UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

LIPA'S ANSWER TO INTERVENTION PETITIONS CONCERNING LICENSE AMENDMENT TO AUTHORIZE TRANSFER OF SHOREHAM AND RESPONSE CONCERNING NO SIGNIFICANT HAZARDS CONSIDERATION

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On June 28, 1990, the Long Island Lighting Company ("LILCO") and the Long Island Power Authority ("LIPA") jointly requested an amendment ("License Transfer Amendment") of License No. NPF-82 (the "License") authorizing transfer to LIPA of the License for the Shoreham Nuclear Power Station, Unit 1 ("Shoreham"), upon or after amendment of the License to a non-operating status.[1] On March 26, 1991, the Nuclear Regulatory Commission ("NRC" or "Commission") published a proposed no significant hazards consideration determination and a notice of opportunity to request a hearing on the proposed license amendment. 56 Fed. Reg. 11,781 (1991). The notice directed that comments

[1] See Joint Application of Long Island Lighting Company and Long Island Power Authority for License Amendment to Authorize Transfer of Shoreham, June 28, 1990 ("Joint Application").

on the proposed no significant hazards determination be filed with the NRC Staff while intervention petitions were to be filed with the Secretary of the Commission. 56 Fed. Reg. 11,768, 11,769 (1991).

On April 19, 1991, the Shoreham-Wading River Central School District ("SWRCSD") and the Scientists and Engineers for Secure Energy, Inc. ("SE2") (collectively "petitioners") filed pleadings that combined (a) comments on the Staff's proposed no significant hazards consideration determination with (b) petitions to intervene on the License Transfer Amendment.[2]

In accordance with the NRC's rules of practice, LIPA submits this answer to the petitions. LIPA urges that the petitions be rejected in their entirety, for reasons which may be summarized as follows:

- The petitions attempt to raise issues that have been settled previously and/or that are outside the scope of the NRC Federal Register notice. (See Part II below.)

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[2] See Shoreham-Wading River Central School District Comment on Proposed No Significant Hazards Consideration and Petition for Leave to Intervene and Request for Prior Hearing, April 19, 1991 ("SWRCSD Petition"); Scientists and Engineers for Secure Energy, Inc.'s Comment on Proposed No Significant Hazards Consideration and Petition for Leave to Intervene and Request for Prior Hearing, April 19, 1991 ("SE2 Petition") (collectively "petitions").

- Petitioners have failed to establish that they have standing to raise any of the "issues" identified in their petitions and thus fail to satisfy settled NRC criteria for intervention. (See Part III below.)

- In contravention of settled NRC practice, petitioners apparently seek adjudicatory review of the Staff's proposed no significant hazards determination. The NRC Licensing Board which will likely be established to consider the intervention requests is without jurisdiction to consider petitioners' comments on the Staff's proposed no significant hazards consideration determination. However, given petitioners' inclusion of such comments in their intervention petitions, LIPA demonstrates herein that there is no basis for overturning the Staff's proposed finding that the License Transfer Amendment involves no significant hazards consideration. (See Part IV below.)

In short, LIPA submits that petitioners have failed to identify any basis for intervention and that the petitions therefore should be rejected. The petitions present no health, safety, or environmental issues even arguably within the scope of appropriate NRC jurisdiction, but rather represent yet another volley in petitioners' futile campaign to make Shoreham operate for the sake of SWRCSD's tax base and SE2's ideology. The NRC's procedures

should not be disrupted and prolonged to indulge petitioners.

I. BACKGROUND TO THE PROPOSED LICENSE AMENDMENT.

The Commission is already familiar with the background to the proposed License Transfer Amendment, as described in various decisions by the Commission and the Staff.[3] The Joint Application filed by LILCO and LIPA also contains extensive background concerning the License Transfer Amendment. Accordingly, LIPA will only briefly set forth below certain highly pertinent facts.

1. The Joint Application seeks transfer of the License in a defueled, non-operating status. The Commission on March 29, 1990 issued a Confirmatory Order which modified the License, thus preventing the licensee from loading fuel into the reactor vessel without the NRC's prior approval. See 55 Fed. Reg. 12,758 (1990).[4]

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[3] See, e.g., Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-90-08, 32 NRC 201 (1990)("CLI-90-08"); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), DD-90-8, 32 NRC 469 (1990).

[4] The United States Court of Appeals for the District of Columbia Circuit on April 30, 1991 rejected petitioners' efforts to challenge the immediate effectiveness of that Confirmatory Order. See SWRCSD v. NRC, No. 90-1241, slip op. (D.C. Cir. April 30, 1991).

2. LILCO has requested that the License be converted to a possession-only license ("POL") or other non-operational status. The NRC Staff has issued a proposed no significant hazards consideration determination concerning that POL request (55 Fed. Reg. 34,098 (1990)), and petitioners' initial effort to intervene in the POL license amendment proceeding has been rejected by the Licensing Board. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-91-7, 33 NRC ___ (1991)("LBP-91-7"). (It should also be noted that the POL license amendment is clearly outside the scope of this proceeding. See 56 Fed. Reg. 11,781 (1991).)

3. As described in the Joint Application, the License Transfer Amendment is being sought in order to implement certain agreements involving the State of New York, LIPA, and LILCO. Those Agreements establish that Shoreham will never be operated by either LILCO or LIPA and that, once appropriate NRC approvals are obtained, Shoreham will be decommissioned by LIPA in accordance with NRC regulations.[5] As set forth in the Joint Application, several of the Agreements which underlie the Joint

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[5] LIPA was created pursuant to the Long Island Power Authority Act, enacted in 1986 ("LIPA Act"). New York Public Authorities Law § 1020 et seq. (McKinney Supp. 1990). The LIPA Act authorizes LIPA to acquire Shoreham from LILCO and, if it does acquire Shoreham, the Act further directs LIPA to close and decommission Shoreham as a nuclear facility. New York Public Authorities Law §§ 1020-h(9), 1020-t.

Application are the February 28, 1989 Settlement Agreement between New York State and LILCO; the Amended and Restated Asset Transfer Agreement between LILCO and LIPA, dated April 14, 1989 ("Transfer Agreement"); and the Site Cooperation and Reimbursement Agreement between LILCO and LIPA, dated January 24, 1990 ("Site Agreement").

4. The Joint Application requests that the NRC transfer the License to LIPA upon or after amendment of the License to a POL or other non-operating status. Thus, the License Transfer Amendment would authorize LIPA to possess, but not operate, Shoreham in its defueled condition. The requested amendment would not, however, authorize the decommissioning of Shoreham or any other physical activity not already authorized by the License on the date of transfer.

5. It is critically important in considering the License Transfer Amendment, as well as the potential for petitioners to raise any litigable issues, to understand the radiological status of Shoreham, since any health, safety, or environmental issues must be judged in the context of that radiological status. The potential for any offsite radiological consequences has been essentially eliminated by Shoreham's defueled, non-operating status. The reactor has not been operated since June 6, 1987, and has never been operated above the five percent power level. (See Joint

Application, pp. 16-18.) All of the 560 fuel bundles comprising the first Shoreham core are presently stored in the spent fuel pool in the reactor building. The continued maintenance and storage of the irradiated fuel in the spent fuel storage pool poses a minimal radiological hazard. Id.

It should be noted here, and will be discussed further below, that petitioners never give any basis to suggest that the License Transfer Amendment could have any offsite radiological consequences affecting the health, safety, or environmental interests of petitioners or those they claim to represent. Rather, the petitions contain only rote assertions of "possible" radiological risks, with no specificity and for which there is no possible factual support.

II. PETITIONERS LARGELY RAISE MATTERS OUTSIDE THE SCOPE OF THIS PROCEEDING AND ALREADY RESOLVED BY THE COMMISSION.

The clearest message in the April 19 SWRCSD and SE2 petitions is that these petitioners refuse to take instruction from the Commission, and therefore pose specific aspects not cognizable in this proceeding. See 10 C.F.R. § 2.714(a)(2). More than half of petitioners' total of 100 pages, plus attached affidavits, is given over to a wearying reprise, often verbatim, of assertions that have no connection to the pending amendment and/or that have been

previously rejected by the Commission or the Licensing Board. Thus, petitioners recapitulate at length their claims that the decision not to operate Shoreham is subject to Federal review,[6] that no step to remove Shoreham from full operational status can be taken absent a decommissioning plan and a final environmental impact statement ("EIS"), pursuant to the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq., and the EIS must include consideration of the alternative of operating Shoreham.[7]

For two basic reasons, such issues are not cognizable in this license amendment proceeding. First, the issues are beyond the scope of this proceeding. Petitioners have been explicitly advised that, in NRC proceedings, "the hearing notice published by the Commission . . . defines the scope of the proceeding and binds the licensing board." See Long Island Lighting Co. (Shoreham Nuclear Power Station,

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[6] See SWRCSD Petition, pp. 15-16, 22, 26-27, 33; SE2 Petition, pp. 15-16, 21, 25-26, 32.

