

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSIONERS:

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



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In the Matter of)
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CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.) Docket Nos.
 (Indian Point, Unit No. 2)) 50-247 SP
) 50-286 SP
POWER AUTHORITY OF THE STATE OF NEW YORK)
 (Indian Point, Unit No. 3)) July 7, 1983
)
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POWER AUTHORITY'S RESPONSE TO NYPIRG MOTION FOR
RECONSIDERATION OF JUNE 10, 1983 ORDER

ATTORNEYS FILING THIS DOCUMENT:

MORGAN ASSOCIATES, CHARTERED
1899 L Street, N.W.
Washington, D.C. 20036
(202) 466-7000

POWER AUTHORITY OF THE
STATE OF NEW YORK
10 Columbus Circle
New York, N.Y. 10019
(212) 397-6200

SHEA & GOULD
330 Madison Avenue
New York, New York 10017
(212) 370-8000

PRELIMINARY STATEMENT

Power Authority of the State of New York ("Power Authority"), licensee of Indian Point 3 Nuclear Power Plant, hereby responds in opposition to the NYPIRG Motion for Immediate Reconsideration of the Commission's June 10, 1983 Order (the "June 10 Order"). Because the motion is untimely, identifies no matters of fact or law which the Commission overlooked, and improperly raises various new matters, it should be denied.

BACKGROUND

On May 5, 1983, the Commission issued an order (the "May 5 Order") subjecting the licensees to enforcement action based on two offsite emergency planning deficiencies cited on April 14, 1983 by the Federal Emergency Management Agency ("FEMA"). Those deficiencies related solely to (1) lack of written commitments for bus availability in Westchester County; and (2) Rockland County's non-participation in the formal State-sponsored emergency planning process.

In its subsequent Order, dated May 13, 1983 (the "May 13 Order"), the Commission allowed other parties to the Indian Point Special Proceeding to make comments "germane to this enforcement action." The May 13 Order explicitly cautioned that "the Commission does not intend to consider

comments that are not directly relevant to this enforcement action." May 13 Order at 2.

After entertaining extensive oral and written presentations from the licensees, FEMA, governmental units, and numerous parties to the Special Proceeding, the Commission issued its June 10, 1983 Order (the "June 10 Order") finding that the two significant deficiencies cited earlier had been adequately resolved. NYPIRG now belatedly requests that the Commission reconsider its June 10 Order.

THE NYPIRG MOTION SHOULD BE DENIED

A. The NYPIRG Motion is Untimely

10 CFR §2.771 expressly requires that a motion for reconsideration be filed within 10 days of a Commission decision. Pursuant to 10 CFR §2.771, any request for reconsideration was due no later than June 20. NYPIRG's motion for "immediate reconsideration" was filed several days late, on June 23. For this reason alone, the instant motion should be denied.

B. The Commission Did Not Overlook Relevant Matters of Fact or Law

It is well-settled that reconsideration of an order is appropriate only where the decisionmaking body has overlooked matters or controlling decisions that might reasonably

have altered the result originally reached. See, e.g., New York Guardian Mortgage Corp. v. Cleland, 473 F. Supp. 409, 420 (S.D.N.Y. 1979). The Commission overlooked no material factual or legal matters herein.

The Commission clearly acted within its legal discretion in finding the deficiencies adequately resolved by recent measures. See Rockland County v. NRC, No. 83-4003 (2d Cir., May 27, 1983). It is equally clear that the Commission considered the material facts.

There were but two issues before the Commission on June 10: bus availability in Westchester County and Rockland County's formal non-participation in the planning process. With respect to Westchester County, the Commission and FEMA were concerned about a lack of written commitments from bus operators. Those have been obtained, driver training has been accelerated, and the licensees have agreed to provide back-up drivers if necessary. In Rockland County, where State personnel proved to be effective substitutes for County personnel during the March 9, 1983 exercise, the State compensating plan has been rewritten to clarify the State role, and the licensees have identified employees who could substitute for County personnel, if needed.

