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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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| In the Matter of |) | |
| |) | |
| CONSOLIDATED EDISON COMPANY |) | Docket Nos. 50-247-SP |
| NEW YORK, INC. |) | 50-286-SP |
| (Indian Point, Unit No. 2) |) | |
| |) | February 7, 1983 |
| |) | |
| POWER AUTHORITY OF THE STATE OF |) | |
| NEW YORK |) | |
| (Indian Point, Unit No. 3) |) | |
| |) | |
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CON EDISON'S PROPOSAL FOR
SCHEDULING REMAINING TESTIMONY
ON COMMISSION QUESTIONS 3 AND 4

Pursuant to the Board's January 28, 1983 Mailgram, Consolidated Edison Company of New York, Inc. ("Con Edison"), licensee of Indian Point Unit No. 2, hereby submits its suggestions with regard to the scheduling of witnesses under Commission Questions 3 and 4.

DS03

INTRODUCTION

The proper starting point for addressing how to deal with the mass of witnesses who have already proposed testimony on Questions 3 and 4* is a consideration of the Commission's overall purpose in instituting this proceeding. This purpose, as stated in the Commission's January 8 and September 18, 1981 Orders, and as re-affirmed in each instance when the Commission has had an opportunity to do so, is to determine the extent to which the population around Indian Point affects the risks posed by the plants as compared to the risks posed by other nuclear plants. The need to place the consideration of emergency planning issues in this proceeding in perspective was emphasized by Commissioner Ahearne in his Additional Views which accompanied the Commission's September 17, 1982 Order (CLI-82-25). After first referring to the Commission's purpose in instituting this case (Additional Views at 1), Commissioner Ahearne, referring to testimony on emergency planning, stated as follows (at 4):

* It must be remembered that additional testimony on Questions 3 and 4 is to be filed by February 14. It is impossible, of course, at this point to determine what additional testimony will be filed.

". . . it is necessary to keep the basic objective in mind. The intent was to obtain information which would be helpful in evaluating the risk at Indian Point, not to determine and enforce compliance with the emergency planning regulations. Compliance with the regulations is being addressed through a separate, hopefully much faster, process."

As clearly indicated by Chairman Gleason (Tr. 6935), to accept into the evidentiary record of this proceeding all of the already proposed testimony on Questions 3 and 4, much less the testimony that would be offered on February 14, would result in a distorted and unbalanced record which would not serve the Commission's overall purpose. A review of the mass of intervenor emergency planning testimony shows that it is repetitive, often deals with matters beyond the scope of Question 3 and 4 and that much of it would at best be of marginal use in addressing the Commission's overall purpose. In light of this, and in light of the proceeding's compressed time schedule, Con Edison offers the following suggestions regarding scheduling of witnesses.

- A. No more than the presently scheduled further twelve days of hearing time should be allowed for receipt of additional testimony under Commission Questions 3 and 4

Thirteen days of hearing time have already been consumed by the receipt and cross-examination of the

emergency planning testimony of twenty-one witnesses sponsored by Alfredo Del Bello, Rockland County and FEMA.* Con Edison believes that the three further hearing weeks allocated by the Board for the receipt of remaining testimony under Commission Questions 3 and 4 is more than adequate to satisfy the Commission's concerns and to allow a full presentation of relevant, non-cumulative testimony. As Commissioner Ahearne noted, there is a separate process independent of this proceeding to consider the details of emergency planning. To allow additional hearing time for testimony under these questions would result in a skewed, unbalanced record, cluttered with the minutiae of emergency planning at Indian Point.

B. Intervenors must indicate which of their witnesses they wish to offer

It is obviously inappropriate for licensees to suggest which of the 170 previously proposed intervenor witnesses should be allowed to testify as sworn witnesses in this proceeding. Intervenors should make the initial effort in this regard. Accordingly, Con Edison believes

* In addition, emergency planning was the main focus of limited appearance hearings held on January 21-23, 1982.

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B. Intervenors must indicate which of their witnesses they wish to offer

It is obviously inappropriate for licensees to suggest which of the 170 previously proposed intervenor witnesses should be allowed to testify as sworn witnesses in this proceeding. Intervenors should make the initial effort in this regard. Accordingly, Con Edison believes

* In addition, emergency planning was the main focus of limited appearance hearings held on January 21-23, 1982.

that the Board should require intervenors to indicate as soon as possible after February 14 (the due date for additional testimony under Questions 3 and 4) which of their witnesses they wish to be considered for inclusion in the evidentiary record in this proceeding.

