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

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

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

MEMORANDUM AND ORDER

(Reformulating Contentions Under Commission Questions 3 and 4)

I. Introduction

In our November 15, 1982 Memorandum and Order (Formulating Final Contentions and Setting Schedule), we deferred consideration of contentions under Commission Questions 3 and 4 until after FEMA's issuance of its report on the adequacy of offsite emergency planning at Indian Point. FEMA's report, dated December 16, 1982, assesses the corrective actions taken during the 120-day period (August 3, 1982 - December 3, 1982) set by the Commission to cure deficiencies noted in FEMA's interim report of July 30, 1982, and assesses the adequacy of the current plan as a whole. In reformulating

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the contentions under Commission Questions 3 and 4, we have considered changes in the status of emergency planning that have occurred during this period. In addition, we have considered Intervenor's arguments in support of their previously filed contentions and Intervenor's proposals for new contentions. (See "Parents Concerned about Indian Point Proposed Revised Contentions on Commission Questions 3 and 4", dated December 24, 1982 (Parents' Revision); "West Branch Conservation Association's Notice of Continuation of Contentions under Questions 3 and 4", dated December 27, 1982 (WBCA's Notice); "NYPIRG Submission in Support of Contentions on Questions 3 and 4 Formulated by Board Memorandum and Order of April 23, 1982", dated December 28, 1982 (NYPIRG's Submission); and "WESPAC Submission Regarding Revised Contentions on Commission Questions 3 and 4;" dated January 6, 1982 (WESPAC's Submission).)

In determining the admissibility of the emergency planning contentions, we have applied the guidelines set forth in the Commission's orders of July 27, 1982 and September 17, 1982:

1. Proffered contentions must have included a statement of bases and both contentions and the bases must have been stated with reasonable specificity.
2. Those contentions that, while complying with § 2.714, do not seem likely to be important to answering the Commission's questions should be eliminated.
3. Contentions under Commission Question 3 should not challenge the regulations. With regard to the size of the plume exposure pathway EPZ, however, the Commission noted that the "exact size and configuration can be affected by local conditions". The Board is "to address whether the high population density posed by the two plants is such a local condition."

4. Contentions under Commission Question 4 may argue that additional emergency planning measures, not required by NRC or FEMA, should be required for Indian Point as prudent risk-reduction measures in light of the risks posed by Indian Point as opposed to the spectrum of risks posed by other nuclear plants. However, parties must provide a sound basis for such contentions.

Following a restatement of Commission Questions 3 and 4 herein, we address first the contentions admitted in our April 23, 1982 Memorandum and Order (Formulating Contentions, Assigning Intervenors, and Setting Schedule) and then the contentions proposed by Intervenors in their recent submissions.

II. Reconsideration of Contentions Admitted in our April 23, 1982 Memorandum and Order

Commission Question 3

What is the current status and degree of conformance with NRC/FEMA guidelines of state and local emergency planning within a 10-mile radius of the site and, of the extent that it is relevant to risks posed by the two plants, beyond a 10-mile radius? In this context, an effort should be made to establish what the minimum number of hours warning for an effective evacuation of a 10-mile quadrant at Indian Point would be. The FEMA position should be taken as a rebuttable presumption for this estimate.

We admitted seven contentions under Commission Question 3 in our April 23, 1982 order. We address them seriatim.

Contention 3.1

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 of 10 C.F.R. 50.47(b), nor do they meet the standards of Appendix E to 10 C.F.R. Part 50.

The bases for this contention were set forth extensively in the following filings:

- 1) UCS/NYPIRG's "Contentions of Joint Intervenors Union of Concerned Scientists and New York Public Interest Research Group", dated December 2, 1981 (hereinafter UCS/NYPIRG Contentions) (See Contention I(A));
- 2) NYPIRG's Submission of December 28, 1982;
- 3) WESPAC's "Contentions of the Westchester People's Action Coalition", dated December 1, 1981 (hereinafter WESPAC Contentions) (See Contentions 1, 2, and 3); and
- 4) RCSE's "Supplement to Petition: Contentions", dated December 1, 1981 (hereinafter RCSE's Supplement) (See Contentions 2, 3 and 5).

