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LILCO, February 19, 1991

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

LILCO'S OPPOSITION TO PETITIONERS' AMENDED PETITIONS TO INTERVENE AND REQUESTS FOR HEARING

I. Introduction

On February 4, 1991, Petitioners Scientists and Engineers for Secure Energy, Inc. (SE_2) and Shoreham-Wading River Central School District (SWRCSD) each submitted amended petitions to intervene and requests for hearing on three NRC licensing actions concerning the Shoreham Nuclear Power Station: (1) the issuance on March 29, 1990 of a Confirmatory Order prohibiting Long Island Lighting Company (LILCO) from placing fuel back into the reactor vessel without prior NRC approval, (2) the approval on June 14, 1990 of an amendment to the Shoreham Physical Security Plan, and (3) the issuance on July 31, 1990 of an amendment to Shoreham's

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license, suspending the effect of certain conditions related to emergency preparedness while the plant remains defueled. Accompanying the amended petitions were affidavits from SE_2 members Miro M. Todorovich, Dr. John L. Bateman, Eena-Mai Franz, Andrew P. Hull, Dr. Stephen V. Musolino, Joseph Scrandis, and John R. Stehn, as well as from Dr. Albert G. Prodell, President of the SWRCSD Board of Education.

Pursuant to 10 C.F.R. § 2.714(c), LILCO opposes the amended petitions.[1/]

II. Background

The procedural posture of this case is well known to the Licensing Board, which recites the background to this case in its Memorandum and Order of January 8, 1991, Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-91-1, 33 NRC __, slip op. at 1-5 (Jan. 8, 1991). That procedural history will not be repeated here.

It should be noted, however, that since the Board issued LBP-91-1, the Commission has handed down a significant decision, Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-91-01, 33 NRC __ (Jan. 24, 1991), which further underscores the futility of Petitioners' efforts to enlist the NRC's assistance in their campaign to compel LILCO to operate Shoreham.

1/ In referring to the six separate amended petitions, the following short forms are used: SE_2 Confirmatory Order Petition, SWRCSD Confirmatory Order Petition, SE_2 Security Plan Petition, SWRCSD Security Plan Petition, SE_2 Emergency Preparedness Petition, and SWRCSD Emergency Preparedness Petition.

In CLI-91-01, the Commission ruled that, under the NRC's decommissioning regulations, LILCO need not submit and have approved by the NRC a decommissioning plan for Shoreham before the NRC may grant LILCO's pending request to amend its current operating license to create a "possession only license" (POL). The Commission rejected Petitioners' assertions that the NRC had to approve formally a decommissioning plan before issuing a POL, and it referred Petitioners' request for a hearing to the Licensing Board for disposition consistent with the Commission's ruling.

III. Argument

In LBP-91-1, the Board gave Petitioners an opportunity to attempt to cure the deficiencies that it had identified in their initial petitions to intervene. With respect to each petition, both Petitioners have failed to so do. As shown in parts III.A through III.C below, when the Board's extensive findings in LBP-91-1 on SE_2's and SWRCSD's organizational and representational standing are contrasted with the cursory responses Petitioners offer in return, the inadequacies in their amended papers become clear. All six petitions should be dismissed and the requests for hearing denied.

Moreover, apart from the substantive failures of Petitioners' amended papers, LILCO suggests that SE_2 and SWRCSD have exceeded the bounds set by the Board when it gave them an opportunity to refile. In LBP-91-1, the Board, after noting that "Petitioners did not have the benefit of the Commission's prece-

dential decision on decommissioning in CLI-90-08 at the time they filed their various petitions to intervene," concluded that they "should be afforded the opportunity to amend their petitions to intervene to take into account [CLI-90-08] and the deficiencies" that the Board had identified. LBP-91-1, slip op. at 47.

Indisputably, the Board has discretion to allow Petitioners an opportunity to amend. See, e.g., Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 193 (1973). But SE_2 and SWRCSD have seized upon the second chance offered them by the Board as a means of reiterating various arguments related to Shoreham's decommissioning that are clearly outside the scope of these proceedings. To the extent the amended petitions and the accompanying affidavits address the issues of Shoreham's decommissioning and the alternative of plant operation, those aspects of the petitions and affidavits should be disregarded.

