

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Commissioners:
Nunzio J. Palladino, Chairman
Victor Gilinsky
John F. Ahearne
Thomas M. Roberts
James K. Asselstine

'82 SEP -2 P3:36

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of

Consolidated Edison Company of
New York (Indian Point Unit 2)

Docket Numbers 50-247SP
50-286SP

Power Authority of the State of
New York (Indian Point Unit 3)

August 30, 1982

WESPAC'S RESPONSE TO AUGUST 23, 1982
LETTER TO A.S.L.B. FROM SAMUEL J. CHILK, SECRETARY

On July 27, 1982, the Commission issued Memorandum and Order CLI-82-15 in the above-captioned proceeding which, among other things, directed the Atomic Safety and Licensing Board to reconsider and reformulate the contentions which it had framed for consideration in this investigation. The Board, not being able to follow the Commission's Order without creating a situation where "the testimony, perforce, will consist almost entirely of that offered by the Licensees and the NRC Staff" (8/9/82 Memorandum and Certification page 4), requested further guidance from the Commission on August 9, 1982. On August 23, Commission Secretary Samuel J. Chilk replied for the Commission, which had been unable to produce a quorum before this week.

The Secretary replied that the board should defer hearing evidence on Commission questions 3 and 4, dealing with emergency response and planning, until the record on the other five questions, particularly those dealing with accident probability and risk assessment, had been heard. He noted that the NRC Staff had started its "120-day clock" on emergency planning at the beginning of August and posulated that "to hear testimony regarding what is likely to be a rapidly changing situation would be wasteful of the time and resources of the Board and the Parties ... " (letter at page 2).

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WESPAC strongly objects to the meaning, the method, and the motivation of the July 27 order and the August 23 letter. We urge the Commission to allow the licensing Board to complete the proceeding with contentions framed as the Board originally framed them. We urge that the Board, which is primarily an investigatory body, be permitted to complete its investigation and to recommend its findings to the Commission. With all the evidence before them, the learned Board and Commissioners should be able to reach the best decision -- a decision in the interests of the people of the New York Metropolitan area.

Former NRC Commissioner Peter Bradford once said:

(The NRC) should deal with its critics more or less the way the tar baby dealt with Br'er Rabbit. It should have an almost infinite capacity for repressive tolerance, the extending of exquisite procedural courtesy to participants who are never, in fact, allowed to get their hands on anything vital. This can be expected to frustrate critics to the point where they become obsessed or shrill or demagogic or a little crazy. Then, of course, their arguments are more easily dismissed as obsessed, shrill, demagogic, or crazy..."

Perhaps the intervenors' case in this proceeding was getting too close to something vital, and hence the "courtesies" extended by the Licensing Board had to be commuted to the repression of the Commission.

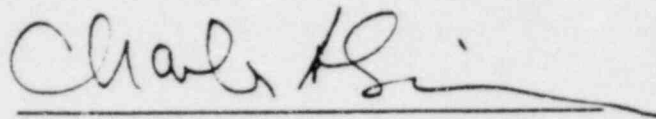
As an intervenor with very limited resources, WESPAC should, perhaps, be grateful for the Commission's and the Secretary's interference. Since the Commission will have the ultimate determination (short of Congress) on the outcome of this proceeding, we should appreciate the Commission's honesty in admitting now, before more of our scarce supply of peoplepower and money is expended, that it has no intention of objectively looking at the facts in this case. By waiting until intervenors painstakingly prepared and filed extensive, detailed, and damning testimony on emergency planning, and by then excluding it from the record of the proceeding, the Commission once again ensures that the Emperor himself believes he is not naked. We children are not to be heard -- in pointing out that the Emperor is only wearing earplugs and a blindfold.

The starting of the 120-day clock, may be an encouraging sign that some of the grossest deficiencies in the Indian Point Emergency Plans will be attended to. But the use of the starting of that clock as an excuse to close the Commission's eyes to clear identification of the deficiencies in the plan, as presented by the intervenors in this case, points up once again the Commission's (or at least the Secretary's) intention not to let the facts interfere with the outcome of either this proceeding or the determination, at the end of the 120 days, about continued operation of Indian Point.

We urge the Commission to take one of two actions:

1. Permit the licensing board to continue along its original course. Extend the September 18 deadline to spring, 1983. Allow the Board to investigate emergency planning first and to prepare a recommendation to the NRC staff by early December as to whether the status of Emergency Planning has been improved to the point where the plants should be allowed to run after the 120-day clock. When the Board presents its findings to the Commission, make a full and objective determination based on all the evidence.
2. Make your determination now that Indian Point is wonderful and safe and no danger to anyone, regardless of whatever annoying evidence or facts may have already surfaced in this and other proceedings. End the hypocrisy, time, and expense of this case whose outcome has been pre-determined. Allow us, as taxpayers who pay your salaries and the expenses of the Staff and interested States, and as ratepayers who pay the expenses of the Licensees, and as intervenors, who pay in blood, sweat, tears, and money for our own cases, to begin to seek judicial and other extra-regulatory remedies for your willful ignorance of the evidence already before yourselves, your staff, and the Licensing Board.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Charles A. Scheiner", is written above a horizontal line.

Charles A. Scheiner,
Co-chairperson

WESPAC

Westchester People's Action Coalition, Inc.

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xc: Attached service list.

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CERTIFICATE OF SERVICE

I hereby certify that copies of WESPAC'S RESPONSE TO AUGUST 23, 1982
LETTER TO A.S.L.B FROM SAMUEL J. CHILK, SECRETARY, have been served on
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