We have determined that this contention should remain in the proceeding since both the contention and its bases meet the criteria set forth above.

Contention 3.2

Emergency planning for Indian Point Units 2 and 3 is inadequate in that the plans make erroneous assumptions about the response of the public and of utility employees during radiological emergencies.

The bases for this contention were set forth in the following filings:

- 1) UCS/NYPIRG Contentions (See Contention I(B)1);
- 2) WESPAC's Contentions (See Contention 4);
- 3) Parents' Contentions of Parents Concerned About Indian Point", dated December 2, 1981 (hereinafter Parents' Contentions) (See Contention III); and
- 4) WBCA's "West Branch Conservation Association's Reply to Objections to its Filed Contentions", dated January 11, 1982 (hereinafter WBCA's Reply) (See Contention in reply to (Question 3).

Upon reconsideration of this contention, we have determined that it does not identify any specific lack of conformance with NRC/FEMA emergency planning guidelines, and therefore, does not seem likely to be important to answering Commission Question 3. In addition, while similar issues may have been litigated in other NRC proceedings, the contention shows no clear nexus to the central point of this investigation, viz, the uniquely populous environs of Indian Point. It should be noted that if the substance of this contention were proven valid at Indian Point, it would be valid at other nuclear facilities as well and thus, would not meet any test of uniqueness to Indian Point. The Commission questions were designed to explore the nature of risks at Indian Point with its large population surrounding the facility as compared to the spectrum of risks posed by other nuclear plants. Therefore, Contention 3.2 shall be eliminated.

Contention 3.3

The present estimates of evacuation times, based on NUREG-0654 and studies by CONSAD Research Corporation and by Parsons, Brinkerhoff, Quade & Douglas, Inc., are unreliable. They are based on unproven assumptions, utilize unverified methodologies, and do not reflect the actual emergency plans.

The bases for this contention were set forth in the following filings:

- 1) UCS/NYPIRG Contentions (See Contention I(B)(2));
- 2) WBCA's Reply (See Contention in reply to Question 3); and
- 3) RCSE's Supplement (See Contention 1).

We have determined that this contention, insofar as it challenges the accuracy of the evacuation time estimates required by the regulations, should remain in the proceeding because the contention and its bases meet the criteria set forth above.

Contention 3.4

The Licensees cannot be depended upon to notify the proper authorities of an emergency promptly and accurately enough to assure effective response.

The bases for this contention were set forth in the following filings:

- 1) RCSE's Supplement (See Contention 2, bases (a) and (b) only); and
- 2) WESPAC's Contentions (See Contention 2).

This contention and its bases, which challenge the Licensees' ability to responsibly initiate notification of an emergency to response officials, meet the Commission guidelines and therefore shall remain in the proceeding.

Contention 3.6

The emergency plans and proposed protective actions do not adequately take into account the full range of accident scenarios and meteorological conditions for Indian Point Units 2 and 3.

The bases for this contention were set forth in the following filings:

- 1) UCS/NYPIRG Contentions (See Contention I(B)(3)); and
- 2) WESPAC's Contentions (See Contention 3, basis (d)).

This contention and its bases challenge the adequacy of the protective actions in the emergency plans due to their failure to provide

for a full range of accident scenarios and meteorological conditions. As it represents a specific challenge to an adequate emergency plan, the contention meets the requisite criteria and is admitted to the proceeding.

Contention 3.7

The problems of evacuating children from threatened areas have not been adequately addressed in the present emergency plans.

The bases for this contention were set forth in the following filings:

- 1) Parents' Contentions (See Contention I, bases (4), (5), (6), (7) and (15)); and
- 2) Parents' Revision (See Contention V, bases (1) - (10)).

