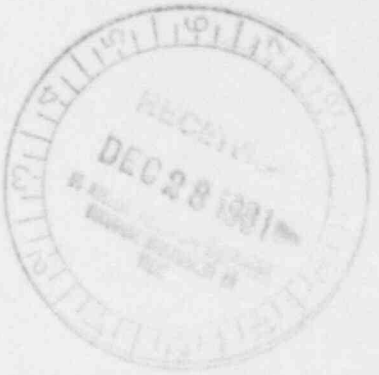

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Louis J. Carter, Chairman
Frederick J. Shon
Dr. Oscar H. Paris

In the Matter of	)	
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.	)	Docket Nos.
(Indian Point, Unit No. 2)	)	50-247 SP
	)	50-286 SP
POWER AUTHORITY OF THE STATE OF NEW YORK	)	
(Indian Point, Unit No. 3)	)	

POWER AUTHORITY'S REPLY TO AMENDED PETITIONS FOR LEAVE TO INTERVENE, AND ANSWER TO PETITION FOR LEAVE TO INTERVENE OF RICHARD L. BRODSKY

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I. UNION OF CONCERNED SCIENTISTS (UCS)

With an air of injured innocence, the small group which controls UCS (the Cambridge Group)[1] seeks to convince this Atomic Safety and Licensing Board (Board) that the issues raised in the Power Authority's Answer to Petitions for Leave to Intervene (Nov. 24, 1981) (Authority's Answer) are new or, as far as UCS is concerned, unheard of. Were it not for the exclusion of UCS from other proceedings on the precise ground that it failed to particularize its interests,[2] that air of injured innocence might have freshness.

Regarding scaremongering and "unseemly polemics," the Cambridge Group must be familiar with the following comment on a UCS "study"[3] about the release of gas into the atmosphere at Three Mile Island. The New York Times wrote that UCS'

> unwillingness to accept even an admittedly safe plan casts doubt on the good faith of the Concerned Scientists. Worse, the [UCS'] tortured reasoning and far-fetched proposals will probably heighten the very fears they are intended to allay.

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1. See text at 13 & n.1, infra.

2. See, e.g., In re Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 and 2), 9 N.R.C. 402, 404 (1979).

3. See UCS, Decontamination of Krypton-85 from Three Mile Island Nuclear Plant (1980).

Fanning the Fears at Three Mile Island, N.Y. Times, May 16, 1980, § 1, at 30, col. 1 (editorial) (Attached as Exhibit A).

Injured innocence aside, UCS' response does allege with stark candor an injury which this Board should put to rest: "UCS has a financial interest in assuring the safety of the Indian Point facility." Amendment to UCS' Petition for Leave to Intervene, and Response to NRC Staff, Consolidated Edison, and PASNY Challenges to UCS Standing to Intervene at 6 n.3 (Dec. 10, 1981) (UCS' Amended Petition). UCS states that, based upon the financial injury to UCS, it has a right to intervene in this proceeding. See id.

One of UCS' "public interest" companions--apparently representing a different public, a different interest--states, "In the public-interest jungle, natural selection tends to eliminate redundant organizations." Response of the Greater New York Council on Energy to NRC Staff and Licensee Answers to the GNYCE Petition for Leave to Intervene and to Prehearing Memoranda at 10 (Dec. 9, 1981).

That is exactly what a proceeding like this could become: a jungle in which sundry political groups use the proceeding to fill their coffers, or to use UCS' phrase, "for its survival." UCS' Amended Petition at 6 n.3. The

Cambridge Group has done well. Its tom-toms raised $1.6 million in 1980.[1]

A. UCS' STEADFAST OPPOSITION TO THE USE OF NUCLEAR POWER AS AN ENERGY SOURCE REQUIRES IT TO PRESENT ITS POLITICAL VIEWS IN POLITICAL FORUMS AND PRECLUDES IT FROM PARTICIPATION IN THIS INVESTIGATORY-ADJUDICATORY PROCEEDING

UCS' goal is to eliminate nuclear power as a viable energy source for this nation, contrary to decisions made by the nation's elected officials and by judicial institutions.[2]

Even UCS' plea of misquote (not by the Authority but by the Boston Globe) constitutes a factual defense to only one of its statements: whether Robert Pollard, the UCS spokes-

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1. See Foundation for Public Affairs, Public Interest Profiles at P-87 (1980).

2. See Atomic Energy Act of 1954, 42 U.S.C. §§ 2011, 2013(d); TVA v. Hill, 437 U.S. 153, 194 (1978); Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 557-58 (1978).

Here, UCS alleges that its "basic position on nuclear power" is consistent with congressional goals and mirrors the posture it has taken on the shutdown of the Indian Point facilities. UCS' Amended Petition at 13. UCS is confused. The group states that it "clearly indicated" in its Petition for Decommissioning of Indian Point Unit 1 and Suspension of Operation of Units 2 & 3 (Sept. 17, 1979) (Petition), that "it believed that Indian Point Units 1 and 2 should be shut down only until they are rendered safe." UCS' Amended Petition at 13 (emphasis added).

However, UCS actually argued that "the provisional operating license for Indian Point Unit 1 should be revoked and the plant decontaminated and decommissioned," Petition at 2, and "Units 2 and 3 should not resume operation, unless and until" UCS' demands are met. Id. at 3-4 (emphasis added).

man, did or did not say that he views "[a] nuclear plant license [to be] nothing more or less than a murder license," matters little. See N-Protest Attracts Thousands, B. Globe, May 7, 1979, at 1, col. 4 (Attached as Exhibit B); Authority's Answer at 4, 39 n.1; UCS' Amended Petition at 12-13. UCS allows all of Mr. Pollard's other statements and those of Dr. Henry W. Kendall, the leader of UCS' Cambridge Group, and statements attributed to UCS as an entity to stand unrefuted.[1]

Take Mr. Pollard, for example, testifying before the New York State Legislature:

> Am I opposed to nuclear power?
>
> I think so, on the ground that it is not a very wise choice.[2]

Mr. Pollard "advocat[es] that [the nation] stop going forward with nuclear powerplants."[3] Operating plants pose

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1. For the text of these statements, see Authority's Answer at 6-8. See also Fed.R.Civ.P. 8(d) ("Averments [legal and factual] in a pleading to which a responsive pleading is required . . . are admitted when not denied in the responsive pleading."). Accord, Legal Aid Society of Alameda County v. Brennan, 608 F.2d 1319, 1334 (9th Cir. 1979), cert. denied, 447 U.S. 921 (1980); Weitnauer Trading Co. v. Annis, 516 F.2d 878, 880-81 (2d Cir. 1975); Peoples Natural Gas Co. v. FPC, 127 F.2d 153, 156 (D.C.Cir.), cert. denied, 316 U.S. 700 (1942).

2. Transcript of Testimony of Robert Pollard, Hearing Before the Special Comm. on Nuclear Safety at 79 (1979) (hereinafter Pollard's Special Committee Testimony).

