



witnesses Philip McIntire, Joseph Keller, and Roger Kowieski (the "McIntire panel"); (2) compelling the deposition of Richard W. Krimm, Assistant Associate Director, FEMA Office of Natural and Technological Hazards ("Krimm"); and (3) in accordance with the Board's earlier rulings, precluding the FEMA witnesses from presenting further testimony during the week of April 26-29 outside the scope of the March 9, 1983 Indian Point emergency planning exercise.

#### The Deposition Motions

The Board has explicitly stated that the parties are entitled to discovery with respect to the exercise testimony to be presented April 26-29. (T:11,667.) See also Commission Memorandum and Order dated January 8, 1981 at p. 6 (this special proceeding shall include "the full procedural format of a trial-type adjudication, including discovery"). Pursuant to this right, the licensees noticed the deposition of the McIntire panel (a copy of the Notice of Deposition is annexed hereto as Exhibit A) and Krimm (a copy of the Notice of Deposition is annexed hereto as Exhibit B.) Oral notice was provided to Stewart Glass, Esquire, counsel to FEMA, prior to service of the formal written notices, and as soon as possible following the receipt of FEMA's Post-Exercise Assessment.

The FEMA testimony is clearly important, particularly since FEMA's Post-Exercise Assessment led that agency to

conclude that it cannot certify the adequacy of off-site emergency planning around Indian Point. Licensees are manifestly entitled to know the bases of FEMA's conclusions, especially since the agency's inability to reach a judgment on adequacy rests on deficiencies in only two of dozens of planning categories.

There are additional, more specific reasons why depositions are imperative. Pursuant to the Board's earlier directive (issued over FEMA's objection), FEMA produced various exercise-related documents for the licensees, including ratings and compilations. Many of these documents are not clearly identified, and contain ratings, codes, and other material which require explanation. Depositions are obviously the most efficient method for obtaining such clarification.

A. The McIntire Panel

The three members of the McIntire panel are officials associated with FEMA's New York regional office.<sup>1</sup> FEMA is sponsoring the McIntire panel as witnesses on April 28 and 29. The need for a pre-hearing deposition of these evidentiary witnesses cannot seriously be questioned. Indeed, the

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<sup>1</sup> One witness, Joseph Keller, is currently in Idaho, although he performs substantial work for the New York office. Licensees have advised FEMA counsel that they will not insist upon Mr. Keller's appearance if he is not in the area.

deposition should significantly reduce licensees' cross-examination at the hearings, since it will identify less significant areas which can be screened out in advance.

Licensees originally noticed the deposition for Thursday, April 21. Subsequently, Mr. Glass unconditionally agreed to make the panel (absent Mr. Keller) available for deposition on Saturday, April 23, although the issue of the Krimm deposition had been discussed and was still unresolved. When Mr. Glass later contacted licensees' counsel regarding the Krimm deposition, he repudiated his earlier agreement to produce the McIntire panel. Instead, he stated his willingness to honor his earlier agreement only if the licensees agreed to forego their right to the Krimm deposition. This course of conduct forced licensees to make the instant motion.

Due process requires that FEMA be compelled to honor its original agreement to produce these witnesses.<sup>2</sup>

B. Krimm

By virtue of his position as Assistant Associate Director, licensees understand Krimm to be among the most senior FEMA officials engaged in evaluating off-site radiolo-

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<sup>2</sup> Although FEMA, strictly speaking, is not a party, its appearance and submission of testimony adverse to certain parties in this proceeding give FEMA little ground upon which to claim insulation from discovery obligations.

gical emergency planning. As Krimm's June 17, 1982 memorandum to the Commission's Division of Emergency Preparedness (Exhibit C hereto) indicates, he has been integrally involved in FEMA's evaluation of emergency planning at Indian Point, and has been a key liaison between FEMA and the Commission.

Licensees have reason to believe that FEMA has applied unique and excessive standards to the enforcement of its regulations at Indian Point, and that this application contravenes equal protection of the law as guaranteed by the fifth amendment of the Constitution. To licensees' knowledge, New York is the only site nationally to have faced a 120-day clock for failure to enact state radiological emergency planning legislation, at a time when such legislation was still pending in other states in which nuclear plants are situated. To licensees' knowledge, Indian Point is the only site which could not be judged "adequately prepared" because bus driver participation is allegedly not assured. Since the FEMA assessment regulations are presently only a proposed rule (see 47 Fed. Reg. 36,386 (Aug. 19, 1982)), FEMA's interpretive process is especially significant. If, as it appears, standards are not being uniformly and consistently applied, lack of adequate discovery is sure to prejudice licensees.

Nothing limits licensees to discovery from regional officials, especially where there is a strong possibility of unequal enforcement in violation of the due process and equal

protection guarantees of the Constitution. If information which may lead to admissible evidence is available at the national level, licensees are entitled to appropriate discovery.

