

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

9-11-70

In the Matter of
LONG ISLAND LIGHTING COMPANY
(License Application, Shoreham
Nuclear Power Station Plant
Unit No. 1)

Docket # 50-322

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PETITION FOR INTERVENTION

Connecticut Action Now, Inc. and Fairfield County Citizens for Environmental Control, Inc. herewith petition the Atomic Energy Commission for leave to intervene in the above matter.

1. Petitioner Connecticut Action Now, Inc. (CAN) is a non-profit, non-stock corporation organized under the laws of the state of Connecticut to stimulate and mobilize voluntary citizen action in the solution of pressing environmental problems.

2. Fairfield County Citizens for Environmental Control, Inc. (FCCEC) is a non-profit, non-stock membership organization, incorporated under the laws of the state of Connecticut with the purpose of engaging in any lawful activity for the purpose of preserving and protecting the environment. Membership of FCCEC is approximately 350 persons.

3. The petitioners have by their activities and conduct exhibited a special interest in assuring the preserva-

tion of the potential of Long Island Sound for its conservational, recreational, economic, and unique environmental qualities.

4. The petitioners are concerned with the preservation of the ecology of Long Island Sound, its marine and plant life, aquatic habitat and supporting ecosystems, and the usefulness of the marine environment of Long Island Sound for recreational and other beneficial purposes.

5. It is of prime importance to the petitioners that the full range of environmental effects of nuclear power plant development on the borders of Long Island Sound be analyzed so that a determination can be made whether this project, singly as well as in concert with other proposals for nuclear power development in this area, will further the public interest of the citizens of the state of Connecticut.

6. The proposed project and other anticipated nuclear power developments bordering the Sound will upon information and belief adversely affect petitioners' interests through damage to the ecology and diverse ecosystems of Long Island Sound because of thermal and radioactive discharges into the water and air and because of safety hazards to the human and natural environment.

7. More specifically, in the area of thermal discharge, the petitioners' interests are affected when damage to aquatic life is caused by the heated effluent from this project. The Shoreham proposal involves a massive discharge of heated effluent into the Sound at a rate of 600,000 gallons per

minute. At that rate the Shoreham plant alone would contribute 6 billion gallons per week to the waters of the Sound. The discharge of such large volumes of heated water into Long Island Sound not only may be detrimental to the fish directly, but may affect these resources indirectly through ecological changes, particularly in the food organisms on which the fish depend. Since Long Island Sound is a narrow body of water involving considerable interchange through circulation, any such adverse conditions originating at the site of the proposed project would produce adverse effects on the existing ecosystems on the Connecticut side of the Sound, counter to the interests of petitioners.

8. If for example certain migratory species of fish were stimulated into early migration as a result of changes in temperature near the point of thermal discharge, such a condition would kill, damage, or upset the reproductive cycle, or food chain of fish, plant, animal life, aquatic biota and supporting ecosystems of Long Island Sound, to the injury of the interests of petitioners.

9. The discharge of heated effluent would cause a speed up of eutrophication and algae growth near the point of discharge. Unless current trends change, we can unfortunately predict a significant increase in the nutrient content of the water of the Sound as a result of this proposed discharge as well as from all other sources discharging heat and sewage from both the Connecticut and Long Island shore-

fronts. Any discharge of heated effluent from the proposed project which speeds eutrophication on the Connecticut shoreline would adversely affect the interests of the petitioners.

10. To the extent that diluted radioactive isotopes become concentrated in aquatic organisms, enter into the food chain in Long Island Sound and eventually are consumed by Connecticut citizens, such a condition would constitute an injury to the petitioners' interests.

11. The exposure of aquatic biota, fish and wildlife organisms to radiation as a result of this project and as a result of the emission of radioactive wastes to the cooling water from other nuclear power development sources, or from the abnormal increase of radioactivity due to an accident at or in the neighborhood of the proposed facility, would result in the occurrence of a concentration of radioactivity harmful to fish and wildlife which use the Sound, and therefore adverse to petitioners' interests.

