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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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

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| |) | |
| In the Matter of |) | Docket Nos. |
| |) | 50-247 SP |
| CONSOLIDATED EDISON COMPANY OF NEW YORK, |) | 50-286 SP |
| INC. (Indian Point, Unit No. 2) |) | |
| |) | |
| POWER AUTHORITY OF THE STATE OF NEW YORK |) | December 31, 1981 |
| (Indian Point, Unit No. 3) |) | |
| |) | |
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POWER AUTHORITY'S OBJECTIONS AND ANSWERS TO
CONTENTIONS OF POTENTIAL INTERVENORS

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Preliminary Statement and General Objections

Power Authority of the State of New York ("Authority"), licensee of Indian Point 3 Nuclear Power Plant, hereby responds, pursuant to this Atomic Safety and Licensing Board's ("Board's") Order of December 2, 1981, to the contentions presented by potential intervenors.* These contentions have been grouped below under the specific issues raised by the Nuclear Regulatory Commission ("Commission") in its January 8, 1981, and September 18, 1981 Orders so as to promote efficiency and aid in focusing this proceeding (pp.11-66).** Contentions that fall outside these issues are appropriately identified.*** At the outset, the Authority makes the following general objections.

* Contentions of the following potential intervenors are addressed: Union of Concerned Scientists ("UCS"), New York Public Interest Research Group, Inc. ("NYPIRG"), Westchester People's Action Coalition ("WESPAC"), West Branch Conservation Association ("WBCA"), Friends of the Earth ("FOE"), New York City Audubon Society ("Audubon"), Greater New York Council on Energy ("GNYCE"), and Parents Concerned About Indian Point ("Parents") and Rockland Citizens for Safe Energy ("RCSE"). UCS and NYPIRG have submitted contentions jointly and are referred to collectively as "UCS-NYPIRG."

** An index listing the contentions of each potential intervenor sequentially is annexed as Appendix A hereto.

*** Although the Authority, to promote efficiency, has attempted to group each contention within a Commission Issue, it is readily apparent (as the Authority notes where appropriate) that many contentions raise matters beyond the Commission's issues, and therefore beyond the scope of this proceeding.

First, potential intervenors are required to file a list of contentions and to specify the basis for each contention. See 10 C.F.R. § 2.714(b) (1981); BPI v. AEC, 502 F.2d 424, 428 (D.C. Cir. 1974) (those seeking a hearing "must be specific as to the focus of the desired hearing"). The purpose of the contentions requirement is to "fram[e] the issues which will be the subject of subsequent discovery and proof." In re Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), 12 N.R.C. 683, 687 (1980). "[B]arren" and "unfocused" contentions are of no assistance to the Board or to the other parties to the proceedings. In re Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), 6 N.R.C. 249, 251 (1977). Contentions must be supported by factual bases. The potential intervenors have repeatedly failed to state adequate bases to support their contentions. Thus, rather than stating facts which "sufficiently put [the licensees] on notice so that they will know at least generally what they will have to defend against or oppose," (Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974)), UCS-NYPIRG repeatedly rely on statements such as "it has not been demonstrated that sufficient thyroid protection is available to emergency workers" (UCS-NYPIRG Contentions at 12), and "[i]t is an unproved assumption that people will respond to radiological threats

in the same way as people generally respond to other non-contamination hazards like fire and floods" (id. at 17, emphasis added). By focusing on an unspecified "lack of demonstration" or an "unproved assumption," UCS-NYPIRG is obviously looking to others to supply the basis for UCS-NYPIRG's own broadly-worded contentions. Even in an investigatory proceeding, this is clearly impermissible. UCS-NYPIRG itself must set forth bases for its contentions. The Authority therefore generally objects to all purported bases using the language "it has not been demonstrated" or "[i]t is an unproved assumption" or equivalent language.

Second, although the Commission has given this Board authority to reformulate contentions, if necessary, to expedite this proceeding (Memorandum and Order at 2 (Sept. 18, 1981)), this Board is not required to "affirmatively 'create' contentions ... or to transform patently bad contentions into acceptable contentions." In re Tennessee Valley Authority, 3 N.R.C. at 221; accord, In re Commonwealth Edison Co. (Zion Station, Units 1 and 2), 8 A.E.C. 381, 406 (1974) ("Plainly there is no duty placed upon a licensing board by the Administrative Procedure Act, or by our Act and the regulations promulgated thereunder, to recast contentions ... for the purpose of making those contentions acceptable."). Therefore,

this Board should reject contentions that: (1) do not "establish . . . an 'issue'" - In re Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), 8 A.E.C. 188, 192 (1973), (2) do not "sufficiently put on notice" other parties so that they will know against what they must defend, and (3) do not assure that the proposed issues are proper for adjudication in this proceeding. In re Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), 8 A.E.C. 13, 20-21 (1974).

Third, UCS-NYPIRG repeatedly fails to comply with the Commission's Memorandum and Order of September 18, 1981 (the "September 18 Order"). The Order explicitly states that "[a]ttention shall be given both to the probability of occurrences of releases and to the environmental consequences of such releases" and "approximately equal attention should be given to the probability of releases and to the probability of occurrence of environmental consequences. . . ." Additionally, such contentions must be specific to the Indian Point site. (September 18 Order at 3 n. 5). UCS-NYPIRG almost invariably chooses, however, to address only the potential "consequences," avoiding the issue of probability, in clear contravention of the limits imposed by the Commission on the Board's jurisdiction. (See discussion in transcript of Commission proceedings, September 11, 1981 at 22-27.) The Authority objects to all

contentions which purport to deal only with potential consequences and avoid the issue of probability.

Fourth, the Authority recognizes that the Commission has empowered the Board with some discretion to raise sub-issues. (See amended footnote 4, September 18 Order at 1.) It has not, however, given such latitude to UCS-NYPIRG. The Authority objects to all attempts by UCS-NYPIRG to rewrite the Commission's Orders by creating "super-issues", which are manifestly not within the scope of the seven questions set forth in the Commission's Orders and which can manifestly not be construed as "sub-issues." Examples of such blatant attempts to rewrite the Commission's Orders are "Issues" I, II, and III proposed by UCS-NYPIRG (UCS-NYPIRG Contentions at 3). The Authority submits that these proposed "super-issues" and all other contentions beyond the scope of the Commission's Orders should be disregarded by the Board.

Fifth, the Authority recognizes that, pursuant to the September 18 Order, "the Board will not be bound by the provisions of 10 CFR Part 2 with regard to the admission and formulation of other contentions (e.g., contentions within the scope of the seven questions)" (September 18 Order at 2). The Board has interpreted this language as permitting contentions which challenge the Commission's regulations, as long as the

contentions fall within the scope of the seven issues.* (See Transcript of Special Pre-Hearing Conference, December 2, 1981 at 99.) However, the Authority generally objects to all contentions which challenge the Commission's regulations. Consideration of such contentions by the Board is improper for the reasons set forth in Licensees' pending motion for a stay of Commission's Orders or for dismissal of this proceeding, or, in the alternative, for certification to the Commission.

Sixth, UCS-NYPIRG's intention, without leave of the Board, to "have the same spokesperson in the hearings, but . . . reserve the right to be represented separately when and if the situation demands" (UCS-NYPIRG Contentions at 2) is not sanctioned by the Commission's Rules of Practice or the Orders establishing the procedures to be followed herein, and constitutes a violation of procedural due process. UCS-NYPIRG cannot have it both ways. The Authority is entitled to know at the outset which individuals and organizations will participate in the proceeding, and requesting consolidation of parties and contentions. The Authority is particularly concerned that at the NYPIRG has not merely one, but three spokespersons who partici-

* Any challenge to the NRC/FEMA emergency planning guidelines, however, is beyond the scope of the seven issues since Issue 3 is concerned solely with "the current status and degree of conformance with NRC/FEMA guidelines." (January 8 Order at 10; emphasis added.)

pated simultaneously. Contrary to UCS-NYPIRG's purported desire to expedite matters and avoid duplication, their intention to engage in an unprecedented procedure of freewheeling substitution and duplication can only prolong and complicate the proceeding.

