

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

81 NOV 27 P3:58

Before Administrative Judges:

Louis J. Carter, Chairman

Frederick J. Shon

Dr. Oscar H. Paris

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of

CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC. (Indian Point, Unit
No. 2)

POWER AUTHORITY OF THE STATE OF NEW
YORK, (Indian Point, Unit No. 3)

Docket Nos. 50-247 SP
50-286 SP



CON EDISON'S ANSWER TO
PETITIONS FOR LEAVE TO INTERVENE

Pursuant to 10 CFR § 2.714(c) and the Atomic Safety
and Licensing Board's Memorandum and Order dated November 13,
1981, Consolidated Edison Company of New York, Inc. ("Con
Edison"), licensee of Indian Point Unit No. 2, submits its
answer to the petitions for leave to intervene herein.* Con

*Con Edison has been served with petitions for leave to inter-
vene from Ruth Messinger, et al., The Metropolitan Transporta-
tion Authority, Rockland Citizens for Safe Energy, County
of Rockland, New York City Audubon Society, The Greater New
York Council on Energy, Parents Concerned About Indian Point,
Union of Concerned Scientists and New York Public Interest
Research Group, Alfred B. Del Bello, The New York State Energy
Office, Friends of the Earth, Inc., Power Authority of the
State of New York, The New York State Assembly and the Special
Committee on Nuclear Power Safety, the Westchester People's
Action Coalition, Inc., West Branch Conservation Association,
Robert Abrams, The Port Authority of New York and New Jersey,
and the Village of Buchanan. Con Edison has not to date been
served with any other petitions to intervene and, accordingly,
reserves its rights to answer any remaining petitions pursuant
to 10 CFR § 2.714(c).

DSB
50/1 Add: Elliott
Greher-OPE

Edison opposes various of the petitions for leave to intervene for the reasons set forth below.

- I. THE PETITIONS FOR LEAVE TO INTERVENE AS "INTERESTED STATES" PURSUANT TO 10 CFR § 2.715(c) FILED BY RUTH MESSINGER, et al., ALFRED B. DEL BELLO, ROBERT ABRAMS, AND THE NEW YORK STATE ASSEMBLY AND SPECIAL COMMITTEE ON NUCLEAR POWER SAFETY SHOULD BE DENIED.
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Under the NRC's Rules of Practice, 10 CFR § 2.715(c), "interested states" receive special rights and privileges which are not available to other participants in Licensing Board proceedings. Before a state, county or municipality may be afforded these special rights and privileges, it must first establish its "interested state" status. The petitions for leave to intervene filed by Ruth Messinger and nine other individuals, Alfred B. Del Bello, Robert Abrams, and the New York State Assembly and Special Committee on Nuclear Power Safety do not establish that they have been authorized to represent any State, county or municipality, or that any such governmental entities have granted them permission to appear on their behalf. Accordingly, these petitioners should, upon a proper showing of an interest which may be affected by this proceeding, be granted only "person" status under 10 CFR § 2.714, on an equal footing with other participants in the proceeding.

The petition for leave to intervene of Ruth Messinger and nine others reveals that each of them are members of the

Council of the City of New York. None of these individuals has shown any cognizable interest in this proceeding beyond the representation that they are Council members. However, nowhere in the petition does it appear that these persons appear on behalf of the interested municipality, the City of New York, or that the City of New York has authorized these individuals to appear on its behalf or to represent its interests in the proceeding.

It is well established that prospective intervenors may not obtain participant status based upon the interests of others whom they do not represent, see e.g., Long Island Lighting Co. (Shoreham Nuclear Power Station Unit 1), LBP-77-11, 5 NRC 481 (1977). These individuals are not the City of New York and have made no showing that they have been empowered to represent the City's interests.

