



NEW YORK PUBLIC INTEREST RESEARCH GROUP, INC.

5 Beekman Street • New York, N.Y. 10038 • (212) 349-6460

Offices in: Albany, Binghamton, Brooklyn, Buffalo, Long Island, Manhattan, New Paltz, Queens, Staten Island, Syracuse, Utica

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December 10, 1980



Commissioners:
John F. Ahearne, Chairman
Peter A. Bradford
Victor Gilinsky
Joseph M. Hendrie
U.S. Nuclear Regulatory Commission
2717 H Street, N.W.
Washington, D.C. 20006

Dear Sirs:

We have studied the revised draft (dated 11/24/80) of the order you are preparing for the Atomic Safety and Licensing Board that is to consider the future of Indian Point, and wish to respond to some aspects of it while there is still time for you to consider revisions.

The order would be much strengthened if it began with a clear, simple statement explaining to those who have no prior background of familiarity with the case just why the hearings are being held. Such a statement is needed because there is widespread media and public interest in the Indian Point case and because it is to everyone's interest to propagate a clear understanding of the Commission's intent in this matter. The present Background section (paragraph #1 in the new draft) does not accomplish that purpose, being too full of references to earlier proceedings and decisions to be intelligible to the citizens affected by Indian Point.

NYPIRG objects most vigorously to any attempt to restrict the rights of the intervenors by curtailing the legal safeguards of due process in 10 CFR Part 2. If UCS, NYPIRG, and other representatives of the public interest are not given a full opportunity to present our case, the Board may well report such a limited and one-sided set of findings to the Commissioners that no order to shut the plants down could possibly be forthcoming (hence no appeal by the licensees, and thus no second, more thorough set of hearings) and no guarantee that we would ever be able to make our entire case. We ask you to remember that without intervenor funding we are at a severe disadvantage in comparison to the licensees, who have the legal staffs and financial resources of a huge corporation and of the State of New York at their disposal, for as extensive litigation as they feel is needed. We have absolutely nothing to gain by protracting the hearings, but are strongly motivated to get them over as expeditiously as possible. To be sure, it is to the licensees' advantage to prolong the hearings by any means possible, as long as they are allowed to operate the plants in the interim.

To limit any such temptation to delay, we suggest that you declare your intention to reconsider the question of interim operation in June 1981 and periodically thereafter (say, every 6 months) until you have made your final decisions on this case. We also suggest that the ASLB be instructed to give priority to the "testing" of the Task Force report alluded to in

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paragraph #3, p. 3, and in #11, p. 6, and to make a recommendation on interim operation/shutdown after an early review of that report.

We are appending to this letter a critique of some aspects of the draft order; an epitome of its contents follows.

First, we content that the attempt to frame the major questions in terms of risk assessment would set the Board an impossible task; hence, the questions need fundamental restructuring.

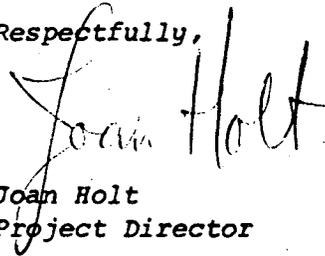
Second, we argue that the charge to the Board should be based on the UCS petition and the ways in which it formulates issues.

Third, we request that New York City be explicitly named as within the "vicinity" of Indian Point for the purposes of this hearing.

Fourth, the ASLB should assemble data needed for a decision on the suitability of Indian Point as a site for nuclear reactors.

Finally, we discuss the NRR staff's conflict of interest in the present case.