This contention and its bases, specifically challenging the adequacy of the range of protective actions provided in the emergency plans, meet the requisite criteria set forth above and shall remain in the proceeding.

Contention 3.9

The road system in the vicinity of the Indian Point plant is inadequate for timely evacuation.

The bases for this contention were set forth in the following filings:

- 1) WESPAC Contentions (See Contention 5); and
- 2) WBCA's Reply (See Contention in reply to Question 1 and Contention in reply to Question 5).

This contention and its bases challenge the adequacy of the road network to accommodate evacuation in Rockland and Westchester counties and meet the Commission's standards of specificity and importance. The

contention may be relevant also for possibly providing answers to the Commission's expressed interest in establishing the minimum number of hours needed for an effective evacuation of a ten mile quadrant at Indian Point. The contention shall remain in the proceeding.

Commission Question 4

What improvements in the level of emergency planning can be expected in the near future, and on what time schedule, and are there other specific offsite emergency procedures that are feasible and should be taken to protect the public?

We admitted seven contentions under Commission Question 4 in our April 23, 1982 order. We address them seriatim.

Contention 4.1

The plume exposure pathway EPZ should be expanded from its present 10-mile radius in order to meet local emergency response needs and capabilities.

The bases for this contention were set forth in the following filings:

- 1) UCS/NYPIRG Contentions (See Contentions II(A), II(B), and III(C));
- 2) Parents' Contentions (See Contention II, basis 7); and
- 3) Parents' Revision (See Original Contention II and Proposed Contention VII, based on Memorandum and Order, April 23, 1982 and basis 2).

The Board believes this contention is too broad as presently stated and has reformulated the contention as follows:

New Contention 4.1

The plume exposure pathway EPZ should be expanded from its present 10 miles radius in order to meet local emergency needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries.

As reformulated, the contention and its bases, meet the Commission's standards of specificity and importance and shall remain in the proceeding.

Contention 4.2

The following specific, feasible off-site procedures should be taken to protect the public:

- a) Potassium iodide should be provided in an appropriate form for all residents in the EPZ.
- b) Adequate sheltering capability should be provided for all residents in the EPZ.
- c) License conditions should prohibit power operation of Units 2 and 3 when the roadway network becomes degraded because of adverse weather conditions.
- d) The roadway network should be upgraded to permit successful evacuation of all residents in the EPZ before the plume arrival time.

The bases for this contention were set forth in the following filings:

- 1) UCS/NYPIRG Contentions (See Contention III(A), subparts (a), (b), (c), and (e)).
- 2) RCSE's Supplement (See Contention 4).

We retain this contention without change since it meets the Commission's criteria of providing a sound basis for exploring whether additional requirements are necessary for the Indian Point facility.

Contention 4.3

There are no feasible offsite emergency procedures which can adequately protect the public:

The bases for this contention were set forth in the following filings:

- 1) "Contentions of the Friends of the Earth, Inc., and New York City Audubon", dated December 2, 1981 (hereinafter FOE/Audubon Contentions) (See Contention 1);
- 2) WBCA's Reply (See Contention in reply to Question 4); and
- 3) WESPAC's Contentions (See Contention 5).

We have reviewed this Contention, its bases, and the comments made thereon during the April 13-14, 1982, prehearing conference, and have decided, in light of the Commission's guidance, that the contention must be deleted. It offers no new suggestions for improving emergency planning or plant safety. Mere criticisms of existing emergency plans provide nothing that is not already covered in contentions accepted under Commission Questions 3 and 1. Therefore, Contention 4.3 shall be eliminated.

Contention 4.4

The emergency plans should be upgraded by taking account of special groups with special needs in emergencies. In particular, provision must be made for evacuating persons who are dependent upon others for their mobility.

