

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:
Louis J. Carter, Chairman
Frederick J. Shen
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))	May 27, 1982

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MEMORANDUM IN SUPPORT OF
MOTION TO COMPEL DISCOVERY

- I. There is no basis in law or in any of the Commission's or Licensing Board's Orders for Licensees' refusal to allow their witnesses to be deposed.

The Commission's January 8, 1981 and September 18, 1981 setting forth this proceeding exempt the licensing board from the strictures of 10 C.F.R. Part 2 for certain matters relating to the admission and formulation of contentions. However, the Orders states that in all other respects the provisions of 10 C.F.R. Part 2 will control. Footnote 4 to January 8, and September 18 orders.

10 C.F.R. § 2.740s establishes that parties to an NRC proceeding have the right to depose one another "without leave of the Commission or the presiding officer." Depositions between intervenors and licensees are permitted "without any showing or good cause." United States Nuclear Regulatory

Commission Staff Practice and Procedure Digest, § 10.2(3), (1978), at 26.

Rather than formally notice the depositions for a specific time, UCS/NYPIRG called licensees' attorneys to offer a range of possible times and to propose that mutually convenient dates be set. The shortness of time before actual hearings commence requires that we seek an immediate ruling from the board compelling licensees to make their witnesses available for depositions. The licensees have made clear their unwillingness to produce their witnesses without an order from the board. To notice despositions formally so that licensees may object in writing would simply waste precious time. An immediate ruling from the board is necessary.

II. Licensees' refusal to let their witnesses be deposed is part of an attempt to deny intervenors any meaningful discovery of witness testimony.

UCS/NYPIRG has attempted to discover the substance of and bases for licensee witnesses' testimony through interrogatories as well as depositions. Both types of attempts have been frustrated. The pertinent interrogatories were UCS/NYPIRG interrogatories 1(h), 1(i), 1(j) and 2. None succeeded in eliciting useful information. Question 1(h) requested a cataloging of reports submitted to licensees by the witness. 1(i) asked, "what is the subject matter of the witness' testimony?" 1(j) asked, "what are the facts and/or opinions to which the witness will testify and the grounds for each fact or opinion?" Interrogatory 2 requested licensees to "provide a reasonable description of all documents that will be relied upon in the testimony presented by each witness."

For the five witnesses the licensees responded as follows: they answered 1(h) for two witnesses by saying there were no reports, and for the other three witnesses they objected that the interrogatory was "vague, burdensome, oppressive and overbroad." 1(i) was answered, "human response to disasters," and "basis for human response assumptions" for the first two witnesses respectively. For the third, fourth and fifth witnesses the identical answer was given -- "evacuation planning." 1(j) was answered,

Human response to radiological emergencies does not differ materially from human response to non-radiological emergencies. (The ground for this opinion is personal research.)

for the first witness. And for the second witness:

Human response assumptions underlying the Indian Point emergency plans are valid. (The ground for this opinion is personal research.)

The third, fourth and fifth witnesses had identical answers:

The evacuation plans for Indian Point are adequate and evacuation time estimates are valid. (The grounds for these facts and opinions are research, training, and personal involvement in preparing the plans.)

Interrogatory 2 was answered in two different ways: for the first two witnesses the licensees answered, "Dr. Dynes and Mr. Lecker have yet to determine which documents, if any, which [sic] they will rely upon in their testimony." For the third, fourth and fifth witnesses licensees listed all emergency planning documents currently known to intervenors, but gave no hint as to which documents in particular or which parts of documents would be the focus of testimony.

CONCLUSION

The pattern of licensees' responses is transparent; the board's duty is incontrovertible. Licensees have presented no good reasons why the provisions of 10 C.F.R. Part 2 should be ignored or defied. Rather, through their answers to interrogatories they have demonstrated that depositions of their witnesses are urgently needed. For these reasons UCS/NYPIRG's motion to compel discovery should be granted.