3. Investigation of Charges Relating to Nuclear Reactor Safety: Hearings Before the Joint Comm. on Atomic

an "undue risk to public health and safety."[1]

Because UCS must see these and like proceedings as political forums, kinds of fundraising plateaus in the "public-interest jungle," it no doubt believes that to require it to take its case to the appropriate constitutionally-designated democratic forums denies it fundamental first amendment rights. UCS' Amended Petition at 12; see id. at 6. However, this investigatory-adjudicatory proceeding before an atomic safety and licensing board is not a soapbox.[2]

Energy, 94th Cong., 2d Sess. 124 (1976) (statement of Robert D. Pollard).

1. Industry's Response to the Accident at Three Mile Island: Oversight Hearings Before the Subcomm. on Energy and the Environment of the House Comm. on Interior and Insular Affairs, 96th Cong., 1st Sess. 123 (1979) (testimony of Robert D. Pollard). See also Transcript of Testimony of Robert D. Pollard Before the Subcomm. on Energy and the Environment of the House Comm. on Interior and Insular Affairs, 97th Cong., 1st Sess. 2 (1981) (testimony regarding the Bingham Amendment to the Atomic Energy Act of 1954, Pub. L. No. 96-295, § 110, 94 Stat. 785 (1980)); State Panel Told Indian Pt. Plant Must Be Closed, N.Y. Times, May 25, 1979, § 2, at 2, col. 6; Pollard's Special Committee Testimony at 15; Industry's Response to the Accident at Three Mile Island: Oversight Hearings Before the Subcomm. on Energy and Environment of the House Comm. on Interior and Insular Affairs, 96th Cong., 1st Sess. 43 (1979) (statement of Robert D. Pollard); Transcript of Statement of Robert D. Pollard Before the N.Y. Legislature at 1 (1979); Close Indian Point Plants, Nuke Scientist Urges, N.Y. Daily News, May 25, 1979, at 6, col. 3.

2. See In re Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), 10 N.R.C. 597, 602 (1979).

B. HAVING ADMITTED THAT IT HAS NO MEMBERS, UCS HAS NO STANDING TO APPEAR IN THIS PROCEEDING

Contrary to UCS' assertion, UCS Amended Petition at 2-3, judicial concepts of standing govern this proceeding.[1] UCS labels its adherents "sponsors." UCS never denies that its "sponsors" are not members according to the legal definition by which standing is granted to organizations. Instead, UCS adopts a "more bang for the bucks" theory, contending that sponsors as contributors wield more control over its actions than would democratic self-government.

UCS appears unaware that voting control by the members of an association is required.[2] A mere "stake" is not

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1. In re Nuclear Engineering Co. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), 7 N.R.C. 737, 739-40 (1978); In re Public Service Co. (Black Fox Station, Units 1 and 2), 5 N.R.C. 1143, 1144-45 (1977); In re Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), 4 N.R.C. 610, 612 (1976).

2. See Health Research Group v. Kennedy, 82 F.R.D. 21, 26 (D.D.C. 1979); see also Cutler v. Kennedy, 475 F.Supp. 838, 840 (D.D.C. 1979).

10 C.F.R. Part 2 also sets forth the rules applicable to this adjudicatory hearing. UCS argues that, notwithstanding the Nuclear Regulatory Commission's (Commission's) order that these regulations "should control" this proceeding, the standing regulations are nonetheless inapplicable to the hearing before this Board. UCS' Amended Petition at 3; see Memorandum and Order at 2 (Sept. 18, 1981) (September 18 Order). The Commission fully intended that UCS be held to regulatory standards, as the Commission clearly enumerated the occasions when the Licensing Board may depart from these provisions, and further stated that "[i]n other respects, except as provided elsewhere in this Order, 10 CFR Part 2 will control." Id. Nowhere in the Commission's order is it stated that these regulations do not pertain to the standing of intervenors in this pro-

enough to grant standing to an organization to intervene in an adjudicatory proceeding, for "[s]urely, something more is required and must be found in the special relationship between an association and its members."[1]

UCS has no such special relationship and can have no such relationship, for it has no members.

C. UCS' OWN FINANCIAL INTEREST IN THE OUTCOME OF THIS HEARING DOES NOT CONSTITUTE A LEGALLY COGNIZABLE INJURY TO IT

UCS has been denied standing to intervene in a proceeding for failure to particularize its interests.[2] UCS again fails to state its injury as is required by the law.[3]

As Judge John J. Sirica wrote:

> [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 . . ., on the one hand, and the control exercised by members of an organization as they regularly elect

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ceeding. UCS has, in effect, admitted in its confusion that it does not pass the Commission's test for standing to intervene in this proceeding.

1 Health Research Group v. Kennedy, 82 F.R.D. at 25.

2. In re Virginia Electric & Power Co., 9 N.R.C. at 404.

3. UCS endeavors to equate a desire to intervene with a legal interest. See UCS' Amended Petition at 6 n.3. However, "something more is required." Health Research Group v. Kennedy, 82 F.R.D. at 25. Financial loss requires "something more" to substantiate UCS' stake in this proceeding, a factor UCS omits in its recitation.

their governing body, on the other.

Health Research Group v. Kennedy, 82 F.R.D. at 27 (emphasis in original).

Only a special kind of eliteness allows a tiny controlling group to contend that it best knows the proper course for an organization or a nation. UCS' purposes are broad and diverse. They do reflect concerns about matters of interest to the general public.[1] However, the very breadth of UCS' good intentions dilutes whatever control is exercised by those who answer direct mail with contributions. See id. at 28. Although UCS states that "[a]n organization's interest in pursuing the goals upon which is [sic] was founded has been deemed sufficient to confer standing," UCS' Amended Petition at 5, the Supreme Court of the United

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1. These goals are:

> 1. To conduct scientific and technical analysis and research in the public interest;
>
> 2. To disseminate the results of this research and analysis broadly to the general public;
>
> 3. To present its views and assist members of the public in presenting their views before administrative agencies and the courts.

Articles of Incorporation of Union of Concerned Scientists Fund, Inc. at 1 (Sept. 19, 1973) (emphasis added); Articles of Amendment to the Articles of Incorporation of Union of Concerned Scientists Fund, Inc. (Nov. 15, 1978) (emphasis added).

States has accepted for review the very decision upon which UCS relies.[1]

Before the forum to which UCS should address its remarks, the Congress, UCS has admitted that its "sponsors" who, having nothing to do with the selection of its board of directors or staff, exert no control over their actions:

> We have a management structure up in Cambridge, Mass., an executive director and an assistant director and a board of directors which meets occasionally to discuss major policy issues. The management together with the board decides when we are going to make various moves, what cases we will get into and what policy positions the organization will take.[2]

UCS has failed to demonstrate the required assurance that its sponsors, and not its autocratic enclave, are before this Board. There is no legal basis to grant standing to a "mere[] . . . well-informed point of view." Health Research Group v. Kennedy, 82 F.R.D. at 27.

While UCS has stated that it represents its non-existent "members'" interest in personal safety, Joint Petition for Leave to Intervene by the Union of Concerned Scientists

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1. See Coles v. Havens Realty Corp., 633 F.2d 384 (4th Cir. 1980), cert. granted, 101 S.Ct. 1972 (1981).