Seventh, the contentions of UCS-NYPIRG cannot possibly be answered. The Authority frequently objects throughout its Answers that contentions are vague or duplicative, although we have made every possible effort to supply specific objections.*

The so-called "Contentions" submitted by WBCA, however are simply too vague to respond to. At the outset, WBCA has ignored the Board's directives and the Commission's Rules of Practice by failing to submit a separate document containing its contentions. In a letter sent to the Board, dated December 2, 1981, WBCA concedes this omission, explaining only that:

. . . we have listed the contentions we considered outstanding in our first application of November 2, 1981. We had not been more specific because we were not arguing our case on application. We expect to offer witnesses who will buttress our assertions. The argument that our contentions are too general is not

* In addition to the general objections and the responses to specific contentions set forth below, the Authority denies each of the potential intervenors' contentions.

timely. We have taken our contentions from the Emergency Plan's own index. If our contentions are too general then so is the Plan.

Even putting aside this procedural irregularity, the "Contentions" lack sufficient particularity.* They contain no supporting bases, as required by 10 CFR § 2.714(b). Indeed, WBCA does not even take a position on the issues they purport to raise. Accordingly, the Authority generally objects to the "Contentions" but is unable to set forth any specific objections.

* The "Contentions" state, in their entirety:

5. Petitioner seeks leave to intervene with respect to the following issues:

a. The feasibility of evacuation in the event of an emergency at Indian Point.

b. The feasibility of staying in place in the event of an emergency.

c. The willingness of others to accept refugees from the emergency.

d. The feasibility of the ten mile limit inside which we reside as a demarcation. [WBCA withdraws this Contention in its December 2 letter.]

e. The transportation routes available.

f. The plan for reunification of families.

g. The safety and possible realistic life of the physical plants #2 and #3.

h. The economic benefits of continued operation of units #2 and #3, if any. The concomitant liabilities of costs and who will be bearing them.

The Contentions of Honorable Richard L. Brodsky are also generally objectionable. Mr. Brodsky has not submitted any contentions of his own. Instead, he has simply photocopied the Contentions of UCS/NYPIRG, with his intention "to defer to spokespeople for the Union of Concerned Scientists so as not to unduly delay the hearing process." (Brodsky Contentions at 2.) Rather than duplicate its responses to the UCS/NYPIRG Contentions, the Authority refers the Board to its answers thereto in response to the Brodsky Contentions.

Indeed, the defects in the WBCA and Brodsky Contentions highlight a major threat of delay and confusion in this proceeding. Many contentions proposed by potential intervenors clearly overlap, while others could be easily consolidated. Obviously, it would be premature for the Authority to move to consolidate contentions and intervenors now, since the Board has yet to determine which contentions and intervenors will be admitted. Nevertheless, we respectfully urge that the Board keep this obvious duplication in mind in determining the admissibility of contentions. This will assist the Board in keeping the number of contentions to a minimum, facilitating

compliance with the Commission's directive that this proceeding
be completed by September 18, 1982.

Responses to Contentions

COMMISSION ISSUE I

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).

INTERVENOR CONTENTIONS

1. UCS-NYPIRG Contention I(B)5

The accident consequences that would be suffered by the public in the area of the Indian Point reactors before any protective actions could be or would be implemented in the event of a radiological accident at Indian Point Units 2 and 3 are unacceptable for some accidents (including accidents which exceed the design basis for the Indian Point units). Even if heroic emergency measures are implemented in accordance with the abilities, training, equipment, and degree of preparedness of the State and Local emergency response organizations, the health consequences to the public from such accidents will include prompt fatalities, early fatalities, early and latent illnesses, fatal and non-fatal cancers, thyroid nodules, and genetic defects.

Authority Response

The Authority objects to this Contention on the grounds that the Contention:

- (1) fails to specify the accidents at issue, and, thus, is so vague as to make a response impossible;
- (2) raises an issue generic in nature which is not capable of resolution in this proceeding; and
- (3) addresses the consequences of accidents without discussing the probability of such accidents.

(1) and (2) The Contention lacks specificity and raises an issue generic in nature.

This Contention does not specify which potential accidents would cause "unacceptable" consequences. The Commission is currently in the process of formulating a qualitative/quantitative safety goal which will on a generic basis define what risks are "acceptable" for any nuclear power plant. 45 Fed. Reg. 71,023 (1980). Until this generic goal has been approved by the Commission, it is not possible for a judgment to be rendered on the acceptability of the risks of potential accidents at Indian Point.

Further lack of specificity is apparent in that the bases imply that operators will neither promptly recognize nor correctly assess and diagnose plant malfunctions. However, UCS-NYPIRG does not specify which alarms or indicators are unreliable, but simply claim that the licensees have failed to "demonstrate" this reliability.

(3) The Contention addresses the consequences of an accident without discussing the probability of an accident.

In addition, this Contention considers only the consequences of an accident, not its probability, as directed by the Commission. In an explanatory footnote to Issue 1, the Commission states that "Attention shall be given both to the probability of occurrences of releases and to the environmental risks of such releases," and that "Approximately equal attention should be given to the probability of occurrence of releases and to the probability of occurrence of the environmental consequences" Memorandum and Order at 3 n.5 (Sept. 18, 1981), quoting Statement of Interim Policy on "Nuclear Power Plant Accident Considerations under the National Environmental Policy Act of 1969," 44 Fed. Reg. 40,101 (1980).

2. WBCA Contention

In regard to NRC's Sept. 18 Memorandum and Order and that of January 8, WBCA contends

that the risks surrounding Indian Point are greater than that of many other operating stations due to the design and condition of the stations. We expect to provide witnesses to illustrate that the condition and design are riskier than many other stations.

Authority Response

The Authority objects to this Contention because it is too vague to warrant a reply. WCBA fails to specify even one feature of the "design" or "condition" of the Indian Point station which renders it "riskier than many other stations." In fact, earlier concerns of the Commission regarding comparative risk at Indian Point rested on population, not design, considerations. "This judgment was based principally on the fact that there are large populations in the vicinity of these . . . units" (Preliminary Assessment of Core Melt Accidents at the Zion and Indian Point Nuclear Power Plants and Strategies for Mitigating Their Effects at 1-1 (1981) (hereinafter "NUREG-0850")). The WBCA claims to have witnesses who will "butress" [sic] their "assertions." Surely the WBCA could have asked these witnesses to specify at least one objectionable design feature.

3. FOE/Audubon Contention I

The consequences of an accident at the Indian Point reactors can include substantial and irreparable harm to the health and safety of the public in the New York City area, and in

other areas which are in the vicinity of the reactors. Immediate radiological threats to the health of the public in the event of a serious radiological emergency will include prompt and early fatalities, illnesses, latent fatal or non-fatal cancers, thyroid nodules, or genetic defects. Long-term health threats can be posed by contaminated soils, buildings, food and water supplies in addition to the long-term health threats posed by releases of radiation during accident conditions. Present emergency planning is inadequate to mitigate these health effects, and there are no interim or future protective measures which could feasibly protect the health of the public.

Authority Response

The Authority objects to this Contention because it:

- (1) fails to comply with the Commission's directive concerning risk;
- (2) is not sufficiently specific; and
- (3) is conclusory in nature.