The same issue arose in General Electric Company (General Electric Test Reactor -- Vallecitos Nuclear Center), LPB-79-28, 10 NRC 578 (1979), where an individual member of Congress sought intervention in a licensing proceeding. Noting that the United States itself did not seek to be admitted in the proceeding, the Licensing Board ruled that:

"[A] petitioner has a right to intervene only when it appears from the petition that he will be, or might be, injured in fact by one or more of the possible outcomes of the proceeding. The only exception to the rule that intervention is granted as a matter of right only to a person who can show an injury in fact is found in 10 CFR § 2.715(c), which requires that representatives of

the state or municipality be afforded a reasonable opportunity to participate in a proceeding. That rule does not extend to congressmen." (10 NRC at 581-82; citation omitted; emphasis supplied)

Because the instant petitioners are not themselves interested states or municipalities, the petition of Ruth Messinger, et al., to participate as an interested party should be denied.

A similar deficiency exists with the petition to intervene "as an interested state" filed by Alfred B. Del Bello. Del Bello represents that he is the Westchester County Executive. However, he purports to intervene only on his own behalf, and not on behalf of the County of Westchester.

The County of Westchester is governed by a County Board of Legislators. The Charter of the County provides that the Board of Legislators shall, unless otherwise provided, have "all the powers and duties of the county." (Section 107.01, Westchester County Charter and Administrative Code).

The Del Bello petition for leave to intervene does not indicate that the Board of Legislators of the County of Westchester has authorized Del Bello to represent its interests in this proceeding, nor does the petition state a basis for Del Bello's own "interest" in this proceeding under requisite Commission standards. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976); Nuclear Engineering Co. (Sheffield Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737 (1978). The Del Bello petition to intervene should accordingly be denied.

Petitions for leave to intervene have also been filed by Robert Abrams and the New York State Assembly and Special Committee on Nuclear Power. Abrams is the Attorney General of the State of New York, and the New York State Assembly and Special Committee are instrumentalities of the State of New York. However, neither petition purports to intervene on behalf of the interested state, the State of New York, and neither petition represents that the State of New York has authorized the petitioner to represent its interests.

Indeed, the petition for leave to intervene filed by the New York State Energy Office represents that it is authorized to appear on behalf of New York State. Unlike the Abrams and Assembly/Special Committee petitions, the Energy Office petition expressly avers that it represents the interests of the State of New York in this proceeding:

"[T]he New York State Energy Office hereby petitions on behalf of the State of New York and its interested agencies to participate in the noticed proceeding as an interested state." (Petition for Leave to Participate as an Interested State by the New York State Energy Office, dated November 6, 1981 at p. 1 (emphasis supplied)).

The Energy Office petition cites statutory authority conveying to it the duties and responsibilities of representing the State of New York in proceedings such as this:

"Under Section 7-101 of the Energy Law and Section 104 of the Commerce Law of the State of New York, the State Energy Office is given the responsibility for coordinating regulatory programs of State agencies and instrumentalities which affect atomic energy activities in New

York, for developing a coordinated position among State agencies with respect to Federal regulatory matters and for coordinating the participation of the agencies and instrumentalities for the State in the regulatory process of the Federal Government where such Federal process affects atomic energy activities in the State." (Id. at pp. 2-3.)

The "interested state" for purposes of 10 CFR § 2.715(c) is The State of New York, and it appears that its interests are represented by the New York State Energy Office. Since the Abrams and Assembly/Special Committee petitioners do not even claim that they are the State of New York, and since those petitions do not state any basis for individual or organizational interest, respectively, under NRC standards, they should be denied.

The dismissal of the Messinger, Del Bello, Abrams and Assembly/Special Committee petitions are mandated not only by Commission precedent, as in General Electric Company, supra, but by judicial precedent as well. The Commission recognizes that questions of standing to intervene in Commission proceedings are to be resolved by reference to judicial decisions on standing. In Portland General Electric Co., supra, 4 NRC 610, the Commission stated that:

"We have found the standards announced by the federal courts to be useful guides in determining the kind of interests a petitioner must establish to sustain a claim for participation in a proceeding as a matter of right."
(4 NRC at 613)

