: Service List

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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SACRAMENTO MUNICIPAL UTILITY)
DISTRICT) Docket No. 50-312-OLA
)
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Station))

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