

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BRANCH

In The Matter of x
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:
Consolidated Edison Company :
of New York (Indian Point Unit 2):
:
Power Authority of the State of :
:
New York (Indian Point Unit 3) x

Docket Numbers 50-247SP
50-286-SP
September 3, 1982

RESPONSE OF COUNTY LEGISLATOR RICHARD BRODSKY TO LETTER TO
ATOMIC SAFETY AND LICENSING BOARD OF SECRETARY SAMUEL J.
CHILK DATED AUGUST 23, 1982

The Commission's July 27, 1982 Memorandum and Order, the ensuing request from the A.S.L.B to the Commission for clarification and guidance, and the resulting response to the A.S.L.B. from Secretary Chilk in the name of the Commission creates doubt that the Commission's supposed purposes in conducting this proceeding can be met.

It must be supposed that in posing questions to the Board, the Commission desired answers. It must further be supposed that those charged with gathering information sufficient to answer the questions understood the need for speed, for specificity, for completeness, and fairness. As a party and a participant in the opening round of hearings, it seemed to me that, except for the delaying tactics of counsel for the licensees, all the above criteria were met. Important and relevant testimony was presented on questions

posed by the Commission.

The extraordinary intervention of the Commission has had, as of now, only one measurable result. The hearings have been delayed significantly. But from the point of view of the intervenors who originally requested the hearings, who have borne the brunt of presenting evidence on the questions, who are not directly or indirectly funded by the public or the ratepayers as are the Commission, the other governmental bodies participating, and the licensees, and who now have had the rules changed in mid-hearing, the results of the Commission's decisions are calamitous. The integrity of the entire process has been undermined, perhaps fatally.

It may reasonably be inferred that the Commission has abandoned any purpose of creating an unbiased, complete record upon which to base any findings it may make in the future.

If the Commission's concern that there be a balance between testimony on consequences and that on risk was to be addressed fairly, a variety of procedural vehicles exist. But the arbitrary requirements for certain kinds of testimony from each kind of witness, the arbitrary change in scheduling of hearings after plans had been made and finalized for months, the arbitrary rejection of contentions previously adopted, and the failure to concede the magnitude of the damage done to the intervenors together constitute a violation of law,

of the Constitutional guarantees of substantive and procedural due process, and of the mandate of the Commission in the broader sense to proceed in a manner that is fundamentally fair and respects the public concerns in this matter. A detailed brief of these violations can be provided upon request by the Commission.

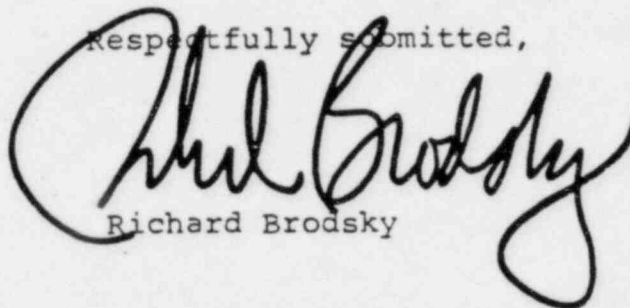
The Commission cannot expect the intervenors to ignore the practical consequences of its acts. A failure to remedy the disastrous rulings of the past weeks may cause some or all of the intervenors to reassess their participation in the hearings. If that should come to pass, because the Commission has left to the intervenors the job of creating a record upon which it can act, there may be no evidence or testimony available save that presented by the licensees.

The resignation of Judge Carter emphasizes what is at stake in this matter. The fact of unfairness is magnified by the broad public perception of unfairness. A rigid restatement of the Commission's errors will not serve its or the public interest.

Accordingly, I request that the Commission reconsider its

rulings and reinstate the contentions and procedures in effect before July 27, 1982, and in consequence of that ruling reject the resignation of Judge Carter. A failure to do so will fatally undermine the proceedings and the hope that the Commission would seek full and honest answers to the many questions about the safety of the Indian Point reactors.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read "Richard Brodsky". The signature is written in a cursive style with a large initial "R" and "B".

Richard Brodsky

Service List Attached