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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF RESPONSE TO SCIENTISTS AND ENGINEERS FOR SECURE ENERGY, INC. AND SHOREHAM-WADING RIVER CENTRAL SCHOOL DISTRICT PETITIONS TO INTERVENE

John T. Hull
Counsel for NRC Staff

Mitzi A. Young
Senior Supervisory Trial Attorney

February 11, 1992

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INTRODUCTION

On January 22, 1992, Scientists and Engineers For Secure Energy, Inc. ("SE2") and Shoreham-Wading River Central School District ("School District") (collectively "Petitioners"), filed petitions to intervene and requests for hearing[1] in the above-captioned proceeding. The Petitions respond to the December 23, 1991 *Federal Register* notice, 56 Fed. Reg. 66459, regarding the proposed issuance of an order authorizing the decommissioning of the Shoreham nuclear power plant.[2]

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[1] Scientists and Engineers For Secure Energy, Inc.'s Petition For Leave To Intervene And Request For Prior Hearing ("SE2 Petition"); Shoreham-Wading River Central School District Petition For Leave To Intervene And Request For Prior Hearing ("School District Petition"). These petitions are collectively referred to as "Petitions."

[2] The Shoreham reactor is defueled and all spent fuel is in the spent fuel pool. *See* 56 Fed. Reg. at 66459. The order "would allow the immediate dismantlement of the reactor pressure vessel and internals, contaminated systems, and plant structures" using the DECON decommissioning method. *Id.* The environmental impacts of using the DECON

(continued...)

The Petitions largely ignore the matters discussed in the *Federal Register* Notice. Instead, the Petitioners argue that (1) the NRC should preserve Shoreham's capability to generate electricity by nuclear means until the economic consequences and possible indirect environmental impacts (e.g., increased pollution from operation of a replacement fossil fuel plant) of the Long Island Lighting Company's ("LILCO") decision to close Shoreham are evaluated in an Environmental Impact Statement ("EIS"); and (2) the EIS should consider resumed nuclear operation of Shoreham as an alternative to decommissioning.[3] As discussed below, Petitioners fail to show that they would suffer a particularized injury from the proposed authorization to decommission Shoreham and fail to raise a specific aspect within the scope of the proceeding.[4] The requests for leave to intervene pursuant to 10 C.F.R. § 2.714 should, therefore, be denied.

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[2](...continued)
method at Shoreham are analyzed in a supplement to the environmental report submitted with the decommissioning plan. *Id.* Since nuclear fuel at Shoreham will be shipped either to Nine Mile Point for use or to Europe for reprocessing, fuel disposal is not considered part of the Shoreham decommissioning actions. *Id.* The decommissioning plan, dated December 29, 1990 ("Plan") was supplemented on August 26, November 27 and December 6, 1991, in response to Staff requests for additional information. *Id.* at 66460.

[3] It is noted that the Petitions seem to focus not on the Plan which is the subject of the December 23, 1991 notice, but on some other approval. *See, e.g.*, School District Petition at 7, 11; SE2 Petition at 7, 10.

[4] The Staff previously filed a motion to dismiss the petitions for failure to raise matters within the scope of this proceeding and will only briefly summarize the arguments here. *See* NRC Staff's Motion To Dismiss Intervention Petitions, dated February 5, 1992 ("Staff Motion").

BACKGROUND

This proceeding is the last in a series of licensing actions related to LILCO's decision to terminate operations at its Shoreham nuclear power plant. In an agreement between LILCO and the State of New York, which became effective June 28, 1989, LILCO agreed to terminate operations at Shoreham and to transfer ownership of Shoreham to the Long Island Power Authority ("LIPA"), an entity created by the New York State Legislature. LIPA would then carry out the decommissioning of Shoreham. On June 28, 1990, LILCO and LIPA filed a joint amendment application requesting transfer of the Shoreham license from LILCO to LIPA "upon or after amendment of the license to a non-operating status." 56 Fed. Reg. 11768, 11781 (March 20, 1991). LILCO's request for a possession-only license ("POL"), noticed in 55 Fed. Reg. 34098 (August 21, 1990), was granted and the POL was issued to LILCO on June 14, 1991.[5]