Consistent with the General Electric case, the courts have often recognized that the status of an indi-

vidual as a public official does not in itself give such a person standing to sue. In Reuss v. Balles, 584 F.2d 461 (D.C. Cir.), cert. denied, 439 U.S. 997 (1978), the Court of Appeals for the District of Columbia denied standing to a public official who could not establish personal injury in fact, holding that "a legislator receives no special consideration in the standing inquiry." (584 F.2d at 466)

In Harrington v. Bush, 553 F.2d 190 (D.C. Cir 1977), the same fact situation was presented as here, where a public official argued that he had standing because of his status as a public official, but did not purport to act with the authorization of the governmental body which he served. The Court denied standing, observing that:

"If there is one concept to be gained from the Supreme Court decisions on standing, it is that a litigant, to have standing, must have a stake in the controversy at issue, i.e., he himself must perceptibly win or lose depending on the outcome." (553 F.2d at 209, footnote omitted; emphasis in original)

Specifically addressing public official status as it pertained to standing, the Harrington court held that:

"[W]hen a legislator has not been authorized to sue on behalf of the institution to which he belongs, the crucial inquiry relates to his personal injury and stake in the controversy, regardless of its source." (553 F.2d at 200, n. 42; emphasis in original)

For the foregoing reasons, the Messinger, Del Bello, Abrams, and Assembly/Special Committee petitions for leave to intervene should be denied.

II. THE PETITION FOR LEAVE TO INTERVENE FILED BY
THE COUNTY ATTORNEY FOR ROCKLAND COUNTY SHOULD
NOT BE GRANTED PENDING AUTHORIZATION FOR ITS
FILING FROM THE COUNTY OF ROCKLAND.

Unlike the petitions for leave to intervene referred to in Point I, above, the petition filed by Marc L. Parris, County Attorney, ostensibly on behalf of the County of Rockland, does not seek participation as an interested state. Only 10 CFR § 2.714 "person" status has been sought, see petition at paragraph 2. Nonetheless, the petition states, at paragraph 3, p. 2, that its filing has been authorized only by the Chairman of the Rockland County Legislature, the County Commissioner of Health, and an individual identified as a fire coordinator. There is no representation that the filing of the petition on behalf of the County of Rockland has been authorized by the ruling governmental body, the Rockland County Legislature. It is important to Con Edison and the other participants in this proceeding that participation by the County of Rockland be duly authorized, in order to insure that the County will be bound by the outcome. The Licensing Board should not grant the petition until it has been averred that participation in this proceeding has been duly authorized by a resolution of the Rockland County Legislature.

III. THE PETITIONS FOR LEAVE TO INTERVENE FILED BY ROCKLAND CITIZENS FOR SAFE ENERGY, NEW YORK CITY AUDUBON SOCIETY, THE GREATER NEW YORK COUNCIL ON ENERGY, PARENTS CONCERNED ABOUT INDIAN POINT, THE UNION OF CONCERNED SCIENTISTS AND THE NEW YORK PUBLIC INTEREST RESEARCH GROUP, INC., FRIENDS OF THE EARTH, INC., WESTCHESTER PEOPLE'S ACTION COALITION, INC., AND WEST BRANCH CONSERVATION ASSOCIATION SHOULD BE DENIED BECAUSE THE PETITIONING ORGANIZATIONS HAVE NOT DEMONSTRATED AN INTEREST WHICH MAY BE AFFECTED BY THIS PROCEEDING.