Respectfully submitted,

Jeffrey M. Blum

JEFFREY M. BLUM
Special hearing attorney,
Union of Concerned Scientists

Amanda Potterfield/jmg

AMANDA POTTERFIELD
Attorney,
New York Public Interest
Research Group

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CONSOLIDATED EDISON COMPANY OF NEW YORK) Docket Nos. 50-247 SP
(Indian Point Unit 2)) 50-286 SP
)
POWER AUTHORITY OF THE STATE OF NEW YORK)
(Indian Point Unit 3)) May 28, 1982

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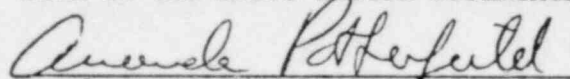
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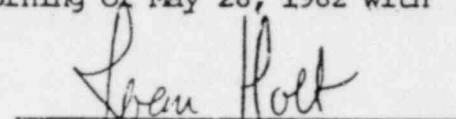
UCS/NYPIRG SUPPLEMENTARY INTERROGATORIES TO CON EDISON
AND PASNY

UCS/NYPIRG MOTION TO COMPEL DISCOVERY PURSUANT TO 10 C.F.R.
2.740(f) and MEMORANDUM IN SUPPORT OF MOTION TO COMPEL DISCOVERY

FOE/AUDUBON SUPPLEMENTAL RESPONSE TO LICENSEES' REQUEST
FOR THE PRODUCTION OF DOCUMENTS

have been served on the official minimum service list for the above
captioned proceeding by depositing in the United States mail, first class,
this 28th day of May 1982. The judges of the Atomic Safety and
Licensing Board were each mailed a copy of the UCS/NYPIRG Motion to Compel
and Memorandum in Support of Motion to Compel Discovery by Express Mail on
May 27, 1982. Mr. Brandenburg for Con Edison and Mr. Pikus of Shea and
Gould for PASNY were served by hand on the morning of May 28, 1982 with
each of the above listed documents.


Amanda Potterfield, Esq.
P.O. Box 384
Village Station
New York, NY 10014


Joan Holt
New York Public Interest
Research Group, Inc.
9 Murray St.
New York, NY 10007

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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POWER AUTHORITY OF THE STATE OF
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Docket Nos. 50-247 SP
50-286 SP

SERVICE LIST

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

Louis J. Carter, Esq., Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Oscar H. Paris
Administrative Judge
Atomic Safety and Licensing Board
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

Janice Moore, Esq.
Counsel for NRC Staff
Office of the Executive
Legal Director
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

Paul F. Colarulli, Esq.
Joseph J. Levin, Jr., Esq.
Pamela S. Horowitz, Esq.
Charles Morgan, Jr., Esq.
Morgan Associated, Chartered
1899 L Street, N.W.
Washington, D.C. 20036

Charles M. Pratt, Esq.
Thomas R. Frey, Esq.
Power Authority of the
State of New York
10 Columbus Circle
New York, N.Y. 10019

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

Joan Holt, Project Director
Indian Point Project
New York Public Interest
Research Group
5 Beekman Street
New York, N.Y. 10038

John Gilroy, Westchester Coordinator
Indian Point Project
New York Public Interest
Research Group
240 Central Avenue
White Plains, New York 10606

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

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

Alfred B. Del Bello
Westchester County Executive
Westchester County
148 Martine Avenue
New York, N.Y. 10601

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

Renee Schwartz, Esq.
Botein, Hays, Sklar & Herzberg
Attorneys for Metropolitan
Transportation Authority
200 Park Avenue
New York, N.Y. 10166

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

Honorable Ruth Messinger
Member of the Council of the
City of New York
District #4
City Hall
New York, New York 10007

Eric Thorson, Esq.
Marc L. Parris, Esq.
County Attorney
County of Rockland
11 New Hemstead Road
New City, N.Y. 10010

Geoffrey Cobb Ryan
Conservation Committee
Chairman, Director
New York City Audubon Society
71 West 23rd Street, Suite 1828
New York, N.Y. 10010

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

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

Pat Posner, Spokesperson
Parents Concerned About
Indian Point
P.O. Box 125
Croton-on-Hudson, N.Y. 10520

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

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

Lorna Salzman
Mid-Atlantic Representative
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 Hemstead Road
New City, N.Y. 10956

David H. Pikus, Esq.
Richard F. Czaja, Esq.
330 Madison Avenue
New York, N.Y. 10017

Ms. Amanda Potterfield, Esq.
P.O. Box 384
Village Station
New York, New York 10014

Mr. Donald L. Sapir, Esq.
60 East Mount Airy Road
RFD 1, Box 360
Croton-on-Hudson, New York 10520