

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Commissioners:  
Nunzio J. Palladino, Chairman  
Victor Gilinsky  
John F. Ahearne  
Thomas M. Roberts  
James K. Asselstine

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USNRC

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OFFICE OF SECRETARY  
DOCKETING & SERVICE  
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In the Matter of	)	
	)	
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.	)	Docket Nos.
(Indian Point, Unit No. 2)	)	50-247 SP
	)	50-286 SP
POWER AUTHORITY OF THE STATE OF NEW YORK	)	
(Indian Point, Unit No. 3)	)	Aug. 17, 1982
_____	)	

LICENSEES' RESPONSE TO  
AUGUST 9, 1982 MEMORANDUM AND CERTIFICATION

The Power Authority of the State of New York and Consolidated Edison Company of New York, Inc. hereby respond to the Atomic Safety and Licensing Board's (Board's) Memorandum and Certification (Seeking Further Commission Guidance) (Aug. 9, 1982) (Memorandum).

While alleging a new development as the basis for certifying two questions to the Commission relating to probabilities and consequences, the Memorandum seeks to reargue, under the label "certification," an issue the Commission has resolved twice.<sup>1</sup> Memorandum and Order at

1. The Memorandum suggests that the number of intervenor contentions was significantly reduced. Memorandum at 1 & n.1. To the contrary, in the April 23 Order all of the intervenors' contentions were incorporated

16-17 (July 27, 1982); Memorandum and Order at 3 & n.5 (Sept. 18, 1981).

The Memorandum contends that the hearing "should not [be] blind . . . to relevant evidence simply because the party presenting it lacks the expertise to perform a probability analysis." Memorandum at 3. Inasmuch as the Commission has instructed on two occasions that witnesses testifying on the safety of the plants address both aspects of risk -- the probability of a release at Indian Point and the consequences of such a release -- for each accident scenario, the Memorandum's statement suggests underlying dissatisfaction with the Commission's repeated directives. Contrary to the Memorandum's assertion, the relevance of evidence is not self-evident. In this proceeding, evidence on the risk posed by the Indian Point plants is relevant

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into 22 Board-formulated contentions. Since the intervenors were informed that they would have the "opportunity in the consideration of [a] contention to present evidence and arguments that were included in [the incorporated] contentions," Transcript at 586 (Apr. 13, 1982) (Second Special Prehearing Conference) (Statement of Judge Carter); see id. at 587, in effect, all intervenor contentions cited in the Board April 23 Order were incorporated by reference. Thus, the number of contentions have not been reduced from 57 to 22, at all. See Transcript at 604-05 (Apr. 13, 1982) (Statement of Judge Shon); Licensees' First Set of Interrogatories and Document Requests under Commission Question 1 to Union of Concerned Scientists/New York Public Interest Research Group, Inc., Friends of the Earth, Inc., New York City Audubon Society, and Parents Concerned About Indian Point 7-29 (June 16, 1982). One of the consequences of incorporating contentions has been that over 171 intervenor witnesses and approximately 50 interested State witnesses had been scheduled to testify on emergency planning alone.

only when it addresses both the probability and consequences of a release on a plant and site specific basis.

The intervenors' strategy from the outset of this proceeding has been to discredit the use of Probabilistic Risk Analysis (PRA) methodology to calculate the probability of a nuclear accident.<sup>1</sup> They have chosen not to engage in any PRA-type analysis. Thus, it is not surprising that the Memorandum notes that "little mention of probability" was found during a review of the intervenors' contentions and bases. Memorandum at 4.

Although the Memorandum characterizes intervenors as impecunious<sup>2</sup> and unable to present witnesses with "the

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1. Intervenors attack the use of PRA by arguing that the probability of nuclear accidents cannot be predicted within a degree of reasonable certainty. See "Some Consequences of Catastrophic Accidents at Indian Point and Their Implications for Emergency Planning," Direct Testimony of Brian Palenik and Dr. Jan Beyea, at 9-10, 67-70 (June 7, 1982); UCS/NYPIRG Response to Licensees' First Set of Interrogatories under Commission Question 1, at 1-6, 8-9 (July 23, 1982).

2. During the year ending February 28, 1981, the Union of Concerned Scientists, Inc. (UCS) raised \$1,528,619 and spent \$346,564 on nuclear safety research and \$148,706 on energy policy research. The Union of Concerned Scientists, Inc. -- Statement of Support, Revenue and Expenses and Changes in Fund Balances (year ended February 28, 1981). The New York Public Interest Research Group (NYPIRG), having raised \$1,420,242 for the year ending August 31, 1980, New York Public Interest Research Group, Inc. Annual Report--Charitable Organization (year ended August 31, 1980), likewise, is far from impecunious. And surely the Attorney General of the State of New York, who co-sponsored expert witnesses Dr. Jan Beyea and Brian Palenik, has sufficient resources.

interdisciplinary expertise"<sup>1</sup> necessary to provide testimony in accordance with the Commission's order, Memorandum at 2-3, in fact, the intervenors' failure to do so is because of hostility to quantitative risk assessment and not for financial reasons. However, even financial reasons do not justify a failure to comply with Commission testimonial requirements. "[T]he reluctance of [these] organizations to support litigation voluntarily undertaken may not be attributed to exiguous finances and does not excuse the failure" to present testimony as required by the Commission. In re Consumers Power Co. (Midland Plant, Units 1 and 2), 1 N.R.C. 473, 474-75 (1975).