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[5] The POL became effective on July 19, 1991, when the United States Court of Appeals for the District of Columbia Circuit denied a motion to stay its issuance. *See* 56 Fed. Reg. 28424 (June 20, 1991) and *Shoreham-Wading River Central School District v. NRC*, No. 91-1140 (D.C. Cir. July 19, 1991). The Supreme Court later denied a stay application regarding the POL that was submitted to Justice Stevens and referred to the Court. *Id.*, ___ U.S. __, 112 S.Ct. 9 (1991). The merits of the proposed POL license transfer, including LIPA's qualifications to become the transferee of the Shoreham POL, are being contested by Petitioners in the License Transfer proceeding pending before the Licensing Board in Docket No. 50-322 OLA-3.

DISCUSSION

I. Petitioners Lack Standing To Intervene

A. Legal Standards Governing Standing In NRC Proceedings

The Commission has long held that contemporaneous judicial concepts of standing will be applied in determining whether a petitioner has established a right to intervene in NRC proceedings under the Atomic Energy Act, 42 U.S.C. § 2011 *et seq* ("AEA"). *See, e.g., Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-92-02, 35 NRC ___ , slip op. at 10 (February 6, 1992); *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983); *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614 (1976). These judicial concepts require a petitioner to "establish that he or she will suffer a distinct and palpable harm that constitutes the injury in fact, that the injury can be traced fairly to the challenged action, and that the injury is likely to be redressed by a favorable decision in the proceeding." *Public Service Co. of New Hampshire* (Seabrook Station, Unit 1), CLI-91-14, 34 NRC 261, 266-67 (1991). *Accord, Foundation on Economic Trends v. Lyng*, 943 F.2d 79, 82 (D.C. Cir. 1991) ("*Lyng*"); *Nuclear Engineering Co.* (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 (1978) (there must be a concrete demonstration that harm could flow from the result of a proceeding).

Mere academic interest in a matter or a result is not sufficient to establish standing. *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972); *Edlow International Co.*

(Agent for the Government of India on Application to Export Special Nuclear Material), CLI-76-6, 3 NRC 563, 572 (1976). One must show he would be actually harmed by the outcome of the proceeding in order to intervene. *Id.* at 573-74; *Lyng*, 943 F.2d at 85.

The Supreme Court recently indicated that unless a statute provides a specific right of judicial review, one must premise an action upon the Administrative Procedure Act, 5 U.S.C. § 555 *et seq.* (APA), and show not only that he is within the zone of interests protected by the statute involved, but that he will suffer a palpable "legal wrong because of the challenged agency action or [be] adversely affected or aggrieved by that action within the meaning of a relevant statute." *Lujan v. National Wildlife Federation*, ___ U.S. ___, 110 S. Ct. 3177, 3185-86 (1990) ("*Lujan*").[6] *See* APA, 5 U.S.C. § 702. A relevant statute is one "whose violation is the gravamen of the complaint." *Lujan*, 110 S.Ct. at 3187. To show that one is adversely affected or aggrieved by agency action within the meaning of a relevant statute one must provide specific facts showing the manner in which the agency action causes harm. *Id.* at 3186-87. Making general or conclusory

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[6] The Court recently stressed this point in a case involving a challenge to a Postal Service rulemaking permitting use of private courier systems. *Air Courier Conference of America v. American Postal Workers Union*, ___ U.S. _____, 111 S. Ct. 913, 918 (1991). The Court emphasized the separate requirements of the injury in fact and zone of interest standing tests in holding that the revenue protective purposes of the Private Express Statutes, 18 U.S.C. §§ 1693-1699 and 39 U.S.C. §§ 601-606, did not "plausibly relate to the Unions' interest in preventing the reduction of employment opportunities," and denied the employee unions standing to challenge the agency action. 111 S. Ct. at 918-921. The Court rejected the unions' argument that the entire 1970 Postal Reorganization Act, 39 U.S.C. § 101, *et seq.*, embracing the general codification of all postal statutes, and which includes provisions to stabilize labor-management relations, should be used in applying the zone of interests test. *Id.* at 920-21. Such a level of generality could "deprive the zone-of-interests test of virtually all meaning." *Id.* at 921.

of harm without detailing specific agency acts causing harm is not enough to establish standing. *Id.* at 3186-88.[7]

B. Petitioners Have Not Established Injury In Fact

The Petitioners' complaints of injury to their AEA rights are conclusory statements with no citation to any LILCO or LIPA filings.[8] The Petitioners have not shown how the proposed approval of a decommissioning order for the Shoreham facility will cause them any injury in fact, so as to allow them to intervene.[9]

Petitioners similarly make general allegations of rights to information under the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.* ("NEPA"), and that this informational interest is injured by the lack of an EIS on Shoreham's decommissioning.