The June 10 Order expressly reflects these developments.¹ The measures recently undertaken directly address the deficiencies cited earlier by FEMA. Therefore, the Commission overlooked no controlling matters.

C. The NYPIRG Motion Raises New Matter

A motion for reconsideration is limited to issues before the Commission in its earlier determination. See, e.g., Tennessee Valley Authority (Hartsville Nuclear Plants, Units 1A, 2A, 1B, and 2B), ALAB-467, 7 NRC 459 (1978); Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-477, 7 NRC 766 (1978). Both NYPIRG and UCS now raise matters on a "motion for reconsideration" which were not before the Commission earlier.

One example is the reference to a labor dispute involving certain employees of the Consolidated Edison Co. of New York, Inc. ("Con Edison"), licensee of Indian Point Station, Unit No. 2. Such an issue is an entirely new matter

¹ Union of Concerned Scientists' ("UCS") June 23, 1983 response in support of NYPIRG's motion (at p. 2) speculates that the June 10 Order was "written without benefit of review of the FEMA report on the status of planning and preparedness which was delivered to the Commission the day before the vote." This argument is belied on the face of the June 10 Order, which states that the Commission gave "careful consideration . . . to the most recent information which we have received from the Federal Emergency Management Agency." June 10 Order at 2.

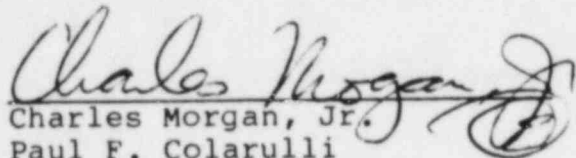
beyond the scope of the May 5 and June 10 Orders, upon which licensees have not had an opportunity to comment.²

A second example is the reference by NYPIRG and UCS to certain emergency planning items other than bus commitments in Westchester and the State compensating plan for Rockland. Those matters are beyond the scope of the May 5 and June 10 Orders and, in any event, were not cited as significant by FEMA. The May 13 Order placed UCS and NYPIRG on notice that such matters would not be considered.

For all of the foregoing reasons, the NYPIRG Motion for Immediate Reconsideration should be denied.

² Regardless, Power Authority employees committed to emergency planning are of course unaffected by the Con Edison dispute, and Con Edison has advised us that its employees committed to emergency planning are not involved in the dispute.

Respectfully submitted,



Charles Morgan, Jr.
Paul F. Colarulli
Joseph J. Levin, Jr.

MORGAN ASSOCIATES, CHARTERED
1899 L Street, N.W.
Washington, D.C. 20036
(202) 466-7000

Stephen L. Baum
General Counsel
Charles M. Pratt
Assistant General Counsel

POWER AUTHORITY OF THE STATE
OF NEW YORK
Licensee of Indian Point Unit 3
10 Columbus Circle
New York, New York 10019

Bernard D. Fischman
Michael Curley
Richard F. Czaja
David H. Pikus

SHEA & GOULD
330 Madison Avenue
New York, New York 10017

Dated: July 7, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

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

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INC. (Indian Point, Unit No. 2)) 50-286 SP
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CERTIFICATE OF SERVICE

I hereby certify that copies of the POWER
AUTHORITY'S RESPONSE TO NYPIRG MOTION FOR RECONSIDERATION in
the above-captioned proceeding have been served on the
following by deposit in the United States mail, first class,
this 7th day of July, 1983.

Docketing and Service Branch
Office of the Secretary
U. S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Ellyn R. Weiss, Esq.
William S. Jordan, III, Esq.
Harmon & Weiss
1725 I Street, N.W., Suite 506
Washington, D.C. 20006

James P. Gleason, Esq., Chairman
Administrative Judge
Atomic Safety and Licensing
Board
513 Gilmore Drive
Silver Spring, Maryland 20901

Joan Holt, Project Director
Indian Point Project
New York Public Interest
Research Group
9 Murray Street
New York, N.Y. 10007

