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September 9, 1982

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Atomic Safety and Licensing Board
United States Nuclear Regulatory
Commission
Washington, D.C. 20555

RE: Indian Point Investigation, Docket Nos.
50-247 SP, 50-286 SP

Gentlemen:

I am enclosing a copy of a filing made to the ASLB by PASNY in this case dated last Wednesday, September 1. You will note that PASNY reads your order of July 27, 1982 as calling for the excising of virtually all public participation. We continue to hope that that is not your intention, and that you will reconsider this course of action now that you have become aware of its effect.

We hope, in addition, that Judge Carter's resignation will prompt the Commission to rethink its response to the ASLB's questions of August 9, 1982. When a man of Judge Carter's wide experience concludes that he cannot in principle preside over a hearing under the restraints the Commission has mandated, it behooves the Commission to reconsider its actions. Judge Carter's views on this matter can hardly be dismissed as those of a partisan.

The intervenors also renew our request to address you orally before you vote on the Secretary's letter. We cannot understand why, at this juncture, the Commission would refuse to hear brief comments from the public participants. It is quite possible that Judge Carter's resignation could have been avoided if the Commission had solicited the Board's and the Intervenor's views before now.

Very truly yours,


Ellyn R. Weiss

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cc: w/o enclosure - Indian Point Service List

DSQ3

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

Certificate of Service

I hereby certify that on this 9th day of September, 1982, a copy of the letter to the Commissioners RE: Indian Point Investigation, Docket Nos. 50-247 SP, 50286 SP was mailed to the following parties by first-class mail, postage prepaid, and hand delivered to all Commissioners.

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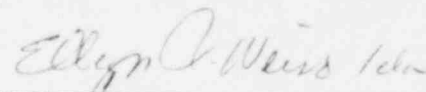
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

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

-----)	
)	
In the Matter of)	Docket Nos.
)	50-247 SP
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. (Indian Point, Unit No. 2))	50-286 SP
)	
POWER AUTHORITY OF THE STATE OF NEW YORK (Indian Point, Unit No. 3))	September 1, 1982
)	
-----)	

POWER AUTHORITY'S COMMENTS REGARDING THE COMMISSION'S
JULY 27, 1982 ORDER TO REFORMULATE CONTENTIONS

ATTORNEY FILING THIS DOCUMENT:

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PREFACE

The Power Authority of the State of New York (Power Authority) hereby submits these comments on contentions under Questions 1 through 6 to aid the Atomic Safety and Licensing Board (Board) in the reformulation of contentions directed by the Nuclear Regulatory Commission (Commission). See Memorandum and Order at 17 (July 27, 1982) (July 27 Order).¹ Of general application to this reformulation process is the Power Authority's view that intervenors' written factual bases must support the Board-formulated contentions and not the intervenors' underlying contentions. Although the underlying contentions were considered subsumed by the Board's contentions for discovery purposes, the Board should now affirm that the only contentions at issue are those which it formulated, and that the bases in the record must support those contentions. To proceed otherwise would add a dimension to the hearing which was clearly not contemplated by the Commission.

1. The Power Authority incorporates by reference and reasserts its objections to contentions as stated in Power Authority's Objections and Answers to Contentions of Potential Intervenors (Dec. 31, 1981), Authority's Reply to Responses to Objections to Contentions of Potential Intervenors (Feb. 11, 1982), and as stated at the Second Special Prehearing Conference on April 13 and 14, 1982. The Power Authority also reserves the right to respond to the Board's reformulation of contentions under all the Commission's Questions.

COMMISSION QUESTION 1

What risk may be posed by serious accidents at Indian Point 2 and 3, including accidents not considered in the plants' design basis, pending and after any improvements described in (2) and (4) below? Although not requiring the preparation of an Environmental Impact Statement, the Commission intends that the review with respect to this question be conducted consistent with the guidance provided the staff in the Statement of Interim Policy on "Nuclear Power Plant Accident Considerations under the National Environmental Policy Act of 1969;" 44 FR 40101 (June 13, 1980). [Footnote omitted.]

