UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Louis J. Carter, Chairman
Oscar H. Paris
Frederick J. Shon

In the Matter of	
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. (Indian Point, Unit No. 2)	Docket Nos. 50-247 SP 50-286 SP
POWER AUTHORITY OF THE STATE OF NEW YORK (Indian Point, Unit No. 3)	

POWER AUTHORITY'S ANSWER TO PETITIONS FOR LEAVE TO INTERVENE

Pursuant to the Atomic Safety and Licensing Board's Memorandum and Order dated November 13, 1981, and 10 C.F.R. § 2.714(c)(1981), the Power Authority of the State of New York (Authority), licensee of Indian Point Unit No. 3, hereby submits its answer to the petitions for leave to intervene filed in this proceeding.

The Authority does not oppose the intervention of:

(1) The Port Authority of New York and New Jersey,

(2) Robert Abrams, Attorney General of the State of New York,[1]

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1. Although not opposing the intervention of the Attorney General of the State of New York, the licensees concur with the New York State Energy Office that they, not the Attorney General, represent the State of New York and its agencies in this proceeding. Letter from Howard A. Fromer to Louis J. Carter (Nov. 17, 1981).

DS03 1/1 Add: Elliott Greker OPE

(3) New York State Assembly and the Special Committee on Nuclear Power Safety

(4) Metropolitan Transportation Authority,

(5) New York State Energy Office,

(6) County of Rockland,

(7) Alfred B. Del Bello, Executive of the County of Westchester, and

(8) Village of Buchanan.

The Authority opposes the intervention of the following organizations because such intervention would not be in the public interest:

(1) Union of Concerned Scientists (UCS),

(2) New York Public Interest Research Group, Inc. (NYPIRG),

(3) Parents Concerned About Indian Point (Parents),[1]

(4) Westchester People's Action Coalition, Inc. (WESPAC),

(5) Friends of the Earth, Inc. (FOE),

(6) West Branch Conservation Association (WBCA),

(7) Greater New York Council on Energy (GNYCE),

(8) New York City Audubon Society (NYC Audubon), and

(9) Rockland Citizens for Safe Energy (RCSE).

Opposition to these petitions is based upon the following grounds:

1) Because petitioners oppose the use of nuclear power plants regardless of safety, they should not be allowed to seek

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1. Parents was created by and thus is merely a branch of NYPIRG; all arguments raised herein in opposition to NYPIRG's intervention apply with equal force to Parents.

relief in this proceeding;

2) Petitioners as organizations lack standing to represent individual citizens because petitioners have no members or have not demonstrated that the persons named in their petitions are members of their organizations;

3) Descriptions of petitioners' members lack sufficient particularity to verify whether their interests are legally cognizable; petitioners also fail to show a legal stake specific to themselves in this proceeding;

4) Petitioners' purposes, broad and diverse, are not solely or primarily related to the nuclear safety issues in this proceeding;

5) Petitioners' failure to submit authorizations verifying the accuracy and scope of petitioners' representation of their "members" bar their standing; and

6) Discretionary intervention is inappropriate when petitioners have not proffered evidence that they will contribute positively to this proceeding.

The licensees also oppose the intervention of the members of the Council of the City of New York (Council) because such intervention under the interested state rule is unnecessary in that the State's interests will be adequately represented in this proceeding.

I. BECAUSE PETITIONERS OPPOSE THE USE OF NUCLEAR POWER PLANTS REGARDLESS OF SAFETY, THEY SHOULD NOT BE ALLOWED TO SEEK RELIEF IN THIS PROCEEDING

Recently, the NRC, in addressing a petition to shut down all nuclear power plants, declared that it

> does not sit as an arbiter of any national morality alleged to exist apart from the Constitution and the laws of Congress, which each Commissioner is sworn to uphold. Nor does any other Commission. Nor does any Court.
>
> . . . .
>
> If the petitioners feel that the statutory standards applying to nuclear power are not stringent enough on moral grounds, they must make that case to the Congress. The morality embodied in the existing statutes is not the one that they urge, and we have no power to change that.

46 Fed.Reg. 39,573, 39,580 (1981) (emphasis added).

UCS and NYPIRG do not seek a safe nuclear plant. They seek no nuclear plants at all. Robert Pollard, UCS nuclear engineer, has stated:

> "A nuclear plant license is nothing more or less than a murder license."

N-Protest Attracts Thousands, B. Globe, May 7, 1979, at 1, col. 4 (emphasis added). Joan Holt of NYPIRG has charged that:

> nuclear power is neither necessary nor in the public's interest [and NYPIRG] favor[s] an expeditious phase out of New York State's operating reactors.

Letter from Joan Holt to NRC Commissioners at 10 (July 24, 1981). Such statements by UCS and NYPIRG raise serious question as to whether they "look[] upon [this] proceeding as a forum for resolving technical questions in the fairest and most comprehensive manner, or alternatively, whether [they] view[] this proceeding merely in terms of a podium for soapbox oratory." In re Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), 10 N.R.C. 597, 602 (1979).

UCS and NYPIRG should not be allowed to call upon the resources of this Board and the NRC to aid them in achieving their goals which are inconsistent with congressional policy and the purposes of this proceeding. See Doyle v. United States, 494 F.Supp. 842, 844 (D.D.C. 1980).

Congress has declared:

> (a) the . . . use . . . of atomic energy shall be directed so as to make the maximum contribution to the general welfare, subject . . . to the paramount objective of making the maximum contribution to the common defense and security; and
>
> (b) the . . . use . . . of atomic energy shall be directed so as to . . . improve the general welfare, increase the standard of living, and strengthen free competition in private enterprise.

Atomic Energy Act, 42 U.S.C. § 2011. These policies are to be effectuated by a program which encourages "widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security and with the health and safety of the public." Id. § 2013(d).

The Supreme Court of the United States has affirmed that Congress' role is to establish policy regarding nuclear power.

> Nuclear energy may some day be a cheap, safe source of power or it may not. But Congress has made a choice to at least try nuclear energy, establishing a reasonable review process in which courts are to play only a limited role. . . . Time may prove wrong the decision to develop nuclear energy, but it is Congress or the States within their appropriate agencies which must eventually make that judgment.

Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 557-58 (1978) (emphasis added); see TVA v. Hill, 437 U.S. 153, 194 (1978) ("it is . . . the exclusive province of the Congress . . . to formulate legislative policies and mandate programs and projects").

UCS and NYPIRG are diametrically opposed to Congress' objective of encouraging the development and use of commercial nuclear power. UCS has termed power plants "unnecessary reactors" which can cause cancer and genetic damage to future generations. Letter from Eric E. Van Loon, Executive Director of UCS to Friend at 2 (undated solicitation letter) (emphasis in original); see id. at 3 ("Since 1971, UCS has been a leader in the struggle against the dangers posed by nuclear power.").

Robert D. Pollard,[1] formerly employed by the NRC and currently on the staff of UCS, is vehemently opposed to the nuclear option at any cost. At a news conference, Pollard told reporters that the only question with which the nation is presented is "how fast we should do away with the nuclear power as an energy source." Gloom Voiced on Atom Power, Wash. Post, May 3, 1979, § 1, 8, col. 1, at col. 2. Pollard envisions a future of either catastrophe or no nuclear power:

> [F]or the long term, even after Three Mile Island, I think I see only two options for nuclear power.