The NRC's regulations on intervention and standing require that a prospective intervenor demonstrate an interest which may be affected by the proceeding before intervention may be granted. 10 CFR § 2.714(a)(2) provides, in pertinent part, that:

"The petition [for leave to intervene] shall set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in paragraph (d) of this section"

It is well established that, in applying this regulation, the NRC adopts judicial concepts of standing, such as those set forth in Sierra Club v. Morton, 405 U.S. 727 (1972). In Portland General Electric Co., *supra*, the Commission characterized the standing test as follows:

"To have 'standing' in court, one must satisfy two tests. First, one must allege some injury that has occurred or will probably result from the action involved. Under this 'injury in fact test' a mere academic interest in a matter, without any real impact on the person asserting it, will not confer standing."
(4 NRC at 613)

A review of the petitions for leave to intervene herein filed by Rockland Citizens for Safe Energy, New York City Audubon Society, Greater New York Council on Energy, Parents Concerned About Indian Point, Union of Concerned Scientists ("UCS") and New York Public Interest Research Group, Inc. ("NYPIRG"), Friends of the Earth, Inc. ("FOE"), Westchester People's Action Coalition, Inc., and West Branch Conservation Association (hereinafter collectively referred to as "organizational petitioners"), reveals that none of these organizations claims to have interests of its own which would warrant a grant of intervention under articulated NRC standards. In Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377 (1979), a prospective intervenor organization sought intervention due to its "special interest" in the construction and operation of the subject facility. The Appeal Board stated that:

"[O]rganizations of [the prospective intervenor's] stripe are not clothed with independent standing to intervene in NRC licensing proceedings. Rather, any standing which the Guild may possess is wholly derivative in character. It must appear that at least one of the persons it purports to represent does in fact have an interest which might be affected by the licensing action being sought; here, the issuance of a construction permit for the Allens Creek facility." (9 NRC at 390)

Endorsing the Supreme Court's decision in Sierra Club, the Appeal Board quoted from that decision that:

"* * * a mere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the

problem, is not sufficient by itself to render the organization 'adversely affected' or 'aggrieved'. . . ." (9 NRC at 391)

The organizational petitioners in this proceeding seek intervention based upon the supposed interests of their "members" living within 50 miles of Indian Point. However, these organizations have failed to establish a proper basis for obtaining intervention in such a manner. The extent to which associational organizations may derivatively rely upon the interests of its members to satisfy judicial standing requirements was considered in Health Research Group v. Kennedy, 82 F.R.D. 21 (D. C. 1979). In Health Research Group, Judge Sirica ruled that organizations may obtain standing to achieve intervention based only upon the interests of persons who exercise control over the organization by direct electoral participation in the governing of its affairs. The Court stated that:

"[P]laintiffs allege injury only to their 'contributors' and 'supporters.' Because plaintiffs do not claim injury to any interest of their own, the question arises whether they may have standing solely as the representatives of these contributors and supporters." (82 F.R.D. at 24; footnote omitted; emphasis in original)

Observing that "the associational standing doctrine represents a very limited exception to the fundamental Article III requirement that the plaintiff before the court be himself among the injured," supra at 25, the Court ruled that there must be a "substantial nexus" between the injured person and

the organizational party derivatively depending upon his status to achieve standing:

"So long as the courts insist on some sort of substantial nexus between the injured party and the organizational plaintiff -- a nexus normally to be provided by actual membership or its functional equivalent measured in terms of control -- it can reasonably be presumed that, in effect, it is the injured party who is himself seeking review. Absent this element of control, there is simply no assurance that the party seeking judicial review represents the injured party, and not merely a well-informed point of view." (82 F.R.D. at 26-27; emphasis in original)

The Court concluded in Health Research Group that members actively participating in the governing of the subject organization could supply a basis for standing, but that contributors could not:

"[T]here is a material difference of both degree and substance between the control exercised by masses of contributors tending to give more or less money to an organization depending on its responsiveness to their interests, or through the expression of opinion in the letters of supporters, on the one hand, and the control exercised by members of an organization as they regularly elect their governing body, on the other." (82 F.R.D. at 27; emphasis in original)

The UCS/NYPIRG petition, and also the FOE petition, fail to supply the "substantial nexus" necessary for standing between their "sponsors" (the petitioners' own term; see UCS/NYPIRG petition at p. 1; FOE petition at p.2) said to live in close proximity to Indian Point, on the one hand, and the respective organizations, on the other. The petitions of the other organizational petitioners are similarly deficient. These petitions make no effort whatsoever to satisfy Health Research

Group requirements, failing to make any reference to the involvement of the variously named persons in the governing of the organization. Indeed, the reference in the UCS/NYFIRG and FOE petitions to such individuals as "sponsors" implies the contributor status which was specifically found to be inadequate in Health Research Group.

