

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:  
Louis J. Carter, Chairman  
Dr. Oscar H. Paris  
Frederick J. Shon

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In the Matter of :

CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC. (Indian Point,  
Unit No. 2) :

Docket Nos. 50-247 SP  
50-286 SP

June 3, 1982

POWER AUTHORITY OF THE STATE OF  
NEW YORK (Indian Point, Unit No. 3) :

LICENSEES' MOTION FOR AN ORDER  
COMPELLING RESPONSES TO  
INTERROGATORIES OR, IN THE ALTERNATIVE  
IMPOSING SANCTIONS FOR FAILURE TO  
RESPOND, AND STRIKING CERTAIN CONTENTIONS

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Consolidated Edison Company of New York, Inc. ("Con Edison"), licensee of Indian Point Unit No. 2, and Power Authority of the State of New York ("Power Authority"), licensee of Indian Point Unit No. 3 (collectively the "licensees"), hereby move the Atomic Safety and Licensing Board ("Board") pursuant to 10 CFR § 2.740(f)\* to issue an order compelling the Union of

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\* 10 CFR § 2.740(f) of the Commission's Rules of Practice provides:  
Motion to Compel Discovery. (1) If a deponent or party upon whom a request for production of documents or answers to interrogatories is served fails to respond or

Concerned Scientists/New York Public Interest Research Group ("UCS/NYPIRG"), Parents Concerned About Indian Point ("Parents"), and Friends of the Earth/New York City Audubon Society ("FOE/Audubon"), (collectively "intervenors"), to fully answer the "Licensees' Interrogatories and Document Request Under Commission Questions 3 and 4" dated May 3, 1982 within five (5)\* days of issuance of such order.

Additionally, licensees seek an Order striking the following UCS/NYPIRG submittals on the ground that UCS/NYPIRG has again failed to provide factual underpinnings to each:\*\*

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(footnote continued from previous page)

objects to the request, or any part thereof, or fails to permit inspection as requested, the deposing party or the party submitting the request may move the presiding officer, within ten (10) days after the date of the response or after failure of a party to respond to the request for an order compelling a response or inspection in accordance with the request. The motion shall set forth the nature of the questions or the request, the response or objection of the party upon whom the request was served, and arguments in support of the motion. For purposes of this paragraph, an evasive or incomplete answer or response shall be treated as a failure to answer. Failure to answer or respond shall not be excused on the ground that the discovery sought is objectionable unless the person or party failing to answer or respond has applied for a protective order pursuant to paragraph (c) of this section.

\* Licensees, due to the time constraints generally inherent in this proceeding, purposefully request response within five days rather than within the ten days provided for by 10 CFR § 2.740(f).

\*\* The deficiencies of the relevant responses are discussed more fully infra at pp. 8-25.

Bases 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18 and 19 of contention IA; contention I(B)(1); bases 1, 2, 3, 5, and 6 of contention I(B)(2); bases 2, 3, and 4 of contention I(B)(3); contention I(B)(6); bases 1 and 3 of contention I(B)(7); contention II(A); contention II(B); contention III(A). Licensees also request the Board to strike FOE/Audubon's contention I and Parents' bases 4, 5, 6, 7, 9, 12, 15, 22 to contention I, bases 1 and 7 to contention II, and basis 1 to contention III, all on the same ground as set forth above relative to the UCS/NYPIRG submittals.

Licensees further move for an Order striking Board Contentions 3.2, 3.3, 3.7, 4.2, and 4.7 on the ground that both lead intervenors and contributing intervenors to each of these contentions have utterly failed to substantiate factually their underlying contentions and bases.