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

Janice Moore, Esq.
Counsel for NRC Staff
Office of the Executive
Legal Director
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Mr. Frederick J. Shon
Administrative Judge
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Brent L. Brandenburg, Esq.
Assistant General Counsel
Consolidated Edison Co.
of New York, Inc.
4 Irving Place
New York, N.Y. 10003

Jeffrey M. Blum, Esq.
New York University Law
School
423 Vanderbilt Hall
40 Washington Square South
New York, N.Y. 10012

Charles J. Maikish, Esq.
Litigation Division
The Port Authority of
New York and New Jersey
One World Trade Center
New York, N.Y. 10048

Marc L. Parris, Esq.
Eric Thorsen, Esq.
County Attorney
County of Rockland
11 New Hemstead Road
New City, N.Y. 10956

Ezra I. Bialik, Esq.
Steve Leipsig, Esq.
Environmental Protection Bureau
New York State Attorney
General's Office
Two World Trade Center
New York, N.Y. 10047

Joan Miles
Indian Point Coordinator
New York City Audubon Society
71 West 23rd Street, Suite 1828
New York, N.Y. 10010

Andrew P. O'Rourke
Westchester County Executive
148 Martine Avenue
White Plains, N.Y. 10601

Greater New York Council on
Energy
c/o Dean R. Corren,
Director
New York University
26 Stuyvesant Street
New York, N.Y. 10003

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Andrew S. Roffe, Esq.
New York State Assembly
Albany, N.Y. 12248

Honorable Richard L. Brodsky
Member of the County
Legislature
Westchester County
County Office Building
White Plains, N.Y. 10601

Renee Schwartz, Esq.
Paul Chessin, Esq.
Laurens R. Schwartz, Esq.
Margaret Oppel, Esq.
Botein, Hays, Sklar & Herzberg
200 Park Avenue
New York, N.Y. 10166

Phyllis Rodriguez,
Spokesperson
Parents Concerned About
Indian Point
P.O. Box 125
Croton-on-Hudson, N.Y. 10520

Stanley B. Klimberg
General Counsel
New York State Energy Office
2 Rockefeller State Plaza
Albany, New York 12223

Charles A. Scheiner, Co-
Chairperson
Westchester People's Action
Coalition, Inc.
P.O. Box 488
White Plains, N.Y. 10602

Honorable Ruth Messinger
Member of the Council of the
City of New York
District No. 4
City Hall
New York, New York 10007

Alan Latman, Esq.
44 Sunset Drive
Croton-on-Hudson, N.Y. 10520

Richard M. Hartzman, Esq.
Lorna Salzman
Friends of the Earth, Inc.
208 West 13th Street
New York, N.Y. 10011

Zipporah S. Fleisher
West Branch Conservation
Association
443 Buena Vista Road
New City, N.Y. 10956

Mayor George V. Begany
Village of Buchanan
236 Tate Avenue
Buchanan, N.Y. 10511

Judith Kessler, Coordinator
Rockland Citizens for Safe
Energy
300 New Hempstead Road
New City, N.Y. 10956

David R. Lewis, Esq.
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Mr. Donald Davidoff
Director, Radiological
Emergency Preparedness
Group
Empire State Plaza
Tower Building, RM 1750
Albany, New York 12237

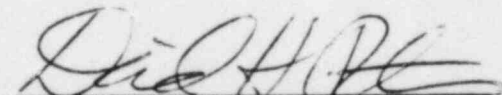
Stewart M. Glass
Regional Counsel
Room 1349
Federal Emergency Management
Agency
26 Federal Plaza
New York, New York 10278

Amanda Potterfield, Esq.
New York Public Interest
Research Group, Inc.
9 Murray Street,
3rd Floor
New York, N.Y. 10007

Melvin Goldberg
Staff Attorney
New York Public Interest
Research Group
9 Murray Street
New York, New York 10007

Steven C. Sholly
Union of Concerned Scientists
1346 Connecticut Ave., N.W.
Suite 1101
Washington, D.C. 20036

Spence W. Perry
Office of General Counsel
Federal Emergency Management
Agency
500 C Street, Southwest
Washington, D.C. 20472


David H. Pikus