2. Industry's Response to the Accident at Three Mile Island: Oversight Hearings Before the Subcomm. on Energy and the Environment of the House Comm. on Interior and Insular Affairs, 96th Cong., 1st Sess. 56-57 (1979) (statement of Robert D. Pollard accompanied by Ellyn R. Weiss) (emphasis added).

and the New York Public Interest Research Group at 2-3 (Nov. 6, 1981), UCS has admitted that its concern is making money. It states that it "stands to be directly and severely affected . . . its financial health and vitality" by the outcome of this proceeding. UCS' Amended Petition at 6 n.3. UCS' admission that it, as a matter of right is entitled to intervene so that it may reap pecuniary profits from this proceeding, is as bold as its budget: $1.6 million.[1]

D. UCS' PARTICIPATION IS DESIGNED TO CONFUSE RATHER THAN CLARIFY, AND THUS ITS DISCRETIONARY INTERVENTION IN THIS PROCEEDING IS NOT IN THE PUBLIC INTEREST

UCS has not shown that its "participation may reasonably be expected to assist in developing a sound record."[2] Instead, it has shown that its participation may assist in developing a sound budget. However, its non-fundraising interests will be protected[3] even if UCS is not allowed to burden, broaden and delay this proceeding.[4]

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1. Foundation for Public Affairs, Public Interest Profiles at F-87 (1980).

2. In re Portland General Electric Co., 4 N.R.C. at 616; In re Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), 7 N.R.C. 381, 387, aff'd, 7 N.R.C. 473 (1978). See Authority's Answer at 33.

3. See Authority's Answer at 3-8, 15.

4. See In re Detroit Edison Co., 7 N.R.C. at 387-88.

Already, UCS has urged the Board to adopt a "general question" which runs contrary to the Commission's intent.[1] The Commission gave careful thought to "the issues it wishe[d] to be addressed in the adjudication." September 18 Order at 1. It designated the logical order to be followed. It mandated that "the proceeding [is to] remain[] clearly

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1. In its Contentions of Joint Intervenors Union of Concerned Scientists and New York Public Interest Research Group at 3 (Dec. 2, 1981) (Joint Intervenors' Contentions), UCS seeks to revise the Commission's orders of January 8, 1981, and September 18, 1981. The Commission formulated the question thusly:

> What risk may be posed by serious accidents at Indian Point 2 and 3, including accidents not considered in the plants' design basis, pending and after any improvements described . . . below?

Memorandum and Order at 3 (Sept. 18, 1981) (September 18 Order). The Commission quotes its statement of interim policy on "Nuclear Power Plant Accident Considerations under the National Environmental Policy Act of 1969," 45 Fed.Reg. 40,101 (1980), which states that "attention shall be given both to the probability of occurrence of [radiation] releases and to the environmental consequences of such releases." See September 18 Order at 3 n.5. UCS has revised the Commission's query, focusing only upon consequences:

> What are the individual and societal consequences of an accident at Indian Point (including accidents which exceed the design basis of the Indian Point units) to the health, safety, and property of the population surrounding the Indian Point site?

Joint Intervenors' Contentions at 3 (emphasis deleted). The Commission clearly stated that the Board should focus clearly upon the questions asked by the Commission. September 18 Order at 2.

focused on the issues set forth in [that] Order." Id. at 2. However, UCS even seeks to alter the logical sequence of the Commission's issues.

UCS has reorganized and restated the words of the Commission.[1] Its effort to bypass this Board has been rebuffed by the United States Court of Appeals for the Second Circuit.[2] Yet, it continues to elevate emergency planning issues on the Board's agenda. It seeks to do this before the Board has an opportunity to learn the facts and nature of the emergency being planned for. UCS puts the emergency, consideration of the risk of a serious accident at Indian Point, last; the Commission put it in its first and second issues. September 18 Order at 3, 4; In re Consolidated Edison Co. (Indian Point Units 2 and 3), 13 N.R.C. 1, 7-8 (1981).

II. NEW YORK PUBLIC INTEREST RESEARCH GROUP, INC. (NYPIRG)

NYPIRG[3] has failed to respond to or to explain most of the defects in its original petition for leave to inter-

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1. See Joint Intervenors' Contentions at 3, 33, 38, 46 (Dec. 2, 1981).

2. Union of Concerned Scientists v. NRC, No. 81-4188 (2d Cir. Dec. 15, 1981) (petition for review dismissed).

3. Inasmuch as Parents Concerned About Indian Point (Parents) is but a branch or child of NYPIRG, all of the allegations contained in this section apply with equal force to Parents.

vene.[1] NYPIRG's Petition for Leave to Amend Portions of Joint Petition to Intervene (Dec. 2, 1981) (NYPIRG Amended Petition). As such, the following allegations should be deemed admitted:[2] (1) NYPIRG's steadfast opposition to the use of nuclear power as an energy source precludes it from participating in this proceeding; (2) NYPIRG does not have an interest specific to itself which might be adversely affected if the proceeding has one outcome rather than another; (3) NYPIRG may not litigate the claims of its members because the interests it seeks to protect are not germane to the organization's purpose; (4) because NYPIRG's has not proffered evidence that it will contribute positively to this proceeding, discretionary intervention is inappropriate; and (5) NYPIRG's scaremongering conduct bars its participation in this proceeding.

III. WESTCHESTER PEOPLE'S ACTION COALITION, INC. (WESPAC)

A. WESPAC'S STEADFAST OPPOSITION TO THE USE OF NUCLEAR POWER AS AN ENERGY SOURCE PRECLUDES IT FROM PARTICIPATING IN THIS PROCEEDING

WESPAC admits that its ultimate goal is to terminate

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1. Apparently, Joan Holt petitioned for leave to intervene in this proceeding prior to receiving proper authorization from the NYPIRG State Board. See NYPIRG Amended Petition: Attachment, Late Proposal, To NYPIRG State Board from Mel Goldberg (Dec. 6, 1981).

2. See note 1, supra, at 8.

the use of nuclear power as a viable energy source in this country. In its Amended Petition, WESPAC states:

> 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 . . . and free the world's people from the Sword of Damocles hanging over our heads.

WESPAC's Pre-hearing Memorandum and Response to Staff and Utility Answers to Petitions for Leave to Intervene at 5 (Dec. 1, 1981) (WESPAC Amended Petition) (emphasis added). These statements reinforce the charge that WESPAC does not "look[] upon [this] proceeding as a forum for resolving technical questions in the fairest and most comprehensive manner, [but] views [it] merely in terms of a podium for soapbox oratory."[1]

The Commissioners have mandated that the scope of the hearing be limited to issues relating specifically to Indian Point. September 18 Order at 2. Participation by WESPAC cannot help but burden, broaden, and delay the proceeding and thereby serve an interest other than that of the public.

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1. In re Pennsylvania Power and Light Co., 10 N.R.C. at 602.

B. WESPAC HAS NOT DEMONSTRATED THAT ITS MEMBERS HAVE AN "INTEREST" IN THIS PROCEEDING

WESPAC has chosen to reject this Board's order that it submit affidavits from the persons named in its petition for leave to intervene verifying their residence and their "interest" in this proceeding.[1]

At the December 2, 1981 prehearing conference, the Board directed all intervenors to cure defects in their petitions for leave to intervene. WESPAC's response is that it "object[s] to the tone and the precedent [of] putting paperwork higher than substantive issues."[2] WESPAC Amended Petition at 5.

