

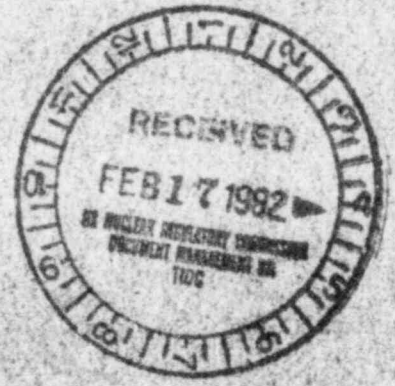
UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

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

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In the Matter of )  
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)  
CONSOLIDATED EDISON COMPANY OF ) Docket Nos. 50-247-SP  
NEW YORK, INC. (Indian Point, ) 50-286-SP  
Unit No. 2) )  
)  
)  
POWER AUTHORITY OF THE STATE OF NEW ) February 11, 1982  
YORK, (Indian Point, Unit No. 3) )  
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CON EDISON'S REPLY MEMORANDUM  
RESPECTING CONTENTIONS PROPOSED BY  
PROSPECTIVE INTERVENORS



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Consolidated Edison Company of New York, Inc. ("Con Edison"), licensee of Indian Point Unit No. 2, pursuant to leave granted by the Licensing Board in its order of January 11, 1982, replies to new matter raised by certain prospective intervenors in responses to the licensees' and NRC Staff's objections to their respective contentions. Con Edison has been served with responses by Friends of the Earth, Greater New York Council on Energy, Parents Concerned About Indian Point, West Branch Conservation Association, Westchester People's Action Coalition,



and Union of Concerned Scientists and New York Public Interest Research Group. In addition, Richard Brodsky filed a response to the objection to his participation in this proceeding.

Con Edison has not been served with a response by Rockland Citizens for Safe Energy, which evidently agrees with Con Edison's position regarding the proposed Rockland Citizens' contentions as set forth at pp. 33-37 of "Con Edison's Memorandum Respecting Contentions Proposed by Prospective Intervenors" dated December 31, 1981 (Con Edison Contentions Memorandum).

Only West Branch Conservation Association has submitted substantial new material in response to the licensees' and NRC Staff's objections. The Union of Concerned Scientists and New York Public Interest Research Group (UCS/NYPIRG) have modified their contentions in minor respects, the significance of which is discussed below. Thus the majority of the prospective non-interested state intervenors have elected to stand upon the contentions originally submitted on December 2, 1981. For the reasons set forth in the Con Edison Contentions Memorandum and herein below, we respectfully submit that the Board should determine each contention to be acceptable or not acceptable as set forth in these two memoranda.

Con Edison replies to the responses of each responding prospective intervenor at Point IV below. However, since several of the prospective intervenors have advanced similar (but erroneous) interpretations of the Commission's orders establishing

this proceeding, the licensee initially addresses contention arguments which are common to more than one prospective intervenor.

I

THE COMMISSION'S ORDERS CHARTERING  
THIS PROCEEDING DO NOT SANCTION  
AN OPEN-ENDED INQUIRY INTO  
RADIOLOGICAL EMERGENCY PLANNING  
AT INDIAN POINT

- A. The Commission clearly intended that the adequacy of emergency planning be tested according to existing NRC/FEMA guidelines.

The emergency planning contentions of the prospective intervenors, save only those to which no objection was raised in the Con Edison Contentions Memorandum, either assert what that petitioner would deem as a minimally acceptable emergency planning measure, or attack emergency planning in one way or another as inherently unworkable or infeasible. Thus Westchester People's Action Coalition (WESPAC) candidly suggests that "one of the greatest services this Board could do for the Commission . . . is to help identify weak spots in the [emergency planning] regulations which need improvement,"\* and Parents Concerned About Indian Point (Parents) asserts in support of its contentions situations where emergency plans "conform to NRC/FEMA guidelines on paper," but nonetheless "do not provide an effective

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\* WESPAC's Preliminary Response . . . dated January 14, 1982 at 9.

system of response."\*

The permissible scope of the emergency planning inquiry in this proceeding is not nearly so broad. In Question 3, the Commission clearly confined examination of state and local emergency planning to its "current status and degree of conformance with NRC/FEMA guidelines" (emphasis supplied). This clearly excludes the numerous petitioner contentions asserting what emergency planning might be, or how it cannot work at all.

Much reliance is placed upon the wording of Commission Question 4,\*\* which inquires whether "there are other specific offsite emergency procedures that are feasible and should be taken to protect the public." However, the Commission has set forth three explicit requirements for contentions arising under this question: that they be "specific"; that they be "feasible"; and that in light of actual accident risk their value is such that they "should be taken to protect the public." Excepting those contentions acknowledged in the Con Edison Contentions Memorandum to properly allege under Question 3 a lack of conformance with NRC/FEMA guidelines, there are no emergency planning contentions which meet the three-pronged test so as to qualify under Question 4.

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\* Parents Response to Objections ... dated January 22, 1982 at 7.

\*\* See e.g., UCS/NYPIRG Response to Objections ... dated January 29, 1982 at 7, WESPAC's Preliminary Response at 9.

- B. The Commission has not authorized the admission of contentions challenging the size of the plume EPZ.

Several prospective intervenors have submitted contentions asserting that comprehensive emergency planning should be expanded beyond the 10-mile plume exposure pathway emergency planning zone (EPZ) provided by NRC regulations, 10 CFR § 50.54 (s)(1). Apart from the generic prohibition of contentions challenging NRC regulations, which has only narrow exceptions in this proceeding,\* these petitioners have sought to support the admissibility of these particular contentions by two arguments: that the Commission's Question 3 inquires into emergency planning "beyond a 10-mile radius,"\*\* and that NRC emergency planning regulations contemplate a plume EPZ of greater than 10 miles.\*\*\*

Neither argument supplies a basis for admitting contentions asserting that the plume EPZ should be expanded -- in effect that comprehensive emergency planning should be required at distances beyond 10 miles from Indian Point. First, the "beyond a 10-mile radius" language of Commission Question 3 expressly relates to and modifies "what is the current status

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\* See Con Edison Contentions Memorandum at 8-10.

\*\* See e.g. WESPAC's Preliminary Response at 8-9.

\*\*\* 10 CFR § 50.54(s)(1). See e.g. Parents Response to Objections at 6-7; UCS/NYPIRG Response to Objections at 67-68.

and degree of conformance with NRC/FEMA guidelines."\* The Commission thus indicated that it would permit inquiry into the status and degree of conformance with guidelines establishing the ingestion pathway EPZ (a 10 to 50 mile annulus around plants) established by 10 CFR § 50.54(s)(1), and only then insofar as compliance with ingestion pathway requirements "is relevant to risks posed by the two plants." The Commission's explicit wording therefore unmistakably precludes an inquiry into comprehensive emergency planning beyond the 10-mile plume EPZ because it is not provided for by the NRC/FEMA guidelines which circumscribe Question 3.

Second, the same NRC/FEMA guidelines provide for a plume EPZ of "about" 10 miles. 10 CFR § 50.54(s)(1) states in pertinent part that:

"Generally, the plume exposure pathway EPZ for nuclear power reactors shall consist of an area about 10 miles (16 km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (80 km) in radius. The exact size and configuration of the EPZs for a particular nuclear power reactor shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries."