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1. Pollard has "affirmed" that the information in both the Union of Concerned Scientists' Petition for Decommissioning of Indian Point 1 and Suspension of Operation of Units 2 & 3 (filed Sept. 17, 1979), and its Petition to Intervene, is correct. Affidavit of Robert D. Pollard (filed Nov. 9, 1981).

> We are either going to have a catastrophic accident, and that will finish it off, or the Nuclear Regulatory Commission will begin to do its job, and in doing that job it will make nuclear power so expensive that no more nuclear plants will be built, and the existing ones will be phased out as rapidly as possible.

Transcript of Testimony of Robert Pollard, Hearing Before the Special Comm. on Nuclear Safety at 78-79 (1979) (hereinafter Special Committee Testimony).

Moreover, Pollard is adamant in his belief that the Indian Point plants should be closed at once.[1] U.S. Panel Releases Reports that Critic Says Show Failure to Act on Safety Before Licensing Atom Reactors, N.Y. Times, Feb. 13, 1976, § 1, at 15, col. 1. He reiterated his immovable stance at a congressional hearing.

> Mr. Pollard. I would think that what we need to do with these plants is decommission them and not let them operate again.
>
> The Chairman. How quickly?
>
> Mr. Pollard. Immediately.
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> The Chairman. Tomorrow afternoon?
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> Mr. Pollard: Yes sir.
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> The Chairman. As soon as we can?
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> Mr. Pollard. As soon as we can. I think if we wait until tomorrow afternoon, and the

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1. The UCS has made public its objection with regard to Indian Point by placing a full-page advertisement against operation of the plants in the New York Times. 48,000 People Could Die on a Northerly Wind from Indian Point, N.Y. Times, Sept. 23, 1979, § 4, at 20. See also Some Day We All Will Wake Up, N.Y. Times, Apr. 8, 1979, § 4, at 22, (full-page advertisement in which UCS claims that "[t]he government has violated a public trust").

> accident occurs tomorrow morning, everyone will agree we should have shut them down today. That is what we are facing here, is the country going to be smart enough or wise enough to face up to the problems[1] which we know exist. Or are we going to wait until we have a serious accident that kills 10,000 people, that contaminates metropolitan New York? That is the choice we are facing.

Industry's Response to the Accident at Three Mile Island: Oversight Hearings Before the Subcomm. on Energy and the Environment of the House Comm. on Interior and Insular Affairs, 96th Cong., 1st Sess. 44 (1979) (statement of Robert D. Pollard).

Dr. Henry W. Kendall, a UCS co-founder, states:

> We [UCS] believe that in view of the unique features of nuclear power that it is imprudent for a nation to adopt a commitment to this source until all feasible alternative means of preventing energy are exploited, energy management and conservation implemented fully, and, finally, a compelling need shown to exist.

H. Kendall, Nuclear Power: A Review of Its Problems, reprinted in U.S. Foreign Policy and the Export of Nuclear Technology to the Middle East: Hearings Before the Subcomms. on International Organizations and Movements and on the Near East and South Asia of the House Comm. on Foreign Affairs, 93d Cong., 2d Sess. 298 (1974) (emphasis added).

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1. The courts have uniformly confirmed that "[a]bsolute or perfect assurances are not required [by the Atomic Energy Act], and neither present technology nor public policy admit of such a standard." Citizens for Safe Power, Inc. v. NRC, 524 F.2d 1291, 1297 (D.C. Cir. 1975).

NYPIRG established its Indian Point Shutdown Project in 1979.[1] NYPIRG Annual Report, 1979-1980, at 13. Joan Holt, project coordinator, has stated that no amount of safeguards could satisfy her concerns; the only solution is to shutdown Indian Point.

> CHAIRMAN AHEARNE: [I]f I was tracking what some of your initial comments were tell me if this impression is wrong. The impression I got was that if a number of changes are made in the operator improvements, procedural improvements and in short and long term safeguards that there are really no set of those that would meet your concerns.
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> MS. HOLT: That's right.
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> CHAIRMAN AHEARNE: That your concerns really would only be met when the plant is being shutdown.
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> MS. HOLT: Yes, because of the site. That's my personal view, yes. And that's the view of my organization. We feel that there is no way because you cannot guarantee that accidents cannot happen. You can debate probabilities all day but they can happen, and if they happen our region is in double jeopardy because of the dense population.

Transcript of NRC Public Meeting, Presentation by Commenters in UCS 2.260 Petition on Indian Point at 71-72 (Feb. 5, 1980). See Statement of Joan Holt for Presentation to the NRC at 4 (Feb. 5, 1980) (hereinafter Holt Presentation Statement) ("There is no way around it: those plants must be closed!").

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1. A NYPIRG publication proclaims that nuclear power has become a "nightmare." Nuclear Power: An Idea Whose Time Has Passed? (1979) (unpaginated). See NYPIRG's 1980 Legislative Program 7; NYPIRG Annual Report, 1979-1980, at 13; NYPIRG Annual Report, 1975, at 6.

NYPIRG believes that this hearing "should be of a broad enough scope to allow participants to raise basic questions about nuclear safety--and to challenge many of the assumptions underlying the way the NRC regulates nuclear power plants."[1] Holt, New York City's Nuclear Threat, Agenda, at 5 (Jan.-Feb. 1981) (emphasis added). Holt has told the Commissioners that it is they "who are on trial here!" Holt Presentation Statement at 4. She has accused the Commissioners of "collusion" with the utilities, id. at 2, and with being "more interested in protecting the nuclear industry than in safeguarding the public." Holt Committee Statement at 1.

NYPIRG's challenges are being voiced in an improper forum, as are those of UCS. The Commissioners have mandated that the scope of the hearing be limited to issues relating specifically to Indian Point. Memorandum and Order at 2 (NRC Sept. 18, 1981). Participation by UCS and NYPIRG will broaden, delay, and confuse the proceeding, and thereby not be in the public interest.

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1. Holt has denounced the Commissioners for perpetrating "lies, cover-ups, and . . . public relations hype." Statement of Joan Holt Before the United States Nuclear Regulatory Commission for the Committee to Protect Children from Nuclear Dangers 1 (Jan. 15, 1980) (hereinafter Holt Committee Statement). She has characterized Governor Carey as "mislead" and "misinformed," Letter from Joan Holt and Dean Corren to Governor Hugh L. Carey at 1 (June 30, 1980), and with being more concerned with "money rather than lives." Consumer Group Raps Carey on Indian Point, Daily News, Nov. 18, 1980, at 10.

She claims that the "emergency preparedness scheme of the NRC is a criminal sham," id. (emphasis added), and that the NRC is playing "Russian Roulette" with the citizens of New York. Nuclear Panel Approves Restart of PASNY Plant, Gannett Westchester Newspapers, Nov. 15, 1980.

Similarly, WESPAC, FOE, and GNYCE should not be allowed to intervene in this proceeding to promote their goals of closing down the nuclear power industry.

WESPAC "believe[s] that nuclear powerplants are a clear and present danger to the health and welfare of living things." WESPAC Petition, reprinted in Emergency Planning Around U.S. Nuclear Powerplants: Nuclear Regulatory Commission Oversight Hearings Before a Subcomm. of the House Comm. on Government Operations, 96th Cong., 1st Sess. 351 (1979) (statement of Connie Hogarth, Director, WESPAC) (hereinafter Emergency Planning Hearings). WESPAC has urged Congress to shut down all currently operating nuclear power plants, decommission them, and impose a moratorium on the construction of new facilities. Id. at 337, 339, 348, 351. WESPAC's director, Connie Hogarth, believes that nuclear power is "threatening to world peace, threatening to the very future of humankind." Hogarth, A Defense of Civil Disobedience, N.Y. Times, Sept. 22, 1977. § 22, at 20, col. 3 (hereinafter Civil Disobedience). She holds that

> [e]very nuclear plant built today[1] increases the probability of a nuclear accident and increases the probability that the plutonium produced will eventually become a weapon of mass destruction.