Contention 1.1

The accident consequences that would be suffered by the public, even allowing for emergency planning measures, and their associated probabilities combine to produce high safety risks or risks of environmental damage including: prompt fatalities, early fatalities, early and latent illnesses, fatal and non-fatal cancers, thyroid nodules, genetic effects, and contamination of buildings, soils, waters, agricultural lands, recreational lands, and wildlife areas.

Power Authority's Response

Contention 1.1 as formulated by the Board must be struck unless each intervenor presents in the record written underlying factual bases and direct testimony which include a discussion of the probability of a release as well as the consequences of such a release at Indian Point Unit 3. Pursuant to the Commission's directive of August 23, 1982, UCS, NYPIRG, FOE/Audubon, and Parents each must present witnesses who address both the probabilities and consequences of releases at Indian Point.¹ Because these

1. FOE/Audubon's contribution to Contention 1.1 with respect to probabilities and consequences concerns "effects

intervenors were not consolidated,¹ the co-sponsorship of witnesses does not satisfy the Commission's directive. Specifically, the Commission

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.

Letter from Samuel J. Chilk to Atomic Safety and Licensing Board at 2 (Aug. 23, 1982) (August 23 Letter) (footnotes omitted) (emphasis in original and added).

COMMISSION QUESTION 2

What improvements in the level of safety will result from measures required or referenced in the Director's Order to the licensee, dated February 11, 1980? (A contention by a party that one or more specific safety measures, in addition to those identified or referenced by the Director,

on buildings, soils, waters, agricultural lands, recreational lands, and wildlife areas." Memorandum and Order (Formulating Contentions, Assigning Intervenors, and Setting Schedule) at 4 (Apr. 23, 1982). Parents' contribution concerns "the special susceptibility of children to radiation." Id. UCS and NYPIRG, the lead intervenors, are responsible for the other consequences and associated probabilities listed in Contention 1.1. Id.

1. UCS and NYPIRG were not consolidated and thus are separate intervenors. Each must present its own witnesses on probabilities and consequences if it wishes to address Contention 1.1. || ✓

should be required as a condition of operation would be within the scope of this inquiry if, according to the Licensing Board, admission of the contentions seems likely to be important to resolving whether (a) there exists a significant risk to public health and safety, notwithstanding the Director's measures, and (b) the additional proposed measures would result in a significant reduction in that risk.)

Contention 2.1

The following additional specific safety measures should be required as conditions of operation:

a) A filtered vented containment system for each unit must be installed.

b) License conditions must be imposed to prohibit power operations with less than a fully operable complement of safety-grade and/or safety-related equipment.

c) A "core-catcher" must be installed at each unit to provide additional protective action time in the event of a "melt-through" accident in which the reactor pressure vessel is breached by molten fuel.

d) A separate containment structure must be provided into which excess pressure from accidents and transients can be relieved without necessitating releases to the environment, thereby reducing the risk of containment failure by overpressurization.

Contention 2.2

The following additional specific safety measures should be required as conditions of operation:

a) The cooling system at the plants should be changed so that it no longer uses brackish Hudson River water. This change is needed to combat safety-related corrosion problems.

b) A solution to the radiation embrittlement problem in the units' reactor pressure vessels must be found and implemented.

c) A solution to the problem of steam generator tube deterioration must be found and implemented.

d) A complete review of both plants must be undertaken to discover and correct flaws resulting from poor quality control in construction and in operation.

Power Authority's Response

With respect to Commission Question 2, the Commission reaffirmed the necessity for the Board to require intervenors to meet the two-prong threshold standard for presentation of contentions under this Question. The Commission requires that

in addition to assuring compliance with 10 C.F.R. § 2.714 before admitting such contentions, the Board must make a threshold finding for each such contention whether "(a) there exist a significant risk to public health and safety, notwithstanding the Director's measures, and (b) the additional proposed measures would result in significant reduction in that risk." This finding will be based on written material provided by the sponsor of the proposed measure.

