

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF INSPECTION AND ENFORCEMENT
Richard C. DeYoung, Director

In the Matter of

CONSOLIDATED EDISON COMPANY OF
NEW YORK
(Indian Point, Unit 2)

POWER AUTHORITY OF THE STATE OF
NEW YORK
(Indian Point, Unit 3)

Docket Nos. 50-247
50-286
(10 C.F.R. 2.206)

DIRECTOR'S DECISION UNDER 10 C.F.R. 2.206

By letter dated May 13, 1983, the County Attorney of Rockland County, New York, on behalf of the Rockland County Legislature, submitted Rockland County Resolution No. 302, passed on April 19, 1983 (Resolution), to the Directors of the Offices of Nuclear Reactor Regulation, Nuclear Material Safety and Safeguards, and Inspection and Enforcement for treatment as a petition under 10 C.F.R. 2.206 of the Commission's regulations. The Resolution requested that the Commission immediately suspend operation of the Indian Point Station, Units 2 and 3, until such time as the health, safety and welfare of Rockland County citizens could be assured. By letter dated June 13, 1983, the Rockland County Legislature renewed its request for relief in accordance with Resolution No. 302, asking that the Commission reverse its June 10th decision not to take enforcement action. These letters have been referred to the Director of the Office of Inspection and Enforcement for consideration as a request for action under 10 C.F.R. 2.206.

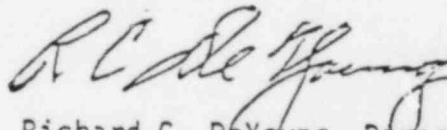
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JUN 29 1983

The Commission in its June 10, 1983 Order, CLI-83-16, ___ NRC ___, addressed the question of continued operation of the Indian Point facility, and concluded that the facility should not be shut down. For the reasons set forth in the Commission's June 10th order, the staff does not believe that the relief requested in the Rockland County Resolution is warranted at this time. Accordingly, the Rockland County Legislature's request for action pursuant to 10 C.F.R. 2.206 is hereby denied.

As provided by 10 C.F.R. 2.206(c), a copy of this decision will be filed with the Secretary for the Commission's review. This decision will constitute the final action of the Commission twenty-five (25) days after date of issuance unless the Commission, on its own motion, institutes a review of this decision within that time.



Richard C. DeYoung, Director
Office of Inspection and Enforcement

Dated at Bethesda, Maryland
this 29 day of June, 1983.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSIONERS:

Nunzio J. Palladino, Chairman
Victor Gilinsky
Thomas M. Roberts
James K. Asselstine



In the Matter of

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
(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

July 7, 1983

POWER AUTHORITY'S RESPONSE TO NYPIRG MOTION FOR
RECONSIDERATION OF JUNE 10, 1983 ORDER

ATTORNEYS FILING THIS DOCUMENT:

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PRELIMINARY STATEMENT

Power Authority of the State of New York ("Power Authority"), licensee of Indian Point 3 Nuclear Power Plant, hereby responds in opposition to the NYPIRG Motion for Immediate Reconsideration of the Commission's June 10, 1983 Order (the "June 10 Order"). Because the motion is untimely, identifies no matters of fact or law which the Commission overlooked, and improperly raises various new matters, it should be denied.

BACKGROUND

On May 5, 1983, the Commission issued an order (the "May 5 Order") subjecting the licensees to enforcement action based on two offsite emergency planning deficiencies cited on April 14, 1983 by the Federal Emergency Management Agency ("FEMA"). Those deficiencies related solely to (1) lack of written commitments for bus availability in Westchester County; and (2) Rockland County's non-participation in the formal State-sponsored emergency planning process.

In its subsequent Order, dated May 13, 1983 (the "May 13 Order"), the Commission allowed other parties to the Indian Point Special Proceeding to make comments "germane to this enforcement action." The May 13 Order explicitly cautioned that "the Commission does not intend to consider

comments that are not directly relevant to this enforcement action." May 13 Order at 2.