Indeed, it has become increasingly clear throughout both the administrative process and the special proceeding that FEMA's national office plays an important role in evaluating emergency planning around Indian Point.

In fact, when licensees, in the course of these hearings, attempted earlier to ask certain relevant questions of the witnesses sponsored by FEMA's regional office, those regional witnesses have disclaimed personal knowledge, suggesting that only the national officials are capable of providing such answers:

Q Would you consider it important in your evaluation of the Indian Point plan to familiarize yourself with whether other plans in which there has been no verification of sirens have been approved by FEMA?

MR. GLASS: Your Honor, I object. I think he is putting information into evidence that is [sic] not been in evidence. He is making statements.

JUDGE CARTER: I think that he is really asking him, when you go about making your decisions, do you consider those types of things. I think he can ask him whether the [sic] considers that, and not whether he actually did it in this case.

WITNESS MC INTIRE: No, we don't, and let me explain so that the Board will not think that we are parochial in our interest.

What we do, we are in contact with our national office whose job is to be aware of what is going around on all the REP programs across the country. If anything that has been done at another site might be germane to one of the sites we are working on, they will provide us that information.

Therefore, we have a channel to receive information about what is going on at other sites as appropriate. It is just not a matter of our natural business to send us everything that has to do with REP.

(T:2247-48.)

It is apparent that the regional witnesses assume that they are receiving full information from their national office. Licensees are entitled to discover whether these assumptions are in fact correct, and whether FEMA's regulations are being properly and constitutionally applied at Indian Point and in the same manner as at other sites. FEMA's testimony suggests that the alleged problems at Indian Point are unique. Licensees submit that this is not the case. Since the principal aim of this special proceeding is to compare the risks at Indian Point with the spectrum of risks at other sites, the discovery sought herein is proper, relevant, and necessary.

It is well-established that discovery privileges are broad, and can include pursuit of information even if it only "appears reasonably calculated to lead to the discovery of admissible evidence." See, e.g., 10 CFR § 2.740; Fed. R. Civ. P. 26(b)(1). Thus, it is hardly ground for objection that the

deponent is not scheduled as a hearing witness, or that he works at a national rather than regional office. Indeed, licensees have reason to believe that Krimm has knowledge which should be included in the record. For the convenience of the witness, licensees have noticed his deposition for Washington, D.C. and remain completely flexible with respect to scheduling.

Licensees respectfully urge that Krimm be compelled to appear.

Motion to Preclude Testimony Outside the Scope of the Exercise

The Board has unequivocally stated that during the April 26-29 period, with the exception of "carryover" witnesses Cohen and Seasonwein:

[W]e are not going to be hearing other witnesses on emergency planning, and the witnesses that are going to have to testify are going to be testifying completely on the matters that relate to the exercise.

So this is not an open, you know, open door, to pick up testimony that should have been delivered in the previous days that have been allocated for that purpose.

(T: 13,076; see also T: 11,949.)

Mr. Glass advised counsel for licensees just last week that, notwithstanding the Board's clear directive, he may yet attempt to introduce testimony regarding a FEMA verifica-



tion process conducted independently of the exercise. Such an attempt would contravene the Board's ruling, surely lengthen the hearings, and deprive licensees of their right to adequate preparation.

A. Not Exercise Testimony

Such testimony is plainly and concededly not about the March 9 exercise. Rather, it appears to be an attempt by FEMA either to rebut or confirm testimony already presented by the State of New York, the licensees, and various county witnesses. This testimony -- which appears to be designed primarily to bolster FEMA's stature and credibility -- is beyond the purpose of the April 26-29 hearings.

B. Inadequate Preparation Time

10 CFR § 2.743(b) requires the service of written testimony "at least fifteen (15) days in advance of the session of the hearing at which [the] testimony is to be presented." FEMA was granted a brief reduction in this time period in order to file exercise testimony by April 15.<sup>3</sup>

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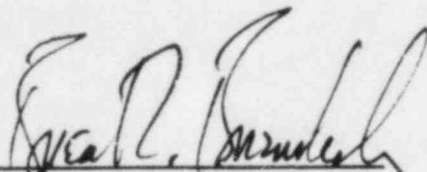
<sup>3</sup> FEMA has alluded previously to its desire to submit "verification" testimony, although the context made it appear that the "verification" was related to the March 9 exercise. (See T: 5854.) The Board never approved the proposal. In its earlier allusion to this testimony, however, FEMA committed to filing this testimony, too, by April 15. (Id.) Thus, FEMA now appears to be acting in violation not only of the Board's rulings and § 2.743(b), but also in violation of its own commitment.