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[7] Although the Court in *Lujan* was dealing with a motion for summary judgment, the principles discussed there are relevant here since, in determining whether Petitioners have standing, an inquiry is made of Petitioners' rights under the AEA and how the Petitioners' interests may be affected in the NRC proceeding. *See* 10 C.F.R. § 2.714 (d)(1).

[8] Petitioners merely state that it is "clear that the denial of the [decommissioning] application would protect affiants' rights to adequate assurance of health and safety under the AEA." SE2 Petition at 6; *see* School District Petition at 6. "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." SE2 and School District Petitions at 7. "The violations of the AEA, by definition, increase the risk of radiological harm" to SE2's members. SE2 Petition at 12; *see* School District Petition at 13.

[9] Aside from the conclusory nature of the injury claims, the Petitioners make no showing that these alleged injuries arise from any *federal* action. The Commission has many times emphasized that the decision of whether Shoreham will operate or be decommissioned is not a NRC decision, but a private decision. *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-90-8, 32 NRC 201, 207-208 (1990); *id.*, CLI-91-2, 33 NRC 61, 70-71 (1991); *id.*, CLI-91-8, 33 NRC 461, 470 (1991).

See, e.g., SE2 Petition at 12, 22-23. But a generalized interest in information that may be relevant in a particular proceeding fails to confer standing in the absence of a specific showing as to how the proposed federal action would harm a petitioner's NEPA interests. *See Rancho Seco*, CLI-92-02, slip op. at 13-14, *citing Edlow supra*. The Commission, citing *Lyng*,[10] *supra*, refused to grant informational standing based on *Competitive Enterprise Institute v. National Highway Traffic Safety Administration*, 901 F.2d 107 (D.C.Cir. 1990), the case relied upon by Petitioners for informational standing. *Rancho Seco, supra*, slip op. at 14-18.[11]

The proximity of Petitioners' members to Shoreham, Petitions at 7-8, is irrelevant for standing in this proceeding involving the decommissioning of a defueled nuclear plant, where the Petitioners have not shown potential for offsite radiological consequences. *See Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989).

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[10] In *Lyng*, 943 F.2d at 84-86, the court, after a careful examination of pertinent authority, held on the basis of precedent in that court and the Supreme Court's reasoning in *Lujan*, that failure to receive information in an EIS did not provide the basis for a cause of action under NEPA, unless one could also show injury from the proposed action. The desire for information under NEPA shows no "injury in fact" to provide a basis for standing unless there is a showing of harm arising from the environmental impacts of the proposed action. *Lyng*, 943 F.2d at 84-85.

[11] To the extent Petitioners wish to litigate matters as private attorneys general, they may not do so. *Sierra Club v. Morton, supra; cf.* SE2 Petition at 10, 13; School District Petition at 11, 14.

The Petitioners have failed to show any injury in fact stemming from the proposed decommissioning order or from the lack of an EIS,[12] and have thus failed to establish their standing.

C. Petitioners Have Not Shown That They Are Within The Zone Of Interests Protected By NEPA Or The AEA

To satisfy the zone of interest test for standing, a petitioner must show that it seeks to protect one or more interests that are arguably within the zone of interests regulated or protected by the statute whose violation forms the gravamen of the complaint. *See Air Courier Conference v. American Postal Workers Union*, 111 S. Ct. at 918; *Lujan*, 110 S.Ct. at 3187.