In addition, some of the arguments that Petitioners make in support of their intervention they easily could have made, but did not, in their initial petitions. LILCO does not believe that, in giving Petitioners an opportunity to amend, the Board intended to give them carte blanche to introduce arguments that they could have asserted previously, without the benefit of CLI-90-08. To the extent Petitioners have so done, those arguments, too, should be disregarded.

Finally, in allowing Petitioners an opportunity to amend, the Board said that its ruling was "predicated in part on the

Commission being rather liberal in permitting petitioners the opportunity to cure defective petitions to intervene." Id., citing Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631, 633 (1973). In North Anna, the Appeal Board had remarked that the "participation of intervenors in licensing proceedings can furnish valuable assistance to the adjudicatory process." While perhaps true in the some cases, it is not true here.

It is important to remember that, in explaining the benefits that intervenor participation might offer, the Appeal Board in North Anna went on to say that "[i]n the final analysis, there must ultimately be strict observance of the requirements governing intervention, in order that the adjudicatory process is invoked only by those persons who have real interests at stake and who seek resolution of concrete issues." ALAB-146, 6 AEC at 633. Neither SE_2 nor SWRCSD qualify as "persons who have real interests at stake" here.

Petitioners' oft-stated interest -- indeed, their only interest -- is that Shoreham be operated as a nuclear-powered facility. Beyond that, they have nothing concrete to contribute to the proceedings at issue, as those proceedings are narrowly and properly defined by CLI-90-08. It is common knowledge that Petitioners' strategy is to prolong the process of NRC approval of actions that they view as being in furtherance Shoreham's decommissioning, in the hope that, ultimately, there either will be a shift in position by LILCO or the State of New York, or that

some agency of the federal government will step in to attempt to mandate operation of the plant. The NRC's adjudicatory process need not and should not be allowed to be used merely as a tool in pursuit of these ends.

A. Confirmatory Order

1. SE_2's Amended Petition

In LBP-91-1, the Board found that SE_2 had failed to demonstrate standing, either organizationally or representationally, on the matter of the NRC's issuance of the Confirmatory Order. As amended, SE_2's petition continues to be fatally defective in both respects.

(a) Organizational Standing

With respect to organizational standing, the Board previously ruled that SE_2 had "not established that it will suffer a distinct and palpable harm that constitutes injury." LBP-91-1, slip op. at 23. The Board noted that SE_2's "organizational interest" is "educational and informational in nature on the subject of the 'national energy debate,'" a status that renders it "not unlike . . . 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.'" Id. at 23, 24, citing Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983). Such "broad public interest," the

Board stated, "does not establish the particularized interest necessary for participation by a group in agency adjudicatory processes." LBP-91-1, slip op. at 24. A further "defect" in the petition, the Board continued, is that it "failed to identify any injury that can be traced to the challenged action." LBP-91-1, slip op. at 24, citing Dellums v. NRC, 863 F.2d 968, 971 (D.C. Cir. 1988).

As the Board then noted, given the scope of the proceeding as properly defined, the "action that can be challenged . . . 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." LBP-91-1, slip op. at 24-25. But SE_2, the Board pointed out, "did not identify injury stemming from this determination. Instead, the Confirmatory Order is treated by SE_2 as never more than "incidental to the action cited as the proximate cause of Petitioners' injury," the alleged de facto decommissioning of the Shoreham plant. Id. at 25. By focusing on "decommissioning and restart, two matters not at issue in this proceeding," the Board concluded, SE_2 has "not shown how, in a concrete way, the lack of an environmental assessment of the Confirmatory Order would injure its ability to disseminate information that is essential to its programmatic status and is in the zone of interest protected by NEPA." Id. at 26.

SE_2 has still not made any such showing. In its three-and-a-half-page amended petition, the closest SE_2 comes to confront-

ing the Board's ruling on its lack of organizational standing is its allegation that "given the absence of a categorical exclusion pursuant to 10 C.F.R. § 51.22(c)," the lack of an environmental assessment or environmental impact statement violates the organization's rights under NEPA "because it deprives [SE_2] of the information which NEPA requires to be developed by the Staff for the benefit of the general public and the decision-makers." SE_2 Confirmatory Order Petition at 2-3.

But this conclusory allegation of legal harm, lacking specifics or explanation, hardly demonstrates that SE_2 has organizational standing to intervene. The deficiencies identified by the Board with respect to organizational standing remain.

