

Second Circuit Rule 27(a) governing use of this form is reprinted on reverse. Note requirement that lower court opinion or agency decision be attached.

83 4003

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

County of Rockland, Petitioner

- against -

United States Nuclear Regulatory Commission, United States of America, Consolidated Edison Co. of New York, Inc. and the Power Authority of the State of New York

Docket Number

NOTICE OF MOTION

state type of motion

In Opposition to Motion for Expedited Hearing

MOTION BY: (Name and tel. no. of attorney in charge) Brent L. Brandenburg (212) 460-4333

OPPOSING COUNSEL: (Name and tel. no. of attorney in charge)

Has a request of opposing counsel for consent been refused? [] Yes [X] No
Has service been effected? [X] Yes [] No
Is oral argument desired? [] Yes [X] No

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL

Has request for relief been made below? (See F.R.A.P. Rule 8.) [] Yes [] No
Would expedited appeal eliminate need for this motion? [] Yes [] No

Requested return date: January 18, 1983

If no, explain why not:

Date of argument of appeal, if scheduled:

Judge or agency whose order is being appealed: United States Nuclear Regulatory Commission

Brief statement of the relief requested:

Denial of motion for expedited hearing.

Previous requests for similar relief and disposition:

None.

Statement of the issue(s) presented by this motion:

Do facts exist which justify the granting of an expedited hearing?

Brief statement of the facts (with page references to the moving papers):

See Consolidated Edison's Memorandum of Law in Opposition to Petitioner's Motion for an Expedited Hearing annexed hereto.

Summary of the argument (with page references to the moving papers):

See Consolidated Edison's Memorandum of Law in Opposition to Petitioner's Motion for an Expedited Hearing annexed hereto.

8301210262 830117 PDR ADOCK 05000247 G PDR

Brent L. Brandenburg Attorney for Consolidated Edison Company of New York, Inc. 4 Irving Place New York, New York 10003 (212) 460-4333

January 17, 1983

Date

The name signed must be printed beneath

Attorney for

ORDER

Kindly leave this space blank.

IT IS HEREBY ORDERED that the motion

be and it hereby is granted denied

DOCKET NUMBER 80-247-286 PROD & UTIL FAC.

DS03

Date

Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
County of Rockland, :
Petitioner, :
- against - :
United States Nuclear Regulatory :
Commission, United States of America, : Docket No. 83-4003
Consolidated Edison Co. of New York, :
Inc. and the Power Authority of the :
State of New York, :
Respondents. :
-----X

MEMORANDUM IN OPPOSITION
TO ROCKLAND COUNTY'S
MOTION FOR AN
EXPEDITED HEARING

This memorandum is submitted by respondent Consolidated Edison Company of New York, Inc. ("Con Edison"), pursuant to Rule 27(b) of the Rules of Procedure of the United States Court of Appeals for the Second Circuit, in opposition to petitioner's motion for an expedited hearing.

Petitioner ("Rockland") on January 6, 1983, brought a petition to review an allegedly final decision of the United States Nuclear Regulatory Commission ("NRC") dated December 22, 1982. The NRC in the decision at issue decided that with regard to the state of off-site radiological emergency planning, "no shutdown [of Indian Point Units 2 and 3] or other enforcement action is needed at this time." Consolidated Edison Co. of New York, Inc.

and Power Authority of the State of New York (Indian Point Units 2 and 3), CLI-82-38 at 7, _____ NRC _____ (1982).

On January 7, 1983, petitioner moved this Court pursuant to its Rule 27(b) for an expedited hearing to consider Rockland's petition for review, alleging, inter alia, that "the current operation of Indian Point Unit 2, and anticipated operation of Indian Point Unit 3 in March or April of 1983 poses a serious risk to the health, safety and welfare of the citizens of Rockland County."

Petitioner's Motion at 2. Rockland proposed the following timetable:

1. NRC to file its records within 20 days after service upon it of the petition for review;
2. Rockland to serve and file its brief within 20 days after the date on which the record is filed;
3. Con Edison and the Power Authority of the State of New York ("PASNY") to serve and file their briefs within 15 days after service of the brief of Rockland;
4. Rockland to file and serve its reply brief within 7 days after service of the briefs of Con Edison and PASNY.

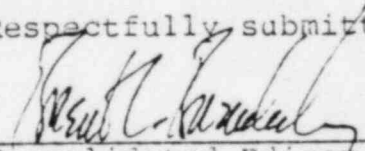
The schedule put forth by Rockland reduces by one-half the usual times permitted for filing and service of the record and briefs as set out in Rule 31(a) of the Federal Rules of Appellate Procedure.

Con Edison submits that Rockland's unsubstantiated and conclusory allegation as to the presence of a risk to the health, safety and welfare of the citizens of Rockland County by virtue of the operation of Indian Point Units 2 and 3 fails to establish an appropriate showing of urgency to justify this Court's granting an expedited hearing of the petition for review. Indeed, since an NRC-originated hearing in which the very same emergency planning questions propounded by petitioner are being considered and evaluated by an Atomic Safety and Licensing Board ("ASLB") is currently in session, there is no apparent urgency warranting an expedited hearing of Rockland's petition.

CONCLUSION

For all of the foregoing reasons, this Court is respectfully urged to deny petitioner's motion for an expedited hearing.

Respectfully submitted,



Consolidated Edison Company
of New York, Inc.
By: Brent L. Brandenburg
4 Irving Place
New York, New York 10003
(212)460-4333

Patricia M. Fruehling
of Counsel

Dated: January 17, 1983
New York, New York

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
: County of Rockland, :
: Petitioner, :
: - against - :
: United States Nuclear Regulatory :
: Commission, United States of America, : Docket No. 83-4003
: Consolidated Edison Co. of New York, :
: Inc. and the Power Authority of the :
: State of New York, :
: Respondents. :
: -----X

State of New York)
) ss.:
County of New York)

Robert F. Kiedaisch, being duly sworn, says that he served by first class U.S. mail, the attached Memorandum in Opposition to Rockland County's Motion for an Expedited Hearing upon the County of Rockland at the County Office Building, New City, New York 10956; upon the United States Nuclear Regulatory Commission at 1717 H Street, N.W., Washington, D.C. 20555; upon the United States Department of Justice at Constitution Avenue, Washington, D.C. 20530; and upon the Power Authority of the State of New York at 10 Columbus Circle, New York, New York 10019.

Robert F. Kiedaisch

Sworn to before me this
17th day of January, 1983.

Evette King

EVETTE KING
Notary Public, State of New York
No. 0000000000
Qualified in Rockland County
Certificate filed in New York County
Commission Expires March 23, 1983