



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555

August 23, 1982

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In the Matter of Consolidated Edison Company of  
New York (Indian Point, Unit 2) Power Authority of  
the State of New York (Indian Point, Unit 3)  
Docket Nos. 50-247-SP and 50-286-SP

Dear Administrative Judges:

There will be no quorum for formal Commission action in response to your August 9, 1982 Memorandum and Order until the week of August 30, 1982. However, since time is of the essence, the Commission has informally authorized me to send you this letter containing the Commission's response. The Commission intends to formally affirm this response the week of August 30, 1982.

The Commission issued a Memorandum and Order on July 27, 1982 offering guidance to the Licensing Board in this special proceeding. CLI-82-15. The Board has now certified several questions to the Commission regarding its intent in issuing that Memorandum and Order and the future course of the proceeding in light of recent developments in emergency planning. Memorandum and Certification, August 9, 1982, (hereinafter "Board Order"). Those questions are as follows:

- 1a. Must each witness's testimony address both consequences and probabilities, or must each party address both factors in its direct case?
- 1b. Alternatively, may we hear a combination of consequence and probability testimony taken from

different sources, e.g., from the testimony of witnesses presented by different parties, or from cross-examination?

- 2a. Shall we continue to hear evidence on the "status and degree of conformance with NRC/FEMA guidelines" aspect of Question 3 and the "improvements in the level of emergency planning" and "time schedule" aspects of Commission Question 4?
- 2b. If we limit our proceeding to the "minimum hours warning" aspect of Question 3 and the "other specific offsite emergency procedures" aspect of Question 4, should we investigate those matters as they are now or as they are expected to be in four months?

Board Order at 4-6 [footnotes omitted].

Questions 1a and 1b are motivated, the Board tells the Commission, by a concern that its order might mean that only those witnesses who can qualify as experts in multiple and diverse fields can testify on accident risks. That was not the Commission's intention. It intended that each party (or each group of parties consolidated by the Board\*) be required to include in any direct testimony and related contentions (and underlying bases) that it may choose to file on accident consequences a discussion of the probability of the accidents leading to the alleged consequences. It is clearly not sufficient for a party offering testimony and contentions on consequences to rely on the probability testimony (including cross-examination) or contentions and bases of another non-consolidated party.

Turning to Questions 2a and 2b, the Board notes that the NRC staff has started the "120-day clock" pursuant to 10 CFR §50.54(s)(2)(ii) as a result of a July 30, 1982 report by FEMA in which FEMA found deficiencies in the Indian Point emergency plan. Board Order at 5. In light of this development, and based upon the Commission's perception that to hear testimony regarding what is likely to be a rapidly changing situation would be wasteful of the time and resources of the Board and the parties, the Commission

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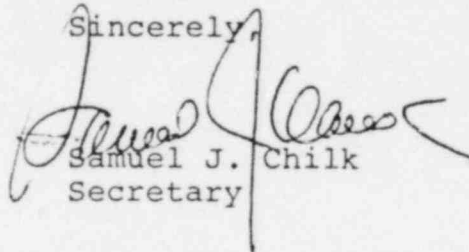
\*/ See 10 CFR 2.751a.

believes that the Board should (after reconsidering its rulings on the contentions and completing any necessary prehearing matters) proceed first to take evidence on Commission questions 1, 2, 5, 6 and 7. Then, if the concerns that prompted the Board to certify questions 2a and 2b are resolved at the conclusion of the testimony on these other Commission questions, the Board is to proceed to take evidence on questions 3 and 4 under the Commission guidance previously provided. If the concerns remain at this later date, then the Board should return to the Commission for further guidance. The Commission recognizes that evidence on plant risks (in particular questions 1 and 5) may depend to some extent on assumed levels of emergency response. However, it believes that the parties can present testimony concerning accident risks based on assumptions as to ranges of emergency responses and that any disputes as to the feasibility or likelihood of particular emergency response testimonial assumptions can be either addressed expeditiously without inquiring into details of questions 3 and 4 or postponed until questions 3 and 4 are addressed on their merits.

Commissioner Gilinsky provided the following comments:

"I disapprove the substance of the guidance which the Commission is giving to the Board. Furthermore, I find the form of this guidance -- a letter from the Secretary, which has not even been discussed by the Commission -- to be an improper vehicle for giving directions to the Licensing Board."

Sincerely,



Samuel J. Chilk  
Secretary