LIPA December 9, 1991

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	Docket No. 50-322-OLA-3
LONG ISLAND LIGHTING COMPANY	)	(License Transfer Application)
(Shoreham Nuclear Power Station, Unit 1)	)	

RESPONSE OF THE LONG ISLAND POWER AUTHORITY TO PETITIONERS' JOINT SUPPLEMENTAL PETITION

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Pursuant to 10 C.F.R. § 2.714(c), the Long Island Power Authority ("LIPA") hereby responds to the Joint Supplemental Petition ("Pet. Supp." or "Supplement") filed on November 18, 1991 by petitioners Shoreham-Wading River Central School District ("SWRCSD") and Scientists and Engineers for Secure Energy, Inc. ("SE2") with respect to the joint application of LIPA and the Long Island Lighting Company ("LILCO") for an amendment of License No. NPF-82 ("License Transfer Amendment"), authorizing transfer to LIPA of a possession-only license ("POL") for the Shoreham Nuclear Power Station, Unit 1 ("Shoreham"). Petitioners' Supplement was filed pursuant to the Board's October 23, 1991 Scheduling Order, which (1) allowed petitioners an opportunity to amend their April 19, 1991 intervention petitions

in light of the answers filed in May by LIPA, LILCO, and the NRC Staff and (2) directed that petitioners file the contentions they seek to litigate in connection with their petitions.

As will be shown, petitioners did not avail themselves of the opportunity to amend their intervention petitions in light of the answers by LIPA, LILCO, and the NRC Staff. Thus, for the reasons shown in those answers, petitioners lack standing to intervene in this matter.

The absence of standing is only highlighted by the utter failure of Petitioners' Supplement to set forth admissible contentions. Petitioners' Contentions 1-5 do nothing more than recycle five shop-worn contentions purportedly based on the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq.; these contentions were rejected by this Board in Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-91-39, 34 NRC ___ (1991) ("LBP-91-39"). Contentions 6 and 7, purporting to challenge LIPA's financial qualifications and managerial "character," merely elaborate upon points as to which petitioners have already been shown to lack standing in the May 6 and 17 answers by LIPA, LILCO, and the NRC Staff. Moreover, even if petitioners had standing with respect to Contentions 6 and 7 (which they do not), those contentions fail to set forth litigable issues. Thus, the Board should reject all seven contentions without subjecting itself to the burdens of yet another prehearing conference further considering matters that

have been thoroughly reviewed in prior prehearing conferences held on related matters.

The facts underlying this proceeding are well known to the Board and will not be repeated here. For a detailed discussion of the factual background, LIPA respectfully refers the Board to the joint LIPA/LILCO application for the License Transfer Amendment[1] and to the May 6 and 17 answers by LIPA, LILCO, and the NRC Staff to petitioners' April 19, 1991 intervention requests regarding the License Transfer Amendment.[2] More recently, the New York Court of Appeals rejected all challenges by petitioners and others to the decision not to operate Shoreham. See Citizens for an Orderly Energy Policy, Inc. ("COEP") v. Cuomo, No. 182 (N.Y. Oct. 22, 1991). The Court of Appeals' decision in COEP underscores the fact that this Board should not tolerate petitioners' further efforts to relitigate these issues.

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

[2] See LIPA's Answer to Intervention Petitions Concerning License Amendment to Authorize Transfer of Shoreham and Response Concerning No Significant Hazards Consideration (dated May 6, 1991) ("LIPA May 6 Answer"); LILCO's Opposition to Petitioners' Request for Hearing on Shoreham Transfer and LILCO's Response to Comments on Proposed No Significant Hazards Consideration Determination (dated May 6, 1991) ("LILCO May 6 Answer"); NRC Staff Response to Petitioners' Intervention Petitions, Requests for Hearing, And No Significant Hazard Consideration Comments (dated May 17, 1991) ("NRC Staff May 17 Answer").

I. PETITIONERS' SUPPLEMENT SIMPLY HIGHLIGHTS PETITIONERS' LACK OF STANDING.

As noted, this Board's October 23, 1991 Scheduling Order (p. 2) provided petitioners an opportunity "to amend their intervention petition in light of the . . . answers" filed by LIPA, LILCO, and the NRC Staff. Petitioners did not avail themselves of this opportunity to attempt to correct the standing-related deficiencies identified in the answers by LIPA, LILCO, and the NRC Staff. Instead, in the standing section of the Supplement (pp. 2-8), petitioners have merely rehashed points made in their April 19 petitions to intervene.

Moreover, petitioners' rehash of their standing points only serves to highlight their lack of standing with respect to the License Transfer Amendment. The only alleged injuries to which petitioners refer in the Supplement all relate to the supposed "'environmental harm'" flowing from the decision of LILCO, in agreement with New York State entities, to undertake "the destruction of a $5.5 billion electric generating plant at the beginning of its 40 year useful life." (Pet. Supp., p. 4.) Petitioners' presentation thus serves principally to reaffirm that their grievance is not with transfer of the Shoreham license in a POL status from LILCO to LIPA, but rather with the prior, non-federal decision that Shoreham would not operate as a nuclear power plant. LIPA respectfully refers the Board to prior discussions as to why petitioners lack standing. (See LIPA May 6

Answer, pp. 14-43; LILCO May 6 Answer, pp. 2-9; NRC Staff May 17 Answer, pp. 15-27.)

II. PETITIONERS HAVE NOT PRESENTED ANY LITIGABLE CONTENTIONS.

A. Legal Standards For Contentions.

The NRC's standard for admissible contentions appears in 10 C.F.R. § 2.714(b)(2), as revised in 1989, 54 Fed. Reg. 33,168 (1989). This standard requires a petitioner's contentions to possess adequate "basis" and "specificity." A contention's "basis" must be demonstrated through a

> concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing, together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish facts or expert opinion.

10 C.F.R. § 2.714(b)(2)(ii).

The Commission's regulations further state that the Board shall

> refuse to admit a contention if:
>
> (i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

10 C.F.R. § 2.714(d)(2) (emphasis added).

As revised, these regulations constitute a more rigorous standard for admissibility than existed under prior NRC practice. See, e.g., Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-942, 32 NRC 395, 426 n.104 (1990) (revised contention rule "imposes a higher standard" than previous regulations); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-938, 32 NRC 154, 163-64 n.5 (1990) (to same effect).

The Commission has also held that a Board may not ignore "the requirements set forth in 10 C.F.R. § 2.714(b)(2)(i), (ii), and (iii)." Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, 3), CLI-91-12, 34 NRC 149, 155 (1991). Strictly construing the new pleading requirements for contentions, the Commission explained that these requirements "demand that all Petitioners provide an explanation of the bases for the contention, a statement of fact or expert opinion upon which they intend to rely, and sufficient information to show a dispute with the applicant on a material issue of law or fact." Id. at 155 (emphasis added). If any one of these requirements is not met, the Commission said, "a contention must be rejected." Id. (emphasis added).

