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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE COMMISSION

'92 FEB 24 A11:14

In the Matter

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power Station,  
Unit 1)

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Docket No. 50-322

(Decommissioning) DCOM

PETITIONERS' OPPOSITION TO NRC STAFF  
MOTION TO DISMISS

On February 5, 1992, the Nuclear Regulatory Commission ("NRC" or "Commission") Staff filed "NRC Staff's Motion to Dismiss Intervention Petitions" ("Staff Motion") in the above-captioned proceeding. Petitioners Shoreham-Wading River Central School District ("School District") and Scientists and Engineers for Secure Energy, Inc. ("SE<sub>2</sub>") hereby oppose that motion for the reasons given below.

First, collateral estoppel does not bar further argument that Shoreham's resumed operation must be considered as an alternative to decommissioning because that issue has not "been determined by a valid and final judgment." See, Staff Motion at 5 and decisions cited therein. The Staff itself admits that, as to some rulings, "Petitioners' appeals from these decisions are pending before the Commission." Staff Motion at 6 n.7. And the Commission decisions relied on principally by the NRC Staff (CLI-90-08, CLI-91-02, and CLI-91-08) are currently under review by the U.S. Court of Appeals for the District of

Columbia Circuit together with related Commission final orders. See, Shoreham-Wading River Central School District v. U.S.N.R.C., U.S.App.D.C. Docket Nos. 91-1140 & 91-1301. See Staff Motion at 2, 6-8. Without a "valid and final judgment," collateral estoppel does not apply by the Staff's own admission. It is necessary for the School District and SE<sub>2</sub> to maintain its position that the proper scope of inquiry under the National Environmental Policy Act ("NEPA") includes the alternative of resumed operation while the administrative and judicial processes proceed. Further, even if Petitioners were estopped from raising this single alternative, that fact would not call for dismissal of the petitions, but only limitation on the scope of NEPA review sought by Petitioners in the proceeding.

Second, the petitions do not address matters outside the scope of the Federal Register notice and, alternatively, even if they do address some issues outside the scope of the Federal Register notice that does not call for dismissal but a limitation of the scope of the proceeding. For example, the NRC argues that "the petitions referenced the alternative of operating Shoreham and the consequences of its non-operation -- matters outside the scope of the licensing action . . . ." Staff Motion at 9. The Staff misses the point. "The consequences of its non-operation" are "effects" or "impacts" of the proposal which must be considered in any NEPA analysis of the proposal, even if it is not necessary to consider renewed operation as an "alternative." See 40 C.F.R. § 1508.8 (definition of "effects"); 40 C.F.R. §

1508.9 (even an environmental assessment must address "the environmental impacts of the proposed action").

Third, the objections to the lack of detail in the initial petitions are premature since Petitioners have an unfettered right to supplement those petitions before the Atomic Safety and Licensing Board. See 10 C.F.R. § 2.714(a)(3) & (b) (1991). E.g., Staff Motion at 3 n.3 & 9 n.8.

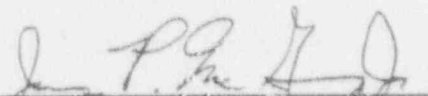
Petitioners are proceeding to develop the appropriate affidavits and petition amendments with particularized contentions for consideration in the Commission licensing process.

CONCLUSION

WHEREFORE, Petitioners urge the Commission to deny the Staff Motion or to defer action on it until Petitioners have fully developed their petitions and supplied detailed contentions supported by affidavits in line with the process promised by 10 C.F.R. § 2.714.

Respectfully submitted,

February 20, 1992

  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the Petitioner's Opposition to the NRC Staff's Motion to Dismiss in the above-captioned proceeding have been served on the following by first-class mail, posted prepaid on this 20th day of February, 1992:

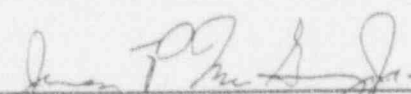
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