The pertinent regulation thus provides that the "exact" size and

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\* The exact language of Question 3 here involved is:  
"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?"



configuration of the plume EPZ may expand or contract due to demography, topography, etc. so long as it is "about" 10 miles in radius. The regulation does not, however, permit a plume EPZ differing in major respects from the "about" 10 miles specified, and the various contentions asserting that the plume EPZ should be greatly expanded are therefore not sustainable under Question 3.

A further, independent reason for the inadmissibility of contentions challenging the 10-mile plume EPZ is that none of them purport to rely upon demography, topography, land characteristics, access routes, or jurisdictional boundaries, as provided in 10 CFR § 50.54(s)(1). All of the contentions urging an expansion of the plume EPZ offer as their bases the presumed effects of postulated radioactive plumes -- a ground not included in the applicable regulation.

## II

IT IS THE COMMISSION'S UNMISTAKABLE INTENTION THAT THE CONSEQUENCES OF POSTULATED ACCIDENTS BE CONSIDERED ONLY IN CONJUNCTION WITH THEIR PROBABILITIES OF OCCURRENCE, AND ONLY THEN WHEN MODELED SPECIFICALLY FOR THE INDIAN POINT PLANTS

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The lynchpin of the Commission's January 8, 1981 and September 18, 1981 orders establishing this proceeding is the desire to develop a record showing "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." The Commission stated that this is not just one of many issues which it wishes addressed, but is in fact its "primary concern." As the Commission quite clearly recognized, this inquiry would be completely defeated if participants were permitted to focus only on "what ifs" -- attempting to model the consequences of postulated accident sequences without regard to the probability of their occurrence.

In order to further its risk-focused objectives, the Commission provided in great detail at pages 3 and 4 of its September 18 order the manner in which accident risks should be considered by the Board. The Commission extracted key provisions from the NRC's Statement of Interim Policy on nuclear power plant accident considerations, and directed that this proceeding be conducted consistent with that guidance. Chief among them is the requirement that in assessing the risk from accidents, "approximately equal attention should be given to the probability of occurrence of releases and to the probability of occurrence of the environmental consequences." The other major requirement imposed upon this Board in assessing the accident risk of Indian Point is that in connection with postulated accidents, "a description of a release scenario must include a discussion of the probability of such a release for the specific Indian Point units." September 18 Order at footnote 5 (emphasis supplied).

In submitting contentions asserting draconian consequences of accidents at Indian Point, unaccompanied by any discussion of probabilities, the prospective intervenors were taken to task by the licensees and Staff for totally ignoring what was so obviously the Commission's cornerstone principle for the conduct of these hearings. So complete was the petitioners' disregard of the Commission's risk directives that contentions do not discuss postulated release scenarios at all, much less their probabilities of occurrence at Indian Point. The contentions instead started with the assumption that there was already a major radiation release to the environment. UCS/NYPIRG candidly admits that "intervenors' principal concern is that there be a thorough airing of consequences of possible accidents at Indian Point,"\* or in other words, that they wish to totally ignore the first half of the Commission's all-too-clear risk equation.

In their recent responses, petitioners raise an array of arguments as to why their contentions need not meet the Commission's aims as expressed in footnote 5. All of these arguments are totally meritless. UCS/NYPIRG\*\* and Greater New York Council on Energy (GNYCE)\*\*\* first make the incredible

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\* UCS/NYPIRG Response to Objections at 3.

\*\* Id.

\*\*\* Reply of GNYCE . . . dated January 15, 1982 at 4.

assertion that the footnote 5 requirement of equal, plant-specific attention to probability and consequences is an obligation which the Commission placed only upon the Board in formulating its ultimate recommendations. UCS/NYPIRG must expect the Board to develop its probability analysis from whole cloth, they being permitted to talk only about consequences.

The Commission in fact intended no such thing. It is self-evident that even a state-of-the-art consequence analysis of a postulated accident would be totally useless to the Commission without an equally precise analysis of the chances of that accident occurring at Indian Point. For this reason the Commission provided that:

"it is important that contentions raised by parties ... in this proceeding contribute materially to answering those designated issues [set forth in the Commission's questions].... [T]he Board is empowered only to accept ... contentions which seem likely to be important to resolving the Commission's questions...." September 18 order at 1-2.

By the clearest of language the Commissioners thus imposed the requirements of footnote 5 upon contention practice in this proceeding.

Next, UCS/NYPIRG urges the Board to disregard footnote 5 in ruling upon accident-related contentions since "specific probability estimates . . . are methodologically flawed and lack sufficient validity to justify ignoring possible major consequences."\* Once again, the petitioner presumes to

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\* UCS/NYPIRG Response at 3.

second-guess the Commission, which provided in its January 8 order establishing this proceeding that:

"Risks from nuclear power reactors are defined by the probabilities and consequences associated with potential accidents. In directing a comparison of the risks of the Indian Point units with those from a representative group of other operating units, the Commission is fully aware of the uncertainties that attend such quantitative risk assessment calculations.... Despite these uncertainties, risk assessment methods offer the best means available for objective and quantitative comparison of the kind needed here." January 8 order at 8.

Several intervenors next claim that the probabilities of the unspecified accidents upon which they would rely are "greater than zero."\* This is disingenuous at best, represents an attempt to defeat the Commission's quantitative goals, and in any event does not comply with the requirement that accident modeling take into account "plant-specific features," September 18 order at 3.

UCS/NYPIRG also seeks to avoid the Commission's insistence on joint treatment of accident probability and consequences by characterizing dire accident consequences as emergency planning contentions unaffected by footnote 5 (Id. at 2,3). GNYCE adopts the same tack, claiming that its accident consequence assertions are really economic questions.\*\*

As shown in Point I, supra, the Commission's focus

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\* Friends of the Earth response ... dated January 7, 1982 at 1, UCS/NYPIRG Response to Objections at 3.

\*\* Reply of GNYCE at 4-5.



on emergency planning in this proceeding is related to compliance with existing regulatory requirements and is independent of postulated accidents. Even the portion of the Commission Question 4 inquiring whether there are specific and feasible offsite emergency procedures which should be taken can only be addressed after some informal assessment of the likelihood that any given procedure might be called upon. The Commission made abundantly clear that it would not be aided by a record chronicling worst case accident consequences, and contentions seeking to do this are as inadmissible when styled as emergency planning contentions as when they are admittedly presented directly as risk issues. As for Question 6, the economic question, it explicitly relates to shutdown, not continued operation.

Lastly, UCS/NYPIRG complains that the "enormous cost" of risk assessment might somehow preclude the participation of the public.\* Friends of the Earth (FOE) similarly suggests that "since licensees themselves have (Initial Statement of Position regarding Questions) at this time no details or evidence regarding accident probabilities, then there is no obligation on the part of petitioners to produce such information either."\*\*

Both positions are without merit. First of all, the Commission in its orders clearly did not elevate any desire for

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\* UCS/NYPIRG Response to Objections at 3.

\*\* FOE Response at 1.

public participation above its "primary concern" that there be a rigorous, quantitative inquiry into the risk of accidents at Indian Point, paying equal attention to both probabilities and consequences. It is not unusual under NRC practice generally that prospective intervenors who lack the ability or inclination to submit acceptable contentions in certain areas may be precluded from advocating positions within those areas.