First, this Contention is not in compliance with the Commission's Memorandum and Order of September 18, 1981. Although the Order explicitly states that "[a]ttention shall be given both to the probability of occurrences of releases and to the environmental consequences of such releases," Memorandum and Order at 3 n. 5 (Sept. 18, 1981), FOE/Audubon chooses to address only the potential "consequences," avoiding the issue of probability.

Second, the Contention is not sufficiently specific because it fails to specify the nature of the accidents which warrant FOE/Audubon's concern. Mere recitation that these accident scenarios are beyond design basis does not provide sufficient specificity for a reply.

Third, the Contention is conclusory, in that it states that "there are no interim or future protective measures which could feasibly protect the health of the public." Thus, acceptance of this FOE/Audubon Contention would prejudice the results of this proceeding.

COMMISSION ISSUE 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 of the facility or facilities, would be within the scope of this inquiry.)

INTERVENOR CONTENTIONS

1. UCS-NYPIRG Contention III(A)

It is essential, although not necessarily sufficient, that the following emergency planning measures and protective actions be implemented or capable of being implemented within 10 miles (plume EPZ) of the Indian Point reactors in order to protect the public health and safety in the event of an

accident at Indian Point Units 2 and 3. However, none of the following measures have either been implemented, are now capable of being implemented, or are planned to be implemented:

- d. License conditions must be placed on the operating licenses for Indian Point Units 2 and 3 which prohibit power operations with less than a fully operable complement of any safety-grade and/or safety-related equipment.
- f. A filtered, vented containment system must be installed at Indian Point Units 2 and 3 to help prevent containment failure by overpressurization.
- g. A "core-catcher" must be installed at Indian Point Units 2 and 3 to provide additional protective action time in the event of a "melt-through" accident in which the reactor pressure vessel is breached by molten fuel.
- h. A separate containment structure must be provided into which excess pressure from accidents and transients can be relieved without necessitating releases to the environment, thereby reducing the risk of containment failure by overpressurization.

The only basis for the Contention asserts:

It has not been demonstrated that adequate sheltering capability exists in the plume EPZ for all residents and transients at risk during an accident at Indian Point Units 2 and 3. Such capability is necessary if sheltering is to be used as a protective action alternative for these plants. (Emphasis added).

It is incumbent on the proponent of a contention to demonstrate

the adequacy of the contention. UCS-NYPIRG has obviously failed to comply with this requirement.

The Authority objects to item "d" on the grounds that it

- (1) raises an issue generic in nature;
- (2) fails to adequately specify bases; and
- (3) is conclusory in character.

First, the Indian Point units comply with all the Commission's regulations and technical specifications regarding plant operability. This Contention posits a proposal that would have to be applied to all nuclear power plants or at least all such plants in areas of high population. Given its generic implications, consideration of this Contention is outside the issues prescribed by the Commission.

Second, this Contention fails to specify what magnitude of risks it assumes exists and therefore is insufficient.

Third, this Contention is conclusory in nature because it assumes that the magnitude of the risks posed by Indian Point is so substantial that special conditions are needed for operation. Yet, UCS-NYPIRG studiously avoids allegations about the probability of accidents at Indian Point throughout its Contentions.

The Authority objects to Item "f" because an inadequate basis is presented. Mere recitation of a four year-old general study on filtered, vented containment is insufficient to warrant consideration by this Board.

Additionally, a filtered, vented containment system is currently being independently analyzed by the Commission and the Authority. NUREG-0850 reports that elimination of late overpressurization failures, the purpose of a filtered, vented containment, reduces the number of acute and latent fatalities by only less than a factor of two. NUREG-0850 at 3-119. However, a member of the Advisory Committee on Reactor Safeguard (ACRS) and NUREG-0850 argue that a factor of 10 in risk reduction is the reasonable minimum for adoption of mitigative features. Transcript of ACRS Meeting at 111 (July 9, 1981) (Mr. Kerr: "I mean, for example, less than [a factor of] 10 is statistically meaningless."); NUREG-0850 at 4-2. The NRC's preliminary analysis states that the factor of two level of risk reduction "may not be sufficient to warrant a major modification in containment building design." NUREG-0850 at 3-119. The Zion Probabilistic Safety Study also demonstrates an insignificant risk reduction from a filtered, vented containment. 1 Zion Probabilistic Safety Study at II. 9-16 (1981). The Authority will present its analysis as soon as it is available and, in any event, prior to the hearing. The

potential intervenors must address the incremental risks from the very devices they propose.

The Authority objects to item "g" because it fails to adequately specify a basis in support. Recitation of a general statement without site-specific data is insufficient.

The Zion Probabilistic Safety Study concluded that a refractory core ladle provides an insignificant degree of risk reduction to warrant installation. (1 Zion Probabilistic Safety Study at II. 9-16 (1981).) This device is also currently under study by the Commission. The Authority will present its analysis as soon as it is available and, in any event, prior to the hearing.

The Authority objects to Item "h" because it:

(1) fails to provide an adequate basis, and (2) is contradictory and inconsistent with Contention III(A)f. UCS-NYPIRG insists both on a containment design which will not necessitate radiation releases, a separate containment, and one which will use controlled releases as a hypothetical mitigative feature, the filtered vented containment described in Contention III(A)f. Neither Contention should be allowed.

Accordingly, the Authority submits that Contention III(A) should be rejected in its entirety.

COMMISSION ISSUE 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.

INTERVENOR CONTENTIONS

1. UCS-NYPIRG Contention I(A)

I(A). Emergency planning for Indian Point Units 2 and 3 is inadequate to protect the health and safety of the public because the existing plans do not conform to the requirements of 10 C.F.R. 50.47, in that they do not meet any of the sixteen mandatory standards of 10 C.F.R. 50.47(b).

Authority Response

The Authority objects to Contention I(A) on the grounds that:

- (1) the Contention's assertion that emergency planning is "inadequate" is beyond the scope of Commission Issue 3;
- (2) the Contention fails to satisfy the particularity requirement of 10 CFR §2.714(b); and

(3) USC-NYPIRG has failed to set forth adequate factual bases to support the Contention.

(1) The Contention's assertion that emergency planning is "inadequate" is beyond the scope of Commission Issue 3.

As quoted above, Commission Issue 3 is "the current status and degree of conformance with NRC/FEMA guidelines of state and local emergency planning," not whether emergency planning is inadequate. The Contention should be rejected as beyond the scope of Commission Issue 3.

(2) Contention I(A) fails to satisfy the particularity requirement of CFR §2.714(b).

UCS-NYPIRG's blanket statement that the emergency plans "do not meet any of the sixteen mandatory standards of 10 CFR 50.47(b)" (UCS-NYPIRG Contentions at 4) is so broad that the parties cannot reasonably respond. A contention that the plans do not meet any standards is belied by the fact that the Commission staff has accepted, by the letter of Boyce Grier dated August 24, 1981, the correction of certain deficiencies earlier found in the emergency plans. While the Authority does not object to properly drawn contentions within the terms of the Commission's orders, it does request that the Board require

UCS-NYPIRG to frame its contentions with the particularity mandated by 10 CFR §2.714(b).*

(3) Contention I(A) is not supported by adequate factual bases.

Contention I(A) is also inadequately supported by factual bases. UCS-NYPIRG states, for example, that "the licensees have failed to demonstrate that each person in the line of succession for the 'emergency coordinator' position is qualified and fully trained" (UCS-NYPIRG Contentions at 6). As discussed above, it is incumbent on the potential intervenors, not the licensees, to supply factual bases in support of contentions. Absent some showing that the licensees were required to "demonstrate" that each person in the line of succession is qualified, and what such a "demonstration" should entail, the basis is deficient. This applies equally to other bases, in which UCS-NYPIRG merely asserts that "it has not been demonstrated that ..."***

* If UCS-NYPIRG's bases are permitted to serve as particulars for this contention, the Board should direct that the bases will be treated as part of the contention.