[7] See SWRCSD Petition, pp. 6-10, 14-17, 21-25, 27, 31, 32-35, 36-37, 38-43, 46-47, 49-50; SE2 Petition, pp. 6-10, 14-17, 20-24, 26, 30, 31-34, 35-36, 37-42, 45-46, 48-49.

[8] See SWRCSD Petition, pp. 16, 20-21, 23, 25; SE2 Petition, pp. 16, 20-21, 22, 34.

Unit 1), LBP-91-1, 33 NRC 15, 20 (1991) ("LBP-91-1"); see also LBP-91-7, p. 6.[9]

Here, the public notice published by the NRC addressed an amendment to the License to reflect NRC authorization to transfer the License from LILCO to LIPA. The notice plainly does not contemplate requests for hearing on a variety of issues not noticed for comment. Just as in LBP-91-1, 33 NRC at 20 (involving the Confirmatory Order, security plan amendment, and emergency preparedness amendment), the scope here does not include either the decision that Shoreham should be decommissioned or the actual decommissioning and its ramifications, environmental or otherwise. It certainly does not include the validity of New York State legislation enacted in connection with Shoreham. Accordingly, all such issues provide no basis for intervention.

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[9] The scope of NRC proceedings must be within the control of the Commission because a practice allowing petitioners to define the issues would "deluge the Commission with intervenors and expand many proceedings into virtually interminable, free-ranging investigations," so that the Commission's "substantive discretion to decide what is important enough to merit examination would be subverted." Bellotti v. NRC, 725 F.2d 1380, 1381 (D.C. Cir. 1983).

Second, most of petitioners' arguments are improperly raised in this proceeding because they have already been considered by the NRC and rejected. More precisely, the Commission has concluded the following:

1. LILCO is legally entitled to make, without any NRC approval, an irrevocable decision not to operate Shoreham. See CLI-90-08, 32 NRC 201 (1990), aff'd on reconsideration, CLI-91-02, 33 NRC ___ (1991) ("CLI-91-02"). Petitioners' argument that the NRC has authority over the entire agreement to decommission Shoreham "is simply incorrect." See CLI-91-02, p. 8.

2. The NRC's scope of responsibility concerning the non-operation of Shoreham is limited to ensuring that the licensee complies with the requirements of the License and the regulations "applicable to whatever mode or condition the plant might be in at a given time," such as ensuring operability of systems and availability of personnel required to ensure plant safety in the defueled mode. See CLI-91-02, p. 8 n.1.

3. As to decommissioning, the decision on the method -- as opposed to the decision whether to decommission the facility -- is a decision that requires NRC approval. See CLI-91-02, p. 8.

4. The NEPA rule against impermissible segmentation of NRC decisionmaking does not require the agency to withhold all other regulatory approvals pending approval of a decommissioning plan. Hence, the NRC was entitled to proceed with various actions taken by LILCO and the NRC Staff in view of Shoreham's defueled, non-operating condition -- the Confirmatory Order precluding reload of fuel, 55 Fed. Reg. 12,758 (1990); changes in the security plan, 55 Fed. Reg. 10,528 (1990); removal of certain conditions regarding offsite emergency preparedness activities, 55 Fed. Reg. 12,076 (1990); and the proposed POL, 55 Fed. Reg. 34,098 (1990). See CLI-90-08; CLI-91-02; Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-91-01, 33 NRC 1 (1991) ("CLI-91-01"). Similarly, under the NRC's decommissioning rules, a POL "may be issued without any preliminary or final decommissioning information." See CLI-91-01, 33 NRC at 3.

5. Pending consideration of a decommissioning plan, the NRC's responsibility on decommissioning is to ensure that the licensee refrains from taking any action that would "materially and demonstrably" affect the methods or options available for decommissioning, or substantially increase the costs of decommissioning. See CLI-90-08, 32 NRC at 207 n.3.

6. Under NEPA, the NRC Staff need not prepare an Environmental Assessment ("EA") or an EIS analyzing resumed operation of Shoreham as a nuclear plant or the possible need to construct fossil-fuel facilities as alternatives to operation of Shoreham. See CLI-90-08, 32 NRC at 209.

The April 19 petitions raise anew all of the foregoing issues, as though they had not already been resolved by the Commission. Petitioners have made no showing that any of the foregoing rulings by the Commission were in error. Nor do they suggest that the issues now are posed in a functionally distinguishable context. Instead, petitioners treat the requested License Transfer Amendment as a new opportunity to reargue issues already decided by the Commission, claiming once again that "decommissioning is a continuing process beginning with actions to remove a facility safely from service and continuing through to actions to reduce the level of residual radioactivity at the site until it is released for unrestricted use" (e.g., SWRCSD Petition, p. 40 (emphasis in original)), and asserting that the proposed license transfer is "another step in the decommissioning process." (E.g., id., p. 42.) The NRC has made clear that petitioners' definition of decommissioning is wrong, and that their assertion of illegal segmentation of decommissioning, because it depends on that definition, likewise is wrong. As a result, petitioners' own characterization of this requested

amendment as simply "another step" in decommissioning shows that the arguments that were unavailing as to earlier steps deserve no further attention here.

The foregoing considerations rule out most of the "specific aspects" which would be the subject of petitioners' intervention. Specific aspects Nos. 1-3 and 5-8 under NEPA (SWRCSD Petition, pp. 46-47; SE2 petition, pp. 45-46) are the same issues raised under NEPA with respect to the proposed POL.[10] Just as was the case in LBP-91-7, those issues are "inappropriate for this proceeding and [should] not be discussed further." LBP-91-7, p. 28. Several specific aspects of the petitions allegedly raising issues under the Atomic Energy Act of 1954 ("AEA"), 42 U.S.C. § 2011 et seq., including Nos. 1 and 6 (SWRCSD Petition, pp. 27, 31; SE2 petition, pp. 26, 30), likewise should be summarily excluded because "alleged aspects that related to decommissioning . . . Shoreham . . . are not issues in this proceeding and therefore are irrelevant." LBP-91-1, 33 NRC at 30.

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[10] See SWRCSD's Comment on Proposed No Significant Hazards Consideration and Petition for Leave to Intervene and Request for Prior Hearing (dated Sept. 20, 1990), pp. 51-53; SE2's Comment on Proposed No Significant Hazards Consideration and Petition for Leave to Intervene and Request for Prior Hearing (dated Sept. 20, 1990), pp. 53-55.

In sum, petitioners have relied heavily, and improperly, upon matters that are beyond the scope of the License Transfer Amendment and, moreover, that have already been resolved by the NRC. Petitioners, in effect, ask the Commission to (1) suspend its rules and practices with respect to the scope of agency proceedings, (2) directly repudiate its own recent decisions on a wide-ranging set of issues, (3) abandon principles of stare decisis, and (4) bypass proper NRC procedures for appeal of adverse determinations. We recognize that the Commission follows a "rather liberal" practice with respect to intervention. See LBP-91-1, 33 NRC at 40. Such a practice is not sufficient reason, however, to tolerate abusively duplicative, irrelevant, and nugatory pleadings. Accordingly, all sections of the petitions related to the decision not to operate Shoreham, consideration of resumed operation, NEPA issues already decided, and the scope of NRC review of Shoreham's decommissioning plan should be excluded from consideration in assessing the petitions.

III. PETITIONERS HAVE NO STANDING TO INTERVENE.

As demonstrated in Part II above, the petitions raise numerous arguments that are beyond the scope of this proceeding and that have already been rejected by the Commission. In this Part, LIPA further shows that

petitioners lack standing to intervene in proceedings concerning the License Transfer Amendment.