The NRC requires a party seeking intervention to demonstrate an "interest" which may be affected by the proceeding. 10 C.F.R. § 2.714(a)(1). An organization may establish its own interest through the "interests" of its

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1. See In re Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), 9 N.R.C. 377, 393 (1979); In re Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), 8 N.R.C. 575, 583 (1978); In re Consumers Power Co. (Midland Plant, Units 1 and 2), 8 N.R.C. 275, 277 (1978).

2. WESPAC claims that it "would have no trouble obtaining affidavits from the six people listed in [its] petition [for leave to intervene]," WESPAC Amended Petition at 5, and that it "will provide such papers if the Board requires." Id. The Board has already so required. In its amended petition, WESPAC "urge[d] the Board to get past the obstacles." Id. at 8. Yet, its continued refusal to provide necessary documents threatens to cause further delay.

members.[1] WESPAC, however, has so little interest it prefers to flout the instructions of this Board and refuses to file affidavits even though, in WESPAC's words, "it would have no trouble in obtaining affidavits." WESPAC Amended Petition at 5.

C. WESPAC HAS NOT SHOWN THAT ITS OWN INTERESTS ARE LEGALLY COGNIZABLE

WESPAC has demonstrated no interest specific to itself which might be adversely affected if the proceeding has one outcome rather than another.

The Supreme Court has stated 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 [confer standing].[2]

Even if WESPAC had asserted a generalized harm, it must show a "distinct and palpable injury" to itself.[3]

Although WESPAC argues that its "goals would be directly devastated by a serious accident at Indian Point," WESPAC Amended Petition at 6, it fails to explain how its "goal" is cognizable under the Atomic Energy Act.

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1. See, e.g., In re Detroit Edison Co., 8 N.R.C. at 583.

2. Sierra Club v. Morton, 405 U.S. 727, 739 (1972).

3. Warth v. Seldin, 422 U.S. 490, 501 (1975); In re Ten Applications for Low-Enriched Uranium Exports to Euratom Member Nations, 6 N.R.C. 525, 531 (1977).

D. WESPAC MAY NOT LITIGATE THE CLAIMS OF ITS MEMBERS BECAUSE THE INTERESTS IT SEEKS TO PROTECT ARE NOT GERMANE TO THE ORGANIZATION'S PURPOSE

WESPAC claims that its "broad range of concerns makes [it] more, not less, qualified to participate in this proceeding." WESPAC Amended Petition at 6. The issue is not whether WESPAC is "qualified," but whether WESPAC is an appropriate agent to represent a diverse membership with varied interests. WESPAC confuses the reason for the following rule: an organization must demonstrate that "the interests it seeks to protect are germane to [its] purpose."[1] Judge Sirica has explained the reason for that rule.

> This requirement helps insure, not only that the party before the Court be a competent and effective advocate on the issues presented, but also that the members of the plaintiff organization have had an opportunity to influence their representatives on positions related to the particular member injury at issue. Like the membership requirement . . . this too ultimately insures that it is the injured party, and not merely a well-intentioned advocate, who is, at least in effect, before the Court.[2]

Moreover, it protects against "the possibility that decisions made by an [organization's] leadership do

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1. Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333, 343 (1977).

2. Health Research Group v. Kennedy, 82 F.R.D. at 28 (emphasis in original and added).

not . . . reflect the views of its constituency."[1]

WESPAC's purposes, wide-ranging and disparate, are

> [t]o stimulate among the residents of Westchester County, New York, through an exchange of ideas and cooperation among diverse organizations, a fuller understanding of the issues which offset the quality of life including, but not limited to, the environment, economic security, the preservation and expansion of individual rights, the equality of all peoples, and the promotion of world peace, all for the betterment of Westchester County, America and the World.[2]

WESPAC also combats racism and sexism[3] and is concerned about United States imperialism, prison overcrowding, and anti-union corporations.[4]

Clearly, the stakes and interests of WESPAC's members "are too diverse and possibilities of conflict too obvious to make [WESPAC] an appropriate vehicle to litigate the claims of its members" in this proceeding.[5]

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1. Simone, Associated Standing and Due Process: The Need for an Adequate Representational Scrutiny, 61 B.U.L.Rev. 174, 179 (1981).

2. Certificate of Incorporation of Westchester People's Action Certificate, Inc. at 3 (filed Sept. 22, 1975) (emphasis added).

3. Emergency Planning Around U.S. Nuclear Powerplants: Nuclear Regulatory Commission Oversight Hearings Before a Subcomm. of the House Comm. on Government Operations, 96th Cong., 1st Sess. 340 (1979) (prepared statement of Charles Scheiner).

4. WESPAC Newsletter, Jan./Feb. 1981, at 7, 10, 12.

5. Associated General Contractors v. Otter Tail Power

E. BECAUSE WESPAC HAS NOT PROFFERED EVIDENCE THAT IT WILL CONTRIBUTE POSITIVELY TO THIS PROCEEDING, DISCRETIONARY INTERVENTION IS INAPPROPRIATE

WESPAC has not met its burden of showing that the requirements for discretionary intervention have been met. See Authority's Answer at 33. "Foremost among the factors which are to be taken into account in deciding whether to allow participation in this proceeding as a discretionary matter is whether such participation would likely produce 'a valuable contribution . . . to [the] decision-making process.'"[1]

WESPAC indicates that it has filed "comments or letters with the NRC [at various times regarding Indian Point,] testified before numerous NRC Boards, . . . met with the Commission and/or Staff several times," and has participated in cases before the New York State Public Service Commission concerning utility rates.[2] WESPAC Amended Petition at 7. However, WESPAC has failed to demonstrate that it has yielded information which could contribute to this proceeding or that any of its staff members are "qualified by

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Co., 611 F.2d 684, 691 (8th Cir. 1979).

1. See, e.g., In re Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), 4 N.R.C. 631, 633 (1976).

2. WESPAC's belief that its involvement with rate hearings will somehow contribute to this proceeding is further proof that its participation will unduly delay and contribute to confusion in this proceeding.

either specialized education or pertinent experience to make a substantial contribution."[1]

IV. WEST BRANCH CONSERVATION ASSOCIATION (WBCA)

A. WBCA HAS NOT SHOWN THAT ITS OWN INTERESTS ARE LEGALLY COGNIZABLE

WBCA maintains that "[t]o say that [it is] not providing sufficient injury is a farce." West Branch Conservation Association's Amendment to Intervenor Application of Nov. 2, at 2 (Dec. 2, 1981) (WBCA Amended Petition). However, the Authority has argued that WBCA must show a "distinct and palpaple injury" to itself to be granted standing to intervene.[2] Instead, WBCA has focused its attention upon the particularization of its members' interests. WBCA Amended Petition at 1-2. Thus, WBCA has failed to demonstrate that a "cognizable interest [specific to itself] might be adversely affected if the proceeding has one outcome rather than another."[3]

In addition, because WBCA has not proffered evidence that it will contribute positively to this proceeding,

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1. In re Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), 5 N.R.C. 1418, 1422 (1977).

