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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:
James P. Gleason, Chairman
Dr. Oscar H. Paris
Frederick J. Shon

SERVED DEC 9 1982

In the Matter of)	
)	
CONSOLIDATED EDISON COMPANY)	Docket No. 50-247-SP
OF NEW YORK)	50-286-SP
)	
(Indian Point, Unit No. 2))	
)	
POWER AUTHORITY OF THE STATE)	
OF NEW YORK)	
)	December 8, 1982
(Indian Point, Unit No. 3))	

MEMORANDUM AND ORDER
(Memorializing Rulings of
Telephone Conference on December 3, 1982)

On December 3, 1982, this Board conducted a telephone conference to consider Licensees' Motion to Dismiss Certain Contentions, dated December 1, 1982. Counsel representing the Licensees (Consolidated Edison Company (Con Ed) and the Power Authority of the State of New York (Power Authority)), the Union of Concerned Scientists (UCS), and the NRC Staff participated in the conference. West Branch Conservation Association (WBCA) was unable to participate and, instead, submitted a written response to Licensees' motion: West Branch Conservation Association's Reply to Motion of the

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Licensees of December 1 to Dismiss Certain Contentions, dated December 4, 1982.^{1/} The conference call, therefore, concerned only Licensees' motion to dismiss UCS's Contentions 2.1(a) and (d).

Licensees argued in their motion that Contentions 2.1(a) and (d) should be dismissed because UCS would be presenting no witnesses under either of these contentions. Licensees explained at the conference that it assumed UCS would be presenting no witnesses because UCS had failed to provide its list of witnesses by November 29, 1982, the deadline set in the Board's Order of November 24, 1982, and UCS had indicated to one of Licensees' counsel that it had no witnesses under Commission Question 2. UCS argued during the conference call that it would be presenting witnesses under Contentions 2.1(a) and (d) but had only been able to secure one of its witnesses and would need more time to secure the others. UCS explained that it had failed to meet the November 29 deadline for filing its list of witnesses for Commission Questions 1, 2, and 5 because it had misunderstood that requirement. UCS stated that it had believed it was only required to provide a list of witnesses it had secured by that date, but had until December 23, 1982, the deadline for filing testimony, to secure all of its witnesses. UCS expressed its understanding that it had a continuing duty to

^{1/} Other parties were not invited to participate because the matters discussed involved only the intervenor, UCS.

supplement its responses to interrogatories and, therefore, had intended to provide the parties with the names of its witnesses as they became available.

Staff stated that it was opposed to having the contentions dismissed at this time but was concerned that an extension of time for UCS to provide its list of witnesses not effectively preclude depositions of those witnesses.

Because of UCS's misunderstanding as to the established date to file its list of witnesses, the Board granted UCS an extension of time until December 10 to file its list of witnesses for Commission Question 2. UCS must place in the hands of all the parties that list of witnesses by that date, even if that must be accomplished by telephone with confirmation by wire or some other expedited method of service. In addition, the Board made the following changes to dates in the schedule affected by this extension of time:

- 1) The due date for UCS to file testimony on Commission Question 2 was extended from December 23 to December 28.
- 2) The final day for depositions of the UCS witnesses by the Staff and the Licensees was extended from December 16 to December 23.
- 3) The due date for Licensees and Staff to file testimony on Commission Question 2 was extended from January 7 to January 12.

During the telephone conference Licensees raised the issue of UCS's failure to identify all of its witnesses under Commission Questions 1 and 5 by the November 29 deadline set forth in the

Board's November 24 order. After hearing argument from all the parties participating in the conference, the Board granted UCS an extension of time until December 17 to file its list of witnesses for Commission Question 1. The Board instructed Licensees and Staff to ignore the December 10 deadline for noticing depositions on UCS's witnesses on Question 1. The parties shall work out a new deadline among themselves. Schedule changes with respect to Question 5 will be dealt with later.

The Board ruled that the new deadlines set for the filing of witness lists also applied to the filing of the witnesses qualifications and the list of documents upon which they will rely.

Finally, Licensees' request to hold Licensees' Motion to Dismiss Certain Contentions, dated December 1, 1982, in abeyance until UCS identifies the witnesses it plans to present under Commission Question 2 was granted.^{2/}

ORDER

Upon consideration of the foregoing and the entire record in this proceeding it is this 7th day of December, 1982

ORDERED

^{2/} We wish to take this opportunity to set the record straight by correcting the transcript of the December 3, 1982, telephone conference as follows: Tr. 4887, line 16, "certain intervenors" should read "pro se intervenors."

