

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of)	
)	
CONSOLIDATED EDISON COMPANY OF NEW YORK (Indian Point Unit 2))	Docket Nos. 50-247 SP 50-286 SP
)	
POWER AUTHORITY OF THE STATE OF NEW YORK (Indian Point Unit 3))	February 26, 1982

UCS/NYPIRG ANSWER TO NRC STAFF MOTION
TO STRIKE UCS/NYPIRG OBJECTIONS AND,
IN THE ALTERNATIVE, MOTION FOR LEAVE
TO RESPOND TO STAFF'S AND LICENSEES'
STATEMENTS OF POSITION



In its February 18, 1982 submission, the NRC Staff moves to strike the Union of Concerned Scientists (UCS) and the New York Public Interest Research Group, Inc. (NYPIRG) Objections to the answers to Commission Questions submitted by the Staff and the Licensees.¹ The motion to strike is based on three grounds:

- A) UCS and NYPIRG lack standing to file such objections;
- B) the objections fail to comply with the Board's Memorandum and Order on Practice and Procedures dated December 21, 1981, in that the title of the objections did not include a reference to requests for the Board to require the supplementation of the Staff's and Licensees' answers to the Commission Questions; and

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¹ Neither Con Edison nor the Power Authority of the State of New York has responded to the UCS/NYPIRG Objections, dated Feb. 11, 1982.

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C) the objections are premature, since discovery has not yet begun.

UCS and NYPIRG answer the motion to strike pursuant to 10 CFR 2.730(2)(c), discussing the issues of standing and discovery together, and then responding to the complaint about the title of the objections. UCS and NYPIRG take no position on Staff's request for an extension of time to respond, as long as such an extension will not delay the Board's pending decisions on standing of the proposed intervenors and on the admissibility of contentions.

A) UCS/NYPIRG Standing to File Objections and C) Premature Discovery

As proposed intervenors in this proceeding, UCS and NYPIRG have been required to submit petitions to intervene, contentions and responses to objections to contentions. It is puzzling why the Staff now argues that UCS and NYPIRG must have "standing" to reply to pleadings in the nature of contentions submitted by the Staff and Licensees. UCS and NYPIRG respectfully refer the Board once again to its stated purpose in requiring Staff and the Licensees to submit answers to the Commission Questions:

to provide on a fair and balanced basis
a vehicle for the statement of positions.

(Emphasis supplied.)

Pre-Hearing Conference, December 2, 1981,
Transcript, p. 129.

The UCS and NYPIRG objections to the Statements of Positions filed by the Staff and the Licensees did not request an early beginning of discovery, but rather simply insisted on further information and specificity in the statements as a matter of notice pleading; in the same way, the Staff and Licensees objected to some contentions of proposed intervenors by demanding further details. Since the Staff

and Licensees relied in their Statements of Position upon reports not yet available to the public, it is entirely reasonable for proposed intervenors to request that those reports be released as a supplement to the Statements of Position.

Moreover, even if the request for supplementation of the Statements of Position were considered to be in the nature of discovery, the requests would be appropriate at this time. A pre-hearing conference was held on December 2, 1981, and the issues to be considered in this proceeding have been established by the Commission Questions. Formal commencement of discovery awaits only the Board's ruling on the standing of proposed intervenors. 10 CFR 2.740(b)(1).

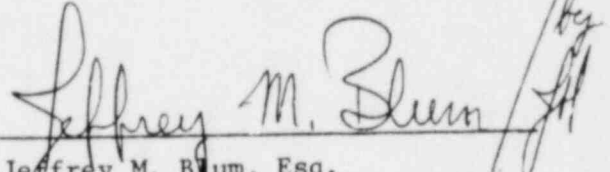
Fundamental fairness requires that UCS' and NYPIRG's short response to the pleadings of the Staff and Licensees be received, just as the lengthy objections of those parties to the contentions of the proposed intervenors have been received. In the alternative, however, if the Board determines that an opportunity to respond to the Statements of Position does not exist as of right, UCS and NYPIRG respectfully request the Board to treat this Answer as a motion for leave to respond to the Statements of Position, and to consider the UCS/NYPIRG objections that were submitted on February 11, 1982.

B) Incomplete Title

The title of the UCS/NYPIRG objections to the Statements of Position was not intended to mislead the Staff or Licensees nor to surprise any party. Assuming for the sake of argument that the title should have contained a reference to the requests made at the end of the three page document, this insignificant oversight is no basis for striking the document. The proposed intervenors consider similar defects in the form of pleadings, such as the Staff's failure to state

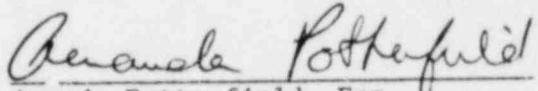
the date of its motion to strike on the front page, to be a minor inconvenience that should not be the subject of exchanges of objections among the parties to this proceeding.

New York, New York
February 26, 1982



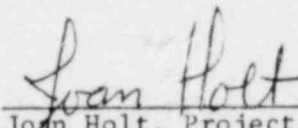
Jeffrey M. Blum, Esq.
New York University Law School
423 Vanderbilt Hall
40 Washington Square South
New York, New York 10012
212-598-3452

Counsel for Union of Concerned
Scientists



Amanda Potterfield, Esq.
P.O. Box 384
Village Station
New York, New York 10014
212-227-0265

Counsel for New York Public Interest
Research Group, Inc.



Joan Holt, Project Director
New York Public Interest Research
Group, Inc.
5 Beekman Street
New York, New York 10038
212-349-6460