The bases for this contention were set forth in the following filings:

- 1) WESPAC's Contentions (See Contention 6);
- 2) Parents' Contentions (See Contention 1, basis (22) and Contention II, basis (7));
- 3) Parents' Revision (See Contention X); and
- 4) UCS/NYPIRG Contentions (See Contention I(B)(2), basis (6) and Contention I(A), basis (7)).

We have decided to delete this contention from consideration under Commission Question 4 because the contention and its bases challenge the adequacy of the emergency plan but do not offer specific additional emergency planning measures which should be required. However, we find that the bases mentioned above identify specific inadequacies in the plan which are important to answering Commission Question 3, and which might not be covered in the bases of contentions already admitted. Therefore, we have decided to reformulate Contention 4.4 as a contention to be considered under Commission Question 3. This contention shall be labelled Contention 3.10 and shall state as follows:

Contention 3.10

The emergency plan fails to conform to NUREG-0654 in that, contrary to Evaluation Criterion II.J.10.d. proper means for protecting persons whose mobility may be impaired have not been developed. Specifically, adequate provisions have not been made for groups named in the bases submitted for the following contentions:

WESPAC 6
Parents I, basis (22) and II basis (7)
UCS/NYPIRG I(B)(2), basis (6) and I(A) basis (7).

Contention 4.5

Specific steps must be taken by NRC, State, and local officials to promote a public awareness that nuclear power plant accidents with substantial offsite risks are possible at Indian Point.

The basis for this contention was set forth in "UCS/NYPIRG Contentions", in Contention I(B)(7).

Upon reconsideration of this contention and its basis, we have determined that a "sound basis" has not been provided for the suggested additional measure and that the contention does not meet the standard of specificity required under the Commission guidelines. Analysis of the TMI-2 accident alleging a failure of the NRC to promote the necessity for emergency planning in that case does not provide a sufficient basis to support a contention that more steps are necessary in this case, particularly in light of the emergency planning requirements embodied in NRC regulations since the TMI-2 accident. In addition, the essence of this contention, i.e., the need for advance public information, is encompassed in UCS/NYPIRG Contention I(A) (bases (7) and (9)), which has been accepted for litigation under Contention 3.1. Therefore, Contention 4.5 shall be eliminated.

Contention 4.6

A maximum acceptable level of radiation exposure for the public must be established before any objective basis will exist for adequate emergency planning.

The basis for this contention was set forth in "UCS/NYPIRG Contentions", in Contention I(B)(5).

We have determined that this contention should also be deleted from the proceeding. It calls for the establishment by the NRC of acceptable dose levels under accident conditions in order that responsible emergency planning can be evaluated. This contention challenges the NRC regulations without providing a sound basis for why such a measure is necessary for Indian Point in particular. Were the NRC to issue acceptable dose levels, they would apply to every nuclear facility.

Our responsibility is to look at 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. This contention does not meet that guidance.

Contention 4.7

The present emergency planning brochures and present means of alerting and informing the population of an emergency do not give adequate attention to problems associated with persons who are deaf, blind, too young to understand the instructions, or who do not speak English.

The bases for this contention were set forth in the following filings:

- 1) Parents' Contentions (See Contention I, bases (2), (17), and (22); and Contention II, basis (7));
- 2) Parents' Revision (See Contention XIII);
- 3) WESPAC's Contentions (See Contention 2, bases (e) and (f)).

Upon reconsideration of this contention and its bases, we have determined that parts of the contention are subsumed in contentions under Commission Question 3. In addition, as currently phrased the contention merely identifies inadequacies but does not suggest additional measures. On the other hand, the bases submitted do provide a sound basis for proposing additional measures that should be required to notify the special population groups listed in the contention, and this issue is not treated directly under Commission Question 3. In order to have the benefit of the parties testimony on this matter, and to conform with Commission guidance, we have decided to reformulate the contention as follows:

Reformulated Contention 4.7

The emergency plans should be upgraded to provide more adequate methods for alerting and informing persons who are deaf, blind, too young to understand the instructions, or who do not speak English.

