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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

In the Matter of	)	
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. (Indian Point, Unit No. 2)	)	Docket Nos. 50-247 SP 50-286 SP
POWER AUTHORITY OF THE STATE OF NEW YORK (Indian Point, Unit No. 3)	)	June 3, 1983

LICENSEES' OPPOSITION TO FOE/AUDUBON REQUEST
TO FILE TESTIMONY BY AFFIDAVIT

Consolidated Edison Company of New York, Inc. and the Power Authority of the State of New York, licensees of Indian Point Units 2 and 3, respectively, oppose the request of FOE/Audubon to file the affidavit of Dr. Isaac Levi.

On May 10, 1983, counsel for FOE/Audubon wrote a letter to this Atomic Safety and Licensing Board (Board), enclosing an affidavit executed by Dr. Levi. Letter from Richard M. Hartzman to Administrative Judges at 1 (May 10, 1983) (Hartzman Letter). Although this affidavit purports to be a "clarification concern[ing] Dr. Levi's method of making sensible probability judgments," it is in fact additional testimony. Hartzman Letter at 1.

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As this Board has made clear, testimony by affidavit is "improper" because it does not allow for cross-examination. Transcript of Proceedings at 8747 (Judge Gleason); see Transcript of Proceedings at 7927 (Judge Gleason). The Board has refused to admit material proferred by the licensees because there was no opportunity for the witness to "run the gamut of being cross examined." Transcript of Proceeding at 15,220 (Judge Gleason).

Unlike Rockland County official Donald P. McGuire, see Licensees' Motion for Reconsideration of Ruling on Admissibility of Deposition (May 9, 1983), Dr. Levi is not an adverse party, but is simply a witness. See Fed.R.Civ.P. 32(a)(2). Moreover, Mr. McGuire was available for examination during his deposition, but Dr. Levi has not been available for cross-examination with respect to the matters contained in his affidavit and there has been no showing that he was unavailable to give such testimony at the hearing.

The licensees, therefore, request that FOE/Audubon be denied leave to file the Affidavit of Dr. Isaac Levi (May 10, 1983).

Respectfully submitted,

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Dated: June 3, 1983

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 1983, I caused a copy of Licensees' Opposition to FOE/Audubon Request to File Testimony by Affidavit, to be served by first class mail, postage prepaid on the following:

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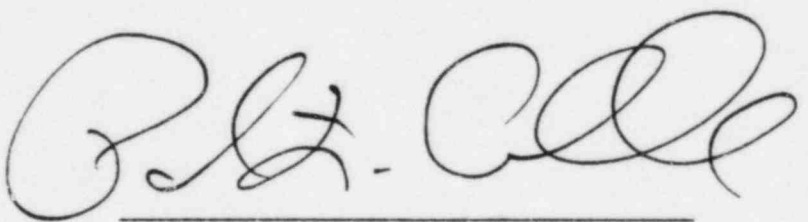

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