** UCS-NYPIRG's final basis, that "[t]here is no assurance that an adequate and appropriate level of preparedness will be maintained for so long as the Indian Point units operate," (p. 16) is patently improper. This statement is not at all factual, but is at best a vague prediction. Moreover, any consideration of future deficiencies (or, indeed, any future issues other than improvements), is beyond the scope of the January 8 Order, which limits the emergency planning issues to "the current degree of conformance with NRC/FEMA guidelines" and "improvements in the level of emergency planning [that] can be expected in the near future." (emphasis added.) The basis is therefore improper for this additional reason.

Because Contention I(A) is vague and not particularized, and because the underlying bases are replete with flaws, the Board should reject the Contention.

2. UCS-NYPIRG Contention I(B)

I(B). Emergency planning for Indian Point Units 2 and 3 is inadequate to protect the public health and safety because existing plans do not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, as is required by 10 C.F.R. 50.47(a), in that:

- (1) The plans are based on unproved assumptions of human response during radiological emergencies.

Authority Response

The Authority objects to Contention I(B)(1) on the grounds:

- (1) that 10 CFR § 50.47(a) is inapplicable herein;
- (2) that the issue raised by the Contention purports to relate to is beyond the scope of the January 8 Order; and
- (3) UCS-NYPIRG has failed to set forth adequate bases to support the Contention.

- (1) 10 CFR § 50.47(a) is inapplicable herein.

By its terms, 10 CFR 50.47(a) does not apply to licensed plants and hence is inapplicable herein.

(2) Contention I(B)(1) raises an issue beyond the scope of the January 8 Order.

The January 8 Order explicitly confines the emergency planning issue to the "current status and degree of conformance with NRC/FEMA guidelines." Contention I(B)(1) challenges the guidelines themselves, since it suggests that even compliance with guidelines would not provide reasonable assurance that adequate protection measures can and will be taken.*

(3) Contention I(B)(1) is not supported by adequate factual bases.

Contention I(B)(1) is not supported by adequate factual bases. UCS-NYPIRG merely states that factors "have not been adequately taken into account," "have not been given adequate consideration," or are allegedly based

* Even assuming arguendo (see general objection fifth, pp. above) that contentions challenging the Commission's regulations are permitted as long as the contentions fall within the scope of the seven issues, it is clear that any challenge to the NRC/FEMA emergency planning guidelines is beyond the scope of the seven issues, since the relevant Commission Issue is limited to "the current status and degree of conformance with NRC/FEMA guidelines." (January 8 Order at 10.)

may be ameliorated. Thus, UCS-NYPIRG has failed to adequately support the Contention.

1(b)(4). The proposed protective actions that might be taken in the event of an accident at Indian Point Units 2 and 3 are not sufficiently integrated to assure that the proper action or mix of actions is taken under particular accident conditions and there are inadequate criteria in the plans for determining which actions should be taken.

Authority Response

The Authority objects to this Contention on the grounds:

- (1) that the Contention is duplicative of prior Contentions; and
- (2) the issue of thyroid prophylaxis is beyond the scope of this proceeding.

(1) Contention I(B)(4) is duplicative of prior Contentions.

The fact that Contention I(B)(4) is duplicative of prior Contentions is especially clear in light of the supporting bases. The issue of protective action criteria is covered in the preceding Contention I(B)(3). The issue of evacuation time estimates and routes is covered in Contention I(B)(2).

(2) The issue of thyroid prophylaxis is beyond the scope of this proceeding.

As is apparent from the supporting bases, to the extent Contention I(B)(4) is not duplicative of prior Contentions, it relates to the issue of thyroid prophylaxis. The issue of thyroid prophylaxis is beyond consideration in this proceeding since the State of New York has determined not to approve potassium iodide for radiological emergency use. A contrary finding by the Board would create an obvious conflict between two jurisdictions. Moreover, the State's determination on this matter of public health and safety constitutes a decision reserved to the States pursuant to the tenth amendment.

1(b)(6). There is no objective basis for judging the adequacy of emergency planning for the Indian Point area in the absence of an established maximum acceptable level of radiation exposure for the general public as a consequence of reactor accidents.

Authority Response

The Authority objects to Contention I(B)(6) on the grounds that the Contention is beyond the scope of the January 8 and September 18 Orders. These Orders limit the issues of the proceeding to conformance with existing NRC/FEMA guidelines, improvements that can be expected, and other specific offsite emergency procedures that are feasible. Maximum exposure levels already exist; these have been promulgated by the Environmental Protection Agency and endorsed by the Commission.

UCS-NYPIRG could, within the scope of the Commission's direction, raise an issue whether these guidelines are being met. But the contention that new standards are required constitutes an unmasked challenge to the entire generic regulatory structure, which is beyond the scope of this proceeding.*

1(b)(7). The NRC's attitude toward emergency planning, as it stands on its own and as it is reflected in the emergency planning attitudes of the licensees, their contractors, and Local and State emergency response officials, has caused and continues to cause a failure to perform emergency planning or accidents which are held by the NRC to be "not credible." In order for effective emergency plans to be created, NRC must promote an awareness that nuclear power plant accidents with substantial offsite consequences are possible for Indian Point Units 2 and 3 and must be planned for.

Authority Response

This Contention is patently inadmissible. The "NRC's attitude" is not and cannot be an issue in this or any other proceeding relating to a specific licensee. It could not be demonstrated any more clearly than by the very existence of

* Particularly objectionable is UCS-NYPIRG's basis for stating that "[t]here are not established criteria which can be utilized to judge the adequacy of emergency planning which are objective in nature, i.e., no maximum acceptable evacuation time, no maximum acceptable radiation dose levels, etc." At the least, the use of the term "etc." evidences the lack of a specific factual basis for the Contention. More importantly, however, this statement betrays the intervenor's underlying position (stated almost explicitly in Contentions III(B) and IV(A)) that the Indian Point plants should be closed because there can be no acceptable level of emergency planning. Such considerations are unquestionably beyond the scope of this proceeding.

the emergency planning regulations contained in 10 CFR Part 50. that the Commission addresses accidents not considered in the design basis accident analysis. The "promotion of an awareness" is an issue beyond the scope of the proceeding and, indeed, perhaps outside the Commission's statutory authority.

For the foregoing reasons, the Board should reject Contention I(B).

3. UCS-NYPIRG Contention II(A)

II(A). The consequences of a severe radiological accident at Indian Point Units 2 and 3 would involve massive damage to the public health and safety beyond the current plume EPZ, so that effective emergency planning is required for that area in order to protect the public health and safety beyond the current plume EPZ.

Authority Response

The Authority objects to this Contention because it fails to:

- (1) properly consider the risk of the accident referenced;
- (2) sufficiently specify what consequences are at issue; or
- (3) make any allegation that applicable NRC/FEMA guidelines for emergency planning beyond the 10 mile EPZ are not met. Such failures make a response to this Contention impossible.

First, this Contention fails to address the probability of an accident as directed by the Commission. See Authority Response to UCS-NYPIRG Contention I(B)(5).

Second, the Contention is legally insufficient because it fails to specify the nature of the "massive damage" that would result beyond the current EPZ and what accident scenario is at issue with reference to a "severe radiological accident." Without such basic information, a response to this Contention cannot be provided.

Third, the absence of any allegation that applicable guidelines beyond 10 miles are not met makes a response to this Contention impossible.

4. UCS-NYPIRG Contention II(B)

II(B). Local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, jurisdictional boundaries, and particularly access routes and the proximity of the metropolitan New York City area require substantially greater emergency planning beyond the present plume EPZ than currently exists or is contemplated.

Authority Response

The Authority objects to this Contention on the grounds:

- (1) that the Contention fails to satisfy the particularity requirement of 10 CFR § 2.714(b); and
- (2) that UCS-NYPIRG has failed to set forth adequate factual bases to support the Contention.

