

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD '82 OCT 21 A10:43

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

OFFICE OF SECRETARY
REGULATING & SERVICE
BRANCH

INTERVENORS' RESPONSE TO ASLB MEMORANDUM
AND ORDER OF OCTOBER 1, 1982

The Intervenor have conferred regarding the Board's Order of October 1, 1982 and decided to respond jointly herein to three issues raised by that Order.*/ Some of the Intervenor will file their own separate papers on other questions. The three issues are as follows:

1. A request for clarification of the meaning of a "discussion" of probability.
2. A request that the Board proceed immediately to reformulate the contentions on questions 3 and 4.
3. A proposed schedule for expediting the hearings.

I. Request for Clarification of "Discussion" Requirement

Some of the language contained in the section describing the required "discussion" of accident probability raises questions as to whether the "discussion" must be in the form of testimony, sponsored by all expert witness, etc.

*/This does not include the Interested States, although the New York City Council agrees to the proposed schedule presented here.

In particular, the Order states (Sl.op. at 4) that "[s]ome discussion of that probability must be presented in a party's (or group of parties') direct testimony."

The Intervenors interpret the Commission's Order as using the term "discussion" for the precise purpose of distinguishing this discussion requirement from direct testimony, in recognition of the fact that Intervenors do not have the resources to pay experts for the production of testimony in this complex and enormously expensive technology. Chairman Palladino, who was in the majority of the 3-2 decision, stated as follows:

I believe that the Commission is not requiring that each party provide witnesses able to present and support independently its case on probabilities. (CLI-82-25, September 17, 1982 separate views of Chairman Palladino, emphasis in original)

We therefore ask the Board to clarify that the "discussion of probability" required of Intervenors need not be in the form of expert testimony.

II. Request that Board Immediately Reformulate Contentions on Questions 3 and 4.

The Board did not reformulate the Intervenors' contentions on Commission Questions 3 and 4, accepting Con Ed's argument that to do so would be wasteful effort considering possible revision in the emergency plans as a result of the 120-day clock. The NRC Staff urged the Board, on the other hand, to proceed immediately to reformulate all contentions. In this matter, Intervenors agree with the

Staff and ask the Board not to wait until the end of the 120-day clock to address the contentions on Questions 3 and 4.

Most of the contentions related to Questions 3 and 4 are not dependent in any significant way on the changes now being made to the emergency plans; they do not call into question the adequacy of the plans in areas indentified as deficient by FEMA. We believe that the only contentions arguably affected by the 120-day clock are 3.1, 4.4, 4.5 and 4.7. Even as to these contentions, Intervenor submit that while their testimony might require some changes to reflect events during the 120-day clock, the contentions themselves will not change.

The Intervenor are in limbo at this point, unable to go ahead with further preparation on the issues on which Intervenor have particular competence and interest since the contentions are subject to change in the future. Intervenor wish to be able to go ahead immediately; too much time has already been lost due to the Commission's action. We therefore ask the Board to reformulate all appropriate contentions now.

III. Proposed Schedule

The proposed schedule is based upon the following factors:

1. At the time the Indian Point hearings were suspended last July, some parties had filed their responses to Interrogatories on Questions 1, 2 and 5. Other parties were on the verge of providing their answers since the deadlines were imminent. Suspension of the hearings obviated these deadlines. Fairness now requires that new dates be set for the delivery of these outstanding responses.

2. At the time the hearings were suspended, the only discovery on Questions 1, 2 and 5 had been an initial round of Interrogatories. There remained considerable time in the schedule for the taking of depositions pursuant to 10 CFR 2.740a. At least some parties were preparing to depose witnesses for these Questions when the suspension forestalled further discovery. Assuming that the Board believes the testimony on these questions to have the same importance as that of previously-deposed witnesses on questions 3 and 4, the Board must allow such discovery to go forward. We have proposed an expedited schedule to achieve this.

3. The Commission's purpose in suggesting that Questions 1, 2 and 5 be heard before completion of Questions 3 and 4 was not to denigrate the importance of emergency planning or to conceal defects from the public. Its purpose was to aid the efficient conduct of these proceedings. CLI-82-25, Sept. 17, 1982, Sl.op. at §-5. It is now apparent that there will be considerable time required to complete discovery and prepare testimony on Questions 1, 2 and 5.

In addition, Intervenors have now been made subject to a new obligation, i.e. the requirement of preparing a "discussion" of accident probability, which will take substantial time and effort. Clearly, the most efficient way to proceed at this point is to begin taking testimony on the issues which are ready to go forward while conducting discovery and preparing testimony on the other issues. The issues which are ready to go forward immediately are the Interested States' testimony on Commission Questions 3 and 4.

In any event, the order in which questions are to be addressed should be evaluated now in light of the fact that there is virtually no chance of evidentiary hearings recommencing on any issue before the end of the 120 day clock, on or before December 4, 1982. At that time, the Board should proceed immediately with what is ready to be heard.