In their standing arguments,[13] Petitioners cite the AEA and NEPA, but their failure to show that the injuries complained of could arise from any radiological or environmental damage caused by the proposed decommissioning order is a fatal deficiency. *See Rancho Seco, supra*, slip op. at 10-11 (loss of employment caused by the decision not to operate

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[12] In addition, Petitioners have failed to show there is any information on the impact of decommissioning not included in the Generic Environmental Impact Statement (NUREG-0586), which accompanied the decommissioning rule, 10 C.F.R. § 50.82 (53 Fed. Reg. 24,018, June 27, 1988). Thus, Petitioners have failed to show that the Commission and the public were not provided with all pertinent information that might be contained in an individual EIS on the decommissioning of Shoreham.

[13] *See* SE2 Petition at 4-8; School District Petition at 4-9. Petitioners also fail to establish representational standing by failing to submit member affidavits authorizing the Petitioners to represent member interests in the proceeding. *See Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 393-94 (1979).

the facility, and not by any environmental damage, is not an injury conferring NEPA standing).

Here, as in *Rancho Seco*, Petitioners' asserted injuries arise from a decision not to operate a nuclear facility. The asserted economic injuries such as higher electricity costs and loss of tax revenues (SE2 Petition at 5-6, 8; School District Petition at 5-6, 8-9) are no more within the zone of interests protected by the AEA or NEPA than the petitioner's interest in employment was in *Rancho Seco*. Such economic interests have long been ruled as outside the AEA and NEPA zones of interest. *See Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-333, 3 NRC 804, 806 (1976), *affirmed*, CLI-76-27, 4 NRC 610, 614 (1976); *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1420-21 (1977); *North Shore Gas Co. v. EPA*, 930 F.2d 1239, 1243 (7th Cir. 1991) (utility ratepayers not within NEPA's scope).[14] Electricity and tax rates are state concerns, and do not support standing in NRC proceedings. *See Public Service Co. of New Hampshire* (Seabrook Station, Unit 2), CLI-84-6, 19 NRC 975, 978 (1984); *see also Pacific Gas & Electric Co. v. State Energy Resources Conservation &*

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[14] In *Hazardous Waste Treatment Council v. EPA*, 861 F.2d 277, 283-84 (D.C. Cir. 1988), it was held that economic benefit to competitors was not within the "zone of interests" protected by NEPA "in the absence of either some explicit evidence of an intent to benefit [competitor] firms or some reason to believe that such firms would be unusually suitable champions of Congress's ultimate goals." Similarly, in *Gifford-Hill & Co. v. FTC*, 523 F.2d 730, 731-32 (D.C. Cir. 1975), one's economic interest in delaying enforcement of the antitrust laws was not found to be in the "zone of interests" of NEPA to allow a suit to require preparation of an environmental statement. Each case focused on whether the petitioners' "real concerns" were protected by NEPA.

Development Comm., 461 U.S. 190, 212 (1983) ("The Federal Government maintains complete control of the safety and 'nuclear' aspects of energy generation; the States exercise their traditional authority over the need for additional capacity, the type of generating facilities to be licensed, land use rulemaking and the like"). Thus, the Petitioners' interests in such economic matters as increased tax revenues from having a generating plant in a taxing district, School District Petition at 9, or in lower costs of electricity, SE2 Petition at 8, are not within the zone of interests protected by NEPA or the AEA.

Even reading Petitioners' assertions liberally so as to find injury in fact to their interests should the decommissioning order be approved, Petitioners have failed to show that their asserted interests or injuries are within the zone of interests of the AEA or NEPA. Accordingly, they have failed to establish standing to participate in this proceeding. *See TMI, supra*, 18 NRC at 332.

D. Petitioners Have Not Shown How Their Injuries Would Be Redressed By Preparing An EIS

In *Seabrook*, CLI-91-14, *supra*, the Commission emphasized that to establish standing, a petitioner must show that a claimed "injury is likely to be redressed by a favorable decision in the proceeding," and must show that "but for the particular action it challenges, its injury would abate." 34 NRC at 267 (citations omitted).