(b) Representational Standing

As a threshold matter, the Board noted that the "presumption of standing" typically made for individuals residing within 50 miles of the facility at issue does not apply in this case "because it is not a significant amendment which would involve an obvious potential for offsite consequences." LBP-91-1, slip op. at 27, citing Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325 (1989). The Board continued that, to satisfy representational standing requirements, "it would have to be shown by [SE_2] that a member's particularized injury in fact results from the Confirmatory Order." LBP-91-1, slip op. at 27.

SE_2, the Board ruled, had "failed to make this showing." LBP-91-1, slip op. at 27. In the first place, the Board said,

while one of SE_2's member interests 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 [an] NRC licensing proceeding." Id. Moreover, as for "wanting to protect its members from adverse health consequences that would result from substitute oil burning plants," the Board said, "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." Id.

These fatal flaws remain. In its amended petition, SE_2 offers nothing that should cause the Board to change its initial ruling. First, SE_2 seems to have chosen to ignore the Board's determination that the "50-mile" presumption of standing is inapplicable here. For instance, the affidavits of Dr. Bateman, Ms. Franz, Mr. Hull, Dr. Musolino, Mr. Scrandis, and Dr. Stehn all recite that they "live within the fifty mile geographical zone utilized by the [NRC] to determine whether a party is sufficiently threatened by the radiological hazard and other environmental impacts of the proposal to establish the requisite interest and standing for intervention as of right." Affidavit of John L. Bateman, M.D., et al., at ¶ 1.[2/]

2/ In addition, some of SE_2's represented members have continued to assert interests that the Board has determined are not availing here. See LBP-91-1, slip op. at 27 (a "ratepayer's interest does not confer standing in NRC licensing proceeding[s]"). Affiant Franz asserts that she has a cognizable interest based on the allegation that, under the Settlement

(continued...)

SE_2 does allege, though without any support, that "allowing the Shoreham plant to remain in a degraded safety condition while possessing an operating license creates an obvious potential for offsite radiological consequences for its represented members." SE_2 Confirmatory Order Petition at 3.[2/] This bare allegation is simply insufficient, however, to constitute a showing of a "particularized injury in fact." Indeed, the Board has already determined that the Confirmatory Order does not create an "obvious potential" for radiological harm. LBP-91-1, slip op. at 27.

The closest any of the represented members come to alleging with "particularity" that they will suffer an "injury in fact"

2/ (...continued)
Agreement between LILCO and New York State, "electric rates will probably increase by 10% per year," which will supposedly lead to a "weakened Long Island economy and real estate market." Affidavit of Eena-Mai Franz at ¶ 7. For his part, affiant Scrandis argues that he has a cognizable interest in the proceeding since, by not requiring LILCO to maintain Shoreham in operable condition, the NRC is "wreaking havoc upon the economic well-being of Long Island and, in turn, myself." Affidavit of Joseph Scrandis at ¶ 7. Finally, affiant Stehn contends that he "finds [him]self threatened by the rising costs of electrical power." Affidavit of John R. Stehn at ¶ 3.

2/ Significantly, even though both SE_2 and SWRCSD assert that the Confirmatory Order poses an "obvious potential for offsite radiological consequences," they have never sought a stay of the Confirmatory Order from either the NRC or the federal courts. To the contrary, on May 7, 1990, Petitioners filed with the U.S. Court of Appeals for the District of Columbia Circuit an emergency request for a stay of a number of NRC actions -- including the then-proposed issuance of the Physical Security Plan and emergency preparedness amendments -- but not the Confirmatory Order. The stay request was denied two days later. If, as Petitioners argue, the Confirmatory Order poses such a "obvious" threat to the health and safety of their represented members, it is curious that they have never sought a stay of its effectiveness.

(though here, too, their allegation is inadequate) is their joint claim that the

> Confirmatory Order also represents a threat to my personal radiological health and safety and to my real and personal property in violation of my rights under the Atomic Energy Act of 1954, as amended. In direct violation of its own stated policy, the NRC has failed, in that Order, to require LILCO to undertake remedial actions to bring the Shoreham Plant in compliance with the terms of its full-power operating license. Thus, should a determination later be made to operate the Shoreham Plant, deterioration allowed by LILCO and by that incomplete Order will at the least move operation further away in time, and at the worst, increase the likelihood and risk of a radiological accident.

