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BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of Long Island Lighting Company (Shorham Nuclear Power Station, Unit 1)	USNRC Docket No. 50-322 Long Island Lighting Co.; Consideration of Issuance of an Order Authorizing Decommissioning a Facility and Opportunity for Hearing (56 Fed. Reg. 66459 (December 23, 1991))

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SCIENTISTS AND ENGINEERS FOR SECURE ENERGY, INC.'S
PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR PRIOR HEARING

On December 23, 1991, the Nuclear Regulatory Commission ("NRC") published notice in the Federal Register that the NRC is considering issuing an order to the Long Island Lighting Company ("LILCO"), licensee of the Shoreham Nuclear Power Station ("Shoreham"), authorizing the decommissioning of Shoreham. 56 Fed. Reg. 66459 (1991).

The December 23, 1991 notice provides that "any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene" by January 22, 1992. Id. at 66459, Col. 3.

UNAVAILABILITY OF THE SHOLLY PROCEDURE

Scientists and Engineers for Secure Energy, Inc. ("SE_2") hereby submits that the NRC Staff cannot make a proposed no significant hazards determination in connection with the proposed action.

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The so-called "Sholly" procedure whereby the Commission makes a proposed no significant hazards consideration determination on a proposed license amendment and then makes that amendment immediately effective prior to a hearing upon issuance of a final determination does not apply to a decommissioning order issued pursuant to Section 103 or 104 of the Atomic Energy Act of 1954, as amended ("AEA") to amend the existing possession only license ("POL").

It is beyond question that a POL is not an operating license; therefore, the Sholly Procedures cannot be applied to an amendment to such a reactor non-operating license. The Commission's own regulations issued pursuant to the Sholly amendment also recognize the limitation of these procedures to applications "requesting an amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for attesting facility." 10 C.F.R. §§ 50.91 & 50.92(c) (1991) (emphasis added).

PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR PRIOR HEARING

Scientists and Engineers for Secure Energy, Inc. ("SE_2" or "Petitioner") and its members would be adversely affected by this proposed decommissioning order and, therefore, pursuant to Section 2.714 of the Commission's Rules, SE_2 requests that it be granted leave to intervene as a party and that a hearing be held to consider the merits of the proposed order.

SE$_2$ views this decommissioning order as one part of the larger proposal tc decommission Shoreham. Each step in the decommissioning proposal that moves Shoreham closer to a fully decommissioned state and further away from full-power operational status violates the dictates of the Atomic Energy Act of 1954 as amended ("AEA"), 42 U.S.C. §§ 2011 et seq. (1988), and the National Environmental Policy Act of 1969 as amended ("NEPA"), 42 U.S.C. §§ 4331 et seq. (1988). Thus, while the issues presented herein directly relate to the instant application, they necessarily include other unlawfully segmented actions taken and/or proposed[1/] by LILCO, and approved the NRC Staff, in furtherance of the decommissioning scheme.

1/ In Kleppe v. Sierra Club, the Supreme Court states that "when several proposals . . . that will have a cumulative or synergistic impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together." 427 U.S. 390, 410, 96 S.Ct. 2718, 2730 (1976).

I. STANDING OF PETITIONER TO INTERVENE

As the NRC Staff has stated the applicable law: To determine whether a petitioner has sufficient interest to intervene in a proceeding, the Commission has held that a licensing board may apply judicial concepts of standing. A petitioner must show that the action sought in the proceeding will cause an injury in fact and that the violation causing that injury is a violation of an interest protected by the AEA and/or the NEPA. Dellums v. NRC, 863 F.2d 968, 971-80 (D.C. Cir. 1988).

In addition, a petitioner must establish that the injury is likely to be remedied by a favorable decision granting the relief sought ("redressability"). Dellums, 863 F.2d at 971.

The Court has recognized, in the context of NRC proceedings, "that widely-held, non-quantifiable aesthetic and environmental injuries are sufficient to satisfy" the injury in fact test." Dellums, 863 F.2d at 972. Also, the Dellums' Court recognized that an organization satisfies standing requirements by showing

> that '(a) its members would otherwise have standing to sue in their own right, (b) the interests that it seeks to protect are germane to the organization's purpose, and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.' Hunt v. Washington State Apple Advertising Comm'n., 432 U.S. 333, 343, 97 S.Ct. 2434, 2441, 53 L.Ed.2d 383 (1987).