None of the actual or potential injuries of which Petitioners complain, regardless of whether they are assumed to arise from the license transfer, from decommissioning, or from the decision not to operate Shoreham, and none of the alleged effects on the Long

Island community, whether direct or indirect, regardless of the cause, would be redressed by the preparation of an EIS. Petitioners overriding concern is that Shoreham be preserved to allow future operation as a nuclear power facility. The NRC has no independent authority under the AEA to order the operation of any nuclear plant. *See Shoreham*, CLI-91-2, 33 NRC at 72-73. Further, while NEPA prescribes a process for agency decisionmaking, it gives no authority beyond what is already present in an agency's organic statute. *See Robertson v. Methow Valley Citizens Council*, ___ U.S. ___ , 109 S.Ct. 1835, 1846 (1989). Thus, any EIS the NRC might prepare regarding Shoreham would not enable the NRC to require reversal of the private, nonfederal decision not to operate Shoreham. Moreover, in light of the circumstances surrounding Shoreham, any assertion that an EIS might cause the parties to the February 1989 agreement to change their course of action and restart Shoreham is purely speculative. *See* CLI-91-2, 33 NRC at 71-72.[15]

In *Northern States Power Co.* (Tyrone Nuclear Energy Park, Unit 1), CLI-80-36, 12 NRC 523 (1980), a case where petitioners sought to reverse cancellation of a nuclear power facility, Chairman Ahearne and Commissioner Hendrie denied standing on redressibility grounds as follows:

> Whether or not to pursue a particular nuclear power project is a decision left to the licensees, and to other government agencies having a proper interest in power supply and electric rates. The NRC cannot order that a plant be built. Thus, it cannot fashion relief which would in any way redress the harm to Dakota

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[15] As the Commission noted in CLI-91-10, 34 NRC 1, 2 (1991), the actions taken under the possession only license issued last year could render full power operation at Shoreham moot.

> ratepaye , caused by the cancellation of the Tyrone project. The reasoning of the Supreme Court ... persuades us that the Dakota Commissions lack standing in this case because any permissible exercise of our licensing authority would indeed be "gratuitous."

Id. at 526-27 (citation omitted). Commissioners Gilinsky and Bradford concurred for similar reasons. *Id.* at 527.

The Commission's words are fully applicable to this proceeding. Petitioners have not carried their burden of establishing that the fundamental harm alleged -- the non-operation of Shoreham -- is redressible by the result of this proceeding. *See Seabrook, supra*, 34 NRC at 267. Because Petitioners have not shown how preparation of an EIS now regarding the proposed decommissioning of Shoreham would redress or abate their alleged injuries, they have failed to establish standing to intervene in this proceeding.

II. An Order Authorizing Decommissioning May Be Issued Without A Prior Hearing

Petitioners argue that the Sholly procedure, under which the Staff makes an action immediately effective by issuing a no significant hazards consideration ("NSHC") determination, cannot be used to authorize the decommissioning of Shoreham because the procedures do not apply to an order issued to amend a POL -- a "non-operating license." Petitions at 1-2. They further request a prior hearing to consider the merits of the proposed decommissioning order.[16]

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[16] The Staff has previously addressed arguments that a action that amends a POL cannot be issued under the Sholly procedures. In our response to the intervention petitions filed in the License Transfer proceeding, we explained that license transfers under 10 C.F.R. § 50.80 may be authorized by a license amendment and that the Staff has routinely (continued...)

Under Section 189a(2) of the AEA, 42 U.S.C. § 2239(a)(2), and 10 C.F.R. §§ 50.90-50.92, a license amendment may be issued and made immediately effective during the pendency of a request for hearing based on a determination that the action involves NSHC. Orders which authorize a licensee to conduct activities not already authorized by the license have been viewed as orders that amend a license. *See Sholly v. NRC,* 651 F.2d 780, 790-91 (D.C. Cir. 1980) (order allowing venting of the containment); *Southern California Edison Co.* (San Onofre Nuclear Generating Station, Unit 1), CLI-85-10, 21 NRC 1569, 1573-75 (1985) (no amendment since confirmatory order did not expand a licensee's authority or direct action inconsistent with, or not authorized by, the license).

