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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
James P. Gleason, Chairman
Frederick J. Shon
Dr. Oscar H. Paris

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In the Matter of	:	Docket Nos.
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. (Indian Point, Unit No. 2)	:	50-247 SP 50-286 SP
POWER AUTHORITY OF THE STATE OF NEW YORK, (Indian Point, Unit No. 3)	:	February 7, 1983

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POWER AUTHORITY'S MOTION TO ESTABLISH SCHEDULE
AND LIMIT SCOPE OF NEW YORK CITY COUNCIL TESTI-
MONY UNDER COMMISSION QUESTIONS 3 AND 4

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Preliminary Statement

Power Authority of the State of New York ("Power Authority"), licensee of Indian Point 3 Nuclear Power Plant, hereby moves the Board for an Order (1) establishing a schedule and time allocation for the hearing of witnesses under Commission Questions 3 and 4; and (2) limiting the scope of the testimony to be presented by the New York City Council Members (the "City Council").

The Board correctly recognizes that "[t]here is no way in our handling of this issue that we are going to be able to accommodate that large number [over 170] of [intervenor] witnesses." (T:6933.) We respectfully submit, however, that the Board has substantially underestimated the hearing time necessary to accommodate even 47 intervenor witnesses, as the Board has proposed, and the host of additional witnesses to be presented by the Commission Staff, FEMA, New York State, the licensees, and the City Council. Even with reasonable limits placed on cross-examination time, we estimate that it would take at least double the number of hearing weeks presently allocated to hear this testimony.

Thus, rather than establish limits on the number of individual witnesses, the Power Authority submits that it would be more fair, efficient, and consistent with the

Commission's orders and due process to allocate existing hearing time to the various parties and interested states. We also believe that the Board should limit the scope of the City Council testimony in order to further the above goal of properly managing limited hearing time, as well as to comply with the Commission's orders herein.

Hearing Time Should Be
Allocated Among the
Parties

The Commission's July 27, 1982 Memorandum and Order (CLI-82-15) ("July 27 Order") strongly reaffirms the Commission's directive to focus this proceeding and to screen out evidence* that would not contribute materially to addressing the stated purpose of the proceeding, namely the comparative risk posed by Indian Point.

Obviously, some witnesses will present testimony which is more material than others'. FEMA, the Commission Staff, and New York State, for example, are in a position to

* While the July 27 Order speaks in terms of screening out issues and contentions, a fortiori this guidance should apply to presentation of evidence. The Commission's obvious objective is to avoid wasting hearing time on matters beyond its primary concerns. To screen out issues and contentions, but then to allow the presentation of evidence without regard to the Commission's guidance, would make no sense, contravene the Commission's objectives, and waste time.

compare emergency planning at Indian Point with planning at other sites.* Licensees' on-site panels and the Commission Staff are the only witnesses to have filed testimony on the most important aspect of radiological emergency preparedness -- the on-site response.

A full opportunity must be given, of course, to hear and cross-examine witnesses presented by all parties, intervenors, and interested states. A limitation on the number of witnesses has proven all but impossible to effect in the past, and the Power Authority has a standing due process objection to arbitrary limits placed upon cross-examination time which would prejudice the parties. Accordingly, we propose the following schedule within which the parties, interested states, and intervenors must present their direct testimony and accommodate reasonably anticipated cross-examination:

- (1) Lead intervenors (2 days).
- (2) Contributing intervenors (1 day).
- (3) City Council** (1 day).
- (4) Licensees (2 1/2 days).
- (5) Commission Staff (2 days).
- (6) State of New York (2 1/2 days).
- (7) FEMA (2 days).

* Further, New York State should be allowed additional time to respond to the testimony of Rockland and Westchester County witnesses, who were allotted two full weeks of testimony during which they made repeated allegations concerning the State's role and participation in emergency planning.

** But see objections at pp. 4 - 6, infra.

This schedule affords the intervenors more time than any other party, and reflects the Power Authority's expectations regarding time necessary to reasonably cross-examine material witnesses. The Board should require all parties, intervenors, and interested states to submit a schedule of proposed witnesses and anticipated cross-examination time for each, no later than February 15. The Board can then, in consultation with the participants, determine whether such schedules are reasonable and, if not, make its own modifications.