863 F.2d at 972.

In this case, SE_2 will submit affidavits of Pr[illegible]r Miro M. Todorovich (its Executive Director), and its members Dr. John L. Bateman, Eena-Mai Franz, Dr. Stephen V. Musolino, Joseph Scrandis, and Dr. John R. Stehn, in which those members elect to have their interests represented by the SE_2 and allege violations of their rights under the AEA and NEPA together with allegations of how approval of the instant application prior to completion of the NEPA process would injure their rights and the rights of SE_2 under NEPA to participate in the development of, and have the benefit of, an FEIS on the proposal and the entire proposal to decommission Shoreham, and how approval of the application would injure their rights under the AEA to have reasonable assurance of their individual health and safety, and SE_2's rights and responsibilities to assure the reasonable assurance of the health and safety of its members.

It should also be noted that if this application is approved, many of SE_2's members will suffer great losses of services by Suffolk County and/or the Town of Brookhaven and increases in real estate taxes due to the loss of taxes on the Shoreham facility, which would be large and palpable financial and property harms to those members. See 56 Fed. Reg. 66460 col 1. Such economic injuries have been recognized as independently satisfying the "injury in fact test" in the context of NRC

licensing decisions. Dellums, 863 F.2d at 973 (a single individual's "inability to find work").

Further, it is clear that the conduct of the development of an EIS pursuant to Part 51 of the Commission's regulations would avoid the injury to affiants' and SE_2's rights under NEPA since it would afford them the opportunity to participate in that process and the benefit of the resulting FEIS. It is also clear that the denial of the application would protect affiants' rights to adequate assurance of health and safety under the AEA. And it is equally clear denial of that application for decommissioning order would avoid the above-mentioned loss of significant services and increases in taxes on SE_2 members.

Given these facts, SE_2 and its members satisfy the requirements for organizational standing, since affiants would otherwise have standing to intervene in their own right. The interests that SE_2 and its members seek to protect are germane to the SE_2's purposes and neither the claim asserted nor the relief requested requires the participation of the affiant members personally in the proceeding.

A key point here is that Shoreham's decommissioning is not a foregone conclusion. While LILCO and the State of New York wish to steer Shoreham towards decommissioning, the NRC has yet to formally approve any decommissioning plan, and before any such approval may issue, the NRC must complete an Environmental Impact

Statement ("EIS") which includes consideration of all alternatives.

Petitioner's interests, as detailed below, will be protected, and the requirements and purposes of the AEA met, if Petitioner is allowed to intervene in a prior hearing held on this matter and the remedies sought by Petitioner are granted as a result of that proceeding.

LILCO's efforts toward de facto decommissioning without an approved decommissioning plan are a per se violation of the AEA and a direct health and safety violation.

NEPA mandates preparation of an EIS prior to agency decisionmaking on major federal actions significantly affecting the quality of the human environment. The EIS must consider, inter alia, the environmental impacts of, and the reasonable alternatives to, the proposal. Thus, NEPA ensures that agency decisionmaking not only includes environmental consideration, but also is structured in such a way that environmental consideration is meaningful.

SE_2 has determined that its responsibilities demand that it seek intervention in this instance in order to protect the interests of SE_2 and its members and their property.

SE_2's affiant[illegible]ers live and/or work within both the ten and fifty mile limitations used by the Commission to determine whether an intervenor expressing contentions under the

health and safety provisions of the Atomic Energy Act has an interest sufficient to allow intervention.

SE_2 has an interest in protecting the health and environment of its members, who live and/or work in close proximity to the Shoreham facility, from both the possible radiological impacts of the proposed amendment and 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.

Furthermore, the SE_2's affiant members depend on LILCO to meet their electric energy needs. SE_2 has a vital interest in ensuring that an adequate and reliable supply of electricity will be available to meet its members' needs and that the electricity provided is available at reasonable rates. Shoreham is presently capable of meeting the growing electric energy needs of the Long Island area. Actions to decommission the facility and build substitute oil or gas burning plants, on the other hand, delay any increase in the Region's electric energy production capacity, and also generate significant expenses which will inevitably be passed on to Long Island's ratepayers, including those whose interests Petitioner seeks to protect.