Section 189 of the AEA, 42 U.S.C. 2239, was amended in 1983 to generally provide that the Commission may issue license amendments without a hearing or prior notice if it determines that the amendment involve NSHC. Pub. L. 97-415 § 12, 96 Stat. 2073 (1983). This amendment, generally known as the "Sholly Amendment" provided the statutory basis for the Commission's prior practice of allowing amendments not involving significant hazards considerations to become effective prior to a hearing. *See Final Procedures*

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[16](...continued)
approved transfers through the issuance of a license amendment under 10 C.F.R. §§ 50.90-50.92, with a NSHC determination. NRC Staff Response to Petitioners' Intervention Petition, Requests For Hearing, And No Significant Hazards Consideration Comments, dated May 17, 1991, at 32-40. *See e.g., Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 22 (1978) (any transfer of ownership requires Commission approval and an application for a license amendment); *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-81-17, 14 NRC 299 (1981) (Staff authorized to amend the operating license to accomplish transfer of possession, use and operation). *See also Public Service Co. of New Hampshire* (Seabrook Station, Unit 1), CLI-91-14, 34 NRC 261 (1991) (affirming denial of intervention sought in ownership transfer noticed under Sholly Rule).

and Standards on No Significant Hazards Consideration, 51 Fed. Reg. 7744-46 (March 6, 1986) ("Sholly Rule").

Acting under that amendment, the Commission adopted 10 C.F.R. §§ 50.91, 50.92, 50.58(b)(6) and 2.105(a)(4)(i), which permitted the issuance of license amendments involving NSHC prior to a hearing and provided a limited review of such determinations. *Notice and State Consultation,* 48 Fed. Reg. 14873 (April 6, 1983); 48 Fed. Reg. 14864 (April 6, 1983); 51 Fed. Reg. 7744. Under the final rule, where it is determined that a license amendment request involves NSHC, the NRC will issue a notice which describes the requested amendment, sets forth the proposed NSHC finding, requests comments on that proposed finding, and gives notice of an opportunity for hearing. If requests for hearing are filed pursuant to such notice, the NRC will make a final determination on whether the amendment involves a significant hazards consideration. If the final determination is that the proposed amendment involves NSHC, the NRC may (upon making the requisite health and safety findings) issue the requested amendment despite the pendency of a hearing request. The regulation explicitly provides that one may not petition to have a NRC Staff's NSHC determination reviewed. 10 C.F.R. § 50.58(b)(6); 10 C.F.R. § 2.105(a)(4)(i); *see also* 48 Fed. Reg. 14873, 14876; 51 Fed. Reg. 7744, 7746, 7759.

The Commission's regulations recognize that decommissioning may be authorized by means of an amendment. 10 C.F.R. §§ 51.53 and 51.95 both refer to "an amendment authorizing the decommissioning of a production or utilization facility covered by § 51.20."

The Supplementary Information accompanying the Decommissioning Rule also states that "decommissioning is carried out under an amended license in accordance with the terms of a decommissioning order" and that the Commission "will follow its customary procedures, set out in 10 C.F.R. Part 2 . . . , in amending Part 50 licenses to implement the decommissioning process." 53 Fed. Red. 24018, 24024. The Supplementary Information further explains that the rule applies to reactors having a possession only license since the reactors "possess an 'operating license,' albeit modified." 53 Fed. Reg. 24018, 24027. Thus, it is apparent that the Commission's Decommissioning Rule would not preclude the immediate effectiveness of an order authorizing decommissioning at Shoreham, if the Staff were to determine the action does not involve a significant hazards consideration.[17]

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[17] The Staff has previously noticed actions authorizing decommissioning indicating that the proposed amendment would approve the decommissioning proposal and associated technical specifications. The notice concerning the LaCrosse reactor indicated that the license of the permanently shutdown reactor had been amended to a "possession-but-not-operate status" and specifically stated, that, if a request for hearing were filed, the proposed amendment could be issued if the Commission published for further comment a proposed NSHC finding in accordance with 10 C.F.R. §§ 50.91 and 50.92. *Dairyland Power Cooperative*, 53 Fed. Reg. 11718 (April 8, 1988). The notice concerning the Humboldt Bay power plant, which provided an opportunity for prior hearing, also stated that the Commission was issuing an amendment that, *inter alia*, would approve the licensee's decommissioning plan. *Pacific Gas & Electric Co.*, 51 Fed. Reg. 24458 (July 3, 1986). Both notices predate the Commission's Decommissioning Rule, which became effective July 27, 1998. 53 Fed. Reg. 24018 (June 27, 1988).

