

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

John F. Ahearne, Chairman
Victor Gilinsky
Joseph M. Hendrie
Peter A. Bradford

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
50-286

LICENSEES' MOTION FOR RECONSIDERATION
OF THAT PORTION OF THE COMMISSION'S ORDER
OF MAY 30, 1980 WHICH DIRECTS ADJUDICATORY HEARINGS

The 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, move the Commission for the reasons stated below for reconsideration of that portion of the Commission's order dated May 30, 1980 which directs that an adjudicatory hearing be held before an Atomic Safety and Licensing Board concerning certain enumerated matters regarding the Indian Point units.

The licensees submit that in light of the Interim Operations Task Force Report on Indian Point dated June 12,

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1980, and demographic data relating to Indian Point and other sites, there is no rational basis for singling out Indian Point for such a unique proceeding, particularly prior to the setting of new or revised industry-wide safety standards. This is so because: (1) the Task Force concluded that the overall societal risk of an Indian Point reactor was about the same as a typical reactor on a typical site; (2) the Task Force concluded that the risk to individuals of an Indian Point reactor was some 30 times less than the risk to individuals posed by a typical reactor; and (3) the population density surrounding Indian Point is not materially dissimilar from numerous other sites which are not subject to adjudicatory hearings. The commencement of site-specific safety hearings -- even of an investigatory nature -- in the absence of any clearly understood or agreed-upon regulatory standard is illogical and presents manifest opportunities for unfairness and confusion.

GROUND'S FOR RECONSIDERATION OF
THE ADJUDICATORY HEARING PHASE
OF THE COMMISSION'S MAY 30 ORDER

1. The Commission's decision to direct adjudicatory hearings should be fully reevaluated in light of the Interim Operations Task Force Report.

The Commission's order of May 30, 1980 did not contain any articulated basis for holding the contemplated adjudication. Neither did it express disagreement with the previous contrary determination of the Director of the Office of Nuclear Reactor

Regulation ("Director"). The May 30th order did establish an Interim Operations Task Force, which was asked to consider the overall risks posed by operation of Indian Point. The Commission directed the Task Force to discuss and compare the accident risk of Indian Point to other reactor designs.

The Staff's original, preliminary estimate, reflected in the Director's February 5th briefing, that the two operating Indian Point units represented a significant part of total societal risk of nuclear power in the United States was and is incorrect. The Interim Operations Task Force, addressing the logic used by Staff in making this preliminary estimate, specifically found "that equation is wrong" (transcript of the Commission's meeting of June 26, 1980 at 32). In his briefing to the Commissioners, Mr. Robert Bernero of the Commission's office of Nuclear Regulatory Research stated "[w]e would conclude from our analysis that the Indian Point site or reactors are not the dominant societal risk" (Tr. 56). The report of the Task Force states that the "overall [i.e., societal] risk of the Indian Point reactor is about the same as a typical reactor on a typical site."* (Task Force Report, SECY 80-283, p. 38)

However, in the area of individual risks posed to each of our citizens by operation of nuclear power plants, the Task Force concluded that:

[Indian Point] poses about 30 times less risk of early fatalities, about 50 times less risk of early injuries, about 30 times less risk of latent cancers, and about 50 times less risk of property damage [than the postulated typical (Surry) reactor]. (Task Force Report, p. 32).

The Task Force found that Indian Point posed less of a risk

than the Surry reactor even prior to the implementation of the interim measures set forth in the Director's February 1980 order.

The Task Force report is not the only study which has arrived at the above conclusions. The Task Force's risk analysis is generally consistent with an exhaustive analysis independently prepared for the licensees entitled "Westinghouse/Offshore Power System (OPS) Report on the Evaluation of Residual Risk for the Indian Point Power Plant." This report was sent to the Commission and UCS counsel under letter of May 23, 1980.