12. Qualitative and quantitative studies of bottom biota, plankton, crustacea, fish, temperature, salinity, bottom composition and water chemistry must be made in order to determine what environmental radioactivity in Connecticut would occur as a result of the normal and abnormal operation of the proposed facility at Shoreham.

13. Stratford Connecticut is the nearest municipality to the Shoreham facility, having a population of over 25,000 persons. It is eighteen miles northerly of the proposed site

across the Sound. It and other communities along the Connecticut shoreline must be protected from emission of radioactive gases under normal and abnormal conditions. Stratford and the other Connecticut communities must be assured of the operational reliability of the Shoreham facility since it is in such close proximity to these population centers.

14. Transportation of radioactive wastes from the proposed Shoreham facility to their permanent disposal point, if transported by sea, would directly and seriously endanger the waters of Long Island Sound and the Connecticut shoreline in the event of an accident.

15. Unless the above cited dangers to the environment and ecology of Connecticut can be prevented, eliminated, or adequately controlled, then the petitioners and their members' right to live in and enjoy an environment free from improvident destruction, pollution or unnecessary radiation would be irreparably damaged, and their rights to the use and enjoyment of property free from unnecessary invasion or impairment, which rights are protected by the Fifth Amendment to the United States Constitution, would be violated. The petitioners also assert the interests of other Connecticut citizens similarly situated.

16. Upon information and belief, no Connecticut officials, much less private residents along the Connecticut shoreline, had actual or effective knowledge of the Shoreham

proposal in time to comply with the technical filing procedures. The petitioners observe that the Atomic Energy Commission (hereafter the Commission) itself has on a prior occasion postponed the scheduled hearings and that other parties, including the Attorney General of the State of New York, have been permitted to intervene without being foreclosed by a filing technicality. The petitioners therefore must not be arbitrarily denied their legal right to present their interests and concerns before the Commission.

Jurisdiction and Obligations of the Atomic Energy Commission

17. The National Environmental Policy Act of 1969, Public Law 91-190; 83 Stat. 852 (hereafter NEPA), marked a major departure in the heretofore often passive role of governmental responsibility for preventing and correcting environmental wrongs. NEPA places an affirmative procedural duty on government agencies to analyze proposals under their jurisdiction in terms of their environmental impact.

18. NEPA places upon the Commission the duty of considering the thermal, ecological, radiological, and other environmental effects of the proposed Shoreham facility on Long Island Sound and the Connecticut shoreline.

19. NEPA establishes a national policy to, among other things, "prevent or eliminate damage to the environment and

biosphere" (Section 2, NEPA). In Section 101 (a) the United States Congress

recognizing the profound impact of man's activity on the interrelations of all components of the natural environment...and...the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures...to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. (emphasis added)

20. Under Section 101 (b) of NEPA, the Atomic Energy Commission has the

continuing responsibility...to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may...

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important...natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice:

21. In Section 101 (c) of NEPA Congress recognized "that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment."

22. In order to carry out the above cited purposes and policies of NEPA, Congress authorized and directed that, to

the fullest extent possible, "the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act". (Section 102 (1) of NEPA).

23. In furtherance of such "action-forcing" implementation, Section 102 (2) thereof requires in part that:

all agencies of the Federal Government shall--

(B)...insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the the human environment, a detailed statement by the responsible official on--

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

24. On its face therefore, NEPA requires the Commission to make detailed environmental statements on the full range of environmental effects involved in nuclear power plant licensing procedures.

25. Through its regulations implementing the NEPA and its interpretation of its jurisdiction under the Water Quality Improvement Act of 1970 (Public Law 91-224 and hereafter WQIA), the Atomic Energy Commission has attempted to restrict its jurisdiction and obligations under NEPA, with the result that it is not operating in compliance with the comprehensive directives which NEPA places upon federal agencies, and accordingly does not intend to do so for the Shoreham proposal.

26. Section 21 (b) of WQIA requires the applicant Long Island Lighting Company to provide the licensing agency (the Commission) with a certification from the state in which a discharge originates or will originate (or "from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate") that there is reasonable assurance "that such activity will be conducted in a manner which will not violate applicable water quality standards."