1. That the schedule for UCS, Licensees, and Staff is modified as follows:^{3/}

December 10 - UCS shall file a list of witnesses it plans to present on Commission Question 2, including the qualifications of those witnesses and a listing of the documents upon which each witness will rely.

December 17 - UCS shall file a list of witnesses it plans to present on Commission Question 1, including the qualifications of those witnesses and a listing of the documents upon which each witness will rely.

December 23 - Final day for depositions of the UCS witnesses on Commission Question 2 by the Staff and the Licensees.

December 28 - Due date for UCS to file testimony on Commission Question 2.

January 12 - Due date for Licensees and Staff to file testimony on Commission Question 2.

2. That the deadline for noticing depositions on UCS's witnesses for Question 1 shall be arrived at by negotiation of the parties.

3. That Licensees' Motion to Dismiss Certain Contentions, dated December 1, 1982, is held in abeyance until UCS identifies the witnesses it plans to present under Commission Question 2.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

Oscar H. Paris
Administrative Judge

for James P. Gleason, Chairman
Administrative Judge

Bethesda, Maryland

^{3/} A copy of the entire schedule as modified is attached for the convenience of all parties.

MODIFIED SCHEDULE

1982

- November 19 Responses due to discovery requests on Commission Questions 1, 2 and 5 (Extended for UCS, infra)
- 26 Final day for noticing depositions on Commission Question 2 (Extended for UCS witnesses, infra)
- 27 Due date for motions to consolidate
- December 2 UCS shall file substantive answers to the interrogatories of Licensees and the Staff on Commission Questions 1, 2 and 5
- 3 Beginning on this date, UCS may conduct discovery with respect to Commission Question 2
- 9 Final day for depositions on Commission Question 2 (Extended for UCS witnesses, infra)
- 10 UCS shall file a list of witnesses it plans to present on Commission Question 2, including the qualifications of those witnesses and a listing of the documents upon which each witness will rely
- 17 FEMA report due on adequacy of offsite emergency plans
- 17 UCS shall file a list of witnesses it plans to present on Commission Question 1 including the qualifications of those witnesses and a listing of the documents upon which each witness will rely
- 23 Final day for depositions of the UCS witnesses on Commission Question 2 by the Staff and the Licensees
- 28 Responses due from party intervenors supporting or abandoning contentions on Commission Questions 3 and 4
- 28 Due date for UCS testimony on Commission Question 2
- 29 Due date for Westchester County supplemental testimony on Commission Questions 3 and 4
- 30 Due date for WBCA testimony on Commission Question 2
- January 7 Board Order reformulating contentions under Commission Questions 3 and 4

- 10 Hearing on prefiled testimony of Westchester County on Commission Questions 3 and 4. One week allotted: Monday through Friday.
- 12 Due date for Licensees and Staff to file testimony on Commission Question 2
- 14 Final day for depositions on Commission Question 1
- 18 Hearing on Commission Question 2. Two weeks allotted: Tuesdays through Fridays
- 24 Due date for party responses on reformulated contentions under Commission Questions 3 and 4
- 24 Due date for testimony from Licensees and Staff on Commission Question 1
- 31 Due date for Intervenors' testimony on Commission Question 1
- February 8 Hearings on Commission Question 1. Two weeks allotted: Tuesdays through Fridays
- 8 Board Order finalizing contentions on Commission Questions 3 and 4
- 14 Due date for FEMA and all parties to file supplemental testimony on Commission Questions 3 and 4
- March 1 Hearings on Commission Questions 3 and 4. Three weeks allotted: Tuesdays through Fridays
- 1 Final day for noticing depositions on Commission Question 5
- 15 Final day for depositions on Commission Question 5
- 22 Last day for noticing depositions on Commission Question 6
- 22 Final day for testimony from Licensees, Staff and parties on Commission Question 5
- April 5 Hearings on Commission Question 5. One week allotted: Tuesday through Friday
- 5 Last day for depositions on Commission Question 6

- 12 Final day for testimony from Licensees, Staff and parties on Commission Question 6
- 19 Hearing begins on Commission Question 6. One week allotted: Tuesday through Friday
- May 27 Due date for proposed findings of fact and conclusions of law
- July 29 Date for Board recommendations to the Commission
- Note: Cross-examination plans are to be filed with the Board at least three days prior to the hearing to which they apply.