

11/27/81

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
CONSOLIDATED EDISON COMPANY)
OF NEW YORK (Indian Point, Unit 2))
)
POWER AUTHORITY OF THE STATE OF)
NEW YORK (Indian Point, Unit 3))

Docket Nos. 50-247-SP.
50-286-SP

NRC STAFF PREHEARING CONFERENCE
MEMORANDUM AND PROPOSED ORDER



I. INTRODUCTION

In its Order dated November 9, 1981, the Board established to preside over the above-captioned proceeding scheduled a special prehearing conference for December 2, 1981. The Board further ordered the Staff and formal petitioners to prepare a prehearing conference memorandum and proposed order discussing the subjects of:

- 1) Identification and clarification of key issues in this proceeding;
- 2) Amendment of pleadings if necessary or desirable;
- 3) A schedule for discovery, hearings and further actions in the proceeding; and
- 4) Any other matters which may aid in the orderly disposition in this proceeding.

The Staff's discussion of these four topics is set forth below.

II. IDENTIFICATION AND CLARIFICATION
OF THE KEY ISSUES IN THIS PROCEEDING

In its Order of January 8, 1981, the Commission set forth the issues to be investigated in this proceeding in the form of seven

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questions.^{1/} Consolidated Edison Co. of New York and the Power Authority of the State of New York (Indian Point, Units 2 and 3), CLI-81-1, 13 NRC 1, 7-8 (1981). The issues as set forth by the Commission are:

1) What risk may be posed by serious accidents at Indian Point 2 and 3, including accidents not considered in the plants' design basis, pending and after any improvements described in (2) and (4) below?

Although not requiring the preparation of an Environmental Impact Statement, the Commission intends that the review with respect to this question be conducted consistent with the guidance provided the staff in the Statement of Interim Policy on "Nuclear Power Plant Accident Considerations under the National Environmental Policy Act of 1969;" 44 FR 40101 (June 13, 1980).^{2/}

^{1/} In an Order issued in September of 1981 the Commission clarified its questions Nos. 1 and 2. Consolidated Edison Co. of New York and the Power Authority of the State of New York (Indian Point, Units 2 and 3), CLI-81-23, 14 NRC ____ (September 18, 1981).

^{2/} In particular, that policy statement indicates that:

Attention shall be given both to the probability of occurrences of releases and to the environmental consequences of such releases;

The reviews "shall include a reasoned consideration of the environmental risks (impacts) attributable to accidents at the particular facility or facilities";

"Approximately equal attention should be given to the probability of occurrence of releases and to the probability of occurrence of the environmental consequences"; and

Such studies "will take into account significant site and plant-specific features"

Thus, a description of a release scenario must include a discussion of the probability of such a release for the specific Indian Point plants.

2) What improvements in the level of safety will result from measures required or referenced in the Director's Order to the licensee, dated February 11, 1980? (A contention by a party that one or more specific safety measures, in addition to those identified or referenced by the Director, should be required as a condition of operation would be within the scope of this inquiry if, according to the Licensing Board, admission of the contention seems likely to be important to resolving whether (a) there exists a significant risk to public health and safety, notwithstanding the Director's measures, and (b) the additional proposed measures would result in a significant reduction in that risk.)

3) What is the current status and degree of conformance with NRC/FEMA guidelines of state and local emergency planning within a 10-mile radius of the site and, of the extent that it is relevant to risks posed by the two plants, beyond a 10-mile radius? In this context, an effort should be made to establish what the minimum number of hours warning for an effective evacuation of a 10-mile quadrant at Indian Point would be. The FEMA position should be taken as a rebuttable presumption for this estimate.

4) What improvements in the level of emergency planning can be expected in the near future, and on what time schedule, and are there other specific offsite emergency procedures that are feasible and should be taken to protect the public?

5) Based on the foregoing, how do the risks posed by Indian Point Units 2 and 3 compare with the range of risks posed by other nuclear power plants licensed to operate by the Commission? (The Board should limit its inquiry to generic examination of the range of risks and not

go into any site-specific examination other than for Indian Point itself, except to the extent raised by the Task Force.)

6) What would be the energy, environmental, economic or other consequences of a shutdown of Indian Point Unit 2 and/or Unit 3?

7) Does the Governor of the State of New York wish to express an official position with regard to the long-term operation of the units?

