

9-15-70 50-322

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of)
)
LONG ISLAND LIGHTING COMPANY)
)
(Shoreham Nuclear Power Station)
Unit 1))

Locket No. 50-322

ANSWER OF THE AEC REGULATORY STAFF TO
PETITION TO INTERVENE ON THE ISSUE OF MIGRATION
OF PLANT RADIATION OF FOOD BY JAMES S. TURNER

By petition filed September 2, 1970, Mr. James S. Turner requested that he be permitted to intervene on his own behalf in this proceeding. In his petition Mr. Turner stated generally that he is concerned that the implications of the Federal Food and Drug Act be fully weighed in the granting of any nuclear power plant license, that he believes that migration of radioactive material from nuclear power plants requires serious attention, and that, unless the role of the Federal Food and Drug Administration is considered, complicated legal questions will be raised about the liability of the applicant for added hardships and costs to food producers whose produce is affected by radiation from the Shoreham plant.

The Commission's "Rules of Practice" in 10 CFR §2.714(a) provide that any person "whose interest may be affected by a proceeding" may petition for leave to intervene. The provisions of 10 CFR §2.714(a) also require that petitions for leave to intervene set forth "the interest of the petitioner in the proceeding [and] how that interest may be affected by Commission action." In order for the petitioner to have any "interest [that] may be affected by a proceeding" he must,

HF

at least, show that some injury in fact may occur as a result of Commission action either to himself or to some other person or group of persons he has standing to represent. Data Processing Service v. Camp, U.S., 25 L.Ed. 2d 184 (1970).

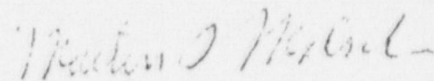
It does not appear from his petition that Mr. Turner himself either lives in the vicinity of the proposed Shoreham plant, consumes food which may contain radioactive material from the proposed plant, or produces food in the vicinity of the plant which might be affected by it. Mr. Turner does not allege that the construction or the operation of the proposed Shoreham plant will cause any harm to any person or group of persons whom he represents since his petition clearly indicates that he is petitioning on his own behalf. Indeed the petition as a whole indicates that Mr. Turner is not seeking to become a party to this proceeding to protect any personal interest or interest of anyone else whom he represents, but rather to raise certain abstract legal questions. In short, Mr. Turner has not shown or even alleged that some injury, in fact, may occur as a result of Commission action either to himself or to some other person or group of persons he represents. We believe, therefore, that Mr. Turner has not shown that he has any "interest [that] may be affected by [this] proceeding."

A petition for leave to intervene in this proceeding, in order to be timely, should have been filed not later than March 10, 1970. The Commission's "Rules of Practice" in 10 CFR §2.714(a) provide that a

petition for leave to intervene that is not timely will be denied unless the petitioner shows good cause for failure to file it on time. Mr. Turner indicates in his petition that he became aware of the Sherman proceeding "late in the summer of 1970". Mr. Turner has been aware of this proceeding at least since July 16, 1970, when his "Notice of Intent to File a Petition to Intervene on the Issue of Migration of Plant Radiation to Food by James S. Turner" was presented to the board at the third prehearing conference (Tr. p. 175). At that time Mr. Turner stated that his petition would be submitted within one week. Mr. Turner's petition was not filed until September 2, 1970, almost two months since the third prehearing conference. We do not believe that Mr. Turner has established good cause for this delay.

For the above reasons, the AEC regulatory staff respectfully requests that Mr. Turner's petition be denied. We would have no objection, however, to Mr. Turner being permitted to make a limited appearance in accordance with 10 CFR §2.715.

Respectfully submitted,



Martin G. Malsch
Counsel for
AEC Regulatory Staff

Dated at Bethesda, Maryland,
this 15th day of September, 1970.

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the matter of)
Long Island Lighting Company)
(Shoreham Nuclear Power Station)
Unit No. 1))

Docket No. 50-322

ORDER

By a motion dated July 28, 1970, Intervenor Lloyd Harbor Study Group moved this Board (as a first alternative to its first motion) to disqualify itself.

On September 3, 1970, the Board, having considered the motion, the affidavit attached thereto and the arguments of the parties thereon, issued an order denying the motion insofar as it related to and sought relief from this Atomic Safety and Licensing Board.

Section 2.704 (c) of the Commission's Rules of Practice states "If a party deems the presiding officer to be disqualified, he may move that the presiding officer disqualify himself. The motion shall be supported by affidavits setting forth the alleged grounds for disqualification. If the presiding officer does not grant the motion he will refer it to the Commission which will determine the sufficiency of the grounds alleged."

In accordance with Section 2.704 (c) the Board's order of September 3, 1970, is hereby referred to the Commission for its determination of the sufficiency of the grounds alleged.

7. the Atomic Safety & Licensing Appeal Board for Shoreham be reconstituted by the Atomic Energy Commission with members who have no personal interest in the field of atomic energy development, and that the composition of such Board be interdisciplinary and be also representative of the environmental life sciences so as to comply with the mandate of NEPA;

8. the Advisory Committee on Reactor Safeguards be reconstituted by the Atomic Energy Commission with a reasonable number of members representative of the environmental life sciences so as to comply with the mandate of NEPA, and that upon such reconstitution, that the Shoreham application be remanded to the ACRS and that the ACRS furnish a revised report thereon, taking into consideration the requirements of NEPA;

and for such other and further relief as may be just and proper herein.

Dated: Babylon, New York
July 28, 1970.

Respectfully submitted

REILLY, LIKE & SCHNEIDER
by: IRVING LIKE, ESQ.
Attorneys for Intervenor,
The Lloyd Harbor Study
Group, Inc.
200 West Main Street
Babylon, New York 11702

TO:

Mr. Stanley T. Robinson
Office of the Secretary
U.S. Atomic Energy Commission
Washington, D.C. 20545

Hon. Jack M. Campbell, Chairman
Atomic Safety & Licensing Board
Stephenson, Campbell & Olmstead
231 Washington Avenue
P.O. Box 877
Sante Fe, New Mexico 87501

Hon. James P. Gleason, Esq.
Alternate Chairman
Atomic Safety & Licensing Board
205 Commonwealth Building
1625 K Street, N.W.
Washington, D.C. 20006

Dr. A. Dixon Callihan
Union Carbide Corporation
P.O. Box Y
Oak Ridge, Tennessee 37830

Dr. Hugh C. Paxton
Los Alamos Scientific Laboratory
Box 1663
Los Alamos, New Mexico 87544

Dr. John C. Geyer, Chairman
Department of Geography & Environmental Engineering
The Johns Hopkins University
Baltimore, Maryland 21218

Joseph Scinto, Esq.
Atomic Energy Council
112 State Street
Albany, New York

Gerald F. Hadlock, Esq.
Trial Counsel
U.S. Atomic Energy Commission
Washington, D.C.

Edward J. Walsh, Jr., Esq.
Long Island Lighting Company
250 Old Country Road
Mineola, New York 11501

Zwissler, Diedolf & Volkmann, Esqs.
One South Ocean Avenue
Patchogue, New York 11772

