

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF RESPONSE IN OPPOSITION TO POWER
AUTHORITY'S ADDENDUM TO NOTICE OF APPEAL

Janice E. Moore
Counsel for NRC Staff

May 25, 1982

DESIGNATED ORIGINAL

Certified By

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I. INTRODUCTION

On May 10, 1982, the Power Authority of the State of New York (the Authority), Licensee of Indian Point, Unit 3, filed a document entitled "Power Authority's Addendum to Notice and Supporting Brief of Appeal of the Atomic Safety and Licensing Board's Order Granting Intervention" (hereinafter Addendum). In that document the Authority adds to its appeal that portion of the order of April 23, 1982, issued by the Licensing Board designated to preside over this proceeding, granting intervenor status to the Greater New York Council on Energy (GNYCE). For the reasons stated below and in "NRC Staff's Brief in Response to Power Authority's Appeal of the Atomic Safety and Licensing Board's Order Ruling on Petitions to Intervene" (hereinafter Staff Response) filed on May 4, 1982, the Staff opposes the Authority's appeal of the Licensing Board's ruling concerning the standing of GNYCE to intervene in this proceeding and submits that the Licensing Board's ruling should be affirmed.

II. STATEMENT OF THE CASE

On November 6, 1981, GNYCE filed a timely petition for leave to intervene in this proceeding. The Staff argued that an amendment to GNYCE's petition was necessary to establish its standing to intervene on the grounds that:

- 1) the petition contained no indication that the named GNYCE members had authorized the organization to represent their interests, and
- 2) the petition did not indicate whether the organization had authorized the signer of the petition to act as the organization's representative in this proceeding.^{1/}

On December 10, 1981 GNYCE filed an amendment to its original petition which included affidavits of Andrew Rosenbloom and Dean R. Corren. In his affidavit Mr. Rosenbloom stated that he is a member of GNYCE with a direct interest in the outcome of this proceeding, and that he authorized GNYCE to represent that interest.^{2/} The affidavit of Dean R. Corren stated that he is a duly authorized representative of GNYCE.^{3/} In response to

^{1/} "Response of the NRC Staff to Petitions for Leave to Intervene and Requests for Participation as Interested States Filed in Response to the NRC Federal Register Notice of October 7, 1981" at 21 (November 24, 1981) (hereinafter Staff Response to Petitions).

^{2/} "Affidavit of Andrew Rosenbloom Authorizing Representation by the Greater New York Council on Energy" (hereinafter Rosenbloom affidavit) attached to "Amendment to Petition for Leave to Intervene of the Greater New York Council Council [sic] on Energy" dated December 10, 1981 (hereinafter GNYCE Amended Petition).

^{3/} "Affidavit of Dean R. Corren Certifying Authority to Represent GNYCE" (hereinafter Corren Affidavit) attached to GNYCE Amended Petition.

GNYCE's amended petition, the Staff asserted that GNYCE met the standing requirement for intervention in this proceeding.^{4/}

On April 2, 1982, the Licensing Board issued an Order ruling on the standing of various petitioners to intervene in this proceeding. All the petitioning organizations except for GNYCE were granted intervenor status.^{5/} With regard to GNYCE the Licensing Board found that it had standing to intervene, but that without further specification, GNYCE had failed to set forth a litigable contention. Memorandum and Order (Ruling on Petitions to Intervene and Agenda for Second Prehearing Conference) at 24 (April 2, 1982). The Board ordered GNYCE to submit further specification of one of its contentions by April 12, 1982, and conditionally admitted GNYCE as an intervenor pending a ruling on this contention.

GNYCE complied with the Board's Order, and its contention was discussed at the Second Prehearing Conference held on April 13 and 14, 1982. On April 23, 1982, the Licensing Board issued an Order setting forth the contentions to be litigated in this proceeding. In that Order GNYCE's contention was found to be adequate, and GNYCE was admitted as a party to the proceeding. Memorandum and Order (Formulating Contentions, Assigning Intervenors, and Setting Schedule) at 20 n.4 (April 23, 1982). The Authority now appeals the admission of GNYCE as a party on the

^{4/} "Response of the NRC Staff to the Amendments to Petitions of UCS-NYPIRG, GNYCE, Parents, and WESPAC for Leave to Intervene and Amendments to Requests of the County and NYC Council for Participation as Interested States" (hereinafter Staff Response to Amended Petitions) at 15 (December 21, 1981).