II. PETITIONER'S INTERESTS WOULD BE GREATLY AFFECTED BY THE ORDER

The proposed order violates the requirements of the AEA at the expense of the Petitioner's members right to reasonable assurance of radiological health and safety and circumvents their NEPA rights to timely environmental consideration of the decommissioning proposal, including its reasonable alternatives. Petitioner wishes to participate in each and every aspect of the hearing which touches and concerns these interests as well as the specific aspects identified below and in any amendment of this petition hereafter filed.

SE_2, on behalf of itself and its members, seeks leave to intervene and request a hearing to determine whether the proposed order should be varied, denied or deferred under the AEA. The specific aspects of the proposed action as to which SE_2 wishes to intervene are: (1) whether a grant of the proposed order would be arbitrary, capricious and/or an abuse of discretion pursuant to the Atomic Energy Act and the Commission's regulations, and subsidiary guidance thereunder; (2) whether, if a decision is made to operate Shoreham, the proposed order would totally frustrate or significantly delay and increase the cost of returning the plant to an operational mode; (3) whether the proposed order would constitute an irreversible and irretrievable commitment of the Shoreham resource; and (4) whether the order would undermine the reasonable assurance that full power

operation, should it ultimately be pursued, would or could be conducted with consonant with the public health and safety and national defense and security, particularly the reasonable assurance of the Petitioner's members protection (including their real and personal property) from the radiological hazards of operating the facility.

In deciding whether or not such steps should be allowed, the NRC is obligated to consider not only the immediate health and safety implications of proposed decommissioning actions, but also future such implications, the public interest in the plant as an operational entity, the national security and common defense interest in the operational plant, and finally, the environmental impacts of, and alternatives to, allowing a plant to be prematurely decommissioned.

SE_2 also wishes to have full and fair NEPA consideration given the decommissioning proposal (of which the instant application is an interdependent part), including the need for power, the cost-benefit analysis of decommissioning, and the operation and near-term operation alternatives for Shoreham. Any actions in furtherance of the de facto decommissioning proposal prejudice consideration of such mandatory NEPA analysis by, among other things, making the alternatives further away in time, more costly, and less likely in fact.

NEPA, as implemented in regulations issued thereunder by the Council on Environmental Quality ("CEQ") and the NRC,

mandates that no major Federal action significantly affecting the quality of the human environment will be implemented without first receiving a full environmental review. As more fully detailed below, Petitioner's interests under NEPA will be protected, and the purposes and requirements of NEPA served, to the extent that such a NEPA review is conducted under the NRC Rules (including a hearing) and the remedies sought by Petitioner are granted in the proceeding. Petitioner's interests will be adversely affected should this petition or the relief sought herein be denied.

The remedies sought by Petitioner specifically include the correction of this presumptuous "decision" that the reactor will never return to full power operation, as well as a return to the mandates of the NRC's regulations under the AEA and NEPA which require maintenance of the full power license obligations until an informed decision is made with all appropriate environmental and economic considerations.

If a full NEPA environmental review is conducted, it may be that the factors which first led to the construction of this $5.5 billion dollar reactor would lead relevant decisionmakers at the NRC and elsewhere to favor the continued utilization of this brand new facility and reject the decommissioning proposal.

The increased risks of radiological harm to Petitioner's members, as discussed above, also constitute adverse

environmental impacts and would also increase the risk that the choice of reasonable alternatives would be limited. The application presents the issue of an irreversible and irretrieveable effect starkly. As a result, approval of the proposed order is barred by 10 C.F.R. §§ 51.100(a) and 51.101(a) (1990) until a record of decision is issued following completion of the required NEPA review of the decommissioning proposal. See also, 10 C.F.R. § 51.100(a)(1) (1990).

Intervention and a hearing on this proposed order, prior to its approval, addressing the aspects identified in this Petition, is the only avenue available to Petitioner before the NRC for protecting not only its own vital interests but also those of its members as to this NP licensing issue at this time. The Petitioner must address each incremental, segmented step proposed by the licensee and the NRC Staff which would further advance the de facto decommissioning by the licensee in violation of the AEA and NEPA.

The violations of the AEA, by definition, increase the risk of radiological harm to those whose interests SE_2 seeks to protect, its members.

The violations of NEPA also deny Petitioner its rights to information on, and to participate in, the formulation of an environmental review of the impact of, and alternatives to, the ongoing decommissioning of the Shoreham facility.