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1. WESPAC has accused the NRC of colluding with industry and perpetrating a fraud on the public in its handling of UCS' Petition for Decomissioning of Indian Point 1 and Suspension of Operation of Units 2 and 3. WESPAC/SHAD Comment on the Recommendation by the Director of Nuclear Reactor Regulation Harold Denton Relating to the 2.206 Petition of the Union of Concerned Scientists on Indian Point at 2, Nos. 50-3, 50-247, 50-286 (filed Mar. 10, 1980). WESPAC also questioned the NRC's competence to protect public safety. Id. at 4.

Id. at 20, col. 4. Hogarth and WESPAC would bring to this hearing a mistaken notion that the nation's commitment to nuclear power is on trial.

Lorna Salzman,[1] Mid-Atlantic Representative for FOE, has urged that nuclear energy be abandoned and that the United States "opt for safer forms of energy that do not mortgage our lives and those of our descendants." Salzman, Carl, & Dickerson, Nuclear Gamble, N.Y. Times, Mar. 31, 1974, § 6, at 65, col. 1.[2]

Moreover, FOE endorsed, with other environmental groups, "a phase out of nuclear energy over the next 10 years and a major shift away from large-scale, high-technology energy developed generally." Carter, Failure Seen for Big-Scale, High-Technology Energy Plans, Science, Mar. 2, 1977, at 764.

David Brower, the founder of FOE, has stated that his organization is adamantly opposed to nuclear power:

> "We can stop nuclear energy right away . . . and phase out the use of fossil fuels in a period of 50 years, . . . using what we already know how to do."

Now His Foe is Nuclear Energy, San Francisco Chronicle, Aug. 21, 1977, § 2, at 1, col. 1.

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1. Salzman signed the FOE petition to intervene in this proceeding. See Petition to Intervene at 3.

2. Salzman also wrote that "the existence of nuclear power plants constitutes the greatest self-imposed threat to national security that we now face." Salzman, Our Nuclear Achilles Heel, N.Y. Times, June 17, 1981, § 1, at 30, col. 3. Salzman's letter used the Israeli attack on Iraq's nuclear facility to express her view that "the 72 operating nuclear power plants in the United States" were an immense national liability. Id.

Brower has conceded that a straightforward, complete victory on the nuclear energy question is unlikely. Id. Rather than seeking an all-out victory on the issue before Congress, the appropriate forum for Brower's political objectives, he seeks to make "gains" by opposing the "bad guys" in various legal proceedings. Id.

In its antinuclear publication, Alternate Currents with The Greater New York Council on Energy, GNYCE counsels its readers that

> [a]nyone can help create a stable energy future and stop the spread of nuclear technology.

Anyone Can, Alternate Currents with the Greater New York Council on Energy, Fall 1980, at 7 (hereinafter Alternate Currents) (emphasis added). It believes that the development and use of nuclear power is not in the public interest.

> Nuclear power is good for the companies that build reactors, those that control the supply of uranium, and the electric utilities that, through state public service laws, earn profits in proportion to their capital investment. Meanwhile, American consumers must pay ever-increasing prices for products made with electricity, struggle against accelerating inflation and a growing health risk, and bear the financial and social costs of high unemployment in an economy that is vulnerable to the whims of uranium and oil suppliers.

Debits and Credits, Alternate Currents with the Greater New York Council on Energy, Fall 1980 at 1, 7. GNYCE claims that "[s]uch basic civil rights as freedom of speech and freedom of the press may have to be sacrificed to maintain a safe level of public ignorance about nuclear technology and the uses of nuclear substances." Material Unaccounted For, Alternate Currents with

the Greater New York Council on Energy, Fall 1980, at 3. Dean Corren, Director of GNYCE, has stated that even if Indian Point "were perfectly safe, [it still] has to go!" Transcript of Public Meeting with Harold Denton, NRC at 22 (Jan. 22, 1980).[1]

Additionally, the UCS desires to place the NRC on trial in this proceeding, not the safety of Indian Point. Pollard and UCS charge NRC "mismanagement." Pollard resigned from the NRC because

> "I could no longer, in conscience, participate in a process that so effectively evades the single legislative mandate given to the N.R.C.--protection of public health and safety."

Con Ed Official Brands Critic of Atom Safety Unprofessional, N.Y. Times, Feb. 24, 1976, § 1, 16, col. 4, at col. 5 (emphasis added). He has accused the NRC of being "blind to safety issues." Safety an Issue at Indian Point, N.Y. Times, Jan. 21, 1976, § 1, 62, col. 7, at col. 8.

On the NRC's efforts to maintain safety, Pollard claims that the

> NRC safety standards are in a state of disarray. Rather than having an organized,

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1. Corren strongly advocates the replacement of nuclear power with cogeneration.

> Cogeneration needs a tremendous amount of attention, and I do believe it is the only hope for really stabilizing and controlling the price of electricity in New York City over the next thirty years.

Transcript of Joint Public Hearing before the New York State Assembly Special Comm. on Nuclear Power Safety and Comm. on Corporations, Authorities and Commissions: An Inquiry into the Accident at Indian Point Number Two at 249 (Feb. 12, 1981).

> unified and unequivocal set of safety standards, NRC has a bewildering collection of regulations, regulatory guides, informal rules-of-thumb, formal technical specifications, design requirements, performance criteria, etc. that are applied and interpreted on an ad hoc basis.

Nuclear Siting and Licensing Act of 1978: Hearings Before the Subcomm. on Nuclear Regulation of the Senate Comm. on Environment and Public Works, 95th Cong., 2d Sess. 975 (1978) (Detailed Testimony of Robert D. Pollard Before the Subcomm. on Energy and Power of the House Comm. on Interstate and Foreign Commerce).

WESPAC, GNYCE, and FOE, like UCS and NYPIRG, seek to put nuclear energy and the NRC on trial. Their participation in this proceeding would divert attention from the complex issues involved, denigrate the process the NRC has chosen to resolve safety issues at Indian Point, and not be in the public interest.

II. PETITIONERS AS ORGANIZATIONS LACK STANDING TO REPRESENT INDIVIDUAL CITIZENS BECAUSE PETITIONERS HAVE NO MEMBERS OR HAVE NOT DEMONSTRATED THAT THE PERSONS NAMED IN THEIR PETITIONS ARE MEMBERS OF THEIR ORGANIZATIONS

UCS, WESPAC and NYPIRG seek to establish standing by virtue of their "members" living near Indian Point. They have failed, however, to establish that the persons listed in the petitions are, indeed, members.

A petitioner seeking leave to intervene as a matter of right must assert an interest which may be affected by the proceeding. 10 C.F.R. § 2.714(a)(2) (1981). In determining whether such an interest has been sufficiently alleged, the NRC applies contempo-

raneous judicial concepts of standing.[1] In re Nuclear Engineering Co. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), 7 N.R.C. 737, 739-40 (1978); In re Public Service Co. (Black Fox Station, Units 1 and 2), 5 N.R.C. 1143, 1144-45 (1977); Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), 4 N.R.C. 610, 612 (1976). The Supreme Court of the United States has held that "associational standing"[2] depends on whether the organization has "established actual injury to any of [its] . . . members." Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 40 (1976) (emphasis added).

