

POWER AUTHORITY OF THE STATE OF NEW YORK
10 COLUMBUS CIRCLE, NEW YORK, NEW YORK 10019

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
4 IRVING PLACE, NEW YORK, NEW YORK 10003

June 15, 1982

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HAND DELIVERED

Chairman Nunzio J. Palladino
Commissioner John F. Ahearne
Commissioner Victor Gilinsky
Commissioner Thomas M. Roberts
Commissioner James K. Asselstine
United States Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

Re: Consolidated Edison Co. 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

Dear Commissioners:

The Indian Point proceeding has reached a critical stage which requires your immediate intervention. The final prehearing conference is scheduled for Thursday, June 17, 1982 with evidentiary hearings to begin on Tuesday, June 22. Without immediate action on a pending licensees' petition for certification¹ which has been strongly supported by the Commission's staff,² the carefully focused, limited inquiry ordered by this Commission will become an administrative free-for-all.

On May 10, 1982, licensees filed a petition before the Commission to direct certification of four questions relating to the Atomic Safety and Licensing Board's (Board's) order formulating contentions for the Indian Point proceeding: (1) whether the Commission intended to relieve intervenors of the requirement to provide bases for contentions, (2) whether the Commission

1. Licensees' Petition For Directed Certification Pursuant To 10 C.F.R. § 2.718(i) And For Waiver of 10 C.F.R. § 9.103 (May 10, 1982).

2. NRC Staff Response to Support Licensees' Request for Certification and Waiver of 10 C.F.R. § 9.103 (June 1, 1982).

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intended to permit challenges to existing regulations without compliance with 10 C.F.R. § 2.758, (3) whether the Board impermissibly allowed contentions to address only the release consequences and not the probability of such releases, and (4) whether the proposal of additional safety features had to satisfy the Commission's two-pronged standard for this proceeding. Licensees' Petition For Directed Certification Pursuant To 10 C.F.R. § 2.713(i) And For Waiver Of 10 C.F.R. § 9.103, at 2-3.

On June 1, 1982, the Commission staff joined the licensees in urging certification of these issues. In so doing, staff noted that the Board "decided the subject of the first question incorrectly," that the "Board also erred in its ruling on the applicability of 10 C.F.R. § 2.758 to the contentions in this proceeding," that the Board's ruling on the third question will cause "[t]he public interest [to] be dealt a disservice by a misfocused proceeding," and that the "Board was in error in its resolution of the application of the two-pronged test for consideration of safety measures." NRC Staff Response to Support Licensees' Request for Certification and Waiver of 10 C.F.R. § 9.103 at 14, 19, 22, 24 (emphasis added). As staff warned, "The resolution of these issues will determine the tenor and content of the entire Indian Point special proceeding." Id. at 26 (emphasis added).

Recent events underscore the necessity for the Commission's intervention in this proceeding.

In response to licensees' discovery requests, intervenors listed 36 witnesses who would testify on emergency planning contentions. Then, on June 10, 1982, only one week before the final pre-hearing conference and only ten days before the start of the evidentiary hearing, the intervenors "supplemented" their response by serving a list of 171 witnesses who purportedly will testify on only two of the Commission's six questions and the contentions thereunder.¹ In addition, witnesses proposed by other parties will increase this number to more than 200.²

Unless the Commission acts immediately, the Board will begin the evidentiary hearing by receiving testimony on contentions that both the staff and the licensees believe the Commission never intended for this special inquiry. An unfocused proceeding with hundreds of witnesses could play havoc with the September 18, 1982 deadline urged by the Commission for a final recommendation from the Board and will produce a result wholly

1. Intervenors also moved for an extension of the deadline for filing testimony for 13 of these witnesses.


2. Licensees intend to argue before the Board that the number of witnesses should be circumscribed.

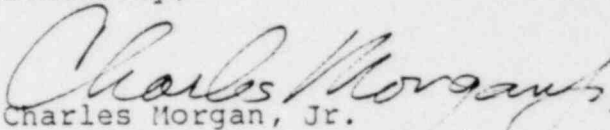
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inconsistent with the Commission's purpose in ordering a limited proceeding.

The Commission should reaffirm that this proceeding is a Commission-mandated inquiry and not a roving, unbounded forum by granting licensees' May 10, 1982 petition for directed certification and conforming this proceeding to the Commission's orders.

Sincerely,


Brent L. Brandenburg
Counsel for Consolidated Edison
Co. of New York, Inc.


Charles Morgan, Jr.
Counsel for Power Authority
of the State of New York

CMJr.:lb

cc: Official Service List
(first class mail)