The Task Force report and the licensees' similar analysis do not state a case for singling out Indian Point for hearings. One can hardly avoid questioning the wisdom of a regulatory policy which singles out one of the country's safest reactors, as determined by a Task Force of the regulatory body itself,* for exhaustive safety-related scrutiny. Before extensive resources of the Commission Staff and licensees are committed to the unprecedented site-specific inquiry contemplated by the May 30 order, the licensees respectfully submit that the Commission should reevaluate the need for a hasty trial-type investigatory inquiry into a myriad of issues involving an operating facility. The Commission should reconsider its course in light of the Task Force's careful and

* The design and operational features evaluated by the Task Force are unique to Indian Point.

deliberate evaluation of the actual relative societal and individual risks posed by operation of the Indian Point units.

The results of the Commission's Task Force study eliminate any sustainable basis for commencing an elaborate investigation relating solely to Indian Point. The Commission's General Counsel stated on July 17, 1980 that the only reason for immediately proceeding with the adjudicatory phase was the hope of saving time:

What the Commission essentially decided, as I understand it, was that it made more sense to go forward with an adjudication related to this specific plant now, rather than waiting for [a generic] proceeding to determine across [the board] requirements for all plants. The length of time that would be taken before you had a decision on Indian Point would be considerably reduced by the Commission's course of action if you were to, first, have your informal proceeding to develop across the board requirements, and following with an adjudication. (Transcript of July 17, 1980 Commission discussion of Indian point at p. 8)

However, wholly apart from the inefficiency of holding a plant-specific safety hearing prior to the setting of industry-wide standards, the General Counsel's explanation is reasonable only if there is some logical basis for hastening "a decision on Indian Point." The Task Force report precludes any such basis, since it found that the risks posed by Indian Point are typical of the societal risks of nuclear plants in general, and the individual risks are much less.

2. It would be discriminatory for the Commission to single out the Indian Point units for special proceedings,

presumably due to differing demographic characteristics,
when the Indian Point site is not dissimilar from other sites.

In connection with the Indian Point interim operation issue, the Commission's General Counsel stated on July 11 that Commission action "will be sustained if the Commission can support it on a rational policy basis, and if the Commission acts consistently in applying that policy to other reactors." (Transcript of July 11, 1980 Commission discussion of Indian Point, at p. 2-A) The Indian Point licensees agree with the General Counsel's standard and respectfully request that any decision to proceed with an investigatory adjudication be subject to this same test.

The Commission's May 30 order is completely silent on the question of why Indian Point should be singled out among all operating reactors for special proceedings. As noted above, if hearings were premised upon a surmised disproportionate risk at Indian Point, that rationale has now been found "wrong." However, if the near-site population density is the proffered reason, then that rationale is wrong as well.

At the Commission's Indian Point discussion on July 17, 1980, Commissioner Gilinsky stated that:

I think the thing that singles out this site [Indian Point] is that there are a lot of people around it. Otherwise, it would be like most other reactors. (Transcript of July 17, 1980 Commission discussion of Indian Point, at p. 34)

When Chairman Ahearne later asked whether adjudicatory proceedings would have been directed for another reactor, other than Indian

Point, after a Staff decision not to commence a show cause proceeding, Commissioner Bradford replied that:

In the normal course of events, it would be a petition and a Director's decision, presumably a denial. In all likelihood we would not, then, institute a proceeding of this sort.

It is because for reasons having to do with the questions opened up by population density coupled with a sort of rough reassessment of the concept of credible accident that we are going further forward here. (Transcript of July 17, 1980 Commission discussion of Indian Point at p. 43)

There is nothing plant-specific about the concept of credible accident which would warrant singling out one site alone for investigatory hearings. Similarly, there are no unique demographic factors which justify subjecting Indian Point to proceedings which are not being required of other reactors similarly situated. In the most safety-significant area comprising a 5 mile radius from a reactor site, see e.g. the NRC's Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans, NUREG-0396, Fig. I-8,* there is no appreciable difference between Indian Point and other similar reactor sites:

| <u>Site</u> | <u>Density</u> (people/square mile) |
|--------------|-------------------------------------|
| Limerick | 855.98 |
| Indian Point | 670.78 |
| Millstone | 614.75 |
| Zion | 588.18 |
| Midland | 520.25 |

Source: Demographic Statistics Pertaining to Nuclear Power Reactor Sites, NUREG-0348, Table 8 at p. T39.