Further, in its Shoreham-related decisions, the Commission has provided additional guidance as to the criteria for an admissible NEPA-based contention. See, e.g., Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-91-04, 33 NRC 233, 237 (1991) ("CLI-91-04"). The Commission's NEPA-related guidance in CLI-91-04 and other decisions was summarized by this Board in its very recent decision in LBP-91-39:

> [First,] the contention must explain why the environmental impacts of decommissioning Shoreham fall outside the envelope of impacts already considered by the Commission in the agency's Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (GEIS). . . . Second, the contention must plausibly explain how the granting of the [requested amendment] involves special circumstances likely to foreclose one or more of the alternatives for decommissioning Shoreham so that such agency action constitutes an illegal segmentation of the EIS process.

LBP-91-39, pp. 7-9 (emphasis added; footnotes omitted). As we show below, these additional standards for NEPA-based contentions apply equally to the License Transfer Amendment.

Petitioners' NEPA-Based Contentions Are Not Litigable For The Reasons Already Addressed In LBP-91-39.

Contentions 1-5 in Petitioners' Supplement present virtually the same NEPA-based contentions that petitioners raised previously in conjunction with the POL. (Compare Pet. Supp., pp. 8-13 (Contentions 1-5) with Petitioners' Amendment and Supplement to Petitions to Intervene Regarding POL Amendment

(dated July 1, 1991) ("Pet. POL Supp."), pp. 6-10, 12 (Contentions 1, 2, 3, 4, and 6).)[3] This Board's decision in LBP-91-39 specifically addressed and rejected all of these contentions in the POL context. For the reasons shown below, LBP-91-39 applies with equal force here, disposing of each of the five NEPA-based contentions sought to be litigated in this proceeding.

To be sure, the Board's decision in LBP-91-39 was made in the context of the POL proceeding, and this proceeding concerns the License Transfer Amendment. However, four of petitioners' NEPA-based contentions here (Contentions 2-5) do not even refer to the License Transfer Amendment, but rather raise the very same issues raised in the POL context. Moreover, there is no meaningful distinction between the POL proceeding and the License Transfer proceeding for purposes of analyzing petitioners' NEPA-based contentions.

Operationally, the License Transfer Amendment will accomplish nothing more than replacing LILCO with LIPA as the Shoreham licensee. (See generally Joint Application; LIPA May 6 Answer, pp. 4-7; LILCO May 6 Answer, pp. 21, 23 & n. 17.) The License Transfer Amendment proposes no change whatever in the physical configuration of the Shoreham plant, in the treatment or

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[3] Indeed, Petitioners' Supplement even contains the same typographical errors appearing in the earlier iteration of these contentions.

handling of special nuclear material or other hazardous commodities, or in any other material aspect of Shoreham activities. (See LIPA May 6 Answer, pp. 4-7.) The application further proposes no authority to do anything physically with respect to Shoreham beyond what has now been authorized by the license to be transferred, the POL. (Id.) The License Transfer Amendment thus involves "no environmental impacts," but rather is coextensive with the POL from the perspective of environmental impact (or lack thereof).[4] Therefore, the POL and License Transfer Amendment are interchangeable for purposes of analyzing the NEPA-based contentions in Petitioners' Supplement.[5]

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[4] Appendix D to the Joint Application shows in detail why the License Transfer Amendment has no environmental implications. Petitioners do not even cite, much less dispute, any portion of Appendix D, even though it has been filed with the NRC for over 17 months. This vividly illustrates petitioners' failure to present viable contentions for this Board's consideration.

[5] The Board and the Commission have found the same analysis appropriate for the POL on the one hand and the Confirmatory Order, Physical Security Plan, and emergency preparedness license amendments on the other. See, e.g., LBP-91-39; Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-91-26, 33 NRC 537 (1991) ("LBP-91-26"); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-91-01, 33 NRC 1 (1991) ("CLI-91-01").

1. Contention 1.

Contention 1 in Petitioners' Supplement renews yet again petitioners' arguments concerning the supposed impermissible segmentation of environmental review "of the proposal to decommission Shoreham." (Pet. Supp., p. 9.) As presented here, this contention is couched identically to the first contention addressed in LBP-91-39 (pp. 3-11), except that the present formulation refers to the License Transfer Amendment instead of the POL Amendment. (Compare Pet. Supp., pp. 8-10 with Pet. POL Supp., pp. 6-7.) More specifically, substituting reference to the License Transfer Amendment for prior reference to the POL Amendment, petitioners contend that the NRC

> must require LILCO to prepare an environmental report and that the NRC Staff must then publish a draft environmental impact statement ("DEIS") for comment, prepare a final environmental impact statement ("FEIS"), and follow other NRC procedures for the consideration of the environmental impacts of the proposal to decommission Shoreham before approving transfer of the Shoreham license to the Long Island Power Authority ("LIPA") because that action is within the "scope" of the proposal to decommission Shoreham.
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(Pet. Supp., p. 8 (emphasis added to show change).) In LBP-91-39, the Board declared the same contention to be inadmissible in the POL context because the contention met neither portion of the Commission's two-pronged test of CLI-91-04 for admissible NEPA-based contentions.

In LBP-91-39, the first fatal deficiency identified as to this contention was petitioners' complete failure to provide a "reasonable explanation why the GEIS is inapplicable to the decommissioning of Shoreham." LBP-91-39, p. 9. Indeed, in the POL context, this Board indicated that nothing in petitioners' contention "even hints at such an explanation." Id. Petitioners' Contention 1 regarding the License Transfer Amendment is defective for precisely the same reason, and should therefore be rejected. As in the POL proceeding, there is not a word in Contention 1 that indicates why the GEIS is inapplicable to the decommissioning of Shoreham. And there is nothing about the License Transfer Amendment that would make the GEIS inapplicable to the decommissioning of Shoreham.

The second reason given for the Board's rejection of the impermissible-segmentation contention in LBP-91-39 was that the contention did not provide a "'plausible explanation' of how the POL amendment constitutes an illegal segmentation of the EIS process." Id., pp. 9-10 (footnote omitted). Likewise, here there has been no attempt to explain how the License Transfer Amendment constitutes an illegal segmentation of the EIS process. Like the POL, the License Transfer Amendment is entirely segregable from consideration of a decommissioning plan, which will only determine the method of decontaminating the Shoreham plant. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-90-08, 32 NRC 201, 208 (1991) ("CLI-90-08") ("broadest NRC action related to Shoreham decommissioning will be

approval of the decision of how that decommissioning will be accomplished"). The License Transfer Amendment will have no effect on the choice of decommissioning methods. Also like the POL, the License Transfer Amendment has independent utility, for it permits the transfer of ownership of the plant pursuant to the Asset Transfer Agreement,[6] in conformity with the February 1989 Settlement Agreement between LILCO and New York State.[7] See Joint Application, pp. 4-6.[8]

In a new concluding sentence to the first paragraph of Contention 1, petitioners assert that

> license transfer would make the proposal to decommission irreversible since New York State statutes forbid LIPA to operate Shoreham as a nuclear facility and compel LIPA to decommission Shoreham. Long Island Power Authority Act, §§ 1020-t & [1020-h] subd. 9.

(Pet. Supp., p. 9.) But nothing is added by this assertion. The Commission has long assumed that the decision by all concerned not to operate Shoreham (and hence Shoreham's ultimate

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[6] See Amended and Restated Asset Transfer Agreement (dated June 16, 1988) amended April 14, 1989 ("Asset Transfer Agreement").

