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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD  
Before Administrative Judges:  
James P. Gleason, Chairman  
Frederick J. Shon  
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)	: March 14, 1983
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POWER AUTHORITY'S MOTION TO STRIKE  
SELECTED INTERVENOR TESTIMONY

ATTORNEYS FILING THIS DOCUMENT:

Charles Morgan, Jr.  
Joseph J. Levin, Jr.  
Paul F. Colarulli  
MORGAN ASSOCIATES, CHARTERED  
1899 L Street, N.W.  
Washington, D.C. 20036  
(202) 466-7000

DS03

### Preliminary Statement

Power Authority of the State of New York ("Power Authority"), licensee of Indian Point 3 Nuclear Power Plant, hereby moves for an order striking the portions of direct testimony indicated below filed by the various intervenors herein. The Power Authority reserves its rights to move to strike additional testimony at the time each witness is presented, based, inter alia, on voir dire or subsequent developments.

At the outset, we strenuously object to Intervenors Witness List for Commission Questions 3 and 4 filed on March 11, 1983 (the "intervenor witness list"). Intervenors incredibly propose to present 99 witnesses in the five-day period allocated by the Board and at least 4 additional witnesses at later dates. This outrageous proposal flaunts the Recommended Decision of Judge James A. Laurenson and the Board's adoption thereof.<sup>1</sup> Even assuming that many of these witnesses will be presented as so-called "panels"<sup>2</sup> (a device which has proven of little or no time-saving benefit in the

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<sup>1</sup> This is not the first time that intervenors have defied scheduling limitations. At the outset of the proceeding, intervenors failed to comply with the Board's directive to reduce their scheduled witnesses to a reasonable number. (T: 1064, 1191.)

<sup>2</sup> The Power Authority further objects to the intervenors' failure to identify which witnesses will be presented as panels, and submits that the intervenors have forfeited any right to group as belated panels any witnesses who pre-filed individual testimony.

past), the 99 witnesses (among whom are numerous experts and local officials) cannot possibly be cross-examined within 5 days.

For these reasons, as well as under general evidentiary principles, the Power Authority moves to strike the testimony set forth below.<sup>3</sup> Even if the Board strikes the testimony indicated below, we believe that the Board will be required to take additional action in accordance with Judge Laurenson's Recommended Decision in order to accomodate the present schedule. As Judge Laurenson noted:

The fact that I have not recommended the elimination of certain testimony proffered by intervenors should not be construed as an indication of its admissibility. In fact, my review of the written direct testimony of intervenors' 170 witnesses led me to conclude that the majority of it was of little or no probative value in light of the state of the record at the present time. I previously stated my reasons for not recommending its elimination at this time. However, it should be readily apparent from the suggested schedule of remaining days available to intervenors that even with limitations on cross-examination, only a fraction of their witnesses will be able to testify. Frankly, I believe that this is a benefit rather than a flaw in my proposal. The intervenors should be given the

<sup>3</sup> We continue to believe that a party should not have to recommend which witnesses another party should call, and in no way seek to limit public participation. The intervenors' continued disregard of scheduling realities, however, has left the Power Authority little choice but to make the instant motion. The Power Authority also maintains and renews all of its prior objections regarding intervenor witnesses, including its objection to being placed in a position of determining which intervenor witnesses should be heard.

opportunity to again review their schedule of proposed witnesses and cull out only those with significant testimony on the issues at hand.

Based upon my review of the record and the intervenors' proposed testimony, I submit my observations for the record. In my opinion, very little, if any, of the testimony proposed for panels of community witnesses is of any probative value. For example, I found nothing in the testimony of the panel of pastors which, by virtue of their positions as clergy, distinguishes their testimony from that of any other lay witness. The Board has already heard testimony from county and local officials concerning the subjects of transportation, schools, police, ambulance, reception centers, communications, condition of roads, and certain handicapped groups. In light of the limited time available for this matter, intervenors should take this opportunity to reexamine their list of witnesses and pare it to those who have relevant, material and probative evidence to offer. While I understand the intervenors' concern that affected residents of the area should be permitted to testify, I believe that this position should yield to the necessity to present expert testimony on the subject of emergency planning in the limited time available.

If intervenors do not voluntarily reduce the number of proposed witnesses, but attempt to call the panels of community witnesses on subjects that have already been the subject of previous testimony, the Board should be prepared to rule on the admissibility of such evidence pursuant to 10 CFR §2.757. (Emphasis added.)

(Recommended Decision at 16-17.)

We continue to believe that the testimony of Intervenors' so-called "community witnesses" is generally cumulative and repetitive, and can not be presented within the available hearing time.

