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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

82 OCT 14 P4:17

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges
James P. Gleason, Chair
Frederick J. Shon
Dr. Oscar H. Paris

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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In the Matter of: :
:
CONSOLIDATED EDISON COMPANY OF NEW YORK : Docket Nos.
INC. (Indian Point, Unit No. 2), :
:
POWER AUTHORITY OF THE STATE OF NEW YORK : 50-247 SP
(Indian Point, Unit No. 3) : 50-286 SP
:
October 13, 1982
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NEW YORK CITY COUNCIL MEMBER
MOTION IN RESPONSE TO ASLB
MEMORANDUM AND ORDER
(October 1, 1982)

NEW YORK CITY COUNCIL MEMBERS granted Interested State
status by this Atomic Safety and Licensing Board hereby moves
this Board for an ORDER:

1. Clarifying the meaning and import of the term
discussion as utilized by this Board in its
MEMORANDUM AND ORDER of October 1, 1982 (p. 4);
2. Granting NEW YORK CITY COUNCIL MEMBERS an ex-
tension beyond October 15, 1982 for it to determine
its position regarding the issue of consolidation
(see, MEMORANDUM AND ORDER, p. 38); and
3. Reversing this Board's current position regarding
the taking of testimony on Commission Questions
3 and 4; and establishing a schedule which will
allow NEW YORK CITY COUNCIL MEMBERS (and other
Interested States) to present testimony on
Commission Questions 3 and 4 immediately upon
the expiration of the 120-day clock now in effect.

DISCUSSION

Points 1 and 2:

In its MEMORANDUM AND ORDER this Board states:

...each party or group of parties consolidated by the Board pursuant to 10 CFR §2.715a which offers testimony not yet heard on accident consequences must also offer a discussion of the probability of the accidents leading to the alleged consequences. Some discussion of that probability must be presented in a party's (or group of parties') direct testimony. It may be based on calculations performed by the party itself or on information developed by another party, including the NRC Staff or the Licensees, which may be obtained through discovery. A party's discussion on probability may be elaborated upon later and offered as rebuttal testimony, if appropriate, after the party has obtained more information through direct testimony and cross-examination. (P. 4).

NEW YORK CITY COUNCIL MEMBERS request that this Board clarify its use of the term discussion. It is unclear, at least to this participant in this investigation, whether the Board views a discussion of the probability issue as a condition precedent for the introduction of testimony on consequences under Commission Question 1; or whether the discussion will be treated as evidence itself, or both.

Given its lack of clarity on this issue, NEW YORK CITY COUNCIL MEMBERS also request that it not be required to determine its position regarding the matter of consolidation until such decision might be informed by an understanding of this Board's interpretation of the meaning of the term discussion.

Point 3:

NEW YORK CITY COUNCIL MEMBERS filed testimony with this Board, pursuant to Board directive, responsive to Commission Questions 3 and 4 on July 23, 1982. This testimony was not directed at or responsive to particular contentions articulated by this Board in its MEMORANDUM AND ORDER of April 23, 1982. Rather it was responsive to the Commission Questions themselves.

As a result of the the July 30, 1982 report by the Federal Emergency Management Agency (FEMA), the NRC Staff activated a 120-day clock pursuant to 10 CFR §50.54(s)(2)(ii). In light of this development, the Commission, in its ORDER regarding the future conduct of this proceeding, stated that the Board "...can...proceed first to take evidence on Commission Questions 1,2,5,6 and 7.", before completing Questions 3 and 4. (Commission Order CLI-82-25, September 17, 1982). At the time of this ORDER, NEW YORK CITY COUNCIL MEMBER testimony, though filed, had not been heard.

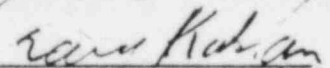
The Commission's reasons for its procedural approach, as adopted by this Board, rest on a concern for an expeditious and thorough hearing. This interest is, of course, shared by NEW YORK CITY COUNCIL MEMBERS. It is agreed that it would be wasteful to spend the time taking testimony on a situation likely to be changing rapidly during the 120-day period as a result of State, County and Licensee activity responsive to the FEMA report.

If the testimony that has been filed by the COUNCIL MEMBERS could be affected by the State, County and Licensee activity there would be good reason to postpone the hearing of such testimony. This is not the case, however. Nor is it the case that any reformulation of the contentions under Commission Questions 3 and 4 as a result of events occurring during the 120-day period will affect the relevance of the NEW YORK CITY COUNCIL MEMBER offering, as the COUNCIL MEMBER testimony is directed at the Questions themselves and not at the contentions thereunder.

For these reasons, NEW YORK CITY COUNCIL MEMBERS submit that the interests of expedition and thoroughness will be served by this Board receiving testimony from the COUNCIL MEMBERS on Commission Questions 3 and 4 during the month of December (or earlier, if possible) while the Board itself reformulates the contentions under Questions 3 and 4 in light of the developments that may occur during the 120-day period; and while all the participants in these hearings are completing discovery and testimony preparation for Commission Questions 1,2,5 and 6.

WHEREFORE, NEW YORK CITY COUNCIL MEMBERS granted Interested State status in these proceedings prays for an ORDER granting the herein requested relief and any other relief that to this Atomic Safety and Licensing Board may seem proper.

Respectfully submitted,


Craig Kaplan, Special Counsel,
National Emergency Civil Liberties Comm.
for NEW YORK CITY COUNCIL MEMBERS

Dated: October 13, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of)
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CONSOLIDATED EDISON COMPANY)
OF NEW YORK (Indian Point, Unit 2))
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POWER AUTHORITY OF THE STATE OF)
NEW YORK (Indian Point, Unit 3))

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

October 13, 1982

CERTIFICATE OF SERVICE

I hereby certify that copies of NEW YORK CITY COUNCIL MEMBER MOTION IN RESPONSE TO ASLB MEMORANDUM AND ORDER (October 1, 1982) in the above captioned proceeding have been served on the following by deposit in the United States mail, first class, this 13rd day of October, 1982.

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