(1) Contention II(B) fails to satisfy the particularity requirement of 10 CFR § 2.714(b).

UCS-NYPIRG's statement that "local emergency response needs . . . require substantially greater emergency planning . . . than currently exists or is contemplated" is so vague as to be impossible to respond to.

(2) Contention II(B) is not supported by adequate factual bases.

The purported bases merely point out certain characteristics of the Indian Point area, without demonstrating how the current state of emergency planning fails to meet NRC/FEMA guidelines or what other offsite emergency procedures are feasible.

5. UCS-NYPIRG Contention II(C)

II(C). Emergency planning for Indian Point Units 2 and 3 is inadequate to protect the public health and safety because the existing plans within the current plume EPZ do not conform with the requirements of CFR Part 50 and Appendix E to Part 50; therefore there is no basis for assuming that such plans form an adequate basis for ad hoc protective actions beyond the current plume EPZ.

Authority Response

The Authority objects to this Contention on the grounds that (1) the Contention is too vague and conclusory to meet the particularity requirement of 10 CFR § 2.714(b), and (2) the bases are equally conclusory. The Contention should be rejected.

6. WESPAC Contention 1

The New York State Radiological Emergency Plan including the Westchester County Plan (the Plan), addresses a problem of unprecedented scope. Its proposals for notification, communication and evacuation relies on people, equipment and procedures. The people (including many who would have to be volunteers) have not been trained or even properly informed. The equipment is inadequate. The procedures are ineffective.

Authority Response

The Authority objects to Contention 1 on the ground that the Contention fails to satisfy the particularity requirement of 10 CFR § 2.714(b).

Contention 1 contains nothing more than sweeping generalizations. It states, in the most conclusory of terms, that "[t]he people . . . have not been trained," (Contentions at 1); "[t]he equipment is inadequate" (id.); and "[t]he procedures are ineffective (id.).". The Contention clearly lacks the detail

necessary to provide sufficient notice to the Board and licensees, and should therefore be rejected.

Contention 1 constitutes a sweeping attack on the emergency plans without any reference whatsoever to the guidelines and their requirements. This deficiency defeats the entire purpose of the proceeding, which is to focus on the specific issues raised by the Commission.

7. WESPAC Contention 2

The trigger for the Plan -- effective and reliable communication among the facility operators, public officials and the public -- is fatally flawed.

Authority Response

The Authority objects to Contention 2 on the grounds that:

- (1) the Contention fails to satisfy the particularity requirement of 10 CFR § 2.714(b);
- (2) WESPAC has failed to set forth adequate factual bases for the Contention; and
- (3) the Contention raises issues beyond the scope of this proceeding.

(1) The Contention fails to satisfy the particularity requirement of 10 CFR § 2.714(b).

Contention 2 fails to set forth any specific deficiencies in communication plans, procedures, personnel, or

equipment. The purposes of this proceeding can only be served if particularized assertions relating to the issues raised by the Commission are included in the Contention.

(2) WESPAC has failed to set forth adequate factual bases for the Contention.

Contention 2 relates exclusively to communications, yet many of the supporting bases do not concern communications. Basis "b" refers to purported deficiencies in on-site preparedness, without any mention of communications. Basis "c", which criticizes an unspecified "warning that the 'incident' being planned for 'is not expected to pose a serious health hazard,'" again does not concern or even mention communications.

The remaining bases are insufficiently particularized to support the Contention.

(3) The Contention raises issues beyond the scope of this proceeding.

Contention 2 is so broad that it is impossible to determine on its face whether it raises issues properly admissible pursuant to the January 8 and September 18 Orders. The primary basis, however, leaves no doubt that WESPAC seeks to raise issues outside the scope of this proceeding. Basis licensees. This could not be more improper. The January 8

Order expressly confines the proceeding to consideration of "the current status and degree of conformance with NRC/FEMA guidelines" and future improvements. Issues of historical performance and "the nuclear utility industry's entire record" obviously violate these boundaries.

8. WESPAC Contention 3

The Plan does not provide for effective drills.

Authority Response

The Authority objects to Contention 3 on the grounds that:

- (1) the Contention fails to meet the particularity requirement of 10 CFR § 2.714(b);
- (2) the Contention raises issues beyond the scope of the proceeding; and
- (3) WESPAC has failed to set forth adequate factual bases for the Contention.

(1) The Contention fails to meet the particularity requirement of 10 CFR § 2.714(b).

Contention 3, which lacks any particularity, fails to satisfy 10 CFR § 2.714(b). It is incumbent upon WESPAC to submit a specific Contention within the scope of the Commission's Orders. Contention 3 is utterly inadequate.

(2) The Contention raises issues beyond the scope of this proceeding.

This Contention constitutes an impermissible challenge to existing NRC/FEMA guidelines. (See p. 6, n. (*), supra.)

The nature and scope of drills are governed by NUREG-0654 and other pertinent documents and guidelines. WESPAC's so-called "bases" make clear that the adequacy of the guidelines themselves are being contested. As an obvious example, WESPAC asserts that the public must take part in drills, yet the Commission has refused to require that the general public participate in drills. Moreover, WESPAC's statement that "[e]ffective drills are precluded because they can only simulate one situation at a time" and other similar statements do not simply criticize the effectiveness of planned drills, but instead suggest that no effective drill can be possible. This is clearly beyond the scope of the proceeding.

(3) WESPAC has failed to set forth adequate factual bases for the Contention.

WESPAC has completely ignored the requirement that adequate factual bases be supplied in support of the Contention. The so-called "bases" herein are wholly conclusory and speculative. WESPAC has failed to supply any factual support

or even any empirical data, studies, or recommendations for improvements.

Contention 3 is therefore defective.

9. WESPAC Contention 4

The Plan is based on fallacious assumptions of human behavior.

Authority Response

At the outset, the Authority notes that Contention 4 is virtually identical to Contention I(B)(1) submitted by UCS/NYPIRG.

The Authority objects to Contention 4 on the grounds that:

- (1) the issue raised by the Contention is beyond the scope of the January 8 Order; and
- (2) WESPAC has failed to set forth adequate bases to support the Contention.

(1) Contention 4 raises an issue beyond the scope of the January 8 Order.

The January 8 Order explicitly confines the emergency planning issue to the "current status and degree of conformance with NRC/FEMA guidelines." Contention 4 challenges the guidelines themselves, since it suggests that even compliance

with the guidelines would not provide reasonable assurance that adequate protective measures can and will be taken.

(2) Contention 4 is not supported by adequate factual bases.

Contention 4 is not supported by adequate factual bases. WESPAC simply states conclusions without underlying factual support. This deficiency is evidenced by WESPAC's pervasive reliance upon such terms as "guaranteed to provoke panic" (Contentions at 7); "fail to take into account" (Contentions at 7); and "cannot be expected" (id.). Ironically, WESPAC states that "[t]he Plan recognizes that young ages and consequent parental concern require special treatment, but does not come up with a practical suggestion," yet WESPAC itself has failed to come forward with any suggestion.

WESPAC's failure to provide factual bases undermines the objective of this proceeding, in addition to contravening the Commission's Rules of Practice.

10. Parents' Contention I

Children within the ten mile plume exposure pathway Emergency Planning Zone are particularly susceptible to the physical effects of radiation and to the psychological trauma of a disaster, and are not adequately protected by the Radiological Emergency Response Plan.

Authority Response

The Authority objects to Contention I on the grounds that:

- (1) the Contention is beyond the scope of the Commission's January 8 and September 18 Orders;
- (2) the Contention fails to satisfy the particularity requirement of 10 CFR § 2.714(b); and
- (3) Parents have failed to set forth adequate factual bases to support the Contention.