Finally, the Power Authority objects to the inadequate discovery provided by the intervenors with respect to the proposed witnesses. Of 7 expert witnesses of whom licensees have requested depositions, none have yet been produced, and intervenors have indicated that, at most, only 2 might be made available. Furthermore, intervenors have not supplemented their answers to interrogatories filed nearly one year ago. Such inadequate discovery violates due process.

TESTIMONY TO BE STRICKEN

Objection Abbreviations

- (C) Cumulative and/or repetitive
- (Co) Conclusory
- (F) Inadequate foundation
- (H) Hearsay and/or lack of personal knowledge
- (N) Improper notice
- (O) Outdated
- (R) Irrelevant, immaterial, and/or beyond scope of Commission Questions 3 and 4
- (S) Speculative

Testimony is identified in the order it appears in intervenors' witnesses list. In some instances, the Power Authority's motion to strike contains both grounds for striking all of the witness' testimony and alternative grounds for striking portions thereof.

<u>Witness (Intervenor number)</u>	<u>Page (Line)</u>	<u>Objections</u>
Erikson (148) <sup>4</sup>	All of supplemental testimony	H,R
Courtney (134)	1(12)-2(2) 2(11)-(19) 2(20)-(28) 3(1)-(10)	H S S,H R
King (41)	1(16)-end	H
Galdone (42)	1(13)-(18) 2(18)-(21)	H,S H
Connelly (150)	1(33)-(34)	H
Brooker (151)	3(2)-(5) 3(17)-(25) 4(18)-(21) 5(1)-(8)	S S,O,C S S
Ford (140)	1(8)-(14) 2(4)-3(4) 3(9)-(17) 4(10)-(12) 4(14)-(17) 4(20)-(24)	H S S H S S

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<sup>4</sup> Since Dr. Erikson was the only witness identified by intervenors prior to March 11, licensees were earlier able to file a written motion to strike his supplemental testimony.

Bulleit (131)	1(33)-(35) 1(38)-end	H F,R,Co
Burgher (138)	2(18)-(20) 3(12)-4(4)	H H
Iurato (87)	2(21)-(25)	H
Doughty (110)	1(6)-(8) 1(14)-(20)	S H,S
Melbin (168)	All	R
Smith (20)	All	O,F,R
Co (75)	3(8)-(9) 5(5)-(6) 5(8)-(10) 5(21)-(23) 6(24)-7(12) 7(13)-(14) 8(9)-(12) 8(21)-(23)	R S S S R F,H F,R,C R
Saunders (73)	2(17)-(18) 3(3)-(5)	R S
Cohen (58A)	2(22)-(24)	F,S
Teasdale (133)	1(13)-(15)	F,S
Dyer (147)	2(7)-(8)	H
Blattstein (59)	2(6)-(19)	F,H
Sbarra (60)	1(9)-(16) 1(17)-2(7) 2(10)-(12)	R H,S R
Simon (65)	2(2)-(4)	F,H

Vinci (46)	1(3)-(5) 1(13)-(15)	F S
Kriveloff (4)	All	F <sup>5</sup> ,H
Sheer (112)	2(2)-(3) 2(6)-(19) 2(20)-(23)	S H R
McGovern (144)	1(2)-(3) 1(5)-2(1) 2(2)-(12)	Co S,Co R
Gromack (70)	2(7)-(9) 2(17)-(19) 2(20)-(24) Supplemental testimony: 2(1)-end	Co S Co  H
Conklin (98)	1(5) 1(11)-end	H S,R
Lavelle (24)	2(23)-(25)	R
Johnson (7)	1(9)-(20) 1(22)-(23) 1(27)-2(17) 2(25)-end	H H,S,F H,S,Co H,Co
Wayne (97)	2(12)-(15) 2(16)-(18) 3(26)-4(10) 4(11)-end	S H H,S Co
Hare (96)	1(16)-(21) 1(22)-(24) 2(4)-(9) 2(12)-(15) 2(17)-end	S H,R R H H,S
Johnson (32)	1(23)-(25) 2(5)-(9) 2(13)-(16) 2(30)-end	S H H,S,R H,S,Co,R

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<sup>5</sup> In particular, the direct testimony fails to qualify the witness as an expert.



Burger (63)	1(15)-(23)	H,Co
	2(1)-(10)	H,S
	2(13)-(21)	H
	2(25)-3(3)	H
	2(8)-(21)	H,S
	4(6)-(9)	H
	4(12)-(14)	S,Co
	4(19)-(22)	H
	5(11)-(12)	R,H,Co
Cormican (173)	1(20)-2(1)	H
	2(19)-(22)	H
	3(12)-4(23)	S,Co
	5(5)-(12)	R
	5(18)-end	H,C,S
Gochman (115)	1(4)-(5)	H
	1(8)-(10)	S
	1(14)-(16)	H
	1(18)-(21)	H
Rubeo (86)	1(1)-(7)	R
	2(24)-end	H,S,Co
Sekelsky (88)	2(3)-(6)	R
Indusi (124)	1(7)-(17)	H,Co,S
	2(1)-(4)	Co,S
	2(8)-(11)	H
	2(24)-3(2)	H
	3(7)-end	S,Co
Gohring (125)	1(4)-(9)	S
	1(15)-end	S,H,Co
Bergman (53)	1(25)-(34)	S,Co
	2(13)-(19)	H
Awalt (49)	All of supple- mental testimony	C
	2(7)-(9)	H
	2(19)-end	C,R
O'Brien (50)	All	N,F
	1(7)-(8)	H
Moore (51)	1(6)-(9)	H
	2(1)-(6)	S,Co,H

Bethge (52)	1(18)-(20) 2(5)-(6) 2(15)-(18) 2(29)-(32)	R S,Co H S,Co
Gunn (159)	1(30)-2(17) 2(25)-(31) 3(16)-(20)	H H,S,Co H,R,Co
Capon (164)	2(19)-(24)	S
Puglisi (161)	1(11)-(17) 2(1)-end	R H
Ziegler (100)	1(5)-(9) 1(24)-2(13)	Co H,Co
Helbraun (99)	2(5)-end	H,N
Zelman (10)	All	C,R
de Ward (78)	1(3)-(9) 1(14)-(17) 1(18)-(22) 1(27)-(28) 2(16)-end	R H S,Co F,S,Co Co,R
Ancona (135)	1(7)-2(9) 2(17)-(18) 2(19)-end	S,Co,F,R Co,S H,R,Co
Narod-Shiek (105)	2(18)-(23) 2(26)-(31) 3(7)-(14)	Co S,Co H
Roden (84)	Supplemental testimony: 1(12)-end	H,S,Co
Rodriguez (102)	1(20)-(23) 2(20)-(24)	F H
Bowles (85)	1(12)-2(1) 2(1)-(12) 2(18)-(21) 2(22)-end	R H,S,Co H R,H

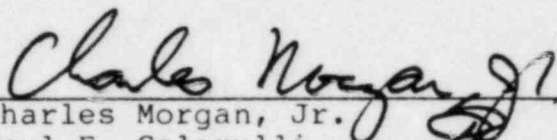
Kahn (120)	2(1)-(5) 2(14)-(15)	R R
Jessup (126)	2(26)-3(3) 3(4)-end	H,Co H
Litty (56)	1(4)-(5)	H
Murphy (40)	All Supplemental testimony: 2(25)-3(20) 7(18)-8(2) 8(17)-(18) 8(22)-11(5) 11(14)-12(16) 12(23)-13(15) Exhibit	R <sup>6</sup> ,H  R,Co H,Co Co R H,R H,R H,C,R

Intervenors have requested leave to present witnesses Kagan (103), Lifton (149), Bower (43), and Brazelton (128) at later dates. The Power Authority objects to any further expansion of the hearing schedule, and submits that this additional testimony is cumulative and repeats other testimony already offered.

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<sup>6</sup> See, e.g., Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-680 (July 16, 1982) (regulations require arrangements only for treating persons who are both injured and contaminated).

Respectfully submitted,

  
Charles Morgan, Jr.  
Paul F. Colarulli  
Joseph J. Levin, Jr.

MORGAN ASSOCIATES, CHARTERED  
1899 L Street, N.W.  
Washington, D.C. 20036  
(202) 466-7000

Stephen L. Baum  
General Counsel  
Charles M. Pratt  
Assistant General Counsel

POWER AUTHORITY OF THE  
STATE OF NEW YORK  
Licensee of Indian Point Unit 3  
10 Columbus Circle  
New York, New York 10019  
(212) 397-6200

Bernard D. Fischman  
Michael Curley  
Richard F. Czaja  
David H. Pikus

SHEA & GOULD  
330 Madison Avenue  
New York, New York 10017  
(212) 370-8000

Dated: March 14, 1983

UNITED STATES OF AMERICA  
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CERTIFICATE OF SERVICE

I hereby certify that copies of POWER AUTHORITY'S MOTION TO STRIKE SELECTED INTERVENOR TESTIMONY and POWER AUTHORITY'S MOTION FOR WAIVER OF EXHIBIT DISTRIBUTION in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, this 14th day of March, 1983.

