

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:
James P. Gleason, Chairman
Dr. Oscar H. Paris
Frederick J. Shon

In the Matter of	X	
	X	
CONSOLIDATED EDISON COMPANY OF	X	Docket Nos.
NEW YORK (Indian Point Unit 2)	X	50-247-SP
	X	50-286-SP
POWER AUTHORITY OF THE STATE OF	X	
NEW YORK (Indian Point Unit 3)	X	February 8, 1983
	X	
	X	

MEMORANDUM IN OPPOSITION TO LICENSEES'
FEBRUARY 1, 1983 MOTION FOR EXPEDITED
ORDER COMPELLING PRODUCTION OF DOCUMENTS

- I. The Document Requested by Licensees is not Being Relied Upon by FOE/Audubon Witness, Dr. Charles Perrow.
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Contrary to the assertion of Licensees in their memorandum in support of their motion, FOE/Audubon has produced the documents upon their witness, Dr. Charles Perrow is relying for his testimony. These documents were listed in the attached bibliography and provided to the licensees prior to Dr. Perrow's deposition.

Dr. Perrow is not relying upon the two manuscript chapters referred to and requested in licensees moving papers. These manuscripts are unrevised rough drafts of chapters of a work in progress being prepared under contract for future publication.

Dr. Perrow, at his deposition, acknowledged that

he was relying on the same factual background for his testimony as in the manuscripts (T.29-30). References to this factual background was provided to licensees in the bibliography referred to above.

But there is no independent material in or portion of the manuscripts upon which Dr. Perrow has relied for his testimony (Affirm. of R. Hartzman).

As stated at the deposition, there are parallel discussions in portions of the testimony and the manuscripts which derive from a common stem, and the manuscript was brought to the deposition as a ready background reference (T.32). The one time Dr. Perrow made use of the manuscript at the deposition was to look at a list of factors in the concept of "tight coupling" (T.89-91) in order to refresh his recollection. These are the same factors which are noted on page 3 of his prefiled testimony.

Since Dr. Perrow has not relied upon these documents for his testimony, licensees' motion should be denied.

II. The Requested Documents Contain Proprietary Information and Are Thus not Discoverable.

The standards for a claim of proprietary information are "that (1) the information in question (is) 'of a type customarily held in confidence by its originator'; (2) there is 'a rational basis for having customarily held (it) in confidence'; (3) 'it has, in fact, been kept in confidence'; and (4) 'it is not found in public sources.'" In re Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), 3 N.R.C. 408, 416-17 (1976)(footnote omitted).

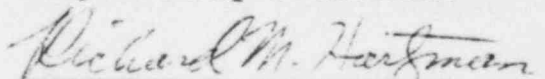
Dr. Perrow's manuscripts are incomplete rough drafts of a work in progress, under contract with a publisher. They are subject to revisions and all references have not been checked. The material is not found in public sources for the obvious reason that it is still in the developmental stage. Such information is normally kept in confidence, and, as is the custom in the academic and publishing communities, is only shown in confidence to selected peers for critical comment and review for the purpose of developing the work. Dr. Perrow's manuscripts have in fact been kept in confidence, and its use in any way at an open public hearing or by the licensees would be an unwarranted invasion into this privileged material.

III. It Is Contrary to Public Policy to Permit Discovery of Works in Progress.

If author's works in progress were to normally be discoverable in NRC proceedings, individuals with important and relevant information would be discouraged from coming forward and testifying because of a justified fear of having material disclosed which they are not yet prepared to disclose. Such a result is against public policy and to be avoided.

Since licensees are not entitled to the requested documents, their motion should be denied.

Respectfully submitted:



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Dated: February 8, 1983

- ✓ Union of Concerned Scientists, The Risk of Nuclear Power Reactors (Union of Concerned Scientists) (Cambridge, Massachusetts, August, 1977)
- The Need for Change: The Legacy of TMI. Report of the President's Commission on the Accident at Three Mile Island, Government Printing Office, (Washington, D.C., October 1979).
- ✓ Essex Corporation, Human Factors Evaluation of Control Room Design and Operator Performance at Three Mile Island-2. NUREG/CR-1270, Vol. 1, (January 1980): p. v.
- R.L. Scott, Jr., Fuel-Melting Accident at the Fermi Reactor on October 5, 1966, Nuclear Safety 12 (1971): pp. 122-134. John Faulkner, We Almost Lost Detroit ✓ (New York: Reader's Digest Press, 1975).
- ✓ USNRC, Report to the Congress on Abnormal Occurrences (January-June, 1975); USNRC Recommendations Related to the Browns Ferry Fire, NUREG-0050 Washington, D.C.: USNRC, (February, 1976); David Dinsmore Comey, "The Incident at Browns Ferry", Peter Faulkner, ed., The Silent Bomb (New York: Random House, 1977): pp. 3-22.
- Hearings, President's Committee on the Accident at Three Mile Island, May 30, 31, June 1, July 18.
- Bupp, Irvin C. and Jean-Claude Derian, Light Water: How the Nuclear Dream Dissolved, NY: Basic Books, 1978.
- Castro, W.R., "Safety-Related Occurrences Reported in October-November 1970," Nuclear Safety, vol. 12, No. 2, 145, March-April, 1971.
- _____, "Operating Experiences," Nuclear Safety 12:3, 249, May-June 1971b.
- _____, Castro, W.R., "Operating Experiences," Nuclear Safety 12:4, July-August 1971c.
- _____, Nuclear Safety 13:3 May-June, 236, 1972.
- _____, Nuclear Safety 16:2, 233, March-April, 1975.
- ~~Hunt, D.G., Nuclear Safety, 12:2, 85-89, March-April, 1971.~~
- Morris, P.A. and R.H. Engelken, "Safety Experience in the Operation of Nuclear Power Plants," in International Atomic Energy Agency Principles and Standards of Reactor Safety. Proceedings of a Symposium. Vienna, IAEA, 429-446, 1973.
- ✓ Nuclear Regulatory Commission, NRC Licensee Assessments, NUREG-0834, August 1981.
- Scott, R.L. Jr., "Fuel Melting Incident at the Fermi Reactor on October 5, 1966," Nuclear Safety, 12:2, 123-34, March-April 1971.
- U.S. Atomic Energy Commission, Wash-1192: Operational Accidents, 1943-1970, 1972.