

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

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

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In the Matter of	)	Docket Nos.
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. (Indian Point, Unit No. 2)	)	50-247 SP 50-286 SP
POWER AUTHORITY OF THE STATE OF NEW YORK (Indian Point, Unit No. 3)	)	May 27, 1982

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MEMORANDUM IN SUPPORT OF  
MOTION TO COMPEL DISCOVERY

I. There is no basis in law or in any of the Commission's or Licensing Board's Orders for Licensees' refusal to allow their witnesses to be deposed.

The Commission's January 8, 1981 and September 18, 1981 setting forth this proceeding exempt the licensing board from the strictures of 10 C.F.R. Part 2 for certain matters relating to the admission and formulation of contentions. However, the Orders states that in all other respects the provisions of 10 C.F.R. Part 2 will control. Footnote 4 to January 8, and September 18 orders.

10 C.F.R. § 2.740s establishes that parties to an NRC proceeding have the right to depose one another "without leave of the Commission or the presiding officer." Depositions between intervenors and licensees are permitted "without any showing or good cause." United States Nuclear Regulatory

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Commission Staff Practice and Procedure Digest, § 10.2(3), (1978), at 26.

Rather than formally notice the depositions for a specific time, UCS/NYPIRG called licensees' attorneys to offer a range of possible times and to propose that mutually convenient dates be set. The shortness of time before actual hearings commence requires that we seek an immediate ruling from the board compelling licensees to make their witnesses available for depositions. The licensees have made clear their unwillingness to produce their witnesses without an order from the board. To notice depositions formally so that licensees may object in writing would simply waste precious time. An immediate ruling from the board is necessary.

II. Licensees' refusal to let their witnesses be deposed is part of an attempt to deny intervenors any meaningful discovery of witness testimony.

UCS/NYPIRG has attempted to discover the substance of and bases for licensee witnesses' testimony through interrogatories as well as depositions. Both types of attempts have been frustrated. The pertinent interrogatories were UCS/NYPIRG interrogatories 1(h), 1(i), 1(j) and 2. None succeeded in eliciting useful information. Question 1(h) requested a cataloging of reports submitted to licensees by the witness. 1(i) asked, "what is the subject matter of the witness' testimony?" 1(j) asked, "what are the facts and/or opinions to which the witness will testify and the grounds for each fact or opinion?" Interrogatory 2 requested licensees to "provide a reasonable description of all documents that will be relied upon in the testimony presented by each witness."

For the five witnesses the licensees responded as follows: they answered 1(h) for two witnesses by saying there were no reports, and for the other three witnesses they objected that the interrogatory was "vague, burdensome, oppressive and overbroad." 1(i) was answered, "human response to disasters," and "basis for human response assumptions" for the first two witnesses respectively. For the third, fourth and fifth witnesses the identical answer was given -- "evacuation planning." 1(j) was answered,

Human response to radiological emergencies does not differ materially from human response to non-radiological emergencies. (The ground for this opinion is personal research.)

for the first witness. And for the second witness:

Human response assumptions underlying the Indian Point emergency plans are valid. (The ground for this opinion is personal research.)

The third, fourth and fifth witnesses had identical answers:

The evacuation plans for Indian Point are adequate and evacuation time estimates are valid. (The grounds for these facts and opinions are research, training, and personal involvement in preparing the plans.)

Interrogatory 2 was answered in two different ways: for the first two witnesses the licensees answered, "Dr. Dynes and Mr. Lecker have yet to determine which documents, if any, which [sic] they will rely upon in their testimony." For the third, fourth and fifth witnesses licensees listed all emergency planning documents currently known to intervenors, but gave no hint as to which documents in particular or which parts of documents would be the focus of testimony.

CONCLUSION

The pattern of licensees' responses is transparent; the board's duty is incontrovertible. Licensees have presented no good reasons why the provisions of 10 C.F.R. Part 2 should be ignored or defied. Rather, through their answers to interrogatories they have demonstrated that depositions of their witnesses are urgently needed. For these reasons UCS/NYPIRG's motion to compel discovery should be granted.

Respectfully submitted,

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
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CONSOLIDATED EDISON COMPANY OF NEW YORK ) Docket Nos. 50-247 SP  
(Indian Point Unit 2) ) 50-286 SP  
 )  
POWER AUTHORITY OF THE STATE OF NEW YORK )  
(Indian Point Unit 3) ) May 28, 1982

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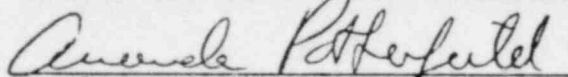
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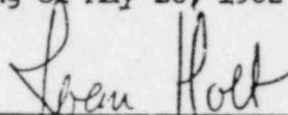
UCS/NYPIRG SUPPLEMENTARY INTERROGATORIES TO CON EDISON  
AND PASNY

UCS/NYPIRG MOTION TO COMPEL DISCOVERY PURSUANT TO 10 C.F.R.  
2.740(f) and MEMORANDUM IN SUPPORT OF MOTION TO COMPEL DISCOVERY

FOE/AUDUBON SUPPLEMENTAL RESPONSE TO LICENSEES' REQUEST  
FOR THE PRODUCTION OF DOCUMENTS

have been served on the official minimum service list for the above  
captioned proceeding by depositing in the United States mail, first class,  
this 28th day of May 1982. The judges of the Atomic Safety and  
Licensing Board were each mailed a copy of the UCS/NYPIRG Motion to Compel  
and Memorandum in Support of Motion to Compel Discovery by Express Mail on  
May 27, 1982. Mr. Brandenburg for Con Edison and Mr. Pikus of Shea and  
Gould for PASNY were served by hand on the morning of May 28, 1982 with  
each of the above listed documents.

  
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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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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

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