

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

before the ATOMIC SAFETY AND LICENSING BOARD
Louis J. Carter, Chairman
Mr. Frederick J. Shon
Dr. Oscar H. Paris

DOCKETED
USNRC

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OR

December 1, 1981

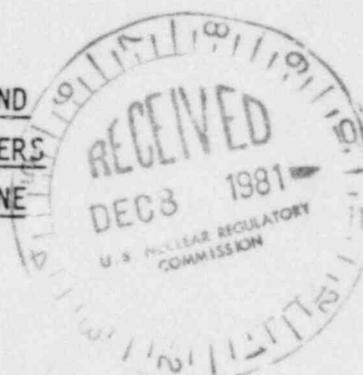
OFFICE OF SECRETARY
OF PUBLIC AFFAIRS & SERVICE
BRANCH

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 Number 50-247SP

Docket Number 50-286SP

WESPAC'S PRE-HEARING MEMORANDUM AND
RESPONSE TO STAFF AND UTILITY ANSWERS
TO PETITIONS FOR LEAVE TO INTERVENE



INTRODUCTION

On November 5, 1981, the Westchester People's Action Coalition, Inc. (WESPAC), on behalf of itself and its members, filed a Petition for Leave to Intervene in the above-captioned proceeding. The petition was received by the Atomic Safety and Licensing Board and distributed to all parties in a timely fashion.

On November 9, the Board issued an order scheduling a pre-hearing conference for tomorrow (December 2, 1981), and requesting each party to file a pre-hearing memorandum and proposal to identify key issues in the proceeding, amend pleadings if necessary or desirable, and establish a schedule.

On November 13, the Board issued another order, acknowledging receipt of petitions, inviting the Staff and Licensees to respond to petitions, and requiring contentions to be filed by December 2. Subsequently, the Staff, Con Edison, and State Power Authority have filed voluminous answers challenging the standing and/or aspect of each petitioning party.

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This Response is WESPAC's response to questions relating to the pre-hearing conference and to our petition for leave to intervene. We are filing contentions in a separate document; those contentions address

some of the major issues in this proceeding. They all fall under the seven points enumerated by the Nuclear Regulatory Commission in its January 8 and September 18, 1981, orders. Of course, we would also like issues falling within the Commission guidelines which are raised by any other intervenor to be fully considered.

WESPAC received (by mail) the Staff and Licensee answers to petitions for leave to intervene only this morning, the day before the pre-hearing conference. Consequently, we have not had a great deal of time to prepare this response. Fortunately, the "issues" raised in the answers are not worthy of a great deal of time.

Pre-Hearing Memorandum

We have not prepared an in-depth memorandum or a draft order relating to key issues in this proceeding, amendment of pleadings, or scheduling the proceeding. The following is a summary of our positions, which we believe are shared by many petitioners:

- a. The issues which should be considered have been delineated by Orders issued by the Commission earlier this year. From our review of the filed petitions, every prospective intervenor raised questions which fall within those delineations.

Furthermore, we feel it premature and arbitrary to disqualify issues which some parties may find objectionable at this stage of the proceeding. After contentions are filed, the Board and the Parties will have an opportunity to review them and consolidate or disqualify issues which are not deemed relevant. At this stage, however, it is unnecessary.

The NRC has initiated this proceeding "for the resolution of safety issues concerning the plants" (January 8, 1981 order, page 1). If these issues are to be truly resolved, and not just papered over, the fullest possible consideration of substantive matters is necessary. We urge the Board not to rule out issues before they have been considered on their merits -- and thereby not to cast a shadow over this proceeding in the eyes of the public. That public, after all, elects the Congress which gives the NRC its power. That is the public in whose "interest, convenience, and necessity" utilities like Consolidated Edison are supposed to operate. That public gives the State Power authority its franchise. And that

public, at least in theory, holds supreme power in our democratic form of government. The Board must avoid even the appearance of prejudice.

b. The question of amendment of pleadings will be discussed in more depth below, when we respond to specific allegations against WESPAC's petition. At present we merely state the obvious: the purpose of this proceeding is to ensure Indian Point's safe operation, and not to provide work for attorneys (salaried for the NRC and Licensees, volunteer for most of the intervenors). The more procedural obstacles can be avoided, the more likely we will have a timely and full resolution of the real issues in this case.

c. The schedule proposed by the Staff in their November 27 Memorandum, which is the only one we have received, has similar problems -- placing priority on procedure instead of on improving Indian Point safety. More time is allowed for avoiding issues (objections to petitioners, objections to contentions, motions for summary disposition) than for dealing with them. No provision is made for Reply Findings of Fact.