More important, however, is that no intervenor was handicapped in preparing risk contentions which met the express requirements of footnote 5 and the Commission's orders. Contrary to FOE's statements, there are two risk studies presently on file with the Indian Point docket which address the risk of the Indian Point units in the quantitative manner directed by footnote 5 of the Commission's September 18 order. One study was prepared for licensees, and another for the NRC Staff. Both studies are referenced in Con Edison's December 31, 1981 Six Questions Statement, and have been freely available to all petitioners in the Public Document Room.

These studies, and also others such as WASH-1400 with which many prospective intervenors are quite familiar, could have assisted greatly in the preparation of contentions relying upon accidents which met Commission footnote 5 standards. But by persisting in worst case "what ifs," without the requisite attention to probabilities of occurrence, the petitioners have offered only a partial fragment of what the Commission so clearly required.

Contentions dependent upon accident consequences are accordingly not appropriate contentions in this proceeding.

### III

#### ACCEPTABLE CONTENTIONS IN THIS PARTICULAR PROCEEDING MUST BE SITE-SPECIFIC TO INDIAN POINT

The Con Edison Contentions Memorandum pointed out that the Commission had by design confined the scope of this proceeding to issues related specifically to Indian Point, and that generic issues common to a great number of nuclear plants are to be considered in a separate generic proceeding which was simultaneously ordered by the Commission. The Commission's allocation of Indian Point-specific issues to this proceeding and generic issues to the separate proceeding is an integral part of its desire for this proceeding to address its primary concern: how is Indian Point different from other plants in areas important to risk?

UCS/NYPIRG "agrees that this proceeding is to be site-specific to Indian Point"\* but differs as to what issues should be deemed site-specific. UCS/NYPIRG contends that any issue which can be raised with respect to the Indian Point plants should be permitted, no matter whether such an issue might be a generic issue equally applicable to a host of

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\* UCS/NYPIRG Response to Objections at 4.

other plants as well.

The UCS/NYPIRG argument is wholly dependent upon their analogy to operating licensing proceedings, where an otherwise generic issue may be raised so long as it has applicability to the plant seeking a license to operate. Con Edison has no quarrel with the rule applied generally in licensing proceedings. That rule is simply inapplicable to the quite different focus of the instant proceeding. In operating license proceedings, it is to be expected that a safety issue -- however generic it may be -- should be taken up, since the question is whether such a plant is sufficiently safe to be entitled to a license to operate.

Such is not the purpose of this proceeding, however. The Indian Point units are already licensed by the Commission to operate, and their entitlement to operate under applicable licensing standards was reaffirmed by the Commission at an earlier stage of this proceeding, see January 8 order at 2-5.

The Commission intends a quite different purpose for this proceeding. Here, the Commission wishes to "compare Indian Point to the spectrum of risks from other nuclear power plants." January 8 order at 8. This goal will not be furthered at all by the admission of contentions raising issues common to numerous other plants, or all plants, since they offer no assistance whatsoever in determining how the risks at Indian Point differ from those at other sites. And as the Commission expressly

provided, "only . . . contentions which seem likely to be important to resolving the Commission's questions" are to be admitted.

WESPAC quite properly points out that contentions relating to the demography of Indian Point are truly site-specific and should be admitted if otherwise proper.\* Con Edison has not objected to such contentions. However, Con Edison has objected to contentions asserting general consequences claimed to occur from any nuclear power plant accident. These will not aid the Commission, and are not entitled to be admitted in this particular proceeding.

#### IV

CON EDISON'S REPLY RESPECTING  
THE APPROPRIATENESS OF THE  
CONTENTION OF EACH PROSPECTIVE  
INTERVENOR WHO HAS FILED A  
RESPONSE TO OBJECTIONS

FRIENDS OF THE EARTH

Although denominated "Friends of the Earth Response to NRC Staff Response to Objections" (hereafter "FOE Response") the document actually responds to objections of licensees to the FOE/Audubon Society contentions as well.

Con Edison continues to object to each of FOE's contentions on the grounds that they are not site-specific,

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\* WESPAC's Preliminary Response at 10.



constitute a challenge to the Commission's regulations, fail to comply with footnote 5 and raise issues beyond the scope of the Commission's regulations.

GREATER NEW YORK COUNCIL ON ENERGY

Contention I

Con Edison continues to object to the admissibility of this contention for the same reasons set forth in the Con Edison Contentions Memorandum. The requisite specificity has not been supplied for the first and last sentence, although GNYCE has offered to do so upon Board request. That portion of the contention dealing with accident questions is inadmissible for the reasons set forth in Point II of the Con Edison Contentions Memorandum and Point II, above.

Contention II

Con Edison continues to object to the admissibility of this contention because its subject matter is the economic consequences of continued operation in the face of some unspecified probability of a serious accident, which would in turn have economic consequences. Try as it might, the arguments set forth in the GNYCE reply, however artfully expressed, would still require the Board to re-write Commission Question 6 to provide for an inquiry into the economic consequences of not shutting down Indian Point, that is, continuous operation. These are Question 1 issues, however they are not accompanied

by the necessary probability allegations required by footnote 5. The costs of a postulated serious accident are unrelated to the costs of shutting down Indian Point, the latter being the only permissible topic for a contention properly arising under Question 6.

#### PARENTS CONCERNED ABOUT INDIAN POINT

Parents Concerned About Indian Point responded to Staff, PASNY and Con Edison objections to its contentions in a document entitled "Parents Response to Objections to Contentions I & II"\* (hereinafter "Parents Response").

#### Contention 1

Con Edison objected to this contention because it was not site-specific, since there was no showing that children within the Indian Point ten mile EPZ were any more susceptible to the physical or psychological effects of radiation than children around any other site. Parents responded to this objection with the following:

"Incredibly, the licensee objects to Parents' particular concern about their children on the ground that all children near nuclear power plants are in the same danger and without the protections required by law."  
(Parents Response at 5)

This statement is a gross mischaracterization of Con Edison's position. The Company believes special provision

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\* Despite this title, the document responded to objections to all four of Parents' contentions.

should be made for children in emergency plans and it believes that such provision has been made in the plans for the areas around the Indian Point site. Our position on this contention was, and remains, that there has been no showing that the concern expressed in the contention is a site-specific concern or that it properly arises under Commission Questions 3 or 4. Nothing Parents have said in their response answers this point.

We also continue to object to this contention on the ground that the contention itself\* lacks sufficient specificity. Finally, we continue to believe that psychological effects of radiological emergencies are not a proper subject for consideration under the Atomic Energy Act or the Commission's orders in this proceeding.

#### Contention II

Con Edison restates its objection to this contention. It does not raise site-specific issues (which the Parents Response seemingly acknowledges\*\*) and also constitutes a challenge to the Commission's regulations establishing a ten mile EPZ.

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\* Con Edison noted in the Con Edison Contention Memorandum that some or all of Parents' bases 2, 6 through 15, and 20 through 22, might form the base for an acceptable contention.

\*\* See, Parents Response at 5, dealing with NRC Staff Objections to Parents' Contention II.

In its response to the NRC Staff's objections to its Contention II, Parents claim that the contention is "related to" both Commission Questions 3 and 4. This Contention does not show how the plans fail to meet NRC/FEMA guidelines for planning for children beyond the 10 mile EPZ nor does the contention discuss possible feasible improvements in emergency planning.