[7] See Agreement Between the State of New York and LILCO (dated February 28, 1989) ("1989 Settlement Agreement").

[8] In fact, such independent utility is precisely what SWRCSD fears with respect to the License Transfer Amendment. Transfer of the Shoreham license from LILCO to LIPA will have the effect of beginning to reduce, over a 10-year period, SWRCSD's tax revenues related to Shoreham. See Long Island Power Authority Act of 1986 ("LIPA Act"), New York Public Authorities Law, § 1020-q (McKinney Supp. 1990).

decommissioning) is irreversible. See CLI-90-08, 32 NRC at 205, 208; Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-91-02, 33 NRC 61, 71-72 (1991) ("CLI-91-02"); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-91-08, 33 NRC 461, 470 (1991) ("CLI-91-08"). That irreversible decision has been made by the Shoreham licensee (LILCO), the proposed successor licensee (LIPA), and the Governor of New York State and upheld by the New York Court of Appeals; the decision is not a federal decision susceptible to intervention by petitioners.

The relevant consideration for this Board is whether issuance of the License Transfer Amendment would foreclose the choice among decommissioning options, not whether such amendment would have the effect of making future operation of Shoreham less likely than it already is. See CLI-91-08, 33 NRC at 470. Here, whether the POL is held by LILCO or by LIPA has no effect on the method of decommissioning, and petitioners notably fail to make any allegation to the contrary. Hence, as in the POL context, petitioners' impermissible-segmentation contention fails the second prong of the Commission's test for NEPA-based contentions.

As a third reason for dismissing the impermissible-segmentation contention in LBP-91-39, the Board noted that the contention failed to satisfy "the pleading requirements of 10 C.F.R. § 2.714(b)(ii) and (iii)." LBP-91-39, p. 11. The same inadequacies of pleading exist here. Despite the Board's ruling

in LBP-91-39 that the impermissible-segmentation contention was inadequately explained in the POL context, Petitioners' Supplement reiterated the contention in the context of the License Transfer Amendment with no additional detail or explanation. Thus, by definition, Contention 1 fails the pleading requirements of 10 C.F.R. § 2.714(b)(ii) and (iii).

2. Contentions 2-5.

The next four contentions sought to be litigated as to the License Transfer Amendment (Contentions 2-5) do not even mention the "License Transfer Amendment." Rather, they are virtual clones of four of the POL-related contentions addressed and dismissed in LBP-91-39. (Compare Pet. Supp., pp. 10-13 with Pet. POL Supp., pp. 7-10, 12.) Therefore, these next four contentions may be dismissed by the Board without revisiting the details of each contention, based on the Board's holdings in LBP-91-39. Indeed, petitioners' obstinacy in raising these contentions anew despite the Board's holdings in LBP-91-39 simply represents yet another instance of their unwillingness to take guidance from the prior rulings of the Commission and this Board. (See LIPA May 6 Answer, pp. 7-14; LILCO May 6 Answer, pp. 9-18; NRC Staff May 17 Answer, pp. 10-15.)

Contention 2. In Contention 2, which is identical to the second contention addressed in LBP-91-39 (pp. 11-13), petitioners assert (yet again) that the NRC's GEIS on

decommissioning does not apply to Shoreham. (Compare Pet. Supp., p. 10 with Pet. POL Supp., pp. 7-8.) The Board disposed of this same argument in LBP-91-39 on two independent grounds, which are equally applicable here.

First, LBP-91-39 determined that this contention "deals exclusively with the need for an EIS on the decommissioning of Shoreham," without tying the contention to the proposed POL. LBP-91-39, p. 13. Thus, the contention was found by this Board to be irrelevant to the proposed POL because petitioners had not "establish[ed] that the POL amendment -- the only licensing action involved in [the LBP-91-39] proceeding -- is part of the proposal to decommission Shoreham." Id. Exactly the same observations are applicable here. Whether an EIS, other than the GEIS, is necessary for the decommissioning of Shoreham is immaterial to the License Transfer Amendment. Petitioners have failed to establish that the License Transfer Amendment -- the only licensing action involved in this proceeding -- is part of the proposal to decommission Shoreham.[9]

The second ground given for rejecting this identical contention in LBP-91-39 was that the contention does not meet the second prong of the Commission's test for admissibility of a

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[9] Even if the License Transfer Amendment were part of the proposal to decommission Shoreham, petitioners have failed to supply any factual basis that would undermine a conclusion that the environmental consequences of decommissioning Shoreham fall well within the parameters of the GEIS.

NEPA-based contention: "The contention contains no explanation of how the POL amendment constitutes an illegal segmentation . . . ." Id., p. 13. This defect is equally evident here, where petitioners have likewise failed to show the "crucial linkage" between the decommissioning process and the License Transfer Amendment. Id. As stated previously, the NRC's review of decommissioning relates to the alternatives and methods of decommissioning. The License Transfer Amendment is completely segregable from this inquiry.

Contention 3. In Contention 3, presenting only a minute variation from the third contention addressed in LBP-91-39 (pp. 13-15), petitioners assert that "LILCO's environmental report should address all issues prescribed by Regulatory Guide 4.2 (Rev. 2, July 1976) and 10 C.F.R. Part 51, App. A (1991)." (Compare Pet. Supp., pp. 10-11 with Pet. POL Supp., p. 8.) This contention appears to relate to the Environmental Report submitted by LIPA in December 1990, along with its proposed decommissioning plan; LILCO has asked the Commission to review and act upon these submissions. (See LIPA's Supplement to Environmental Report on Decommissioning of Shoreham (dated December 1990); SNRC-1781 Letter from J.D. Leonard, Jr., LILCO to NRC (Document Control Desk), dated January 2, 1991.

Contention 3 must fail in its entirety for non-compliance with the pleading requirements of 10 C.F.R. § 2.714(b)(ii) and (iii). The contention utterly fails to

"identify the alleged errors in the report and state the reasons why the report is in error," as required by 10 C.F.R. § 2.714(b)(2)(iii). See LBP-91-39, p. 15 n.31. Moreover, to the extent that this contention relates to petitioners' impermissible-segmentation allegations, it falls with Contentions 1 and 2 for failure to satisfy the Commission's two-pronged test for NEPA-based contentions. Finally, to the extent that the contention relies on an alleged failure to comply with Regulatory Guide 4.2, it is fatally defective for the reasons already noted in LBP-91-39. Compliance with regulatory guides is "not required"; indeed, the guide at issue specifically notes that "conformance with the format set forth in the guide is not required." See LBP-91-39, p. 14 (quoting NRC Regulatory Guide 4.2 (Rev. 2), "Preparation of Environmental Reports for Nuclear Power Stations" (July 1976) at ix).