Rather than propose our own schedule in this Response, we urge the Board to adopt a schedule which places priorities on digging out facts, not on papering them over. We understand that UCS/NYPIRG is submitting a proposed schedule; we concur with the general approach they are taking.

d. Staff claims (pages 9-11) some sort of immunity from discovery proceedings. We strenuously object. Since all staff work is accessible to the public under the Freedom of Information Act, we see no rationale for hindering that access. The existence of an NRC Public Documents Room in Washington has no bearing on a proceeding that the Commission has ordered be held "in the vicinity of Indian Point." Furthermore, previous staff decisions (i.e. the licensing of Indian Point 2 and 3) are the most basic questions at issue in this case. If anything, Staff should be held to a higher standard of discovery than any other party. They are, after all, public employees whose sole charter is to represent the interests of the American people who pay their salaries.

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ATTACKS ON OUR PETITION FOR LEAVE TO INTERVENE

The three "defendants" in this proceeding, Consolidated Edison, the State Power Authority, and the NRC staff, seem determined to avoid issues wherever possible. In addition, they seek to bury intervenors under an avalanche of paper and legalisms. While a certain amount of procedural formality is essential to the orderly and effective proceeding of this case, an excess of legalistic technicalities will smother any hopes of reaching a recommendation and decision based on facts. Perhaps that is what the Staff and Licensees wish, but it is not in the interests of the people most directly affected -- the neighbors of Indian Point -- and it is directly contradictory to Orders by the Nuclear Regulatory Commission throughout this proceeding.

It is imperative that the Atomic Safety and Licensing Board set a proper tone early in this proceeding. As NRC Commissioner Peter Bradford has stated, intervenors should be given "exquisite procedural courtesy." The Staff and Licensees should be directed to confine their efforts to helping to reach a resolution of this case based on substance, and not to frustrate the intent of the NRC and the ASLB through obfuscation.

It is doubly ironic that the public, as federal and state taxpayers and as Con Edison ratepayers, is paying for Staff, PASNY, and Con Ed legal beagles. At the same time, those of us who are intervening on behalf of neighbors or others with a personal concern about Indian Point safety, must rely on volunteer lawyers and our own, often donated, personal time.

Bearing in mind that the allegations of the "defendants" do not really dignify a response, and that by responding to them we are falling into their trap and ignoring substantive issues, we offer the following brief answers to specific objections to WESPAC's petition:

a. Anti-nuclear viewpoints

PASNY (page 11) alleges that WESPAC and other parties desire to "close down the nuclear power industry." We do not take exception to the allegation, but simply point out that it has nothing whatever to do with this case. Each human being and every organization has desires for utopias; these idealistic visions generally do not stand in the way of working for interim, partial, improvements.

Yes, we would like to close down the industry -- we believe it represents an unconscionable threat to the health, safety, and financial well-being of people living in areas populated by nuclear plants and other components of the fuel cycle. Furthermore, we would like to end the nuclear weapons industry -- a connection being increasingly recognized by the NRC in the past week -- and free the world's people from the Sword of Damocles hanging over our heads.

But we are even more concerned about our own lives, homes, families, and countryside -- we live in the shadow of Indian Point -- and of the 20 million others near that shadow. We would like to close Indian Point; it is the most dangerous nuclear power plant site in the country. Even if we can't close it today, we would like to see it operated in the safest manner possible. And that, after all, is the purpose of this proceeding -- as much as the Staff and Licensees would like to avoid it.

b. Membership

All three "defendants" make various noises about membership, affidavits, standing, etc. We stand on the Fourteenth Amendment to the Constitution for our standing. As citizens, taxpayers, voters, ratepayers, and human beings whose lives and property are endangered by unsafe operation of Indian Point, WESPAC's members are directly, personally, immediately, and deeply affected by the plants' future and the outcome of this case.

We would have no trouble obtaining affidavits from the six people listed in our petition; in fact we could obtain affidavits from over a thousand WESPAC members within the endangered territory. We will provide such papers if the Board requires, but we object to the tone and the precedent -- putting paperwork higher than substantive issues.

PASNY further alleges, through a selective reading of WESPAC's bylaws, that WESPAC's "Board of Directors decides what policies and procedures WESPAC will follow, and 'members' have no active voice in management of the groups's affairs." (page 19-20). In fact, our bylaws state that the Board of Directors is elected annually by the membership, which consists of many hundreds of people, the vast majority of whom live within the Indian Point area.