Petitioner must address the de facto decommissioning at this time because LILCO obviously seeks to abrogate its obligations under its license before the NRC issues a final and fully informed decision on the decommissioning proposal, thereby both endangering the health and safety and other interests of Petitioner, its members, under the AEA, and jeopardizing the future viability of the reactor, and thereby avoiding a meaningful environmental analysis pursuant to NEPA. Without Petitioner's active involvement, the NRC Staff and the licensee would simply continue to circumvent the law and regulations and thereby deny Petitioner, which is interested in the development of a complete record, the opportunity to have such full AEA and NEPA consideration before significant alternatives are foreclosed.

Obviously, neither the NRC Staff nor the licensee appear to be in the least bit interested in representing the Petitioner's valid interests by complying with the requirements of the AEA and/or NEPA. Petitioner will bring to light the significant regulatory, health, safety and environmental issues which form the bases for its challenge to the proposed order and for all of the licensee's actions toward de facto decommissioning. These essential issues are required by law to be addressed, and by addressing them now in this action the Petitioner will hasten their examination and appropriate resolution by the Commission.

III. SPECIFIC ASPECTS AS TO WHICH PETITIONER SEEKS TO INTERVENE

A. Specific Aspects of the Subject Matter As To Which Petitioner Seeks to Intervene Under the AEA

Sections One, Two, and Three of the AEA set out the Declarations, Findings and Purpose of that Act which must guide the Commission's decisions pursuant to its substantive provisions. 42 U.S.C. §§ 2011-2013 (1988).

Section 2(e) of the Act explains that "utilization facilities are affected with the public interest." 42 U.S.C. § 2012 (1988). Petitioner submits that utilization facilities, such as Shoreham, are licensed to serve the public interest. In obtaining the benefits that result from the license to operate a plant, a licensee also shoulders the burden of maintaining the plant operational for so long as the licensee holds the license and the NRC determines that the public interest is best served by an operable plant.

The decision as to whether a plant shall be rendered inoperable then is not strictly for the licensee to make. While the plant may be privately owned, it was constructed based on strict regulations established on behalf of the public and with the understanding that it would serve the public for the duration of the plant's useful life unless the proper Federal authorities determine that it is in the public interest that the plant prematurely cease operation. Any such determination would have

to be based on proper health and safety, environmental, and common defense and security factors. Thus, the fact that LILCO and the State of New York may have currently determined that they wish Shoreham decommissioned is not the last word on the matter. The Commission must make a proper determination of the public interest, from local, state, and national perspectives weighing the environmental, economic, and other impacts and the alternatives before any operable nuclear plant is decommissioned. Such a determination has yet to be made in this case.

Petitioner contends that the proposal to use the DECON approach to decommissioning as opposed to SAFSTOR or ENTOMB will cause additional unnecessary, and therefore impermissible, radioactive exposures to those whom it represents and therefore, their interests under the Atomic Energy Act would be harmed by approval of the DECON alternative and protected by a choice of another alternative or denial of the application for a decommissioning order which are the remedies which they seek. It is also contended that the Commission does not have adequate assurance of the financing of the activities under the decommissioning order or of the capability of the organization proposed to conduct the decommissioning order. Petitioner contends that these lacks of adequate assurance endanger the interests of those represented under the Atomic Energy Act and that a denial of the decommissioning order would protect their interests.

B. Specific Aspects of the Subject Matter As to Which Petitioner Seeks To Intervene Under NEPA.

The proposed order is one segmented part in implementation of a proposed major Federal action which, if approved, will significantly affect the quality of the human environment. Because preparation of an EIS and a final decision is required before any part of the decommissioning proposal may be implemented, the proposed order is in direct violation of Section 102(2)(C) of NEPA and Petitioner's right to such NEPA

review, if it is approved prior to NEPA review of the whole decommissioning proposal.

Section 102(2)(C) of NEPA provides that, prior to making a decision to implement a "proposal" for a "major federal action significantly affecting the quality of the human environment," administrative agencies shall prepare an Environmental Impact Statement ("EIS") which evaluates, among other things, the "environmental impacts of" and the "alternatives to" the proposed action. 42 U.S.C. § 4332 (1982).