July 27 Order at 13. Accordingly, for each specific measure which is proposed by an intervenor, there must be in the record written documentation that a significant risk to public health and safety does exist and that the addition of the proposed measure would in fact significantly reduce that risk.

UCS and NYPIRG, the only intervenors on Contention 2.1, propose three specific safety measures, i.e., a filtered vented containment system, a core catcher, and a separate containment structure. These proposals, contentions 2.1(a), (c), and (d), must be struck unless UCS and NYPIRG each can

demonstrate that there exists a "significant risk to the public health and safety" and that each of these measures would "significantly reduce" the risk to the public.

Regarding Contention 2.1(b), the suggestion of UCS and NYPIRG that plant operations be prohibited unless there exists a "fully operable complement of . . . equipment" clearly is not the kind of "safety measure" envisioned by the Commission. Contention 2.1(b) is merely a veil for a shutdown of Indian Point and must be struck.

WBCA, the only sponsor of Contention 2.2, urges in Subcontentions (b) through (d) a solution to the problems of radiation embrittlement and steam generator tube deterioration, and a complete review of the plant's original design and construction. These mere statements are patently inadmissible as "specific safety measures." Those items clearly cannot satisfy the threshold standard of a demonstration that a given measure would significantly reduce the risk posed by the plant. They are an agenda for study, not admissible contentions and, therefore, should be struck. Contention 2.2(a), concerning the use of Hudson River water, may be an appropriate contention if WBCA can provide a written factual basis in the record of (1) the "significant risk" posed by Indian Point and (2) the reduction of risk that could result from this measure.

POWER AUTHORITY'S RESPONSE TO CONTENTIONS UNDER COMMISSION

QUESTIONS 3 AND 4

In light of the Commission's August 23, 1982 letter to this Board, the Power Authority is not providing detailed comments regarding each contention under Questions 3 and 4. See August 23 Letter at 2-3. Rather, the Power Authority suggests that the Board's reformulation of contentions under Questions 3 and 4 at least await the expiration of the so-called "120-day clock," 10 C.F.R. § 50.54(s)(2)(ii) (1982), which was started on August 3, 1982 for the correction of alleged emergency planning deficiencies.

The Commission's interim guidance in its August 23 letter on the four "certification" questions contained in the Board's Memorandum and Certification of August 9, 1982, directs that consideration of contentions under Questions 3 and 4 be postponed:

the NRC staff has started the "120-day clock" pursuant to 10 CFR § 50.54(s)(2)(ii) . . . 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 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.

August 23 Letter at 2-3 (emphasis added).

To avoid wasting the resources of the Board and the parties and further postponing the resumption of the hearings, the Board should delay its reformulation of the contentions under Questions 3 and 4 until this "rapidly changing situation" has been resolved. A searching examination of these contentions and their factual bases, as required by the Commission, will require days and perhaps weeks of effort by the parties -- an effort which may well prove useless as a result of changed circumstances during the next four months.

Although the Power Authority believes that such a postponement is appropriate, the following comments, applying generally to the Board's actions on Questions 3 and 4, are submitted as an indication of some of the problems the Power Authority would address should the Board choose to reformulate contentions under Questions 3 and 4 at this time. If the Board so decides, the Power Authority hereby requests the opportunity to provide detailed comments.

The Commission stated that the "purpose of the proceeding [is to determine] the extent to which nearby population affects the risk posed by Indian Point as compared to the spectrum of risks posed by other nuclear

power plants." July 27 Order at 13 (emphasis added). The contentions under Questions 3 and 4 do not relate to this purpose and, thus, do "not seem likely to be important in answering [the Commission's] questions," one of the "additional requirements" beyond 10 C.F.R. § 2.714 imposed upon this proceeding by the Commission. July 27 Order at 12 (emphasis in original). The "minor contribution" that these contentions would make to this proceeding is "incommensurate with the time and resources required to address them," and the Board should, therefore, "screen [them] out." Id. at 13.