The Board's rulings will, of course, provide guidance to the parties. The Board should first decide how to allocate the twelve remaining hearing dates among licensees, NRC Staff/FEMA, the New York State Energy Office, New York City Council Members and intervenors. (Con Edison's suggestions regarding this allocation are set forth below.) Whatever number of witnesses intervenors choose to propose must be capable of being cross-examined within the time allocated by the Board to intervenors.

In addition to deciding how to allocate the remaining hearing dates, guidance to intervenors will be provided by the Board's forthcoming Order finalizing contentions under Commission Questions 3 and 4. In their "Index to Witnesses Presenting Emergency Planning Issues on Behalf of the Intervenors" intervenors indicated which of the contentions in the Board's April 23, 1982 Order each of their 170 witnesses was addressing. It is clear from an examination of this document that many of these witnesses addressed issues that are now beyond the scope of the reformulated contentions of the Board's January 7, 1983 Order. For example, many of the intervenor witnesses have

filed testimony addressing former contention 3.2, which the January 7 Order deleted. The decision the Board makes on final contentions under Questions 3 and 4 will have an obvious impact on the continued relevance of much of the intervenors' previously proposed testimony.

- C. The Board should consider only witnesses whose testimony reflects the post-Fema Interim Report off-site emergency planning developments referred to in the Commission's September 17 Order

In its September 17, 1982 Order (CLI-82-25), the Commission recognized that the running of the FEMA "120 day clock" and the efforts to resolve the alleged significant deficiencies in Indian Point off-site emergency planning noted in FEMA's July 30, 1982 Interim Report would have a major impact on how Commission Questions 3 and 4 were to be dealt with in this proceeding. In that Order, the Commission suggested deferral of the receipt of evidence in Questions 3 and 4 so that the 120 day clock situation would be fully considered. The Commission felt that, in light of the "rapidly changing situation" (at 4), which was set in motion by FEMA's Interim Report, it would be "wasteful of the time and resources of the Board and the parties" to proceed with receiving testimony on emergency planning issues. The same considerations that led the Commission to urge the deferral of hearings on Questions 3 and 4 argue in favor of the Board now considering only testimony dealing with off-site emergency planning which reflects the status

of such emergency planning at the end of the 120 day clock period. A major effort was undertaken to resolve the alleged deficiencies in Indian Point off-site emergency planning. This effort is continuing. The scope and depth of this enterprise by those responsible for off-site emergency planning is reflected in FEMA's December 17, 1982 report to the Commission, which details the massive effort undertaken by state and local officials to resolve the alleged deficiencies found by FEMA in its Interim Report.

Intervenors' proffered emergency planning testimony deals almost exclusively with off-site issues. All of this testimony was submitted before FEMA's July 30 Interim Report, and thus is quite stale in terms of the current status of off-site emergency planning. Accordingly Con Edison urges that the Board consider accepting during the remaining Questions 3 and 4 hearing days only testimony that reflects a consideration of the current status of off-site emergency planning. Con Edison believes that just as the Board required intervenors to submit statements of continued support of emergency planning contentions in light of the 120 day clock (November 15, 1982 Memorandum and Order at 16) the Board should require intervenors to make a showing that each piece of their emergency planning testimony is not now outdated due to the passage of time.

D. Allocation of the twelve hearing dates
for Questions 3 and 4

Con Edison believes that it is essential that the Board make a decision in advance of actual hearing dates as to how to allocate the remaining twelve hearing dates for emergency planning issues. We believe that the following represents a fair apportionment of these days:

2½ days for cross-examination of Licensee witnesses;

4 days for cross-examination of NRC/FEMA witnesses;

2½ days for cross-examination of New York State witnesses;* and

3 days for cross-examination of intervenor witnesses.

Con Edison believes that the allowed time for cross of licensees, NRC/FEMA and New York State witnesses will be adequate to cross-examine these witnesses thoroughly on their previously submitted testimony, as well as whatever additional testimony may be filed on February 14.