4. Some Interested States have expressed concern about the prospect of an excessively long delay between the pre-filing of their officials' testimony and the calling of those witnesses for cross-examination. This would place an undue burden on the officials by requiring them to retain the details of their observations long after their testimony had been filed. In addition, Interested States face a problem in the form of expected turnover of officials which would be exacerbated by long delays. Even if revision of contentions on Questions 3 and 4 were to take longer than we anticipate, this would not warrant delaying the Interested States' testimony on these questions since their role in the hearings is neither dependent upon nor limited by contentions.

5. The Commission is undoubtedly correct that testimony which relates to the emergency planning deficiencies being addressed by the 120-day process should be reviewed, and where appropriate revised, in light of changes made during that period. Because the Licensees and the New York State Department of Emergency Preparedness are in charge of making these changes, they should at the earliest possible time come forward with evidence documenting any improvements and/or changes. Two weeks after the termination of the 120day clock is ample time in which to make such a filing. Indeed, Intervenors believe that this is a generous amount of time considering that the whole 120day period is being devoted to precisely this question of evaluating the changes and their effectiveness and that the process is to be completed at the end of the 120 days.

Once the Licensees and the New York State Office of Emergency Preparedness have filed their supplementary testimony, all other parties should have approximately two weeks to reaffirm, revise or withdraw testimony already submitted and if necessary, to submit supplementary testimony in response to the licensee's and State's positions.

6. Since discovery has been completed on all aspects of Questions 3 and 4 other than on questions related to the imposition of the 120-day clock and changes to the emergency plans related thereto, hearings can proceed on

these Questions while discovery continues on Questions 1, 2, 5 and 6. This will best facilitate the efficient progress of the hearings.

7. Our proposed schedule provides that Licensees and Staff file direct testimony on Questions 1, 2 and 5 before Intervenors and Interested States. We believe that this will accomodate both the interests of expedition and fairness. The Commission has established a substantial new burden for Intervenors to meet with respect to accident probabilities. We have been required to change the focus of our efforts to respond to this obligation since it is a threshold burden for participation on other issues. At the same time, the Commission and the Board recognized that Intervenors do not have access to the resources of the licensees and Staff and therefore provided that our probability discussion may be based on the direct testimony and cross examination of those parties. (Memorandum and Order, October 1, 1982, Sl.op. at 4).

Our schedule provides for a brief discovery period on Questions 1, 2 and 5, and for filing of Licensee and Staff testimony first, essentially trading discovery time for time to review and assess the Staff and Licensee testimony, which will contain their analyses of accident probabilities in a far more comprehensive state than we could hope to have it during discovery.

The schedule would proceed as follows:

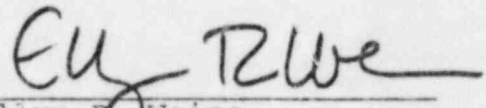
- 11/7/82: Responses due to all outstanding discovery requests on Questions 1, 2 and 5.
- 11/15/82: Board issues reformulation of Contentions For Questions 3 and 4.
- 11/21/82: Deadline for filing new discovery requests and deposition notices for Questions 1, 2 and 5.
- 11/29/82: Briefs in Response to Board reformulation of contentions on Questions 3 and 4.
- 12/4/82: 120-day clock terminates.
- 12/6/82: Prehearing conference on Questions 3 and 4, if necessary.
- 12/10/82: Final order on Questions 3 and 4.
- 12/14/82:
to Hearings commence, Interested States on Questions
12/17/82: 3 and 4.
- 12/20/82: Discovery closes; Licensee and Staff supplemental filings on emergency planning due.
- 1/4/83
to Hearings continue (Interested States)
1/7/83:
- 1/10/83: All other parties' supplemental filings as a result of 120-day clock due.
- 1/17/83: Licensee and Staff Testimony on Question 1, 2 and 5 filed.
- 1/18/83: Hearings continue (Interested States or first possible time that Intervenor testimony on Questions 3 and 4 could begin.)

Dates to be determined later would be 1) the filing of Intervenor testimony and discussion on Questions 1, 2 and 5 and 2) commencement of hearings on Questions 1, 2 and 5.

Even if the Board decides not to reformulate the contentions on Questions 3 and 4 until after the 120-day clock, the schedule for hearing would not be altered substantially

since the Interested States' testimony, which comes first, does not depend on contentions. The Board could reformulate those contentions on or about December 20, 1982, briefs in response could be filed January 3, 1983 with a prehearing conference, if necessary on January 17, 1983. The remainder of the schedule would not change.

Respectfully submitted,


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Dated: October 19, 1982

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing INTERVENORS' RESPONSE TO ASLB MEMORANDUM AND ORDER OF OCTOBER 1, 1982, have been mailed, postage paid, first class, this 19th day of October, 1982, to the following:

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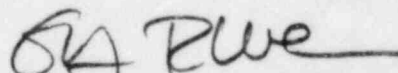
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