* This seminal Commission report on emergency planning thus concludes that evacuation is normally preferable to sheltering only within 5 miles of a reactor site, see NUREG-0396 at p. I-51.

In the 10 mile radius area which the Commission has itself selected as the outer limit for substantial emergency planning,* Indian Point is once again not materially different from other sites, none of which are to be subject to the unique investigatory hearings contemplated for Indian Point:

| <u>Site</u> | <u>Density</u> (people/square mile) |
|-------------------|-------------------------------------|
| Indian Point | 695.18 |
| Zion | 605.78 |
| Limerick | 485.88 |
| Shippingport | 456.36 |
| Three Mile Island | 434.17 |

Source: Demographic Statistics Pertaining to Nuclear Power Reactor Sites, NUREG-0348, Table 8 at p. T40.

And, with respect to the most populous 22 1/2 degree, 10 mile sectors surrounding operating reactors (which the Commission's Interim Operations Task Force found to be "often more significant than population density averaged over all directions"), Indian Point ranks sixth, after Zion, Millstone, Duane Arnold, Three Mile Island and Trojan, see June 12 Interim Operation Task Force Report at p. 5.

These demographic facts are fully reflected in the findings of the Interim Operations Task Force. In his briefing to the Commissioners on June 26, 1980, Mr. Robert Bernero testified that:

* In the case of a serious reactor accident, NUREG-0396 thus concludes that "[a]t 10 miles the whole body dose for the median plant was about 1/10 of a rem and very few plants had doses in excess of 1/2 rem whole body," NUREG-0396 at p. I-34.

If you look at this risk of early fatality you can see the three most populous sites, Indian Point, Zion and Limerick, are virtually the same risk curve. Fermi is not far behind. (Transcript of June 26, 1980 Task Force briefing at p. 18)

On the subject of early injuries, Mr. Bernero testified that "[t]he four populous sites now look much the same." (Tr. at 23) And on the subject of latent cancer and property damage, Mr. Bernero testified that "except for a few unique cases out in the western desert," the effects of a serious accident would be approximately the same at all reactor sites (Tr. at 24).

It is only at 30 and 50 mile distances from Indian Point that population factors become dissimilar from other reactors. Yet these great distances from reactor sites are not subject to anything like the same plant accident risks as are near-in locations, according to the Commission's own analysis as set forth in Planning Basis for the Development of State and Local Government Emergency Response Plans, NUREG-0396. It is upon this basis that comprehensive emergency planning has been found unnecessary for areas far removed from reactor sites. Absent any plausible safety rationale for doing so, for the Commission now to formulate regulatory policy based upon population so geographically removed from reactor sites is thus inherently discriminatory against the more heavily populated Eastern industrial states.

In sum, the selection of Indian Point as the only

site for an exhaustive investigatory inquiry before an Atomic Safety and Licensing Board will not stand up against the test articulated by the Commission's General Counsel as quoted above. Since the Indian Point site is one of a number of sites surrounded by large populations, and particularly after the Commission Task Force has found that there is no undue risk to public health and safety in the continued operation of Indian Point, there can be no "rational policy basis" for singling out Indian Point for adjudicatory hearings, without the "consistent application of that policy to other reactors."

3. It is unreasonable and counter-productive to devote extensive time and resources to the proposed adjudicatory hearings at this time.

Since both Indian Point licensees are heavily involved implementing the so-called interim measures of the Director's February 11, 1980 Indian Point Confirmatory Order, as well as post-TMI requirements, fire protection, emergency planning and the like, adjudicatory hearings at the present time would unnecessarily divert technical, management and financial resources from these important tasks.

After industry-wide safety standards have been set in generic proceedings, the Commission will also be able to evaluate the actual benefits flowing from their implementation, and will be able to use that information to better determine the need for, and thrust of, any future

adjudicatory proceedings. Moreover, it is unreasonable, to say the least, for the Commission to conduct an exhaustive investigation of one site alone, and divert resources away from actual productive safety efforts, unless a need for adjudicatory hearings has been shown. What has been clearly shown so far is that there is no safety basis for such proceedings at this time.