The Council on Environmental Quality ("CEQ") regulations, which are "binding on all federal agencies," further clarify the NEPA responsibilities of federal agencies. 40 C.F.R. § 1500.3 (1988). Among other things, those regulations (a) mandate application of NEPA "at the earliest possible time to insure that planning and decirions reflect environmental values," (b) require that actions which are "interdependent parts of a larger action" be discussed in a single impact statement, and (c) prohibit actions which "limit the choice of reasonable alternatives" until the NEPA process is complete. 40 C.F.R. §§ 1501.2, 1508.25, & 1506.1. The NRC's own NEPA regulations, which closely parallel those of the CEQ, also prohibit any "decision on a proposed action" or actions, especially one tending to "limit the choice of reasonable alternatives," pending completion of the NEPA process. 10 C.F.R. §§ 51.100 and 51.101 (1989).

While the decommissioning proposal has been advanced by LILCO, a non-federal entity, the NRC's on-going supervision of that licensee's activities and the need for NRC approval of the various aspects of the decommissioning process make what otherwise might be a private action in another industry into a "major federal action." The NRC controls whether the decommissioning proposal may proceed and, therefore, has a non-discretionary duty under NEPA to ensure that neither the Shoreham facility, itself, as the relevant part of the environment under the supervision of the NRC, nor the alternatives to its decommissioning, are adversely affected by premature implementation of the decommissioning proposal. See 40 C.F.R. § 1506.1(b) (1988).

To date, the NRC Staff has failed to recognize this duty and, instead, has given LILCO tacit and explicit permissions to implement an ever increasing number of steps in the decommissioning proposal which have no utility independent of that proposal.

LILCO and the NRC Staff claim that no steps have been taken at Shoreham which are irreversible or constitute irretrievable commitments of resources. This claim is subject to significant doubt in view of the judicial interpretation of these concepts in the context of NEPA and the facts of this case. See Commonwealth of Massachusetts v. Watt, 716 F.2d 946, 953 (1st Cir. 1983) ("each of these events represents a link in a chain of

bureaucratic commitment that will become increasingly harder to undo the longer it continues"); Sierra Club v. Marsh, 872 F.2d 497, 500 (1st Cir. 1989) ("the harm at stake is a harm to the environment, but the harm consists of the added risk to the environment that takes place when governmental decisionmakers make up their minds without having before them an analysis (with prior public comment) of the likely effects of their decision on the environment").

For example, if the concepts of "irreversible" and "irretreivable" are stretched to their theoretical definitional limits, the same claim could be made even if the plant had been razed but "could be" rebuilt. The issue is not whether the plant, its equipment and its staff could someday be put back together again, but rather over what duration and at what cost could the feat be achieved.

The farther away in time and expense LILCO and the NRC move the reestablishment of operational capability, the less likely it becomes that the alternative of operating Shoreham will be pursued. In the Spring and early Summer months of 1989, when LILCO made its intention to cooperate with New York State in a plan to decommission Shoreham plainly known to the NRC, the Shoreham plant sat ready for immediate full-power operation. As a fully licensed plant with a complete staff and fully functional equipment and systems, Shoreham constituted a valuable resource

for the Long Island area in that it was capable of immediately generating electric energy.

The proposed order is another in a series of actions instigated by LILCO, to be approved by the NRC Staff, in furtherance of the decommissioning proposal. As such, the proposed order would make the intended benefit and purpose of Shoreham (the supply of 805 MWe in full power operation) more remote in time and less likely in fact. It would, therefore, violate NEPA and the Commission Rules (in particular, 10 C.F.R. § 51.101(a)(1) (1989)) if approved prior to completion of NEPA review.

The Petitioner first urged maintenance of the status quo (that is, full operational readiness at the Shoreham plant), pending preparation of an EIS and a final decision on the proposal to decommission the facility, in its Section 2.206 request filed in July 1989. Petitioner has reiterated the need for the Commission to take such action in supplements to the initial request and at meetings between the NRC Staff and LILCO management. The NRC Staff's response has continually been that an EIS will have to be prepared before decommissioning can take place.[2/]

2/ The NRC has stated that while:

> decommissioning of a facility requires a license amendment necessitating the preparation of an EIS, such an amendment has not yet been applied for in this case. If

(continued...)

The CEQ definition of "proposal" includes the statement: "A proposal may exist in fact as well as by agency declaration that one exists." 40 C.F.R. § 1508.23 (1988) (explicitly adopted by the Commission at 10 C.F.R. § 51.14(b) (1989)). A hard look at the reality of the present situation makes it abundantly clear that a decommissioning proposal exists "in fact" in this instance.

