

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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



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 Numbers 50-247SP  
50-286SP

January 14, 1982

WESPAC'S PRELIMINARY RESPONSE TO OBJECTIONS  
TO OUR CONTENTIONS FILED BY THE NRC STAFF,  
CON EDISON, AND THE POWER AUTHORITY

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## INTRODUCTION

At the Pre-Hearing Conference in the above-referenced proceeding, held in Croton-on-Hudson on December 2, 1981, the Westchester People's Action Coalition (WESPAC) filed six contentions, with 38 bases, which we intend to prove in this proceeding. At that conference, the Board directed that the NRC Staff, Con Edison, and the State Power Authority submit responses to those contentions by the end of the month.

On December 31, 1981, Con Edison filed "Con Edison's Memorandum Respecting Contentions Proposed by Prospective Intervenors," the NRC Staff filed "NRC Staff Response to Contentions of 10 CFR 2.714 Petitioners," and PASNY filed "Power Authority Objections and Answers to Contentions of Potential Intervenors." We have learned unofficially that parties' responses to these objections are expected to be filed by today, January 14, 1982. The instant filing is a request for an extension of time to respond to these objections, as well as a partial response to general issues raised by the three objectors.

## REQUEST FOR EXTENSION OF TIME

Due to the New Year's holiday, WESPAC did not receive the responses of Staff and licensees until Tuesday, January 5. The PASNY filing was incomplete (missing page 37), and we did not receive the complete filing until January 12.

On Friday, January 8, we learned (from Joan Holt of NYPIRG) that Chairman Carter intended to interpret a lack of response from WESPAC and other 2.714 parties to indicate that we do not disagree with the

objections, and that such response should be filed within fifteen days of the service date of the objections. Since such a schedule has not been communicated to petitioners by the Board, and since there is no provision in 10 C.F.R. Part 2 which covers this situation, we find ourselves with extremely short notice that a response to objections is expected.

Our volunteer attorney, Alan Latman, has been out of the country since January 2 and will not return until January 24. I will be in California on business from January 16-24. If the Board is not prepared to accept all of our contentions and bases without additional response, we request an extension of time until February 1, 1982 to supplement the issues discussed below and to respond to objections to specific contentions.

#### GENERAL OBJECTIONS RAISED BY STAFF AND LICENSEES

The following section identifies general issues raised by PASNY, the NRC Staff, and Con Edison in their responses to WESPAC's and other contentions. This will be followed by our preliminary responses to these issues.

##### General Objections of the NRC Staff:

Staff objections, while more well-considered than those of Con Edison or the Power Authority, seek to limit the scope of the proceeding more narrowly than prescribed by the NRC Orders of January 8 and September 18, 1981. Staff accepted parts of five (of six) of our contentions, including sixteen (of 38) bases. Nevertheless, we disagree with the objections Staff raised to the remaining issues. The objections generally fall into the following areas:

1. Many of our contentions should be split up, with each basis forming a separate contention. (Staff response at 37-38).
2. Contentions are vague and/or should be made more specific. (Staff response at 37, 39).
3. Several contentions "assert no identifiable connection with the provisions of the Plan or with particular NRC/FEMA planning guides." (Staff response at 39).
4. Several "are unclear as to whether they relate to the matters within the EPZ." (Staff response at 39).
5. One (Contention 3) "may even constitute a challenge to the regulations." (Staff response at 39).

General Objections of the Power Authority:

The Power Authority objected to every single contention filed by every party, demonstrating that their objections are dilatory and obstructionist, and that they are merely trying to subvert this proceeding. Nevertheless, we have identified the following general objections to contentions of WESPAC (and others) in their December 31 filing:

1. Contentions which challenge or seek to improve Commission regulations should not be admitted. (PASNY objections at 5-6).
2. Contentions which do not set forth every bit of evidence which will later be offered to prove them do "not satisfy the particularity requirement of 10 CFR 2.714(b)" or "WESPAC has failed to set forth adequate bases to support the Contention." (PASNY at 35 and many other places).

3. Contentions which do not, in themselves, provide alternatives to solve identified problems in the emergency plan, are deficient. (PASNY at 41, 57).

PASNY found our contentions "confusing" (57), and claims that they "lack the detail necessary to provide sufficient notice to Board and licensees" (35-36). One would get the impression that PASNY did not read the bases supplied for each issue raised. If PASNY, spending taxpayers and bondholders money for high-priced lawyers, cannot understand these simple issues, how are they to be expected to run a facility as complex and potentially catastrophic as the Indian Point 3 nuclear plant. Unless PASNY improves their ability to comprehend the issues under discussion in this case, the Board should strongly recommend to the Commission that their license be revoked. They are clearly incompetent and inadequate to fulfill the requirements the Commission desires in a licensee.