After entertaining extensive oral and written presentations from the licensees, FEMA, governmental units, and numerous parties to the Special Proceeding, the Commission issued its June 10, 1983 Order (the "June 10 Order") finding that the two significant deficiencies cited earlier had been adequately resolved. NYPIRG now belatedly requests that the Commission reconsider its June 10 Order.

THE NYPIRG MOTION SHOULD BE DENIED

A. The NYPIRG Motion is Untimely

10 CFR §2.771 expressly requires that a motion for reconsideration be filed within 10 days of a Commission decision. Pursuant to 10 CFR §2.771, any request for reconsideration was due no later than June 20. NYPIRG's motion for "immediate reconsideration" was filed several days late, on June 23. For this reason alone, the instant motion should be denied.

B. The Commission Did Not Overlook Relevant Matters of Fact or Law

It is well-settled that reconsideration of an order is appropriate only where the decisionmaking body has overlooked matters or controlling decisions that might reasonably

have altered the result originally reached. See, e.g., New York Guardian Mortgage Corp. v. Cleland, 473 F. Supp. 409, 420 (S.D.N.Y. 1979). The Commission overlooked no material factual or legal matters herein.

The Commission clearly acted within its legal discretion in finding the deficiencies adequately resolved by recent measures. See Rockland County v. NPC, No. 83-4003 (2d Cir., May 27, 1983). It is equally clear that the Commission considered the material facts.

There were but two issues before the Commission on June 10: bus availability in Westchester County and Rockland County's formal non-participation in the planning process. With respect to Westchester County, the Commission and FEMA were concerned about a lack of written commitments from bus operators. Those have been obtained, driver training has been accelerated, and the licensees have agreed to provide back-up drivers if necessary. In Rockland County, where State personnel proved to be effective substitutes for County personnel during the March 9, 1983 exercise, the State compensating plan has been rewritten to clarify the State role, and the licensees have identified employees who could substitute for County personnel, if needed.

The June 10 Order expressly reflects these developments.¹ The measures recently undertaken directly address the deficiencies cited earlier by FEMA. Therefore, the Commission overlooked no controlling matters.

C. The NYPIRG Motion Raises New Matter

A motion for reconsideration is limited to issues before the Commission in its earlier determination. See, e.g., Tennessee Valley Authority (Hartsville Nuclear Plants, Units 1A, 2A, 1B, and 2B), ALAB-467, 7 NRC 459 (1978); Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-477, 7 NRC 766 (1978). Both NYPIRG and UCS now raise matters on a "motion for reconsideration" which were not before the Commission earlier.

One example is the reference to a labor dispute involving certain employees of the Consolidated Edison Co. of New York, Inc. ("Con Edison"), licensee of Indian Point Station, Unit No. 2. Such an issue is an entirely new matter

¹ Union of Concerned Scientists' ("UCS") June 23, 1983 response in support of NYPIRG's motion (at p. 2) speculates that the June 10 Order was "written without benefit of review of the FEMA report on the status of planning and preparedness which was delivered to the Commission the day before the vote." This argument is belied on the face of the June 10 Order, which states that the Commission gave "careful consideration . . . to the most recent information which we have received from the Federal Emergency Management Agency." June 10 Order at 2.

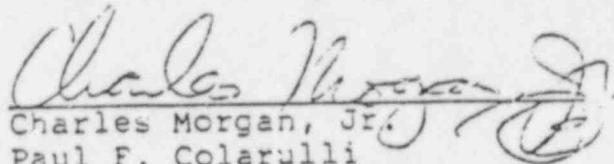
beyond the scope of the May 5 and June 10 Orders, upon which licensees have not had an opportunity to comment.²

A second example is the reference by NYPIRG and UCS to certain emergency planning items other than bus commitments in Westchester and the State compensating plan for Rockland. Those matters are beyond the scope of the May 5 and June 10 Orders and, in any event, were not cited as significant by FEMA. The May 13 Order placed UCS and NYPIRG on notice that such matters would not be considered.