For the most part, petitioners' standing arguments involve alleged injuries already held by the Licensing Board to be precluded as grounds for standing in NRC proceedings. What very little is new here -- principally the assertion that LIPA lacks financial, technical, and managerial qualifications to hold the License -- likewise provides no basis for intervention because petitioners have not even attempted to show any particularized injury in fact that could result from transfer to LIPA of the License for a defueled, non-operating, minimally contaminated plant. In short, the present petitions -- like the petitions on previous license amendments -- are woefully deficient and provide no basis to support a grant of intervention.

The applicable standing principles have been addressed comprehensively in LBP-91-1 and LBP-91-7, the recent decisions of the Licensing Board regarding earlier Shoreham-related petitions by these same petitioners. In summary, the Licensing Board has noted that the Commission applies judicial concepts of standing. Portland Gen. Elec. Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976). These require a showing of (a) injury in fact that is (b) arguably within the zone of interests protected by the statutes covering the proceedings.

Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983). Further, a petitioner must also 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).

In limited circumstances, standing may be based upon a showing that petitioner is within the geographic zone that might be affected by an accidental release of fission products. Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 443 (1979). However, a presumption of standing based on proximity is applied only in those instances involving an "obvious potential for offsite consequences;" otherwise, a petitioner must allege some specific injury in fact that will result from the action taken. Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 330 (1989).

Economic interests of a ratepayer do not confer standing, nor do assertions of a broad public interest in (a) regulatory matters, (b) the administrative process, or (c) development of economical energy resources.

Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983).

In two recent and extensive Shoreham opinions, the Licensing Board has held that the foregoing principles foreclose standing for petitioners' challenges to the Confirmatory Order, the security plan amendment, the offsite emergency preparedness amendment, and the POL. LBP-91-1; LBP-91-7. Yet, in their April 19 filings, petitioners make no effort to demonstrate standing according to these principles.[11] They instead splatter on the record an unfocused amalgam of assertions and arguments bearing loosely on standing. Nothing offered by petitioners satisfies the tests for standing summarized above and previously applied in LBP-91-1 and LBP-91-7.

The organizational and representational interests asserted by petitioners may be organized into six separate classifications: (1) economic injuries related to the phased removal of the Shoreham plant from the tax base, resulting in lost revenues to SWRCSD and/or higher taxes and lost services for individuals assertedly represented by SE2;

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[11] In only one respect have petitioners heeded the Licensing Board's guidance in LBP-91-1 and LBP-91-7. The present petitions are accompanied by affidavits from persons claimed to be represented by SWRCSD and SE2. As shown below, however, the affidavits are conclusory and do not provide a basis for standing even if they adequately demonstrate that the affiants seek to be represented by SWRCSD or SE2.

(2) economic injuries related to an interest in Shoreham as a source of energy supplies; (3) interests related to environmental concerns, particularly as to preparation of an EIS; (4) organizational interests in supporting nuclear energy; (5) antitrust concerns; and (6) representational interests related to the health and safety of persons residing, working, and/or recreating near the Shoreham plant. An analysis of each of these claimed bases for standing, measured against relevant standards, demonstrates that petitioners do not have standing to challenge the license amendment.[12]

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[12] As a preliminary matter, SWRCSD cannot establish representational standing for any NRC proceeding related to Shoreham. First, when seeking to represent the interests of an individual (here Mr. Albert G. Prodell), an organization must show that the individual interests it seeks to protect are "germane to the organization's purpose." Hunt v. Washington Apple Advertising Comm'n, 432 U.S. 333, 343 (1977). Even interpreted generously, the germaneness rule requires "that an organization's litigation goals be pertinent to its special expertise and the grounds that bring its membership together." Humane Soc'y v. Hodel, 840 F.2d 45, 56 (D.C. Cir. 1988). SWRCSD has no expertise in radiological safety and was not organized for any of the purposes which it now asserts as the bases for representational standing.

Second, SWRCSD is a public agency and does not have "members" whose interests it can represent. Standing has been denied where there was a question "whether, in the absence of a membership relation, an organization can premise standing on the fact that it has located certain individuals who agree with its complaint." American Legal Found. v. FCC, 808 F.2d 84, 91 (D.C. Cir. 1987). See also Clonlara, Inc. v. Runkel, 722 F. Supp. 1442, 1451 (E.D. Mich. 1989).

A. Effect On Tax Base And Local Services.

Both petitioners, in a representational capacity, and SWRCSD in an organizational capacity, proffer as injury in fact the effect of the proposed license amendment in removing the Shoreham facility on a phased basis from the tax base of Suffolk County, the Town of Brookhaven, and/or SWRCSD.[13] Assuming arguendo that these assertions adequately allege an injury in fact, there nonetheless is no standing because the alleged injuries are clearly outside the zone of interests protected by the AEA and NEPA.[14]

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[13] See SWRCSD Petition, p. 14 (if transfer is approved, the School District "will suffer the loss of an excess of approximately $26 million annually in real estate tax revenue (about 86% of its total annual income) from the loss of taxes on the Shoreham facility . . . ."") and p. 19 ("additional economic interest . . . stems from the fact that the District derives significant tax revenues based on the value of Shoreham as an operating plant"); Prodell affidavit, p. 7 (reduction in tax income "will cause a precipitous decline in the quality of education offered to school children in the District in addition to huge tax increases for School District residents, such as myself"); SE2 Petition, p. 14 (citing "increases in real estate taxes due to the loss of taxes on the Shoreham facility"); Bateman affidavit, p. 6 ("transfer to LIPA would involve a drastic reduction in real property tax income for the County of Suffolk"); Franz affidavit, p. 5 (to same effect), Musolino affidavit, p. 5 (to same effect); Stehn affidavit, p. 6 (to same effect).

[14] Petitioners cite Dellums v. NRC, 863 F.2d at 973, for the proposition that economic injuries satisfy the "injury in fact" test. (See SWRCSD Petition, p. 13; SE2 Petition, p. 13.) However, Dellums makes clear that injury alone does not confer standing. Rather, the petitioner must also demonstrate satisfaction of the other aspects of the standing test. Id. at 974 n.6.

As noted above, standing requires that the asserted injury be 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). The Licensing Board already has squarely held that SWRCSD's interests as a "tax recipient" are "economic concerns which are outside of the Commission's jurisdiction. The Commission has no regulatory responsibility for . . . tax distribution. [Economic concerns] do not confer standing in NRC licensing proceedings . . . ." LBP-91-1, 33 NRC at 30.

The Licensing Board's decision in LBP-91-1 is clearly correct and is dispositive here of the tax-related injuries cited by both petitioners. To be within the zone of interest requires that the person asserting standing, if not the subject of the action, either be directly identified by Congress as a beneficiary of the law, or be a party whose interests establish him or her, as an "unusually suitable champion[] of Congress's ultimate goals." Hazardous Waste Treatment Council v. EPA, 861 F.2d 277, 283 (D.C. Cir. 1988), cert. denied, 490 U.S. 1106 (1989). By contrast, the zone of interest test "denies a right of review if the plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit." Clarke v. Securities Indus. Ass'n, 479

U.S. 388, 399 (1987); see also Association of Data Processing Serv. Orgs., Inc. v. Camp, 397 U.S. 150 (1970). In order to be within the zone of interest, the party's interest must coincide "systematically, not fortuitously" with the interests Congress intended to protect. Hazardous Waste Treatment Council v. Thomas, 885 F.2d 918, 924 (D.C. Cir. 1989).

Petitioners can point to nothing in the AEA or NEPA suggesting a congressional purpose to increase or preserve the tax base of political subdivisions through maintenance and operation of nuclear plants. Nor do tax-driven interests make the petitioners "unusually suitable" parties to enforce the congressional objectives. Indeed, these proposed interventions show vividly that an interest in tax revenues is very likely to diverge from the health and safety objectives of the AEA. For the sake of preserving tax revenues, for example, SWRCSD has contended that defueling the reactor is inconsistent with the License, even though leaving fuel in the reactor would pose a greater danger of radiological contamination and environmental harm than does placement of the fuel in the spent fuel storage pool. (See SWRCSD Petition, p. 38; SE2 Petition, p. 37.) More generally, the quest for tax revenues could cause a similarly situated petitioner to seek continued operation of even a dangerously contaminated or outmoded plant. To the extent that petitioners rely upon injury to the tax base,

they fall squarely among those to whom standing should be denied because their suits "are more likely to frustrate than to further statutory objectives." Clarke v. Securities Indus. Ass'n, 479 U.S. at 397 n.12.