(1) The Contention is beyond the scope of the Commission's January 8 and September 18 Orders.

Contention I is beyond the scope of the January 8 and September 18 Orders. These Orders limit the issues of the proceeding to conformance with existing Commission and FEMA guidelines, improvements that can be made, and other specific offsite emergency procedures that are feasible.

Contention I, as worded, does not concern the "current status and degree of conformance with NRC/FEMA guidelines," but instead seems to suggest that the present guidelines are inadequate because they do not take into account the asserted greater susceptibility of children. Accordingly, the Contention falls outside the issues specified in the Commission's Orders and is therefore inadmissible.

(2) The Contention fails to satisfy the particularity requirement of 10 CFR § 2.714(b).

The Contention states that children are not adequately protected by the Radiological Emergency Response Plan. This statement is too vague to respond to. The Commission's objective herein of examining safety issues at Indian Point and recommending improvements, if warranted, can only be served if intervenors make specific assertions that particular guidelines are not being met or if specific improvements in emergency planning are recommended.

(3) Parents has failed to set forth adequate factual bases to support the Contention.

Contention I focuses on some unspecified inadequacy of protection for children. Most of the bases, however, do not specifically relate to children, but rather are vague, general conclusions that apply to any segment of the population. Parents states, for example, that "emergency planning information must be widely distributed, extremely detailed, and available in several languages" (Contentions at 1); "there is no way to assure [bus drivers'] cooperation" (Contentions at 2); and "reception centers and congregate care centers are not equipped with any emergency supplies" (Contentions at 3). These bases are not only conclusory and in many

cases beyond the scope of the proceeding, but are also generalized contentions that extend beyond Parents' purported objective of focusing on the special needs of children.

In addition, of course, many of the "bases" are vague and conclusory (e.g., "[t]here are not enough school buses" (Contentions at 2) and "[f]rantic, uncontrollable behavior may hamper the entire emergency response effort" (id.)).

For all of these reasons, Contention I should be rejected.

11. Parents' Contention II

Children outside the 10 mile EPZ are particularly susceptible to the physical effects of radiation and to the psychological trauma of a disaster and are not adequately protected by the Radiological Emergency Response Plan.

Authority Response

The Authority objects to Contention II on the grounds that:

- (1) the Contention is beyond the scope of the Commission's January 8 and September 18 Orders;
- (2) the Contention fails to satisfy the particularity requirement of 10 CFR § 2.714(b); and
- (3) Parents have failed to set forth adequate factual bases to support the Contention.

(1) The Contention is beyond the scope of the Commission's January 8 and September 18 Orders.

As in Contention I, Parents has failed to state a Contention concerning conformance with existing guidelines or recommended improvements in emergency planning. Hence, this Contention must also be rejected as beyond the scope of the Commission's Orders.

(2) The Contention fails to satisfy the particularity requirement of 10 CFR § 2.714(b).

The Authority refers the Board to its response (2) to Contention I, above. Parents must make specific assertions, and not rely on sweeping conclusions and generalizations.

(3) Parents has failed to set forth adequate factual bases to support the Contention.

As does Contention I, Contention II relies upon conclusory statements that are in no way limited to the language of the Contention, which focuses exclusively on children.

Moreover, virtually all of the "bases" do not state facts, but instead are conclusions unsupported by the underlying facts required by 10 CFR § 2.714(b).

Contention II is therefore inadmissible.

12. Parents' Contention III

Adequate consideration has not been given to parental and child behavior and to family decision-making patterns in the emergency planning process.

Authority Response

The Authority objects to Contention III on the grounds that:

- (1) the Contention is unsupported by adequate factual bases; and
- (2) the Contention raises issues beyond the scope of the proceeding.

(1) The Contention is unsupported by adequate factual bases.

First, virtually all of the "bases" are not factual, but instead are unsupported conclusions. Parents concludes, for example, without citing any support, that "[m]ost parents will not train their children" (Contentions at 5) and "[p]anic will ensue when parents and children, at different locations, cannot communicate with each other" (*id.*). Such statements blatantly disregard the well-established requirement that factual bases be set forth in support of contentions.

(2) The Contention raises issues beyond the scope of the proceeding..

It is clear from Parents' so-called "bases" that the real thrust of Contention III is that effective emergency planning is not possible because frequent drills are necessary, but such drills should not be conducted because of the costs and potential traumatic consequences. The obvious, though unstated, conclusion is that no level of emergency planning is acceptable. Such a conclusion is clearly beyond the scope of this proceeding, since the January 8 and September 18 Orders limit emergency planning issues to conformance with existing guidelines and feasible improvements. Hence, Contention III should be rejected.

13. RCSE Contention 1

It is contended that in the event of delay in notification of county, state and Federal officials by licensee of a site or general emergency situation at the Indian Point nuclear facility, or in the event of rapid escalation to General Emergency Action Level with possibilities of prompt major release of radiation, the amount of time available for evacuation as a chosen protective action will be inadequate.

Authority Response

The Authority objects to Contention 1 on the grounds that the Contention fails to meet the special threshold established in the January 8 Order for evacuation time estimate

issues. The January 8 Order states that the "FEMA position should be taken as a rebuttable presumption for this estimate." (January 8 Order at 10.) Thus, the intervenors must, at a minimum, set forth contentions and supporting bases sufficient to overcome the presumption established by the FEMA estimates.

RCSE has not met this burden. It has failed to offer any alternative estimates or even any alternative methodology. The bases for challenging the estimates in the plans are almost entirely speculative.

The Authority recognizes that evacuation time estimates are a proper issue in this proceeding to the extent that grounds can be stated for challenging the FEMA estimates. RCSE has failed to come forward with such grounds.

14. RCSE Contention 2

It is contended that the use of evacuation as a protective action, especially when working within a short time-frame (as delineated in previous RCSE contention) is dependent, in part, upon prompt and accurate notification by licensee. Such notification cannot be assured.

Authority Response

The Authority objects to Contention 2 on the grounds that:

- (1) the Contention raises issues beyond the scope of this proceeding; and

(2) RCSE has failed to set forth adequate factual bases to support the Contention.

(1) The Contention raises issues beyond the scope of this proceeding.

The Commission's January 8 Order explicitly confines the scope of the proceeding to "the current status and degree of conformance with NRC/FEMA guidelines." (Emphasis added.) The Contention, however, is based entirely upon purported historical experience, not the current status. Thus, the Contention must be rejected as falling outside the scope of the proceeding.

(2) RCSE has failed to set forth adequate factual bases to support the Contention.

RCSE contends that "prompt and accurate notification . . . cannot be assured." RCSE, however, has not provided an adequate factual basis for this Contention. Thus, we object to the Contention.

15. RCSE Contention 3

It is contended that in the event of a major radiological emergency involving Indian Point, provisions for prompt communication among principal response organizations to emergency personnel and to the public, as required by 10 CFR 50.47 (b)(6) do not exist.

Authority Response

The Authority does not object to Contention 3.

16. RSCE Contention 5

It is contended that no information has been made available to the public regarding notification and initial actions in the event of an emergency at Indian Point, such as is required in 10 CFR 50.47 (b)(7).

Authority Response

The Authority does not object to Contention 5.

COMMISSION ISSUE 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?