The Commission also stated that contentions based on the allegations in the Union of Concerned Scientists' petition to the affect that certain Commission regulations are not met in one or both units will be accepted if they meet the requirements of 10 C.F.R. Part 2 without regard to whether they fall within or outside the Commission's seven questions. CLI-81-23, supra, at n. 4. Since the Commission has set forth the questions it wishes addressed in this proceeding, the Board has been given broad discretion with regard to admission and formulation of contentions concerning the Commission's questions. However, the Commission added that the Board is empowered only to accept and formulate those contentions which seem likely to be important to resolving the Commission's questions. This action, the Commission stated, would assure that the proceeding remains focused on the issues set forth in its questions. Id.

In an Order dated November 13, 1981, the Board directed that all contentions be filed no later than December 2, 1981, the day of the special prehearing conference. The Board further stated that a schedule for the filing of written responses to these contentions would be discussed at the prehearing conference. Order at 3. The Board in its Order did not mention any requirement that those governmental entities seeking participation under

10 C.F.R. §2.715(c) must set forth the issues on which they wish to participate at the prehearing conference.

An "interested state" may raise particular issues of interest or concern to it. Gulf States Utilities Company (River Bend Station Units 1 and 2), ALAB-444, 7 NRC 760, 768 (1977). These issues should be framed prior to the hearing and should be relevant, material, and narrow enough to permit adjudication in an adjudicatory setting. Id. Since the Commission has asked the Board to complete this proceeding within a relatively short period of time, the Staff suggests that all government entities gaining § 2.715(c) status in this proceeding be required to file the issues on which they wish to participate at an early stage of the proceeding. The Staff believes that once the Board grants the requests for such participation, the "interested states" should be given a date certain by which the issues with respect to which they wish to participate should be set forth in a manner which would allow them to be addressed in this proceeding.

The Staff also notes that the Commission in its January 8 and September 18, 1981 Orders recognized that the Board established to preside over this proceeding might have some questions of its own. CLI-81-1, supra at 5 n.4, revised, CLI-81-23, 14 NRC ____ (1981). The Staff suggests that if the Board determines that it in fact does wish to raise certain questions, these questions should be posed as early as possible in the proceeding. This would allow the parties to address the questions in a timely manner and within the schedule requested by the Commission.

III. AMENDMENT OF PLEADINGS

In its response to the petitions for leave to intervene and requests for participation filed in this proceeding, the Staff noted that many of

those petitions and requests require some amendment in order to comply with the Commission's regulations and case law. The Staff suggests that these amendments be required by a date certain after the close of this special prehearing conference. The Staff suggest that all amended petitions must be filed no later than December 7, 1981.

IV. SCHEDULE FOR DISCOVERY, HEARINGS AND
FURTHER ACTIONS IN THIS PROCEEDING

The Staff has attempted to develop a schedule which would allow for completion of this proceeding within the time limit suggested by the Commission in its Order of January 8, 1981, as amended September 18, 1981. The Staff's proposed schedule^{3/} is as follows:

<u>Event</u>	<u>Proposed Date</u>
Time expires for petitioners to file contentions ^{a/}	12/2/81
Time expires for petitioners to amend pleadings to correct any deficiencies concerning "interest", "aspects" or "authorization".	12/7/81
Time expires for responses to the petitioners' contentions	12/24/81
ASLB Order on petitions for leave to intervene, requests to participate and contentions (Contentions Order) ^{b/}	1/18/82

3/ It should be noted that this schedule provides for various actions which may not in fact be taken by any party, e.g., the filing of objections to the Board's Order on contentions. These actions were included in the schedule to attempt to minimize uncertainty in the conduct of the proceeding.

a/ ASLB Order of November 13, 1981.

b/ Consistent with the Appeal Board's decision in Houston Lighting and Power (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521, 525 (1979), the Board may wish to provide the petitioners an opportunity to respond to objections to their contentions in writing or schedule a second prehearing conference to provide petitioners an opportunity to respond to any objections to their contentions.

Discovery begins:	1/18/82
-Last day for filing requests for production of documents (2/12/82) ^{c/}	
-Last day for filing interrogatories (2/26/82) ^{d/}	
-Last day for filing admissions (3/4/82) ^{e/}	
Objections to ASLB Contentions Order filed	1/28/82
Objections to ASLB Contentions Order filed by Staff	2/2/82
Close of Discovery	3/19/82
Time expires for filing motions for summary disposition	3/31/82
Time expires for filing answers to motions for summary disposition ^{f/}	4/26/82
Time expires for filing supplemental responses to motions for summary dispositions ^{f/}	5/11/82
Prehearing Conference ^{g/}	5/18/82
ASLB Order on motions for summary disposition	5/24/82
File written testimony ^{h/}	6/8/82
Start of hearing	6/23/82

^{c/} Allows time for filing of responses pursuant to 10 C.F.R. §2.741 within the proposed discovery period.