An organization must demonstrate that the persons it purports to represent are actually members. Hunt v. Washington Apple Advertising Commission, 432 U.S. 333 (1977).

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1. The primary requisite for a grant of standing is an interest sufficient to insure "that the questions will be framed with the necessary specificity, that the issues will be contested with the necessary adverseness and that the litigation will be pursued with the necessary vigor." Flast v. Cohen, 392 U.S. 83, 106 (1968).

2. See Hunt v. Washington Apple Advertising Commission, 432 U.S. 333 (1977); Warth v. Seldin, 422 U.S. 490, 511 (1975); Sierra Club v. Morton, 405 U.S. 727, 739 (1972); National Motor Freight Traffic Association, Inc. v. United States, 372 U.S. 246, 247 (1963). The associational standing doctrine represents a very limited exception to the fundamental requirement of Article III of the Constitution that the complaining party be among the injured. Baker v. Carr, 369 U.S. 186, 204 (1962). Representational standing, however, "does not eliminate or attenuate the constitutional requirement of a case or controversy [because] [t]he association must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justifiable case had the members themselves brought suit." Warth v. Seldin, 422 U.S. at 511 (citations omitted).

> So long as the courts insist on some sort of substantial nexus between the injured party and the organization plaintiff - a nexus normally provided by actual membership or its functional equivalent measured in terms of control - it can reasonably be presumed that, in effect, it is the injured party who is himself seeking review. Absent this element of control, there is simply no assurance that the party seeking judicial review represents the injured party, and not merely a well informed point of view.

Health Research Group v. Kennedy, 82 F.R.D. 21, 26-27 (D.C. Cir. 1979) (emphasis in original and added); cf. In re Houston Lighting and Power Co., 9 N.R.C. 439, 459 (1979) (South Texas Project, Units 1 and 2) ("[T]here may be a difference between [the petitioner's] 'constituency' and its 'members.'").

Accordingly, the persons on whose behalf an organization asserts standing must "possess all of the indicia of membership in [that] organization." Hunt v. Washington Apple Advertising Commission, 432 U.S. at 344. Membership is established by electing or serving on the board of directors. See, e.g., Health Research Group v. Kennedy, 82 F.R.D. at 26-27. Exercising "considerable influence on [an organization's] policies and projects" through "financial support" and "letter writing" constitutes neither the indicia of membership nor any other connection sufficiently substantial to confer associational standing. Id. at 27.

> [T]here is a material difference of both degree and substance between the control exercised by masses of contributors tending to give more or less money to an organization depending on its responsiveness to their interests, or through the expression of opinion in the letters of supporters, on the one hand, and the control exercised by members of an organization as they regularly elect their governing body, on the other.

Id. (emphasis in original).[1]

UCS is mainly funded by contributions from its "sponsors." See Special Committee Testimony at 13 ("We are sponsored by donations from over 75,000 sponsors").[2] The group has no true members. Originally, UCS' Articles of Incorporation provided that "the corporation shall have no members." Articles of Incorporation of Union of Concerned Scientists Fund, Inc. at 1 (Sept. 19, 1973). This clause was subsequently amended to allow "non-voting members." "[I]ndividuals will become bona fide members upon the contribution of time or money and shall have the right to receive certain publications and other items at reduced or no fee." Articles of Amendment to the Articles of Incorporation of Union of Concerned Scientists Fund, Inc. (Nov. 15, 1978) (emphasis in original and added).

The UCS' "sponsors" have no active voice in management of the group's affairs.

> We have a management structure up in Cambridge, Mass., an executive director and an assistant director and a board of directors which meets

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1. In a previous case in which UCS was denied intervention for failure to particularize its interests, an Atomic Safety and Licensing Appeal Board declined "to explore the question whether representational standing can be based on the personal interests of a mere financial contributor to the organization." In re Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), 9 N.R.C. 402, 404 n.2 (1979).

2. UCS generally refers to its adherents as "sponsors." See, e.g., Industry's Response to the Accident at Three Mile Island: Oversight Hearings Before the Subcomm. on Energy and the Environment of the House Comm. on Interior and Insular Affairs, 96th Cong., 1st Sess. 56 (1979) (statement of Robert D. Pollard accompanied by Ellyn R. Weiss); Special Committee Testimony at 13; Letter from Eric E. Van Loon to Fellow Citizen at 4 (undated solicitation letter).

> occasionally to discuss major policy issues. The management together with the board decides when we are going to make various moves, what cases we will get into and what policy positions the organization will take.

Industry's Response to the Accident at Three Mile Island: Oversight Hearings Before the Subcomm. on Energy and the Environment of the House Comm. on Interior and Insular Affairs, 96th Cong., 1st Sess. 56-57 (1979) (statement of Robert D. Pollard accompanied by Ellyn R. Weiss) (emphasis added). Thus, UCS' "sponsors" do not possess the minimum amount of control necessary to qualify as its members. See Hunt v. Washington Apple Advertising Commission, 432 U.S. 333; Health Research Group v. Kennedy, 82 F.R.D. 21.

Like UCS, WESPAC has no true members. Rather, it has contributors who donate time or money in an attempt to close all nuclear plants. See Indian Point: The Next Three Mile Island? at 24 (revised Feb. 1980) (collection of antinuclear materials). Like the supporters in Health Research Group, WESPAC's contributors exercise no control over the group's affairs. The Board of Directors decides whether to accept pecuniary gifts. Certificate of Incorporation of Westchester People's Action Coalition, Inc. at 5 (filed Sept. 22, 1975) (hereinafter Certificate of Incorporation). The Board of Directors disposes of the organization's assets upon dissolution. Id. at 6. The Board of Directors, "in its discretion," may appoint trustees to care for the coalition's property. Id. Apparently, the Board of Directors decides what policies and procedures WESPAC will follow, and "members" have no active voice in management of the

group's affairs. Thus, WESPAC's contributors do not possess the minimum amount of control necessary to qualify as members. See Hunt v. Washington Apple Advertising Commission, 432 U.S. 333; Health Research Group v. Kennedy, 82 F.R.D. 21.[1]

Lacking true members, UCS and WESPAC fail to satisfy the most basic requirement for asserting representational standing.

NYPIRG is funded mainly through mandatory assessments on students on member campuses, and by citizens through NYPIRG's canvassing program.[2] NYPIRG Annual Report, 1979-1980, at 27, 29 (1980) (hereinafter Annual Report); The NYPIRG Annual Report, 1978, at 22-24 (1978). Although students through the mandatory program elect and serve as board of directors, Annual Report at 8, mandatory "membership" undercuts all claims by NYPIRG that it truly represents the interests of students in New York.[3] The "primary function" of the citizen canvassing program is to raise funds to support NYPIRG's programs, to disseminate information on NYPIRG issues, and to encourage citizen participation in

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1. WESPAC also claims to represent "individuals with whom it regularly communicates." Petition for Leave to Intervene at 1. No nexus whatsoever is alleged between WESPAC and these individuals. Thus, their interests cannot support its petition for the same reason its "members'" interests cannot.

2. For the year ending August 31, 1980, contributions to NYPIRG totaled $1,420,242: citizen contributions ($842,785), student contributions ($434,308), other contributions ($5,745), foundation and trust grants ($116,804), and government grants ($20,600). Annual Report, Charitable Organization (New York State Department of State).