Affidavits of John L. Bateman, M.D., and John R. Stehn at ¶ 7; Affidavits of Eena-Mai Franz, Andrew P. Hull, Dr. Stephen V. Musolino, and Joseph Scrandis at ¶ 6 (emphasis added). This claim of danger, however, is directly tied to some postulated future operation of the plant (not at issue in this proceeding), not to the issuance of the Confirmatory Order. Thus, Petitioners' conclusory assertion does not satisfy the Board's admonition that SE_2 show a member's "particularized injury in fact" that "results from the Confirmatory Order." LBP-91-1, slip op. at 27 (emphasis added).

Finally, in apparent response to the Board's finding that SE_2 had shown no "nexus" between the Confirmatory Order and the alleged resultant harm, all that SE_2 offers is a bald assertion there is such a "nexus" between the Settlement Agreement, the Confirmatory Order, the "alleged resultant construction of substitute oil burning plants," and the "harm that would be

created for Petitioners' represented members." SE_2 Confirmatory Order Petition at 3. But SE_2 does not show that such a "nexus," exists; it simply claims that it does. This is inadequate. The petition should be denied.

2. SWRCSD's Amended Petition

SWRCSD's amended petition on the Confirmatory Order should also be denied. Its amended petition is, in fact, virtually identical to that proffered by SE_2. Since the Board previously found SWRCSD's initial petition on the Confirmatory Order to be largely the same as SE_2's initial petition,[4/] then if SE_2's attempt to amend its petition is insufficient, it follows that SWRCSD's is inadequate as well. As shown below, to the extent the Board previously made specific rulings on SWRCSD's lack of organizational and representational standing, SWRCSD has failed to correct those deficiencies.

(a) Organizational Standing

The Board properly made short work of SWRCSD's alleged organizational standing in LBP-91-1. It found that SWRCSD's "organizational interest is that of a ratepayer and a tax recipient," economic concerns that are "outside the Commission's jurisdiction." LBP-91-1, slip op. at 28. Such concerns "do not

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4/ In LBP-91-1, the Board noted that SWRCSD's petition only "differs from that of [SE_2] insofar as the description of the petitioner including its organizational purpose, whom it seeks to represent and the nature of their interest." LBP-91-1, slip. op at 21.

confer standing in NRC licensing proceedings," the Board said, and "therefore [SWRCSD] has no basis for organizational standing." Id.

In its amended petition, SWRCSD has made no effort whatsoever to counter the Board's determination. SWRCSD does claim that the lack of environmental review for the Confirmatory Order "deprives . . . Petitioner of the information which NEPA requires to be developed by the Staff for the benefit of the general public and the decision-makers." SWRCSD Confirmatory Order Petition at 2-3. But SWRCSD fails to explain how the NEPA-related issues it associates with Shoreham and the Confirmatory Order are germane to its organizational interests, which the Board has already determined to be that of a ratepayer and tax recipient.5/

In this respect as well, affiant Prodell ignores the Board's determination that such economic concerns do not bestow standing in NRC proceedings, and insists on arguing that SWRCSD has a cognizable interest in the "adverse economic consequences" that supposedly will follow from Shoreham's decommissioning. Affidavit of Dr. Albert G. Prodell at ¶ 12. Even if Shoreham's decommissioning were at issue in this proceeding (and it is not), SWRCSD still would not have demonstrated organizational standing to intervene, given the Board's ruling and controlling NRC

5/ Moreover, as with SE_2's identical allegation, SWRCSD offers nothing but a conclusory statement of legal harm, not a demonstration or even a reasonably specific allegation of some true harm in fact.

precedent. See, e.g., Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 & n.4 (1983); Public Service Co. of New Hampshire (Seabrook Station, Unit 2), CLI-84-06, 19 NRC 975, 978 (1984); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-789, 20 NRC 1443, 1447 (1984).

(b) Representational Standing

As for representational standing, the Board pointed out that SWRCSD had not provided a "supporting statement" demonstrating that the representative had authorized such representation. LBP-91-1, slip op. at 28. Beyond that procedural fault, the Board emphasized again that the "fact that the individual may reside and work in close proximity to the nuclear facility does not create a presumption of standing," since 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." Id. at 29.