^{d/} Allows time for filing of answers pursuant to 10 C.F.R. §2.740b within the proposed discovery period.

^{e/} Allows time for responding pursuant to 10 C.F.R. §2.742 within the proposed discovery period.

^{f/} See 10 C.F.R. §2.749(a) which allows any party to serve an answer within 20 days after service of the motions supporting or opposing the motion and allows the opposing party ten days after service of any statement of facts filed in support of a motion to respond to any new facts and arguments.

^{g/} Under 10 C.F.R. §2.752, a prehearing conference is to be held sixty days after close of discovery.

^{h/} Under 10 C.F.R. §2.743(b), parties are to serve written testimony at least 15 days in advance of the hearing.

End of hearing	7/28/82
Filing of findings	8/17/82
Filing of findings by the Staff ^{i/}	8/27/82
Issuance of ASLB recommendations	9/18/82

V. OTHER MATTERS WHICH MAY AID IN THE
ORDERLY DISPOSITION OF THIS PROCEEDING

A. Consolidation of Parties

The Commission has stated that this proceeding will be governed by 10 C.F.R. Part 2 of the Commission's regulations. Indian Point, CLI-81-23, supra at n.4. Moreover, the Commission in its "Statement of Policy on Conduct of Licensing Proceedings" (46 Fed. Reg. 28533, May 27, 1981) stated that "...adjudicatory boards are encouraged to expedite the hearing process by using those management methods already contained in Part 2 of the Commission's Rules and Regulations". Under those regulations the Board has the authority to consolidate parties who have substantially the same interest which may be affected by the proceeding and who raise substantially the same questions for all purposes of the proceeding. 10 C.F.R. §2.715a. See Duke Power Company (Oconee-McGuire), ALAB-528, '9 NRC 146, 150 n.9 (1979); Policy Statement, supra. The Board may also place conditions on intervention in the interest of having common interests represented by a spokesman, and restricting duplicative or irrelevant evidence. 10 C.F.R. §2.714(e).

i/ 10 C.F.R. §2.754 provides that the parties file findings and conclusions of law sequentially with the Staff filing last.

The Staff suggests that within a short time after the Board admits the contentions to be addressed in this proceeding and the parties who will be participating in it, the Intervenor should be required to confer and present the Board with a plan to appoint a lead intervenor, spokesperson or lead counsel on each major issue involving a number of related contentions. This appointment should be made for all purposes of the proceeding including, but not limited to, discovery, the filing of pleadings, presentation of evidence, cross-examination, the filing of proposed findings and arguments before the Board. If within ten days after service of the Board's Order the parties are unable to present such a plan to the Board, the Board should order the consolidation of appropriate parties. Either voluntary or Board ordered consolidation would shorten both the actual hearing time and the time required in the other stages of this proceeding. This is not a novel approach. Such approaches have been taken by previous Commission adjudicatory boards. See Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), Memorandum and Order Setting Schedule for Submission of Contentions and other Preliminary Information, dated October 14, 1981 (unpublished Order). Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), LBP-79-34, 10 NRC 828, 356 (1979).

B. Discovery

The Staff believes that the 60-day discovery period proposed by the Staff would allow the parties sufficient time to complete their discovery, especially if the parties are diligent in filing their discovery requests and the requests are reasonable.

Discovery against the Staff is governed by 10 C.F.R. §2.720(h)(2)(i) and §2.740a(j) regarding depositions; §2.720(h)(2)(ii) regarding interrogatories; and §2.744 and 2.790 regarding production of documents. Making reference to these provisions the Appeal Board in Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 & 2), ALAB 613, 12 NRC 317, 323 (1980), noted that discovery against the Staff is on a different footing than discovery against other parties in a proceeding. The Appeal Board pointed out that the Commission's regulations (10 C.F.R. §2.790(a)) require Staff documents that are relevant to licensing proceedings be made routinely available in the NRC Public Document Room. Id. at 323. These documents should, as the Appeal Board noted, reasonably disclose the basis for the Staff's position, thus obviating any need for formal discovery against the Staff. Id. If a document is not available in the Public Document Room, a party may serve a request on the Executive Director for Operations (EDO) without leave of the presiding officer pursuant to 10 C.F.R. §2.744. Discovery against the Staff by means of interrogatories is governed by 10 C.F.R. §2.720(h)(2)(ii) of the Commission's regulations, rather than by 10 C.F.R. §2.740. Under 10 C.F.R. §2.720(h)(2)(ii), interrogatories to the Staff must be filed with the presiding officer. If the presiding officer (in this case the Licensing Board) determines that the information sought by the interrogatories is necessary to a proper decision in the proceeding, and that the information is not reasonably available from another source, then the Board may require the Staff to answer the interrogatories. Finally, 10 C.F.R. §2.720(h) requires a showing of

"exceptional circumstances" for the presiding officer to allow the deposition of named NRC Staff personnel.