Respectfully,



Joan Holt
Project Director

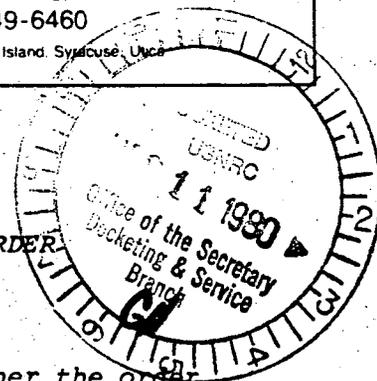
cc: Leonard Bickwit
Peter Crane



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CRITIQUE OF THE NOVEMBER 24th DRAFT OF INDIAN POINT ORDER

First, we wish to express our disappointment that neither the order nor the transcripts of the discussions concerning it (on November 13 and November 24) contain any mention of the issues raised in the Citizens' Task Force Report of last June, or in any of NYPIRG's communications concerning the order, especially our letter of September 26, 1980. We respectfully request the Commissioners to read and give serious consideration to the matters discussed in the last-mentioned letter (copy attached). It is true that we have urged courses of action that would constitute a sharp break with past practices. It is also true, however, that the Kemeny and Rogovin reports and, most recently, the Nuclear Oversight Committee, called, in the strongest terms, for fundamental changes in the outlook, organization, and practices of the NRC.

Hidden Traps in Risk Assessment: Technical/Statistical Limitations

Our major objection to the order is that it relies so heavily on quantitative risk assessment, expecting from it what this approach cannot deliver. There are several fundamental problems with it, beyond the objections we have previously raised.

(1) NEITHER THE ASLB NOR ANY OF THE PARTIES WHO WILL APPEAR BEFORE IT HAVE THE CAPABILITY TO PERFORM ANALYSES OF THE KINDS REQUIRED. The questions would have had to be addressed to the sort of research team that produced WASH-1400. The Chairman implicitly recognized this contradiction in his remark during the November 24 meeting that there was no intention "to have this be an attempt to have a board do WASH-1400" (p. 31 of the transcript).

(2) EVEN RASMUSSEN'S TEAM WOULD BE UNABLE TO PROVIDE THE DATA REQUIRED TO ANSWER THE QUESTIONS THE COMMISSION HAS IN MIND, IN LESS THAN SEVERAL YEARS OF INTENSIVE WORK. From the discussion on November 24, it is evident that the Commissioners are currently taking the position that they will close down Indian Point only if it can be shown that the risks posed by its reactors are greater than any other, and perhaps also if there is only one other reactor with equally great risks. THERE IS NO WAY TO SATISFY SUCH A CRITERION BY DATA FROM A SAMPLE OF THE OTHER REACTORS, even if a truly representative (i.e., strictly random) sample were available -- and it is not. For, if it appeared that the cumulative risks at Indian Point were clearly higher than those of the other reactors at other sites used in the Task Force report, with the one allowable exception, the licensees could quite properly object that the case had not been proved. As long as even one other reactor remained for which a risk assessment had not been done, there would remain the possibility that it might be equally risky.

(3) IT IS IMPOSSIBLE TO MAKE VALID COMPARISONS OF RISKS OF THE KIND THE COMMISSION ENVISIONS. All of the attempts at such risk assessment for nuclear plants so far made have relied primarily on the methods and findings of the Reactor Safety Study (RSS or WASH-1400). In a devastating critique of that study (The Safety of Nuclear Reactors), the Union of Concerned Scientists revealed that its authors had planned their work so as to give plausibly scientific appearing support for a "predetermined conclusion" not to embarrass either the utilities or their regulators. The UCS detailed RSS's many techniques of concealing unfavorable data, omitting certain calculations, and making optimistic assumptions that produced spuriously low estimates both of the probabilities of serious accidents and of their consequences. The RSS's risk figures, therefore, are subject not only to great "uncertainty," as NRC delicately puts it, but to marked, systematic error or bias. It is not remotely acceptable as a scientific report.