#### General Objections of Consolidated Edison

1. Contentions which are not "site-specific to Indian Point," do not assert that a particular situation is worse "at the Indian Point site than at any other nuclear reactor site," or do not assert that a condition is handled "any differently under the Indian Point emergency plan than under any other plan" should not be admitted. (Con Ed response at 2-4, 42-48, and elsewhere).
2. "Contentions challenging NRC regulations should be rejected," since they do not meet narrow requirements outlined in the September 18 order. (Con Ed at 8-10).

3. Contentions are too vague, do not meet particularity requirements, or should be excluded as unhelpful at the Board's discretion. (Con Ed at 10-13).

Con Ed also proposes a division of issues (pages 13-16) in order to be able to present its case on risk assessment before the licensees' delaying tactics preclude intervenors from raising our issues before the September 18, 1982 deadline. Risk assessment relates to only two of the Commission's seven questions, and there is no indication that those two are more important than the other five. WESPAC strongly objects to Con Edison's proposed categorization. If there is insufficient time to hear all the issues before September, the Board should request an extension of time from the Commission. Since the Commission allowed two years to pass between the original filing of the UCS petition and the appointment of the Board, a few additional months of evidentiary hearings would certainly be in order.

#### PRELIMINARY RESPONSES TO GENERAL OBJECTIONS

As we indicated earlier, this is intended only as an initial response to objections raised by one or more licensee and/or staff. We will respond in more detail, dealing with each of our contentions individually, if the Board so wishes.

#### Vagueness and particularity:

This issue was raised by Staff (2), PASNY (2), and Con Ed (3). WESPAC would be happy to amend our contentions in order to make them more specific or particular. We have, however, met the requirements set forth in the Rules of Practice. The form of contentions, as enun-

ciated in 10 CFR 2.714(b), calls for a filing which includes "a list of contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity." A "list" is not a book. The bases for WESPAC's contentions are, for the most part, extremely specific, setting forth precise facilities, streets, services, etc., and certainly meet any rational test for "reasonableness."

This area of objection, raised repeatedly by PASNY, is clearly not a ground for eliminating contentions, but only for rewording or amending them. PASNY would require that our Contentions prove the case before the proceeding starts, rather than just set forth the issues we intend to prove. When our testimony is filed, and as discovery proceeds, more details and specificity will obviously be added. If the Board desires, we will amplify or reword our contentions before then.

Separation of issues into separate contentions:

In a number of instances, Staff (1) and Con Edison suggest that individual bases of WESPAC's contentions should be split up into separate contentions. WESPAC has no objection to this rewording, and will cooperate with any suggestions the Board makes in this area.

Lack of specific, stated, connections with regulations or emergency plan:

This was cited by Staff (3) and implied by PASNY (1). There is no requirement, either in 10 CFR part 2 or in the Commission's January 8 and September 18 orders, that contentions be directly, narrowly,

connected to specific paragraphs in the regulations or the emergency plans. Rather, the Commission has stated that "The purpose of this proceeding will be to take evidence and make recommended findings and conclusions on disputed issues material to the question whether the Indian Point Units 2 and 3 plants should be shut down or other action taken." (January 8 order at 7). In order to expedite this proceeding, they specify seven questions for the Board to explore. Only one of these questions (number 3), and only half of that question (the "degree of conformance with NRC/FEMA guidelines" and not the status half) refers to emergency planning regulations.

The rest of the order looks at the issue in the only rational way to look at it -- how well protected are the extraordinary number of human beings who live in the vicinity of Indian Point? While regulations may be helpful in assuring that protection, their inadequacies or oversights should not be used as an excuse not to safeguard New Yorkers (and other tri-state area residents) from a potential catastrophe at Indian Point.

Discussion of matters outside the 10-mile EPZ:

Staff (4) raises this question. It is irrelevant to the admission of contentions in this proceeding. In the January 8, 1981 order (page 8), the Commission "is interested in the current state of emergency planning in the vicinity of Indian Point." In Question 3 of the same order, they ask "what is the current status and degree of conformance with NRC/FEMA guidelines of state and local emergency planning within a 10-mile radius and, of the extent that it is relevant to the risk posed by the two plants, beyond a 10-mile radius." The previous sentence is the only reference in the entire seven questions to the



10-mile EPZ, and is clearly not a proscription of consideration of all people and problems beyond the invisible 10-mile radiation shield that surrounds every United States nuclear power plant.