LILCO has entered into a Settlement Agreement with various entities of the State of New York that represents a decommissioning proposal. The Agreement (which may be terminated by its own terms or voided by pending suits currently before the in state Court of Appeals) provides that LILCO will not operate the plant but will take steps to remove the plant from service in an effort to both reduce costs and facilitate the transfer of the plant to an entity of New York State which will, in turn, take the final steps in the decommissioning process.

The Commission's own definition of the term "decommission" supports Petitioner's contention that LILCO's actions to date constitute decommissioning. The Commission Regulations define "decommission" as meaning "to remove (as a

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2/ (...continued)
the Commission issues a license amendment authorizing the decommissioning of the Shoreham facility, an environmental review will be performed . . . .

Interim Reply to the initial Section 2.206 Request (dated July 20, 1989) (emphasis added).

facility) safely from service and reduce residual radioactivity to a level that permits the release of the property for unrestricted use." 10 C.F.R. § 50.2 (1989)(emphasis added). Thus, under the Commission's definition, 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.

The proposed order violates Petitioner's rights under NEPA, and the NEPA regulations promulgated by the CEQ and the NRC, both (a) to have decisions on interdependent parts of a proposal for a major federal action informed by a Final EIS evaluating the proposal as a whole and also (b) to have alternatives to a proposed action preserved pending the preparation of an FEIS and the issuance of a final decision on the proposal as a whole.

Before this further step in the decommissioning plan is taken, an environmental evaluation of the decommissioning plan as a whole must be undertaken. The D.C. Circuit has stated that "NEPA creates a right to information on the environmental effects of government actions; any infringement of that right constitutes a constitutionally cognizable injury . . ." Competitive Enterprise Inst., et. al. v. Nat'l Highway Traffic Safety Admin., No. 89-1278, slip op. at 28 (D.C. Cir. Jan. 19, 1990). Until an EIS has been prepared on the total decommissioning proposal, no

part of that plan, including this proposed order, may be implemented.

In addition to failing to recognize this proposed order as yet another step in the inching implementation of the larger decommissioning proposal, the NRC has failed to prepare even an environmental assessment for this amendment. Section 51.21 of the Commission's regulations states that "[a]ll licensing . . . actions subject to this subpart require an environmental assessment except those identified in § 51.20(b) as requiring an environmental impact statement, those identified in § 51.22(c) as categorical exclusions, and those identified in Section 51.22(d) as other actions not requiring environmental review." 10 C.F.R. § 51.21 (1989).

Assuming arguendo, that the proposed order may be considered a discrete action, distinct from the larger decommissioning proposal, it is not among those actions listed in Section 51.20(b) which require preparation of an EIS. Likewise, the proposed amendment is not among the actions listed in subsections (c) or (d) of Secton 51.22 which constitutes categorical exclusions from environmental review. Thus, Section 51.21 mandates proparation of at least an environmental assessment ("EA") addressing the environmental impacts of, and alternatives to, this licensing action. Further, Petitioner requests a proposed EA and also asserts that the proposed order

involves unresolved conflicts concerning alternative uses of available resources. See 10 C.F.R. § 51.22(b) (1989).

An environmental assessment is intended to provide a basis for a decision whether a proposed action merits preparation of an EIS or a finding of no significant impact. This determination hinges on whether the proposed action will or will not "have a significant effect on the quality of the human environment." 10 C.F.R. § 51.32(a)(3) (emphasis added); see also 42 U.S.C. § 4372(2)(c).

Thus, the level of environmental scrutiny a proposed action must undergo is determined by the "significance" of the action's environmental effects.

The CEQ regulations provide guidance as to the meaning of "'significantly' as used in NEPA." 40 C.F.R. § 1508.27 (1988). Among the factors listed by the CEQ to be considered by an agency in evaluating whether a proposed action will "significantly affect the quality of the human environment" is:

> Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

40 C.F.R. § 1508.27(b)(7) (1988) (emphasis added). An environmental assessment of this proposed order must, therefore, consider the cumulative impacts of the proposed order the other

related actions which have or will be taken in furtherance of t' decommissioning scheme.