#### Contention III

Con Edison continues to object to the admission of this contention. It is not site specific and constitutes an attack on the NRC's emergency planning regulations. In its response to the NRC Staff's objections to this contention Parents seems to concede this point by referring to "emergency plans that conform to the NRC/FEMA guidelines on paper" (Parents Response at 7). Parents then argue that despite this "paper" conformance, the plans "do not conform to NRC/FEMA guidelines" because they are allegedly based on "fallacious assumptions" about human nature (Ibid). The "fallacious assumptions" which somehow undermine the plans' conformance with applicable guidelines are Parents' generic concerns about how people respond to emergencies.

#### Contention IV

Con Edison continues to object to this contention. Psychological stress, which the Contention itself and Bases No. 2 deal with, is not a proper issue for consideration in

this proceeding. The attempt by Parents to claim that this contention is a proper one under Question 6 because it relates to "environmental consequences" is clearly specious. In addition, the concerns addressed by this contention are clearly generic, and not site-specific, in nature.

Con Edison continues to object to bases 1 and 2 on the ground that they are based upon accidents but do not comply with footnote 5. This issue is fully addressed in Point II of this memorandum. Parents Response answered this objection by claiming that the contention relates to Question 6 and that therefore footnote 5 does not come into play, and that, in any event, the requirements of the footnote apply to the record as a whole, and not to contentions. A party cannot evade its responsibility to comply with footnote 5 by simply pigeon-holing a contention under a question other than Question 1. The requirements of footnote 5 apply to all contentions based upon accidents. (See Point II, supra).

#### WEST BRANCH CONSERVATION ASSOCIATION

In response to the objections of Staff, PASNY and Con Edison to its original set of contentions, West Branch Conservation Association (WBCA) has submitted a "Reply to Objections to the Filed Contentions" dated January 11, 1982 (hereafter "WBCA Reply"). The main body of the WBCA Reply (pp. 4-12) is denominated "Contentions in Reply to the Seven



Questions," although the WBCA material appears instead to be statements on the Commission's Questions, and no bases are provided. Confusingly, WBCA also seeks leave (at 3) to re-submit contentions. For purposes of our response we will follow the WBCA format, that is, we will consider their statements on a question-by-question basis. In our response we will indicate where we believe the WBCA Reply to a particular question contains more than one issue and will separately state Con Edison's position for each separately perceived issue.

Our surmise that WBCA did not intend to submit contentions is bolstered by WBCA's failure to conform to standard contention practice. The Reply fails to follow the recognized contention format despite the fact that WBCA apparently had the contentions of other parties as models. The mad jumble that is the WBCA Reply fails to meet the requirement of 10 CFR § 2.714(b) that contentions and their bases be "set forth with reasonable specificity."

#### Contentions in Response to Question 1

Con Edison believes that there is one contention in this section (i.e., pp. 4-7) of the WBCA Reply. We assume that the "contention" part of the WBCA Reply to Question 1 is as follows.

If a serious accident occurred, breaching the containment vessel, damage within the ten mile range has been

evaluated. The risk that this poses is beyond measure because the area in Rockland County cannot be evacuated and the terrain surrounding the stations IP #2 and IP #3, in Rockland County is unique. (WBCA Reply at 4).

This contention is objectionable for the following reasons:

1. It lacks specificity. Although "a serious accident, breaching the containment vessel" is referred to, there is no discussion in the "bases" of this contention (i.e., pp. 5-7) of what this serious accident may be. Although it is stated that the "damage" from this unspecified accident "has been evaluated", there are no statements of what this damage is, or who has conducted such an evaluation.

2. The contention fails in any way to address footnote 5 but rather simply posits dire consequences without specifying initiating events or their chances of occurrence at Indian Point. The contention alleges that the risk from a serious accident "is beyond measure." Calculating this risk and comparing it to other risks is precisely what this proceeding is about.

3. The bases for this contention (i.e., pp. 5-7) is simply a rambling, disjointed collection of comments on the Rockland County road system. No serious attempt has been made to relate these specific comments to portions of the Rockland County Emergency Response Plan. In addition, without some idea of the accident assumed by WBCA, responding to these

"bases" would be virtually impossible.

Contentions in Response to Question 2

We believe that there are four separate contentions set forth in the WBCA's Reply's consideration of Question 2 (pp. 8-9)

1. "The use of brackish Hudson River cooling water is unique to Indian Point units #2 and #3 and should be discontinued." (WBCA Reply at 8).
2. "The Director's Order cannot reverse embrittlement of the vessel which poses a monumental danger should another flooding occur." (Ibid.)
3. "The Director's Order cannot solve the reduction in the design life expectation of the steam generator tubes." (Ibid. at 9)
4. "NUREG-CR-0400, page 48, section 12, describes the many design defects that offer examples of possible core meltdowns." (Ibid.)

Con Edison objects to each of these contentions as not properly within the scope of Commission Question 2. That question asks "what improvements in the level of safety can be expected from measures referenced or required in the Director's February 11 order" or from other "specified safety measures". None of the four contentions attempt to provide answers to this question, nor do they attempt to meet the parenthetical requirements of Commission Question 2.

The first contention criticizes the use of "Hudson River cooling water in Indian Point" and urges that its use be "discontinued" but does not offer an alternative. Thus,

the contention does not either assess a safety measure required or referred to in the Director's February 11, 1980 order or propose a "specific safety measure".

The second contention simply claims that the Director's Order cannot "reverse embrittlement of the vessel" but does not offer a "specified safety measure" to cure the "problem." In addition, although the contention refers to "a monumental danger" due to embrittlement, no attempt has been made to comply with footnote 5. Finally, the contention lacks an adequate factual basis. The offered basis for this contention simply contains an unsupported claim that "vessel of the Indian Point stations has been proven to be beyond design specs" and a conclusion that "the parts cannot last for the design life of the plant" (WBCA Reply at 9).

The third contention, dealing with steam generator tubes, does not address a measure specified in the Director's Order or an additional specified safety measure and thus is not an acceptable contention under Question 2. In addition, the bases offered do not meet the specificity requirements of 10 CFR § 2.714(b).

The fourth contention does not meet the requirements for contentions under Question 2, consisting, as it does, of an assertion that "NUREG-CR-0400 . . . describes the many design defects that have occurred that offer examples of possible core meltdowns" (WBCA Reply at 9). No attempt

is made to specify which of the unspecified "many design defects" exist at Indian Point nor is an attempt made to offer the type of "specified safety measures" contemplated by Question 2.

#### Contentions in Response to Question 3

The perceived contention in this part of the WBCA Reply (p. 10) is the following statement:

"Rockland County cannot be evacuated in any safe time."

Con Edison objects to the admission of this contention. First, although based upon the occurrence of some unstated catastrophic accident which prevents evacuation in a "safe time," the contention does not comply with footnote 5. That is, there is no specification of what accident will occur or what the probabilities of this accident are. In addition there is no explanation of what is meant by "safe time." In this regard it should be noted that the reference in the introductory material to this contention to FEMA "evacuation times" in NUREG-0654 is incorrect. The page referred to deals with estimated times for release of radioactive material. Thus, it appears that this contention is based upon a basic misreading of NUREG-0654. Finally, the factual bases for this contention are not only inadequate, they are non-existent.

