

August 13, 1982



SECY-82-337

**ADJUDICATORY ISSUE**  
(Notation Vote)

For: The Commissioners

From: Leonard Bickwit, Jr.  
General Counsel

Subject: INDIAN POINT SPECIAL PROCEEDING - ORDER  
RESPONDING TO LICENSING BOARD'S  
CERTIFIED QUESTIONS

Discussion: Attached is a draft Commission order  
responding to certified questions  
contained in a Licensing Board  
"Memorandum and Certification (Seeking  
Further Commission Guidance)", dated  
August 9, 1982. The Board seeks  
Commission guidance in two areas:  
(1) clarification of the Commission's  
intent regarding the requirement for  
testimony to address both probabilities  
and consequences; and (2) advice as to  
the scope of the hearing in light of  
recent FEMA and Staff actions concluding  
that there are deficiencies in the  
Indian Point emergency plans.

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

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

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 No.s 50-247  
50-286

ORDER

CLI-82-

The Commission issued a Memorandum and Order on July 27, 1982 offering guidance to the Licensing Board in this special proceeding. CLI-82-15. The Board has now certified several questions to the Commission regarding its intent in issuing that Memorandum and Order and the future course of the proceeding in light of recent developments in emergency planning. Memorandum and Certification, August 9, 1982 (hereinafter "Board Order"). Those questions are as follows:

- 1a. Must each witness's testimony address both consequences and probabilities, or must each party address both factors in its direct case?

- 1b. Alternatively, may we hear a combination of consequence and probability testimony taken from different sources, e.g., from the testimony of witnesses presented by different parties, or from cross-examination?
- 2a. Shall we continue to hear evidence on the "status and degree of conformance with NRC/FEMA guidelines" aspect of Question 3 and the "improvements in the level of emergency planning" and "time schedule" aspects of Commission Question 4?
- 2b. If we limit our proceeding to the "minimum hours warning" aspect of Question 3 and the "other specific offsite emergency procedures" aspect of Question 4, should we investigate those matters as they are now or as they are expected to be in four months?

Board Order at 4-6 [footnotes omitted].

Questions 1a and 1b are motivated, the Board tells the Commission, by a concern that its order might mean that only those witnesses who can qualify as experts in multiple and diverse fields can testify on accident risks. That was not the Commission's intention. It intended that each party (or each group of parties consolidated by the Board\*/) be required to include in any direct testimony and related contentions (and underlying bases) that it may choose to file on accident consequences a discussion of the probability of the accidents leading to the alleged consequences. It is clearly not sufficient for a party offering testimony and contentions on consequences to rely

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\*/ See 10 CFR 2.751a.

on the probability testimony (including cross-examination) or contentions and bases of another non-consolidated party.

Turning to Questions 2a and 2b, the Board notes that the NRC staff has started the "120-day clock" pursuant to 10 CFR §50.54(s)(2)(ii) as a result of a July 30, 1982 report by FEMA in which FEMA found deficiencies in the Indian Point emergency plan. Board Order at 5. In light of this development, and based upon the Commission's perception that to hear testimony regarding what is likely to be a rapidly changing situation would be wasteful of the time and resources of the Board and the parties, the Commission believes that the Board should (after reconsidering its rulings on the contentions and completing any necessary prehearing matters) proceed first to take evidence on Commission questions 1, 2, 5, 6 and 7. Then, if the concerns that prompted the Board to certify questions 2a and 2b are resolved at the conclusion of the testimony on these other Commission questions, the Board is to proceed to take evidence on questions 3 and 4 under the Commission guidance previously provided. If the concerns remain at this later date, then the Board should return to the Commission for further guidance. The Commission recognizes that evidence on plant risks (in particular questions 1 and 5) may depend to some extent on assumed levels of emergency response. However, it believes that the parties can present testimony concerning accident risks based on assumptions as to ranges of emergency responses. Any disputes as to the feasibility



or likelihood of particular emergency response testimonial assumptions can be either addressed expeditiously without inquiring into details of questions 3 and 4 or postponed until questions 3 and 4 are addressed on their merits.

It is so ORDERED.

For the Commission,

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SAMUEL J. CHILK  
Secretary of the Commission

Dated at Washington, D.C.

this \_\_\_ day of \_\_\_\_\_, 1982