^{5/} For a list of those parties granted intervenor status see Staff Response at 3 n.2. Those interested states granted leave to participate are enumerated in Staff Response at 4 n.3.

grounds that: 1) GNYCE failed to demonstrate that the signer of the affidavit of membership in the organization had the "requisite indicia of membership" required by Hunt v. Washington Apple State Advertising Commission, 432 U.S. 333, 344 (1977); and 2) GNYCE is opposed to nuclear power. Addendum at 2.

III. ISSUE ON APPEAL

Whether the Licensing Board erred in admitting GNYCE as an Intervenor based on an affidavit of a person alleging to be a member and notwithstanding GNYCE's organizational purpose to oppose nuclear power.

IV. ARGUMENT

A. The Licensing Board's Determination that GNYCE Possessed Standing to Intervene in a Representative Capacity Based on the Affidavit of its Member was Correct

The Authority has not submitted any arguments specific to GNYCE but merely incorporates by reference the arguments it advanced in its April 19, 1982 brief in support of its notice of appeal. Addendum at 1, 2. In the Staff Response addressing the question of the underlying basis for representational standing, the Staff distinguished between UCS, an organization seeking to intervene in a representative capacity on behalf of its sponsors, and RCSE, an organization seeking to intervene in a representative capacity on behalf of its members. Staff Response at 12 n.19. The Staff pointed out that the Hunt decision relied upon by the Authority in its brief in support of the notice of appeal did not apply to RCSE, since RCSE based its standing on its members rather than on sponsors or financial contributors. Id.

GNYCE is in the same position as RCSE. GNYCE submitted an affidavit as an amendment to its original petition for leave to intervene on December 10, 1982. In this affidavit, Mr. Rosenbloom stated that he was a member of GNYCE, with a direct interest in the outcome of the proceeding, and that he authorized GNYCE to represent his interest in this proceeding. Rosenbloom affidavit. Since the organization has identified a member whose interest may be affected by the outcome of the proceeding, and who has authorized GNYCE to represent that interest in this proceeding, GNYCE has established the requisite standing to intervene in the proceeding. GNYCE is basing its standing on the interests of its members rather than sponsors or financial contributors. Therefore, as with RCSE, the Hunt decision does not serve to preclude GNYCE's intervention in this proceeding. The Licensing Board's ruling concerning the standing of GNYCE to intervene in the proceeding should be affirmed.

B. An Organization's Opposition to Nuclear Power does not Preclude its Intervention in NRC Proceedings

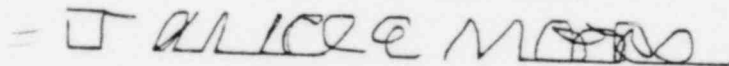
In its Addendum the Authority incorporates by reference its argument that opponents of nuclear power should not be permitted to use this proceeding as a forum to debate nuclear power. Addendum at 2. The Authority asserts by the use of extra-record quotations that GNYCE is an organization which opposes nuclear power. As the Staff argued in its response to the Authority's brief in support of the notice of appeal, expressed opposition to nuclear power by conduct outside of this proceeding does not preclude intervention in NRC proceedings. The Authority does not identify any Commission regulations or case law in its Addendum to support its position. The Staff submits that there are none. The Staff incorpor-

ates by reference its arguments made in response to the Authority's position in this matter set forth in the Staff's Response at 16-18.

V. CONCLUSION

For the reasons set forth above and in the Staff Response to the Authority's appeal filed on May 4, 1982, the Licensing Board's ruling concerning the standing of GNYCE to intervene in this proceeding should be upheld.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "J ALICE MOORE", with a horizontal line drawn through the end of the signature.

Janice E. Moore
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 25th day of May, 1982

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE IN OPPOSITION TO POWER AUTHORITY'S ADDENDUM TO NOTICE OF APPEAL" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 25th day of May, 1982.

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