I. INTERVENORS ARE IN DEFAULT FOR FAILURE TO COMPLY WITH THE BOARD'S ORDER AND WITH THE COMMISSION'S REGULATIONS

Licensees consistently have argued in this proceeding that intervenors have proffered contentions related to emergency planning for which they have failed to provide adequate factual bases pursuant to 10 CFR § 2.714.\* The Board, taking the position

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\* See Con Edison's Reply Memorandum Respecting Contentions Proposed by Prospective Intervenors at 21-24, 26-30 (Feb. 11, 1982); Authority's Reply to Responses to Objections to Contentions of Potential Intervenors at 19-22, 27-32 (Feb. 11, 1982); Con Edison's Memorandum Respecting Contentions Proposed by Prospective Intervenors at 32-36, 37, 46-48 (Dec. 31, 1981); Power Authority's Objections and Answers to Contentions of Potential Intervenors at 13-14, 47-49, 56-59 (Dec. 31, 1981); see also Licensees' Petition for Directed Certification Pursuant to 10 CFR § 2.718(i) and for Waiver of 10 CFR § 9.103, at 2, 6, 7, 11-12 & n.\* (May 10, 1982).

that whatever was lacking with regard to factual bases could be cured during the discovery process, stressed at the second special prehearing conference the importance of the use of discovery to identify the crucial issues in this proceeding. Transcript of Proceeding at 605 (April 13, 1982). Interrogatory responses are thus particularly important in the present proceeding since the Board (unlike boards in typical operating licensing cases) has here in substance found that discovery would serve to supply the specific factual bases for contentions (id.), which bases were notably absent from many of intervenors' initial contention submissions.

After the second special prehearing conference, the Board issued an order on April 23, 1982 (the "Order") that contained an initial discovery schedule. Memorandum and Order (Formulating Contentions Assigning Intervenors, and Setting Schedule) (April 23, 1982)\* In that Order, the Board stated that "[i]nterrogatories shall be answered promptly and fully, answers being complete yet succinct." Order at 21.

The discovery schedule propounded by the Board established May 3 as the date by which all interrogatories on matters under Commission Questions 3 and 4 were to be filed,

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\* The Board's order reinforced the Commission's rule that [e]ach interrogatory shall be answered separately and fully in writing under oath or affirmation." 10 CFR § 2.740b(b) (1981). This regulation evinces the intervenors' procedural duty to respond to discovery requests in a diligent manner.

May 31 as the date on which discovery closed on matters under Commission Questions 3 and 4, June 7 as the date by which testimony on Questions 3 and 4 must be filed, and June 14 as the date by which cross-examination plans under Question 3 and 4 must be filed. Order at 22. This compacted time frame makes it absolutely imperative that all parties, licensees and intervenors alike, respond "promptly and fully", "completely but succinctly" to posed interrogatories.

Unfortunately, UCS/NYPIRG, Parents and FOE/Audubon have not even attempted to comply with this Order or with the Commission's discovery regulations. To date, the intervenors have failed to respond to a large number of interrogatories, have provided incomplete and/or evasive answers to others and, in many instances, have failed to provide information that is in any way responsive to the question actually posed. Under the Commission's Rules of Practice with respect to motions to compel discovery, such "evasive or incomplete answer(s) or response(s) shall be treated as failure to answer or respond." 10 CFR § 2.740(f)(1). Indeed, such responses "amount to no more than blatant refusals to answer." Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-80-13, 11 NRC 559, 564 (1980).

The named intervenors' responses constitute egregious flauntings of established Commission policy with respect to its discovery rules, which rules are to be "accorded a broad and liberal treatment so that parties may obtain the fullest possible



knowledge of the issues and facts before trial, and that the inquiries are limited only by the requirement that they be reasonably relevant to a sensible investigation." Boston Edison Co., et al. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579 (1975); see 10 CFR § 2.740(b)(i).

Intervenors may not ignore the licensees' request. The interrogatories must either be answered or objected to within the time allowed. 10 CFR § 2.740(b). The fact that the request may be burdensome or expensive will not relieve the intervenors of their obligation. Boston Edison Co., et al., 1 N.R.C. at 584.

Licensing Boards have not hesitated to apply these standards. Intervenors' actions herein fully warrant, "on the basis of rules, precedents, and practice, [their] dismissal." Pennsylvania Power & Light Co., 11 NRC at 565; see Public Service Electric & Gas Co. (Atlantic Nuclear Generating Station, Units 1 and 2), LBP-75-62, 2 NRC 702, 706 (1975) (holding that 10 CFR § 2.707\* "...empowers the Board to dismiss a recalcitrant party

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\* 10 CFR § 2.707 provides in relevant part:  
On failure of a party . . . to comply with any prehearing order entered pursuant to § 2.715a or § 2.752, or to comply with any discovery order entered by the presiding officer pursuant to § 2.740, the Commission or the presiding officer may make such orders in regard to the failure as are just, including among others, the following:  
(a) Proceed without further notice, find the facts as to the matters regarding which the order was made in accordance with the claim of the party obtaining the order, and enter such order as may be appropriate, or  
(b) Proceed without further notice to take proof on the issues specified.