3. The propriety of mandatory student assessments by a state PIRG is pending before the United States Court of Appeals for the Third Circuit. Galda v. Bloustein, 516 F.Supp. 1142 (D.N.J. 1981), appeal docketed, No. 81-2433 (3rd Cir., filed Sept. 3, 1981).

government. Id. at 27. For a "membership" fee, citizens are "'entitl[ed] . . . to periodic newsletters and other printed material describing NYPIRG's activities and other issues of current political interest.'" New York Public Interest Research Group, Inc. v. Village of Roslyn Estates, 498 F.Supp. 922, 923 (E.D.N.Y. 1979), quoting NYPIRG's verified complaint. Citizen contributors neither elect nor serve on the board of directors. The financial contribution of citizen contributors to NYPIRG is the largest of any group yet their control of NYPIRG is the least. Thus, citizen contributors do not possess the minimum amount of control necessary to qualify as members of NYPIRG. See Hunt v. Washington Apple Advertising Commission, 432 U.S. 333; Health Research Group v. Kennedy, 82 F.R.D. 21.

"A petitioner is responsible for providing a Board with sufficient information for determining whether the petitioner has standing of right." In re Houston Power and Lighting Co., 9 N.R.C. at 459. NYPIRG has not indicated whether the persons listed on the petition are students in a mandatory program or citizen contributors. Absent such clarification, the Authority contends that NYPIRG has failed to establish the existence of the requisite nexus between itself and the persons it seeks to represent.

Likewise, FOE, WBCA, GNYCE, NYC Audubon,[1] and RCSE have failed to provide any proof that the persons named on their petitions possess "indicia of membership" or any other substantial nexus with the organization. See Health Research Group v. Kennedy, 82 F.R.D. at 27.

III. DESCRIPTIONS OF PETITIONERS' MEMBERS LACK SUFFICIENT PARTICULARITY TO VERIFY WHETHER THEIR INTERESTS ARE LEGALLY COGNIZABLE; PETITIONERS ALSO FAIL TO SHOW A LEGAL STAKE SPECIFIC TO THEMSELVES IN THIS PROCEEDING

UCS and NYPIRG seek leave to intervene to protect their own interests. Petition to Intervene at 2. Although they claim that an accident at Indian Point would affect their "members' personal safety and health," id. at 3 (emphasis added), they have made no showing that a "cognizable interest [specific to itself] might be adversely affected if the proceeding has one outcome rather than another." In re Nuclear Engineering Co., 7 N.R.C. at 743.

> The requirement that a party seeking review must allege facts showing that he is himself adversely affected does not insulate executive action from judicial review, nor does it prevent any public interests from being protected through the judicial process. It does serve as at least a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome. That goal would be undermined were we to [confer standing] at the behest of organizations or individuals

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1. NYC Audubon states that it "will endeavor to consolidate" with other National Audubon Society chapters with similar interests in the matter. Petition for Leave to Intervene at 3. The Licensees oppose any such consolidation. While consolidation may provide the Licensing Board with an effective means of avoiding repetitive presentations by intervenors, see 10 C.F.R. § 2.715a (1981), NYC Audubon cannot seek intervention on behalf of unknown and unenumerated Audubon Society chapters.

> who seek to do no more than vindicate their own value preferences through the judicial process.

Sierra Club v. Morton, 405 U.S. at 740 (footnotes omitted) (emphasis added).

In applying the "injury-in-fact" requirement to organizations, the Supreme Court has stated that

> a mere "interest in a problem," no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to [confer standing].

Sierra Club v. Morton, 405 U.S. at 739; In re Nuclear Engineering Co., 7 N.R.C. at 742; In re Allied-General Nuclear Services, 3 N.R.C. at 421 (ACLU denied intervention). "[A]n organization's abstract concern with a subject that could be affected by an adjudication does not substitute for the concrete injury required by Art. III." Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. at 40. Accordingly, even if an organization has asserted a generalized harm, it must show a "distinct and palpable injury" to itself. Warth v. Seldin, 422 U.S. at 501; In re Ten Applications for Low-Enriched Uranium Exports to Euratom Member Nations, 6 N.R.C. 525, 531 (1977).

The NRC requires a party seeking intervention to demonstrate an "interest" which may be affected by the proceeding. 10 C.F.R. § 2.714(a)(1) (1981). To determine whether a petitioner has asserted the requisite "interest," the NRC requires, in accordance with judicial concepts of standing, a showing that the action being challenged could cause "injury in fact" to the person seeking leave to intervene, and that such injury is

arguably within the "zone of interests" protected by the statute governing the proceeding. In re Portland General Electric Co., 4 N.R.C. at 613; see Warth v. Seldin, 422 U.S. at 498-501; United States v. SCRAP, 412 U.S. 669, 686 (1973); Association of Data Processing Service Organizations v. Camp, 397 U.S. 150, 152-54 (1970).

WESPAC also seeks leave to intervene "on behalf of itself." Petition for Leave to Intervene at 1. Although WESPAC claims that "intermittent operation of Indian Point Units 2 and 3 has affected and will continue to threaten [its members'] personal safety," Petition for Leave to Intervene at 1 (emphasis added), it has made no showing that one final decision in this proceeding, rather than another, might effect harm to it. See Sierra Club v. Morton, 405 U.S. at 740.

Similarly, FOE, WBCA, NYC Audubon, and RCSE should be denied standing on behalf of themselves for failure to demonstrate a "distinct and palpable injury."

Although an organization may establish standing through the "interests" of its members, "it must identify specifically the name and address of at least one affected member who wishes to be represented by the organization." In re Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), 8 N.R.C. 575, 583 (1978) (emphasis added); accord, In re Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), 9 N.R.C. 377, 393 (1979). Thus, the Petitioners must make a "clear and current showing" that the persons listed in the petition do, in fact, reside within 50 miles of the plant site and that their

interests are those set forth in the petition. In re Consumers Power Co., (Midland Plant, Units 1 and 2), 8 N.R.C. 275, 277 (1978).

UCS and NYPIRG list only the name, city, and state of the "members" they seek to represent. Petition to Intervene at 3. Absent disclosure of a street address, "it is not possible to verify the assertion that such members exist." In re Houston Lighting Co., 9 N.R.C. at 393, UCS and NYPIRG have additionally failed to submit affidavits from their "members" verifying the place of their residence and that their interests have been set forth in the petition. In re Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), 3 N.R.C. 420, 423 (1976); In re Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), 3 N.R.C. 328, 330 (1976). Absent proper specificity of address and verification of interest, it is impossible to determine whether the parties UCS and NYPIRG purport to represent do, in fact, have a sufficient "interest" in this matter.

Similarly, WESPAC, FOE, WBCA, GNYCE, NYC Audubon, and RCSE have also failed to submit affidavits from its "sponsors" or "members" verifying their place of abode and attesting that their interests have been set forth in their petition.

IV. PETITIONERS' PURPOSES, BROAD AND DIVERSE, ARE NOT SOLELY OR PRIMARILY RELATED TO THE NUCLEAR SAFETY ISSUES IN THIS PROCEEDING

NYPIRG, a Ralph Nader-inspired organization,[1] has goals that are wide-ranging and disparate:

> The public or quasi-public objectives which the purposes will achieve are to provide citizens of Central New York a lawful and meaningful method to influence decisions which affect the public interest. . . . [NYPIRG] will seek to contribute to and effect informed public action by research, evaluation, and education. The areas of involvement include environmental preservation, consumer protection, racial and sexual discrimination, product safety, corporate responsibility, as well as problems of social welfare.

