

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

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

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In the Matter of  
CONSOLIDATED EDISON COMPANY  
OF NEW YORK  
  
(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

February 19, 1982



MEMORANDUM AND ORDER  
(Responding to Filing by Donald L. Sapir, Esq.)

On February 18, 1982, this Board received a letter from counsel for the NRC Staff dated February 16, 1982, concerning certain documents filed with the Commission by Donald L. Sapir, Esq., who represents the Kitchewanc Chapter of the SHAD (Sound-Hudson Alliance Against Atomic Development) Alliance. The documents included a "Written Statement of Donald L. Sapir, Esq." (Statement) with a covering letter dated January 14, 1982, which asks that the Statement be incorporated into the public record of this proceeding. The Statement and the cover letter were docketed and became a part of the record on January 15, 1982.

In his Statement Mr. Sapir says that he wrote to the Commission requesting that a Board be appointed to adjudicate the safety of the

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continued operation of Indian Point Units 2 and 3. Further, he states that after the Board was appointed he "wrote to the NRC seeking intervenor status" on behalf of himself and the Kitchewank Chapter of SHAD Alliance. Mr. Sapir says that he received no response to that letter nor to a subsequent letter reiterating his interest in participating in these proceedings. On the assumption that we have received his petition to intervene, Mr. Sapir now protests "the secrecy with which this matter has been handled" and expresses "[outrage] at the backroom manner in which this proceeding had been handled to his exclusion."

In its February 16 letter to the Board the Staff indicated that it had searched the NRC files for the documents which Mr. Sapir claims to have filed and was able to find only one letter from him, dated February 22, 1980. In that letter, a copy of which was attached to the Staff's letter to the Board, Mr. Sapir requested that a board be appointed to investigate the safety of the Indian Point plants. In his 1980 letter Mr. Sapir did not mention the SHAD Alliance nor indicate an interest in intervening, should hearings be held.

This Board has conducted an independent search for the letters which Mr. Sapir claims to have sent to the Commission since the Board was appointed, requesting leave to intervene. We have not found them. The only communication which we have received from SHAD Alliance was a letter from Mr. William Friedmann, dated November 10, 1981, expressing an interest in making an oral limited appearance statement.

We regret that neither we nor the Commission have received the documents which Mr. Sapir claims to have sent to request leave to intervene, but we reject his allegation that we have conducted this proceeding

in secrecy. As Mr. Sapir may now be aware, a Special Prehearing Conference was held in Croton-on-Hudson on December 2, 1981, and Hearings for Limited Appearances were held in Peekskill on January 22, 1982, and in New City on January 23 and January 24, 1982.<sup>1/</sup> The official notices of these meetings were not sent to Mr. Sapir personally, of course, because at the time we were unaware of his interest in intervening. There was an effort made by the NRC Region I office to provide notice of the meetings to the general public via local news media. On December 15, 1981, a news release announcing the Special Prehearing Conference was sent to approximately 40 newspapers, radio stations, and television stations located in towns and cities in the vicinity of the Indian Point plants; on December 15, 1981, a press release announcing the Limited Appearance Hearings was similarly distributed to news media. The large turnout of local citizens at these meetings was, we believe, evidence of the effectiveness of public notice of the meetings.<sup>2/</sup> Mr. Sapir was certainly entitled to attend any of these public meetings and speak personally with the Board.

On the assumption that the letters which Mr. Sapir claims to have sent were lost through no fault of his own, we shall now provide Mr. Sapir and the Kitchewank Chapter of SHAD Alliance the opportunity to file, out of time, a petition for leave to intervene in this proceeding. As required

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<sup>1/</sup> We do not consider the Boscobel Room of the Springvale Inn, the Town of Cortlandt's Civic Center, and the Main Auditorium of the Clarkstown Town Hall, where the public meetings have been held in this proceeding thus far, to be "backrooms."

<sup>2/</sup> Legal notice of the opportunity to file petitions for intervention was published earlier in the Federal Register (46 FR 49,688, 1981).

by 10 C.F.R. § 2.714(a)(1), and in fairness to the other petitioners and parties all of whom filed on time, Mr. Sapir's petition must address the criteria set forth in the regulations for considering a "nontimely filing". In the showing of good cause for failure to file on time, Mr. Sapir should include copies of the missing documents and an indication of when and how they were sent to the Commission.<sup>3/</sup> Said petition shall be filed 15 days from the date of this Order. Parties and petitioners may file answers to the out-of-time petition pursuant to 10 C.F.R. § 2.714(c).

Upon consideration of the foregoing facts and of the entire record in this matter, it is this 19th day of February, 1982

ORDERED

That Mr. Donald L. Sapir, Esq., may file a petition to intervene on behalf of himself and the Kitchewanc Chapter of SHAD Alliance within 15 days of the date of this Order. Said petition must address the five factors for satisfying a nontimely filing set forth in 10 C.F.R. § 2.714(a)(1). Parties and petitioners to this proceeding may file an answer to said petition within 10 days of the service of the petition, except for the NRC Staff, which shall file a response within 15 days of the service of the petition.

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<sup>3/</sup> We are sending a courtesy copy of this Memorandum and Order to Mr. Sapir via First Class Mail and are attaching thereto a copy of 10 C.F.R., Part 2, and of our Memorandum and Order on Practice and Procedures dated December 21, 1981.

Judge Carter participated in the issuance of this Memorandum and Order but was unavailable to sign it.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

*Oscar H. Paris*

Oscar H. Paris  
ADMINISTRATIVE JUDGE

*Frederick J. Shon*

Frederick J. Shon  
ADMINISTRATIVE JUDGE

Bethesda, Maryland

February 19, 1982