The Board found that SWRCSD had "fail[ed] to particularize any injury that it traces to the Confirmatory Order." LBP-91-1, slip op. at 29. While SWRCSD "claims it wants to protect the health and safety of employees from the radiological impacts of the Confirmatory Order," the Board said, it had not identified "what those radiological impacts are." Id. Moreover, as for SWRCSD's claim to want to protect its employees from "alleged adverse health and other environmental consequences of nonopera-

tion of Shoreham," the Board continued, this claim is "beyond the scope of the proceeding and cannot provide a basis for standing." Id.

SWRCSD has taken to heart none of the Board's implicit suggestions as to how to craft a suitable petition. SWRCSD has submitted a "supporting statement" in the form of the Prodell Affidavit. Other than that, however, they offer nothing to cause the Board to change its initial ruling.

For instance, even though the Board has already determined that the Confirmatory Order creates no "obvious potential for offsite consequences" for SWRCSD's members' interests, SWRCSD continues to adhere -- as did SE_2 -- to its unsupported view that "allowing the Shoreham plant to remain in a degraded safety condition" does create an "obvious potential" for such consequences. SWRCSD Confirmatory Order Petition at 3. Yet, neither SWRCSD nor affiant Prodell has done anything to address these threshold issues, and, as the Board put it, to identify "what those radiological impacts are." The amended petition should be denied.

B. Physical Security Plan Amendment

1. SE_2's Amended Petition

The Board found SE_2's initial petition on the Physical Security Plan amendment to be "fundamentally . . . a repeat of its petition to intervene on the Confirmatory Order Modification," and discussed that petition only as it differed "from that

previously considered and decided." LBP-91-1, slip op. at 30. Similarly, to the extent that SE_2's petition as amended resembles the one it filed on the Confirmatory Order, the arguments already advanced against the latter petition will not be repeated here. For, as amended, SE_2's petition on the Physical Security Plan still does not meet NRC criteria for demonstrating standing to intervene, either organizationally or representationally.

(a) Organizational Standing

In LBP-91-1, the Board ruled that, for the same reasons it had given in rejecting SE_2's initial petition on the Confirmatory Order, SE_2 had "not established organizational standing" with respect to the Physical Security Plan amendment proceeding. SE_2 had not, the Board said, "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." LBP-91-1, slip op. at 35.

SE_2 still has not. All its says on this point in its amended petition is that the "absence of an [environmental assessment] or [environmental impact statement] obviously causes an injury" to SE_2's "right to the availability of the information that would be developed by the NRC Staff." SE_2 Security Plan Petition at 3. Such a injury, however, is by no means "obvious." Indeed, that was the Board's very point. SE_2 still has failed to

establish, in a "concrete way," how the lack of an environmental review causes an injury to its organizational interest.6/

(b) Representational Standing

With respect to representational standing, the Board first noted that SE_2 had failed to provide the required supporting statement. LBP-91-1, slip op. at 35. This procedural flaw was, however, the least of SE_2's worries. For instance, the Board went on to rule that SE_2 had failed to meet its "burden of showing that a member's particularized injury in fact results from the Security Plan Amendment." Id.

Similarly, the Board continued, SE_2 had not established that any of its members would suffer a "distinct and palpable harm constituting an injury in fact resulting from the amendment to the security plan." LBP-91-1, slip op. at 36. In this vein, the Board recited SE_2's assertion that to "reclassify as not vital, equipment and areas deemed vital" to Shoreham 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 in-

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6/ In addition, while the Board held that it could not at the time it issued LBP-91-1 decide whether, as LILCO contended in response to SE_2's initial petition, "the changes in the security plan are categorically excluded from an environmental review," LILCO renews its position on this issue and notes that SE_2 has provided no explanation why the exclusion provided by § 51.22(c)(12) for security plan changes should not apply here. See Long Island Lighting Company's Opposition to Intervention Petitions and Requests for Hearing on Confirmatory Order and on Amendment to Physical Security Plan (May 3, 1990) at 39 ("May 3 Opposition").

> crease in danger to members' radiological health and safety . . . .

Id. Such an assertion, the Board said, "does not satisfy the requirements of showing a particularized injury in fact," because "that which [SE_2] has presented is an abstract argument that is unconnected to the legal and factual issues in this proceeding." Id.

Moreover, the Board found, "there is no factual predicate to [SE_2's] claim of increased risk to members' radiological health and safety," since SE_2 has "arrive[d] at its claim of increased radiological health and safety risk by building inference on inference which does not result in a supportable conclusion." LBP-91-1, slip op. at 36. In this respect, the Board went on to note that

> 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 was such increased vulnerability and risk of sabotage, there was no showing that it could result in radiological harm.