Moreover, the contentions do not meet the second additional requirement for consideration in this proceeding because neither the contentions nor their bases are "stated with reasonable specificity." Id. at 12.

The so-called "bases" for these proposed contentions were also conclusory and vague. Intervenors did not specify deficiencies in the detail necessary to provide sufficient notice to the Board and to the Power Authority as to the actual provisions of 10 C.F.R. § 50.47 which the intervenors claim are at issue.

Contention 3.1 provides an example of several of these deficiencies:

Emergency planning for Indian Point Units 2 and 3 is inadequate in that the present plans do not meet any of the sixteen mandatory standards set forth in 10 C.F.R. 50.47(b), nor do they meet the

standards set forth in Appendix E to
10 C.F.R. Part 50.

Memorandum and Order (Formulating Contentions, Assigning
Intervenors, and Setting Schedule) at 7 (Apr. 23, 1982)
(April 23 Order). This contention is virtually identical to
UCS' and NYPIRG's proposed contention I(A), to which the
Power Authority originally objected because it was "so broad
that the parties cannot reasonably respond." Power
Authority's Objections and Answers to Contentions of Poten-
tial Intervenors at 22 (Dec. 31, 1981). The Power Authority
also objected because UCS and NYPIRG had failed sufficiently
to specify factual bases. Id. at 23. WESPAC's and RCSE's
contentions were similarly broad and vague. Id. at 35-41,
47-49.

As presently formulated, this contention does not ad-
dress "the extent to which nearby population affects the
risk posed by Indian Point as compared to the spectrum of
risks posed by other nuclear power plants," July 27 Order at
13, but rather focuses upon a detailed examination of emer-
gency planning. Commissioner John Ahearne, one of the two
present Commissioners who developed the original order
establishing this proceeding, "expected emergency planning
to be a relatively peripheral issue [and] did not expect a
detailed examination of the current status of compliance
with the current regulations." Memorandum, Additional Views
of Commissioner Ahearne at 3 (Aug. 20, 1982) (Intervenors'

Request to Observe Emergency Planning Exercise) (emphasis added). This contention will require reformulation at the expiration of the so-called "120-day clock."

COMMISSION QUESTION 5

Based on the foregoing, how do the risks posed by Indian Point Units 2 and 3 compare with the range of risks posed by other nuclear power plants licensed to operate by the Commission? (The Board should limit its inquiry to generic examination of the range of risks and not go into any site-specific examination other than for Indian Point itself, except to the extent raised by the Task Force.

Contention 5.1

The risks associated with Indian Point Units 2 and 3 are greater than those associated with many other operating nuclear power plants. These greater risks result from the design and operating conditions of the plants.

Board Question on Commission Question 5

What bearing does the fact that Indian Point has the highest population within 10, 30, and 50 miles of any nuclear plant site in the United States have on the relative risk of Indian Point compared to other plants?

Power Authority's Response

Absent any written factual bases in the record for the proposition that Indian Point poses a greater risk because of its design and operation than the risk posed by many other nuclear power plants, Contention 5.1 should be struck.

Staff has been directed to reply to a Board-formulated question concerning the relative risk of Indian Point compared to other plants. This question appears to be appropriate.

COMMISSION QUESTION 6

What would be the energy, environmental, economic or other consequences of a shutdown of Indian Point Unit 2 and/or Unit 3?

Contention 6.1

An economic consequence of the shutdown of Indian Point Units 2 and 3 would be a [sic] economic benefit accruing to Rockland County through the sale of replacement power.

Contention 6.2

The physical and psychological^[1] environment of children will be improved by permanently shutting down the Indian Point Nuclear Power Station.