B. Economic Interest In Energy Supplies.

In a similar vein, petitioners seek to predicate standing on the claim that SWRCSD organizationally and individuals assertedly represented in both petitions have "a vital interest in ensuring that an adequate and reliable supply of electricity will be available . . . at reasonable rates," an interest allegedly threatened by non-operation of Shoreham.[15]

Again, the Licensing Board already has held that standing cannot be predicated upon an alleged interest in "obtaining sufficient amounts of electricity at reasonable rates," noting that "[i]t is very well settled in Commission practice that a ratepayer's interest does not confer standing in NRC licensing proceeding[s]." LBP-91-1, 33 NRC at 30; see id. ("The Commission has no regulatory responsibility for rates . . . ."); Metropolitan Edison Co.

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[15] See SWRCSD Petition, pp. 18-19; Prodell affidavit, pp. 6-7; SE2 Petition, pp. 18, 22; Bateman affidavit, p. 4-5; Franz affidavit, pp. 4-5; Musolino affidavit, p. 4-5; Scrandis affidavit, pp. 4-5; Stehn affidavit, pp. 5-6.

(Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 n.4 (1983).

Additionally, standing is defeated on grounds of causation and redressability. It is indisputable, as set forth in previous Shoreham-related Commission decisions, that petitioners' lack of access to power supplies from the Shoreham plant is not due to any action of the NRC (much less NRC action relevant to this requested license amendment), but rather results from the non-Federal decision by LILCO that Shoreham will not be operated. E.g., CLI-90-08, 32 NRC at 207-8. LILCO has confirmed that this decision will hold whether or not the pending license amendment is approved, and whether or not the Settlement Agreement is invalidated. (See LILCO's Opposition to Joint Motion for Stay, pp. 10-12 (dated March 25, 1991).) Under the circumstances present here, it is not within the power of the NRC to order LILCO to operate Shoreham. See CLI-90-08, 32 NRC at 207. The proposed amendment, therefore, will have no impact one way or the other on petitioners' interest in power supply issues. The outcome petitioners seek here -- denial of the license amendment -- would do nothing more than leave a defueled, non-operating plant and the related POL in LILCO's possession. Standing is lacking in such circumstances. See Dellums, 863 F.2d at 971 (no standing unless injury "fairly can be traced to the challenged action" and is "likely to be redressed by a favorable

decision" (citing Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26, 38, 41 (1976))).

C. Environmental And NEPA-Related Effects.

Petitioners also allege standing grounded on environmental considerations. The main burden of their assertions in this regard is their argument that approval of the proposed license amendment would injure their rights to participate in the development of, and to have the benefit of, an EIS "on the proposal to transfer the license, especially as part of the entire proposal to decommission Shoreham." (SWRCSD Petition, p. 14; SE2 Petition, p. 14.)[16] The very formulation of this supposed ground for standing demonstrates that petitioners' alleged environmental grievances lie with matters beyond the scope of this proceeding, not with the proposed license amendment at issue here.

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[16] Petitioners also assert that "widely-held non-quantifiable aesthetic and environmental injuries" are sufficient to satisfy the injury in fact test, relying upon Dellums v. NRC, 863 F.2d at 972. Dellums, a case challenging licenses to import uranium hexaflouride from South Africa, did not involve such injuries. In the course of a general description of standing rules, the Dellums court quoted from Sierra Club v. Morton, 405 U.S. 727 (1972), a case confirming that there could be environmental injuries, but denying standing because the party seeking review did not allege facts showing that it was among the injured. The generalized context in which petitioners use the principle, implying that anyone has standing to challenge environmental injuries, therefore is inapposite.

1. The Alleged Environmental Impacts Are Beyond The Scope Of This Proceeding.

Petitioners do not even attempt to identify any environmental consequences flowing from the particular matter involved in this proceeding -- the proposed license amendment authorizing transfer of Shoreham in a defueled, non-operating status. Instead, as in earlier petitions, petitioners' environmentally based arguments for standing flow from non-operation of Shoreham, which they say will require construction of new plants and generation of power from other, less environmentally benign fuels. (See SWRCSD Petition, p. 18; SE2 Petition, p. 17 (asserting petitioners' interest in "protecting the health and environment of its members . . . from . . . the adverse health and other environmental consequences of non-operation of Shoreham cognizable under NEPA, for example, the air pollution produced by the oil and/or gas burning plants which would be necessary substitutes for Shoreham").) Such alleged consequences are outside the scope of this proceeding because, as has been emphatically stated by the Commission, the non-operation of Shoreham is not a consequence of Federal action (much less of this proposed amendment). Thus, NEPA is not implicated. See CLI-90-08, 32 NRC at 207-08. Accordingly, the Licensing Board already has squarely held that there is no "nexus" between the proposed POL amendment and the construction of substitute oil-burning

plants, and that "[a]ny alleged harm relating to the abandonment of Shoreham, . . . [and] the need for a NEPA review of restart of Shoreham as a NEPA alternative are all beyond the scope" of proceedings before the NRC and cannot serve to establish standing. LBP-91-7, pp. 28, 30; see LBP-91-1, 33 NRC at 20, 30-31, 34, 36, 38.

2. The Proposed Amendment Will Have No Cognizable Environmental Impacts.

It is clear why petitioners have failed to specify environmental consequences flowing from the action actually under consideration here. There are none, and thus there is no injury in fact.

As noted above, the License Transfer Amendment would do nothing more than replace LILCO with LIPA as the Shoreham licensee. The Joint Application provides detailed support for a conclusion that there are "no environmental impacts related to the proposed license amendment." (Joint Application, app. D, p. 2.) The amendment proposes no change whatever in the physical configuration of the Shoreham plant, in the treatment or handling of special nuclear materials or other hazardous commodities, or in any other aspect of Shoreham activities. The application proposes no authority to do anything physically with respect to Shoreham beyond what will already be authorized by the

License to be transferred. Thus, the amendment is not a "proposal" for a "major Federal action[] significantly affecting the quality of the human environment," requiring preparation of an EIS pursuant to 42 U.S.C. § 4332(2)(C).

Petitioners do not dispute any of the foregoing. Indeed, they never even cite to any part of the Joint Application with which they disagree, much less specify a basis for any disagreement. Rather, petitioners' assertions of injury based on NEPA rest entirely on the thesis, long-since rejected, that all steps in the direction of decommissioning are part of an impermissible segmentation of a decommissioning proposal. However, as discussed in Part II above, the Commission has flatly rejected petitioners' all-encompassing definition of "decommissioning plan," by deciding that neither the decision to cease operations nor steps consistent with that decision, short of consideration of a physical decommissioning plan, necessarily implicate NEPA. (See CLI-90-08, 32 NRC at 207-08.)

3. The Proposed Amendment Does Not Implicate Rules Against Segmentation Under NEPA.

As they have before without success, petitioners again cite Council on Environmental Quality ("CEQ") regulations requiring that actions that are "interdependent parts of a larger action" be discussed in a single EIS and

prohibiting actions that "limit the choice of reasonable alternatives" until the NEPA process is complete. (See SWRCSD Petition, p. 33 (citing 40 C.F.R. §§ 1508.25, 1506.1); SE2 Petition, p. 32.) But separate environmental review of sequential actions is appropriate where each agency action is segregable, has independent utility, and does not foreclose the opportunity to consider alternatives relevant to the steps to follow. Piedmont Heights Civic Club, Inc. v. Moreland, 637 F.2d 430, 439 (5th Cir. Unit B Feb. 1981). Where each independent approval will not result in any "irreversible or irretrievable commitments" to the remaining segments, agencies need not prepare a complete EIS or an EA for all segments as a prerequisite to the first. Department of Energy (Clinch River Breeder Reactor Plant), CLI-82-23, 16 NRC 412, 424 (1982).

The License Transfer Amendment obviously is segregable from consideration of a decommissioning [redacted], which will determine the method of decontaminating the Shoreham plant. See CLI-90-08, 32 NRC at 208 ("broadest NRC action related to Shoreham decommissioning will be approval of the decision of how that decommissioning will be accomplished"). The amendment also has the manifest independent utility of permitting transfer of ownership of the plant pursuant to the Settlement Agreement. Finally, because the proposed License Transfer Amendment involves no physical activity whatsoever, it does not and cannot have

the effect of precluding any subsequent decisions on the method of decommissioning, nor do petitioners suggest any such implications.[17] Therefore, the proposed amendment meets precisely the test for independent environmental review. Accordingly, petitioners' segmentation argument here, still resting on the broad definition of decommissioning that has been repudiated by the Commission, poses the same non-issue as in its earlier filings.