2. Warth v. Seldin, 422 U.S. at 501; In re Ten Applications for Low-Enriched Uranuim Exports to Euratom Member Nations, 6 N.R.C. at 531; see Authority's Answer at 24.

3. In re Nuclear Engineering Co., 7 N.R.C. at 743.

discretionary intervention is inappropriate. See Authority's Answer at 33-35.

V. GREATER NEW YORK COUNCIL ON ENERGY (GNYCE)

A. GNYCE'S STEADFAST OPPOSITION TO THE USE OF NUCLEAR POWER AS AN ENERGY SOURCE PRECLUDES IT FROM PARTICIPATING IN THIS ADJUDICATORY PROCEEDING

GNYCE claims that the eradication of nuclear power as an energy option is not its goal. Response of the Greater New York Council on Energy to NRC Staff and Licensee Answers to the GNYCE Petition for Leave to Intervene and to Prehearing Memoranda at 4 (Dec. 9, 1981) (GNYCE Intervention Response). However, Dean Corren, director of GNYCE, admits that he finds flattering and is "proud" of the precise statements he made which admit that the demise of nuclear power is his goal. Id. at 4-5.[1]

He should go directly to Congress for it is there that

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1. GNYCE alleges, that "a stable energy future" does not include nuclear technology. Anyone Can, Alternate Currents with the Greater New York Council on Energy, Fall 1980, at 7; see Authority's Answer at 13-14.

In a fitful tantrum, GNYCE terms the Authority's arguments "silly, irresponsible, and unworthy of any party to this proceeding;" "ludicrous;" "fatuous;" "wild and totally unsubstantiated; "without substance, merit or even consistancy [sic];" "usually disingenuous, at best specious, and without exception counter-productive to the task of this proceeding;" and "ideological, unsupported, or frivolous in nature." GNYCE's Intervention Response at 5-7. The Authority has provided both legal and factual bases for all the arguments it has raised which are pertinent to GNYCE. See Authority's Answer at 3-6; 10 n.1; 13-18; 22-25; 31-32; 33-35.

the nation's elected legislative branch decided that nuclear power is to be a viable energy source.[1]

GNYCE argues that "[i]n the public interest jungle, natural selection tends to eliminate redundant organizations." GNYCE Intervention Response at 10. Simultaneously, GNYCE argues that to bar an intervenor opposed to nuclear power from an administrative court would deny it fundamental first amendment rights. Id. at 4. GNYCE is free to seek from Congress and the people revision of the Atomic Energy Act. It may be entitled to engage in jungle warfare in a "public interest jungle," but not in an investigative-adjudicatory proceeding held pursuant to the laws of the United States. Those who participate here must "look[] upon [this] proceeding as a forum for resolving technical questions in the fairest and most comprehensive manner [and not] merely in terms of a podium for soapbox oratory."[2]

B. HAVING FAILED TO PROVE THAT IT HAS MEMBERS, GNYCE HAS NO STANDING TO APPEAR IN THIS PROCEEDING

GNYCE maintains that its "filing of an amended petition

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1. See Atomic Energy Act, 42 U.S.C. §§ 2011, 2013(d); see also Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. at 557-58 (Congress is the proper forum for raising basic policy questions about nuclear power).

2. In re Pennsylvania Power & Light Co. 10 N.R.C. at 602.

including affadavits [sic]" satisfies the legal requirements for standing in this proceeding. GNYCE Intervention Response at 6. The Affidavit of Andrew Rosenbloom Authorizing Representation by the Greater New York Council on Energy (Dec. 10, 1981), merely shows that someone has granted GNYCE the authority to represent him in this proceeding. See Authority's Answer at 31-32. However, GNYCE's Amended Petition does not show that this someone is a "member" under any appropriate legal standard. See Authority's Answer at 15-22.

> So long as the courts insist on some sort of substantial nexus between the injured party and the organization plaintiff--a nexus normally 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.[1]

GNYCE has submitted no proof that Andrew Rosenbloom, on whose behalf it seeks intervenor status has any electoral

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1. Health Research Group v. Kennedy, 82 F.R.D. at 26-27 (emphasis in original and added); cf. In re Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), 9 N.R.C. 439, 459 (1979) ("[T]here may be a difference between [the petitioner's] 'constituency' and its 'members.'"). See also Hunt v. Washington State Apple Advertising Commission, 432 U.S. at 344.

control over GNYCE or its board of directors, if there be such a board or members.[1]

Additionally, Mr. Rosenbloom, in his affidavit, fails to specify that his interests are set forth in GNYCE's petition for leave to intervene. Failure to attest to this requirement is another ground upon which standing has been denied.[2]

C. BECAUSE GNYCE HAS NOT PROFFERED EVIDENCE THAT IT WILL CONTRIBUTE POSITIVELY TO THIS PROCEEDING, DISCRETIONARY INTERVENTION IS INAPPROPRIATE

GNYCE has not met its burden of showing that the requirements for discretionary intervention have been met. See Authority's Answer at 33. Whether GNYCE is or is not the "fittest," it has not shown that its "participation may reasonably be expected to assist in developing a sound record."[3] Besides, other means are available to protect GNYCE's interests, if any, and its intervention will burden, broaden, and delay this proceeding.[4]

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1. See, e.g., Health Research Group v. Kennedy, 82 F.R.D. at 26-27.

2. In re Consumers Power Co., 8 N.R.C. at 277.

3. In re Portland General Electric Co., 4 N.R.C. at 616; In re Detroit Edison Co., 7 N.R.C. at 387.

4. See id., 7 N.R.C. at 387, 388. GNYCE also discusses the scaremongering conduct of others even though that issue has not yet been raised against it. The Authority will respond to the answers of those against whom the motion to exclude fear as an issue in this proceeding has been directed. The Authority reserves the right to then address

VI. NEW YORK CITY AUDUBON SOCIETY (NYC AUDUBON)

NYC Audubon has failed to respond to defects in its petition for leave to intervene. As such, the following allegations should be deemed admitted: (1) NYC Audubon does not have an interest specific to itself which might be adversely affected if the proceeding has one outcome rather than another; and (2) because NYC Audubon has not proffered evidence that it will contribute positively to this proceeding, discretionary intervention is inappropriate.

VII. ROCKLAND CITIZENS FOR SAFE ENERGY (RCSE)

A. RCSE HAS NOT DEMONSTRATED THAT THE PERSONS IT PURPORTS TO REPRESENT ARE ACTUALLY MEMBERS

RCSE has refused to establish that the named persons in its petition for leave to intervene are actually members of RCSE. RCSE has submitted affidavits from Helga Ancona and Wayne Browning in which they state that they are "member[s]." Affidavit of Helga Ancona (Dec. 10, 1981); Affidavit of Wayne Browning (Dec. 9, 1981). However, mere recitation of membership is insufficient. Rather, RCSE must demonstrate that Ms. Ancona possesses the minimum amount of electoral control necessary to qualify her as a member.[1]

GNYCE's comments in regard thereto.

1. Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333; Health Research Group v. Kennedy,

RCSE has additionally failed to respond to other defects in its original petition. As such, the following allegations should be deemed admitted: (1) RCSE does not have an interest specific to itself which might be affected if the proceeding has one outcome or another; and (2) because RCSE has not proffered evidence that it will contribute positively to this proceeding, discretionary intervention is inappropriate.

VIII. MEMBERS OF THE COUNCIL OF THE CITY OF NEW YORK (MEMBERS)

A. MEMBERS HAVE FAILED TO OBTAIN PROPER AUTHORIZATION

No resolution or document submitted by the Members authorizes them to intervene on behalf of the Council of the City of New York.

B. THE MEMBERS' INTERESTS WILL BE ADEQUATELY REPRESENTED IN THIS HEARING BY OTHER PUBLIC AGENCIES SEEKING PARTICIPATION AS REPRESENTATIVES OF INTERESTED STATES

The Members, in their Petition for Leave to Amend Petition for Intervention of New York City Councilmembers and to Add Eight Additional Signatories (Dec. 10, 1981), have not refuted the Authority's showing that the Member's interests cannot properly be expressed by the New York State Assembly and its Special Committee on Nuclear Power Safety, and the Attorney General of the State of New York, see

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82 F.R.D. 21.

Authority's Answer at 35-38; neither have the Members addressed the fact that the Authority has not opposed the intervention of the County of Rockland, Alfred B. Del Bello, Executive of the County of Westchester, or the Village of Buchanan, see id. at 2, all of which have sought to participate in this proceeding as representatives of interested states or counties under 10 C.F.R. § 2.715(c).

The plants are located within Westchester County, within the Village of Buchanan, and 10 miles from the County of Rockland. Petition for Intervention of Alfred B. Del Bello at 1 (Nov. 6, 1981); Petition for Leave to Intervene of the County of Rockland at 2 (Nov. 6, 1981). The concerns of residents of these jurisdictions close to the plants are the same concerns the Members present. Thus, regarding personal and public health and safety, it is geographically self-evident that these intervenors will adequately represent the interests of citizens who live farther away.

C. THE RULE ALLOWING INTERVENTION OF INTERESTED STATES WAS NOT INTENDED TO ALLOW THE INTRODUCTION OF DUPLICATIVE EVIDENCE AND TESTIMONY INTO ADJUDICATORY PROCEEDINGS

The regulation which provides for the participation of representatives of interested states and agencies, as originally promulgated, provided only for the participation of state entities. 10 C.F.R. § 2.715(c) (1978). This rule was amended to include interested cities, counties, and agencies thereof as a matter of comity, because the

Commission determined that the type of "cooperation" embodied by the rule "could be extended to other units of government." 43 Fed. Reg. 17,798, 17,800 (1978) (emphasis added). However, the Commission also stated that it "is committed to developing a hearing process which will produce decisions in a timely fashion." Id. at 17,798. The Commission has reiterated this goal in this proceeding by stating that the Board should make recommendations to it so that "the Commission may make its decision within a reasonable period of time."[1] Memorandum and Order, 13 N.R.C. at 6.

Intervention by the Members, particularly when their interests are otherwise adequately represented, would necessarily further burden, broaden, and delay this proceeding.

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1. In addition, the Board is empowered to restrict duplicative and repetitive evidence in this proceeding. 10 C.F.R. § 2.714(e). Congress has provided that,

> [s]o far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function. With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it.

5 U.S.C. § 555(b) (in pertinent part) (emphasis added).

IX. RICHARD L. BRODSKY

To the extent Mr. Brodsky seeks to make a limited appearance, pursuant to 10 C.F.R. § 2.715(a), the Authority has no objection. Indeed, Mr. Brodsky's statement to this Board is consistent with a limited appearance, not intervention:

> It is not my intention to intervene actively, in the sense of conducting cross-examination or offering witnesses, but to preserve the rights of the legistlature [sic] and the people I represent to a full and fair hearing in this proceeding.

Transcript of Proceeding at 94 (Dec. 2, 1981).

As to intervention, the Authority opposes Mr. Brodsky's petition upon the following grounds:

1) Mr. Brodsky has failed to provide proof that he qualifies as an interested state under 10 C.F.R. § 2.715(c);

2) Because Mr. Brodsky has not proffered evidence that he will contribute positively to this proceeding, discretionary intervention is not approrpiate;

3) As a private litigant, Mr. Brodsky may not assert the rights of third parties under 10 C.F.R. § 2.714; and

4) Because Mr. Brodsky opposes the existence of the Indian Point power plant regardless of safety, he should not be allowed to seek relief in this proceeding.

A. MR. BRODSKY HAS FAILED TO PROVIDE PROOF THAT HE QUALIFIES AS AN INTERESTED STATE

Mr. Brodsky claims that he "qualifies as an 'interested state' pursuant to 10 C.F.R. 2.715 as a 'representative' of an affected County and affected municipalities." Petition for Leave to Intervene at 4 (Dec. 2, 1981) (Brodsky Petition). However, Mr. Del Bello, the county executive, has intervened on behalf of the county. Additionally, Mr. Brodsky has not submitted a resolution from the Westchester County Board of Legislators (County) indicating that the Board has decided to intervene in this proceeding nor has he provided an affidavit or any other document from the County stating that he is authorized to represent the County in this matter.

B. BECAUSE MR. BRODSKY HAS NOT PROFFERED EVIDENCE THAT HE WILL CONTRIBUTE POSITIVELY TO THIS PROCEEDING, DISCRETIONARY INTERVENTION IS INAPPROPRIATE

The contentions filed by Mr. Brodsky, who does not intend "to intervene actively," are but word-for-word copies of the contentions filed by the Union of Concerned Scientists and the New York Public Interest Research Group, Inc.[1] Presumably, if presented at all, they could better be presented by their authors.

Although the NRC has allowed "intervention as a matter

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1. Compare Contentions of Honorable Richard L. Brodsky (Dec. 2, 1981) (Brodsky Contentions) with Joint Intervenors' Contentions.

of discretion to some petitioners who do not meet judicial standing tests,"[1] the petitioner has the burden of showing that the requirements for discretionary intervention have been met.[2] "[B]road, generalized averments will not suffice."[3]

"Foremost among the factors which are to be taken into account in deciding whether to allow participation in the proceeding as a discretionary matter is whether such participation would likely produce 'a valuable contribution . . . to [the] decision-making process.'"[4] Accordingly, a petitioner "must specify the extent to which it will involve itself . . . and the contribution which that involvement can reasonably be anticipated to make."[5]

Mr. Brodsky contends that there are five areas in which he seeks to intervene, Brodsky Petition at 3-4, but has

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1. In re Portland General Electric Co., 4 N.R.C. at 616.

2. In re Nuclear Engineering Co., 7 N.R.C. at 745; see In re Detroit Edison Co., 7 N.R.C. at 387-88; In re Portland General Electric Co., 4 N.R.C. at 616-17.