Contention 4. In Contention 4, which is identical to the fourth contention considered in LBP-91-39 (pp. 15-17), petitioners allege that an EIS on Shoreham's decommissioning is required because LIPA's decommissioning plan, by proposing the DECON method, would "foreclose the consideration of alternative decommissioning methods including SAFSTOR and ENTOMB." (Compare Pet. Supp., pp. 11-13 with Pet. POL Supp., pp. 9-10.) Arguing exactly as they did in the POL context, petitioners further claim (1) that "issuance of the POL" for Shoreham (not the License Transfer Amendment) would allow certain components to be shipped for offsite disposal and (2) that

> [s]ince DECON is the only alternative "in which the equipment, structures, and portions of the facility and site containing radioactive contaminants are removed . . . from the site," it is clear that allowing LILCO to proceed with the disposal of reactor internals at this time would prejudice the consideration both of SAFSTOR . . . and of ENTOMB.

(Pet. Supp., pp. 11-12 (emphasis in original).)

In LBP-91-39, the Board disposed of this identical contention for "neglect[ing] the first prong" of the Commission's test for NEPA-based contentions "by offering no explanation why the GEIS is inapplicable to the decommissioning of Shoreham." See LBP-91-39, p. 16. The "petitioner has not even attempted to explain why the environmental impacts of decommissioning Shoreham fall outside the envelope of impacts already considered in the GEIS." Id. Since the contention here is identical in all respects, it must fail for the same reason.

Although LBP-91-39 did not address the question whether this contention met the second prong of the Commission's test with respect to the POL, the contention plainly does not satisfy the second prong in this context, involving the License Transfer Amendment. Petitioners have made absolutely no allegation that issuance of the License Transfer Amendment -- having the effect of substituting LIPA for LILCO as the licensee -- would in any way prejudice the availability of the decommissioning options of SAFSTOR and ENTOMB. Rather, petitioners rely on unsupported, conclusory assertions that LIPA's decommissioning plan itself and

the "issuance of the POL" would allegedly foreclose alternatives for decommissioning. (See Pet. Supp., p. 11.)

It is preposterous for petitioners to argue, as they do in this contention, that the mere proposal of a decommissioning plan forecloses the Commission from consideration of other alternative methods of decommissioning. A decommissioning plan must choose one alternative, and that choice is not an issue in this proceeding unless it is somehow affected by the License Transfer Amendment. And petitioners here have failed to meet their pleading obligation under CLI-91-04 to show that it is. Moreover, assertions regarding the effects of the POL -- as opposed to the License Transfer Amendment -- cannot suffice as the basis of a litigable contention in this proceeding. As already noted, the License Transfer Amendment proposes no physical changes at the plant, nor any changes in licensee authority to conduct activities that might impact upon decommissioning. Instead, the License Transfer Amendment merely substitutes LIPA for LILCO as the Shoreham licensee. Thus, in the context of the License Transfer Amendment, this contention fails both prongs of the Commission's test for NEPA-based contentions.

Contention 5. In Contention 5, which repeats verbatim the sixth contention addressed in LBP-91-39 (pp. 18-19), petitioners assert that the EIS "required for consideration of

the [decommissioning] proposal" must include the consideration of the

> indirect effects of the adoption of that proposal, including the construction of fossil plants and transmission lines to replace Shoreham. See 40 C.F.R. § 1508.8 (1989). The Council on Environmental Quality ("CEQ") requirement for the consideration of and definition of the concept of such "indirect effects" has been adopted by the NRC. 10 C.F.R. §§ 51.14(b) & 51.45(b)(2) (1991).

(Compare Pet. Supp., p. 13 with Pet. POL Supp., p. 12.)

This contention first erroneously assumes that an EIS on decommissioning is required at all and also that it must necessarily consider the indirect effects that would flow from non-operation of Shoreham, including the alleged need for the construction of fossil-fuel plants and associated transmission lines. In any event, in LBP-91-39, the Board concluded that its earlier ruling in LBP-91-26 required the rejection of this contention. See LBP-91-39, p. 19. Citing and quoting LBP-91-26, the Board stated:

> Such indirect affects would be outside the scope of any required NEPA review in this proceeding. It is clear beyond cavil that the Commission has held that restart will not be considered nor will other methods of generating electricity, which included fossil fuel plants. Likewise, the effects of fossil fuel plants are beyond the scope of the proceeding.

LBP-91-39, p. 19 (emphasis added; footnote omitted). Petitioners have merely recycled this contention once again, and it should be dismissed pursuant to the Board's earlier dispositions in LBP-91-39 and LBP-91-26.

C. Petitioners' Contentions Concerning LIPA's Financial Qualifications And Managerial "Character" Are Not Admissible.

For the reasons shown in Section B above, petitioners' NEPA-based contentions are inadmissible. Contentions 6 and 7 are made under the Atomic Energy Act of 1954 ("AEA"), 42 U.S.C. § 2011 et seq. In Contentions 6 and 7, petitioners apparently contend that LIPA lacks the financial qualifications and "character requirements" to become an NRC licensee.[10] As shown below, however, Contentions 6 and 7 are not admissible for several reasons, most importantly because they fail to demonstrate any link between the asserted deficiencies in LIPA's financial qualifications and managerial "character" and the health and safety considerations relevant under the AEA.

[10] Contention 7 literally asserts that "LILCO's management fails to meet the character requirements for an NRC licensee." (Pet. Supp., p. 17 (emphasis added).) LIPA assumes that the word "LILCO's" constitutes a typographical error and that "LIPA's" was meant.

1. Petitioners Lack Standing To Litigate Contentions 6 And 7.

As shown at length in LIPA's May 6 Answer, to establish standing with respect to AEA contentions, would-be petitioners are required to show that, as a "result" of the proposed amendment, they would suffer a "particularized injury in fact" falling within the zone of interests of the AEA. See, e.g., Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 225, 330 (1989); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-91-7, 33 NRC 179, 185-86 (1991). But petitioners' April 19 petitions to intervene did not allege (much less show) any potentially adverse radiological impact on them from issuance of the License Transfer Amendment, which would simply transfer to LIPA the POL for a defueled, non-operating, minimally contaminated plant. Thus, petitioners' April 19 submissions failed to establish standing, the prerequisite for litigation of admissible contentions. See Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 330 (1989) (standing must be established with particularity for proposed license actions which lack "obvious potential for offsite consequences") (emphasis added); LIPA May 6 Answer, pp. 14-43; LILCO May 6 Answer, pp. 2-9; NRC Staff May 17 Answer, pp. 15-17.[11]

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[11] In this respect, petitioners also failed to challenge a well-developed record that affirmatively shows the lack of offsite radiological risk associated with Shoreham under the management of either LILCO or LIPA. (See LIPA May 6 Answer, pp. (continued...)

Nor has standing been demonstrated in Petitioners' Supplement with respect to petitioners' contentions under the AEA. Instead, Contentions 6 and 7 exist in a complete vacuum. Neither contention even asserts -- much less adequately demonstrates -- the existence of any link between alleged deficiencies in LIPA's finances or "character" and potential adverse offsite consequences if LIPA becomes the licensee for Shoreham in its defueled, non-operating, minimally contaminated status. In this regard, both Contentions 6 and 7 flagrantly disregard the Board's prior guidance that any health-and-safety contentions must take account of Shoreham's status as a "defueled plant that has never been in commercial operation." See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-91-1, 33 NRC at 34 (1991). Thus, even taking their April 19 petitions to intervene and the November 18 Supplement together, petitioners have not even attempted to satisfy the standards articulated by this Board for establishing standing with respect to contentions under the AEA.