FEMA cannot possibly come close to meeting the requirements of § 2.743(b) if it files yet additional testimony. If "verification" testimony--as yet not received--is as described by Mr. Glass to licensees' counsel, a major consideration of emergency planning resources would necessarily be undertaken at the literal close of the hearings, and over a month after the completion of hearings on Questions 3 and 4 (excepting only exercise testimony). It would be impossible to entertain this material and complete the hearings on schedule.

C. The Verification Data Is Simply Part  
Of The Ongoing Administrative Process

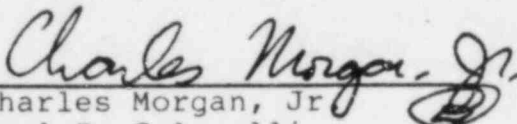
FEMA's verification activities are conducted as part of its normal administrative process pursuant to proposed 44 CFR 350 (47 Fed. Reg. 36,386 (Aug. 19, 1982)). Thus, any relevant data will be included in the administrative record, and subject to the enforcement provisions of 10 CFR Part 2, regardless of whether it is presented herein.

For these reasons, it does not appear warranted to expand the scope of the hearings, with the attendant risks of prejudice and due process violations.

  
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Respectfully submitted,

  
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Dated: April 20, 1983

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

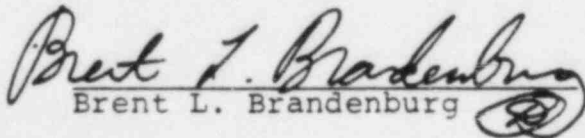
_____	)	
In the Matter of	)	
	)	
CONSOLIDATED EDISON COMPANY OF	)	Docket Nos.
NEW YORK, INC.	)	50-247 SP
(Indian Point, Unit No. 2)	)	50-286 SP
	)	
POWER AUTHORITY OF THE STATE	)	April 15, 1983
OF NEW YORK	)	
(Indian Point, Unit No. 3)	)	
_____	)	

NOTICE OF DEPOSITION OF  
PHILIP McINTIRE, JOSEPH KELLER AND  
ROGER KOWEISKI BY LICENSEES

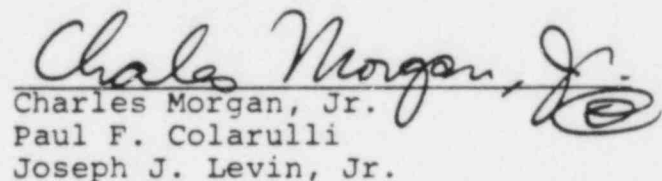
Notice is hereby given that a deposition will be taken by Licensees of Philip McIntire, Joseph Keller and Roger Koweiski, witnesses for the Federal Emergency Management Agency ("FEMA"), on Thursday, April 21, 1983, at 9:00 A.M., at the offices of Shea & Gould, 330 Madison Avenue, New York, New York, and will continue until completed.

The deposition will concern testimony under Commission Questions 3 and 4 which the deponents will be providing on behalf of FEMA in the captioned proceeding. The deponents should bring with them copies of all documents upon which they rely in their testimony, together with any documents concerning suggestions or instructions received from any person regarding the content of the testimony or the April 14, 1983 Post Exercise Assessment. Other parties are invited to appear and cross-examine.

Respectfully submitted,

  
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Dated: April 15, 1983

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NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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

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CONSOLIDATED EDISON COMPANY OF	)	Docket Nos.
NEW YORK, INC.	)	50-247 SP
(Indian Point, Unit No. 2)	)	50-286 SP
	)	
POWER AUTHORITY OF THE STATE	)	April 18, 1983
OF NEW YORK	)	
(Indian Point, Unit No. 3)	)	
	)	

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NOTICE OF DEPOSITION OF  
RICHARD W. KRIMM BY LICENSEES

Notice is hereby given that a deposition will be taken by Licensees of Richard W. Krimm of the Federal Emergency Management Agency ("FEMA"), on Friday, April 22,

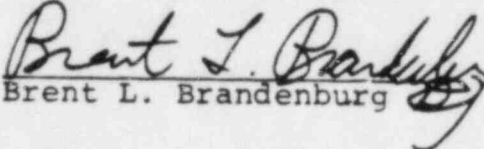
1983, at 10:00 A.M., at the offices of Shea & Gould, 1627 K Street, Washington, D.C., and will continue until completed.

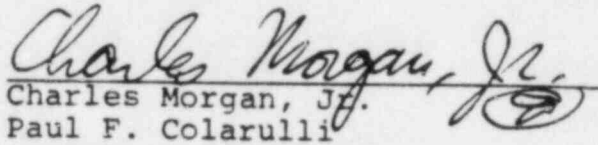
The deposition will concern (1) the current status and degree of conformance with Nuclear Regulatory Commission/FEMA guidelines for off-site radiological emergency planning in the emergency planning zones surrounding the Indian Point nuclear power plants in Buchanan, New York; and (2) FEMA's participation in the above-captioned special proceeding. The deponent should bring with him copies of all documents listed on the annexed schedule.

