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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF RESPONSE TO INTERVENORS' MOTION FOR AN EXTENSION
OF DEADLINES IN ORDER TO COMPLETE THE RECORD ON EMERGENCY
PLANNING ISSUES IN COMMISSION QUESTIONS THREE AND FOUR

Janice E. Moore
Counsel for NRC Staff

March 16, 1983

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imposed deadlines. Id.

At the time Intervenors filed their Motion, the parties were engaged in proceedings before Judge James A. Laurenson, an alternate Board member appointed to address the question of scheduling emergency planning witnesses and to recommend a fair and efficient method of hearing emergency planning testimony of the various parties. Subsequently, in a Recommended Decision dated March 4, 1983, Judge Laurenson recommended that two additional days be added to the eight hearing days remaining, for emergency planning issues, and that the resultant ten hearing days be allocated as follows: Intervenors - 5 days; Licensees - 2 days; New York State - 1 day; Westchester County - 1/2 day; Rockland County - 1/2 day, NRC Staff - 1 day. Recommended Decision at 18 (March 4, 1983). The Board issued an Order adopting Judge Laurenson's recommendation with minor modifications which included the two additional hearing days to be held during the week of March 28, 1983. Mailgram of March 7, 1983 at 1. As the above ruling shows, the Board did not agree with Intervenors' claim that they needed ten hearing days to present their case. ^{1/}

As a general rule, scheduling the receipt of evidence in a hearing is a matter of Licensing Board discretion. As such, appellate bodies are disinclined to interfere with scheduling decisions absent a "truly exceptional situation" which warrants interlocutory appellate consideration. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2) ALAB-459, 7 NRC 179, 188; Public Service Co. of N.H.

^{1/} Judge James Laurenson, noted in his recommended decision that much Intervenor testimony is "...of little or no probative value in light of the state of the record at the present time." Recommended Decision at 16 (March 4, 1983). He advised Intervenors to take another look at their list of witnesses with the aim of presenting only those witnesses with significant testimony on the issues at hand. Id. at 16.

(Seabrook Station, Units 1 and 2), ALAB-295, 2 NRC 668 (1975). In this proceeding, extensive consideration has been given to developing a schedule for receiving testimony on Commission Questions 3 and 4. The schedule was the subject of Board directed discussions among the parties concerning possible stipulations, a day-long conference before Judge Laurensen, a nineteen page recommended decision by Judge Laurensen and consideration by the Licensing Board. As noted by Judge Laurensen, there is precedent for imposing reasonable limitations on direct examination and cross-examination in developing a schedule in the decisions of the courts and the Commission's Appeal Board. Recommended Decision at 7-9.

Intervenors have been allotted five days for the presentation of their case, to commence on March 15, 1983. It is difficult to say at this time when the hearings in question are just beginning what portion of Intervenors' testimony will be heard and how long it will take to hear each witness. Five days may in fact prove to be adequate time in which to hear all of Intervenors' testimony on Questions 3 and 4 which is determined to be relevant and probative. Intervenors have failed to establish why, if five days are found to be insufficient, more hearing days could not be found within the existing schedule to accomodate Intervenors' needs.^{2/}

^{2/} Emergency planning is just one of three remaining issues to be heard in this proceeding. The parties' testimony on Commission questions 5 and 6 is scheduled to begin on April 5 and April 19, respectively. These dates have been scheduled since November 15, 1982. Licensing Board's "Memorandum and Order (Formulating Final Contentions and Setting Schedule) at 24. There are also scheduled dates for the close of discovery on these Questions and for the filing of testimony. Id. It would create confusion and hardship on other parties were these dates to be disturbed at this late date; any variation now in the scheduled hearing dates for these issues would, for example, necessitate rescheduling of a number of witnesses. For this reason the Staff would oppose any change in schedule which would alter the dates for the presentation of testimony on other remaining issues.

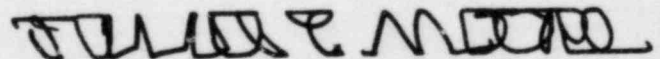
For example, there are no hearings currently scheduled for the week beginning April 11, 1983. Perhaps several days in this week could be used to complete the presentation of any remaining emergency planning testimony. ^{3/}

In sum, Intervenors have failed to establish that the current schedule for hearing the remaining issues in this proceeding needs to be disrupted or extended so as to require the Commission to grant a one month extension beyond the July 29, 1983 deadline for the Board to issue its recommendations. To the extent that it proves necessary, the Board has the flexibility to add hearing days to accommodate unfinished emergency planning testimony within the present schedule to assure the development of a full and complete record. Finally, there has been no showing by the Intervenors that, in setting the current hearing schedule, the Licensing Board abused its discretion warranting Commission review.

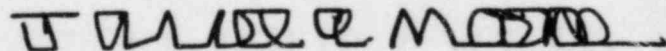
IV. CONCLUSION

For the reasons set forth above, Intervenor's Motion should be denied.

Respectfully submitted,



Janice E. Moore
Counsel for NRC Staff



This 16th day of March, 1983
at Bethesda, Maryland

^{3/} It is not possible under the current schedule to add any more hearing days after April 29, 1983 since that would abbreviate an already compressed schedule for the filing of findings by the parties.

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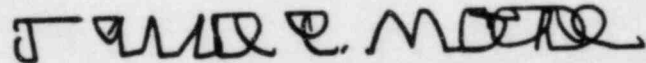
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