Id. at 37. SE_2 had the "burden of providing such information," which, the Board said, "it failed to do." Id.

In its amended petition, SE_2 still has not demonstrated representational standing to intervene. For instance, SE_2 asserts that the "reductions in plant vital areas and security personnel obviously reduce the barriers against radiological sabotage." SE_2 Security Plan Petition at 3. But what SE_2

considers "obvious," the Board has already viewed as being less so.2/

Moreover, SE_2 has altogether failed to confront the fact that, as LILCO pointed out in its May 3 Opposition at 35, even with the changes authorized by the NRC's licensing action on June 14, 1990, Shoreham's Physical Security Plan remained in full compliance with applicable NRC regulations. See also 55 Fed. Reg. 10,540 (March 21, 1990)(the Staff states that the amended plan "will continue to [h]ave a level of protection that is adequate to meet a test of 'Radiological Sabotage: as referred in 10 C.F.R. 73.2(a)"). Given this, SE_2's generalized allegation of harm is simply insufficient. Cf. Sequoyah Fuels Corp. (UF_6 Production Facility), CLI-86-19, 24 NRC 508, 513 (1986)(petitioners' "conclusory assertion of 'danger' is totally inadequate to establish any adverse effect" from the terms of an order under which the licensee retained its "responsibility for conducting operations in a safe manner consistent with all license conditions and other regulatory requirements").

2/ Other than correcting its initial failure to submit supporting statements for its represented members, nothing in the seven affidavits accompanying SE_2's amended petition works to alleviate the various other deficiencies identified by the Board. Again, six of the seven affiants place misdirected emphasis of the fact that they live within 50 miles of Shoreham. A large portion of their affidavits is given over to the alleged harmful consequences of Shoreham's decommissioning, a matter not at issue in this proceeding. Only in the most general (and entirely inadequate) way do the affiants try to allege an "injury in fact." See, e.g., Affidavits of John L. Bateman, M.D., and John R. Stehn at ¶ 6; Affidavits of Eena-Mai Franz, Andrew P. Hull, Dr. Steven V. Musolino, and Joseph Scrandis at ¶ 5.

Thus, it continues to be the case, as LILCO pointed out in its May 3 Opposition at 36, that for SE_2 properly to allege that the Physical Security Plan amendment threatens its represented members with an "injury in fact," it must explain why it believes that the amended plan, which otherwise continued to meet the NRC's generic standards under 10 C.F.R. Part 73, would not provide a sufficient level of protection against radiological sabotage. If SE_2 wishes to argue that the amended plan does not provide an adequate level of protection against sabotage, it continues to have the burden -- which it still has not met -- of explaining why there is something significant about the specific situation at Shoreham that mandates a continuing level of protection that is higher than is called for by the regulations for other, operating plants.

The short of it is, SE_2's amended petition still is based on an "abstract argument," one constructed out of "inference upon inference." For example, SE_2 suggests that it is "not fanciful to posit that degraded armed response personnel staffing and reduced physical barriers increases the risk of penetration and creation of a radiological incident at the fuel pool with off-site consequences." SE_2 Security Plan Petition at 4. SE_2 continues that the "mere assumption of increased risk of theft also gives rise to an increased risk of diversion to weapons or terrorist purposes," with the "possibility of creating panic on Long Island with ensuring personal health and property damage risk." Id. at 4-5.

Such a scenario is fanciful, however, given that SE_2 has not confronted the fact that, even as amended, the Shoreham Physical Security Plan would continue to meet NRC regulations. The amended petition should be denied.

2. SWRCSD's Amended Petition

In LBP-91-1, the Board noted that SWRCSD's petition on the Security Plan amendment was "virtually identical to that of [SE_2] and does not differ in any material respect." LBP-91-1, slip op. at 38. Accordingly, the Board made the "same rulings on [SWRCSD's] petition as we did on [SE_2's]." Id.

SWRCSD's petition as amended is a literal rehash of that submitted by SE_2. Consequently, it should be denied, for the same reasons given in part III.B.1, above.

C. Emergency Preparedness License Amendment

1. SE_2's Amended Petition

At the outset, the Board in LBP-91-1 found SE_2's petition on the emergency preparedness license amendment to "essentially duplicate" those it submitted on the Confirmatory Order and Physical Security Plan. As applicable, therefore, the Board relied upon its ruling with respect to those other petitions in denying SE_2's third petition.

