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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

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

DEPARTMENT OF ENERGY
OFFICE OF SECRETARY
OF ENERGY & SERVICE
PLANNING

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In the Matter of)	
)	Docket Nos. 50-247-SP
CONSOLIDATED EDISON COMPANY OF)	50-286-SP
NEW YORK, INC. (Indian Point Unit No. 3))	
)	
POWER AUTHORITY OF THE STATE OF NEW)	
YORK, (Indian Point, Unit No. 3))	December 17, 1982
)	
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RESPONSE TO CONSOLIDATED EDISON'S MOTION TO ELIMINATE
CONTENTIONS

I. THE MOTION

UCS/NYPIRG opposes Con Edison's motion
for reasons set forth below:

A. Identities of Witnesses Thompson and Sholly

Mr. Stephen Sohinki of Con Edison was informed
of the identities of these two witnesses by telephone
on Thursday, December 9, 1982, one day before the
due date set by the Board. He was told what they would
be testifying about, and was given a cursory description
of their professional qualifications along with a
promise that we would send resumes as soon as possible.

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The NRC Staff was given similar information by telephone on the same or following day. Mr. Sohinki generously offered to pass on the information to the Power Authority of the State of New York (PASNY) and did so.

The Board's purpose in requiring rapid notification of witnesses was to facilitate the taking of depositions in a timely fashion. Apparently the telephone notice was adequate for this purpose, because on the same day that Con Edison sent out its motion to strike contentions, PASNY called to set up depositions of Thompson and Sholly. (At present PASNY refuses to say what position, if any, they will take on the Con Edison motion.)

In the earlier phase of these hearings Judge Carter stated, or at least conveyed the impression that, parties and intervenors who wished to avoid the expense of using express delivery and messenger services could do so by providing the identical information immediately by telephone and then sending written confirmation by regular mail.

This is exactly what UCS/NYPIRG did. If the Board now intends to reverse its earlier position, it should do so explicitly.

B. Documents to be relied upon

UCS/NYPIRG sent licensees a long list of pertinent documents upon which Sholly and Thompson could rely. These were an exhaustive list of documents which Mr. Sholly had uncovered in his research. It appears that Con Edison's objection may be based on the voluminousness of the list. We were unable at that time to provide a shorter list because Thompson and Sholly had not yet begun to prepare their joint testimony. Accordingly, we could not then exclude any of the documents. At the deposition of Thompson and Sholly, tentatively scheduled for Wednesday, December 22 pending resolution of this motion, questions may be addressed concerning the documents that will receive most attention. Testimony simply cannot be detailed in advance of its being written.

C. Professional Qualifications

As of Friday, December 10, 1982 UCS/NYPIRG did not have in its possession a resume for Gordon

Thompson. We promised to obtain this as rapidly as possible and send it to licensees. A copy was obtained on Monday, December 13 and sent. PASNY received it on Wednesday, December 15, prior to the filing of Con Edison's motion. NRC Staff receipt of mail is generally delayed somewhat by the operation of their mail room. I do not know whether Con Edison has yet received their copy, or why they have not if they have not. I also do not know what form of mail the UCS Washington office used for the resume. (Steve Sholly is currently unreachable because he is in the hospital having minor surgery.) If regular mail was used instead of express mail, we apologize for the one-day delay that this caused. However, we contend that such a delay has not prejudiced the licensees sufficiently to justify the filing of this motion.

II. OTHER MATTERS

A. Two Corrections

Despite a conversation between myself and Mr. Sohinki during which I identified witnesses Levi, Pisello and Piccioni as being presented by Friends of the

Earth/Audobon (FCE/Audobon), Con Edison persists in identifying them as witnesses of UCS/NYPIRG. They were so identified in a recent notice of deposition. I would request that this correction be noted for the record.

Secondly, at the time of licensees' previous motion to the Board to compel UCS/NYPIRG responses to their Question 2 interrogatories, a crucial fact was omitted. (Licensees insisted upon immediate resolution of the issue on a day when I could not be present.) The main reason UCS/NYPIRG failed to respond in a timely fashion is that I was never served with a copy of the interrogatories. They were passed out at the hearings on a day when I was home answering licensees' first batch of approximately 100 interrogatories. No copy was mailed to me. A copy was mailed to Ellyn Weiss, but she is involved in many proceedings and cannot be expected to keep track of all documents for this one. In the future I would request that licensees serve me personally, particularly when they file a service list testifying that I have been so served.

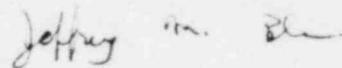
E. A serious discovery issue that may soon emerge

An unnamed member of the NRC Staff whose identity must remain confidential has conveyed information to UCS raising a serious accusation against the Indian Point Probabilistic Safety Study (IPPSS). Although we prefer not to mention the precise nature of this accusation until such time as we must present a motion to compel discovery, the accusation is such that its truth or falsity can only be established by examining the prior drafts and partial prior drafts (including pertinent memoranda) of IPPSS. We have made such a document request and have received a mixed response from the licensees' attorneys. Some say that it is likely they will object on privilege grounds; others say they are attempting to line up the information, but that they do not know whether any such drafts exist.

Because time is short, and the information may be available only in Los Angeles, we request that the Board arrange a time for a possible conference call sometime between now and January 4, 1983. If this issue can be resolved without a motion to compel, we will promptly apprise Ms. Miller of this fact.

We are aware that licensees may have colorable grounds for refusing to provide the documents. However, we also believe that it would cast a pall over this proceeding to have the accusation unresolved.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jeffrey M. Blum".

Jeffrey M. Blum
Attorney for Union of
Concerned Scientists