Even if the organizational petitioners were able to establish sufficient degrees of involvement in the running of their organizations by the individuals whose status they seek to represent, none of the petitions contains any statement by these persons as to exactly what injury in fact would flow to them as a result of the Indian Point investigation. Such a showing is required under Houston Lighting and Power Co., supra:

"The alleged fact that there are Guild members who live in the general vicinity of the Allens Creek site does not alter matters. To be sure, persons who live in close proximity to a reactor site are presumed to have a cognizable interest in licensing proceedings involving the reactor. But there is no like presumption that every individual so situated will deem himself potentially aggrieved by the outcome of the proceeding (an essential ingredient of standing). Some may and some may not. Because of this consideration, the petitioner organization in North Anna did not and could not content itself with the simple assertion that it had members living in the shadow of the facility there in question. To establish its representational standing, it additionally supplied the statement of one of those members, which explicitly identified the nature of the invasion of her personal interest which might flow from the proposed licensing action." (citation and footnote omitted) (9 NRC at 393)

Because the organizational petitions do not assert a cognizable basis for intervention either on behalf of the organizations themselves or derivatively on behalf of named individuals, these petitions for leave to intervene should be denied.

IV THE LICENSING BOARD SHOULD REQUIRE FURTHER
SUBJECT MATTER SPECIFICITY BEFORE GRANTING
ANY PETITIONS FOR LEAVE TO INTERVENE.

Unlike any prior NRC proceeding, the Commission's January 8 and September 18 orders delegate to the Licensing Board the responsibility for conducting a very broad-ranging inquiry, and to report to the Commission by September 18, 1987. Cognizant of the need to proceed on such an ambitious timetable, the Commission in its orders granted powers to the Licensing Board to depart from normal NRC Rules of Practice, all in the interests of a prompt disposition of the proceeding. The Commission's September 18 order herein, at pp. 1-2, states that:

"Because the Commission itself is designating by this Order the issues it wishes to be addressed in the adjudication . . . it is important that contentions raised by parties and sub-issues raised by the Board in this proceeding contribute materially to answering those designated issues. . . . [T]he Commission emphasizes that its purpose is to ensure that the Board is empowered only to accept and formulate, after consultation with the parties, those contentions which seem likely to be important to resolving the Commission's questions on pages 9-10, and thereby to assure that the proceeding remains clearly focused on the issues set forth in this Order."

Thus apart from the normal Licensing Board procedures to narrow issues as granted by the NRC's Rules of Practice, the Board has been given further powers "to assure that the proceeding remains focused." Under 10 CFR § 2.714(a)(2), a prospective intervenor is normally required to set forth "the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene." (emphasis supplied).

The same may be required of "interested state" intervenors. 10 CFR § 2.715(c) provides that:

"The presiding officer may require such ["interested state"] representative to indicate with reasonable specificity, in advance of the hearing, the subject matters on which he desires to participate."

Even under normal Licensing Board procedures, the various petitions for leave to intervene in this proceeding are insufficiently "aspect" specific to permit reasonable progress in the consideration of issues. The petitions of Ruth Messinger and nine others, the Metropolitan Transportation Authority, Alfred B. Del Bello, New York State Energy Office, the New York State Assembly and Special Committee on Nuclear Power Safety, Robert Abrams, and the Port Authority of New York and New Jersey contain no statements whatsoever as to the issues which such parties wish to raise, nor the subject matter as to which they wish to participate.