For all of the foregoing reasons, the NYPIRG Motion for Immediate Reconsideration should be denied.

² Regardless, Power Authority employees committed to emergency planning are of course unaffected by the Con Edison dispute, and Con Edison has advised us that its employees committed to emergency planning are not involved in the dispute.

Respectfully submitted,


Charles Morgan, Jr.
Paul F. Colarulli
Joseph J. Levin, Jr.

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Dated: July 7, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Nunzio J. Palladino, Chairman
Victor Gilinsky
John F. Ahearne
Thomas M. Roberts
James K. Asselstine



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In the Matter of :

CONSOLIDATED EDISON COMPANY OF :
NEW YORK

(Indian Point, Unit No. 2) : Docket Nos. 50-247-SP
50-286-SP

POWER AUTHORITY OF THE STATE OF:
NEW YORK

(Indian Point, Unit No. 3) : July 7, 1983

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CON EDISON'S MEMORANDUM
IN OPPOSITION TO NYPIRG MOTION FOR
RECONSIDERATION OF JUNE 10 ORDER

Consolidated Edison Company of New York, Inc., licensee of Indian Point Unit 2 hereby responds in opposition to the NYPIRG Motion for Immediate Reconsideration of the Commission's June 10, 1983 Order (the "June 10 Order").

On May 5, 1983, the Commission issued an order (the "May 5 Order") subjecting the licensees to enforcement action based on two offsite emergency planning deficiencies cited on April 14, 1983 by the Federal Emergency Management Agency ("FEMA"). Those deficiencies

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related solely to (1) lack of written commitments for bus availability in Westchester County; and (2) Rockland County's non-participation in the formal State-sponsored emergency planning process.

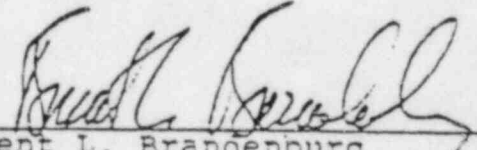
There were but two issues before the Commission on June 10: bus availability in Westchester County and Rockland County's formal non-participation in the planning process. With respect to Westchester County, the Commission and FEMA were concerned about a lack of written commitments from bus operators. Those have been obtained, driver training has been accelerated, and the licensees have agreed to provide back-up drivers if necessary. In Rockland County, where State personnel proved to be effective substitutes for County personnel during the March 9, 1983 exercise, the State compensating plan has been rewritten to clarify the State role, and the licensees have identified employees who could substitute for County personnel, if needed.

After entertaining extensive oral and written presentations from the licensees, FEMA, governmental units, and numerous parties to the Special Proceeding, the Commission issued the June 10 Order finding that major steps had been taken to resolve the two significant deficiencies cited in its earlier May 5 Order. NYPIRG now belatedly requests that the Commission reconsider its June 10 Order.

NYPIRG should not be permitted to relitigate endlessly arguments which the Commission has already fully considered and laid to rest. The only matter raised by NYPIRG which could be considered at all new is the significance of work stoppages at Con Edison to licensees' abilities to support the State of New York's compensating measures plan for Rockland County. As indicated in the attached letter from Con Edison's John D. O'Toole to H.W. Crocker of NRC Region I dated July 1, 1983, this activity is going forward unimpeded and a great number of Con Edison employees have already been trained. To our knowledge, there have been no material changes in compensating measures planning for Rockland County since the overall program was outlined to the Commission by the licensees and FEMA prior to the June 10 Order.

For all of the foregoing reasons, the NYPIRG Motion for Immediate Reconsideration should be denied.