With respect to witnesses who will be offered by intervenors even after they pare down their witness list, Con Edison believes that there should be a "sudden death"

* Specifically the New York State Energy Office, representing the New York State Radiological Energy Preparedness Group (REPG).

provision regarding the admissibility of such testimony under such an approach. If it proves impossible to cross-examine intervenor-sponsored witnesses during the hearing days allocated to intervenors, the testimony of witnesses who cannot be cross-examined should not be treated as sworn testimony but rather to be deemed limited appearance statements. Con Edison believes that this is the only fair way to deal with the mass of testimony submitted by intervenors, while maintaining the hearing schedule necessary to meet deadline commitments of the Commission.

The Board should, of course, carefully monitor cross-examination to prevent dilatory or duplicative cross. However, any artificial "formula" to deal with the problem which has been created by intervenors -- such as a set number of intervenor witnesses who will be subject to a fixed per-witness amount of establishing cross-examination -- would deny the other parties the opportunity to conduct meaningful cross-examination.

Con Edison's proposed schedule does not explicitly provide for the cross-examination of the witnesses of Rockland County or of New York City Council Members. Any further Rockland County witness should be scheduled within the nine days of non-intervenor testimony. The question of New York City testimony is discussed in Part E.

- E. The Board should establish a briefing schedule to consider the admissibility of the testimony sponsored by the New York City Council Members.

Con Edison believes that the testimony of the witnesses sponsored by New York City Council Members should not be admitted, since the testimony presumes a need to evacuate New York City. Such a defacto gross expansion of the 10 mile EPZ as would be required to evacuate New York City cannot be considered in this proceeding.

In its January 24, 1983 "Memorandum Respecting the Licensing Board's January 7, 1983 Memorandum and Order Reformulating Contentions" (at 16-17), Con Edison requested the Board to clarify its intent with regard to Contention 4.1, which deals with the size of the plume exposure emergency planning zone (EPZ). Although some minor modification of the size and shape of the EPZ is permissible, any major enlargement of the radius of the EPZ would be directly contrary to the Commission's explicit guidance in its July 27 Order (at 15) that the size of the Indian Point "EPZ is to be about 10 miles." An expansion of the EPZ to encompass parts of New York City cannot be considered in this proceeding.

Accordingly, Con Edison requests that the Board provide a briefing schedule for the submittal of briefs on the admissibility of this testimony after the Board issues its order promulgating final contentions under Questions 3 and 4.

F. Restrictions Must be Placed on Cross-Examination

However many witnesses the Board chooses to hear on Questions 3 and 4, it is obvious that all parties must be willing to accept restrictions on the extent of cross-examination. The Board should not limit cross-examination if prejudice to any party would result. However, Con Edison believes that in light of the time limitations placed upon the Board and the parties, the Board should carefully monitor cross-examination of witnesses in order to avoid duplicate cross-examination and to ensure the development of an adequate record on Commission Questions 3 and 4.

Also, as provided in the Board's April 23, 1982 Order (at 23), in instances in which a witness addresses a particular contention, the cross-examination of that witness by intervenors should generally be limited to the lead intervenor on that contention, and in no event may more than two intervenors cross-examine any witness or panel of witnesses.

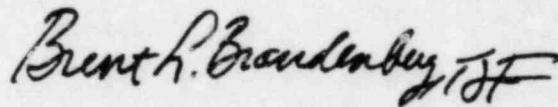
G. Limited Appearance Hearings Should Be Scheduled For Other Intervenor Witnesses

As suggested by Judge Gleason (Tr. 6934), additional limited appearance hearings should be scheduled to hear from the intervenor witnesses who cannot be cross-examined in the time allowed for intervenors.

An examination of the intervenor testimony shows that much of it is of the sort usually offered as limited appearance statements. That is, it offers non-expert testimony on matters under consideration by the Board and does not attempt to address the adequacy of overall emergency planning for Indian Point.

In short, much of this testimony is precisely the same sort of the testimony which was offered at the earlier limited appearance hearings. Accordingly, Con Edison suggests that provision be made for limited appearance hearings in the evenings of emergency planning hearing dates.

Respectfully submitted,



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Dated: New York, New York
February 7, 1983

Of Counsel,
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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NEW YORK, (Indian Point, February 7, 1983
Unit No. 3) :
-----x

CERTIFICATE OF SERVICE

I certify that I have served copies of Con Edison's Proposal For Scheduling Remaining Testimony On Commission Questions 3 And 4 on the following parties by deposit in the United States mail, postage prepaid, this seventh day of February, 1983.

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Dated: February 7, 1983

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