Petitioners' complete failure to tie the License Transfer Amendment to risks of adverse offsite radiological impacts is fatal to their effort to litigate Contentions 6 and 7. As already noted, 10 C.F.R. § 2.714(d)(2)(ii) requires the Board to reject a contention if proof of the contention "would be of no

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[11](...continued)
34-39; LILCO May 6 Answer, pp. 6-7 & n.4; NRC Staff May 17 Answer, pp. 25-27 & nn.25-28.)

consequence in the proceeding because it would not entitle petitioner to relief." Here, proof of the allegations in Contentions 6 and 7 regarding LIPA's financial qualifications and character would not entitle p[illegible]rs to relief -- i.e., denial of the License Transfer Amendment -- because petitioners have failed to show that they would be injured by LIPA's becoming the licensee, even if the shortcomings alleged in Contentions 6 and 7 were presumed to exist.

In the absence of a demonstration of adverse offsite impacts affecting petitioners, their objections to LIPA's qualifications constitute mere officious intermeddling motivated, in SWRCSD's case, by nothing more than a desire to perpetuate the receipt of tax revenues by delaying transfer of the License from LILCO to LIPA. Thus, these petitioners cannot have a hearing concerning LIPA's qualifications, which should instead be judged by the NRC Staff consistent with the Commission's normal process of administrative review.

2. Even If Standing Had Been Established, Contentions 6 And 7 Would Fail To Present Litigable Issues.

If the Board finds a lack of standing, it will be unnecessary to determine whether Contentions 6 and 7 would be admissible in another context. However, even assuming arguendo that petitioners have established standing, Contentions 6 and 7

fail to raise litigable issues concerning LIPA's qualifications to assume the Shoreham License in a POL status.

LIPA's qualifications to become the Shoreham licensee are set out in detail in the Joint Application and related Supplements. (See Joint Application, pp. 25-30 & Appendix C; LIPA May 6 Answer, pp. 33-43; SNRC-1813, Letter from R.M. Kessel, LIPA (enclosing Joint Application supplements), to Dr. T.E. Murley, Director, Office of Nuclear Reactor Regulation, dated June 13, 1991; SNRC-1819, Letter from R.M. Kessel, LIPA (enclosing Joint Application supplements), to Dr. T.E. Murley, Director, Office of Nuclear Reactor Regulation, dated June 27, 1991.) Notably, petitioners do not specifically dispute any item contained in the Joint Application, which incorporates extensive documentation of both LIPA's financial and managerial qualifications. (See Joint Application, pp. 22-30.) Instead, in Contentions 6 and 7, petitioners mainly quibble about whether LIPA's bookkeeping for non-Shoreham expenditures complies with New York law and seek to manufacture a false issue concerning the "character" of LIPA management.

a. Contention 6.

In Contention 6, petitioners contend that "LIPA is not financially qualified to become a Part 50 licensee or engage in any activities under the existing Shoreham license." (Pet. Supp., p. 13 (emphasis added).) This contention is supposedly

supported in six subparts. However, subparts (a)-(e) have nothing whatever to do with the financial qualifications of LIPA to function as the Shoreham licensee if the License Transfer Amendment is approved, but rather address financing for LIPA's non-Shoreham activities. Only subpart (f) of Contention 6 has ary relationship to the question whether LIPA's "activities under the existing Shoreham license" will be adequately funded.

Subpart (f). This proceeding is fundamentally limited by the scope of the approval at issue -- the License Transfer Amendment. The Joint Application proposes that LIPA become the new licensee under the Shoreham POL, which authorizes only very limited activities. Pending approval of a decommissioning plan and issuance by the NRC of a decommissioning order, LIPA will essentially be maintaining Shoreham and continuing preparations for decommissioning. Accordingly, LIPA's finances are implicated by the License Transfer Amendment only to the extent that they relate to this very narrow scope of activities.

As shown in the Joint Application, LIPA bases its showing of financial wherewithal to become the Shoreham licensee on LILCO's obligation to pay for all of LIPA's costs associated with maintaining (and decommissioning) Shoreham. (See Joint Application, pp. 26-30.) As petitioners well know and even acknowledge in their contentions (see Pet. Supp., p. 16), LIPA entered into the Site Cooperation and Reimbursement Agreement ("Site Agreement") with LILCO on January 24, 1990, whereby LILCO

and LIPA established a very precise mechanism to implement LILCO's obligation to reimburse LIPA for all Shoreham-related costs. (See Site Agreement ¶¶ 3.1 - 3.16.)[12] Petitioners do not assert that the provisions of the Site Agreement and related agreements are inadequate to assure LIPA's ability to meet the obligations LIPA seeks to assume under the License Transfer Amendment. To the contrary, petitioners expressly state that the Site Agreement "makes LILCO's obligations to pay all costs attributable to Shoreham 'unconditional and not contingent on any PSC action'. . . . And it gives LIPA absolute authority to establish the amounts that LILCO must pay." (Pet. Supp., p. 16.)

These statements by petitioners themselves effectively concede that LIPA is financially qualified to assume the Shoreham License in a POL status, as requested by the License Transfer Amendment. It is difficult to imagine a more secure footing for LIPA's financial qualification than the state of facts admitted to exist by petitioners. (See Joint Application, pp. 26-30; LIPA May 6 Answer, pp. 40-42 & n.22; LILCO May 6 Answer, pp. 6-9; NRC Staff May 17 Answer, pp. 25-26.) Moreover, there is not one word in petitioners' April 19 petitions to intervene or in the November 18 Supplement tending to show that, should the License Transfer Amendment be granted, the Site Agreement and related

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[12] The Site Agreement has been specifically approved by the New York Public Service Commission, which has allowed LILCO several rate increases in the aftermath of the 1989 Settlement Agreement between LILCO and the State. (See Joint Application, pp. 5-6, 26-30 & n.15; pp. 30-31 infra.)

agreements would be insufficient to assure LIPA's ability to meet any and all obligations under the License.

Petitioners contend, without meaningful basis or specificity, that LIPA's funding may be inadequate for purposes of decommissioning Shoreham. (See Pet. Supp., p. 17.) But allegations concerning decommissioning funding are not material to the License Transfer Amendment (see 10 C.F.R. § 2.714(b)(iii)) because funding for decommissioning is not an issue raised by the License Transfer Amendment. Rather, decommissioning funding is an issue related to the ongoing Staff review of the decommissioning plan. Moreover, even if one were to assume arguendo that the subpart (f) assertions related to decommissioning funding touch on an issue relevant to this proceeding, the contention fails to meet the NRC's requirements for a properly admissible contention. Petitioners cite no specific deficiencies in the well-documented funding proposals for decommissioning costs, fail to even acknowledge the various submissions made to the NRC by LIPA and LILCO on decommissioning costs, and fail to point to any relevant evidence that would call into question the adequacy of decommissioning funding.

