



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:
Louis J. Carter, Chairman
Dr. Oscar H. Paris
Frederick J. Shon

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

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

April 27, 1982

MEMORANDUM
(To Clarify the Record)

In a filing dated April 23, 1982, entitled "UCS/NYPIRG Submission in Support of Board Contention Asserting the Need for Expansion of the Present Plume EPZ", UCS/NYPIRG quoted Judge Paris and characterized the quotation in the following terms:

Judge Paris explicitly ruled during the pre-hearing conference of December 14, 1982:

(T)he Commission had in mind that the Board could admit contentions that did challenge the Commission's regulations.

Transcript p. 269.

Only a portion of Judge Paris's sentence is quoted, as a result of which the full meaning of his statement is not imparted in the UCS/NYPIRG filing. Further, the transcript page cited by UCS/NYPIRG is incorrect, making it difficult for parties to find the passage from which the quotation is taken.

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Finally, Judge Paris's statement should not have been characterized as a ruling. It was a re-statement of a Board decision set forth in an earlier pre-hearing conference and in an earlier order.

The quoted statement by Judge Paris occurs on transcript page 769, beginning at line 14, and reads in full as follows:

As the Board indicated in the first prehearing conference, we believe that when the Commission said that the Board will not be bound by the provisions of 10 CFR Part 2 with regard to the admission and formulation of other contentions (and there, by "other contentions", they meant contentions directed at the Commission Questions), the Commission had in mind that the Board could admit contentions that challenge the Commission's regulations.

(Transcript punctuation corrected).

Perhaps UCS/NYPIRG quoted only what it considered to be the more relevant part of the statement, in the interest of saving space. But we believe that it is important to make clear that the unusual authorization referred to relates only to contentions that may help resolve the Commission's six Questions.^{1/}

This is the second time in this proceeding that the Board has become concerned because only a portion of a statement was quoted in a filing, giving an impression different from that intended by the original statement.^{2/}

^{1/} Our belief in this regard was restated in our April 23, 1982 Memorandum and Order on p. 12, fn. 2, as follows:

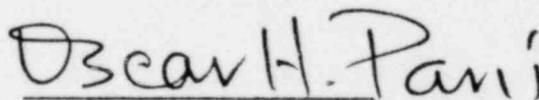
(W)e reconfirm our conviction that we are authorized by fn. 4, as revised, in the Commission's Orders of January 8 and September 18, 1981 to accept contentions addressed to the Commission's Questions, if those contentions seem likely to be important in resolving the Commission's Questions, even though the contentions may urge requirements for Indian Point beyond the regulations.

^{2/} See our Memorandum and Order dated April 2, 1982.

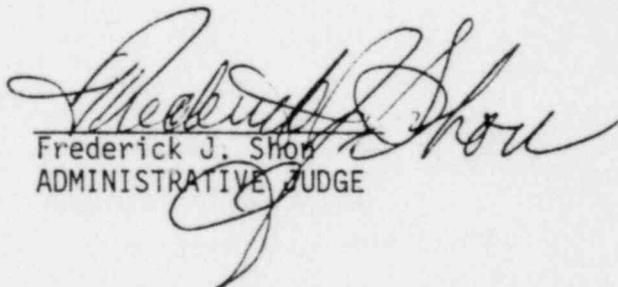
We therefore again caution all parties to exercise care and diligence when quoting from the record to assure that all pertinent portions of the statement are included in the quotation. As the Appeal Board has stated, "[W]e should be free to assume that in a brief or other submission, nothing will be excised from a quoted passage unless its lack of relevance to the question under discussion is beyond substantial dispute." Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB 409, 5 NRC 1391, 1395 (1977).

Judge Carter participated in the issuance of this Memorandum but was unavailable to sign it.

THE ATOMIC SAFETY AND
LICENSING BOARD



Oscar H. Paris
ADMINISTRATIVE JUDGE



Frederick J. Shon
ADMINISTRATIVE JUDGE

Bethesda, Maryland