Certificate of Incorporation of Central New York Public Interest Research Group, Inc. (filed Aug. 8, 1972).[2]

NYPIRG is involved with issues concerning consumer protection,[3] the environment, government reform, health, higher education, energy, redlining, senior citizens, small claims, taxes, and mass transit. NYPIRG Annual Report, 1979-1980, at 12-24.

Although an organization may bring suit as a representative of its members, the Supreme Court of the United States has deter-

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1. Nader has recently called for the closing of Indian Point and other nuclear plants located near high population areas. Close Indian Pt. Reactor? Staten Island Advance, Apr. 23, 1981.

2. The group's name was changed to New York Public Interest Research Group, Inc. in 1973. Certificate of Amendment of the Certificate of Incorporation of Central New York Public Interest Research Group (filed Nov. 12, 1973).

3. NYPIRG is "the largest consumer advocacy organization in [New York] state." NYPIRG Annual Report, 1979-1980, at 12.

mined that the organization must demonstrate that "the interests it seeks to protect are germane to the organization's purpose."[1] Hunt v. Washington State Apple Advertising Commission, 432 U.S. at 343;[2] see In re Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), 9 N.R.C. 439, 447 (1979).

> This requirement helps insure, not only that the party before the Court be a competent and effective advocate on the issues presented, but also that the members of the plaintiff organization have had an opportunity to influence their representatives on positions related to the particular member injury at issue. Like the membership requirement . . . this too ultimately insures that it is the injured party, and not merely a well-intentioned advocate, who is, at least in effect, before the Court.

Health Research Group v. Kennedy, 82 F.R.D. at 28 (emphasis in original and added). "It is necessary, therefore, to assess the interest asserted to be sure that it is one that the claimant can

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1. An association is additionally required to show that "its members would otherwise have standing to sue in their own right," and "neither the claim asserted nor the relief requested, requires the participation of individual members in the lawsuit." Hunt v. Washington State Apple Advertising Commission, 432 U.S. at 343.

2. Post-Hunt cases have continued to require a close relationship between an organization's purpose and the interest it seeks to protect. Church of Scientology of California v. Cazares, 638 F.2d 1272, 1279-80 (5th Cir. 1981); NCAA v. Califano, 622 F.2d 1382, 1391 (10th Cir. 1980); Committee for Auto Responsibility v. Solomon, 603 F.2d 992, 998 n.13 (D.C.Cir. 1979), cert. denied, 445 U.S. 915 (1980); National Constructors Association v. National Electrical Contractors Association, Inc., 498 F.Supp. 510, 520-21 (D.Md. 1980); Wampler v. Goldschmidt, 486 F.Supp. 1130, 1133-34 (D.Minn. 1980); National Office Machine Dealers Association v. Monroe, The Calculator Co., 484 F.Supp. 1306, 1307 (N.D.Ill. 1980); Consumers Union of United States, Inc. v. Miller, 84 F.R.D. 240, 244 (D.D.C. 1979); Huertas v. East River Housing Corp., 81 F.R.D. 641, 649 (S.D.N.Y. 1979); Boyce v. Rizzo, 78 F.R.D. 698, 704 (E.D.Pa. 1978).

properly assert as a true representative." Boyce v. Rizzo, 78 F.R.D. 698, 704 (E.D.Pa. 1978).[1]

In Health Research Group v. Kennedy, 82 F.R.D. 21, Public Citizen and Health Research Group (HRG), both Nader-inspired groups, challenged certain aspects of the Food and Drug Administration's regulation of over-the-counter drugs. For standing, both organizations relied upon contributors to Public Citizen which served as an umbrella organization and conduit for funds to a diverse set of consumer advocacy groups, one of which was HRG, whose primary purpose was consumer advocacy on health issues. Id. at 28. In denying standing to Public Citizen, Judge Sirica observed that a person contributing to Public Citizen "exercis[ed] influence over an organization with the broadest of concerns: the public interest," and that the interests sought to be protected by the lawsuit were germane only with the purposes of HRG. Id. (emphasis added). The Court, however, denied HRG standing because its relationship with the contributors was "highly attenuated." Id. at 28. The Court further noted that "[health issues were] merely one of many projects to which Public Citizen's contributions are channeled." Id.

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1. "An adequate representation problem occurs when an [organization] represents a diverse membership which has varied interests in [a proceeding]." Simone, Associational Standing and Due Process: The Need for an Adequate Representation Scrutiny, 61 B.U.L.Rev. 174, 180 (1981).

Like Public Citizen, NYPIRG is a multi-issue public interest group whose primary pursuits are those other than nuclear power.[1]

Likewise, WESPAC devotes considerable resources to areas unrelated to nuclear power. In its Petition for Leave to Intervene, WESPAC admits that it is "concerned about the quality of life, peace . . . [and] justice." Petition for Leave to Intervene at 1. WESPAC's purposes are:

> To stimulate among the residents of Westchester County, New York, through an exchange of ideas and cooperation among diverse organizations, a fuller understanding of the issues which offset the quality of life including, but not limited to, the environment, economic security, the preservation and expansion of individual rights, the equality of all peoples, and the promotion of world peace, all for the betterment of Westchester County, America and the World.

Certificate of Incorporation at 3.[2] WESPAC also combats racism and sexism, Emergency Planning Hearings at 335, as well as United States imperialism, prison overcrowding, and anti-union corporations. WESPAC Newsletter, Jan./Feb. 1981, at 7, 10, 12.

> FOE is "dedicated to the preservation, restoration, and rational use of the earth's resources," and is working for "a clean environment, a decent workplace, and reasonable

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1. NYPIRG's 1980 Annual Report indicates that it dedicated less than 5% of its program services budget to energy activities. New York Public Interest Group, Inc. Annual Report-Charitable Organization (for the year ended August 31, 1980).

2. Regarding WESPAC's concern with "economic security," such subject matter is not a cognizable interest. In re Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), 5 N.R.C. 1418, 1420-21 (1977) (neither taxpayers nor ratepayers have requisite interest for standing); In re Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), 3 N.R.C. 804, 806 (1976) (ratepayers have insufficient interest).

use of energy."

Foundation for Public Affairs, Public Interest Profiles F-45 (1980) (hereinafter Public Interest Profiles).

FOE has been quoted as stating that it

> will "continue the tone extent, and breadth" of the work it has been doing, covering a broad range of energy, land management, and resource exploitation issues.

Id. at F-51 (emphasis added).[1]

The purpose of the Hunt test is to ensure that an "association has a personal stake in the outcome of [a lawsuit] by limiting the type of member interests for which it may sue." Simone, Associational Standing and Due Process: The Need for an Adequate Representational Scrutiny, 61 B.U.L.Rev. 174, 183 (1981). Moreover, it protects against "the possibility that decisions made by an [organization's] leadership do not . . . reflect the views of its constituency."[2] Id. at 179. The stakes and interests of NYPIRG's, WESPAC's, and FOE's "members" "are too diverse and possibilities of conflict too obvious to make [them] appropriate vehicle[s] to litigate the claims of [their] members"

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1. On nuclear issues, FOE has been involved in proceedings concerning nuclear weapons proliferation and radioactive waste transport. FOE Statement to the New York City Council Environmental Protection Committee on Indian Point II at 1 (Oct. 28, 1981) (statement of Lorna Salzman). The dangers of nuclear warfare and accidental transport spills are not on trial in this proceeding.