Furthermore, on November 22, 1991, the NRC Staff issued an exemption approving the LIPA/LILCO funding package as adequate to assure the moneys needed to fund decommissioning of Shoreham over a 27-month period, at a projected cost of $186 million. See Long Island Lighting Co. (Shoreham Nuclear Power Station,

Unit 1), Exemption from Financial Assurance for Decommissioning (dated Nov. 22, 1991) ("Shoreham Exemption"), 56 Fed. Reg. 61,265 (1991). In support of its determination, the Staff cited the provisions of the Site Agreement, certain other undertakings by LILCO, and "LILCO's and New York State's commitments to fund the decommissioning effort, unconditionally." Id., p. 61,266.[13]

Petitioners also assert that unspecified positions taken by LIPA in a recent rate case before the New York Public Service Commission ("NYPSC") "may" somehow hinder "LILCO's ability to provide [Shoreham] funds to LIPA." (Pet. Supp., p. 16 (emphasis added).) The very formulation of this contention impermissibly invites the Board to engage in speculation that the funding provisions of the Site Agreement might somehow prove to be inadequate to assure LIPA's ability to carry out activities authorized under the License Transfer Amendment. But there is no room for such speculation under the NRC's standards for admissible contentions.

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[13] Petitioners' Supplement challenges the accuracy of LIPA's $186 million projection for decommissioning funding. (Pet. Supp., p. 17.) As already noted, such questions are outside the scope of this proceeding. However, it is noteworthy that the newspaper article on which petitioners rely for this assertion points out that costs for the overall process of removing Shoreham from LILCO's generating capacity are being driven higher by numerous factors extraneous to the cost of physical decontamination, including LILCO's continuing tax payments to petitioner SWRCSD. (See Appendix to Pet. Supp. (dated Nov. 18, 1991), pp. 111-13).) Thus, rather than calling LIPA's estimate of decommissioning costs into question, this newspaper article highlights the costs imposed on LILCO's ratepayers by SWRCSD's attempts to protect its tax revenues by delaying transfer of the License to LIPA.

Significantly, LIPA's filings have been a matter of public record for months. (See Appendix to Pet. Supp. (dated Nov. 18, 1991) ("Pet. App."), p. 108.) Yet petitioners have failed even to specify any position taken by LIPA in the rate case; much less have they demonstrated any respect in which any LIPA position threatened "LILCO's ability to provide [Shoreham] funds to LIPA." Petitioners' failure to make any such showing plainly bespeaks the baseless nature of this allegation and compels the rejection of this contention for lack of adequate basis and specificity. See 10 C.F.R. § 2.714(b)(ii) and (iii).[14]

In addition, petitioners have been less than candid with the Board concerning the status of the NYPSC rate case. Approximately one month ago, before the filing of Petitioners' Supplement, the NYPSC announced its determination to allow LILCO rate increases of approximately 4% for each of the next three years. See Cases 90-E-1185 and 91-G-0112, Long Island Lighting Co., Opinion No. 91-25 (issued Nov. 26, 1991); Ronic Rubin, "4% Increases In Electric Rates Okd For LILCO," Newsday, Nov. 7,

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[14] Moreover, in the context of the proposed License Transfer Amendment, petitioners' vague allegations are inherently implausible. As the present Shoreham licensee, LILCO is already meeting the expenses of maintaining Shoreham in its defueled, non-operating condition. Petitioners show no reason whatever to believe that LILCO will be unable to fund activities of the same scope by LIPA after issuance of the License Transfer Amendment. Further, as already noted, the NRC Staff has recently determined that there is reasonable assurance of LIPA's ability to meet the expenses of decommissioning Shoreham.

1991, at 23 (attached).[15] The rates approved by the NYPSC specifically provide for recovery of the projected costs of maintaining and decommissioning Shoreham in recognition of the Site Agreement between LIPA and LILCO.

Subparts (a)-(e). The balance of petitioners' Contention 6 (subparts (a)-(e)) is entirely irrelevant to LIPA's financial qualifications as an NRC licensee. In subparts (a) and (c)-(e), petitioners dwell at length on supposed failures of LIPA and the Budget Division of the State of New York to implement properly certain New York statutory provisions and administrative agreements concerning LIPA's financing for non-Shoreham activities. (See Pet. Supp., pp. 13-16.) Petitioners also assert in subpart (b) that "LIPA has no reasonable prospect of receiving any funds for its non-Shoreham activities." (Id., p. 14 (emphasis added).)

LIPA disputes most of the allegations raised by petitioners in subparts (a)-(e). But even assuming arguendo that petitioners are entirely correct on these matters, they have failed to identify any material shortcoming in LIPA's financial qualifications to assume the Shoreham license. Most of the matters raised in subparts (a)-(e) of Contention 6 involve internal financial adjustments between the Budget Division of the State of New York and LIPA, a corporate municipal instrumentality

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[15] LIPA is considering whether to seek reconsideration of certain issues resolved adversely to it by the NYPSC.

and political subdivision of the State. Moreover, by definition, all of the matters referenced in subparts (a)-(e) relate to LIPA's non-Shoreham costs and thus are not relevant to LIPA's ability to meet the financial obligations sought to be assumed under the License Transfer Amendment.

The NRC's mandate is to satisfy itself as to LIPA's financial qualifications to become Shoreham's licensee, not to police agreements between New York State and LIPA at the behest of strangers to that relationship such as petitioners.[16] What is important in this proceeding is that the Site Agreement with LILCO is functioning smoothly and, further, that LIPA is and will be fully funded to carry out all Shoreham-related activities relevant to the License Transfer Amendment. Nothing argued in subparts (a)-(e) calls either the present or future functioning of the Site Agreement into question. Thus, the contentions sought to be framed in subparts (a)-(e) of Contention 6 must be

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[16] The LIPA Act expressly leaves matters such as those raised by petitioners to be adjusted between LIPA and the State. Section 1020-r of the LIPA Act provides as follows:

> All appropriations made by the state to the authority shall be treated as advances by the state to the authority, and shall be repaid to it without interest either out of the proceeds of bonds issued by the authority pursuant to the provisions of this title, or by the delivery of non-interest bearing bonds of the authority to the state for all or any part of such advances, or out of excess revenues of the authority, at such times and on such conditions as the state and the authority mutually may agree upon.

New York Public Authorities Law § 1020-r (McKinney Supp. 1990) (emphasis added).

rejected because the "contention[s], if proven, would be of no consequence in the proceeding because [they] would not entitle petitioner to relief." 10 C.F.R. § 2.714(d)(2)(ii).

Not only are the points raised in subparts (a)-(e) of Contention 6 irrelevant for the reasons shown above, but petitioners also have failed to show how any of the points raised in subparts (a)-(e) concerning non-Shoreham funding could possibly have health or safety implications relevant under the AEA. Rather, as they have on earlier occasions, petitioners seek to bog down this Board and the Commission in questions of New York law having no relevance to the function of this Commission. The Commission has previously resisted invitations to become embroiled in issues of New York law sought to be raised by petitioners (see Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-91-08, 33 NRC 461 (1991) (declining to stay issuance of POL pending resolution of appeals before the New York Court of Appeals)), and the Board should do likewise in this instance.

In view of the foregoing, no purpose would be served by seeking to untangle and respond specifically to all of the irrelevant issues sought to be raised by petitioners in subparts (a)-(e). However, three points should be made for the Board's general information.