The issues statements of other prospective intervenors

are hopelessly broad or vague, going far beyond the focus clearly delineated in the Commission's January 3 and September 18 orders. The petition of Rockland County, at paragraph 5(E), indicates that it wishes to raise issues as to the actual cost of full implementation of an emergency evacuation plan. The petition of the New York City Audubon Society, at p. 2, states that it wishes to raise issues regarding the effects on commerce and public health of normal operations at Indian Point and the consequences of accident conditions at the plant. The petition of the Greater New York Council on Energy recites that it desires to raise issues as to the economic consequences for the City of New York of accident conditions at Indian Point, and the petition of Parents Concerned About Indian Point says that it wishes to raise issues about the psychological, emotional and physical health and safety of children as it relates to the plants.

Other petitions are equally broad, far exceeding the scope envisioned by the Commission. Both the UCS/NYPIRG and Westchester People's Action Coalition, Inc. petitions state that they wish to raise issues regarding the consequences of an accident at Indian Point. The petition of Friends of the Earth, Inc., indicates that that organization would like to raise issues concerning the availability and economic and social benefits of alternative energy strategies to replace Indian Point, and the supposed incompatibil-

ity of continued operation of Indian Point with national security. The West Branch Conservation Association petition states that it desires to raise such issues as the realistic service life of the Indian Point units, and their continued cost of operation and the rate treatment thereof.

These issues either find no basis whatsoever in the Commission's January 8 and September 18 orders herein, or raise questions which are generic to all nuclear power plants and have no appreciable Indian Point-specific characteristics. Even those questions addressing accident risk are formulated solely in terms of consequences, in flat disregard of the requirement of the September 18 order, at p. 3, that "[a]pproximately equal attention should be given to the probability of occurrence of releases and to the probability of occurrence of the environmental consequences"

Before granting any intervention petitions, the Board should require more precise and focused statements of proposed issues from both prospective interested state and person intervenors. The Board is fully empowered to do this pursuant to 10 CFR §§ 2.714(a)(2) and 2.715(c), as well as under the Commission's September 18 order. There have already been numerous statements of issues submitted which far exceed the bounds for this hearing permitted under the Commission's orders, or worse yet, no statement of issues at all. Con Edison respectfully submits that conditioning all interventions, pursuant to 10 CFR § 2.714(e and f), upon further,

more specific statements of issues, particularly for bona fide interested state participants, is not only highly desirable, but absolutely essential for compliance with the Commission's directions that the proceeding be completed by September 18, 1982.

- V. NONE OF THE PETITIONS FOR LEAVE TO INTERVENE ESTABLISH A BASIS FOR GRANTING DISCRETIONARY INTERVENTION, SINCE PETITIONERS DO NOT DEMONSTRATE ANY CAPABILITY FOR MAKING A VALUABLE CONTRIBUTION TO THE RECORD.
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In determining in a particular case whether or not the standards for permissive intervention are met by petitioners who do not meet the tests for intervention as a matter of right, Licensing Boards are to exercise their discretion based on the facts and circumstances of each case, Portland General Electric Co. supra, 4 NRC at 616. The burden of demonstrating that the requirements for discretionary intervention have been met is on the petitioner, Nuclear Engineering Co., supra, 7 NRC at 745.

In making determinations regarding discretionary intervention, the NRC has indicated that Licensing Boards should be guided by the following factors:

- "(a) Weighing in favor of allowing intervention --

(1) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

(2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.

(b) Weighing against allowing intervention --

(4) The availability of other means whereby petitioner's interest will be protected.

(5) The extent to which the petitioner's interest will be represented by existing parties.

(6) The extent to which petitioner's participation will inappropriately broaden or delay the proceeding." Portland General Electric Co., supra, 4 NRC at 616.

Various Appeal Boards have held on numerous occasions that the pivotal factor in determining whether to grant discretionary intervention is the ability of a petitioner to make a valuable contribution to the development of a sound record on a safety or environmental issue which is raised by the petitioner and which appears to be of enough importance to call for Board consideration. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1422 (1977); Public Service Company of Oklahoma, et al., (Black Fox Station Units 1 and 2), ALAB-397, 5 NRC 1143, 1151 at n. 14 (1977); Virginia Electric & Power Co. (North Anna Power Station, Units 1 and 2), ALAB-363, 4 NRC 631 (1976); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-470, 7 NRC 473, 475, at n. 2 (1978).

