

HARMON & WEISS

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WASHINGTON, D. C. 20006

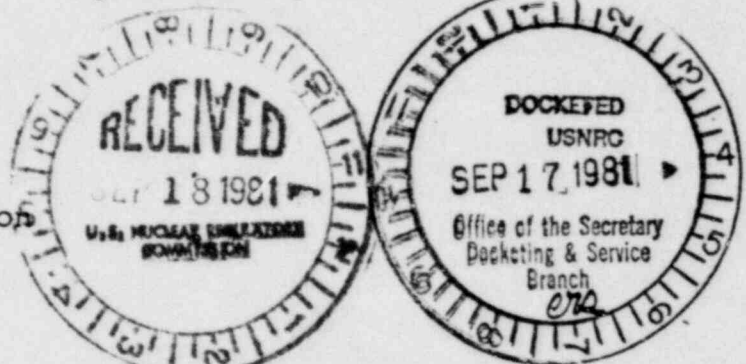
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September 17, 1981

Nunzio Palladino, Chairman
Commissioner John Ahearne
Commissioner Peter Bradford
Commissioner Victor Gilinsky
Commissioner Thomas Roberts
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555



Dear Commissioners:

The Commission is scheduled to vote soon on a revision to its Order establishing hearings on the safety of Indian Point, Units 2 and 3. These hearings are a long-awaited response to a petition filed by the Union of Concerned Scientists in September 1979. The call for hearings was supported by a large number of citizen groups and elected officials from the metropolitan New York area, including the Attorney General of the State of New York and a number of Congress-people.

As you consider possible revisions to the order, UCS asks you to focus on one issue which is of great concern to us and can profoundly affect the course of the proceeding, which you have characterized as investigatory in nature. That issue is the role which the Staff will take during the proceeding.

As you know, the Staff originally argued against the need for hearings in its case, claiming that the modifications to the plant agreed to by the licensees were sufficient as interim measures until a decision could be made - said to be expected within a year - on long-term accident-mitigating measures to be employed, such as filtered containment venting and/or core retention devices. You will recall that Director Denton specifically stated that it was the Staff's position that such mitigating measures were necessary to make the plants sufficiently safe for the long-term.

It now appears that the Staff's position has changed. Certainly, well more than a year has passed without any hint of a decision on appropriate mitigating measures for Indian Point.

In any case, the Commission disagreed with the Staff at least with respect to the need for hearings and ordered them to take place.

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These hearings differ markedly from those for construction permits and operating licenses, both with respect to the nature of the issues to be considered and the results which can flow from the proceeding. One major purpose of the hearing is to compile a record to assist the Commission itself in determining what steps if any need to be taken, including steps beyond compliance with current regulations to provide an adequate level of protection for the public surrounding high population density sites such as Indian Point. This has always been recognized as a compelling purpose for holding public hearings in this case, which the Commission ordered by unanimous vote.

In addition, the hearings have purposely been characterized by the Commission as investigatory to allow the greatest breadth of flexibility with respect to procedures. The ex parte rule has been waived to allow the Commission to communicate directly with the staff in gathering all possible information that may be helpful to it. Rather than a contest between adversaries, the Commission has determined to use a hearing format to develop a complete record upon which to make decisions.

Under these circumstances, it is imperative that the Staff take a role different from that which it assumes during routine cases, when it takes an adversary posture at the outset in favor of the license and acts in a manner virtually indistinguishable from the applicant. If the Staff is to assist the Board and ultimately the Commission in developing the record and the ex parte rule is to be waived, the staff must act as a true investigator rather than a litigant.

The Staff should not simply assume the role of defender of the Director's decision and the licensees and opposition to all other parties. If it does so, it forfeits any claim to be an investigator and defeats the Commission's purpose in undertaking an investigation rather than an adjudication. Moreover, in such a case, the legality of waiving the ex parte rule becomes highly dubious.

UCS believes that the Commission should direct the Staff to act as assistant to the Board and all of the parties in compiling a full and open factual record and not as an advocate. All relevant documents and studies available to the Staff should be presented to the Board, not only those that favor the Director's decision or some other predetermined position. All of the Staff's communications to the Commission and to other parties should be public. In sum, the Staff should not be playing litigant's games which would frustrate the purpose of the hearing.

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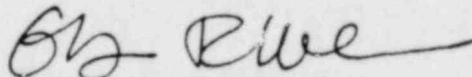
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In your consideration of this question, we ask you to envision a proceeding with no intervenors, but only the Staff and the Board or the Commission. In that case, you would clearly wish the staff to serve as an impartial conduit for facts and analysis, not as the adversary defender of prior positions.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Ellyn R. Weiss". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ellyn R. Weiss
Counsel for the Union of
Concerned Scientists

ERW/dmw