The Commission has argued that despite its unreliability as a source of absolute risk figures, the RSS can be used for comparisons among plants. But it cannot be validly used even for such comparisons unless there is reason to believe that it underestimates risks uniformly for all reactors and sites. On the contrary! Among the types of accident scenarios that are omitted from the RSS and other risk assessments based on it, there are several to which Indian Point seems unusually vulnerable, among them sabotage and terrorist attacks.* Nearby New York City has a high incidence of bombings of public buildings perpetrated by political extremists, psychotics, and others, and the Indian Point licensees have received many bomb threats in recent years. Such risk assessments as those used by the Task Force on Interim Operations also fail to factor in deficiencies of maintenance and management; yet plants differ greatly in these respects. The October flood in the containment building of unit 2 has brought to light an alarming lack of competence at Con Edison in inspecting and repairing its equipment, and a shocking ignorance about the basic structure of the plant on the part of supervisory and managerial personnel, so much so that a week after the flood was discovered, top management did not know whether water had touched the reactor vessel though 9 feet of it had been submerged! One major lesson of TMI was that a minor accident can turn into a disaster if control room operators and their backup staff do not perform with a high level of competence and understanding of the system. We fear for the safety of this country if the team of Keystone cops who run Indian Point 2 are typical of the general range.

The task the Commission is on the brink of setting the ASLB and itself is, therefore, impossible on several grounds. There is no feasible or defensible way to rest the decision on quantitative risk assessment. But that need not be a serious blow to the hearings. The questions raised by the UCS in its petition do not call for answers in such terms. That is only one reason to turn to that document for an alternative charge to the Board. Another is that the UCS started this whole process, making several serious charges, which deserve to be carefully examined by the ASLB. We therefore suggest that the questions raised in the UCS petition's paragraphs 38, 39, 43, 46, 48, 50, 53, and 60 should form the basis of the charge to the Board. A copy of the UCS petition should be appended to the order as an integral part of it.

* We remind the Commissioners that PASNY's security practices, already the subject of NRC enforcement action, are currently under investigation by the U.S. Justice Department.

In addition, the following specific question, requested by the UCS to be part of the charge to the ASLB, should be added:

"With respect to each applicable unresolved generic safety problem listed in NUREG-0410, what specific design features of Units 2 and 3 compensate for the current absence of a solution to that problem and what is the current status of the generic study of the problem?"

In case you decide to change the general plan of the hearings in order to try to ensure that there is no need for a second adjudication covering most of the same ground, and accordingly ask the ASLB to make preliminary decisions on the issues, then such a question as the following (based on paragraph 8 of the UCS petition) needs to be added:

Are the potential consequences of possible severe accidents (including but not limited to a core meltdown) so severe as to render the Indian Point site an unsuitable location for a nuclear power plant; regardless of their computed likelihoods?

Re-examination of the Task Force Report on Interim Operations

We have complained on more than one previous occasion that the Task Force report was, in our opinion, incomplete.* In paragraph #11 of the draft, you note correctly that the report was "compiled in a short time period and not disclosing its detailed methodology and underlying data," adding that it "will be tested" in the hearing. Because the last sentence of paragraph #16 (p. 7) strongly urges the Board to focus on the questions subsequently specified, there should be a question added explicitly calling for a detailed scrutiny of the Task Force's report.

Specify Relevance of New York City

In NYPIRG's view, it is essential that the order make clear the Commission's intent that the implications for New York City be included in all questions considered by the Board. Otherwise, with the kind of wording currently under consideration, the ASLB could decide to exclude consideration of New York City.

Conflict of Interest: Staff of NRR

Director Denton and his staff have repeatedly made the judgment that Indian Point is "safe enough"; indeed, by having been given the task of reviewing the UCS's petition, Director Denton has committed himself to a position that would create a severe conflict of interest for him if he were charged with making a case for anything other than what he ordered. If simply charged with presenting the facts without any instruction, the NRR staff would predictably be under strong internal pressure to justify their former conclusions. That would defeat the purpose of the hearings. The Commissioners must consider this problem very carefully and make sure that staff conflict of interest does not compromise the entire Indian Point adjudication.

* Because of the failure of the Task Force to provide all of the information specifically required of it, NYPIRG requested that a final decision on interim operation be delayed until the Task Force completed its job. That was our main argument, not the minor issues cited in paragraph #7 on p. 4 of the draft order. By omitting our substantive objection to the Task Force report, that paragraph makes it appear that our position was frivolous. We therefore request that you delete that paragraph.