POTENTIAL INTERVENOR CONTENTIONS

1. UCS-NYPIRG Contention III(A)

III (a). It is essential, although not necessarily sufficient, that the following emergency planning measures and protective actions be implemented or capable of being implemented within 10 miles (plume EPZ) of the Indian Point reactors in order to protect the public health and safety in the event of an accident at Indian Point Units 2 and 3. However, none of the following measures have either been implemented, are now capable of being implemented, or are planned to be implemented:

- a. Potassium iodide must be provided in an appropriate form for all residents within the plume EPZ and a sufficient supply and adequate distribution system for transients within the plume EPZ must be provided.
- b. Adequate sheltering capability must be provided to all residents and transients within the plume EPZ.
- c. License conditions must be placed on the operating licenses for Indian Point Units 2 and 3 which prohibit power operation during periods when the roadway network becomes degraded due to adverse weather conditions. Such conditions should include temperature inversions, flooding, snowfall, and icing on the roadways.
- e. The roadway network must be made capable of being used to successfully evacuate all at-risk residents of the plume EPZ before the plume can reach them for the shortest plume arrival time.

Authority Response

The Authority objects to item "a," since the State of New York has determined as a matter of public health and safety not to approve the use of potassium iodide. It would be inappropriate for the Board to further consider such usage, since this creates a jurisdictional conflict and is a matter reserved to the States pursuant to the tenth amendment.

The Authority objects to Item "b" on the grounds that:

- (1) it is wholly conclusory and fails to meet the particularity requirement of 10 CFR §2.714(b), and
- (2) the item is not supported by an adequate basis.

The only basis for the Contention asserts:

It has not been demonstrated that adequate sheltering capability exists in the plume EPZ for all residents and transients at risk during an accident at Indian Point Units 2 and 3. Such capability is necessary if sheltering is to be used as a protective action alternative for these plants. (Emphasis added).

It is incumbent on the proponent of a contention to demonstrate the adequacy of the contention. UCS-NYPIRG has obviously failed to comply with this requirement.

With respect to item "c", the Authority restates and refers the Board to its response to item "d", (pp. 18-19, supra).

Item "e" is too vague to meet the particularity requirement of 10 C.F.R. § 2.714(b).

2. UCS-NYPIRG Contention III(B).

III(B). Under certain accident conditions, consequences within the present plume EPZ would be so severe that even heroic emergency measures would not be sufficient to protect the public health and safety from unacceptable immediate and long-term consequences, including prompt fatalities from acute

radiation exposure, early and latent cancer cases and fatalities, thyroid nodules, and genetic defects. The deficiencies in the existing emergency plans within the plume EPZ are so deficient that there are no feasible "interim" measures which can be implemented to correct these deficiencies.

Authority Response

The Authority objects to Contention III(B) on the grounds that (1) The Commission's Orders of January 8 and September 18 preclude any examination of accident consequences alone, without an accompanying consideration of the probability of such accident conditions. (See pp. 4-5, supra.) (2) The bases for the Contention are either duplicative of other contentions or inadequate. The statement that the "emergency plans meet none of the sixteen required standards of 10 CFR 50.47(b) (1-16)" repeats Contention I(A) verbatim. The three remaining bases are utterly conclusory:

- * Thus, the deficiencies are pervasive and massive.
- * There exist no feasible interim measures which could sufficiently correct such pervasive and massive planning deficiencies.
- * Under severe accident conditions, the impact of these present deficiencies would be greatly magnified in the form of large increases in consequences.

(UCS-NYPIRG Contentions at 43).

The entire Contention is inadmissible.

2. UCS-NYPIRG III(C)

III(C). It is essential, although not necessarily sufficient, that the present plume EPZ be extended sufficiently to encompass the entire population which is at risk from all consequences of accidents at Indian Point Units 2 and 3, including not only prompt fatalities (upon which the present EPZ and plans are based), but also early and latent cancer cases and fatalities, thyroid nodules, and genetic defects. Further, this measure has not been implemented for Indian Point Units 2 and 3 and is not now being developed for implementation.

Authority Response

The Authority objects to this Contention because it is repetitive of Contention II(A). Upon this Contention, UCS-NYPIRG could construct "a podium for soapbox oratory," In re Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), 10 NRC 597, 602 (1979). By arguing that its proposal for extension of the EPZ "is essential, although not necessarily sufficient, UCS-NYPIRG seeks to put the Board and the Commission, let alone the licensees, to a "grisly hard Hobson's choice" by imposing a burden on the Authority under the guise that it is "essential," and simultaneously arguing that even if that burden were met that, too, would not be sufficient. UCS-NYPIRG thus stakes out a position that opposes national policy regarding nuclear power.

4.

UCS-NYPIRG III(D)

III(D). . The consequences of severe accidents at the Indian Point reactors (including accidents which exceed the design basis for Indian Point Units 2 and 3) represent an unacceptable threat to the public health and safety that is not limited to the present plume EPZ, but which extends to the New York City metropolitan area and beyond. Under certain accident conditions, the consequences would be so severe that even heroic emergency measures would not be sufficient to protect the public health and safety from unacceptable immediate and long-term consequences, including prompt fatalities from acute radiation exposure, early and latent cancer cases and fatalities, thyroid nodules, and genetic defects. There are no feasible "interim" measures which can be adopted to remedy this situation.

Authority Response

The Authority objects to this Contention because

it:

- (1) fails to consider probability as well as consequences;
- (2) is impermissibly vague;
- (3) partakes of generic character; and
- (4) is conclusory in nature.

(1) This Contention fails to consider probability as well as consequences.

This Contention is outside the issues prescribed by the Commission. The Commission specifically directed that

questions of risk were to be posed in terms of both probability and consequences. - (See Response to Contention III(A), supra.) This Contention focuses only on the latter.

(2) This Contention is impermissibly vague.

This Contention fails to specify what "severe accidents" are at issue. UCS-NYPIRG also suggests that such accidents are an "unacceptable threat to the public" yet fails to specify what would be an acceptable "threat." Thus, this impermissibly vague Contention provides no standards, further engendering fear.

(3) This Contention partakes of generic character.

This issue raises the generic question of levels of safety which cannot be resolved in this proceeding.

(4) This Contention is conclusory in nature.

The Contention, in arguing that "no feasible 'interim' measures" exist, is conclusory in nature, and thus a response is not possible.

5. WESPAC Contention 5

The Plan relies on unworkable traffic routings for the high population density of Westchester.

Authority Response

With reference to Commission Issue 4 concerning improvements in emergency planning that can be expected in the near future, and other specific offsite procedures that are feasible, WESPAC fails to suggest alternative routes or evacuation methods. Instead, WESPAC contends that "[t]he overall road network is antiquated and inadequate (Contentions at 8). WESPAC thus implies that major roadway improvements are needed. But future roadway improvements clearly are neither improvements expected in the near future nor specific procedures.

6. WESPAC Contention 6

The Plan treats people as statistics and as fungible with each other. They may well be, once the accident occurs. But a response plan must focus on people, if not as individuals, at least in meaningful groups. It must take into account known attributes of groups which bear heavily on the feasibility of evacuation strategies. There are many in Westchester whose circumstances would leave them behind as the majority flee.

Authority Response

The Authority objects to Contention 6 on the grounds that the Contention fails to satisfy the particularity requirement of 10 CFR § 2.714(b). Indeed, the Contention is so confusing that it is difficult to discern the precise nature of the issue.

7. RCSE Contention 4

It is contended that the use of sheltering as a protective action, as outlined in NUREG-0654 and as developed in the RCRERP Rev. 1, is inadequate in major releases of radiation.

Authority Response

The Authority objects to Contention 4 on the grounds that:

- (1) the Contention raises issues beyond the scope of the proceeding; and
- (2) the Contention is not supported by adequate factual bases.

(1) The Contention raises issues beyond the scope of the proceeding.

RCSE expressly challenges the guidelines contained in NUREG-0654. It is clear, however, that any challenge to the NRC/FEMA emergency planning guidelines is beyond the scope of this proceeding since the January 8 Order limits the relevant issues herein to "the current status and degree of conformance with NRC/FEMA guidelines." (January 8 Order at 10.) Hence, the Contention is inadmissible.

