

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD⁸³

Before Administrative Judges:
James P. Gleason, Chairman
Frederick J. Shon
Dr. Oscar H. Paris

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In the Matter of)	
)	
CONSOLIDATED EDISON COMPANY OF)	Docket Nos.
NEW YORK, INC.)	50-247 SP
(Indian Point Unit No. 2))	50-286 SP
)	
POWER AUTHORITY OF THE STATE OF)	
NEW YORK)	Feb. 28, 1983
(Indian Point, Unit No. 3))	
)	

LICENSEES' MOTION TO STRIKE
PRE-FILED TESTIMONY UNDER COMMISSION
QUESTIONS 3 AND 4 OF STEVEN R. MESHNICK

Consolidated Edison Company of New York, Inc. and the Power Authority of the State of New York, licensees of Indian Point Units 2 and 3, respectively, hereby move to strike the pre-filed testimony under Commission Questions 3 and 4 of Steven R. Meshnick, witness for the New York City Council. The basis for this motion is that, in disregard of the Nuclear Regulatory Commission's (Commission's) and Atomic Safety and Licensing Board's (Board's) orders, neither this testimony nor any companion testimony discusses the probability at Indian Point of the type of accident presumed in this testimony.

The Commission has stated that

[a] party providing testimony on consequences must provide at least some discussion of probability [at Indian Point]. The probability discussion should be at least as detailed as the consequences discussion so that risk can be discussed in the same level of detail. We would anticipate that the Board would in its discretion give varying weight to testimony depending on its level of detail

Order at 4 (Sept. 17, 1982) (emphasis added). However, the testimony Dr. Meshnick fails to satisfy the Commission's minimum requirements, for it provides no discussion at all of the probability of the PWR 4-type accident upon which he bases his testimony occurring at Indian Point.

Nor does Dr. Meshnick's testimony "discuss" probability as mandated by the Board. The Board has defined "discussion" as

the consideration or examination by argument of the probability associated with consequences: i.e., a party must . . . offer reasoning or evidence to support its position on probability.

Mailgram (Oct. 29, 1982). Dr. Meshnick fails to offer any evidence to support his position on probability. Indeed, he takes no position at all on probability, a course of action clearly not contemplated by either the Board or the Commission.

In ruling on Licensee's Motion to Strike Pre-Filed Testimony Under Commission Question 1 of Daniel N. Pisello, Richard G. Piccioni, H. Jack Geiger, and Victor W. Sidel,

and Renewed Motion to Strike Testimony of Brian Palenik and Jan Beyea Under Commission Questions 3 and 4 (Feb. 9, 1983), the Board stated that testimony which fails to link probabilities with consequences "is not going to have much evidentiary value as far as the Board is concerned." Transcript at 8187 (Feb. 16, 1983). In fact, "there is a question of relevance to it." Id.

This standard is in stride with the Commission's regulations.

Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable.

10 C.F.R. § 2.743(c) (1982) (emphasis added); accord In re Consumers Power Co. (Midland Plant, Units 1 and 2), 14 N.R.C. 1768, 1781 (1981); In re Illinois Power Co. (Clinton Power Station, Units 1 and 2), 2 N.R.C. 579, 587 (1975). Having recognized that testimony which fails to link probabilities with consequences is irrelevant,¹ the Board is obligated to exclude all such testimony from this hearing.

1. In addition, such testimony is immaterial, for it fails to aid in the determination of the pending action. See In re Consumers Power Co. (Midland Plant, Units 1 and 2) 14 N.R.C. 1768, 1781 (1981).

Further, even the discussion of consequences in Dr. Meshnick's testimony would not be helpful to the Board since it is cumulative and repetitious of other testimony already presented in this proceeding. Specifically, the Board has already heard many hours of testimony from Dr. Jan Beyea¹ and Drs. Daniel Pisello and Richard Picinn² regarding the radiological consequences to New York City resulting from an accident at Indian Point. Since nothing substantially new is added by Dr. Meshnick's testimony, it should be stricken on that ground alone³.

1. See Tr., 2898-3324

2. See Tr., 8063-8172


3. See 10 CFR § 2.743(c)

Accordingly, the licensees request that the Board strike from this proceeding the testimony of Steven R. Meshnick presented under Commission Questions 3 and 4.

Respectfully submitted,

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Dated: February 23, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
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NEW YORK, INC. (Indian Point, , 50-286-SP
Unit No. 2) :
POWER AUTHORITY OF THE STATE OF :
NEW YORK, (Indian Point, :
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CERTIFICATE OF SERVICE

I certify that I have served copies of Licensees' Motion to Strike Pre-filed Testimony Under Commission Questions 3 and 4 of Steven R. Meshnick on the following parties by deposit in the United States mail this 28th day of February, 1983.

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Dated: February 28, 1983

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