First, in subpart (a) of Contention 6, petitioners make the irresponsible assertion that "LIPA is bankrupt." (See Pet. Supp., p. 13.) LIPA is not bankrupt, and it never has been. Far from having any financial difficulties, LIPA has always met its obligations. As of March 31, 1991, its assets (approximately $6.2 million) were well in excess of its current liabilities (approximately $3.9 million). Moreover, its non-Shoreham assets were $2,822,499, and its non-Shoreham current liabilities were $520,777. (See Pet. App., p. 58.)[17]

Second, in subpart (e), petitioners contend that LIPA's fiscal year ("FY") 1990 State allocation for non-Shoreham activities was "in violation of law" because of the alleged absence of a new repayment agreement specifically addressed to the FY 1990 allocation. (Pet. Supp., p. 16.) But the August 1987 Repayment Agreement between LIPA and the Director of the Budget of the State of New York expressly covers all "Fund Appropriations" to LIPA. (Pet. App., p. 4.) Thus, there was no

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[17] Petitioners' manipulation of LIPA's balance sheet is misleading. Petitioners imply that the $14 million line item labeled "State of New York Allocations" is an immediate obligation that threatens LIPA's financial health as to non-Shoreham activities. (See Pet. Supp., p. 13; Pet. App., p. 58.) That is not so. This $14 million figure represents amounts due the State, whose repayment (without interest) is only required if LIPA is in receipt of proceeds from the issuance of bonds or has funds in excess of ongoing obligations. See New York Public Authorities Law § 1020-r (McKinney Supp. 1990) (quoted in note 16 above).

need for LIPA and the Budget Division to enter into a new repayment agreement relating to the FY 1990 allocation.[18]

Third, in subpart (b), petitioners make much of an auditor's statement that LIPA's future appropriation amounts for non-Shoreham activities "'cannot be determined.'" (See Pet. Supp., p. 14.) This auditor's statement merely takes account of the unexceptional fact that LIPA is a political subdivision of the State of New York. As such, like most state and federal agencies, LIPA receives an annual budget appropriation (for its non-Shoreham activities) and does not know its exact amount until the legislature decides. Thus, the auditor statement utterly fails to support petitioners' contention that "LIPA has no reasonable prospect of receiving any funds for its non-Shoreham activities." (Pet. Supp., p. 14.)[19]

But even if LIPA received no future State funding for non-Shoreham activities, LIPA's Shoreham-related activities will

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[18] There simply is no basis in the text of the 1987 Repayment Agreement for petitioners' contention that the Agreement is limited to the initial $11 million allocation made in FY 1988 and FY 1989. However, petitioners are correct in pointing out that LIPA has not yet issued repayment bonds as contemplated by the 1987 Repayment Agreement, a step that LIPA's Board of Trustees will take in short order.

[19] As previously indicated to the NRC Staff, the Governor of New York has stated in writing his strong support for continuation of LIPA's non-Shoreham activities. (See Pet. App., p. 120.) However, in recognition of the State's overall budget needs and LIPA's own current surplus (see above), LIPA received no State appropriation for the fiscal year beginning April 1, 1991. (See Pet. App., pp. 117-21.)

remain fully funded. LIPA has previously explained to the NRC Staff that LIPA will continue to function on Shoreham matters even if its non-Shoreham funding from the State is entirely cut off:

> [MR. KLIMBERG]: LIPA does not rely upon any state-appropriated funds to carry out its activities related to the license transfer, maintenance and decommissioning. All of LIPA's funds for these purposes are provided to us by LILCO through the various settlement agreements.
>
> . . .
>
> DR. MURLEY: . . . [I]f the Assembly were to appropriate no more funds for LIPA in the future, could LIPA continue to exist?
>
> MR. KLIMBERG: . . . That's correct.

(Pet. App., p. 126.)[20] Petitioners do not dispute this representation at all, showing yet again that petitioners' contentions relating to non-Shoreham funding must be rejected under 10 C.F.R. § 2.714(d)(2)(ii).

b. Contention 7.

With respect to managerial qualifications, Petitioners' Supplement does not dispute that LIPA has assembled a managerial and technical team of considerable talent and appropriate professional experience. (See Joint Application, pp. 18-26 &

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[20] Mr. Klimberg is LIPA's President of Shoreham Project and General Counsel. The quoted colloquy occurred at a February 13, 1991 meeting of the NRC Staff with LILCO, LIPA, and the New York Power Authority.

App. C.) Rather, petitioners strain to manufacture false issues of "character," asserting in Contention 7 that LIPA's "management fails to meet the character requirements for [an] NRC licensee." (Pet. Supp., p. 17.) Like Contention 6, this contention never asserts any link between the supposed deficiency in management "character" and the potential for offsite consequences. Thus, Contention 7 merely presents yet another "abstract argument that is unconnected with the legal and factual issues in the proceeding." LBP-91-1, 33 NRC at 38. In any event, there is no substance whatsoever to the two specific allegations asserted to show a lack of "character."

LIPA's Rate-Case Position. LIPA has specifically identified to the NRC all of its Trustees and senior executives. (See, e.g., Joint Application, pp. 12-14 & App. C; SNRC-1819, Letter from R.M. Kessel, LIPA (enclosing Joint Application supplements), to Dr. T.E. Murley, Director, Office of Nuclear Reactor Regulation, dated June 27, 1991.) Petitioners fail to allege, much less show, anything in the background of any of those persons calling their integrity into question. Instead, petitioners seize upon fragments from a March 11, 1991 newspaper article as the basis for asserting that LIPA representatives misled the NRC Staff "by silence, lack of candor and openness and, perhaps, affirmative misleading" at a management level meeting between the NRC Staff and LILCO/LIPA/New York Power Authority a month earlier, on February 13, 1991. (See Pet. Supp., pp. 17-19.) But petitioners utterly fail to demonstrate

any respect in which LIPA representatives supposedly misled the NRC Staff or how their allegations raise a material issue as to the "character" of LIPA's management.

Petitioners quote from remarks to the NRC Staff concerning LILCO/LIPA funding arrangements by two LIPA representatives (LIPA's Chairman Richard M. Kessel and Mr. Klimberg). None of the quoted assertions is claimed to be false in any respect. Rather, the alleged deception involves the undisputed fact that, at the February 13, 1991 meeting, LIPA representatives did not volunteer information concerning what positions LIPA might take in LILCO's then newly filed rate case. (See Pet. Supp., p. 18.)

This supposed challenge to LIPA's "character" must fail because there was no reason why LIPA should have addressed its possible rate-case positions at the February 13 meeting. A questions was asked of LILCO whether its rate filing "has . . . received any opposition," and a LILCO representative responded that it had not but that the time for filing oppositions was still running. (Pet. App., pp. 140-41.) LIPA had nothing to add to this wholly accurate summary of the state of the rate case. No one, from LIPA or otherwise, was asked whether LIPA was contemplating intervention or what its position might be. As of February 13, 1991, LIPA (which is headed by a Board of Trustees) had taken no position in the rate case. The rate case was a complex proceeding involving a wide range of

issues, many of which had no relation whatever to Shoreham or the LILCO/LIPA funding relationship. Like all other potential rate-case participants, LIPA was entitled to the usual time periods allowed for all parties to formulate their positions. LIPA submitted copies of its rate-case testimony to the NRC the day it was filed.[21] Thus, petitioners' contention simply vanishes into thin air.