Intervenors do have experts capable of addressing both the probability and consequences of a release. Intervenors' experts on the consequences of a release at Indian Point are employed by the New York City Audubon Society, one of the intervenors. The Memorandum states that the expertise required to present probabilistic analysis "would encompass statistics, nuclear and/or mechanical engineering, meteorology, health physics, and traffic engineering." Memorandum at 3. Yet, the testimony of these intervenors' experts "encompassed" those specific disciplines noted in

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1. UCS is a "coalition of scientists, engineers, and other professionals" and has "'spent a decade conducting research into nuclear power questions.'" Memorandum and Order (Ruling on Petitions to Intervene and Agenda for Second Special Prehearing Conference) at 30 (Apr. 2, 1982).

the Memorandum.<sup>1</sup> See "Some Consequences of Catastrophic Accidents at Indian Point and Their Implications for Emergency Planning," Direct Testimony of Brian Palenik and Dr. Jan Beyea (June 7, 1982).<sup>2</sup> Additionally, UCS has hired Robert K. Weatherwax as its expert<sup>3</sup> for the specific purpose of reviewing licensees' probabilistic safety study.<sup>4</sup>

Having enumerated "problems" with the Commission's instructions, the Memorandum concludes by telling the Commission how risk testimony should be presented: as "a combination of consequence and probability testimony taken from different sources." Memorandum at 4. This is the very argument which has been presented to the Commission by intervenors, USC/NYPIRG Opposition to Licensees' Petition for Directed Certification of Issues Arising from the Atomic

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1. Moreover, the Board ruled, over licensees' objections, that intervenors' experts were qualified to testify in the disciplines of traffic engineering, health physics, and meteorology. Transcript at 2997-3003 (July 8, 1982).

2. In characterising the testimony of Dr. Beyea and Mr. Palenik as having "withstood probing cross examination," Memorandum at 4, the Memorandum seems to have made a premature determination. The Memorandum may have prejudiced the value of this testimony.

3. Mr. Weatherwax, an engineer, is with Sierra Energy and Risk Assessment, Inc., and previously was associated with the nuclear energy consulting firm of Science Applications, Inc., and with Princeton University's Aerospace Systems Laboratory and the Aerospace and Mechanical Sciences Department.

4. A copy of the Indian Point Probabilistic Safety Study was transmitted to Mr. Weatherwax on May 26, 1982.

Safety and Licensing Board's Order of April 23, 1982, at 9 (May 25, 1982), and addressed by the licensees.<sup>1</sup>

The Board's certified questions 1a and b attack the fundamental premise of the NRC's Statement of Interim Policy on Nuclear Power Plant Accident Considerations under the National Environmental Policy Act of 1969, as applied in the Commission's September 18, 1981 Indian Point Order and reaffirmed in its July 27 Order. That premise is that one witness' accident probability estimate cannot be matched with an independent witness' consequence estimate due to the myriad of methodological and phenomenological assumptions which must be consistent for both halves of the risk equation in order to provide meaningful results.

Regarding the questions 2a and 2b certified by the Board, such questions are clearly premature because the Commission has provided that emergency planning improvements

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[S]uch an approach results in an unrealistic and disjointed discussion of any given release scenario because the probabilities of each of the multitude of occurrences in an event tree must be analyzed together with the consequences of each of those events for the specific Indian Point plant design in order to have a meaningful dialogue concerning the entire release scenario. One cannot divorce the discussion of either aspect of the risk equation from the other without rendering the outcome meaningless.

Licensees' Petition for Directed Certification Pursuant to 10 CFR § 2.718(i) and for Waiver of 10 CFR § 9.103 at 15 (May 10, 1982) (emphasis in original).

must be considered "in light of" risk considerations. The July 27 Order directs that:

additional emergency planning measures, not required by NRC or FEMA, could be raised for Indian Point as prudent risk-reduction measures in light of the risk posed by Indian Point as opposed to the spectrum of risks posed by other nuclear plants.

Memorandum and Order at 15-16 (July 27, 1982) (emphasis added). Since the Commission has thus required the risk posed by Indian Point to be addressed first<sup>1</sup>, the Commission need not address Board questions 2a and 2b at this time.

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1. Licensees urged the Board's adoption of this sequence of testimony at the April Special Pre-Hearing Conference. Transcript at 728, 749, 766 (Apr. 13-14, 1982). The Board's principal reason for commencing the case with emergency planning issues was the unavailability of certain witnesses in July and August. Memorandum and Order at 21 (Apr. 23, 1982). That, of course, is no longer a problem. Consequently, there is no reason at all not to address safety issues first when the hearings reconvene. Predictions of what will occur at the expiration of the so-called "120 day clock" would, of course, be of little use to the Commission in a record that is unlikely to be finalized before the clock's expiration, particularly if the Board still entertains a substantial number of emergency planning witnesses after eliminating contentions as requested by the July 27, 1982 Order. Moreover, the State has responded to the Federal Emergency Management Agency ("FEMA") deficiency comments, indicating that extensive improvements in off-site emergency planning are underway, most of which will be completed by October, 1982. (The State's response has been filed and identified in the record. See Transcript at 3656, WBCA Exhibits 3 and 4.) This schedule of anticipated improvements provides yet another compelling reason to hear emergency planning testimony after completion of safety testimony.

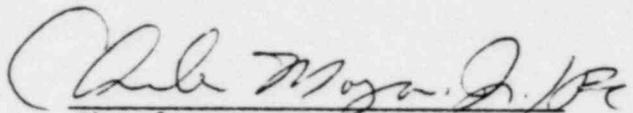
CONCLUSION

Based on the foregoing, the Power Authority of the State of New York and Consolidated Edison Co. of New York, Inc. request that the Commission reaffirm its decision of July 27 without further opinion.

Respectfully submitted,



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