

# STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY 12223

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October 29, 1982

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Washington, D.C. 20555

Dr. Oscar H. Paris  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: 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-SP and  
50-286-SP

Dear Administrative Judges:

By order dated October 12, 1982 you scheduled a pre-hearing conference for November 3rd and 4th, 1982 in the above-captioned proceeding. Various submissions have sought to raise the scheduling of emergency testimony as an issue for discussion at the pre-hearing conference. The New York State Radiological Emergency Preparedness Group (REPG) believes that consideration of the scheduling of emergency planning testimony clearly should not be done at this time. However the press of other business makes it difficult for me to travel to White Plains to speak at a conference at which I believe emergency planning will be, at best, a peripheral issue. Other representatives of (REPG) knowledgeable about emergency planning are heavily engaged in responding to the institution of the 120-day clock. I respectfully request that the Board excuse my absence and that of my colleagues and consider this letter as New York State's response to the submissions on the scheduling of emergency planning issues.

In your October 1, 1982 Order you concluded, after reflecting on arguments by Con Edison and NRC Staff, that your time would be wasted by formulating contentions on emergency planning prior to the expiration of the 120-day clock. Intervenor, by counsel for the Union of Concerned Scientists, request reconsideration of the Board's October 1 decision, arguing that contentions on emergency planning should be drafted prior to the expiration of the 120-day clock. Intervenor claim that even those contentions arguably affected by the 120-day clock will not change and that the Board can therefore proceed to reformulate emergency planning contentions without even knowing what the expiration of the 120-day clock will bring.

Commission Question Three anticipates contentions on the compliance of emergency planning with NRC/FEMA requirements. Question Four anticipates contentions as to what additional emergency planning measures are necessary. The Commission's July 27, 1982 Memorandum and Order requires (pg. 12) that contentions should be offered with a statement of bases and stated with reasonable specificity and should thereafter be screened for importance by the Board. The Board cannot follow the Commission's instructions without knowing FEMA's evaluation of the efforts during the 120-day period to re-evaluate offsite planning. Any drafting of contentions on emergency planning must therefore be delayed until after the 120-day clock expires.

Intervenor also propose a schedule for the taking of testimony on emergency planning. It is incorrect to set a schedule for testimony without first knowing what contentions will be addressed. It is even more incorrect to set a schedule for testimony without knowing the Commission's determination at the end of the 120-day period. The Commission's decision may range the gamut from approval of the offsite plans to a requirement that the Indian Point plants be closed. The situation could very possibly remain in a flux that precludes any scheduling of testimony on emergency planning.

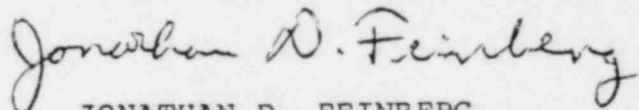
Since the emergency planning situation very possibly will remain uncertain it is impossible for me to comment now upon Intervenor's proposal that the State of New York and the Licensees should file testimony two weeks after the expiration of the 120-day clock. I can state that two weeks may possibly not be sufficient time to appraise the results of the 120 day period. I do wish however to correct Intervenor's statement that the testimony of Interested States, including New York State, does not depend upon contentions and therefore the presentation of the Interested States' testimony should not be delayed for reformulation of contentions (pg. 9 of Intervenor's response). The State of New York recognizes its responsibility to assist the Board in providing a record that

focuses on the Commission's questions. In preparing its first set of pre-filed testimony REPG attempted to discuss the Commission's contentions as fully as the available time and the specificity of those contentions would allow. I expect that the supplemental testimony on emergency planning, if any, filed by New York State in this proceeding will be responsive to the directions the Board embodies in its contentions. Therefore I do not believe our testimony should be presented or even filed prior to the drafting of contentions.

/ Rockland and Westchester Counties propose that their testimony be heard immediately after the conclusion of the 120 day clock. Rockland County apparently does not wish to consider any changes due to the 120 day clock while Westchester believes that new developments could be reflected in oral modifications of its testimony. Rockland's withdrawal from the planning process was one of the reasons why offsite planning was found to be deficient. We suggest that Rockland should consider how that withdrawal is treated by the offsite emergency planners at the conclusion of the 120 day period. Westchester's proposal that it can be allowed to change its position without prefiling testimony is unfair to the other parties and should be rejected. Moreover, Westchester is also mistaken in arguing that the reformation of contentions would not affect its testimony. The Licensing Board could, for instance, request Westchester and Rockland to supply further information on county resources, if necessary. The most appropriate action is to defer any consideration as to when the Counties' testimony should be heard until after the 120-day clock has run.

I thank the Board for considering my response. Again I must request the Board to excuse my absence.

Respectfully submitted,



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cc: Service List