Docketing and Service Branch  
Office of the Secretary  
U. S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Ellyn R. Weiss, Esq.  
William S. Jordan, III, Esq.  
Harmon & Weiss  
1725 I Street, N.W., Suite 506  
Washington, D.C. 20006

\*James P. Gleason, Esq., Chairman  
Administrative Judge  
Atomic Safety and Licensing  
Board  
513 Gilmoure Drive  
Silver Spring, Maryland 20901

\*Joan Holt, Project Director  
Indian Point Project  
New York Public Interest  
Research Group  
9 Murray Street  
New York, N.Y. 10007

\*Dr. Oscar H. Paris  
Administrative Judge  
Atomic Safety and Licensing  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

\*Janice Moore, Esq.  
Counsel for NRC Staff  
Office of the Executive  
Legal Director  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

\*Mr. Frederick J. Shon  
Administrative Judge  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Brent L. Brandenburg, Esq.  
Assistant General Counsel  
Consolidated Edison Co.  
of New York, Inc.  
4 Irving Place  
New York, N.Y. 10003

\*Jeffrey M. Blum, Esq.  
New York University Law  
School  
423 Vanderbilt Hall  
40 Washington Square South  
New York, N.Y. 10012

Charles J. Maikish, Esq.  
Litigation Division  
The Port Authority of  
New York and New Jersey  
One World Trade Center  
New York, N.Y. 10048

Marc L. Farris, Esq.  
Eric Thorsen, Esq.  
County Attorney  
County of Rockland  
11 New Hemstead Road  
New City, N.Y. 10956

Ezra I. Bialik, Esq.  
Steve Leipsig, Esq.  
Environmental Protection Bureau  
New York State Attorney  
General's Office  
Two World Trade Center  
New York, N.Y. 10047

Joan Miles  
Indian Point Coordinator  
New York City Audubon Society  
71 West 23rd Street, Suite 1828  
New York, N.Y. 10010

Alfred B. Del Bello  
Westchester County Executive  
Westchester County  
148 Martine Avenue  
White Plains, N.Y. 10601

Greater New York Council on  
Energy  
c/o Dean R. Corren,  
Director  
New York University  
26 Stuyvesant Street  
New York, N.Y. 10003

Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Atomic Safety and Licensing  
Appeal Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Andrew S. Roffe, Esq.  
New York State Assembly  
Albany, N.Y. 12248

Honorable Richard L. Brodsky  
Member of the County  
Legislature  
Westchester County  
County Office Building  
White Plains, N.Y. 10601

Renee Schwartz, Esq.  
Paul Chessin, Esq.  
Laurens R. Schwartz, Esq.  
Margaret Oppel, Esq.  
Botein, Hays, Sklar & Herzberg  
200 Park Avenue  
New York, N.Y. 10166

\*Phyllis Rodriguez,  
Spokesperson  
Parents Concerned About  
Indian Point  
P.O. Box 125  
Croton-on-Hudson, N.Y. 10520

Stanley B. Klimberg  
General Counsel  
New York State Energy Office  
2 Rockefeller State Plaza  
Albany, New York 12223

Charles A. Scheiner, Co-  
Chairperson  
Westchester People's Action  
Coalition, Inc.  
P.O. Box 488  
White Plains, N.Y. 10602

Honorable Ruth Messinger  
Member of the Council of the  
City of New York  
District No. 4  
City Hall  
New York, New York 10007

Alan Latman, Esq.  
44 Sunset Drive  
Croton-on-Hudson, N.Y. 10520

\*Richard M. Hartzman, Esq.  
Lorna Salzman  
Friends of the Earth, Inc.  
208 West 13th Street  
New York, N.Y. 10011

\*Zipporah S. Fleisher  
West Branch Conservation  
Association  
443 Buena Vista Road  
New City, N.Y. 10956

Mayor George V. Begany  
Village of Buchanan  
236 Tate Avenue  
Buchanan, N.Y. 10511

\*Judith Kessler, Coordinator  
Rockland Citizens for Safe  
Energy  
300 New Hempstead Road  
New City, N.Y. 10956

\*David R. Lewis, Esq.  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Mr. Donald Davidoff  
Director, Radiological  
Emergency Preparedness  
Group  
Empire State Plaza  
Tower Building, RM 1750  
Albany, New York 12237

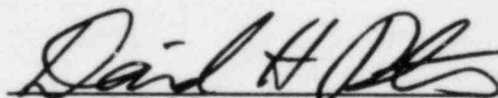
Stewart M. Glass  
Regional Counsel  
Room 1349  
Emergency Management  
Agency  
26 Federal Plaza  
New York, New York 10278

\*Amanda Potterfield, Esq.  
New York Public Interest  
Research Group, Inc.  
9 Murray Street,  
3rd Floor  
New York, N.Y. 10007

Melvin Goldberg  
Staff Attorney  
New York Public Interest  
Research Group  
9 Murray Street  
New York, New York 10007

Steven C. Sholly  
Union of Concerned Scientists  
1346 Connecticut Ave., N.W.  
Suite 1101  
Washington, D.C. 20036

Spence W. Perry  
Office of General Counsel  
Federal Emergency Management  
Agency  
500 C Street, Southwest  
Washington, D.C. 20472

  
David H. Pikus

---

\* Service also effected by hand on March 14, 1983.