Respectfully submitted,


Brent L. Brandenburg
Assistant General Counsel
CONSOLIDATED EDISON COMPANY OF
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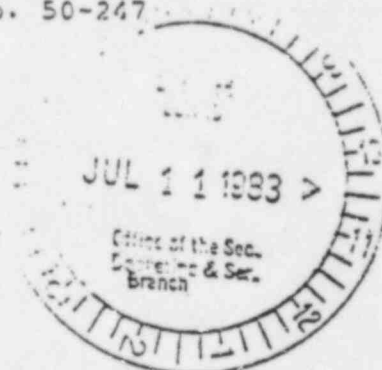
Dated: New York, New York
July 7, 1983

Consolidated Edison Company of New York, Inc.
4 Irving Place, New York, NY 10017
Telephone (212) 400-2533

July 1, 1983

Re: Indian Point Unit No. 2
Docket No. 50-247

Mr. H. W. Crocker
Chief, Emergency Preparedness Section
Region I, Nuclear Regulatory Commission
631 Park Avenue
King of Prussia, PA 19406



Dear Mr. Crocker:

By telephone on June 30, 1983, Mr. Dennis McCloskey, Manager of Emergency Planning, Con Edison, provided you with information concerning the Company's program to assist New York State in carrying out field emergency response activities detailed in the Radiological Emergency Response Interim Plan for Implementing Compensating Measures for Rockland County. This letter constitutes confirmation of the information provided.

New York State has asked the Indian Point licensees to provide 418 volunteers. At present, the distribution of Con Edison volunteers by assignment is:

<u>Assignment</u>	<u>Requested by NYS</u>	<u>Con Edison Management Volunteers</u>
Dose Assessment: EOC	2	0
Field Monitors	4	4
Personnel Monitors	50	25
Ambulance Crew Members	45	23
Reception Center Workers	80	40
Bus Drivers	185	50
Traffic Controllers	<u>52</u>	<u>26</u>
TOTAL	418	168

The remaining personnel presently are being provided by the New York State Power Authority.

The 168 volunteers provided by Con Edison are all management employees of the Company. They may be supplemented by 47 additional management personnel who have volunteered for assignments. Should any of these additional volunteers be assigned, they will receive appropriate training.

Substantial training has already been completed and additional training is continuing. The following training status pertains to Con Edison management volunteers only.

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July 1, 1983

To date, 176 Company volunteers have received an 8-hour course in basic radiation safety. Training for the remaining volunteers will be completed by July 8.

Forty Con Edison volunteers have completed the 4-hour personnel monitoring course.

Five bus drivers took the 40-hour bus driver training course this week. Thirty more are scheduled for the course next week, and the remaining management volunteers will be trained the week of July 11. Arrangements have already been made with the NYS Department of Motor Vehicles for the actual road tests, and we anticipate our management bus driver volunteers to be fully licensed by August 1.

CPR and first aid training will also be completed by July 15. To date, 15 volunteers have received the 8-hour CPR certificate, and 6 have received the 8-hour first aid certificate. Training in these two areas is required by the State for only a limited number of reception center workers and ambulance crew members.

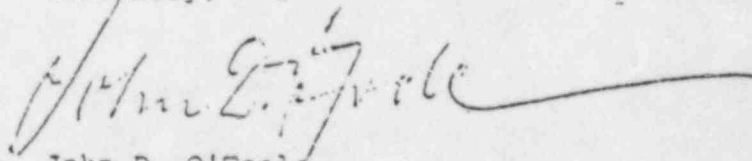
New York State and the Red Cross have scheduled reception center worker task and field training to begin July 7. This training is scheduled to be completed by July 23. Field training will also be scheduled by the State.

Task and field training specific to the State plan for the remaining assignment areas is now being developed by New York State. Our volunteers are prepared to attend these training sessions at any time and at any location they are held.

With regard to equipment, we have made no formal commitments to provide any at this time for activities related to the State's interim plan.

If you have any questions regarding the foregoing, please do not hesitate to contact us.

Sincerely,



John D. O'Toole
Vice President

CC: Donald B. Davidoff
Director, New York State Radiological
Preparedness Group

Philip McIntire
Region II
Federal Emergency Management Agency