Furthermore, the CEQ defines "cumulative impact" as:

> the impact on the environment which results from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7 (1988) (emphasis added). The proposed order cannot be isolated from the continuum of "past, present, and reasonable foreseeable future actions" in furtherance of decommissioning. Rather, a proper environmental assessment will necessarily consider the proposed order in the context of the decommissioning proposal which has been, and continues to be, implemented in a segmented fashion. Such consideration must inevitably yield the conclusion that the piecemeal implementation of the individual steps in the decommissioning process cannot continue until an EIS evaluating the environmental impacts of, and alternatives to, the decommissioning scheme as a whole has been prepared and a final decision on that proposal made.

The "Supplement to Environmental Report (Decommissioning) (December 1990) submitted in the name of the Long Island Power Authority" provides a totally inadequate basis for consideration of the decommissioning of Shoreham. For example, the consideration of socioeconomic impacts in Section

4.1.1.1 fails to discuss the decommissioning proposals effects on the state, county, township and School District tax bases, and the loss of employment and taxes resulting from the proposal. Similarily, all Section 4 is written in broad conclusory terms without any details and in some cases, contrary to common sense (for example, it simply cannot be said that "[d]ecommissioning is not expected have any significant impact on regional or local employment and unemployment rates). See Section 4.1.1. The NRC's requirements for the operating staff for Shoreham demanded over 800 highly skilled and highly paid workers, it is beyond cavil that the loss of those jobs will have at least a very significant impact on local employment, including the lost of property and income taxes from those loss personnel. In similar fashion, the report provides nothing to support its conclusion that "[n]o significant demographic shifts will result from the decommissioning." See Section 4.1.2.1.

There is no discussion of the impact on cultural resources. See Section 4.1.2. There is no discussion of the impacts of the hauling and disposal of construction debris, or their effects on local air, traffic, noise and other considerations. See Section 4.1.2.2.

It is contrary to common sense to assert that the proposal to decommission would have "no significant negative impacts on land use" since it obvious that the proposal is to destroy a very valuable facility which is a great resource for

both real estate and corporate tax revenue for the local community and the state, as well as the federal government, and electric energy. See Section 4.1.2.4.

The discussion of the LILCO preferred decommissioning alternative, DECON, and the alternative decommissioning methods is conclusory and totally lacking in detailed quantative analysis of the radioactive and non-radioactive environmental impacts of the various alternatives. See Chapter 3.0.

There is a total absence of discussion of the implications of the proposal to decommission for the need for power that will be an effect of the proposal to decommission if it is approved.

The absence of such information from the Environmental Report would of course, result in an inadequate draft EIS, which would disable Petitioner and those whom it represents from offering intelligent and focused comments on the draft EIS, and thus results in inadequate final EIS. This would harm their interests protected by NEPA, since the informational purposes of NEPA would be damaged and Petitioner's rights and the rights of those whom it represents would be likewise damaged by the inadequate information and the resulting lack of assurance that the relevant decisionmakers would have complete environmental information available to them for their consideration in making a final decision on the proposal to decommission. In filing

contentions, Petitioner will further amplify these inadequacies in Supplemental Environmental Report.

Petitioner has thus shown an injuries in fact that will result from the proposed order, including injuries which are within the zone of interests protected by NEPA, and that can be redressed by a decision not to approve the order and by granting the other remedies sought.

The particular aspects of the proposed order as to which Petitioner wishes to intervene under NEPA are, inter alia, as follows:

1. Does a proposal to decommission the Shoreham Plant exist "in fact"?

2. Would issuance of the proposed order prior to publication of an FEIS and a record of decision thereon violate the Commission's NEPA regulations, including without limitation, 10 C.F.R. §§ 51.100 & 51.101 (1989)?

3. Do NEPA, and the CEQ and NRC regulations promulgated thereunder, require that the licensee maintain all full power license conditions in full accord with readiness for operation at full power pursuant to its Full-power Operating License, the Technical Specifications and licensee commitments thereunder, as well as the Atomic Energy Act, the regulations and other normal NRC Staff requirements of a full power licensee, until such time as full NEPA review of the decommissioning

proposal is completed and published and a decision on that proposal is subsequently made?

4. Does the proposed order require that an environmental assessement ("EA") prior to becoming effective?

5. If the proposed order does require an EA prior to approval, what is the proper scope of that EA? That is, (a) should the EA be limited to the order as defined in the Notice, (b) should the scope of the EA also include all other pending and/or approved requests by the licensee for amendments to, exemptions from, and other permissions sought with respect to its full-power Operating License, which are pending at this time, or (c) should the scope of the EA include all other proposals in fact, currently pending before the NRC?