4. Petitioners' Arguments Regarding An Environmental Assessment Are Premature And Do Not Confer Standing.

Petitioners also complain that an EA has not been prepared in connection with the License Transfer Amendment to authorize transfer of Shoreham to LIPA. (See SWRCSD Petition, pp. 43-45; SE2 Petition, pp. 42-44.) This provides no basis for intervention. First, petitioners provide no hint of any specific environmental issue they believe should be addressed which has not already been rejected by the NRC. Thus, petitioners can point to no injury resulting from the alleged omission.

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[17] These considerations would be fatal to any claim of impermissible segmentation even if petitioners had standing. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-91-04, p. 5, 33 NRC ___ (1991) (any argument based on allegedly impermissible segmentation must "offer some plausible explanation" as to how the proposed action "could foreclose alternative decommissioning methods").

Second, petitioners' objection is premature. The relevant regulations provide that the appropriate NRC staff director is to determine "[b]efore taking a proposed action" whether an EIS or an EA should be prepared or whether a categorical exclusion applies. 10 C.F.R. § 51.25. No timetable for such a determination is specified. The relevant determination therefore may be made at any time prior to issuance of the license amendment. If the staff director determines, based on 10 C.F.R. §§ 51.21 and 51.22(c) and (d), that an EA should be prepared, there is no reason why that cannot be accomplished prior to action on the amendment. Following an EA, the staff director determines whether to prepare an EIS or a finding of no significant impact. 10 C.F.R. § 51.31. If there is a finding of no significant impact, absent circumstances not present here, no further proceedings are required except for publication under 10 C.F.R. § 51.35.

5. SE2's Informational Interests Alone Do Not Create An EIS Requirement.

Petitioner SE2 emphasizes that it has scientific and educational interests in an EIS. (See SE2 Petition, p. 23; Todorovich affidavit, p. 5.) This is among the grounds for standing already rejected by the Licensing Board. See LBP-91-7, p. 24 (SE2's "broad public educational and informational interest, under Commission decision, does not

establish the particularized interest necessary for participation in the adjudicatory process"). In any event, an informational interest in environmental issues cannot create an EIS requirement where none otherwise exists. Because an EIS is not required in connection with the pending amendment for the reasons discussed above, SE2's professed curiosity cannot confer standing to demand it.

D. Interest In Energy Policy Debate.

Petitioner SE2's affiants also stress their organizational and individual interest in participation in the debate of issues affecting the nuclear industry. (See Todorovich affidavit, pp. 2-4.) The Licensing Board has dealt conclusively with this issue, as well, in previous orders, holding that SE2's "educational and informational" interest "on the subject of the 'national energy debate,'" does not confer standing. LBP-91-1, 33 NRC at 28; see Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983) (no standing conferred by petitioner's interest "in the development of economical energy resources, including nuclear, which have the effect of strengthening the economy and increasing the standard of living"). Here, as before, SE2 has neither alleged nor shown a "distinct and palpable harm which satisfies the interest requirement for intervention." LBP-91-1, 33 NRC at 28.

E. Antitrust Considerations.

Petitioners contend that the amendment creates issues under the antitrust laws. (SWRCSD Petition, pp. 30-31 (transfer of the license to LIPA "would create a situation inconsistent with the antitrust laws specified in AEA § 105.a"); SE2 Petition, pp. 29-30.) This subject does not surface in the section of petitioners' filings related to standing, but rather comes up for the first time under the specific aspects of the matters as to which petitioners wish to intervene. Therefore, it probably should not be considered at all unless standing can be predicated on other grounds.

Nevertheless, it is also clear that the petitioners cannot ride their professed antitrust concerns into proceedings on the License Transfer Amendment. Section 105 applies to construction and operation of nuclear facilities. See AEA § 105(c)(1) and (2), 42 U.S.C. § 2135 (c)(1) and (2). In support of their professed anxiety about anticompetitive impacts, petitioners argue that Section 105 "applies to license transfers even when the transfer results from a mere merger of the license holder with another entity," citing a Federal Register Notice concerning a merger between utilities. (SWRCSD Petition, pp. 30-31; SE2 Petition, pp. 29-30.) The case of a "mere" merger between two operating companies in the same industry may, indeed,

raise antitrust concerns, because increased concentration of the relevant market may result. However, petitioners do not even suggest how any antitrust concern is raised by the transfer of a permanently idled power plant from a private utility to a public agency which is forbidden by law from placing the plant in operation. Petitioners also never even cite, much less address, the portion of the Joint Application showing that there are no antitrust implications because there is no proposal to operate Shoreham. (See Joint Application, p. 36.) In sum, petitioners postulate no injury in fact, causation, or any other essential element of standing with respect to the supposed antitrust issues. Petitioners' frivolous assertion of antitrust consequences therefore provides no basis for their intervention.

F. **Health and Safety Considerations**.

Finally, petitioners assert standing in a representational capacity, on the basis of supposed health and safety concerns.[18] By rights, health and safety concerns under the AEA should be the principal focus of an NRC license amendment proceeding. Here, however, these considerations are an afterthought in petitions

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[18] See SWRCSD Petition, pp. 14, 15, 16, 17-18, 21, 23, 24, 27; Prodell affidavit, pp. 3, 5, 7; SE2 Petition, pp. 14-15, 17, 20, 22, 23, 28; Todorovich affidavit, pp. 4, 6; Bateman affidavit, pp. 4, 6; Franz affidavit, pp. 3-4, 5; Musolino affidavit, pp. 4, 6; Scrandis affidavit, pp. 4, 5; Stehn affidavit, pp. 4, 6.

overwhelmingly concerned with alleged tax impacts, other supposed economic impacts, and the claimed environmental impacts of non-operation of Shoreham. Moreover, petitioners have utterly failed to allege particularized health and safety concerns relating to the grant of the proposed amendment.

1. Petitioners Have Not Shown Any Threat of Particularized Harm.

Petitioners assert that they represent persons living or working within 50 miles of Shoreham and having an interest in protection from "the possible radiological impacts of the proposed amendment." (SWRCSD Petition, p. 18; SE2 Petition, p. 17.) Nothing is said in either petition or in any of the accompanying affidavits to identify any potentially adverse radiological impact of the proposed license amendment, which would simply transfer to LIPA the License for a defueled, non-operating, minimally contaminated plant. Instead, the allegation of standing is premised on naked proximity to Shoreham and is coupled with the false hypothesis that Shoreham might still be operated as a nuclear plant. (See, e.g., Bateman affidavit, p. 1 ("I 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").)

This asserted basis for standing is wholly insufficient. It is well-established that there is no presumption of standing for individuals residing within 50 miles of the facility in cases of proposed actions, such as that here, which lack "obvious potential for offsite consequences." Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 330 (1989) (emphasis added). The Licensing Board has already applied these principles in LBP-91-1 and LBP-91-7, holding that standing will not be presumed except in "a proceeding for a construction permit, an operating license, or a significant amendment that would involve an obvious potential for offsite consequences." LBP-91-1, 33 NRC at 29; see LBP-91-7, p.14.

This proceeding involves neither a construction permit nor an operating license, but rather a license amendment transferring the License for a defueled, non-operating plant with minimal levels of radioactive contamination.[19] There is no "obvious potential for offsite

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[19] The burnup of the fuel is approximately two effective full power days. LILCO's estimate is that the core curie content as of June 1989 was no more than 176,000 curies, with a residual heat generation rate of only 550 watts. The only gaseous activity at Shoreham consists of (continued...)

consequences" for the same reason that the proposed amendment does not have a significant environmental impact for purposes of NEPA -- the amendment would authorize nothing more than a legal transfer and associated administrative changes, with no physical manifestations whatsoever for the Shoreham configuration or environmental programs at the plant site.

The Licensing Board has further held that the appropriate question when standing is predicated on alleged radiological issues is whether the proposed license changes "can result in harm," taking into account Shoreham's status as a "defueled plant that has never been in commercial operation." LBP-91-1, 33 NRC at 34. A would-be intervenor must show that a "particularized injury in fact results from the proposed" amendment; "[m]erely making bare allegations of radiological harm . . . is legally insufficient to establish standing." LBP-91-7, p. 27. Petitioners have not even alleged (much less shown) how transfer of the License of this defueled, non-operating, minimally contaminated plant could result in harm; they have made nothing but a

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[19](...continued)
about 1500 curies of Krypton 85 that are contained in the fuel. Thus, the limited irradiation of the fuel at Shoreham signifies that the fuel presents little risk of undue occupational and non-occupational radiation exposure. Finally, the fact that there has been no high-power operation has substantially reduced the likelihood of any operation-related fuel cladding failures. (See Joint Application, pp. 16-18.)

bare allegation of "possible radiological impacts." (SWRCSD Petition, p. 18; SE2 Petition, p. 17.)