Intervenor Assignments

Lead and contributing intervenor assignments for the retained contentions and for the reformulated contentions will be the same as listed in our April 23, 1982 order.

III. Consideration of Newly Proposed Contentions

NYPIRG in "NYPIRG's Submission" and Parents in "Parents Revision" have proposed new contentions which we discuss below.

NYPIRG Proposed Contentions

- I. The exercise process is not an adequate basis for determining aspects of emergency response capability for an accident at Indian Point.
- II. Letters of agreement, memoranda of understanding, and mutual aid agreements signed by the responsible local officials and by the emergency workers themselves should be the determining criteria in evaluating emergency response capability.

Parents' Proposed Contention

- XIV. Preparedness should be demonstrated by the willingness and ability of emergency workers in the field, by commitments in the form of letters of agreement from all emergency response agencies including schools, bus companies, fire departments, ambulance corps, and local Red Cross chapters, and by the approval, in the form of signatures on the plan, of elected officials of local governments which will be called upon to implement the plans.

NYPIRG supports its new Contention I by ten alleged bases which consist primarily of specific criticisms of the projected emergency planning exercise. NYPIRG proposes in its new Contention II certain evaluation criteria which would replace the drill as a means of determining the adequacy of emergency response capability at Indian Point. We view Parents new Contention XIII as substantially identical to NYPIRG's new Contention II.

We note also that NYPIRG presents its new Contention I as an alternative to our formulating a Board question on the exercise (NYPIRG's Submission at 2).

We have decided not to formulate a Board question on the exercise and not to admit the newly proposed contentions. We find that a Board question on the results of the exercise is unnecessary because, as we have indicated previously, we expect FEMA will report the results of the exercise to the Board and the parties. The results of the exercise will be subject to whatever scrutiny the Board believes to be essential at that time. Further, we decline to formulate a question on the adequacy of the exercise and the results of the exercise as a measure of preparedness at Indian Point or to admit NYPIRG's new Contention I because such a question or contention would challenge the regulations and violate Commission guidelines under Commission Question 3.

We reject NYPIRG's new Contention II and Parents' new Contention XIV for two reasons. To the extent the contentions allege that NUREG-0654

Evaluation Criterion II(A)(3) has not been complied with, the contentions are covered under previously admitted Contention 3.1 (See especially UCS/NYPIRG I(A) basis 3). To the extent the contentions propose new measures not required by FEMA or NRC, they are a challenge to the emergency planning regulations. While such a challenge is allowed under Commission Question 4, parties must provide a sound basis for such a contention and such a basis must be connected to the unique situation at Indian Point. NYPIRG and Parents have failed to show why such a requirement would be more necessary at Indian Point than at other nuclear power plants, and therefore, have failed to provide the sound basis required.

Upon consideration of the foregoing and the entire record in this matter, it is this 7th day of January, 1983,

ORDERED

1. That the following contentions set forth in our Order of April 23, 1982, shall be retained and litigated in this proceeding:

Under Commission Question 3

3.1, 3.3, 3.4, 3.5, 3.6, 3.7, and 3.9

Under Commission Question 4

4.1 and 4.2

2. That Contentions 4.3 and 4.7 shall be reformulated. As reformulated, old Contention 4.3 will be litigated under Commission Question 3 as Contention 3.10. Old Contention 4.7, as reformulated, retains its original number and will be litigated under Commission Question 4.

3. That Contentions 3.2, 4.5, and 4.6 shall be eliminated from the proceeding.

4. That the motions by NYPIRG and Parents for the admission of new contentions and formulation of a new Board Question are denied.

THE ATOMIC SAFETY
AND LICENSING BOARD

Oscar H. Paris

Dr. Oscar H. Paris
ADMINISTRATIVE JUDGE

Frederick J. Shon

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James P. Gleason

James P. Gleason, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland