

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

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

Docket Nos. 50-247 SP
50-286 SP

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

January 24, 1983

UCS/NYPIRG RESPONSE TO MEMORANDUM
AND ORDER (REFORMULATING CONTENTIONS
UNDER COMMISSION QUESTIONS 3 AND 4)
of JANUARY 7, 1983

By Memorandum and Order dated January 7, 1983, the Board reinstated some contentions as formulated in its April 23, 1982 Memorandum and Order; reformulated three contentions; and eliminated four contentions from the above captioned proceeding. Additionally, the Board denied the motions of Parents Concerned About Indian Point (Parents) and NYPIRG to admit a new contention, or in the alternative to formulate a Board questions, relating to the adequacy of drills and exercises to evaluate preparedness. UCS/NYPIRG respectfully submit the following response.

Reinstated Contentions 3.1, 3.3, 3.4
3.6, 3.7, 3.9 and 4.2

UCS/NYPIRG support the Board's decision to reinstate these contentions, unaltered, in the proceeding.

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Reformulated Contentions 4.1, 4.4
(New Contention 3.10) and 4.7

UCS/NYPIRG support the Board's decision to reformulate contentions 4.1, 4.4, and 4.7, and agree to litigate former contention 4.4 under Commission question 3 as new contention 3.10.

Deleted Contentions 3.2, 4.3, 4.5 and 4.6

Contention 3.2

Emergency planning for Indian Point Units 2 and 3 is inadequate in that the plans make erroneous assumptions about the response of the public and of utility employees during radiological emergencies.

UCS/NYPIRG object vigorously to the elimination of contention 3.2 from the proceeding. The contention is basic to Commission question 3 because it challenges the methodology used by planners to fulfill the obligations of the Licensees under FEMA/NRC guidelines in NUREG-0654 and NRC regulations at 10 CFR Part 50. A critique of the assumptions upon which the plans are based is a critical step in determining meaningful conformance of the plans with FEMA/NRC guidelines.

All of the witnesses proffered by UCS/NYPIRG under contention 3.2 have prefiled testimony which is relevant to other contentions, but without a specific contention challenging human response assumptions, intervenors' direct case will be thrown into confusion and prejudiced.* Each piece of testimony is part of the whole case; all pieces are necessary to complete the picture. Although any single witness might not present the whole picture, together the witnesses proposed under contention 3.2 examine the emergency response plans in light of local conditions, and the entire sequence adds up to proof that "erroneous assumptions about the response of the public and of utility employees during radiological emergencies" will doom the plans to failure.

* Rockland Citizens for Safe Energy (RCSE), West Branch Conservation Association (WBCA), Westchester People's Action Coalition (WESPAC) and Parents Concerned About Indian Point (Parents) have submitted testimony on Contention 3.2, in addition to UCS/NYPIRG.

The Board's objections that "if the substance of this contention were proven valid at Indian Point, it would be valid at other nuclear facilities as well" is neither true nor logical. UCS/NYPIRG and other intervenors in this proceeding have not challenged the assumptions underlying emergency planning at other nuclear power plants. It may be that other licensees and their contractors, or other State and local governments, have in some instances incorporated human response information into their planning process. Intervenors in this proceeding challenge the adequacy of planning at Indian Point, the plant located in the most densely populated area of the country, where the numbers of people involved make human response considerations uniquely important.

Human response factors will have a critical effect on the time it takes to mount an effective emergency response in case of an accident at Indian Point. Tens of thousands of vehicles on narrow, winding, hilly roads that go only north and south; no major east-west routes; major evacuation routes that end in bridges; geographical features such as mountains and the Hudson River; frequent snowstorms and rains which cause flooding conditions on evacuation routes; local residents are aware of these features and believe they will impede a smooth, rapid flow of traffic out of the area. To understand the significance of local impediments for the feasibility of evacuation at Indian Point, we must consider how people will respond to them. Expert testimony is appropriate for this question.

Furthermore, the well documented "shadow effect" of ad hoc evacuation of people outside the 10 mile emergency planning zone, is particularly critical in evaluating plans for a nuclear reactor located so close to New York City. The "shadow effect," with all the human response inherent in that concept, could potentially involve the movement of millions, not just hundreds of thousands, of people.

Any problems resulting from the human response to a radiological emergency will be magnified at Indian Point, and the consequences of ignoring the human response factor will be far more horrifying than such consequences in a less densely populated area. The human response contention has a vital nexus to the "central point of this investigation, viz, the uniquely populous environs of Indian Point."

Contention 4.3

There are no feasible offsite emergency procedures which can adequately protect the public.

Contention 4.3 was not based on any UCS/NYPIRG contention or bases, and UCS/NYPIRG were not assigned lead or contributing intervenor responsibility regarding this contention in the Memorandum and Order of April 23, 1982. Therefore, UCS/NYPIRG take no position on the elimination of this contention.

Contention 4.5

Specific steps must be taken by NRC, State, and local officials to promote a public awareness that nuclear power plant accidents with substantial offsite risks are possible at Indian Point.

Contention 4.5 has been eliminated with the proviso that issues of public education and information will be litigated under Contention 3.1. UCS/NYPIRG urge the Board to reconsider and reinstate the contention under Commission question 4. The contention includes a suggestion of "specific offsite emergency procedures that are feasible and should be taken to protect the public," namely, that the NRC and State and local officials should promote an awareness of the dangers of nuclear power in order to ensure that effective emergency plans are created and implemented.

The recent decision^{*} by the Commission to take no action under 10 CFR 50.54(s)(2)(ii) against the Indian Point Licensees, despite a finding by FEMA that significant deficiencies exist in at least two planning standards under NUREG-0654, is the latest episode in a history of erratic enforcement of the planning regulations. The determination that "no shutdown or other enforcement action is needed at this time" has undermined the planning process in the vicinity of Indian Point, and can be corrected only by vigorous NRC action to promote an awareness of the importance of emergency planning, and to emphasize that the Licensees

^{*}DECISION CLI-82-38, December 22, 1982

are in fact required to assure that "appropriate protective measures can and will be taken in the event of a radiological emergency."

In the event that the Board refuses to reconsider and reinstate Contention 4.5, UCS/NYPIRG are prepared to litigate issues of public information under contention 3.1.

Contention 4.6

A maximum acceptable level of radiation exposure for the public must be established before any objective basis will exist for adequate emergency planning.

Contention 4.6 was rejected by the Board on the grounds that UCS/NYPIRG did not provide "a sound basis for why such a measure is necessary for Indian Point in particular."

UCS/NYPIRG argue that dose levels established for Indian Point need not apply at every site, but acceptable dose levels must be promulgated to measure the feasibility of implementing the emergency response plans in the dense population area around Indian Point. The feasibility of an evacuation of the population affected by Indian Point is marginal; the density of population makes an extended time for evacuation critical. There can be no objective evaluation of the effectiveness of evacuation as an emergency response option in the amount of time such a response would realistically take unless acceptable dose levels are established. Dose levels will be a yardstick against which to measure evacuation time estimates and the effects of such factors as human response on the time estimates.

Consideration of Newly Proposed Contentions

NYPIRG Proposed Contentions

- I. The exercise process is not an adequate basis for determining aspects of emergency response capability for an accident at Indian Point.
- II. Letters of agreement, memoranda of understanding, and mutual aid agreements signed by the responsible local officials and by the emergency workers themselves should be the determining criteria in evaluating emergency response capability.

Parents' Proposed Contention

- IV. Preparedness should be demonstrated by the willingness and ability of emergency workers in the field, by commitments in the form of letters of agreement from all emergency response agencies including schools, bus companies, fire departments, ambulance corps, and local Red Cross chapters, and by the approval, in the form of signatures on the plan, of elected officials of local governments which will be called upon to implement the plans.

UCS/NYPIRG urge the Board to reconsider its negative decision regarding a contention or a Board question on the exercise. The newly proposed contentions, as formulated by Parents and by NYPIRG, by suggesting alternative criteria for evaluating major portions of emergency response capability and to identify deficiencies, both refer to specific "other off-site measures which are feasible and which should be taken to protect the public" around Indian Point, and should therefore be litigated under Commission question 4.

Such a requirement would be more necessary at Indian Point than at other nuclear power plants precisely because of the "uniquely populous environs" of Indian Point. At other locations, where the emergency response effort would not be so massive, periodic exercises and drills might be sufficient to evaluate emergency response capability. But for the Indian Point site, the emergency planning exercise cannot, by its very nature, do what is required by NUREG-0654, Planning Standard N, Evaluation Criteria 1.a., that is, "test...a major portion of the elements" of the emergency preparedness plans and "simulate an emergency that results in offsite radiological releases..." It is impossible to simulate a radiological emergency in the suburbs of New York City. NYPIRG listed major portions of the plans which cannot be tested in its "Submission in Support of Contentions on Questions 3 & 4..." dated December 28, 1982. Therefore, intervenors proposed another evaluation criteria based on commitments from the emergency organizations, the emergency workers, and officials of local governments which will be called upon to implement the plans.

The Board has no basis for presuming that all information necessary for resolving the Commissioners' concerns about exercise per-

formance and the adequacy of off-site preparedness as a function of exercise performance, will be provided by FEMA testimony and "whatever scrutiny [of it] the Board believes to be essential at that time." The record of this proceeding already demonstrates that reliance on FEMA findings and reports cannot be assumed to guarantee full and complete information on emergency planning and preparedness at Indian Point. The testimony of intervenor and interested state witnesses has provided and will provide further crucial information necessary for answering Commission questions 3 and 4. This information was not provided by FEMA reports or testimony, could not have been elicited through cross-examination of FEMA witnesses, and in certain instances contradicted, or at least differed from, FEMA evaluations and conclusions.

According to 10 CFR 50.47(a)(2), "In any licensing proceeding, a FEMA finding will constitute a rebuttable presumption on a question of adequacy." The Commission Memorandum and Order of January 8, 1981, establishing this proceeding, repeats the "rebuttable presumption" language with reference to Commission question 3.* It is clear that the FEMA findings are not the last word on the adequacy of emergency plans. If the intervenors and interested states -- who have knowledge of local conditions that FEMA, NRC, Licensees, State representatives, and the Board itself lack -- are not to be permitted to put on a direct case on the results of the exercise, we will be severely prejudiced in this proceeding and the Commission will be deprived of information and perspectives it will need for determining whether or not emergency preparedness is adequate to protect public health and safety at Indian Point.

If the Board declines to reconsider its decision on the proposed contention about the adequacy of exercises at Indian Point, UCS/NYPIRG respectfully moves that the Board exercise the power granted it under 10 CFR 2.718(i) of the Commission regulations, and certify to the Commis-

* "In this context, an effort should be made to establish what the minimum number of hours warning for an effective evacuation of a 10-mile quadrant at Indian Point would be. The FEMA position should be taken as a rebuttable presumption for this estimate." Memorandum and Order, January 8, 1981, p. 6

sion for its determination the following questions:

"Should the Board accept for litigation and reformulate a contention challenging the adequacy of the exercise process to provide a basis for determining emergency response capability for an accident at Indian Point, and proposing that alternative criteria be developed based on written commitments from emergency workers, emergency response organizations, and local officials who will be called upon to implement the plans?"

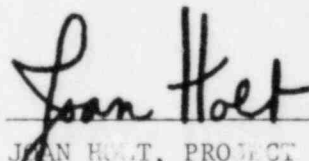
"Alternatively, should the Board formulate a question and invite testimony from all parties regarding the adequacy of the exercise and the results of the exercise as a measure of preparedness?"

Considering the extraordinary involvement of the Commission and its close supervision of the conduct of this proceeding, and the high degree of interest expressed by the Commissioners in the forthcoming exercise, UCS/NYPIRG believe that the Board should give the Commission the opportunity to rule directly on this issue.

Conclusion

Wherefore, UCS/NYPIRG respectfully request that the Board reconsider the provisions of its Memorandum and Order (Reformulating Contentions Under Commission Questions 3 and 4) and reinstate contentions 3.2, 4.5, and 4.6 into the proceeding. Additionally, UCS/NYPIRG request that the Board accept and reformulate for litigation intervenors' proposed contention challenging the exercise as a basis for evaluating emergency preparedness for an accident at Indian Point. Alternatively, UCS/NYPIRG move the Board to certify to the Commission the questions set forth above.

Dated: New York, New York
January 24, 1983



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Certificate of Service

I hereby certify that copies of:

UCS/NYPIRG RESPONSE TO MEMORANDUM
AND ORDER (REFORMULATING CONTENTIONS
UNDER COMMISSION QUESTIONS 3 and 4)
of JANUARY 7, 1983

have been served on the official minimum service list for the above
captioned proceeding by depositing in the United States mail, first class,
this 24th day of January , ~~1982~~ 1983.



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