#### Contention in Response to Question 4

The contention in this question is:

"There are no improvements in the emergency planning that can straighten the roads and level the mountains in Rockland County" (WBCA Reply at 11).

The contention should not be admitted. The contention does not address possible improvements in emergency planning or other "specific offsite emergency procedures". In addition, the purported basis for this contention, "... that the plan does not follow the FEMA criteria," does not support the contention and lacks specificity.

#### Contention in Response to Question 5

The contention is:

"We contend that the plan is inoperable."  
(WBCA Reply at 11)

The WBCA Reply states that the "basis for this contention is explained in numbers 1 and 2 above". (Ibid.) Con Edison restates its objections noted with regard to these earlier WBCA contentions.

#### Contentions in Response to Question 6

This contention claims that:

"A shutdown of Indian Point stations would not affect Rockland County. It would be a boon to Rockland County". (Ibid.)

The bases for this contention are claims that Orange and Rockland Utilities could sell "300 MW of claimed excess capacity to Con Edison" and that at "the current 30% operating level of Indian Point #2 it would only be a drop in the bucket" (WBCA



Reply at 12).

Con Edison objects to this contention for the following reasons:

1. The contention fails to attempt to answer Question 6. Even if the unsupported scheme propounded by this contention were a "boon to Rockland County", Question 6 seeks overall economic, environmental and energy impacts.

2. The contention lacks an adequate factual basis. No support is offered for the claim that Orange and Rockland Utilities has 300 MW excess capacity, nor is there any indication of what fuel is burned by this claimed excess capacity. No attempt has been made to establish that the necessary prerequisites for this imagined boon to occur, i.e., a willing seller and buyer, are likely to occur. Finally, the claimed 30% operating level of Indian Point #2 is without support.

Contention in Response to Question 7

The contention claims that:

"No matter what the Governor may say about the cost-benefit it cannot apply to Rockland County."  
(WBCA Reply at 12).

This "contention" obviously does not respond to Question 7.

WESTCHESTER PEOPLE'S ACTION COALITION (WESPAC)

In response to the objections of NRC Staff and licensees to its contentions WESPAC filed a document entitled "WESPAC's

Preliminary Response to Objections to Our Contention Filed by the NRC Staff, Con Edison and the Power Authority" (dated February 14, 1982 WESPAC Preliminary Response).

In the Con Edison Contentions Memorandum (at 38-48) it was noted that although a number of the bases set forth in WESPAC's six contentions might form proper bases for contentions if specific details were provided, none of the contentions should be admitted in their then-present form. The grounds for objections, in addition to a lack of specificity, were a failure to comply with footnote 5, a lack of site-specificity, and the fact that many of the contentions or bases challenge NRC regulations.

The WESPAC Preliminary Response answers the claim that its contentions do not have sufficient specificity by only arguing that "A 'list' is not a book" (WESPAC Preliminary Response at 7). Although Con Edison of course agrees that exhaustive specificity is not required in contentions, WESPAC's contentions fail to provide sufficient particularity to alert the parties and the Board to the issues WESPAC wishes to litigate. The WESPAC contentions simply amount to an unparticularized collection of unsupported and general attacks on emergency planning.

The WESPAC Preliminary Response also deals with Con Edison's objections that the contentions challenge NRC regulations (at 9-10) and raise issues that are not site-specific

(Ibid 10-11). See Con Edison Contentions Memorandum at 8-10 and Point III, supra.

RICHARD L. BRODSKY

No response has been received from Mr. Brodsky in response to Con Edison's objection to his contentions (See Con Edison Contentions Memorandum at pp. 106-07.) Mr. Brodsky did, however, file a "Response of Richard L. Brodsky to NRC Staff and Licensee Answers to Petitioner Brodsky's Petition for Leave to Intervene" (hereafter "Brodsky Response").

Con Edison continues to object to Mr. Brodsky's participation both as a party and as an interested state. The Brodsky Response fails to cure the defects noted in "Con Edison's Answer to Amended Petitions for Leave to Intervene" (See pp. 20-21).

Con Edison objected to Mr. Brodsky's participation as a party both in his own behalf and as a representative of two named individuals. The Brodsky Response fails to justify the late filing of his petition to intervene. In addition, Mr. Brodsky has failed to supply the required affidavits from the named individuals whom he claims to represent, although the Brodsky Response, dated January 22, 1982 states that these affidavits "are forthcoming". (Brodsky Response at 7).

Con Edison continues to object to Mr Brodsky's participation as an interested state. Mr. Brodsky has failed

to establish that he has been authorized by the Westchester County Board of Legislators, the body which, under § 107.01 of the Westchester County Charter, is "vested with all the powers and duties of the county" except as otherwise provided by law.

Mr. Brodsky claims that he is an "officer" and therefore has a right to participate as an interested state. Section 2.715(c) permits participation by "representatives" of states and municipalities. The use of this word clearly requires that the putative representative establish some authority to act for the body he purports to represent. Status as an "officer" is clearly irrelevant to the question of whether a person may participate as an interested state. There are probably thousands of persons who live in the areas around Indian Point who can honestly claim to be officers of some state or municipal agency.

The sections of the Westchester Administrative Code cited by Mr. Brodsky fail to support his claimed status as an interested state. Section 202.221 simply provides that the State Legislature by enacting the provisions of the Code with relation to the County Board of Legislators did not, unless otherwise indicated, intend to affect the pre-existing powers of the county, or of any officer of the county. Mr. Brodsky has not shown how this section is in any way relevant to the question of his participation as an interested state.

Section 209.241 simply provides that in a case in which the Code granted the Board general powers and also listed specific powers, the enumerated powers "shall not operate to restrict the meaning of a general grant of power." This section also appears to be irrelevant. Although Mr. Brodsky claims that the electorate has granted him "certain discretion to act in their name and on their behalf within legal limits" (Brodsky Response at 7) he has failed to cite any authority showing that this claim entitles him to participate in this proceeding. Accordingly, his application to participate as an interested state should be denied.

UNION OF CONCERNED SCIENTISTS AND  
NEW YORK PUBLIC INTEREST RESEARCH GROUP

Contention I(A)

Con Edison did not previously object to the admission of this contention, although it objected to several of the bases set forth in support of Contention I(A).

Con Edison continues to object to Basis (4) for Contention I(A) in that no "demonstration" of sufficient personnel to adequately respond to an accident is required by the cited provision of NUREG-0654.

Basis (5) for Contention I(A) is not a proper basis for a contention because it sets forth standards for incorporating the Federal response capability in excess of those required by the cited provision of NUREG-0654.

Basis (6) for Contention I(A) posits inadequate "lead times" for emergency action response without stating, in a manner required by footnote 5, those accidents for which such lead time is claimed to be inadequate.

Con Edison continues to object to Basis (7) for Contention I(A) for the reasons previously set forth. This basis is not site-specific as intended by the Commission, see Point III, above. The claimed aspects of non-compliance with NRC/FEMA guidelines are not set forth.

Basis (8) for Contention I(A) is not a proper basis for a contention for the reasons previously set forth, and because it sets forth standards for communications among emergency response organizations in excess of those required by the cited regulatory provision, and in excess of the cited Regional Assistance Committee (RAC) comment.