3. In re Nuclear Engineering Co., 7 N.R.C. at 745.

4. In re Virginia Electric and Power Co., 4 N.R.C. at 633; In re Nuclear Engineering Co., 7 N.R.C. at 743-44.

5. In re Nuclear Engineering Co., 7 N.R.C. at 745. Intervenors admitted on a discretionary basis may be limited to participation in the issues they have "specified as of particular concern to them." In re Portland General Electric Co., 4 N.R.C. at 617.

he seeks to intervene, Brodsky Petition at 3-4, but has stated that he does not intend to engage in "cross-examination or offering witnesses." Transcript of Proceeding at 94 (Dec. 2, 1981). Thus, he does not even contend that his participation would constitute a valuable and significant contribution to this proceeding. He claims that he "has conducted extensive research on problems relating to emergency planning for the region surrounding the Indian Point reactors," and "has long been active in monitoring the hazards posed by the Indian Point reactors." Brodsky Petition at 2, 3. He does not demonstrate, however, that his research has yielded information that could contribute to the proceeding.

C. AS A PRIVATE LITIGANT, MR. BRODSKY MAY NOT ASSERT THE RIGHTS OF THIRD PARTIES UNDER 10 C.F.R. § 2.714

Mr. Brodsky also seeks leave to intervene, pursuant to 10 C.F.R. § 2.714, on behalf of two named persons residing in "Westchester County and/or the 9th Legislative District." Brodsky Petition at 2.

While an organization may be granted standing to represent the interests of its members,[1] an individual litigant

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1. The associational standing doctrine represents a very limited exception to the fundamental requirement of Article III of the Constitution that the complaining party be among the injured. Sierra Club v. Morton, 405 U.S. at 734-39.

normally may not assert the rights of third parties.[1]

> "[T]he general rule is that 'a litigant may only assert his own constitutional rights or immunities.'" McGowan v. Maryland, 366 U.S. 420, 429 (1961), quoting United States v. Raines, 362 U.S. 17, 22 (1960). The same rule comes into play where . . . the right asserted is not of constitutional dimensions. Warth v. Seldin, supra, 422 U.S.[490] at 499-501 [1975]. It is true . . . that in some instances the courts have found that the constitutional or statutory provision in question implies an entitlement to advance a "claim to relief [which] rests on the legal rights of third partis." Id. at 500-01. But [there is] nothing in the Atomic Energy Act or NEPA which would undergird a conclusion that either or both of those statutes contain such an implication.[2]

Accordingly, Mr. Brodsky, as a private litigant, is precluded from intervening on behalf of the two named persons or any other residents of Westchester County or the 9th Legislative District.[3]

D. BECAUSE MR. BRODSKY OPPOSES THE EXISTENCE OF THE INDIAN POINT POWER PLANT REGARDLESS OF SAFETY, HE SHOULD NOT BE ALLOWED TO SEEK RELIEF IN THIS PROCEEDING

Mr. Brodsky does not seek a safe nuclear plant. He

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1. In re Detroit Edison Co., 7 N.R.C. at 387; In re Tennessee Valley Authority, 5 N.R.C. at 1421.

2. In re Tennessee Valley Authority, 5 N.R.C. at 1421.

3. Even if Mr. Brodsky were allowed to intervene on behalf of the two named persons, he has not submitted affidavits from the named persons verifying that he is authorized to represent their interests in this proceeding.

seeks no nuclear plant at all. Almost all of Mr. Brodsky's contentions concern emergency planning. See Brodsky Contentions. His public statements indicate that he believes Indian Point should be closed regardless of the status of emergency planning in the surrounding area. Specifically, he has stated that any attempted evacuation would be disastrous and that the Commission's proposal requiring emergency evacuation plans is "'an exercise in political dishonesty.'"[1] He has also urged the Commission not to "'further distort the political process by pretending that an evacuation plan can render acceptable an otherwise unsafe facility.'"[2] These statements present a question as to whether he "looks upon [this] proceeding as a forum for resolving technical questions in the fairest and most comprehensive manner, or alternatively, whether [he] views this proceeding merely in terms of a podium for soapbox oratory."[3]

Mr. Brodsky should not be allowed to call upon the resources of this Board and the NRC to aid him in achieving

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1. Divergent Views on Evacuation, N.Y. Times, Jan. 20, 1980, at 8, col. 1.

2. Id. (emphasis added).

3. In re Pennsylvania Power and Light Co., 10 N.R.C. at 602.

his goals which are inconsistent with congressional policy,[1] and the statutory constraints of the Commission. 46 Fed. Reg. 39,573, 39,580 (1981).

The Supreme Court of the United States has affirmed that Congress' role is to establish policy regarding nuclear power.[2]

Mr. Brodsky should petition Congress for this is an improper forum and his participation will burden, broaden, and delay the proceeding.

Conclusion

Inasmuch as the defects therein have not been cured by amendment, the Power Authority of the State of New York requests that the Atomic Safety and Licensing Board deny the petitions for leave to intervene submitted by the Union of Concerned Scientists, the New York Public Interest Research Group, Inc., Parents Concerned About Indian Point, Westchester People's Action Coalition, West Branch Conservation Association, Greater New York Council on Energy, New York City Audubon Society, Rockland Citizens for Safe

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1. See Atomic Energy Act, 42 U.S.C. §§ 2011, 2013(d); Doyle v. United States, 494 F.Supp. 842, 844 (D.D.C. 1980).

2. Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. at 557-58; see TVA v. Hill, 437 U.S. at 194 ("it is . . . the exclusive province of the Congress . . . to formulate legislative policies and mandate programs and projects").

Energy, and the Council of the City of New York.

The Authority also requests this Board to deny Richard L. Brodsky's petition to intervene for the reasons stated herein.

Respectfully submitted,

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Dated: December 21, 1981

EXHIBIT A

N.Y. Times

May 16, 1980, § 1, at 30, col. 1

Fanning the Fears at Three Mile Island

The Union of Concerned Scientists, usually one of the more responsible antinuclear groups, has issued an irresponsible report on Three Mile Island.

The group was asked by Pennsylvania's Governor, Richard Thornburgh, to evaluate a proposed release of gas from inside the plant because many nearby residents are concerned about their safety. The Governor believed that a formal evaluation by nuclear critics would enhance public confidence in the process.

The Concerned Scientists quickly showed how naive the Governor was. They concluded that the venting would indeed be perfectly safe. But they nevertheless opposed the idea unless major changes are made to alleviate anxiety among those who fear, wrongly, that they are in danger. Such unwillingness to accept even an admittedly safe plan casts doubt on the good faith of the Concerned Scientists. Worse, the report's tortured reasoning and far-fetched proposals will probably heighten the very fears they are intended to allay.

The venting of radioactive krypton gas was proposed so workers could re-enter the crippled reactor and also to minimize the risk of a large, uncontrolled release. The regulators insist that the release of small doses over many days would be safe; the maximum exposure to anyone would be far less than from a chest X-ray. This is not disputed by the Concerned Scientists' panel. It agrees that the krypton must be removed and that the releases will cause no harm to physical health.

Where the panel disagrees is on how to get rid of the gas. It cites studies suggesting that perhaps 20 percent of the 200,000 people living around the reactor suffer psychological stress, and urges that further steps be undertaken to allay this anxiety. Among the possibilities: a small incinerator with a 250-foot stack to carry the hot gases up and away; or a plastic-coated tube, held aloft by a tethered balloon, to carry the gases even higher.