(2) The Contention is not supported by adequate factual bases.

The so-called "bases" for the Contention consist of two brief sentences which allege simply that radionuclides can infiltrate a "standard residence," and which make an oblique reference to unspecified studies. Ironically, the Contention itself is longer than its supporting "basis," although neither the Contention nor its bases provide the Authority with any assertion which can be responded to. Even assuming that reference to "recognized studies" can constitute a proper basis, intervenors have an obligation at the very least to identify the studies upon which they rely.

Accordingly, Contention 4 should be rejected.

COMMISSION ISSUE 6

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

1. UCS-NYPIRG Contention IV(A)

IV(A). The economic, environmental, safety, health, and other consequences of an accident at Indian Point Units 2 and 3 are so severe, and the threat to the public health and safety so great, that the reactors must be shutdown regardless of the energy, economic, environmental, or other consequences of a preventive shutdown.

Authority Response

The Authority objects to this Contention because:

- (1) Contention IV(A) is outside the scope of Commission Issue 6.
- (2) Contention IV(A) fails to consider the probabilities as well as consequences of such accidents.

(1) Contention IV(A) is outside the scope of Commission Issue 6.

Issue 6 is directed at the consequences of a shutdown; this Contention is directed at the consequences of accidents that might arise from continued operation.

(2) Contention IV(A) fails to consider the probabilities as well as consequences of an accident.

The Commission's Orders of January 8 and September 18 preclude any examination of accident consequences alone, without an accompanying consideration of the probability of such accident conditions. (See pp. 4-5, supra.)

2. UCS-NYPIRG Contention IV(B).

IV(B). The energy, economic, and other such consequences of preventive shutdown are irrelevant as a matter of law to the question of whether Indian Point Units 2 and 3 must be shutdown to protect the public health and safety.

Authority Response

The Authority objects to this contention because:

- (1) Contention IV(B) contradicts and is not within Issue 6 established in the January 8 Order.
- (2) Contention IV(B) is a legal question without factual basis.

(1) Contention IV(B) contradicts and is not within Issue 6 established in the January 8 Order.

The January 8 Order asks the parties to address the energy, economic and other consequences of a shutdown of the Indian Point Units. Contention IV(B) challenges the appropriateness of such considerations. It thus contradicts the Commission's expressed interest in examining the matters raised in Issue 6.

This Contention, moreover, is not within any of the seven issues contained in the January 8 Order.

(2) Contention IV(B) is a legal question without factual basis.

This Contention does not purport to have a factual basis. It is a bold legal issue without any requirement for a factual hearing. This Contention does not require a hearing with witnesses, testimony and discovery. Rather, it is simply a legal argument to be made by a party on brief and not during the evidentiary hearings.

3. GNYCE Contention I.

Viable alternative strategies exist to incurring the excess fuel costs associated with early and permanent shutdown of Indian Point Units 2 and 3. Therefore the NRC would not be justified in permitting the continued operation of the units solely on the grounds of supposed economic or energy need, especially in the face of threats to the health of the public posed by accident consequences. The failure of State agencies or the utilities to implement such strategies cannot be held to imply that such strategies are not viable, would not save or produce sufficient energy, or that such strategies would not limit or eliminate excess fuel costs.

Authority Response

The Authority objects to this Contention because:

- (1) Contention I fails to present adequate factual basis.
- (2) Contention I, as phrased, is not within Commission Issue 6.

- (1) Contention I fails to present adequate factual basis.

GNYCE lists ten means of providing increased conservation of electricity and "alternative" supply of electric energy in the metropolitan New York City area. No specification is provided that any of these means could substitute for Indian Point, however. This specification is particularly important in that the ten means are generalized theoretical means of

substituting for nuclear power plants with no obvious relevance to the Indian Point plants and the New York City region.

(2) Contention I, as phrased, is not within Commission Issue 6.

Contention I relies on the hypothetical viability and importance of alternative energy strategies, even though they may not necessarily be realistic. This reliance on a hypothetical, non-realistic plan is outside of Issue 6 as posed by the Commission.

4. GNYCE Contention II

The economic costs of an accident at the Indian Point reactors which involves the releases of radiation--or solely the threat of releases--and the implementation of protective actions spontaneously or as advised by authorities far outweigh the costs of the energy and economic impacts of permanent shutdown and decommissioning the reactors.

Authority Response

The Authority objects to this Contention because:

- (1) Contention II, as phrased, is entirely without the scope of the Commission's seven issues.
- (2) GNYCE fails to present an adequate factual basis.

(1) Contention II, as phrased, is entirely without the scope of the Commission's Seven Issues.

Contention II seeks to establish a balance between the economic consequences of an accident and the economic advantages of a shutdown with decommissioning. With respect to the statement of consequences, this Contention fails to consider the probabilities as well as the consequences of such accidents. (See pp. 4-5, supra.)

(2) GNYCE fails to present an adequate factual basis.

GNYCE does not present any factual basis whatsoever to support the admission of this Contention.

5. FOE/Audubon Contention II

The consequences of an accident at Indian Point can include substantial and irreparable harm to the environment, to wildlife, aquatic life in the Hudson and other waterways, to agricultural lands, private property, and public recreational lands. The areas that are directly contaminated during an accident and many surrounding areas may have to be abandoned for decades or even centuries in the event of a serious accident at the Indian Point reactors. Consideration must be given to these societal and individual consequences of an accident (which are completely avoided by shutting down the reactor) in considering the environmental consequences of shutdown, as Ordered by the Commission at Question 6.

Authority Response

The Authority objects to the Contention because:

- (1) Contention II is outside the scope of Commission Issue 6.
- (2) Contention II fails to consider the probabilities as well as consequences of an accident.

- (1) Contention II is outside the scope of Commission

Issue 6.

Issue 6 is directed at the consequence of a shut down; this Contention is directed at the consequences that might arise from continued operation.

- (2) Contention II fails to consider the probabilities as well as consequences of an accident.

The Commission's Orders of January 8 and September 18 preclude any examination of accident consequences alone, without an accompanying consideration of the probability of such accident conditions. (See pp. 4-5, supra.)

6. Parents' Contention IV

The physical and psychological environment of children will be improved by permanently shutting down the Indian Point Nuclear Power Station.

Authority Response

The Authority objects to this Contention because:

- (1) the issue of fear is not properly a part of this proceeding,

(2) even if fear were an apparent issue, Parents is barred from raising it, and

(3) this Contention is impermissibly vague.

(1) The issue of fear is not properly a part of this proceeding.

The issue of fear is not properly a part of this proceeding because it is outside the issues prescribed by the Commission and because consideration of the issue of fear of nuclear power is neither authorized, allowed, nor required under the Atomic Energy Act.

(2) Even if fear were an apparent issue, Parents is barred from raising it.

Even if the issue of fear were appropriate, Parents and NYPIRG have distributed literature which consciously attempts to increase "anxiety" in its readers (see Affidavit of Dr. Robert L. Du Pont in Support of Power Authority's Motion to Exclude Fear as an Issue.), USC-NYPIRG now claims that closing a plant which has always operated safely will reduce the fear they have labored assiduously to arouse.

(3) This Contention is impermissibly vague.

The Contention is vague in that it fails to specify how the "physical" environment is adversely affected by the

operation of the Indian Point reactor. The Authority cannot
reply to such a vague and unsubstantiated assertion.

Respectfully submitted,

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Dated: December 31, 1981

APPENDIX A

1. UCS-NYPIRG

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
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, INC.) 50-285 SP
(Indian Point, Unit No. 2))
POWER AUTHORITY OF THE)
STATE OF NEW YORK)
(Indian Point, Unit No. 3))
-----)

CERTIFICATE OF SERVICE

Alan G. Cohen

I certify that I have served copies of the annexed
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