Thus, petitioners have not even attempted to satisfy the standards articulated by the Licensing Board for establishing standing, nor have they come to grips with a well-developed record that affirmatively shows the lack of radiological risk associated with the proposed amendment:

-- LILCO's Defueled Safety Analysis Report ("DSAR") was submitted in January 1990.[20] That document details the radiological considerations pertinent to the non-operating license to be assumed by LIPA. It also documents that, in the defueled state, there can be no significant offsite radiological releases from Shoreham even from the two most significant hazards theoretically relevant to the defueled plant configuration -- a Fuel Handling Accident or a Liquid Radwaste Tank Rupture.[21] Petitioners have not even

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[20] The DSAR was transmitted by SNRC-1664, Letter dated Jan. 5, 1990 from W.E. Steiger, Jr., Assistant Vice President, Nuclear Operations, LILCO to Document Control Desk.

[21] The DSAR demonstrates that the offsite consequences of postulated safety events relevant to the defueled plant configuration are "negligible" and well-within the 10 C.F.R. Part 100 dose guidelines. Specifically, the consequences of a Liquid Radwaste Tank Rupture would be 7.2E-08% of dose guidelines for whole body gamma, 9.3E-10% for skin, and 4.3E-07% for thyroid. (DSAR, p. 15-6.) The most severe Fuel Handling Accident from a (continued...)

attempted to particularize any respect in which transfer of such a non-operating license would threaten adverse radiological impacts offsite.

-- The Joint Application, Appendix E, shows that there are no significant hazards considerations associated with the proposed amendment. Petitioners have not disputed, or even addressed, those materials, or even asserted that there is an obvious potential for offsite consequences.

-- The NRC Staff, in setting forth the basis for its proposed no significant hazards determination, concluded that "there is no possibility for activities under the transferred license to result in any increase in the consequences of a Fuel Handling Accident," and also that "there would be no significant increase in either the probabilities or consequences of a Liquid Radwaste Tank Rupture event as evaluated in the USAR." 56 Fed. Reg. 11,768, 11,781 (1991). The Staff also determined that the amendment will not "alter the applicable events as previously evaluated . . . or

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[21](...continued)
radiological viewpoint is dropping of a fuel assembly onto other fuel assemblies. The 0-2 hour and 0-30 day integrated doses are "many orders of magnitude below" 10 C.F.R. § 100 guidelines. (DSAR, p. 15-10.) Even considering the "worst case" fuel damage event, the whole body and skin doses are "very small fractions (less than 0.031%)" of the guidelines. (DSAR, p. 15-11.)

. . . create new events of radiological concern." Id. It concluded as well that there will be "no reduction in any plant safety margin." Id. Petitioners have offered no particularized challenge to any of these determinations.

Thus, petitioners have neither shown nor even asserted that the amendment has obvious potential for offsite consequences. Failing in that, they also have not propounded any showing of particularized injury in fact resulting from the amendment. Accordingly, the assertion of standing based upon alleged health and safety considerations is legally deficient on its face and must be rejected.

2. Petitioners' Bare Assertions That LIPA Is Unqualified Fail to Demonstrate A Particularized Injury Germane To The Proceeding.

Petitioners' only assertions arguably related to health and safety -- though with no reference to potential offsite injury -- are that "affiant[s] believe[] that LIPA has neither the financial, technical nor managerial qualifications to become the licensee of Shoreham." (SWRCSD Petition, p. 14; see id., pp. 23, 28-30; SE2 Petition, pp. 14, 22, 27-29.) On health and safety issues, including these qualification issues, the standing inquiry should end upon a finding that petitioners have not shown a risk of

offsite harm. It also bears noting, however, that petitioners have shown no basis to believe that transfer of the License from LILCO to LIPA would make adverse radiological impacts appreciably more likely. Thus, petitioners' bare assertions of LIPA's supposed lack of qualifications fail to establish a factual predicate for their assertion of "possible radiological impacts." (SWRCSD Petition, p. 18; SE2 Petition, p. 17.)

In significant part, petitioners seek to raise qualification issues that are not germane to this proceeding, asserting that LIPA is not qualified "to properly maintain and protect the facility in accordance with the full power Operating License." (SWRCSD Petition, p. 23; SE2 Petition, p. 22.) This issue is irrelevant to the license amendment proposed, which seeks transfer of the License in a non-operating status.

Further, as with petitioners' earlier-attempted intervention concerning the emergency plan amendment, petitioners' challenge to LIPA's qualifications "present[s] an abstract argument that is unconnected with the legal and factual issues in the proceeding." LBP-91-1, 33 NRC at 38. Once again, petitioners have ignored the subject of this proceeding -- the Joint Application -- which incorporates extensive documentation of LIPA's technical and financial qualifications. (See Joint Application, pp. 22-30.) Even

if some difference between LILCO's qualifications and those of LIPA had been shown or alleged, petitioners have not come to grips with the key question of how qualified LIPA must be "for a defueled plant and what radiological consequences can be expected from a less [qualified licensee] when the facility is defueled and not operating?" LBP-91-1, 33 NRC at 38-39. Moreover, petitioners have not shown how, in any tangible fashion, the unspecified LIPA qualification deficiencies could lead to an increase in the demonstrably negligible risk of offsite radiological consequences. Petitioners' failure to address such "critical questions" is fatal to their effort to obtain standing. Id.

A particularized showing on such issues is especially critical given the showings made in the Joint Application on LIPA's qualifications. For the reasons shown there, LIPA's financial strength is the same as LILCO's for purposes of Shoreham-related costs (see Joint Application, pp. 26-30), and petitioners make no concrete showing to the contrary.[22]

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[22] Petitioners allege (SWRCSD Petition, pp. 28-29; SE2 Petition, pp. 27-28) that LIPA's existence is "in doubt" because New York State did not appropriate additional funds for the 1991-92 fiscal year. As LIPA's Chairman, Richard M. Kessel, explained at an NRC public meeting on February 13, 1991 (Transcript ("Tr."), p. 24), with $2.8 million in the bank independent of its Shoreham-related funds, LIPA simply did not need additional funds to cover non-Shoreham payroll expenses. All future Shoreham-related costs will be funded by LILCO -- not New York State -- pursuant to the Site Agreement and Transfer Agreement. (Chairman Kessel

(continued...)

Petitioners' allegations that LIPA is technically unqualified are likewise empty. LIPA has assembled a team of considerable talent, well schooled and experienced in operating nuclear facilities. As explained in detail in the Joint Application, pp. 22-26 & Appendix C, LIPA will rely not only on its own expertise but also that of the New York Power Authority ("NYPA") and other contractors and sub-contractors.[23] In addition, many LILCO personnel currently responsible for Shoreham will remain following transfer to assist in maintaining Shoreham, in its defueled, non-operating state. Petitioners do not even suggest any technical challenge of the non-operating License to which LIPA would not be equal. (See SWRCSD Petition, p. 29; SE2 Petition, p. 28.)

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[22](...continued)
estimated LIPA has received $11 million from LILCO through February 13, 1991). (Tr., p. 33:9-10.) Finally, Chairman Kessel presented to the Commission a letter from New York State Governor Mario M. Cuomo in which Governor Cuomo reaffirmed New York's commitment to LIPA, explaining that "[t]he reason that this year's budget contains no new funding for LIPA is simply that no new funding is needed for the 1991-92 fiscal year." (Tr., p. 27.)

[23] Pursuant to an Agreement Concerning Coemployment (effective March 26, 1991), LIPA has co-employed the following NYPA employees: John C. Brons as Executive Vice President, Shoreham Project; Leslie M. Hill, Jr. as the Shoreham Resident Manager; Arthur J. Bortz as Manager, Operations and Maintenance Department; Richard L. Patch as Manager of Quality Assurance; W. Norman Nilsen as Manager, Decommissioning Department; and Fred J. Petschauer as Manager, Radiological Controls Division.

