

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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OF ENERGY
REGULATORY
BRANCH

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges
James P. Gleason, Chair
Frederick J. Shon
Dr. Oscar H. Paris

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: In the Matter of: :
: :
CONSOLIDATED EDISON COMPANY OF NEW YORK : Docket Nos.
INC. (Indian Point, Unit No. 2), : 50-247 S"
: 50-286 SP
POWER AUTHORITY OF THE STATE OF NEW YORK :
(Indian Point, Unit No. 3) :
: February 18, 1983
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NEW YORK CITY COUNCIL MEMBERS
OPPOSITION TO LICENSEES' MOTIONS
REGARDING COUNCIL MEMBER WITNESSES
UNDER COMMISSION QUESTIONS 3 & 4

In its Memorandum and Order of April 2, 1982 admitting New York City Council Members, an interested state, as a party to the proceedings, in the above captioned matter, this Atomic Safety and Licensing Board stated:

We believe that the N.Y.C. Council will be more familiar than other petitioners with problems that might develop in New York City in the event of an emergency associated with an accident at Indian Point; therefore, the Council's participation can reasonably be expected to assist in developing a sound record (at 8).

At no time have Licensees requested the Commission to review this determination, though Licensees have requested such review of other matters.

Pursuant to the Board's April 2, 1982 determination and with the Board's leave, Council Members pre-filed testimony responsive to Commission Questions 3 & 4 on July 23, 1982. At no time prior to February 7, 1983 has there been an objection to the relevance or thrust of this testimony.

On February 7, 1983 this Board, in response to Council Members request of January 14, 1983, determined that hearings be held in New York City during the week of March 1, 1983 and that during this week Council Member witnesses under Commission Questions 3 & 4 be heard.

In separate motions, each dated February 7, 1983, Licensees appear to object to this Board hearing all or part of the testimony that has been offered by New York City Council Members. They assert, inter alia, that New York City Council testimony should be limited to that concerning only the ingestion pathway (PASNY, Motion, Feb. 7, 1983, at 4 et seq.); or that this Board provide a briefing schedule "... for the submittal of briefs on the admissibility of the testimony ..." (Con Ed, Motion, Feb. 10, 1983, at 10). Both Licensees rely on the Commission's July 27, 1982 order.

At this writing, Council Members intend to offer the following witnesses on Commission questions 3 & 4: David

Gurin, et. al., Roberta Spohn and Susan Kinoy (a panel), Benjamin Ward, Howard Berliner, Judianne Densen-Gerber, Nicholas Freudenberg, Kim Hopper, Robert Jorgan, Steven Meshnick, John Seley, Alexander Simos, Leonard Solon and Robert Littlejohn.* Other pre-filed testimony is hereby formally withdrawn; although those who prepared such testimony may wish to make limited appearances before the Board.

Argument

In their motions, which might accurately be styled general motions to strike, Licensees fail to make specific objections to specific proffered witnesses. For this reason alone, Council Members submit, these motions should be denied.

The Commission and the Board have repeatedly asserted that the basic goal of these hearings is to accurately evaluate whether the conditions resulting from siting and structure at Indian Point are so distinctive from conditions at other nuclear facilities so as to warrant special precautions, or at best (or worst depending upon one's point of view) the closing of the plants. This justification is both implicit and explicit in, among others, the Commission Memoranda and Orders of January 8, 1981, and of July 27, 1982, as well as Board Memoranda and Orders of

*New York City Council members have requested a subpoena for witness Littlejohn.

April 2, 1982 and February 7, 1983. It is painfully obvious, ab initio, that the reason for posing such a question is the existence of Times Square and the surrounding City with its large and dense population, a mere 20 to 60 miles from Indian Point. To decide, then, not to receive testimony on the state of emergency planning and preparation, such as it is, in New York City would be, Council members submit, to refuse to address one of the crucial issues before this Board.

Moreover, Licensees arguments are at best disingenuous and at worst examples of harassment designed to inhibit the creation of a complete and sound record. Licensees have had Council Members testimony in their possession for over six months. Their failure to make any objections before this may suggest their prime motivation.

It is surprising that Licensees now claim that a consideration by this Board of the size of the EPZ is somehow forbidden. Not only does such an assertion fly in the face of this Board's position (Memoranda and Order, February 7, 1983 at 12) but the Licensees have, in fact, squarely placed the issue before the Board. (Bley, Potter, Walker testimony at 25, 130). The argument that this consideration is appropriate under Commission Question 1 and not under Questions 3 and 4 is clearly put to rest by the Licensees' own understanding of the overlapping nature of the questions (T. at 7631) as exhibited in their arguments made in response to a motion to strike the Bley, Potter, Walker testimony. It should be noted that the motion to strike was denied by this Board (T. at 7633).

The Board is invited by the Power Authority to consider Council Member testimony under Commission Question 4 (Power Authority motion, FN at 6). Power Authority asserts, however, that Council Member testimony is inadmissible under this head because it lacks "...recommendations for specific, feasible procedures, and does not contain any 'sound basis'...".

Council Members contend that there is already in the record a "sound basis" for this further explanation (Commission Memorandum and Order July 27, 1982 at 16). Licensees have conceded that in the event of an accident New York City will suffer consequences. Note, for example, that Potter, Bley, Walker panel state "...that we could exceed the early fatality dose limit out as far as 60 miles." (T. at 7642).

The Staff also adds to the "sound basis". Dr. Acharya, for example, charts the impact of an accident upon those in New York City (Acharya Testimony at, for example, Fig. III. c. 26). Witnesses Rowsome, and Blond also assert that under certain conditions "early injury could occur out to about 50 miles." (Rowsome, Bley testimony, #12, at IIX).

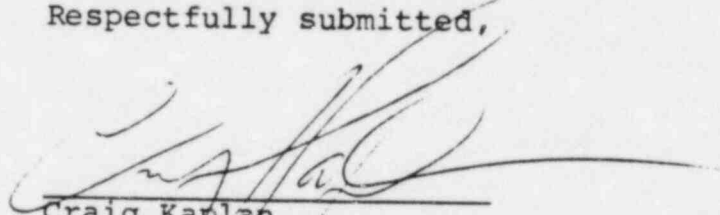
Witnesses Beyea and Palinick provide only additional support for the materiality and relevance of Council Member testimony when they project serious health consequences to those who live and work in New York City in the event of an accident; and further warn of the possibility of long-term evacuation (T. at).

Without belaboring the point, Council Members, therefore, submit that a "sound basis" clearly exists for the admissibility

of the proffered testimony under Commission Question 4. This is done without conceding the argument that other heads may be available as well.

Wherefore, Council Members urge this Board to deny the Licensee motions.

Respectfully submitted,



Craig Kaplan,
for the Members of the
New York City Council

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
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CONSOLIDATED EDISON COMPANY) Docket Nos. 50-247-SP
OF NEW YORK (Indian Point, Unit 2)) 50-286-SP
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POWER AUTHORITY OF THE STATE OF)
NEW YORK (Indian Point, Unit 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of "Council Members
Opposition to Licensees Motions Regarding Council Member Witnesses
Under Commission Questions 3 and 4" in the above captioned proceeding
have been served on the following by deposit in the United States
Mail, first class, this 18th day of February 1983.

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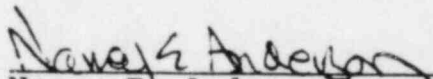
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