

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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
OF NEW YORK

(Indian Point, Unit No. 2)

POWER AUTHORITY OF THE STATE
OF NEW YORK

(Indian Point, Unit No. 3)

Docket Nos. 50-247-SP
50-286-SP

February 25, 1983

MEMORANDUM AND ORDER

(Memorializing Conference Call of February 24, 1983)

MEMORANDUM

On February 24, 1983, this Board held a conference telephone call to address Licensees' motions to strike New York City Council Members' prefiled testimony on Commission Questions 3 and 4.^{1/} Participating in the conference were representatives for the Licensees Con Edison and The Power Authority, the NRC Staff, and the New York City Council (Intervenor). The conference was transcribed (Tr. 8923-58).

^{1/} The Power Authority's Motion to Establish Schedule and Limit Scope of New York City Council Testimony under Commission Questions 3 and 4 (February 7, 1983); Con Edison's Proposal For Scheduling Remaining Testimony on Commission Questions 3 and 4 (February 7, 1983). The New York City Council Members filed an answer in opposition to the motions on February 18, 1983, and filed a supplemental answer on February 22, 1983.

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At the outset of the conference, we indicated that we considered some of the testimony in question to be irrelevant; however, we had also concluded that Licensees' motions were late filed.

Intervenor then discussed the relevancy of its proffered testimony. Intervenor argued that its testimony was relevant under Commission Question 4; the testimony addressed the feasibility of protective measures beyond the ten-mile plume exposure pathway EPZ, and the basis for considering the necessity of desirability of additional protective measures lay in the accident scenarios testified to by Licensee and the NRC Staff.^{2/}

Licensee then argued that Intervenor's testimony did not address constructive improvements (specific, feasible recommendations) and therefore was ill-suited for consideration under Commission Question 4. The Licensee also viewed the testimony as an attack on the Commission's rule establishing plume exposure pathway EPZs as an area "about ten miles" in radius.^{3/} The NRC Staff supported Licensee's motion to the

^{2/} Commission Question 4 states:

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?

^{3/} Licensee also stated that it had interpreted prior Board rulings to hold that motions to strike should be raised at the time the proffering witness appears to testify. In rejoinder, the Board stated that its prior rulings merely held that it would rule on motions to strike at the hearing and prior to the testimony of the proffering witness; however, motions to strike should be filed in advance.

extent Licensees sought to exclude testimony that only concerned evacuation of New York City and that did not set forth any affirmative testimony regarding off-site emergency procedures which are feasible or should be taken.

Based on these arguments and the filings of the parties, we then ruled. We premised our ruling on the realization that there is no distinct demarcation of the Commission Questions; rather there are overlapping issues which in their totality address the risk posed by Indian Point. Therefore, we accepted testimony that addressed the issue:

In the event that a radiological accident at Indian Point could necessitate an evacuation or a relocation beyond the EPZ, the off-site emergency plans for the facility are inadequate.

We rejected, however, the testimony of Leonard Solon on seismicity as cumulative, the testimony of Nicholas Freudenberg as irrelevant, the testimony of Kim Hopper as immaterial, and the testimony of Robert Jorgan as irrelevant and immaterial. 10 CFR § 2.757. We also conditioned the admissibility of the testimony of David Gurin on the availability for cross-examination of the authors of the memorandum Mr. Gurin has included with his testimony.

ORDER

The Board reaffirms its rulings made during the conference call of February 24, 1983.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Oscar H. Paris
Administrative Judge

for: James P. Gleason, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
February 25, 1983