(footnote deleted; emphasis added)



for refusing to comply with a direct order of the Board");  
accor , Northern States Power Co. (Tyrone Energy Park, Unit  
1), LBP-77-37, 5 NRC 1298, 1301 (1977); Offshore Power Systems,  
LBP-75-67, 2 NRC 813, 817 (1975). However, at this juncture  
of the proceeding, licensees, although reserving their right  
to do so at some later date, do not call for dismissal of  
the intervenors but instead recommend that the Board compel  
UCS/NYPIRG, Parents, and FOE/Audubon to respond fully to  
licensees' interrogatories within five (5) days of the issuance  
of such an order. Additionally, licensees move the Board to  
strike certain submittals from intervenors.

II. THE BOARD SHOULD STRIKE CERTAIN BASES AND CONTENTIONS  
BECAUSE INTERVENORS HAVE AGAIN FAILED TO PROVIDE FACTUAL  
BASES THERETO

At the second special prehearing conference, the Board  
stated that discovery would reveal to the licensees and to the  
Commission Staff the factual bases of the intervenors' contentions.  
Transcript of Proceedings at 605 (April 13, 1982). In order to  
aid in the determination of those factual bases, licensees in their  
May 3, 1982 interrogatories set out precise definitional instruc-  
tions. The responses received from UCS/NYPIRG, Parents, and  
FOE/Audubon are sorely deficient, inter alia, as respects the  
definitional instructions, most notably those propounded at "H",

"K". and "L".\* Consequently, many intervenor contentions and bases for contentions remain abysmally insufficient as respects their factual foundations. Accordingly, these submittals should be stricken from consideration in this proceeding. Metropolitan

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\* The pertinent definitions state:

H. "Identify," when referring to a claimed defect or inadequacy in emergency planning for Indian Point, the Indian Point emergency plan or in the evacuation time estimates, shall mean to state specifically the nature of the claimed defect or inadequacy, including:

1. the aspect of planning, provision of the plan or the evacuation time estimate alleged to be defective or inadequate;
2. the volume(s) and page number(s) of the emergency plan at which a defective or inadequate provision or evacuation time estimate appears;
3. whether the aspect of planning, plan provision or evacuation time estimate is alleged not to comply with any provision of the guidelines of the Nuclear Regulatory Commission ("NRC") or Federal Emergency Management Agency ("FEMA"), and if so, a specific citation to the applicable regulation;
4. the grounds for your claim that the aspect of planning, plan, provision or evacuation time estimate is defective or inadequate;
5. what steps you claim should be taken to remedy the claimed defect or inadequacy;
6. the grounds for your claim that the steps identified in response to (5) would remedy the claimed defect or inadequacy;
7. whether the steps identified in response to (5) have been taken at any nuclear plant or in any emergency plan other than Indian Point, and if so, the identity of the nuclear plant or emergency plan;

(footnote continued next page)

Edison Company (Three Mile Island Nuclear Station, Unit No. 1), LBP-80-17, 11 NRC 893 (1980).

The licensing board in Metropolitan Edison Company, supra, dismissed all but two of an intervenor's contentions that were the subject of licensee's unanswered interrogatories.

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(Footnote continued from previous page)

8. the specific relation between the claimed defect or inadequacy and the fact that the Indian Point vicinity is alleged to be an area of high population density; and

9. in the case of a claimed defect in an evacuation time estimate, what you claim would be a correct estimate, and the method of calculation of such estimate.

K. To "state the grounds" or to "identify the grounds" for an allegation, claim, or contention means to describe in detail the reasoning and facts and to provide all data and calculations, which you claim support the allegation, claim, or contention, and to identify all relevant documents, and communications, and individual informants and to state the precise nature and source of your knowledge, information and belief that there is good ground to support such allegation, claim, or contention, and to specify any assumption on which the allegation, claim or contention is based. In the case of any assumption on which an allegation, claim, or contention is based, state the probability that such assumption will in fact occur, and the method of calculation of such probability. If any part of the grounds for an allegation, claim or contention is a guideline of the NRC, cite said guidelines with specificity. If a particular intervenor does not make a particular allegation, claim, or contention, said intervenor should so state.

L. To "state the probability" of an event means to state the probability that the event will occur, to set forth the method by which the probability was calculated, and to set forth the data used in the calculation.

Licensees' Interrogatories and Document Request Under Commission Questions 3 and 4 dated May 3, 1982 at pp. 6-8.

Characterizing its action as being "the least severe sanctions consistent with due process for licensee and a reliable evidentiary record," (id at 904) the board explained that:

No aspect of our order is punitive. It is not for a deterrent effect upon others. The sanctions we order are remedial and are the least we can impose to regulate the course of the proceeding in accordance with the law and the circumstances of this proceeding.

The other alternative we considered was . . . to allow ECNP's contentions to go to hearing despite the default. . . . [W]e could see no value in this approach. . . . [W]e would not know how to force licensee to defend itself against ECNP's allegations if licensee is not informed concerning their specifics. If licensee were to prepare its direct testimony and other evidence to meet ECNP's unclarified charges, it would have to postulate the grounds for them.

\* \* \* \* \*

We do not believe that the evidentiary record would be enhanced by a show of the licensee defending against strawman contentions cast into litigable form by licensee itself.

Id. at 903-904; (emphasis added).

#### A. UCS/NYPIRG'S Responses

The volume of UCS/NYPIRG's Answers to Licensees' Interrogatories (May 19, 1982) is misleading. UCS/NYPIRG has time and time again in its "interrogatory answers" restated its initial contentions and unsupported bases therefor instead of supplying any substance behind the bald assertions which were the subject of the original petition. Indeed, in several instances, UCS/NYPIRG openly answers with mere references to its earlier bases, see UCS/NYPIRG's Answers to Licensees' Interrogatories

Nos. 1, 7, 9, 32, 33, 59, 82. Licensees will address UCS/NYPIRG's response deficiencies seriatim according to each Board contention.

(1) Board Contention 3.1

UCS/NYPIRG is designated lead intervenor; UCS/NYPIRG's contention I(A) forms part of the basis for this Board contention. Order at p. 7.

Licensees addressed interrogatory No. 1 to UCS/NYPIRG contention I (A) ("J(A)") as a whole. The response thereto failed to complete licensees' definition "H" ("H") 2, 5-9, requirements.

Interrogatories 2, 3, 4, and 5 refer to basis (3) of I(A). Responses 3 and 5 are completely nonresponsive, while answers 2 and 4 fail to "state the grounds" pursuant to licensees' definition "K" ("K") or to "identify" pursuant to "H".

Interrogatory 9 refers to basis (5) of I(A). The reply to 9(a) fails to satisfy "H"; 9(b) is acceptable; 9(c) fails to satisfy "H".

Interrogatories 10, 11, 12, 19, 20, 21, 22, and 23 address basis (b) of I(A). Responses 10, 22, and 23 are responsive, albeit no. 23 states that "UCS/NYPIRG has not independently performed such calculations"; the other answers are nonresponsive.

Interrogatories 13, 14, 15, 24, 26, 27, 28, 29, and 30 refer to basis (7) of I(A). Only responses 15 and 26 are responsive; the remaining answers are nonresponsive, nos. 13, 24, and 28 failing to satisfy "H", and no. 27 being nonresponsive as to parts (b), (c), and (i).

Interrogatories 17 and 18 refer to basis (8) of I(A). Though theoretically responsive, answer 17 states that UCS/NYPIRG does not have any analysis ..., " thereby demonstrating that there was no basis in fact for the bald assertion contained in the original petition.

Interrogatories 31 and 32 address basis (9) of I(A). Neither answer is responsive.

Interrogatories 33, 34, and 35 refer to basis (10) of I(A). No answer complies with "H".

Interrogatories 36, 37, and 38 refer to basis (12) of I(A). Response no. 37 is responsive; nos. 36 and 38 fail to comply with "H".