2. One court has held that an organization has to give its members notice of a lawsuit it has filed on their behalf. Local 194, Retail, Wholesale and Department Store Union v. Standard Brands, Inc., 540 F.2d 864, 867-68 (7th Cir. 1976).

in this proceeding.[1] Associated General Contractors of North Dakota v. Otter Tail Power Co., 611 F.2d 684, 691 (8th Cir. 1979).

V. PETITIONERS' FAILURE TO SUBMIT AUTHORIZATIONS VERIFYING THE ACCURACY AND SCOPE OF PETITIONERS' REPRESENTATION OF THEIR "MEMBERS" BAR THEIR STANDING

An organization seeking to obtain standing as a representative of its members "must demonstrate that the particular members whom it purports to represent have in fact authorized such representation." In re Houston Lighting and Power Co., 9 N.R.C. at 444; accord, In re Detroit Edison Co., 8 N.R.C. at 583; see also In re Allied-General Nuclear Service, 3 N.R.C. at 423.

> Where an organization's standing hinges upon its being the representative of a member who has the requisite affected personal interest, it is obviously important that there be some concrete indication that . . . the member wishes to have that interest represented in the proceeding. . . . [U]nless an organization's charter provides to the contrary, mere membership in it does not ordinarily constitute blanket authorization for the organization to represent any of the member's [sic] personal interests it cares to without his or her consent.

In re Houston Lighting and Power Co., 9 N.R.C. at 396.

NYPIRG has not submitted affidavits from any of the named "members" authorizing the organization to represent them in this proceeding. NYPIRG has submitted an affidavit from Joan Holt stating that the named members have been spoken with by her staff

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1. NYPIRG's mandatory "membership" further supports the notion that the interests of NYPIRG members are too diverse to make NYPIRG an adequate representative in this proceeding.

members and have authorized NYPIRG to represent their interests in this proceeding. An Atomic Safety and Licensing Appeal Board, however, has indicated that it is necessary to submit affidavits from the named members themselves.[1] In re Allied-General Nuclear Services, 3 N.R.C. at 423; see In re Houston Lighting and Power Co., 9 N.R.C. at 444. Thus, NYPIRG has failed to provide the requisite "concrete indication" that the named members wish it to represent their interests in this proceeding. In re Houston Lighting and Power Co., 9 N.R.C. at 396.

Neither has WESPAC submitted a single affidavit from any named "member" authorizing the organization to represent him or her in this proceeding. It merely states that its "members" "have specifically authorized WESPAC to represent their interest." Petition for Leave to Intervene at 2. Thus, WESPAC has failed to provide the requisite "concrete indication" that the named members wish WESPAC to represent their interests in this proceeding.

FOE, WBCA, GNYCE, NYCAS, and RCSE have also failed to submit affidavits from their named "members" authorizing the organizations to represent them in this proceeding. See FOE Petition at 2; WBCA Petition at 2; GNYCE Petition at 2; NYC Audubon Petition at 2; RCSE Petition at 2.

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1. In contrast to verbal permission, a sworn statement impresses the oathtaker with the seriousness of the undertaking. See Fed.R.Evid. 603.

VI. DISCRETIONARY INTERVENTION IS INAPPROPRIATE WHEN PETITIONERS HAVE NOT PROFFERED EVIDENCE THAT THEY WILL CONTRIBUTE POSITIVELY TO THIS PROCEEDING

Although the NRC has allowed "intervention as a matter of discretion to some petitioners who do not meet judicial standing tests," In re Portland General Electric Co., 4 N.R.C. at 616, the petitioner has the burden of showing that the requirements for discretionary intervention have been met. In re Nuclear Engineering Co., 7 N.R.C. at 745. The factors to be considered are:

> (a) Weighing in favor of allowing intervention--
>
> (1) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
>
> (2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
>
> (3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.
>
> (b) Weighing against allowing intervention--
>
> (4) The availabilty of other means whereby petitioner's interest will be protected.
>
> (5) The extent to which the petitioner's interest will be represented by existing parties.
>
> (6) The extent to which petitioner's participation will inappropriately broaden or delay the proceeding.

In re Portland General Electric Co., 4 N.R.C. at 616; In re Detroit Edison Co., (Enrico Fermi Atomic Power Plant, Unit 2) 7 N.R.C. 381, 387-88, aff'd, 7 N.R.C. 473 (1978). "[B]road, generalized averments will not suffice." In re Nuclear Engineering Co., 7 N.R.C. at 745.

"Foremost among the factors which are to be taken into account in deciding whether to allow participation in the

proceeding as a discretionary matter is whether such participation would likely produce 'a valuable contribution . . . to [the] decision-making process.'" In re Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), 4 N.R.C. 631, 633 (1976); In re Nuclear Engineering Co., 7 N.R.C. at 743-44. Accordingly, a petitioner "must specify the extent to which it will involve itself . . . and the contribution which that involvement can reasonably be anticipated to make." Id. at 745.[1]

UCS and NYPIRG contend that there are five areas in which they seek to intervene,[2] but present no evidence that their participation would constitute a valuable and significant contribution to this proceeding. Petition for Leave to Intervene at 4-5.

The ability to make such a contribution is "foremost among those factors" to be considered in the decision on discretionary intervention. In re Public Service Co. of Oklahoma, 5 N.R.C. at 1145. Although UCS claims that it "has been involved with safety issues relating to the Indian Point reactors for the last five years," Petition for Leave to Intervene at 2, and NYPIRG alleges that its "staff has been conducting extensive research on problems relating to emergency planning for the region surrounding the Indian Point reactors," Petition for Leave to

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1. Intervenors admitted on a discretionary basis may be limited to participation in the issues they have "specified as of particular concern to them." In re Portland General Electric Co., 4 N.R.C. at 617.

2. The Authority notes that a schedule for addressing the admissibility of specific contentions will be established at a later date. Memorandum and Order 3 (Nov. 13, 1981).

Intervene at 2, neither has demonstrated that its staff members are "qualified by either specialized education or pertinent experience to make a substantial contribution." In re Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), 5 N.R.C. 1418, 1422 (1977).

WESPAC seeks intervention in three areas. It, like UCS and NYPIRG, has been negligent in offering proof of its value to this Board and this proceeding. WESPAC claims that it "has been working to close Indian Point through a wide range of approaches for over five years."[1] Petition for Leave to Intervene at 1. It has failed, however, to indicate the significance of these "approaches" or to set forth any other indication that its intervention in this proceeding would be of value.

Similarly, none of the other petitioners has presented any evidence to conclude that its participation would provide a valuable and significant contribution to this proceeding.

VII. ADMISSION OF THE COUNCIL UNDER THE INTERESTED STATE RULE IS UNNECESSARY BECAUSE ITS INTERESTS WILL BE ADEQUATELY REPRESENTED

This proceeding will not want for the views of New York State. The New York State Energy Office has a filed a Petition

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1. Indeed, WESPAC can only broaden, delay and confuse the proceeding by engaging a "wide range of approaches" to this proceeding. It also intends to expand at a later date the issues with respect to which it seeks to intervene. Petition for Leave to Intervene at 2. Such conduct is clearly not within the public interest.

for Leave to Participate as an Interested State,[1] stating that, under N.Y. Energy Law § 7-101 (McKinney), and under N.Y. Commerce Law § 104 (McKinney), it is responsible for coordinating the state's regulatory programs, and is thus concerned with the safety of the Indian Point plants. Petition for Leave to Participate as an Interested State by the New York State Energy Office at 1-2 (filed Nov. 9, 1981).