In sum, an order authorizing decommissioning of Shoreham may be made immediately effective if the Staff publishes a proposed and final NSHC determination.[18] Thus, no prior hearing would be required.

III. The Petitions Raise Few Aspects Within The Scope Of The Proceeding

While the Staff maintains that the Petitioners have not established standing and in essence, seek to litigate matters outside the scope of this proceeding,[19] Petitioners arguably mention aspects within the subject matter of this proceeding as required by 10 C.F.R. § 2.714(a)(2). Petitioners assert that an EIS or environmental assessment (EA) must be prepared regarding the decommissioning of Shoreham. School District Petition at 23-27, 30; SE2 Petition at 23-26, 29.[20] They question (a) whether DECON will result in unacceptable radiation exposures, and whether LIPA is financially qualified or otherwise capable of carrying out decommissioning, School District Petition at 17; SE2 Petition at 16; and (b) whether the Environmental Report submitted by LIPA is adequate, particularly with respect to the analysis of the DECON alternative, School District Petition at 27-29; SE2

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[18] The Staff already has under consideration LIPA's request that the license be amended to allow LIPA to implement the Shoreham Decommissioning Plan and submitted an analysis of whether the amendment would involve a significant hazards consideration. *See* Letters from L. Hill, LIPA, to NRC, dated January 13 and 23, 1992. LILCO concurred in the submittals by letters dated January 14 and 24, 1992.

[19] Matters outside of the scope of the proceeding provide no basis for intervention or a hearing. *Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976). *See* Staff Motion at 3, 6-10.

[20] In light of the fact the Staff is preparing an EA concerning the proposed decommissioning, this concern may become moot.

Petition at 25-28. While some of these matters might raise a proper "aspect" of the proceeding, as we have stated Petitioners have not shown they have standing to raise these matters.[21] Thus, the Petitions should be denied.

CONCLUSION

The requests for intervention in this decommissioning proceeding should be denied. Although the Petitioners have identified aspects within the subject matter of the proceeding, they do not establish standing to intervene pursuant to 10 C.F.R. § 2.714.

Respectfully submitted,

John T. Hull
Counsel for NRC Staff

Mitzi A. Young
Senior Supervisory Trial Attorney

Dated at Rockville, Maryland
this 11th day of February, 1992

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[21] Should Petitioners establish their standing to raise such claims, properly supported contentions would have to be filed in accordance with 10 C.F.R. § 2.714(b)(2) and the Commission's *Shoreham* decisions regarding environmental issues. *See* CLI-90-8, 32 NRC 201 (1990); CLI-91-2, 33 NRC 61 (1991); CLI-91-4, 33 NRC 233 (1991).

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	)	
	)	

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:

Name:	John T. Hull
Address:	U.S. Nuclear Regulatory Commission Office of the General Counsel Washington, D.C. 20555
Telephone Number:	301-504-1573
Admissions:	Court of Appeals of Maryland District of Columbia Court of Appeals
Name of Party:	NRC Staff

Respectfully submitted,

John T. Hull
Counsel for NRC Staff

Dated in Rockville, Maryland
this 10th day of February, 1992

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

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:

Name:	Mitzi A. Young
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Telephone Number:	(301) 504-1523
Admissions:	U.S. Court of Appeals, D.C. Circuit U.S. District Court, District of Columbia District of Columbia Court of Appeals
Name of Party:	NRC Staff

Respectfully submitted,

Mitzi A. Young
Senior Supervisory Trial Attorney

Dated in Rockville, Maryland
this 11th day of February, 1992

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(Shoreham Nuclear Power Station, Unit 1)	)	(Decommissioning)
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO SCIENTISTS AND ENGINEERS FOR SECURE ENERGY, INC. AND SHOREHAM-WADING RIVER CENTRAL SCHOOL DISTRICT PETITIONS TO INTERVENE" and "NOTICE OF APPEARANCES" for Mitzi A. Young and John T. Hull on the above captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 11th day of February, 1992:

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Atomic Safety and Licensing
Board Panel (1)*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Adjudicatory File* (2)
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John T. Hull
Counsel for NRC Staff