Interrogatories 39, 40, 41, 42, 43, and 44 address basis (13) of I(A). Only response no. 41 is responsive. Replies nos. 39, 40, and 43 fail to comply with "H"; replies 42(c) and 44 fail to comply with "K".

Interrogatories 45, 46, 47, 48 and 49 address basis (14) of I(A). All answers are totally nonresponsive.

Interrogatory 50 refers to basis (15) of I(A). It fails with respect to "H" and "K".

Interrogatories 52 and 53 refer to basis (16) of I(A). Both replies fail to comply with "H".

Interrogatories 54 and 55 address basis (17) of I(A). Both replies are only partially responsive, failing to comply with "H", 5-8.

Interrogatories 56, 57, and 58 refer to basis (18) of I(A). All replies fail to comply with "H", 5-8.

Interrogatories 59, 60, 61 and 62 address basis (19) of I(A). Replies nos. 59 and 60 fail to reply to "H", 2 and 5-8; 61 (b) fails to comply with "H", 3 and 5-8; 61(c) and 62 are nonresponsive answers.

Although interrogatories 63 through 76 are addressed to another intervenor's contention under Board contention 3.1, UCS/NYPIRG has replied substantively to several. The answers are largely nonresponsive.

Obviously, UCS/NYPIRG has failed to comply with licensees' discovery requests. Of particular importance is UCS/NYPIRG's failure to state what they contend would be acceptable compliance with the requirements. Until licensees are able to contrast the present state of emergency planning in any particular area with what intervenors claim to be required on a site-specific basis, licensees will be unable to adequately prepare for the hearings in those areas.

It has been held that compliance with discovery requests is required because to obligate licensees to meet "any conceivable thrust at hearing would be patently unfair, and inconsistent with a sound record." Northern States Power Co. et al, (Tyrone Energy Park, Unit 1), LBP-77-37, 5 NRC 1298, 1300-1301 (1977). Indeed, as licensing boards have recognized repeatedly,

[T]he purpose of discovery is to enable each party prior to hearing to become aware of the positions of each adversary party on the various issues in controversy, and the information available to adversary parties to support those positions.



Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-31, 10 NRC 597, 599 (1979), later opinion, 11 NRC 559 (1980) (emphasis in original).

Accordingly, licensees move the Board to strike bases 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, and 19 of UCS/NYPIRG's contention I(A). See Metropolitan Edison Company, supra.

(2) Board Contention 3.2

UCS/NYPIRG is designated lead intervenor; UCS/NYPIRG's contention I(B)(1) forms part of the basis for this Board contention. Order at p.8.

Interrogatory no. 77 refers to basis (1) of I(B)(1). The reply is totally nonresponsive.

In light of UCS/NYPIRG's failure to substantiate factually its basis underlying this contention and to the failure of Parents (see infra at p. 21), WESPAC and WBCA, the contributing intervenors, to do likewise, (see Licensees' Motion to Impose Sanctions for Default and to Strike Contentions, May 28, 1982), licensees respectfully request that the Board strike Contention 3.2. See Northern States Power, et al., supra; Pennsylvania Power & Light Co., supra; Metropolitan Edison Co., supra.

(3) Board Contention 3.3

UCS/NYPIRG is designated lead intervenor; UCS/NYPIRG's contention I(B)(2) forms part of the basis for this Board contention. Order at p. 9.

Interrogatory 89 addresses I(B)(2) as a whole. The answer is totally nonresponsive.

Interrogatory 81 refers to basis (1) of I(B)(2). The reply fails to comply with "K".

Interrogatory 82 refers to basis (2) of I(B)(2). The reply is nonresponsive.

Interrogatory 83 addresses basis (3) of I(B)(2). The answer is nonresponsive.

Interrogatory 84 refers to basis (5) of I(B)(2). The reply is nonresponsive.

Interrogatory 90 refers to basis (7) of I(B)(2). Although the response is technically responsive, it asserts that "UCS/NYPIRG has made no such calculations of its own."

Because UCS/NYPIRG has failed to substantiate factually its basis underlying this contention and its bases, and because WBCA and RCSE, the contributing intervenors, have likewise failed (see Licensees' Motion to Impose Sanctions for Default and to Strike Contentions, May 28, 1982), licensees respectfully move that the Board strike contention 3.3. See Northern States Power et al., supra; Metropolitan Edison Co., supra; Pennsylvania Power & Light Co., supra.