Con Edison continues to object to Basis (9) for Contention I(A) for the reasons set forth in the Con Edison Contentions Memorandum. Moreover, the assertion that "the public education program is not adequately developed" is insufficiently specific to form a proper basis for the contention. The newly-cited RAC comment does not assert that there is an insufficient transient information program, but merely suggests greater specificity in the plan regarding the program.

Basis (10) for Contention I(A) is an improper basis for a contention premised upon non-compliance with either the cited



regulation or NUREG, because there is no affirmative obligation on the licensee to "demonstrate" adequacy. The claim that the licensee's on-site or other emergency response facilities "do not comply" is insufficiently specific, and in any event does not arise under Commission Question 3. For these reasons and the reasons previously set forth, this basis is inappropriate.

Basis (11) for Contention I(A) is an improper basis for a contention as previously set forth, and because it does not assert any deficiencies or lack of compliance with NRC/FEMA guidance.

Con Edison continues to object to Basis (12) for Contention I(A). Potassium iodide is not understood to be an issue arising under this basis. The Appendix E reference cited in the Response requires no "demonstration." Con Edison has no objection to an otherwise proper contention raising topographical and meteorological issues, however this basis posits standards in excess of cited regulations.

Con Edison continues to object to Basis (13) for Contention I(A). Most of the grounds of objection previously set forth are not responded to in the Response. The extent or manner in which it is claimed that the cited NUREG guidance has not been complied with is not set forth. The basis does reference specific evacuation time estimates, but offers no clue as to how they are claimed to be inadequate. Con Edison's objections to that portion of the basis relating to thyroid protection

were based on lack of compliance with footnote 5, not the position of the State of New York.

Con Edison withdraws its objection to that portion of Basis (14) for Contention I(A) relating to provisions for maintaining dose records for emergency response personnel. Con Edison continues to object to the balance of the basis for the reasons previously set forth. The cited RAC comment is just that -- a comment -- and cannot supersede the cited regulation. The principal flaw of the basis, lack of compliance with footnote 5, has not been corrected.

Con Edison continues to object to Basis (15) for Contention I(A) for the reasons previously set forth, principally the disregard of footnote 5. See Point II, supra. Here, for example, the probability of suitable medical or transportation facilities being needed but unavailable might be found to be 1 in 1,000,000,000 per year, or some other number, however the adequacy of such facilities cannot be judged without the likelihood of usage being known.

Basis (16) for Contention I(A) is not an appropriate basis for a contention for the reasons previously set forth. The basis either sets forth standards for recovery activities in excess of those required by applicable regulations, or in other areas is too vague and imprecise.

Basis (17) for Contention I(A) is not a proper basis for a contention for the reasons set forth previously. UCS/

NYPIRG admit that the basis is a challenge to NRC regulations. This goes beyond the permissible scope of Commission Questions 3 or 4.

Basis (18) for Contention I(A) is a proper basis for a contention excepting the reference to a duty to "demonstrate," and excepting the reference to accountability programs, which are not within the scope of Commission Questions 3 or 4.

Con Edison continues to object to those portions of Basis (19) for Contention I(A) relating to matters other than the updating of the public information programs or evacuation time estimates for the reasons previously set forth.

#### Contention I(B)(1)

Although UCS/NYPIRG claim not to challenge NRC regulations or guidelines, they acknowledge in their Response that they "challenge the realism of the planners' assumptions about how emergency workers and members of the public at risk ... will react." If there is a distinction, it has not been made clear, and Con Edison continues to object to Contention I(B)(1) and its bases for the reasons set forth previously. Generalized human behavioral characteristics are not site-specific (see Point III, supra), and do not fall within the scope of Commission Questions 3 or 4 (see Point II(A), supra).

#### Contention I(B)(2)

If Contention I(B)(2) were to be limited to the matters

identified in Bases (1), (2), the last sentence in (4) as supplemented, (5) as supplemented, and (7), then the contention is reasonably specific and may be admitted. The balance of the contention is not appropriate for the reasons previously set forth. As stated previously, portions of Basis (3) would be acceptable if stated with greater specificity, however the balance of this basis, as well as the first sentence of Basis (4), run afoul of footnote 5 of the Commission's September 18 order. Basis (6) as supplemented remains inappropriate for the reasons set forth previously, the minimum acceptable level of detail or impact on evacuation time estimates still being absent. Basis (8) as supplemented still does not supply any factual basis for the claimed meteorological impacts, nor states the impact on evacuation estimates. The supplemental portion of Basis (8) introduces material relating to accident consequences which does not comply with footnote 5.

Contention I(B)(3)

Con Edison continues to object to Contention I(B)(3) for the reasons previously set forth. UCS/NYPIRG have evidently declined an opportunity to supply greater specificity where requested. Not only have petitioners ignored footnote 5 and raised non site-specific issues, but they have also failed to specify the NRC/FEMA guidelines as to which they claim non-conformance. Neither the contention nor its bases are appropriate under Commission Question 4 for the reasons set forth

at Point I(A), supra.

Contention I(B)(4)

Con Edison continues to object to Contention I(B)(4) for the reasons previously set forth. The petitioners have not clarified the vagueness of the contention and its bases, now reduced by one due to petitioners' agreement with Con Edison as to its redundancy. The Contention and its bases disregard the requirements of footnote 5, are not site-specific, and fail to specify the non-compliance with NRC/FEMA guidelines.

Contention I(B)(5)

UCS/NYPIRG have through amendment attempted to make what was quite obviously a Commission Question 1 risk contention in its original form qualify under Question 3. The contention as amended is still a Question 1 contention and as such, fails to comply with the requirements of footnote 5. "Lead times" can only be inadequate and "severe health consequences" realized depending upon unspecified accident scenarios, which must comply with the Commission's requirements to qualify as contentions. No site-specific aspects of the amended contention are set forth, and even assuming, arguendo, that the contention were properly brought under Question 3, no non-compliance with NRC emergency planning requirements or guidelines is specified. "Inadequate provisions for reducing lead times" is hopelessly vague and non-specific.

The bases for Contention I(B)(5) have been virtually

unchanged, excepting bases (3) and (4) which have been abandoned. Because the contention has not been changed in any significant respect, Con Edison continues to object to it for the reasons previously set forth.

Contention I(B)(6)

UCS/NYPIRG has conceded that Contention I(B)(6) attacks NRC regulations, as asserted by Con Edison previously, but claims that the contention is acceptable under Commission Question 4. This is incorrect for the reasons set forth at Point I(A), supra. In attempting to overcome Con Edison's previous objections to this contention, petitioners confirm that this contention is essentially concerned with the modeling of consequences of postulated (but unspecified) accidents. The contention therefore arises at least in substantial part under Question 1, but does not conform to the requirements of footnote 5. For these reasons and those set forth previously, Con Edison continues to assert the inadmissibility of Contention I(B)(6)

Contention I(B)(7)

Conceding that Contention I(B)(7) in its original form was "perhaps couched in unfortunate language," UCS/NYPIRG has modified the contention (but not its basis) in an attempt to qualify under Question 4. The contention has not been amended in any material way, and accordingly Con Edison continues to



object to Contention I(B)(7) for the same reasons previously set forth.