Nor is anything added by petitioners' strained attempt to impugn the integrity of LIPA's management. Having failed to identify concrete issues on financial and technical qualifications (much less to show how any shortfall in qualifications could cause an offsite injury conferring standing), petitioners can hardly bootstrap themselves into a hearing by simply asserting that there is need for a "thorough examination of all . . . representations made by LIPA." (SWRCSD Petition, p. 30; SE2 Petition, p. 29.)

For all of the foregoing reasons, petitioners lack standing, and their petitions to intervene and request for a hearing should be denied.

IV. ASSUMING ARGUENDO THAT STANDING EXISTS, PETITIONERS ARE NOT ENTITLED TO A PRIOR HEARING.

As noted at the outset, the Commission's March 20, 1991 Federal Register notice set forth the NRC's proposed determination, under 10 C.F.R. §§ 50.90-50.92 (collectively "§ 50.90"), that the License Transfer Amendment involves no significant hazards consideration. See 56 Fed. Reg. 11,768, 11,781 (1991). Petitioners' April 19 filings incorporate comments opposing the proposed determination and stridently demanding a hearing prior to effectiveness of the license transfer. (SWRCSD Petition, pp. 2-11; SE2 Petition, pp. 2-

11.) Petitioners' comments are groundless, and the Commission should finalize its determination of no significant hazards consideration.[24]

A. The Petitions Provide No Basis For Disputing The Staff's § 50.92 Findings.

In the March 20 Federal Register notice, the NRC Staff examined the 10 C.F.R. § 50.92(c)(1)-(3) criteria and carefully explained why the License Transfer Amendment did not involve a significant hazards consideration. See 56 Fed. Reg. 11,781, 11,782 (1991). Petitioners provide no basis to contest any of the technical safety conclusions reached by the Staff in the Federal Register notice. From petitioners' failure to comment upon -- let alone contest -- the Staff's detailed technical conclusions, it may reasonably be inferred that petitioners believe the Staff's conclusions are correct.

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[24] This determination is committed to the Staff "subject only to the Commission's discretion, on its own initiative, to review the determination." 10 C.F.R. § 50.58(b)(6). Therefore, any comments on the no significant hazards determination should have been directed, separately and solely, to the addressee specified in the notice, not combined with the petitions filed with the Secretary of the Commission. See 56 Fed. Reg. 11,769 (1991). In view of petitioners' action, LIPA hereby responds to their filing for the benefit of the Commission. However, should the petitions to intervene be forwarded to a licensing board, the board will be "without authority to review Staff's significant hazards consideration determination." LBP-91-7, p. 8.

Instead of challenging the Staff's hazards analysis, petitioners raise new, unrelated issues that go beyond the merits of the Staff's technical conclusions. We address those arguments in Parts IV.B-D below, and demonstrate that they provide no basis for reconsideration of the Staff's proposed determination.

B. The Commission Is Fully Empowered To Provide Any Required Hearing After Effectiveness.

Petitioners' first argument in opposition to the proposed determination is based on an unsupported contention that the § 50.90 procedures are inapplicable "to a license transfer application." (SWRCSD Petition, p. 2; SE2 Petition, p. 2 (emphasis in original).) This contention elevates form over substance and is contradicted by long-standing NRC practice; further, petitioners would not necessarily be entitled to a prior hearing even if they were correct that the § 50.90 procedures are inapplicable in these circumstances.

Petitioners' argument against application of the § 50.90 procedures here is based on the separate references in AEA § 189 to "proposed license amendments" on the one hand and "'application[s] to transfer control'" on the

other. (See SWRCSD Petition, p. 2; SE2 Petition, p. 2.)[25] This distinction is allegedly reflected in the separate regulatory provisions for license amendments (§ 50.90) and license transfers (§ 50.80). Petitioners apparently would have it that the Joint Application must be treated exclusively under the statutory rubric "application to transfer control" and cannot be considered a "proceeding for the amending of any license," thereby assertedly rendering irrelevant the so-called "Sholly" provisions concerning post-effectiveness hearings that apply to "any amendment to an operating license." AEA § 189(a)(2)(A), 42 U.S.C. § 2239(a)(2)(A).[26]

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[25] Section 189(a)(1) of the AEA, 42 U.S.C. § 2239(a)(1), establishes the basic framework for hearings under the AEA as follows (emphasis added):

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

[26] Section 189(a)(2)(A) provides as follows:

> The Commission may issue and make immediately effective any amendment to an operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the

(continued...)

Petitioners' argument fails at the outset. It takes no account of the actual context of the Joint Application, which incontrovertibly does propose and would require an amendment to the License. Hence, the License Transfer Amendment necessarily imports the "Sholly" procedures.[27]

The conclusion that "Sholly" procedures are applicable in this proceeding not only squares with the statutory language but also comports with long-standing NRC practice. Fully consistent with Congress' broad delegation of power to the Commission under Section 189 of the AEA, Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-86-12, 24 NRC 1, 6 (1986), the NRC's well-settled practice is to use the § 50.90 procedure for applications requesting a license amendment in the transfer context.[28] By contrast, the Commission has

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[26](...continued)
State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this chapter.

[27] The Joint Application plainly involves a license amendment as well as a transfer. For example, attached to and part of the Joint Application is a draft of the many amendments to the Shoreham License that are proposed in the Joint Application.

[28] See, e.g., Illinois Power Co. (Clinton Power Station, Unit 1), 54 Fed. Reg. 13,448 (1989) (transfer of ownership and amendment); System Energy Resources, Inc. (Grand Gulf Nuclear Station, Unit 1), 54 Fed. Reg. 53,220 (1989) (notice of transfer of control and amendment); Kansas Gas & Elec. Co. (Wolf Creek Generating Station), 51 Fed.
(continued...)

generally reserved the § 50.80 transfer vehicle for those cases, often arising in a corporate restructuring, where there is a transfer of control over a license but no amendment to the license is necessary.[29] This long-standing interpretation of the AEA and § 50.90 is plainly within the Commission's discretion, and petitioners cannot compel the substitution of a statutory construction rendering the "Sholly" provisions irrelevant to license amendments proposed in a transfer context. See Chevron U.S.A. Inc. v. Natural Resources Defense Council, 467 U.S. 837, 842-43 & n.9 (1984).

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[28](...continued)
Reg. 29,002 (1986) (notice of proposed transfer of control and amendment); 51 Fed. Reg. 41,876 (1986) (notice of issuance of same); Texas Utils. Elec. Co. (Comanche Peak Steam Electric Station, Units 1 and 2), 54 Fed. Reg. 37,063 (1989) (notice of transfer of ownership and amendment); Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), 55 Fed. Reg. 945 (1990) (notice of issuance of transfer of control and amendment); Niagra Mohawk Power Corp. (James A. FitzPatrick Nuclear Power Plant), No. 50-333, Letter from Gerald K. Rhode (Niagra Mohawk Vice President-Engineering) to Ben Rusche (Director of Nuclear Reactor Regulation) (December 13, 1976).

[29] The NRC has approved restructuring plans under § 50.80, for example, where a holding company was created to own an NRC licensee yet not change to the license itself (not even a change of name) was necessary. See, e.g., Wisconsin Power & Light Co. (Kewaunee Plant), NRC Consent By Letter (January 29, 1988) (creation of holding company to be parent of licensee, with no license amendment necessary); Duquesne Light Co. (Beaver Valley Power Station, Unit Nos. 1 and 2), 54 Fed. Reg. 11, 094 (1989) (to same effect); Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 1, 2, and 3), 52 Fed. Reg. 46,694 (1987) (to same effect).

The foregoing conclusion applies with special force because petitioners would not necessarily be entitled to a prior hearing even if transfer-related proceedings must be treated exclusively under § 50.80 and the statutory provisions related to 'application[s] to transfer control." Section 189 of the AEA does not direct the NRC to hold a prior hearing on an "application to transfer control," nor does the Commission's transfer regulation. See 10 C.F.R. § 50.80(a). Section 50.80 simply prohibits "the transfer of control of the license . . . unless the Commission shall give its consent in writing," but does not address when there should be a hearing.