Furthermore WESPAC's corporate structure does not truly determine how program-related decisions are made. WESPAC has an Administrative Committee, open to all members, which meets monthly and is frequently polled by telephone to make decisions. Several of the people mentioned in our petition are active participants in the Administrative Committee, which has formally authorized, indeed urged, WESPAC's participation in this case.

All members of WESPAC's Board of Directors and of our Administrative Committee reside within the 50-mile radius the staff deems acceptable. Therefore, even if our broader "membership" does not give us standing, our executive bodies themselves could intervene.

The Staff's attack on our petition is contained on pages 14-16 of their November 24 response (received this morning). Page 16 is missing in all copies I have been able to examine. It is therefore difficult to respond to allegations we have not seen.

c. Interest

This allegation (PASNY, page 24) does not merit a response. The answer is contained in PASNY's own manifesto at page 29, and in our Statement of Purpose, which includes improving the quality of life, preserving and expanding individual rights, and improving the environment and community of Westchester County as primary goals. Each of these goals would be directly devastated by a serious accident at Indian Point.

d. Breadth of Concern

PASNY alleges (page 30) that WESPAC's attention to issues other than nuclear power invalidates our participation in this proceeding. If this basis is accepted, PASNY and Con Edison must also be disqualified -- their primary concerns are fulfilling contracts with bondholders and making the maximum rate of return for shareholders. For each, nuclear power is only an intermittent means to that end. Unfortunately, their profits often conflict with our physical and economic health and well-being. It is up to the ASLB and the Commission to try to help resolve that conflict. WESPAC's broad range of concerns makes us more, not less, qualified to participate in this proceeding.

e. "Value"

PASNY (page 35) and Con Ed (page 21) allege that WESPAC has not proven that we can make a valuable contribution to this proceeding. While it seems premature to reach a judgement even before contentions are filed, perhaps what they mean is that our contribution will not be of value to their stockholders and bondholders.

WESPAC has been an active participant, if not a legal intervenor, in this case since its inception, filing comments or letters with the NRC on February 5, March 6, and June 18, 1980, and at other times. We have testified before numerous NRC Boards and met with the Commissioners and/or Staff several times. WESPAC has also been a legal intervenor in a number of cases before the New York State Public Service Commission relating to Indian Point. In 1981, we were granted \$1000. by the New York State Consumer Protection Board for expenses relating to our participation in PSC Case 27869, relating to replacement fuel costs for the October 1980-June 1981 Indian Point Unit 2 outage.

Our record speaks for itself -- and it is a far better record than the Licensees' evasion, delays, and obfuscation which have plagued this case from its inception.

f. Representation

Staff (page 15 -- we didn't get page 16) charges that the joint representation of WESPAC by an officer (myself, Charles Scheiner, as co-chairperson) and an attorney (Alan Latman) is a problem. The staff and the utilities are represented by numerous attorneys, all paid and full-time, and that seems OK. Neither Mr. Latman (who is a Professor of Law at NYU Law School and a Partner in Cowan, Liebowitz, and Latman, P.C.), nor myself (a Principal Systems Engineer with Electronics for Medicine/Honeywell) are being paid for working on this case; each of us has employment which demands more than full-time attention, as well as other interests. By working together, spelling each other at different stages of the proceeding, we hope to match 1% of the legal and personnel resources available, at taxpayer and ratepayer expense, to the Staff and the Licensees.

LICENSEES' MOTION FOR STAY OR DISMISSAL

On November 25. Con Ed and PASNY filed a Motion for a stay of the Commission's January 8 and September 18 order or for dismissal of this proceeding, or for direct certification to this Commission. This motion, contrary to its claims, does directly "seek to hinder ... the examination by the Commission into the safety of the Indian Point units." The NRC's task force on interim operation was specifically designated to do a quick evaluation in advance of an in-depth investigation of Indian Point safety. Its conclusions should in no way prejudice this proceeding.

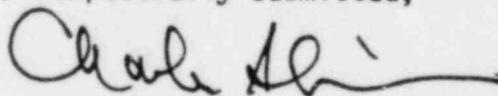
Constitutional issues raised about compensation for property can be raised when and if the NRC makes a determination which involves shutdown -- not before issues are even considered.

The Licensee's motion is wholly without merit and should be denied summarily.

CONCLUSION

We urge the Board to get past the obstacles and get on with the timely resolution of the life-and-death issues in this case -- the acceptability and/or improvement of the safety of Indian Point Units 2 and 3.

Respectfully submitted,



Charles A. Scheiner
Co-chairperson, WESPAC

Dated: December 1, 1981
Served at the pre-hearing conference in Croton, NY 12/2/81.

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