Many people around Three Mile Island are deeply upset. But surely this is no way to ease their minds. If anything, the sight of a balloon or tall stack looming overhead might well cause more anxiety than the release of invisible gases. And where will such reasoning end? The plant operators will eventually have to get rid of radioactive water — and may some day want to restart the reactor. Would even safe plans for doing so be forbidden, to allay unfounded fears?

The most pernicious result of the Concerned Scientists' stand may be to further reduce public confidence in the utility and in Federal regulators. They have proposed a sound plan and yet are now left looking like villains unwilling to take that extra step for safety. Governor Thornburgh would be wise to ignore the advice of his panelists, and urge the Nuclear Regulatory Commission to allow the venting as planned. The Union of Concerned Scientists seems unwilling to risk alienating its constituency no matter what the facts.

EXHIBIT B

Boston Globe
May 7, 1979, at 1, col. 4

N-protest attracts thousands

By Thomas Oliphant
Globe Washington Bureau

WASHINGTON — "I don't like it," said Ben Sebastian, not yet 10 years old, about nuclear power. "I want to live."

On the makeshift stage in front of the US Capitol, his father, singer John Sebastian, smiled down at him. And then one of the favorites of the 1960s launched into his famous song "Welcome Back."

Reaching the punch line, he pointed back at the building that houses Congress and sang: "We tease you a lot because we've got you on the spot."

In front of him, a sea of protesting humanity rose and roared. Washington once again was Demonstration City.

Conjuring up memories and themes of a decade ago, opponents of nuclear power yesterday put on the biggest show of marching strength seen here since the massive protests against the Indochina war.

In the morning, they gathered by the tens of thousands on the grassy Ellipse behind President Jimmy Carter's White House.

At noon, they marched down Pennsylvania avenue, filling a solid half of the street, from the Treasury Department to the Capitol, for more than an hour.

And all afternoon they listened to music and speeches extolling their new-found strength in the wake of the worst nuclear accident in US history at the Three Mile Island power plant in central Pennsylvania.

Inevitably, there was a numbers game played. As ever, the local police were conservative, with a crowd estimate of 65,000. As ever, the march organizers gave a higher figure: 125,000. And, as ever, reporters used to crowds were more toward the middle, at about 100,000.

Numbers aside, the organizers' achievement was considerable. The announcement that the march would be held was made just a month ago, and active planning — from scratch, with no money up front — had taken only three weeks.

"Remember May the sixth, 1979," biologist Barry Commoner shouted into the microphone. "It will be remembered years from now as the day the solar age began and the day the nuclear age died."

It was a day filled with vilification of the nuclear industry, of the government, and of Carter and Energy Secretary James Schlesinger.

"A nuclear plant license is nothing more or less than a murder license," declared former Nuclear Regulatory Commission engineer Robert Pollard. "If Carter won't help us, let's buy him a nuclear erecter set and send him home to Plains, Ga."

"I love to be here, in the shadow of the Washington Monument," said Harvard's George Wald, a veteran of many such scenes. "That great shaft is a symbol of what the government does to its people."

For the President, there were numerous threats that this suddenly national movement may try to do to him what the anti-war people helped do to Lyndon Johnson in 1968.

"Putting a man like Schlesinger in charge of energy policy is like putting Dracula in charge of a blood bank," said actress Jane Fonda, whose film "The China Syndrome" has rivaled the political impact of the Three Mile Island accident in March. "If he won't replace Schlesinger, he himself should be replaced in 1980."

Her husband, longtime activist Tom Hayden, was not much kinder: "Jimmy Carter has thrown away the best of what he had — his honesty and decency and his separation from private interest groups."

The President, who is in favor of continued construction of nuclear plants, did not accept an invitation to speak at the rally. However, the affair did slightly alter his Sunday routine.

Departing for church services from the White House South Lawn, from which the gathering demonstrators were clearly visible and audible, his motorcade took a shortcut through the mansion's grounds so he could remain out of the crowd's sight.

Later, entering nearby Bethesda Naval Hospital to visit an ailing friend, the President said of the march: "I think it is a legitimate demonstration. I understand the concern about nuclear power, and we're doing all we can to reassure people ... that what nuclear reactors we do have are safe."

As it turned out, presidential politics played a direct part in yesterday's five-hour demonstration — in the person of California Gov. Edmund G. (Jerry) Brown, and in the form of a message from Sen. Edward M. Kennedy.

Brown led the crowd in cheers for one the rally's main goals: a moratorium on permits for nuclear power plants, pending a lengthy review of the embattled industry.

"Yell louder," he exhorted, "I want President Carter to hear you."

The governor's appearance drew some boos from marchers not enamored of his austere budget policies, and one not-very-subtle attack from one of the main speakers, Commoner.

As Brown chatted with reporters, Commoner said to the crowd: "Beware of the austerity mongers and the budget shrinkers, whether they come from Georgia or California. The politics of austerity is incompatible with the politics of solar energy."

However, there was a more positive response to re-

marks from Fonda, who introduced Brown — "When we disagree we get on his back, but when we agree we stand by his side."

Kennedy, who would have been a surprise participant, sent word he could not come because he was in Florida with his ailing mother. However, he asked that a statement from him be read to the demonstrators. It was his strongest attack yet on nuclear power, although he avoided direct criticism of the Administration, as well as specific commitments.

"The nuclear safety licensing process is not working," the senator wrote. "The dream of nuclear power has become a nightmare of nuclear fear. If we cannot assure the people of this country that serious accidents can be prevented, then the era of nuclear power is over in the United States ...

"A national reassessment is under way in Congress and the nation to determine whether any additional commitments to nuclear power should be made. I am glad to be a part of that reassessment."

The biggest cheers of the afternoon went to Ralph Nader, a key endorser of the demonstration, when he recalled some oft-quoted words of candidate Carter in the 1976 primaries: "If I ever lie to you, if I mislead, then you come to me and turn me out of the White House."

"It was candidate Carter," Nader said, "who said repeatedly in 1976 that nuclear power would be the last resort and that energy conservation, solar energy, and clean coal were first resorts. It is President Carter who is now saying full speed ahead, under faster licensing procedures, to more nuclear power plants."

A few hundred of the protesters who came here yesterday will remain today to do what their antiwar predecessors used to do — lobby Congress.

Most of their efforts will be concentrated on three proposals: a moratorium on new construction and operating permits; an end to limits on corporate liability for nuclear accidents; and legislation giving states the right to ban location of federal radioactive waste materials within their borders.

At the moment, the moratorium issue is the hottest.

One proposal, introduced by Sen. George McGovern (D-S.D.) and Rep. Edward Markey (D-Mass.) would suspend issuance of new construction and operating permits, pending a three-year review of existing reactor safety defects by Congress' Office of Technology Assessment.

A tougher measure, introduced by Rep. Hamilton Fish (R-N.Y.) would suspend permits for five years, pending review not just of reactor safety issues, but also of waste disposal problems, nuclear weapons proliferation and sabotage potential.