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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

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

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

Docket Nos. 50-247-SP
50-286-SP

NRC STAFF RESPONSE TO UCS/NYPIRG MOTION
TO DIRECT STAFF TO RESCHEDULE MEETING

Henry J. McGurran
Counsel for NRC Staff

October 27, 1982

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I. INTRODUCTION

On October 12, 1982, the NRC Staff received an undated document filed before the Commission by Ellyn R. Weiss on behalf of Union of Concerned Scientists and New York Public Interest Research Group, Inc. (UCS/NYPIRG);^{1/} the document was entitled "Motion to Direct Staff to Reschedule Meeting" ("Motion").^{2/} For the reasons set forth below, the Staff opposes UCS/NYPIRG's Motion.

II. BACKGROUND

On September 15, 1982, the NRC Staff distributed a meeting notice indicating that the Staff had scheduled a meeting with its consultants,

^{1/} UCS/NYPIRG was admitted to intervene in this proceeding by Memorandum and Order (Ruling on Petitions to Intervene and Agenda for Second Special Prehearing Conference), dated April 2, 1982.

^{2/} On the same date, the Staff also received a document filed before the Licensing Board entitled "UCS/NYPIRG Motion to Direct Staff to Reschedule Meeting." This motion was denied by order of the Licensing Board dated October 12, 1982.

Sandia National Laboratories (Sandia), and Licensees in Albuquerque, New Mexico. This notice was distributed internally as well as to NRC Public Document Rooms in Washington, D.C., White Plains, New York, and in New York City at the New York University.^{3/} The purpose of this meeting was to discuss Sandia's preliminary draft letter report which evaluates a portion of the Indian Point Probabilistic Safety Study (IPPSS).^{4/}

On October 12, 1982 the Staff received two motions filed by UCS/NYPIRG. One of these motions was filed before the Commission requesting the Commission to direct that the meeting scheduled in Albuquerque, New Mexico for October 13, 1982 and all future meetings on issues related to the Indian Point hearings be held in New York or Washington, D.C.^{5/} The other motion, which was filed before the Licensing Board and requested the Board to reschedule the October 13, 1982 meeting in New York or Washington, D.C., was denied by Licensing Board Order dated October 12, 1982. The meeting was held in Albuquerque, New Mexico on October 13, 1982, as scheduled.

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- ^{3/} On October 6, 1982, copies of the meeting notice were sent to all parties and participants in this proceeding.
- ^{4/} The IPPSS is a probabilistic risk assessment of the Indian Point Units 2 and 3 issued by the Power Authority and Consolidated Edison in the Spring of 1982.
- ^{5/} UCS/NYPIRG also requested that "Intervenors be given notice at the same time as other parties, rather than three weeks later." The Staff has made and will continue to make every effort to provide all parties to the proceeding timely notice of Staff technical meetings relevant to the issues in this proceeding.

III. ARGUMENT

The Commission's regulations in 10 C.F.R. § 2.102 permit the NRC Staff to confer privately or otherwise with any of the parties to a proceeding in the conduct of its review.^{6/} Section 2.102(a) provides, in part:

- (a) During review of an application by the staff, an applicant may be required to supply additional information. The staff may request any one party to the proceeding to confer with the Staff informally.

The question of whether the Staff can have discussions with another party at a time and place selected by the Staff has previously been considered by an adjudicatory board. Northeast Nuclear Energy Co. et al. (Montague Nuclear Power Station, Units 1 and 2), LBP-75-19, 1 NRC 436 (1975). In Montague various participants in that proceeding requested that discussions between the applicant and the staff on issues relevant to the proceeding be held in New England. The Staff intended to hold these discussions in the Washington area. The Licensing Board denied participants' request to relocate the meeting to New England relying in part on 10 C.F.R. § 2.102.^{7/}

It is true that it is NRC Staff policy with respect to meetings between the NRC technical Staff and applicants or other parties to permit

^{6/} Although the NRC Staff is not reviewing an application of the Licensees, as the Commission has stated with respect to this special proceeding "...except as provided elsewhere in this Order 10 CFR Part 2 will control." Consolidated Edison Co. of New York, Inc. (Indian Point, Unit 2) and The Power Authority of the State of New York (Indian Point Unit 3), CLI-81-1, 13 NRC 1 at 5 n.4 (1981), revised, CLI-81-23, 14 NRC 610 at 611 (1981).

^{7/} The Licensing Board also relied on its lack of authority to supervise the Staff in the conduct of its review process. Of course, as the Commission has noted, the Commission itself does have such authority. Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-80-12, 11 NRC 514, 516 (1980).

such meetings to be open to all parties to a proceeding on an observer only basis. Domestic License Applications Open Meetings and Statement of NRC Staff Policy, 43 Fed. Reg. 28055 (June 28, 1978). However, there is no regulation or statement of policy which states that any party other than the Staff may determine where the Staff will be best able to conduct its review. Frequently, there may be practical considerations which enter into the Staff's determination of the most appropriate location for holding a meeting and conducting its review. These considerations include location of reviewers and their supporting data, extent of Staff and management participation and any time constraints.

For these reasons the NRC Staff was entitled to schedule its meeting with its consultant, Sandia, and Licensees in Albuquerque, New Mexico on October 13, 1982 at the location it determined was most appropriate. Albuquerque, New Mexico is where the Sandia technical reviewers conduct their work and where the documents and data supporting their evaluation of the IPPSS, the topic of the meeting, are maintained. In these circumstances, the most productive exchange of technical information and views necessary for the Staff technical review of the IPPSS would take place at this location.

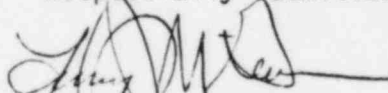
UCS/NYPIRG also requested that the Commission direct that all future meetings on issues covered by the Indian Point hearings be held in New York or Washington, D.C. The only basis provided for this request is that Intervenors cannot afford the expense or the time to go elsewhere. Motion at 1. For the same reasons discussed above: (1) that 10 C.F.R. § 2.102 of the Commission's regulations permits the NRC Staff to confer privately with any party to a proceeding to conduct its technical review,

and (2) that practical considerations must be considered in determining the location of Staff meetings; UCS/NYPIRG's request should be denied. The Commission's regulations permit the Staff to determine the most appropriate location for its technical review to allow a meaningful exchange of information and views, notwithstanding the fact that it may cause expense and inconvenience to other parties should they wish to attend and observe the meeting. The Staff is sensitive to the value of public participation and of openly conducting its reviews. To this end, it has the policy that meetings between the NRC technical staff and other party or parties will be open to observation by the public. In many instances, the Staff determines to hold meetings at or near the site to facilitate public involvement. However, the Staff should be permitted the flexibility to determine the most appropriate location for its meetings.

IV. CONCLUSION

For the above reasons, the Staff urges the Commission to deny that portion of the Motion of UCS/NYPIRG requesting the Commission to direct that all future meetings on the issues covered by the Indian Point hearings be held in New York or Washington, D.C.^{8/}

Respectfully submitted,



Henry J. McGurren
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 27th day of October, 1982

^{8/} That portion of the Motion requesting that the Commission reschedule the October 13, 1982 meeting is moot and, accordingly, should be denied.

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CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF RESPONSE TO UCS/NYPIRG MOTION TO DIRECT STAFF TO RESCHEDULE MEETING in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 27th day of October, 1982.

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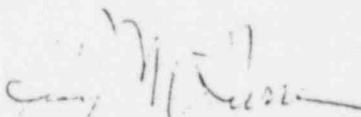
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