27. In 35 Federal Register 8594-8597, published on June 3, 1970, the Commission's proposed rule making for implementation of NEPA states as follows:

6. With respect to water quality aspects of the proposed action covered by section 21 (b) of the

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federal Water Pollution Control Act, the requirements of section 21 (b) supercede pro tanto the more general environmental requirements of sections 102 and 103 of the National Environmental Policy Act of 1969. With respect to such aspects, therefore, the environmental reports submitted by applicants pursuant to paragraphs 1 and 2 and the detailed statements prepared pursuant to paragraph 5 need include only a reference to the certification issued pursuant to section 21 (b) or to the basis upon which such certification is not required.

28. In volume 35 Federal Register 8594-8597, cited above, the Commission asserts in paragraph 9 and paragraph 11 thereof that the licensing and regulatory jurisdiction of the Commission has not been extended to require it to make independent determinations on matters such as water quality, and accordingly the Commission considers such policy operative for the Shoreham proposal.

29. Such an interpretation of its responsibilities and jurisdiction is a misreading of and violation of, among other sections, section 102 (C) of NEPA which requires the Commission to make a detailed statement on "the environmental impact of the proposed action" and to consult with and obtain the comments of any federal agency "with respect to any environmental impact involved", prior to making any detailed statement. (emphasis added)

30. In 35 Federal Register 7390, published on May 11, 1970, the President's Council on Environmental Quality issued interim guidelines for federal agencies under the National Environmental Policy Act. In paragraph 7 thereof, the Council refers to the points which are to be covered

in the content of the Environmental Statement:

i) the probable impact of the proposed action on the environment, including impact on ecological systems such as wildlife, fish and marine life.

Both primary and secondary significant consequences for the environment should be included in the analysis...(emphasis added)

ii) any probable adverse environmental effects which cannot be avoided (water or air pollution, damage to life systems...threats to health or other consequences adverse to the environmental goals set out in section 101 (b) of P.L. 91-190.)

iii) alternatives to the proposed action...

iv) the relationship between local short-term uses of man's environment and maintenance and enhancement of long-term productivity. This in essence requires the agency to assess the action for cumulative and long-term effects from the perspective that each generation is trustee of the environment for succeeding generations. (emphasis added)

v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. This requires the agency to identify the extent to which the action curtails the range of beneficial uses of the environment.

vi) where appropriate, a discussion of problems and objections raised by other federal agencies and state and local entities in the review process...

With respect to water quality aspects which have received certification under section 21 (b) of the Water Quality Improvement Act, the Council's guidelines permit mere reference to the certification.

31. The Council guidelines under the NEPA clearly illustrate the breadth of jurisdiction and responsibility placed upon the Commission by NEPA. Reliance upon the certification procedure as to water quality standards clearly does not relieve the Commission of responsibility to prepare detailed

statements on impact of the proposal on ecological systems such as fish and marine life. (See paragraph 7 (i) of Council's interim guidelines above.)

32. The Commission's rules indicate that it will look only to the water quality standards of New York State. As a federal agency, the Commission abdicates its national responsibility when it interprets that its environmental responsibilities under NEPA are satisfied by having an applicant show compliance with the water quality standards of one state only (New York) where the waterway involved is an interstate body of water to which the citizens of Connecticut and Rhode Island have a legal interest.

33. The Commission's attempt to restrict its jurisdiction through its rules and procedures as stated above and its reliance on the Water Quality Improvement Act is most obviously shown to be in error in a situation where two or more states are involved. Long Island Sound is an interstate navigable body of water adjoining the states of New York, Connecticut and Rhode Island. Any adverse changes in the quality and ecology of Long Island Sound caused by thermal additions from the proposed Shoreham plant are therefore antagonistic to the interests of Connecticut citizens who look to the entire Sound as a uniquely valuable conservation, recreation, and commercial resource.