The Staff, however, is willing to discuss with the parties the feasibility of dispensing with the procedural requirements of filing interrogatories with the Board or document request with the EDO in this proceeding, where it is evident or can be demonstrated that such request is necessary to a proper decision in the proceeding and is not reasonably available from another source. This offer is made in the spirit of suggesting a means to expedite discovery and is not to be deemed a waiver by the Staff of the provisions of 10 C.F.R. §§2.720(h)(2), 2.744, and 2.790.

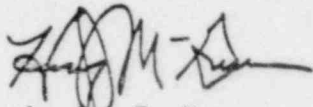
C. Hearing Procedures

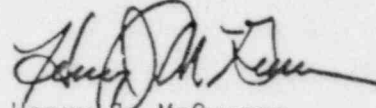
There may be other procedural devices which could be used to aid in the orderly conduct of the actual hearings. For example, parties could be required to file cross-examination plans prior to the testimony on a given issue or of a given witness. This would enable the Board to control repetitive or irrelevant cross-examination. Furthermore, the Board could require the parties to file trial briefs. Both devices have been suggested by the Commission as methods that "should be required at the discretion of the board to expedite the orderly presentation by each party of its case". Policy Statement, supra. Prior to the commencement of the actual hearing sessions, a prehearing conference should be held to discuss these procedural aids.

VI. PROPOSED ORDER

The Staff's proposed order is attached to this prehearing conference memorandum as Appendix A.

Respectfully submitted,

for 
Janice E. Moore
Counsel for NRC Staff


Henry S. McGurren
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 27th day of November, 1981.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

In the Matter of)	
)	
CONSOLIDATED EDISON COMPANY)	Docket Nos. 50-247-SP
OF NEW YORK (Indian Point, Unit 2))	50-286-SP
)	
POWER AUTHORITY OF THE STATE OF)	
NEW YORK (Indian Point, Unit 3))	

MEMORANDUM AND ORDER

The Board held a special prehearing conference on December 2, 1981. Prior to that conference the Board requested all parties and formal petitioners to file prehearing conference memoranda and proposed orders. Having taken these documents into account as well as the views of the parties and petitioners as stated at the prehearing conference, the Board issues the following order.

It is ORDERED:

- (1) All petitions for leave to intervene and requests to participate must be amended no later than December 7, 1981.
- (2) Responses to contentions must be filed by December 24, 1981.
- (3) Petitioners should begin negotiations to determine the feasibility of appointing a spokesperson, lead intervenor or lead counsel for each issue in this proceeding.
- (4) This proceeding will be governed by the following schedule:

<u>Event</u>	<u>Proposed Date</u>
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Time expires for petitioners to amend pleadings to correct any deficiencies concerning "interest", "aspects" or "authorization".	12/7/81
Time expires for responses to the petitioners' contentions	12/24/81
ASLB Order on petitions for leave to intervene, requests to participate and contentions (Contentions Order)	1/18/82
Discovery begins:	1/18/82
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File written testimony	6/8/82
Start of hearing	6/23/82
End of hearing	7/28/82
Filing of findings	8/17/82
Filing of findings by the Staff	8/27/82

Issuance of ASLB recommendations

9/18/82

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Louis J. Carter, Chairman
Administrative Judge

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

CONSOLIDATED EDISON COMPANY)
OF NEW YORK (Indian Point, Unit 2))

POWER AUTHORITY OF THE STATE OF)
NEW YORK (Indian Point, Unit 3))

Docket Nos. 50-247-SP
50-286-SP

CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF PREHEARING CONFERENCE MEMORANDUM AND PROPOSED ORDER, in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 27th day of November, 1981. Copies were hand-delivered to the Licensing Board.

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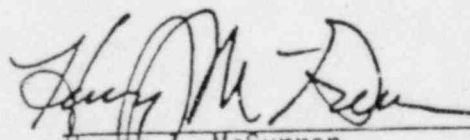
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