Contention II (A)

Con Edison continues to object to the contention on the same grounds as stated in the Con Edison Contentions Memorandum. This contention is a challenge to the Commission's regulations which require that the emergency response plans provide for a plume exposure pathway of "about 10 miles (16 km) in radius" (10 CFR § 50.54(s)(1)). UCS/NYPIRG, by this contention seek a gross expansion of the plume exposure pathway. In their response UCS/NYPIRG claim that the contention does not "challenge the regulation, but once again, the failure of the plans to follow the regulations" (UCS/NYPIRG Response at 68). In support of this claim, UCS/NYPIRG cite a portion of the language of 10 CFR § 50.54 (s)(1) and "NRC/FEMA planning guides" (Ibid.) Reliance on this material is misplaced.

As noted earlier (see pp. 6-7) the language of 10 CFR § 50.54(s)(1) relied upon by UCS/NYPIRG was intended to permit varying the generic exposure pathway and ingestion pathway zones to reflect "demography, topography, land characteristics, access routes, and jurisdictional boundaries." The language was not intended to permit the massive extension of the generic exposure EPZ sought by UCS/NYPIRG. More to the point, the emergency response plans for Indian Point do

make the allowances for such matters as demography, topography, etc., in establishing the EPZ's for the plan (See, e.g. Westchester County Radiological Emergency Response Plan at I-11). Thus, the plans have varied the 10-mile plume exposure EPZ and 50 mile ingestion EPZ to reflect the variables listed in the language in 10 CFR § 50.54(s)(1) cited by UCS NYPIRG. The attack in this contention on the "current plume EPZ" is, therefore, an attack on the Commission's regulations and should not be admitted. See Point I(B), supra.

The claim by UCS/NYPIRG that the "NRC planning guides" support this contention is baseless. The claim that NUREG-0396 views the ten mile EPZ as "simply a rough starting point" (UCS/NYPIRG response at 68) distorts this NUREG. The NUREG states that "it was the consensus of the Task Force that emergency plans should be based upon a generic distance out to which predetermined accidents would provide dose savings for any such accident (Ibid. at 16).<sup>\*</sup> The generic distance for the plume EPZ determined by the Task Force was ten miles, the standard adopted by the Commission's regulations.

In addition this contention is not site-specific.

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\* The approach taken in NUREG-0396 is consistent with the later guidance provided licensees by NUREG-0654/FEMA Rep 1, Rev. 1. That is, the later document calls for a pathway EPZ with an "about 10 mile radius."

In Con Edison Contentions Memorandum we noted that there was no showing that "radiation levels at the outer edge of the plume EPZ in the event of a postulated accident would be any greater than at any other reactor site" (Con Edison Contentions Memorandum at 88). UCS/NYPIRG have not cured this defect.

Finally, we continue to object to admission of this contention due to its failure to comply with footnote 5 of the Commission's September 18 order. For the reasons stated at Point II of this memorandum we believe that footnote 5 is applicable to contentions of this sort. The Response does state that "accident scenarios are postulated at UCS/NYPIRG Contention III(B) and in WASH-1400, Appendix VI." (Response at 68). This statement does not cure the failure to comply with footnote 5 as there is no statement of probabilities of occurrence or references to specific Indian Point features. In addition, the Response even fails to adequately specify what "accident scenarios" are assumed. The reference to scenarios "postulated" in UCS/NYPIRG Contention III(B) is of no help since the contention and its bases simply mention certain types of events leading to releases of radioactive material without discussing the actual scenario leading to these releases. The reference in the Response to "WASH-1400, Appendix VI" is equally unavailing, absent some attempt to specify which scenarios therein UCS/NYPIRG is relying upon

and how these scenarios relate to Indian Point.

Contention II(B)

Con Edison continues to object to the admission of UCS/NYPIRG Contention II(B). In addition to being too broadly stated, this contention, by seeking "substantially greater emergency planning beyond the plume EPZ," is an attack upon NRC regulations which specify a plume EPZ with an "about 10 mile radius." See Point I(B), above. Also, as noted in the Con Edison Contentions Memorandum (pp. 89-91), most of the bases offered in support of the contention do not actually support it. Finally, this contention and its bases do not comply with footnote 5, an omission which has not been corrected.

Contention II(C)

Con Edison continues to object to the admission of this contention. The UCS/NYPIRG Response claims that this contention "assumes the propriety of the present parameters of the plume EPZ" (Response at 73). It is difficult to know what this statement means since the Contention's bases aver that there "will be adverse health consequences beyond the current plume EPZ." In any event, the Response concedes Con Edison's argument that the contention should not be admitted because the contention challenges current NRC regulations. UCS/NYPIRG stated that Con Edison "hits the mark to the extent that it is contended that the absence of detailed,

planning guidelines in the area outside the plume EPZ places in jeopardy the public health and safety" (Response at 73).

This contention is also too vague to be admitted, as there is no showing how the alleged inadequacies in the current plans increase the likelihood that protective actions will be required beyond the current EPZ. The UCS/NYPIRG Response contends only that the connection "is obvious" (at 73). Con Edison continues to object to the admission of this contention due to the failure to comply with footnote 5.

Contention III(A)

Con Edison continues to object to Contention III(A) for the reasons stated in the Con Edison Contentions Memorandum.

Contention III(A) proposes eight separate safety measures without meeting the requirements set out in the January 8 and September 18 orders for sponsors of safety measures in addition to those mandated by the Director's February 11, 1980 order. UCS/NYPIRG's response to this argument is that "since these measures in Contention III A(g-h) are referenced in the Director's Order no such showing is required" (Response at 78). Two things must be said in response to this statement. First, it attempts to answer the objection with regard only to parts (g) and (h) of Contention III(A) and does not address our objections to the other six items. Second, even with regard to items (g) and (h) the answer is inadequate since, through the item referred to in part (g) is mentioned

in the "Director's Decision Under Part 2.206" which was issued on February 11, 1980 (see Director's Decision at 9) as an item to be considered by the NRC Zion-Indian Point Task Force, neither this item nor the safety measure referred to in part (h) of Contention III(A) are safety measures "required or referenced in the Director's Order to the licensee." The term "required or referenced" was intended to encompass measures ordered by the separate February 11 Orders to Con Edison and PASNY which accompanied the Director's Decision and other measures referred to in in these orders to which the respective licensees had already committed. These measures, that is, measures which were required or committed to prior to the issuance of the January 8, 1981 Order, were contrasted to "additional proposed measures" for which the higher threshold of Question 2 must be met. The core catcher and the separate containment structure (i.e. parts (g) and (h) of this contention) obviously fall within the ambit of "additional proposed measures." In addition, the contention does not comply with the requirements of footnote 5 regarding sponsors of risk based contentions.

Con Edison continues to object to Colntention III(A) (a) because it is not site-specific, lacks specificity, and does not meet the standards for offsite emergency procedures established in Question 4. The UCS/ NYPIRG Response does not respond to the lack of specificity and vagueness in the Con Edison Contentions Memorandum, nor to the contention's



failure to meet the Question 4 threshold (See Con Edison Contentions Memorandum p. 96). With regard to the lack of site specificity, the Response concedes that this is a generic issue but restates its argument that generic issues should be considered in this proceeding. We have addressed this question at Point III, supra.

