

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Louis J. Carter, Chairman
Dr. Oscar H. Paris
Frederick J. Shon

'82 JUN -8 P2:35

In the Matter of

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
(Indian Point, Unit No. 2)

POWER AUTHORITY OF THE STATE OF NEW YORK
(Indian Point, Unit No. 3)

) Docket Nos.

) 50-247 SP

) 50-286 SP

) June 7, 1982

LICENSEES' RESPONSE TO WEST BRANCH
CONSERVATION ASSOCIATION'S REQUEST FOR ON-SITE
INSPECTIONS OF INDIAN POINT UNITS 2 AND 3

Pursuant to 10 C.F.R. § 2.741(d) (1981), Consolidated Edison Company of New York, Inc. and the Power Authority of the State of New York, licensees of Indian Point Units 2 and 3, respectively, hereby respond to West Branch Conservation Association's (WBCA's) request to inspect Indian Point Units 2 and 3. Licensees oppose this request because WBCA has failed to satisfy the requirements and underlying purposes of 10 C.F.R. § 2.741(c) in that WBCA's request fails to:

(1) state the items to be inspected with sufficient particularity; (2) justify the necessity for an on-site inspection; (3) demonstrate why other discovery methods are

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not sufficient; and (4) state its representative's qualifications relevant to the inspection.

Section 2.741(c) requires a party requesting permission to enter upon the property of another party for inspection purposes to describe each item to be inspected with "reasonable particularity." 10 C.F.R. § 2.741(c). Yet, WBCA's request "to inspect the entire containment building cooling system and the secondary system outside containment" lacks sufficient particularity. Request from West Branch Conservation Association to the Licensees to Arrange On-Site Inspection of Indian Point Generating Stations Units #2 and #3 at 1 (filed May 3, 1982). WBCA has also completely neglected to "specify [the] manner of making the inspection," 10 C.F.R. § 2.741(c), and the time required for such inspection. Id.

Policy considerations underlying the identical Federal Rule of Civil Procedure further demonstrate the necessity for greater specificity. See Fed.R.Civ.P. 34. In Belcher v. Bassett Furniture Industries, Inc., 588 F.2d 904, 908 (4th Cir. 1978), the court stated that a "bare skeletal request" for inspection of premises is insufficient.

Since entry upon a party's premises may entail greater burdens and risks than mere production of documents, a greater inquiry into the necessity for inspection would seem warranted.

Id. (emphasis added).

WBCA has not demonstrated any "necessity" for on-site inspection. Although WBCA claims that the request "is for the purpose of testifying," Interrogatory--West Branch Conservation Association's Second Request for On-Site Inspection of Indian Point Units #2 and #3, of the Consolidated Edison Company and the Power Authority of the State of New York at 1 (filed May 29, 1982), "[i]t is clear that the right to discovery is a qualified right that does not extend to making unnecessary and unwarranted excursions into the property of another under the guise of supportable litigative need." Belcher v. Bassett Furniture Industries, Inc., 588 F.2d at 908 n.12 (citation omitted). WBCA's request "fails to specify any reason or need for the inspection." Id. at 907.

The court in Belcher further stated that "one method [of discovery] cannot arbitrarily be demanded over another simply because it is less burdensome to the moving party." Id. at 910. WBCA has failed to explain why interrogatories and requests for production of documents are insufficient for its needs in this proceeding. Such justification for an on-site inspection is especially appropriate given the extremely tight timeframe allowed for discovery and hearings in this proceeding.

Additionally, WBCA requests that Mr. Walter L. Fleisher conduct the inspection. Although Mrs. Fleisher has commented that Mr. Fleisher "has previously had clearance and

has not thrown a bomb or anything like that when he was in there," Transcript at 932 (Apr. 14, 1982), WBCA has not offered any indication, whatsoever, that Mr. Fleisher has the necessary qualifications and expertise to undertake an inspection of the plants that would be relevant to contentions 2.2 and 5.1 for which WBCA is the lead intervenor. Without such demonstration, Licensees may be subjected to an unnecessary waste of resources.


The Licensees are not opposed to reasonable inspections of Units 2 and 3 that is necessary and relevant to this proceeding and is conducted in accordance with the Commission's security and access requirements. However, "[t]he degree to which the proposed inspection will aid in the search for truth must be balanced against the burdens and dangers created by the inspection." Belcher v. Bassett Furniture Industries, Inc., 588 F.2d at 908 (footnote omitted). To avoid undue "burdens and dangers" the Licensees suggest that (1) each intervenor be required to determine by a designated date if they intend to seek on-site inspection; (2) each intervenor justify the necessity for on-site inspection and specify the items to be inspected, the qualifications of the inspecting individuals, and the manner of the proposed inspection pursuant to 10 C.F.R. § 2.741(c); and (3) intervenors satisfying section 2.741(c) be required to inspect the sites simultaneously.

CONCLUSION

Based on the reasons stated herein, Consolidated Edison Company of New York, Inc. and the Power Authority of the State of New York request that West Branch Conservation Association's request for inspection of Indian Point Units 2 and 3 be denied.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of June, 1982, I caused a copy of Licensees' Response to West Branch Conservation Association's Request for On-Site Inspections of Indian Point Units 2 and 3 to be served by first-class mail, postage prepaid on the following persons located in Washington, D.C. and by express mail, postage prepaid on all others:

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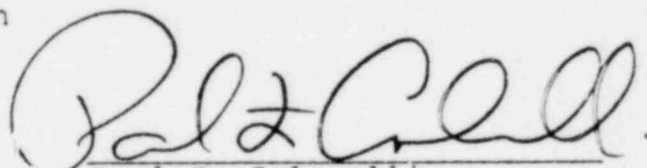
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