Challenges to the NRC regulations:

This is cited repeatedly by PASNY (1) and Con Ed (2), and raised by Staff in connection with our Contention #3. In its January 8 order, the Commission states "The Commission's primary concern is the extent to which the population around Indian Point affects the risk posed by Indian Point as compared to the spectrum of risks posed by other nuclear plants." (pages 7-8). In the seven questions, the only reference to regulations is in question 3. There is clearly no intention on the part of the Commission to circumscribe this proceeding to the legalistic and essentially meaningless exercise of finding which regulation number corresponds with which implementation.

Emergency planning regulations have been totally rewritten by the Commission since Three Mile Island, and they are constantly being evaluated and updated. One of the greatest services this Board could do for the Commission, and for the people of the United States, is to help to identify weak spots in the regulations which need improvement. This goes directly to Question 4 in the January 8 order: "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 what are feasible and should be taken to protect the public." There is no restriction that the requested improvements only deal with areas specified in the regulations.

PASNY's objection (3), which demands that contentions provide solutions for problems petitioners intend to prove during the evidentiary phase of this proceeding, is specious and misdirected. Con Edison and PASNY hired two consultant firms, at a cost of over a million dollars in ratepayers' and taxpayers' money, to develop the current plans, as inadequate and flawed as they are. The intervenors, primarily operating on extremely limited budgets, unpaid volunteer time, and little formal expertise, can hardly to be expected to perform the job the licensees have failed at so miserably. All we can hope to do is to point the licensees, the Commission, FEMA, and state and local officials on the path toward protection the health, safety, and lives of the millions of people who live in the vicinity of Indian Point. As a representative of several thousand of those people, WESPAC sincerely hopes that our demonstration of these flaws will lead to their remediation before a major accident proves us right.

Site-specificity for Indian Point:

Con Edison (1) asserts this point for nearly every one of our contentions. In fact, the Commission has stated (in refutation of licensee's claim that "Indian Point demography is not different from other sites") that "Indian Point has the highest population within 10, 30, and 50 miles of any nuclear power plant site in the United States. At 50 miles, its population is more than double any other plant site." (January 8 order at 6).

The population density alone makes all contentions about removing people during an emergency site-specific, since the problems grow geometrically as both the number of affected people and the difficulty of evacuating them increase with population. In addition, "The

Commission is also interested in the current state of emergency planning in the vicinity of the Indian Point site and in future improvements in that planning ..." (January 8 order at 8, also questions 3 and 4). This issue, as well as every question except #5 of the order, does not look for measures relative to other plants, but rather for an absolute investigation of the Indian Point site in particular. If improvements can be made in the Indian Point site or in its emergency plans which are useful at other sites as well, so much the better. While the Commission will use comparative methods of risk assessment for the probability and consequences of an accident, there is no mention of a comparative evaluation of the efficacy or the methods of emergency planning.

In the January 8 order, question 5 (page 11), the Commission specifically stated that "the Board should ... not go into any site-specific examination other than for Indian Point itself..." (emphasis added). It is hard to see how Con Edison can raise this objection over and over again.

#### CONCLUSIONS

In this filing, we have addressed general objections raised by staff and licensees to one or more of WESPAC's contentions. If the Board requires, we will respond to specific objections to individual contentions, although nearly all of these fall under one of the general categories discussed above. We will also, if the Board directs, amend our contentions to tighten up the wording, increase specificity,

make stated connections with regulations or the emergency plans, or reorganize their structure.

WESPAC recognizes that several of our contentions overlap with those of other intervenors, and we are willing to work with other parties to coordinate our efforts and avoid duplicative and redundant testimony. Parties should not be formally consolidated at this time, however, since each has different positions, interests, and constituencies.

WESPAC strongly opposes Con Edison's suggestion for the categorization and order of issues considered in this case. We urge the board to adopt a schedule similar to the one proposed by UCS/NYPIRG at the December 2 Pre-Hearing Conference.

We are unclear as to the procedure at this point in the proceeding, and request direction from the Board. Would it be helpful for us to reply, contention by contention, to specific objections raised by Staff and Licensees? We would be willing to do so, but would request at least until February first, or two weeks after receiving instructions from the Board, to prepare our responses. If the Board is prepared to adopt all of WESPAC's contentions as issues to be investigated in this proceeding, such further reply would, of course be unnecessary.

Respectfully submitted,



Charles A. Scheiner, Co-chairperson

Served by hand on all parties at the limited appearance hearings in Peekskill, NY, January 14, 1982.