6. Is the Staff's determination that an EIS is necessary for the decommissioning of Shoreham in its response to Petitioner's counsel dated July 20, 1989 determinative of the need for an EIS?

7. If the NRC Staff's July 20, 1989 determination of the need for an EIS is binding on the Staff, does NEPA require initiation of the EIS process at this time?

8. Does the Commission's approval of SECY-89-247 require the initiation of the preparation of an EIS beginning now?

IV. REMEDIES

The Petitioner seeks the following remedies:

1. An order permitting the Petitioner's intervention as to the subject of the captioned notice.

2. An order directing a hearing on the issues presented by the captioned notice as detailed in this petition as it may be amended.

3. An order requiring the NRC Staff not to issue the proposed order pendente lite to allow for an independent assessment by the Atomic Safety and Licensing Board of the issues identified herein.

4. An order consolidating this petition with the petition of Scientists and Engineers for Secure Energy, Inc. insofar as the two petitioners have common interests.

5. An order consolidating this matter with related matters pending before the Commission for which notices of an opportunity for hearing have been and/or will be issued with respect to Shoreham.

6. An order finding that there exists a proposal for the decommissioning of Shoreham, which is a major federal action significantly affecting the quality of the human environment and, therefore, ordering the licensee to prepare and submit an adequate Environmental Report on the scope of that proposal (including, inter alia, the alternatives relating to full-power operation); and, further ordering, that all Shoreham proceedings

not relate to enhancing full-power operation be held in abeyance pending the submission of that Environmental Report, the subsequent preparation and publication of a Draft Environmental Impact Statement by the NRC Staff and further proceedings culminating in the Final Environmental Impact Statement and hearings thereon.

7. An order requiring the NRC Staff and the licensee to furnish the petitioner's attorney with all future communications and/or governmental filings originated by those parties or either of them, by telecopy, express mail, or overnight courier, which communications relate to Shoreham and/or issues affecting Shoreham.

8. An order denying the order application.

9. Order(s) granting such other relief deemed necessary and/or appropriate.

CONCLUSION

WHEREFORE, for the above-stated reasons, the Petition for Leave to Intervene should be granted, a hearing should be held prior to approval of the proposed order and the other remedies herein sought should be granted.

Respectfully submitted,

January 22, 1992

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(202) 857-2929

Counsel for Petitioner
Scientists and Engineers for
Secure Energy, Inc.

In accordance with 10 C.F.R. §§ 2.708(e) and 2.712(b), service may be made upon the above-designated Attorney for Petitioner.

BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of	USNRC Docket No. 50-322
Long Island Lighting Company	Long Island Lighting Co.; Consideration of Issuance of an Order Authorizing Decommissioning a Facility and Opportunity for Hearing (56 Fed. Reg. 66459 (December 23, 1991))
(Shorham Nuclear Power Station, Unit 1)	

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with 10 C.F.R. § 2.713 (1989), the following information is provided:

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Addresss:	Dow, Lohnes & Albertson Suite 500 1255 23rd Street, N.W. Washington, D.C. 20037
Telephone Number:	(202) 857-2929
Admission:	U.S. Supreme Court
Name of Party:	Scientists and Engineers for Secure Energy, Inc.

James P. McGranery, Jr.

Dated at Washington, D.C.
this 22nd day of January, 1992

BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of	USNRC Docket No. 50-322
Long Island Lighting Company	Long Island Lighting Co.; Consideration of Issuance of an Order Authorizing Decommissioning a Facility and Opportunity for Hearing (56 Fed. Reg. 66459 (December 23, 1991))
(Shorham Nuclear Power Station, Unit 1)	

CERTIFICATE OF SERVICE

I hereby certify that one copy of the Scientists and Engineers for Secure Energy, Inc.'s Petition for Leave to Intervene and Request for Prior Hearing is being served upon the following by first-class mail, postage prepaid on this 22nd day of January, 1992:

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
ATTN: Docketing and Services Branch
(original and two copies)

Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
(one copy)

W. Taylor Reveley, III, Esq.
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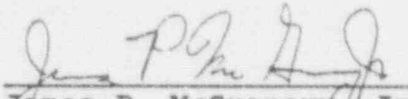

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