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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

UNRECORDED
USNRC

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- Ivan Selin, Chairman
- Kenneth C. Rogers
- James R. Curtiss
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'92 APR -3 P12:00

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In the Matter of:

LONG ISLAND POWER AUTHORITY
(Shoreham Nuclear Power
Station, Unit 1)

Docket No. 50-322 - *DCOM*
(Decommissioning Plan)

ORDER*

This matter is before the Commission on a motion by the NRC Staff to dismiss two petitions for intervention and requests for hearing filed by the Shoreham-Wading River Central School District ("School District") and the Scientists and Engineers for Secure Energy ("SE2") (collectively "petitioners"). These petitions were filed in response to a notice of opportunity for hearing published by the Staff. See 56 Fed. Reg. 66459 (Dec. 23, 1991). The Federal Register notice announced the Staff's proposal to issue an order approving a proposed decommissioning plan submitted by the Long Island Power Authority ("LIPA") and the Long Island Lighting Company ("LILCO") for the Shoreham Nuclear Station. The staff asks us to dismiss the petitions without forwarding them to the Atomic Safety and Licensing Board ("Licensing Board") for routine processing.

*On February 26, 1992, the Commission authorized the NRC Staff to transfer the Shoreham license from the Long Island Lighting Company to the Long Island Power Authority. On February 29, 1992, the NRC Staff issued an order transferring the license. The change in the caption above reflects that transfer.

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The NRC Staff argues that petitioners raise issues which have already been resolved by the Commission; accordingly, the Staff moves to dismiss the petitions under the theory of collateral estoppel. Staff Motion ("Mtn. Dsm.") at 5-8. The Staff also argues that the petitions raise matters outside the scope of the hearing notice and that the remainder of the petitions may be dismissed on those grounds. Mtn. Dsm. at 8-11. Petitioners respond that the decisions removing certain issues they raise in their petitions are not yet "final" as required by the doctrine of collateral estoppel. Petitioners Response ("Pet. Rsp.") at 1-2. Petitioners also respond that they have raised issues regarding the public health and safety aspects of the proposed decommissioning and, in any event, that they are allowed to amend their petitions to raise new issues as a matter of right at any time up to fifteen (15) days prior to the first prehearing conference. Pet. Rsp. at 2-3.

In theory, the Staff is correct; petitioners are barred from litigating matters which we have placed outside the scope of the hearings in previous decisions. Moreover, petitioners may not expand the scope of the proceedings beyond that provided in the hearing notice. However, at this juncture, it is premature to dismiss the petitions. While petitioners do attempt to raise a number of issues that the Commission has barred from this proceeding, petitioners have described at least one aspect of the proceeding -- the question of the safe levels of radiation exposures to the public during the decommissioning of Shoreham, see School District Petition at 17; SE2 Petition at 16 -- that is within the scope of the proceeding. Petitioners also correctly note that they currently have the right to amend their petitions to introduce new issues and that particularized contentions are not required at this point. See 10 C.F.R. §2.714(a)(3) and (b)(1). Accordingly, we will

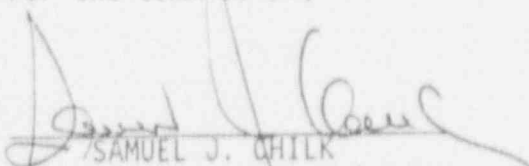
forward these petitions with the responses by the Staff and the Licensee to the Licensing Board. However, if petitioners are unable -- or unwilling -- to submit properly supported contentions on this or other issues relating to the decommissioning order and its criteria under 10 C.F.R. §50.82, the Staff will, of course, be able to file an appropriate motion before the Licensing Board.

The motion to dismiss is denied. The Secretary will forward these petitions and responses to the Licensing Board for processing in accordance with the NRC's Rules of Practice.

It is so ORDERED.



For the Commission,


SAMUEL J. CHILK
Secretary of the Commission

Done at Rockville, Maryland
this 31 day of April, 1992.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power Station,
Unit 1)

Docket No.(s) 50-322-OLA-3

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION'S ORDER - 4/3/92 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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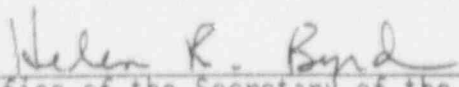
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Docket No.(s)50-322-OLA-3
COMMISSION'S ORDER - 4/3/92

Dated at Rockville, Md. this
3 day of April 1992


Office of the Secretary of the Commission