The Scope of The City
Council Testimony Should
Be Limited

The Power Authority has no objection to the City Council presenting material evidence regarding the 50-mile plume ingestion pathway emergency planning zone ("ingestion EPZ"). Most of the City Council's pre-filed testimony, however, concerns issues irrelevant to the ingestion EPZ and instead deals with the possible evacuation of New York City (which includes areas nearly 60 miles from Indian Point).

The Commission has provided explicit guidance, in its orders herein and its regulations, regarding the extent to which emergency planning issues beyond the 10-mile plume exposure pathway EPZ ("plume EPZ") may be considered in this proceeding. First, the Commission has stated that issues

relating to the exact size of the plume EPZ must be determined under Question 3.* (July 27 Order at 15.) Second, the Commission has proscribed challenges to the Commission's regulations under Question 3. (Id.) Third, while the Commission's regulations permit "minor adjustments" to the size of the plume EPZ to account for local conditions, the plume EPZ must still be "about 10 miles." (July 27 Order at 15; Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), 14 NRC 691, 698 (1981).) Fourth, the Commission regulations provide for a 50-mile ingestion EPZ, which would include portions of New York City. But evacuation planning is not required beyond the plume EPZ. (NUREG-0654 at 59-65.)

Thus, the City Council could properly present testimony relating to protective measures required for the ingestion EPZ, which principally deal with "protecting the public from consumption of contaminated foodstuffs." (Id. at 64.) The bulk of the City Council's testimony, concerning evacuation planning and a vast expansion of the plume EPZ, is both irrelevant, and a direct challenge to the regulations proscribed by 10 CFR

* We noted in the Power Authority's Response to Reformulated Contentions Under Questions 3 and 4 dated January 24, 1983 (at 11, n.(*)) that the contention regarding the size of the plume EPZ was erroneously designated under Question 4. If the City Council testimony were, in fact, proper under Question 4, it would be required to meet the special requirements set forth below, at page 6, n.(*).

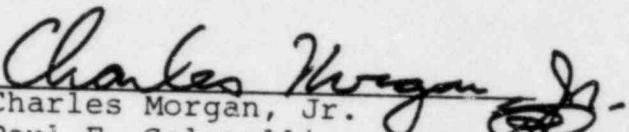
§ 2.758 and the July 27 Order.*

Accordingly, the Board should limit the scope of the City Council testimony to matters relating to the ingestion EPZ, and, inter alia, strike all testimony concerning evacuation planning and expansion of the plume EPZ to include New York City. This will assure compliance with the Commission's orders, and assist in managing the proceeding within its tight schedule.**

* Moreover, Commission Question 4 asks whether there are additional "specific offsite emergency procedures that are feasible and should be taken to protect the public." Even assuming that the evacuation of New York City is somehow relevant under Question 4, the City Council testimony consists mainly of conclusions by politicians and others that evacuation is unfeasible there. It contains no recommendations for specific, feasible procedures, and does not contain any "sound basis" or any demonstration whatsoever that New York City is at risk from Indian Point any more than it is at risk from Shoreham, Oyster Creek, or any other nuclear plant. Thus, it manifestly fails to satisfy the requirements stressed in the July 27 Order and is unimportant in answering the Commission's Questions.

** In the event that the Board denies our motion regarding the City Council, the Power Authority alternatively requests leave to take the depositions of the City Council witnesses. These witnesses raise issues clearly beyond the existing regulations, with which the Power Authority is generally unfamiliar, and upon which we have not pre-filed testimony. Such depositions are imperative in order to avoid prejudice.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that copies of POWER AUTHORITY'S MOTION TO ESTABLISH SCHEDULE AND LIMIT SCOPE OF NEW YORK CITY COUNCIL TESTIMONY UNDER COMMISSION QUESTIONS 3 AND 4 in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, this 7th day of February, 1983.

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