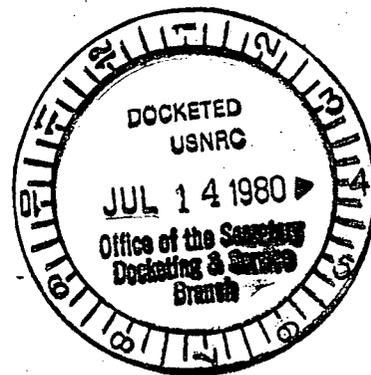


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION



In the Matter of)
)
)
CONSOLIDATED EDISON COMPANY)
OF NEW YORK, INC. (Indian Point,)
Unit No. 2))
)
POWER AUTHORITY OF THE STATE OF)
NEW YORK (Indian Point, Unit No. 3))
_____)

Docket Nos. 50-247
50-286

RESPONSE OF LICENSEES TO
UNION OF CONCERNED SCIENTISTS'
MOTION TO DISQUALIFY COMMISSIONER HENDRIE

The 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, submit this response to the motion of the Union of Concerned Scientists (UCS) to disqualify Commissioner Hendrie from further participation in deliberations and decisions concerning UCS's Petition of September 17, 1979 seeking to shutdown the Indian Point units.

The UCS motion is procedurally defective in that it is addressed to the Commission rather than to Commissioner Hendrie. The motion is in fact repetitive of UCS's previous

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request that the Commissioner disqualify himself, which was denied, and it sets forth no new grounds in fact or in law on which such a motion might be granted. Furthermore, since the motion is posited on Commissioner Hendrie's having been a member of ACRS from 1966 to 1972 and on his having been a member of the agency's staff from 1972 to 1974, the effect of his disqualification on the basis sought by UCS would be to require the Commission to make numerous substantial decisions on the use of nuclear power in this country with no more than three of the five Commissioners called for by statute.

DISCUSSION

I

The Commission's recent decision in Diablo Canyon Nuclear Power Plant, Units 1 and 2, CLI-80-6 [1980] 2 Nucl. Reg. Rep. (CCH) ¶30,454, March 5, 1980, held that recusal decisions are to be made only by the challenged Commissioner and not by the Commission, and that the Commission would not thereafter review such decisions. The Commission based its Diablo Canyon decision on its own "past practice, and the generally accepted practice of the federal courts and administrative agencies ..." (Id.)

II

UCS's motion reiterates a request set forth in its September 17, 1979 petition, which request was rejected by Commissioner Hendrie on April 23, 1980. UCS gives no

explanation for choosing an improper procedure to secure further reconsideration of the denial of the identical relief previously sought.

III

The UCS motion, and the attachments thereto, fail to show the kind of "risk of actual bias or prejudgment" that the Supreme Court has held would be necessary to forbid the participation of the Commissioner in the current proceedings. (See Withrow v. Larkin, 421 US 35, 47 (1975)). All that the UCS has established is that Mr. Hendrie performed the functions of his employment by the Atomic Energy Commission several years ago. UCS has ignored (as Consolidated Edison pointed out in its September 28, 1979 letter to the Commission responding to the UCS petition) that if mere handling of a staff position was sufficient to mandate recusal, then a similar disability would be posited for Commissioner Gilinsky, who also has a staff background.

IV

The Commission has five members. (42 U.S.C. §5841). The interplay of the skills, backgrounds, thoughts and ideas of the full Commission is valuable, particularly when it is faced with deliberations and decisions of the importance and magnitude of those with which the Commission is concerned in the 1980's. The disqualification of any Commissioner for less than clear evidence of bias or prejudgment of issues would be counter-productive to the Commission's mission and contrary to established principles of law.

CONCLUSION.

For the above reasons, the motion of UCS to disqualify Commissioner Hendrie should be denied.

Respectfully submitted,

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Dated: New York, New York
July 8, 1980

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