Freedom of Information Obligations. Petitioners' second supposed issue of "character" involves the allegation that "LIPA simply ignores its responsibilities to respond to . . . requests" under the State of New York Freedom of Information Law. (Pet. Supp., p. 19.) But petitioners offer no proof whatsoever of this charge. Instead, they simply provide to the Board a copy of a letter requesting information. (See Pet. App., pp. 95-97.) The mere fact that a request was submitted to LIPA hardly demonstrates that LIPA "simply ignore[d] its responsibilities to respond to such requests," and no assertion is made that the person making the request (Mr. Edwin Schwenk) was dissatisfied with LIPA's response. (Pet. Supp., p. 19.)

In fact, LIPA responded to Mr. Schwenk's letter one business day after receiving it. (See Letter from Richard P.

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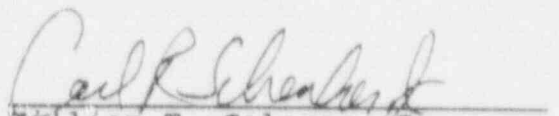
[21] See Letter from Richard M. Kessel, LIPA Chairman, to Dr. Thomas E. Murley, Director, Office of Nuclear Reactor Regulation (May 22, 1991); Letter from Richard M. Kessel to Dennis Crutchfield, Division Director for Advanced Reactors and Special Projects (May 22, 1991).

Bonnifield, LIPA Deputy General Counsel, to Edwin Schwenk (dated September 23, 1991) (attached).) That response recites LIPA's commitment to respond to the requester's two-page 17-item list of requested documents "within the next thirty days." (Id.) Moreover, on October 24, LIPA followed up with a letter confirming an agreement whereby the requester would submit narrowed document requests and LIPA "need not respond until after receipt of the revised request." (See Letter, from Richard Bonnifield, LIPA Deputy General Counsel, to Edwin Schwenk (dated October 24, 1991) (attached).) LIPA has not yet received a revised request from Mr. Schwenk. These circumstances reflect poorly on the candor of petitioners, not on the "character" of LIPA's management.

CONCLUSION

For the reasons shown herein and in LIPA's May 6 Answer, the Board should dismiss the petitions to intervene for lack of standing and should reject all contentions proffered by petitioners.

Respectfully submitted,



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Dated: December 9, 1991

4% Increase In Electric Rates OKd For LILCO

PSC action clears way for 2 additional hikes

By Roni Rabin
STAFF WRITER

The state Public Service Commission yesterday approved a 4.15 percent hike in LILCO's electric rates and cleared the way for additional annual increases of about 4 percent in each of the following two years.

The first rate increase, which goes into effect Dec. 1, will increase the average monthly residential bill of $87 by about $3, and will produce $73.4 million in revenues for the utility.

It also includes novel provisions designed to promote energy conservation by breaking the traditional linkage between utility revenues and profits.

Richard Kessel, executive director of the state Consumer Protection Board and chairman of the Long Island Power Authority, said he was "very disappointed" by yesterday's decision. He added that attorneys from both bodies would review it with an eye to an appeal.

"This is far too generous an award," he said. "Our analysis indicated LILCO was clearly not entitled to more than a 2.2 percent increase. The PSC gave them almost double that."

The PSC also approved a 4.1 percent increase in natural gas rates, an increase designed to produce about $18.7 million in revenues. Although that is only a one-year rate hike, LILCO will submit additional hike requests soon.

The new rate-setting provisions are expected to help the utility extend its energy conservation programs — at eventual savings to consumers — without putting profits at risk, according to PSC and officials of the Long Island Lighting Co.

Under the new system, the amount LILCO collects from customers will not be determined by a fixed schedule of rates, but by many variables, such as the amount of power the utility sells, the quality of its service, the price of oil, its annual property tax bill, the yearly rate of inflation, prevailing interest rates and employee wages. As each variable fluctuates, so too would the rate that customers pay for electricity.

LILCO's original request last year sought annual hikes of 5 percent in electric rates for each of the following three years, but spokesman Joseph McDonnell said the company was pleased with yesterday's decision.

"It sends a favorable signal to the investment community that the PSC is upholding its end of the [Shoreham] settlement agreement," he said, adding that such assurances have a positive impact on debt refinancing because they lead to lower interest rates. "There is assurance on the part of the investors that the PSC is gradually returning LILCO to financial health."

Under the Shoreham pact, LILCO was granted three years of guaranteed 5 percent increases and seven years of targeted increases of approximately 5 percent.

The 5 percent increases initially sought by LILCO were consistent with the targets outlined in the settlement reached with the state two years ago, under which LILCO agreed to close the Shoreham plant in return for assurances of future financial relief. In May, however, state regulators and consumer advocates called for significant cuts in the rate increases LILCO requested last December.

Yesterday's PSC decisions granted a rate increase of 4.1 percent for the year beginning Dec. 1, 1992, and a 4.0 percent increase for the year beginning Dec. 1, 1993. However, those rates will be subject to comment and review, and possibly hearings.

NEWSDAY, THURSDAY, NOVEMBER 7, 1991

Long
Island
Power
Authority

200 Garden City Plaza
Garden City, NY 11530
(516) 742-2200

September 23, 1991

Edwin M. Schwenk
38 Little Plains Road
Southampton, New York 11968

Re: Freedom of Information Law Request

Dear Mr. Schwenk:

I am writing on behalf of the Long Island Power Authority ("LIPA") in response to your letter dated September 17, 1991 requesting certain information under the provisions of the New York State Freedom of Information Law, N.Y. Pub. Off. Law, Sections 84, et seq. LIPA received your letter on September 19, 1991.

We are collecting the documents you requested and will notify you in writing within the next thirty days that the documents are available for inspection and/or photocopying.

Sincerely,

Richard P. Bonnifield

Long
Island
Power
Authority

200 Garden City Plaza
Garden City, NY 11530
(516) 742-2200

October 24, 1991

Mr. Edwin M. Schwenk
38 Little Plains Road
Southampton, New York 11968

Re: September 17 Freedom of
Information Law Request

Dear Mr. Schwenk:

It is our understanding that you will be revising your September 17, 1991 FOIL request to LIPA and that we need not respond until after receipt of the revised request.

Thank you for your consideration.

Sincerely,

Richard P. Bonnifield

CERTIFICATE OF SERVICE

Pursuant to the service requirements of 10 C.F.R. § 2.712 (1991), I hereby certify that on December 9, 1991 I served a copy of the Response of the Long Island Power Authority to Petitioners' Joint Su,plemental Petition and transmittal letter via Courier upon the following parties, except where otherwise indicated:

Commissioner Ivan Selin
Chairman
Nuclear Regulatory Commission
One White Flint North Building
11555 Rockville Pike
Rockville, Maryland 20852

Commissioner Kenneth C. Rogers
Nuclear Regulatory Commission
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Commissioner James R. Curtiss
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