(4) Board Contention 3.6

UCS/NYPIRG is designated lead intervenor; UCS/NYPIRG's contention I(B)(3) forms part of the basis for this Board contention. Order at p. 10.

Interrogatories 94 and 95 refer to basis (2) of

I(B)(3). The reply to No. 94 fails to comply with "H"; although the reply to No. 95 technically is responsive, UCS/NYPIRG states that it "has not calculated the risk," thereby demonstrating that there was no basis in fact for the bald assertion contained in the original petition.

Interrogatory 96 refers to basis (3) of I(B)(3). The reply is nonresponsive.

Interrogatory 97 refers to basis (4) of I(B)(3). The reply fails to comply with "H".

Interrogatory 98 refers to basis (5) of I(B)(3). The answer fails to comply with "H".

Accordingly, licensees move the Board to strike bases 2, 3, and 4 to contention I(B)(3). See Northern States Power et al., supra; Pennsylvania Power & Light Co., supra; Metropolitan Edison Co., supra.

(5) Board Contention 4.1

UCS/NYPIRG is designated lead intervenor; UCS/NYPIRG's contentions, II(A), II(B), and III(C) form part of the basis for this Board contention. Order at p. 13.

Interrogatories 112, 113, 114, 115, and 120 refer to II(A) as a whole. Replies to Nos. 113 and 115 fail to comply with "K".

Interrogatories 118 and 119 refer to basis (6) of II(A). The replies to No. 118(b), (c), and (d) fail to comply with "H" and "K". The reply to No. 119 fails to comply with "H".

Accordingly, licensees move the Board to strike UCS/NYPIRG contention II(A). See Northern States Power et al., supra; Pennsylvania Power & Light Co., supra; Metropolitan Edison Co., supra.

Interrogatories 121, 122, 123, 124, and 128 refer to II(B) as a whole. The reply to No. 121 fails to comply with "K". The answer to no. 128 is nonresponsive and fails to comply with "H" or "K".

Interrogatory 125 addresses basis (4) of II(B). The reply fails to comply with "K".

Interrogatory 127 refers to basis (6) of II(B). The reply fails to comply with "H".

Accordingly, licensees move the Board to strike UCS/NYPIRG contention II(B). See Northern States Power et al., supra; Pennsylvania Power & Light Co., supra; Metropolitan Edison Co., supra.

(6) Board Contention 4.2

UCS/NYPIRG is designated lead intervenor; UCS/NYPIRG's contention III(A) forms part of the basis for this Board contention. Order at p. 14.

Interrogatories 129, 130, 140, 141, 143 and 144 address sections b-d of the Board's Contention. The replies to all of these interrogatories fail to establish that any factual bases exist for that contention.

Interrogatory 131 refers to basis (1) of III(A).

The reply fails to comply with "K".

Interrogatories 137 and 138 address basis (2) of III(A). Both replies are nonresponsive.

Interrogatory 143 refers to basis (4) of III(A). The reply is nonresponsive.

Because UCS/NYPIRG has failed to substantiate that a basis exists in fact with respect to this contention , and because RSCE the contributing intervenor, has likewise failed (see Licensees' Motion to Impose Sanctions for Default and to Strike Contentions, May 28, 1982), licensees respectfully move that the Board strike its Contention 4.2. See Northern States Power et al., supra; Pennsylvania Power & Light Co., supra; Metropolitan Edison Co., supra.

(7) Board Contention 4.4

UCS/NYPIRG is designated contributing intervenor; UCS/NYPIRG's contentions I(B)(2), and I(A), basis (7) form part of the basis for this Board Contention. Order at p. 15.

Interrogatories 146 and 147 address basis (6) of I(B)(2). Both replies are nonresponsive, failing to comply with both "H" and "K".

Because UCS/NYPIRG has failed to substantiate that a basis exists in fact for these contentions and because both WESPAC and WBCA, co-lead intervenors, and Parents, contributing intervenor, have likewise failed (see Licensees' Motion to Impose Sanctions for Default and to Strike Contentions, May 28, 1982; also infra at p. 22), licensees respectfully move that the

Board strike contention 4.4. See Northern States Power et al, supra; Pennsylvania Power & Light Co., supra; Metropolitan Edison Co., supra.