Other parties are invited to appear and cross-examine.



Respectfully submitted,

  
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Dated: April 18, 1983

SCHEDULE OF DOCUMENTS  
TO BE PRODUCED BY RICHARD W. KRIMM

DEFINITIONS

"Document" shall mean any kind of written or graphic matter, however produced or reproduced, of any kind or description, whether sent or received or neither, including originals, copies and drafts and both sides thereof, and including, but not limited to: papers, books, correspondence, telegrams, cables, telex messages, memoranda, notes, notations, work papers, transcripts, minutes, reports and recordings of telephone or other conversations, or of interviews, or of conferences, or of other meetings (including, but not limited to, meetings of boards of directors or committees thereof), affidavits, statements, summaries, opinions, reports, studies, analyses, evaluations, contracts, agreements, journals, statistical records, desk calendars, appointment books, diaries, lists, tabulations, sound recordings, financial statements, computer printouts, data processing input and output, microfilms, all other records kept by electronic, photographic or mechanical means, and things similar to any of the foregoing however denominated by intervenors.

## Documents

1. All documents referring or relating to the Indian Point nuclear reactor site in Buchanan, New York or the surrounding area.

2. All documents referring or relating to any deficiencies in off-site radiological emergency planning in the Indian Point area ("Indian Point planning").

3. All documents containing instructions, suggestions, or inquiries regarding:

- (a) the status of Indian Point planning;
- (b) a decision to report any deficiencies in Indian Point planning; and/or
- (c) FEMA testimony in the Indian Point special proceeding.

4. All documents which compare the status of off-site radiological emergency planning at two or more nuclear reactor sites in the United States.

5. All documents referring or relating to "significant deficiencies" identified by FEMA at any nuclear reactor site in the United States.

6. All documents referring or relating to the failure of a state, county, or local government to participate in off-site radiological emergency planning.

7. All documents referring or relating to advance commitments from emergency response personnel (including, without limitations, bus drivers) and/or the necessity therefor, including, without limitation, the absence of such commitments at any nuclear reactor site in the United States.



# Federal Emergency Management Agency

Washington, D.C. 20472

**17 JUN 1982**

MEMORANDUM FOR: Brian K. Grimes, Director  
Division of Emergency Preparedness  
Office of Inspection and Enforcement

FROM: *Richard W. Krimm*  
Richard W. Krimm  
Assistant Associate Director  
Office of Natural and Technological Hazards

SUBJECT: Need for Findings on Indian Point

Reference: Mr. Brian Grimes to Mr. Krimm, dated June 16, 1982,  
Same Subject

In response to the reference memorandum, which requests an interim finding under the FEMA/NRC Memorandum of Understanding, I have attached the Post Exercise Assessment dated May 27, 1982, together with the June 4 press release relating to the March 3, 1982 exercise at Indian Point. The Post Exercise Assessment was provided to NRC Region I by FEMA Region II.

Significant deficiencies ("capability weak") are identified in the press release and discussed in the Post Exercise Assessment:

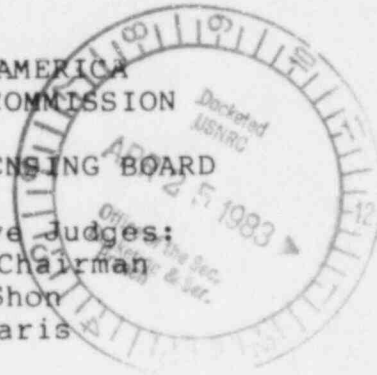
Westchester County pages 30 & 36  
Rockland County pages 39, 40, 42 & 43  
Orange County pages 49 & 54  
Putnam County page 59

As indicated in Mr. Petrone's letter date June 17 to Mr. Hennessy (also attached), Region II, FEMA will review the State's schedule of corrective actions in developing the recommendations for an Interim Finding by FEMA headquarters, as you have requested. Further, a meeting with the State is suggested by Mr. Petrone on either July 7 or 8, at which time the methods and timing for resolution of significant deficiencies will be reviewed. Assuming this schedule of events takes place as projected, the FEMA headquarters Interim Finding with respect to preparedness at Indian Point will be transmitted to you by July 30.

Attachment  
as stated

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, ) 50-247 SP  
INC. (Indian Point, Unit No. 2) ) 50-286 SP  
 )  
POWER AUTHORITY OF THE STATE OF NEW YORK ) April 20, 1983  
(Indian Point, Unit No. 3) )  
 )  
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CERTIFICATE OF SERVICE

I hereby certify that copies of LICENSEES' MOTION TO COMPEL DISCOVERY AND PRECLUDE NON-EXERCISE TESTIMONY in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, this 20th day of April, 1983.

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