

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD²¹ NOV 25 P4:37
Louis J. Carter, Chairman
Frederick J. Shon
Dr. Oscar H. Paris

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11/25/81

SECRETARY
U.S. SERVICE
BRANCH

In the Matter of

CONSOLIDATED EDISON COMPANY OF NEW YORK
(Indian Point Unit 2)

POWER AUTHORITY OF THE STATE OF NEW YORK
(Indian Point Unit 3)

Docket Nos.

50-247 SP

50-286 SP

LICENSEES' MOTION FOR A STAY OF COMMISSION'S
ORDERS OF JANUARY 8, 1981 AND SEPTEMBER 18, 1981
OR FOR DISMISSAL OF THIS PROCEEDING OR, IN
THE ALTERNATIVE, FOR CERTIFICATION TO THE COMMISSION

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U.S. NUCLEAR REGULATORY
COMMISSION

This motion is filed by Consolidated Edison Company of New York, Inc. and the Power Authority of the State of New York, licensees of Indian Point Units 2 and 3, respectively (hereinafter collectively referred to as licensees). The Nuclear Regulatory Commission's (Commission's) Orders of January 8, 1981, and September 18, 1981, direct that a hearing be conducted before the Atomic Safety and Licensing Board (Licensing Board) regarding the operation of the Indian Point units. Licensees move for a stay of this hearing pending the completion of presently scheduled and proposed generic proceedings or for dismissal of this proceeding. In the alternative, licensees move for certi-

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fication of the issues raised in this motion to the Commission for its determination, pursuant to 10 C.F.R. § 2.718(i) (1981), if the Licensing Board considers that the Commission's prior orders preclude the Licensing Board from granting the relief sought in this motion.

Licensees, by this motion, do not seek to hinder any legitimate examination by the Commission into the safety of the Indian Point units. What they do object to is being forced into this evidentiary hearing using trial-type procedures without knowing what standards and criteria will be used to determine the adequacy of safety systems at the plants. Such relevant safety standards and criteria are being established in generic proceedings previously committed to or now in progress before the Commission. In addition, this proceeding is infected with other constitutional and statutory defects. Fundamental principles of fair play and due process of law require that these matters be resolved before this proceeding is conducted.

A task force appointed by the Commission at the outset of this matter to analyze the accident risk at the Indian Point site concluded that the Indian Point units pose 30 to 50 times less risk to persons and property than the postulated typical reactor. The public interest, therefore, is not served by rushing forward with the Indian Point proceeding in violation of licensees' constitutional and

statutory rights.

Licensees submit that the Licensing Board should not commence the proposed hearing based upon the following six grounds which are more fully set forth in licensees' supporting Memorandum of Law which is incorporated herein by reference:

(1) Commencement of an adjudicatory proceeding prior to completion of ongoing proceedings to establish generic standards constitutes a denial to licensees of procedural due process (see Licensees' Memorandum of Law at 8);

(2) Principles of res judicata and collateral estoppel bar reconsideration of the physical and population characteristics of the Indian Point sites (see Licensees' Memorandum of Law at 22);

(3) The Commission's failure to adhere to its existing siting criteria constitutes action which is arbitrary, capricious, an abuse of discretion, and a deprivation of property without due process of law: (a) the siting criteria are violated by the Commission's January Order (see Licensees' Memorandum of Law at 29); (b) the application of existing siting criteria to existing plants has been ratified by Congress (see Licensees' Memorandum of Law at 35); and (c) the retroactive application of new siting standards would violate the due process clause (see Licensees' Memorandum of Law at 37);

(4) The Constitution requires that the Commission establish compelling reasons to justify a shutdown of Indian Point (see Licensees' Memorandum of Law at 40);

(5) An adverse ruling from a readjudication of the Indian Point site would result in an impairment of contract and a taking of property without just compensation guaranteed by the fifth amendment (see Licensees' Memorandum of Law at 45); and

(6) The Commission lacks jurisdiction to conduct the hybrid investigatory-adjudicatory proceeding which constitutes an unconstitutional singling out of the Indian Point licensees (see Licensees' Memorandum of Law at 53).

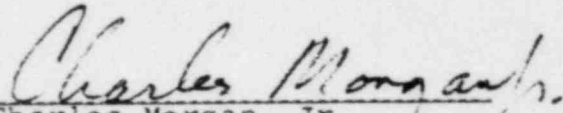
WHEREFORE, the motion of Consolidated Edison Company of New York, Inc. and the Power Authority of the State of New York for a stay of these proceedings, which are mandated by the Commission's Orders of January 8, 1981, and September 18, 1981 directing that a hearing be held concerning Indian Point Units 2 and 3, pending completion of presently scheduled and proposed generic proceedings, or for dismissal of this proceeding or, in the alternative, for certification of the issues raised in this motion to the Commission for its determination pursuant to 10 C.F.R. § 2.718(i) should be granted.

Licensees request oral argument on this motion.

Respectfully submitted,


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