34. The whole policy and thrust of NEPA set forth in

detail above rejects such a confined and restricted interpretation of the Commission's responsibility. Under the Commission's interpretation it would be complying with NEPA if the Commission merely required an applicant to meet the water quality standards of state A even if state A had set a low thermal pollution standard. State B, with a higher standard, would under the Commission's interpretation have no recourse to the procedural preconditions of NEPA requiring the Commission to make detailed statements on the effects of thermal discharge in so far as they affected state B. This situation exists in fact in the Shoreham proposal, where Connecticut's water temperature standards are more strict than those of New York.

35. In light of the comprehensive mandate of NEPA on federal agencies to bring their procedures into conformity with the purposes of the Act, the correct reading of the relationship of NEPA to WQIA is that the requirement of state certification under WQIA means that the water quality standards of the originating state are a minimum below which the Commission cannot approve a license or permit. The directives of NEPA clearly do not set a maximum on water quality standards, and in the case where more than one jurisdiction is involved, NEPA and the Interim Guidelines of the President's Council, cited above, are meaningless unless the Commission assumes its national responsibility and obligation to make indepen-

dent determinations on whether a proposed project will result in thermal pollution of interstate waters. (See NEPA section 101 (B), 102 (1), 102 (2) (B), and 102 (2) (C)(ii).)

36. The effect of any interpretation to the contrary is to leave it solely to New York state to determine the fate of Long Island Sound's ecology and environmental quality, despite the legal interest of Connecticut citizens to such a body of water.

37. A certification that New York's water quality standards have been met does not relieve the Commission of its obligation to make independent determinations on the indirect effects which the heated effluent of the proposed Shoreham plant may have on the fish, wildlife, water fowl, vegetation, etc. of the Sound. Analysis of water quality cannot be separated from analysis of the indirect effects of thermal discharges, and this underlines the directive of section 102 (C) (i) that the full range of environmental impact must be reviewed. This conclusion is reinforced and amplified in paragraph 7 (i) of the President's Council's Interim Guidelines. If the Commission does not take evidence on thermal pollution, it is therefore making an incomplete analysis of environmental effect, and is not in compliance with 102 (C) (i) of NEPA.

38. Compliance with the water quality standards of one state says nothing about the specific environmental

effects of a particular project. The absence of detailed statements for the Shoreham proposal therefore is in violation of all provisions of 102 (C).

39. Section 102 (C) (iv) requires the Commission to make specific findings on the cumulative and long-term effects of nuclear power plant development on the Sound, and the relationship of this Shoreham proposal to all other sources of heated effluent, and the effect that such concerted development will have upon the ecology and environmental quality of the Sound.

40. Section 102 (c) (v) requires the Commission to analyze whether any irreversible commitments of resources would be involved. There is an affirmative duty therefore on the Commission to analyze what portion the nuclear power industry, as one of the many sources of ionizing radiation exposure, should be permitted to appropriate to itself out of the permissible radiation budget of the Sound. This would include a determination on whether any monopoly and other anti-trust issues are being raised.

41. Unless the Commission is required to make independent determinations on such matters as have been discussed above, the Commission avoids its responsibilities to expand its obligation to ensure environmental protection. Such an interpretation which would leave the Commission role in this area virtually unchanged by the enactment of NEPA, would do violence to the purpose and the requirements of that legis-

lation.

42. Upon information and belief the Commission has not requested comments from the appropriate Connecticut agencies and interested parties on the range of environmental effects anticipated by the Shoreham proposal.

43. The NEPA's requirement for detailed statements from the federal agencies has the salubrious purpose of permitting the general public to appraise the extent to which a proposal affects their interests. It therefore provides the public with information at a time when it is possible for them to make their concerns felt instead of being confronted by a fait accompli. As such it has the important effect of increasing public awareness of, participation in, and ultimately acceptance of, decision making. In so doing it reverses earlier practices which placed the burden on the general public to show how they are affected by proposals with potential adverse environmental consequences. Under NEPA the procedure places the burden first upon the governmental agency through the requirement of detailed statements, and then if the agency concludes that there is no effect upon a petitioner, that petitioner must come forward with proof supporting his claims.