Moreover, where a hearing is offered or requested in circumstances not subject to the "Sholly" provisions, the Commission has often exercised its discretion to provide hearings only on a post-effective basis in circumstances presenting no significant hazards consideration.[30] Thus, even if § 50.90 were inapplicable here, the Commission would be fully entitled to defer any hearing until after effectiveness upon determining there is no significant

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[30] See, e.g., General Elec. Co. (Vallecitos Boiling Water Reactor), 1 AEC 541, 543 (1960); Texas Utils. Elec. Co. (Comanche Peak Steam Electric Station, Unit 1), CLI-86-04, 23 NRC 113 (1986); Babcock & Wilcox Co., 2 AEC 259 (1963); Nuclear Fuel Servs., Inc., 2 AEC 364 (1963); 10 C.F.R. § 2.1205(1) (re materials licensing actions); 48 Fed. Reg. 14,864 (1983); 51 Fed. Reg. 7,744 (1986) (re post-effectiveness hearings concerning construction permit amendments).

hazards consideration. In addition, petitioners have shown no prejudice that would arise from the NRC's holding any required hearing after the amendment is effective.

Further, contrary to petitioners' claims SWRCSD Petition, pp. 3-6; SE2 Petition pp. 3-6), § 50.80 has not been ignored. LIPA and LILCO filed the Joint Application, pursuant to both §§ 50.90 and 50.80. (See Joint Application, p. 2.)[31] And the NRC Staff's Federal Register notice of March 20 similarly makes clear that the Staff will seek data pursuant to § 50.80. See 56 Fed. Reg. 11,782 (1991). Finally, § 50.80's requirement that the NRC give its "consent in writing" would plainly be met by the NRC's approval under the amendment procedures of § 50.90. Accordingly, petitioners have shown no legal impediment to a post-effectiveness hearing in this context.

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[31] Petitioners allege, for example, that antitrust data of the type allegedly required by § 50.80 were not submitted by LIPA and LILCO. (See SWRCSD Petition, p. 3; SE2 Petition, p.3). This is untrue; LIPA and LILCO did address antitrust matters in the Joint Application. (See Joint Application, p. 36.) Petitioners' errors simply underscore the fact that they have failed completely to contest the substance of the Joint Application and instead have raised a set of wholly unrelated issues.

C. Petitioners' Attempt To Compare Shoreham To Other Plants Is Irrelevant.

Petitioners' second argument in opposition to the proposed no significant hazards determination is based on an irrelevant comparison of the present factual circumstances to those commented upon by the Commission in other circumstances involving transfers of operating plants.[32] Petitioners assert, for example, that transfer of the License to LIPA will involve more significant organizational changes than those involved in the Grand Gulf case, where the Commission made a no significant hazards determination in a transfer context. (See SWRCSD Petition, pp. 4-5; SE2 Petition, pp. 4-5.) In fact, petitioners understate the amount of continuity in personnel at Shoreham, where numerous positions at the plant will continue to be staffed with LILCO personnel. (See Joint Application, p. 20.) More important, however, hazards considerations obviously must be evaluated on a case-by-case basis, and it is meaningless to compare this proposed amendment to prior amendments involving transfers of license responsibilities for operating plants.

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[32] See SWRCSD Petition, pp. 3-6; SE2 Petition, pp. 3-6 (citing Mississippi Power & Light Co., Middle South Energy, Inc., South Mississippi Electric Power Ass'n, (Grand Gulf Nuclear Station, Unit 1), 51 Fed. Reg. 39,927 (1986) (notice of proposed issuance of amendment); 52 Fed. Reg. 1,561 (1987) (notice of issuance of amendment); "Final Procedures and Standards on No Significant Hazards Considerations," 51 Fed. Reg. 7,744 (1986).

Here, as the Commission is well aware, the operating history at Shoreham is limited; there were less than two effective full power days. The levels of contamination and potential hazards are thus far less than those at a plant that had reached full operation. Further, the license amendment at stake would only authorize LIPA to possess and maintain -- not to operate -- Shoreham. Thus, LIPA's licensed activities would be narrow: To maintain a defueled, non-operating, and minimally contaminated plant in a safe condition consistent with the requirements of the non-operating license sought to be acquired. Notably, as previously pointed out in Part IV.A, petitioners do not even attempt to show error in the conclusions set forth in the Staff's proposed determination as to application of the § 50.90 criteria to the facts of this case. Thus, the proposed no significant hazards determination should be made final.

D. A Final Determination Of No Significant Hazards Consideration Is Not Premature.

In a third argument in opposition to the proposed no significant hazards determination, petitioners contend that a final determination would be "fatally premature" until the NRC prepares an EIS "which evaluates the environmental impacts of, and alternatives to the plan

to decommission Shoreham, and not just those of the method of finally accomplishing decommissioning." (SWRCSD Petition, p. 10; SE2 Petition, p. 10 (emphasis in original).) This argument has no relevance to the three significant hazards factors of § 50.92. Moreover, it is premised on the same rejected interpretation of the NRC's decommissioning rules set forth in petitioners' earlier filings seeking to intervene in the proceeding concerning the proposed POL.[33] The Commission specifically rejected the argument in CLI-91-01 after seeking briefing on the subject. See CLI-91-1, 33 NRC at 6-7.[34]

The argument has no greater force when raised in the context of the requested amendment to transfer Shoreham to LIPA. In addition to the ruling in CLI-91-01, the contention is defeated by its dependence on the assertion that NEPA requires evaluation of the decision not to operate

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[33] See SWRCSD's Comment on Proposed No Significant Hazards Consideration and Petition for Leave to Intervene and Request for Prior Hearing (dated Sept. 20, 1990), pp. 3-10; SE2's Comment on Proposed No Significant Hazards Consideration and Petition for Leave to Intervene and Request for Prior Hearing (dated Sept. 20, 1990), pp. 3-10.

[34] Petitioners also err in characterizing the decommissioning plan submitted by LIPA in December 1990 as "irrelevant" because LIPA is not the Shoreham licensee. (SWRCSD Petition, p. 8 n.4; SE2 Petition, p. 8 n.4.) In the circumstances existing here, where LIPA is the proposed successor licensee and will be responsible for decommissioning and where the present licensee, LILCO, has consented to LIPA's filing, LIPA is plainly entitled to submit a decommissioning plan, as the NRC Staff has recognized by commencing its review of that plan.

Shoreham, a contention already rejected by the Commission in CLI-90-08, CLI-91-02, and Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-90-09, 33 NRC ___ (1991). The License Transfer Amendment has utility independent of eventual decommissioning and will not prejudice decommissioning options. Accordingly, neither the Commission's decommissioning rules nor NEPA requires resolution of decommissioning-related issues at this juncture, much less consideration of matters that the Commission has already determined are beyond the scope of the NRC's NEPA authority and duties.[35]

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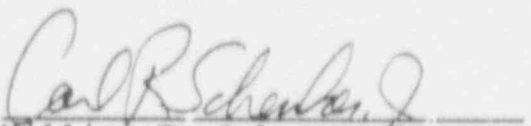
[35] Petitioners also argue that a final determination cannot be made during the pendency of Shoreham-related issues before the Court of Appeals of New York. (See SWRCSD Petition, p. 6; SE2 Petition, p. 6.) This argument is merely a variation of petitioners' previously filed joint motion for a stay of all Commission proceedings and Staff reviews related to Shoreham. (See Joint Motion of SWRCSD and SE2 to Stay or Vacate License Issuance and Other Matters (dated March 8, 1991), pp. 1-2.) The joint motion and this variant thereon are without merit for all the reasons previously discussed in LIPA's Opposition to the Joint Motion for Stay (dated March 25, 1991). Moreover, it is entirely inappropriate for the petitioners to persist in raising the same contentions over and over again in different contexts.

CONCLUSION

For the foregoing reasons, the petitions for leave to intervene and requests for prior hearing should be denied, and the Staff's proposed no significant hazards consideration determination should not be overruled.

Respectfully submitted,



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Dated: May 6, 1991

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'91 MAY -6 P3:53

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

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

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U.S. District Court, District of Columbia
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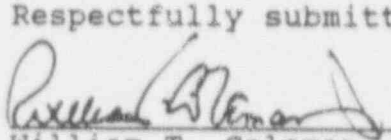
Name of Party: - The Long Island Power Authority

Respectfully submitted,



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NUCLEAR REGULATORY COMMISSION

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May 6, 1991

CERTIFICATE OF SERVICE

Pursuant to the service requirements of 10 C.F.R. § 2.712 (1990), I hereby certify that on May 6, 1991 I served a copy of LIPA's Answer to Intervention Petitions Concerning License Amendment To Authorize Transfer of Shoreham And Response Concerning No Significant Hazards Consideration, Notices of Appearance, and transmittal letter via Courier upon the following, except where otherwise indicated:

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