The lack of need for imminent hearings relating solely to Indian Point is particularly clear since the Indian Point site and units have already been the subject of exhaustive adjudicatory proceedings before previous Atomic Safety and Licensing Boards.* It is respectfully suggested that if the Commission decides that an investigation of Indian Point is necessary, it should first articulate criteria to guide the Licensing Board in second-guessing the Director's February decision not to initiate an enforcement action. To suggest that the Licensing Board formulate such standards

* Indian Point Unit 1, Docket No. 50-3, Construction Permit Proceeding 1956-61, Operating License Proceeding 1962; Indian Point Unit 2, Docket No. 50-247, Construction Permit Proceeding 1966, Operating License Proceeding 1970-74; Indian Point Unit 3, Docket No. 50-286, Construction Permit Proceeding 1967-69, Operating License Proceeding 1974-75, and an adjudicatory proceeding before an Atomic Safety and Licensing Appeal Board (Indian Point Units 1, 2 and 3 (Show Cause), instituted by Commission Order of August 4, 1975 (CLI-75-8, 2 NRC 173). The very allegations which instigated the instant proceeding were independently investigated and found to be without substance by the Joint Committee on Atomic Energy of the U.S. Congress in Investigations of Charges Relating to Nuclear Reactor Safety: Hearing before the Joint Committee on Atomic Energy, 94th Cong., 2d Sess. (1976).

or criteria during or subsequent to the investigatory hearings would be contrary to past Commission practice, unduly discriminatory against these licensees, and more properly the subject of generic proceedings.

WHEREFORE, Consolidated Edison Company of New York, Inc., and the Power Authority of the State of New York, move the Commission to reconsider that portion of its May 30, 1980 order which directs that an adjudicatory hearing concerning only the Indian Point units be held before an Atomic Safety and Licensing Board, and upon reconsideration, to amend its May 30 order so as to delete the provision calling for an adjudicatory hearing concerning the Indian Point units.

Respectfully submitted,

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.
Licensee of Indian Point
Unit 2
4 Irving Place
New York, New York 10003
(212) 460-4600

Brent L. Brandenburg
Of Counsel

POWER AUTHORITY OF THE STATE
OF NEW YORK
Licensee of Indian Point
Unit 3
10 Columbus Circle
New York, New York 10019
(212) 397-6200

Charles M. Pratt,
Of Counsel

Dated: New York, New York
July 25, 1980

RICHARD L. OTTINGER
24TH DISTRICT, NEW YORK

COMMITTEES:
INTERSTATE AND FOREIGN
COMMERCE
SCIENCE AND TECHNOLOGY

Congress of the United States
House of Representatives
Washington, D.C. 20515

REPLY, IF ANY TO:

- 2241 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-8506
- 10 FISK PLACE
MOUNT VERNON, NEW YORK 10550
(914) 899-2886
- 77 QUAKER RIDGE ROAD
NEW ROCHELLE, NEW YORK 10804
(914) 235-5600 OR 426-3040

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*Durke
Cornell
Rebin
Denton
Shapar
J. Cook*

July 16, 1980

Joseph M. Hendrie, Chairman
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Hendrie,

I am writing in regard to the Commission's decision of Friday, July 11, not to impose interim shutdown of Indian Point 2 and 3 reactors during the pendency of the adjudication.

Specifically, I would like to know what form of consideration was given to the Citizens' Task Force Report on Interim Shutdown of Indian Point, which was filed in June by numerous public interest groups.

It is my understanding from Mr. Keith Anderson of your staff that the Commission decided unanimously that certain aspects of the 2 and 3 reactors offset risks posed by proximate population. I would appreciate a copy of the report by the task force appointed by the General Counsel upon which this conclusion was based. Additionally, I would request a copy of the Commission's final order regarding the decision.

Thank you for your prompt attention to this most important matter.

Sincerely,

Richard L. Ottinger

Richard L. Ottinger
Member of Congress

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7/24...To OGC for to Prepare Reply for Signature of Chairman. Due date: July 31
Cpys to: Chm, Cmrs, PE, EDO, SECY, OCA to Acknowledge...80-1451.