A Petition to Intervene as a representative of an interested state was filed for this proceeding[2] by the New York State Assembly (Assembly) and its Special Committee on Nuclear Power Safety. "[T]he members of the New York State Assembly are duly elected to represent and protect" the citizens of that state. Petition to Intervene at 1 (filed Nov. 6, 1981). The Assembly also "shares the state responsibility for emergency planning." Id. at 2; see, e.g., N.Y. State Fin.Law § 94 (McKinney); N.Y. Legis.Law Art. 3, §§ 1, 25 (McKinney).

Additionally, the NRC has required the Licensing Board to solicit the opinion of the Governor of the State of New York who plays a significant role in responses to nuclear emergencies. Thus the state will have substantial input.

The interests of these public bodies subsume those claimed by the Council. The New York State Energy Office is charged with the responsibility of protecting the public safety, as are the

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1. The Authority does not oppose the New York State Energy Office's petition to intervene.

2. The Authority does not oppose the intervention of either the New York State Assembly or its Special Committee on Nuclear Power Safety.

Attorney General and the Assembly. In addition, the Assembly must oversee the institution and adequacy of emergency planning procedures at the Indian Point facilities. Therefore, admission of the Council will neither aid nor expedite the NRC's decision-making process. On the contrary, such admission will hinder and delay the prompt and efficient resolution of the issues to which the Authority and the public are entitled. See Easton Utilities Commission v. AEC, 424 F.2d 847, 852 (D.C.Cir. 1970) (emphasis added) (right to appear is not "blindly absolute, without regard to . . . the administrative avenues established by other statutes and agency rules for participation, or, most importantly, as 'the orderly conduct of public business permits.'")

> "In order that agencies may effectively exercise their powers and duties in the public interest, public participation in agency proceedings should neither frustrate an agency's control of the allocation of . . . its resources nor unduly complicate and delay its proceedings. Consequently, each agency has a prime responsibility to reexamine its rules and practices to make public participation meaningful and effective without impairing the agency's performance of its statutory obligations."

3 K. Davis, Administrative Law Treatise at 71 (2d ed. 1980), quoting Administrative Conference of the United States Recommendation 71-6 (emphasis added).

Elected officials have been denied standing when they claimed the right to sue on the basis of the[illegible]tive office alone, and "could not show concrete injury [illegible]r legally protected interests." McGowan, Congressmen in Court: The New Plaintiffs, 15 Ga.L.Rev. 241, 243 (1981). "There is no warrant for a standing test unique to congressmen." Note, Congressional

Access to the Federal Courts, 90 Harv.L.Rev. 1632, 1636 (1977) (footnote omitted). See, e.g., Goldwater v. Carter, 444 U.S. 996 (1979), Reuss v. Balles, 584 F.2d 461 (D.C. Cir.), cert. denied, 439 U.S. 997 (1978); Harrington v. Bush, 553 F.2d 190 (D.C. Cir. 1977); Metcalf v. National Petroleum Council, 553 F.2d 176 (D.C. Cir. 1977); Harrington v. Schlesinger, 528 F.2d 455 (4th Cir. 1975); Holtzman v. Schlesinger, 484 F.2d 1307 (2d Cir. 1973), cert. denied, 416 U.S. 936 (1974); Metzenbaum v. Brown, 448 F.Supp. 538 (D.D.C. 1978); Public Citizen v. Sampson, 379 F.Supp. 662 (D.D.C. 1974); Riegle v. Federal Open Market Committee, 84 F.R.D. 114 (D.D.C. 1979). Consequently, there should be no warrant for a standing test unique to representatives of interested states, counties, municipalities, or other agencies.

VIII. PETITIONERS' SCAREMONGERING CONDUCT BARS THEIR PARTICPATION IN THIS PROCEEDING

The Authority contends, by information and belief, that UCS, NYPIRG, Parents, and others[1] have combined in an attempt to promote psychological distress in the community regarding nuclear power and the status of emergency planning in the areas

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1. All allegations contained herein apply to other petitioners whom the Authority would expect to identify through an evidentiary procedure.

surrounding Indian Point.[1]

Recently, the Authority obtained evidence documenting scaremongering. UCS, NYPIRG and Parents have circulated a "questionnaire" designed not to elicit facts but to raise the level of anxiety of citizens living near Indian Point.

Conduct of this nature demonstrates an attempt to undermine the objective resolution of issues germane to the issue of the continued operation of Indian Point. Such activity provides further grounds to deny UCS, NYPIRG and Parents standing to intervene in this proceeding. Precision Instrument Manufacturing Co. v. Automotive Maintenance Machinery Co., 324 U.S. 806, 997 (1945) ("'[H]e who comes into equity must come with clean hands.'"). See also Dickey v. Alcoa Steamship Co., 641 F.2d 81, 82 (2d Cir. 1981).

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1. Instead of offering a responsible or reasoned analysis, UCS and NYPIRG seek to create in the community and then inject into this proceeding anxiety and fear. Such a pattern is not a new tactic for these organizations.

Robert Pollard has characterized "[a] nuclear plant license [as] nothing more or less than a murder license," N-Protest Attracts Thousands, B. Globe, May 7, 1979, at 1, col. 4 (emphasis added), while Joan Holt has warned the public that the NRC is playing "Russian Roulette" with their lives. Nuclear Panel Approves Restart of PASNY Plant, Gannett Westchester Newspapers, Nov. 15, 1980. Pollard has additionally toyed with the public's worst fears:

> Besides the number of people that are actually killed, you have people worrying about developing cancer for the rest of their lives, and you have people worried about whether or not their children are going to grow up normally.

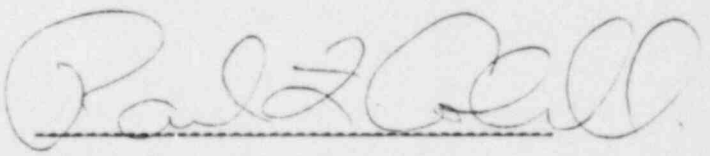
Transcript of Testimony of Robert Pollard, Hearing Before the Special Comm. on Nuclear Safety at 115 (1979).

CONCLUSION

In the interest of conforming this proceeding to the Commission's mandate that the issues be focused and this matter be expedited, the Power Authority of the State of New York requests that the Atomic Safety and Licensing Board deny the petitions to intervene submitted by the Union of Concerned Scientists, the New York Public Interest Research Group, Parents Concerned About Indian Point, Westchester People's Action Coalition, Friends of the Earth, West Branch Conservation Association, Greater New York Council on Energy, New York City Audubon Society, Rockland Citizens for Safe Energy, and the Council of the City of New York.

The Authority requests an evidentiary hearing pursuant to In re Consumers Power Co. (Midland Plant, Units 1 and 2), 8 N.R.C. 275, 277 n.1 (1978), on both the questions of memberships and membership policies and practices of those organizations whose intervention the Authority opposes in Section II, and on the contentions asserted in Section VIII concerning the scare-mongering conduct of UCS, NYPIRG and others.

Respectfully submitted,



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POWER AUTHORITY OF THE STATE
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Licensee of Indian Point
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Dated: November 24, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Louis J. Carter, Chairman
Oscar H. Paris
Frederick J. Shon

In the Matter of	)	
	)	
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. (Indian Point, Unit No. 2)	)	
	)	Docket Nos. 50-247 SP
	)	50-286 SP
POWER AUTHORITY OF THE STATE OF NEW YORK (Indian Point, Unit No. 3)	)	

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of November, 1981, I caused a copy of the foregoing Power Authority's Answer to Petitions for Leave to Intervene to be served by first-class mail, postage prepaid on the following:

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