(a) Organizational Standing

The Board said that SE_2 had "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." LBP-91-1, slip op. at 42-43. The Board based its ruling on the same findings it made in denying SE_2's request for organizational standing on the Confirmatory Order.

SE_2 still has not demonstrated that it has organizational standing to intervene. In fact, nowhere in its amended petition does SE_2 even attempt to demonstrate that the emergency preparedness amendment causes some concrete harm to its organizational interests.[8/]

(b) Representational Standing

The Board denied SE_2's attempt to establish representational standing, finding that it had, again, offered only an "abstract argument that is unconnected with the legal and factual issues in the proceeding." LBP-91-1, slip op. at 43. There was simply no "credible showing," the Board went on to find, "that the amendment would increase the risk of radiological harm to members'

8/ The affidavit submitted by Miro M. Todorovich, SE_2's Executive Director, speaks at some length of his organization's desire to see that Shoreham be operated and not be decommissioned. The matter of Shoreham's operation is not, however, properly at issue in the emergency preparedness license amendment proceeding. Nowhere does Mr. Todorovich, or any of the other affiants, establish that issuance of the emergency preparedness amendment has caused some concrete harm to their organization's educational and informational interests.

health and safety." Id. at 44. No "factual basis" was offered, the Board said, "to support the bare argument." Id.

As amended, SE_2's petition continues to rely on "bare argument." SE_2 contends that the "amendment deprives the [Local] Emergency Response Organization . . . of the adequate effectiveness to meet the requirements of 10 C.F.R. §§ 50.34, 50.47, 50.54 & Part 50, Appendix E . . . for a full power operating reactor license." SE_2 Emergency Preparedness Petition at 2. This contention is misguided in three important respects.

In the first place, whether the level of emergency preparedness at Shoreham is adequate to meet the NRC's standards for a full power licensee is simply irrelevant, notwithstanding that LILCO technically still holds a "full power" license. The important fact remains that, by the emergency preparedness amendment's own terms, LILCO cannot even put fuel back in the reactor vessel (much less operate the plant) until full emergency response capabilities are restored.

Second, if SE_2 means to assert a purely legal argument, then it has overlooked the fact that, concurrently with its issuance of the emergency preparedness license amendment, the NRC also granted LILCO an exemption from the emergency preparedness requirements of 10 C.F.R. § 50.54(q).. 55 Fed. Reg. 31,915 (Aug. 6, 1990). Thus, the statement that, given the amendment, emergency preparedness at Shoreham does not meet all of the criteria of 10 C.F.R. Part 50 and Appendix E -- while literally true -- is

entirely beside the point. With the emergency preparedness exemption, LILCO fully complies with NRC regulations.

Third, the allegation still does not demonstrate with the requisite specificity that SE_2's represented members would suffer a "particularized injury." Cf. LBP-91-1, slip op. at 43. The six affidavits submitted by those SE_2 members living near the Shoreham plant likewise fail to identify any such injury.

Finally, SE_2 would seek to hold a hearing on the question whether the "no significant hazards consideration" provisions of 10 C.F.R. § 50.91 were followed by the Staff in this case. The short answer to this assertion is that, under long-established Commission rules and precedent, a Licensing Board has no authority to entertain any such questions. See 10 C.F.R. § 50.58(b)(6); Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 1), LBP-88-10A, 27 NRC 452, 457 (1988).

2. SWRCSD's Amended Petition

As with the other petitions, the Board found that SWRCSD's petition on the emergency preparedness amendment was "virtually identical" to that of SE_2. LBP-91-1, slip op. at 46. The Board thus denied it on the same basis. As amended, SWRCSD's petition continues to parrot SE_2's. It should denied.

IV. Conclusion

For the reasons given above, all six petitions to intervene and requests for hearing should be denied.

Respectfully submitted,

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DATED: February 19, 1991

LILCO, February 19, 1991

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

CERTIFICATE OF SERVICE

I hereby certify that copies of LILCO'S OPPOSITION TO PETITIONERS' AMENDED PETITIONS TO INTERVENE AND REQUESTS FOR HEARING were served this date upon the following by Federal Express, as indicated by an asterisk, or by first-class mail, postage prepaid.

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