Con Edison renews its objection to Contention III (A)(b). The UCS/NYPIRG Response answers the charge that requiring potassium iodide is not site-specific by simply noting that the Contention refers to "the plume EPZ" and that, therefore, the contention is "obviously" (Response at 78) site-specific. It is unclear how this statement establishes that Contention III(A)(b) raises an issue which is not generic in nature. The Response also fails to adequately address the vagueness of the contention but simply restates the conclusory language used in the contention (i.e., "numerically adequate" "adequate sheltering" p. 79). Finally, the Contention fails to address the fact that, as noted in the Con Edison Contentions Memorandum (p. 97) sponsors of off-site improvements must meet the thresholds of Question 4. (See Point I(A), above).

The Response fails to meet Con Edison's objections to Contention III(A)(c). As noted in the Con Edison Contentions Memorandum, (pp. 96-97) the Contention lacks factual support, raises a generic issue, and fails to meet the standards of

Question 2 for "specific safety measures". The reference in the Response to the December 31, 1981 RAC Review dealing with evacuation times under adverse weather conditions in no way supports the restriction on operations sought by this contention.

Contention III(A)(d) continues to suffer from each of the defects noted in the Con Edison Contentions Memorandum (pp. 98-99). In response to the claim of lack of sufficient specificity and factual bases the Response simply alleges that the Contention uses words "with which the plant operators must surely be familiar" (Response at 79). It is also claimed that since the contention includes the term "operating licenses for Indian Point Units 2 and 3" (Ibid. at 80), the contention does not, as we claimed, raise issues which are not site-specific. It is obvious that possible restrictions on operation "with less than a fully operable complement of safety grade and/or safety related equipment" raise issues that are generic in nature. In addition, the contention is a "specific safety measure" which fails to meet the threshold for these measures specified in Question 2.

Contention III(A)(e) suffers from the same lack of specificity and failure to comply with footnote 5 noted in the Con Edison Contentions Memorandum (pp. 99-100).

In the Con Edison Contentions Memorandum (p. 100) we noted that contentions III(A)(f), (g) and (h), although included

among a list of "emergency planning measures and protective actions," were actually additional safety measures of the sort encompassed within Question 2. The Response agrees that these items do fall within Question 2 (Response at 80), but fails to meet the standards of Question 2. Instead, the response contends that "every known safety device" must be adopted at Indian Point. This approach obviously differs from that of the Commission which requires a sponsor of a safety measure to show substantial risk (remembering that under Question 1, risk involves an assessment of both consequences and probabilities) and that this risk would be substantially reduced by the proposed measure. In addition, we reiterate that each of the proposed improvements is generic in nature.

#### Contention III(B)

In their Response, UCS/NYPPIRG have amended Contention III(B). Con Edison objects to the amended contention for the following reasons:

1. The contention lacks an adequate factual basis and suffers from inadequate specificity. The contention refers to "a range of accident scenarios" without identifying a single scenario. The bases for this amended contention do refer to radioactive releases considered in WASH-1400, but there is no discussion in the contention or the bases as to how these releases would come about. In short, the amended

contention fails to meet the standards of footnote 5. See Point II, supra.

2. The contention is not site-specific. The bases do not refer to the failures of specific systems at Indian Point, but instead refer only to WASH-1400 -- a generic, non-site specific study. Footnote 5 requires scenarios to include "a discussion of the probability of such a release for the specific Indian Point plants."

Contentions III(B) and III(C) have been withdrawn.

Contention IV(A)

Con Edison re-states its objection to Contention IV(A) as set out in the Con Edison Contentions Memorandum (pp. 105-06). The Response fails to address these objections in any way.

Contention IV (B) has been withdrawn.

## V

### CONCLUSION

In conformance with the Commission's order dated January 11, 1982 and its directive that the issues in this proceeding be focused and the matter expedited, Con Edison requests that the Board rule on the petitions for leave to intervene pursuant to 10 CFR § 2.714 as follows. The joint

petition filed by the Union of Concerned Scientists and the New York Public Interest Group should be denied as to UCS and granted as to NYPIRG. Although one or more of the contentions jointly presented by UCS and NYPIRG is proper, UCS has not satisfied the NRC's standing requirements and should not be permitted to intervene. Parents Concerned About Indian Point and the New York City Audubon Society, although satisfying the requisite standing criteria, have proffered no proper contentions. Therefore, their petitions to intervene should be denied. The petitions to intervene of West Branch Conservation Association, Westchester People's Action Coalition, Friends of the Earth, and Greater New York Council on Energy fail to establish standing and are deficient in other regards. The contentions presented by these organizations are also objectionable. They should therefore be denied intervention. Rockland Citizens for Safe Energy's petition to intervene does not satisfy the NRC's standing requirement. Therefore, the one non-objectionable contention presented by RCSE may not be considered, and its petition to intervene must be denied.

With respect to the petitions to intervene as an interested state pursuant to 10 CFR § 2.715(c), Con Edison requests the following. Con Edison does not object to the petitions filed by the Village of Buchanan, the New York State Energy Office, the Port Authority of New York and New

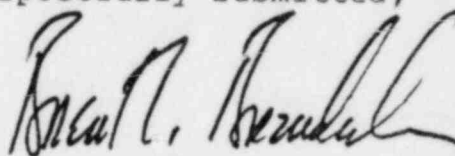
Jersey, and the Metropolitan Transportation Authority. These entities should be permitted to intervene. Similarly, Con Edison has no objection to the petition of the County of Rockland provided that the County Attorney presents confirmation of the County Legislature's authorization of participation in the proceeding.

The petitions to intervene as interested states filed by various members of the Council of the City of New York, Robert Abrams, the New York State Assembly and its Special Committee on Nuclear Power Safety, Alfred B. Del Bello, and Richard L. Brodsky should be denied, without prejudice to their participating pursuant to 10 CFR § 2.71 upon a proper showing. None of these persons or entities have presented authorization from their respective state, municipality or counties so as to validly represent and speak for interested states in this proceeding. Neither are the New York State Attorney General nor the New York State Assembly an "agency" under New York law. Furthermore, Richard L. Brodsky's request to participate as a party representing himself and other named individuals must be denied because no adequate justification for



the late filing, or authorization to represent the named individuals, have been provided.

Respectfully submitted,



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Of Counsel,  
Thomas J. Farrelly

Dated: New York, New York  
February 11, 1982

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

DOCKETED  
1/31/82

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OFFICE OF THE SECRETARY  
DOCKETING & SERVICE  
BRANCH

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In the Matter of	)	
	)	
CONSOLIDATED EDISON COMPANY OF	)	Docket Nos. 50-247-SP
NEW YORK, INC. (Indian Point,	)	50-286-SP
Unit No. 2)	)	
	)	
POWER AUTHORITY OF THE STATE OF NEW	)	February 11, 1982
YORK, (Indian Point, Unit No. 3)	)	
	)	
-----	)	

CERTIFICATE OF SERVICE

I certify that I have served copies of "Con Edison's Reply Memorandum Respecting Contentions Proposed by Prospective Intervenor" on the following parties by first class mail, postage prepaid, this 11th day of February, 1982:

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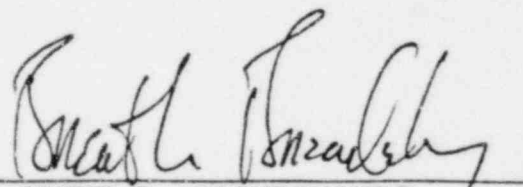
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