Contention 6.3

Considering the savings in operating expense which would result from shutting down Indian Point Units 2 and 3, and allowing for the ways in which cogeneration and conservation can mitigate the costs of replacement power, the net costs of shutdown are small; in fact, they are smaller than previous studies by UCS, GAO, or Rand suggest, and are entirely acceptable.

1. The Board stated:

The litigation of psychological aspects of this contention will be held in abeyance pending issuance of an opinion by the court in PANE v. NRC, Docket No. 81-1131, D.C. Court of Appeals, and any NRC policies or regulations issued as a result of that decision. The reference to physical environment here relates to radiation released offsite by Indian Point Units 2 and 3, radiation spills during transportation of radioactive waste from the plants, and radioactive effluents released into the Hudson River. Tr. 912-13.

April 23 Order at 19 n.3.

Power Authority's Response

Because the intervenors did not, and clearly cannot, provide any basis for distinguishing the "physical environment of children" from that of other persons referred to in Contention 6.2, this aspect of the contention should be struck. Additionally, the issues relating to the physical environment are generic in nature and therefore are not "'likely to be important to resolving the Commission's questions.'" July 27 Order at 12, quoting Memorandum and Order at 4 (Sept. 18, 1981).

The remainder of Contention 6.2 pertaining to psychological stress is inadmissible in this proceeding. In construing People Against Nuclear Energy (PANE) v. NRC, 678 F.2d 222 (D.C.Cir.), petition for cert. filed, 51 U.S.L.W. 3028 (U.S. Aug. 3, 1982), the Power Authority stated that the PANE analysis is not applicable to this proceeding because an accident has not occurred at Indian Point. Letter from Charles Morgan, Jr. to the Atomic Safety and Licensing Board at 2 (May 27, 1982).

The Commission recently confirmed the Power Authority's position. See Policy Statement on Consideration of Psychological Stress Issues, 47 Fed.Reg. 31,762 (July 22, 1982). Psychological stress contentions which do not satisfy the Commission's three-part test are inadmissible in this proceeding. Id. at 31,763.

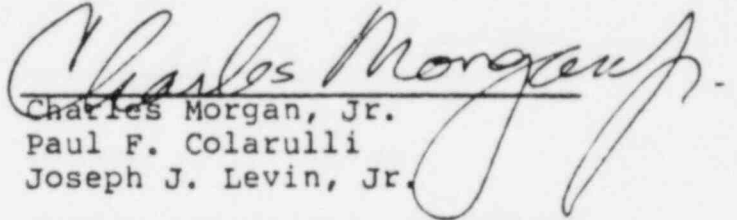
First, the [psychological stress] impacts must consist of "post-traumatic anxieties", as distinguished from mere dissatisfaction with agency proposals or policies. Second, the impacts must be accompanied by physical effects. Third, the "post-traumatic anxieties" must have been caused by "fears of recurring catastrophe". . . . In the Commission's view, the only nuclear plant accident that has occurred to date that is sufficiently serious to trigger consideration of psychological stress under NEPA is the Three Mile Island Unit 2 accident.

Id. at 31,762-63 (emphasis added). One licensing board, of which Judge Shon is a member, has already dismissed the issue of psychological stress in light of the Commission's policy statement. Memorandum and Order (Concerning Psychological Stress Contention), In re Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), Nos. 50-440, -441 (July 19, 1982).

This Board, therefore, should strike Contention 6.2 in its entirety.

Additionally, Contentions 6.1 and 6.3 also should be struck unless written factual bases exist in the record to support them.

Respectfully submitted,


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Dated: September 1, 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

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CONSOLIDATED EDISON COMPANY OF)	
NEW YORK, INC.)	Docket Nos.
(Indian Point, Unit No. 2))	
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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of September, 1982, I caused a copy of the Power Authority's Comments Regarding the Commission's July 27, 1982 Order to Reformulate Contentions to be hand delivered to the following parties marked with an asterisk, and served by first-class mail, postage prepaid on all others:

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