44. While recognizing that the Commission has made no final order on this application, it is most important that the Commission's, the applicant's, and the petitioners'

time not be wasted if the Commission were to grant the license without preparing the detailed statements in conformity with NEPA. Such a position by the Commission would be futile if it were later determined that their position reflected legal error and that therefore the order would have to be vacated and the case remanded for further consideration.

Therefore, the petitioner respectfully requests

(1) That the licensing hearing before the Atomic Safety and Licensing Board, scheduled for September 21, 1970 at Rocky Point, Long Island, New York be postponed or continued until detailed statements have been prepared by the Commission on the full range of environmental impact of the proposed Shoreham facility, in compliance with the directives of NEPA.

(2) That prior to the completion of analysis and the preparation of the detailed statements, the Commission request reports from the Connecticut agencies authorized to develop and enforce environmental standards, including but not limited to the Connecticut Water Resources Commission, the Connecticut State Board of Fisheries and Game, the Connecticut Department of Health, the Clean Air Commission, the Interim Committee to Study Electric Power Plant Requirements, and any other appropriate Connecticut agencies, as required by section 102 (C) of NEPA. These Connecticut reports would be in addition to the reports of appropriate federal agencies as required by section 102 (C).

(3) That the Commission institute a moratorium upon power plant development bordering the Sound until the proposed study of the New England River Basins Commission on the master plan for the use of the resources of the Sound has been completed.

(4) That copies of the detailed statements and supporting reports be made available to the petitioners, and that they be given reasonable time to review said reports to determine the effects upon Connecticut interests.

WHEREFORE, the petitioners respectfully request the Commission to issue an order permitting their intervention as parties to this proceeding.

The name and address of the person on whom service may be made is PETER B. COOPER, ESQ., Sosnoff, Cooper & Whitney, Esqs., 35 Elm Street, New Haven, Connecticut 06510.

Dated: September 10, 1970

CONNECTICUT ACTION NOW, INC.
and
FAIRFIELD COUNTY CITIZENS FOR
ENVIRONMENTAL CONTROL, INC.

by: SOSNOFF, COOPER & WHITNEY

by: Peter B. Cooper
Peter B. Cooper, Partner

Attorneys for Petitioners
35 Elm Street
New Haven, Connecticut 06510

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Certificate of Service

I hereby certify that a copy of this Petition for Intervention has been served by first class mail upon the LONG ISLAND LIGHTING COMPANY at 250 Old Country Road, Mineola, New York, 11501, attention of Edward J. Walsh, Jr., Esq.

Dated: September 11, 1970.

Peter B. Cooper
Peter B. Cooper

Certificate of Service

I hereby certify that a copy of this Petition for Intervention has been served by first class mail upon MARTIN G. HALSCH, Esq., Trial Counsel for the AEC Regulatory Staff, by deposit thereof in United States Mail, postage prepaid, addressed to him at the Atomic Energy Commission, Washington, D.C.

Dated: September 11, 1970.

Peter B. Cooper
Peter B. Cooper

State of Connecticut
County of New Haven

DAVID B. BEIZER, being duly sworn, deposes and says that he is Executive Director of CONNECTICUT ACTION NOW, INC., one of the petitioners herein; that he has read the foregoing Petition and knows the contents thereof, and that to the best of his knowledge, information, and belief statements made in it are true, and that it is not interposed for delay.

David B. Beizer
David B. Beizer

State of Connecticut
County of Fairfield

SYDNEY EVANS, being duly sworn, deposes and says that he is President of FAIRFIELD COUNTY CITIZENS FOR ENVIRONMENTAL CONTROL, INC., one of the petitioners herein; that he has read the foregoing Petition and knows the contents thereof, and that to the best of his knowledge, information, and belief statements made in it are true, and that it is not interposed for delay.

Sydney Evans
Sydney Evans

State of Connecticut
County of New Haven:

Personally appeared David B. Beizer and Sydney Evans,
signers of the foregoing petition and acknowledged the same
to be their free act and deed, before me.

John B. Cooper Sept. 11, 1970
Commissioner of the Superior Court