With regard to discretionary intervention, the NRC has stated that:

"Permission to intervene should prove more readily available where petitioners show significant ability to contribute on substantial issues of law or fact which will not otherwise be properly raised or presented, set forth these matters with suitable specificity to allow evaluation and demonstrate their importance and immediacy, justifying the time necessary to consider them." (Portland General Electric Co., 4 NRC at 617; emphasis supplied).

Judged by these standards, none of the instant petitioners for leave to intervene have stated an appropriate basis for the Board to grant its discretion to permit intervention.* As set forth in Point IV above, many prospective intervenors have either stated no issues as to which they wish to participate, or have stated issues which can only reflect a complete disregard of the Commission's January 8 and September 18 orders directing a hearing limited to specifically enumerated questions.

More importantly, none of the petitioners have come forward with any claims of special expertise in the areas of nuclear power plant risk, comparative risk, civil engineering or emergency management science, or electric energy socioeconomics -- the very subjects upon which the Board is charged with developing a record. The organizational peti-

* Of course, such a basis need not be shown by persons demonstrating injury in fact, and thus stating a basis for intervention as of right.

tioners* in particular have presented no evidence at all from which the Board might even draw a favorable inference that their participation would constitute a valuable and significant contribution to this proceeding. Typical of the representations made in lieu of specific demonstrations of expertise is that of West Chester People's Action Coalition, Inc., which says (petition at p. 1) only that it "has been working to close Indian Point through a wide range of approaches for over five years." This is hardly the basis for a finding by the Board that such a petitioner can make a valuable contribution to the record.

In the petitions there are no representations whatever as to the evidence which such petitioners would adduce, or the experts which they would make available to enlighten the record. Given the broad subject matter areas to be covered in a short time in these particular hearings, such a showing should be the absolute minimum for intervention.

In situations where, as here, a prospective intervenor makes no showing before an NRC Licensing Board that it will make a substantial contribution to the record, discretionary intervention has been denied. In Duke Power Co. (Oconee

* See p. 10 above.

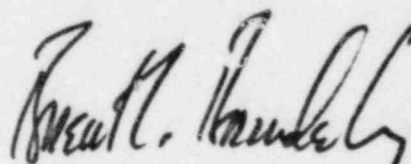
Nuclear Station and McGuire Nuclear Station), LBP-79-2, 9 NRC 90, 102 (1979), intervention was denied to the Natural Resources Defense Council, an organization similar to the organizational petitioners here, because it made no showing that it would make a significant contribution to the proceeding "on substantial issues of law or fact which [would] not otherwise be properly raised or presented."

Since no petitioner has made such a showing in this proceeding, there are no bases for grants of discretionary intervention in this proceeding.

WHEREFORE, Con Edison respectfully requests that the petitions for leave to intervene as interested states filed by Ruth Messinger, et al, Alfred D. Del Bello, Robert Abrams, and the New York State Assembly and Special Committee on Nuclear Power Safety should be denied; that the petition filed on behalf of Rockland County should not be granted pending appropriate authorization; that the petitions filed by the organizational petitioners (see p. 10 herein) should be denied; and that further subject matter specificity should

be required of all petitioners prior to consideration of their respective petitions.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Brent L. Brandenburg", written in a cursive style.

BRENT L. BRANDENBURG
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Dated: New York, New York
November 24, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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) Docket Nos. 50-247 SP
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CERTIFICATE OF SERVICE

I certify that I have served copies of the annexed
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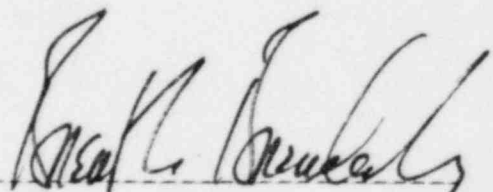
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