(8) Board Contention 4.5

UCS/NYPIRG is the sole intervenor on this contention. Its contention I(B)(7) forms the basis for the contention. Order at p. 16.

Interrogatory 148 addresses basis (1) of I(B)(7). The reply is nonresponsive. Interrogatory 150 refers to basis (3) of I(B)(7). The reply fails to comply with "K".

Because UCS/NYPIRG has failed to substantiate factually bases (1) and (3) of I(B)(7), licensees move to strike those bases. See Northern States Power et al., supra; Pennsylvania Power & Light Co., supra; Metropolitan Edison Co., supra.

(9) Board Contention 4.6

UCS/NYPIRG is designated lead intervenor; UCS/NYPIRG contention I(B)(6) forms the basis for the Board's contention. Order at p. 16.

Interrogatory 151 is addressed to I(B)(6). The answers to No. 151(c) and (e) are nonresponsive, failing to state the grounds for the contention.

Because UCS/NYPIRG has failed to substantiate that a basis exists in fact for its contention I(B)(6) and Parents,

the contributing intervenor, has utterly failed to respond to the interrogatory in any fashion, (see infra at p. 23), licensees respectfully move the Board to strike its contention 4.6. See Northern States Power et al., supra; Pennsylvania Power & Light Co., supra; Metropolitan Edison Co., supra.

(10) General Interrogatory Questions

Interrogatories 180-184 are comprised of general requests, posed to all intervenors. UCS/NYPIRG has responded fully to all of these interrogatories with the exception of no. 180(c), an extremely important request for "the substance of the facts and opinion to which the witness [to appear at the evidentiary hearings] is expected to testify and a summary of the grounds for each opinion." Licensees' Interrogatories at p. 52.

Licensees vigorously urge the Board to compel UCS/NYPIRG to respond fully to this interrogatory.

B. Parents' Responses

Parents has not made even a cursory attempt to respond to licensees' interrogatories, neglecting to respond at times to even those interrogatories related to Board Contentions for which Parents is designated lead or contributing intervenor. Those few responses which Parents does deign to supply are manifestly nonresponsive.

Licensees will discuss Parent's responses seriatim, according to Board contention.



(1) Board Contention 3.2

Parents is designated contributing intervenor "with respect to the special problems of the response of children and those entrusted with their care during emergencies." Parents' Contention III forms part of the basis for the Board's contention. Order at p. 8.

Interrogatories 80 and 177 address basis (1) of Parents Contention III. Both replies fail to comply with definition "K" requirements, are wholly conclusory, and are, therefore, nonresponsive.

Licensees move the Board to strike Parents contention III on the ground that Parents has failed to substantiate that a basis exists for its contention. See Northern States Power et al. supra; Pennsylvania Power & Light Co., supra; Metropolitan Edison Co., supra.

(2) Board Contention 3.7

Parents is the sole intervenor assigned to this Board contention. Parents' contention I, bases (4), (5), (6), (7), and (15) form the basis for the Board's contention. Order at p. 11.

Interrogatories 99, 100, 175, 176 and 179 address this contention. Parents has blatantly chosen to ignore all of licensees' interrogatories under this Board contention, providing only a single response, to interrogatory no. 175, which reply is nonresponsive.

Accordingly, due to Parents' failure to substantiate factually its contention I, bases (4), (5), (6), (7) and (15),

licensees respectfully move the Board to strike its Contention

3.7. See Northern States Power et al., supra; Pennsylvania Power & Light Co., supra; Metropolitan Edison Co., supra.

(3) Board Contention 4.1

Parents is designated contributing intervenor "with respect to children, those responsible for the care of children, and child care institutions and their locations; Parents' contention II, basis (7) forms part of the basis for the Board's contention. Order at p. 13.

Interrogatories 116 and 117 are directed at II(7). Neither reply states the grounds for the contention; both replies are, therefore, nonresponsive.

Therefore, because of Parents' failure to substantiate that a basis in fact exists for its contention III(7), licensees move to strike this contention. See Northern States Power et al., supra; Pennsylvania Power & Light Co., supra; Metropolitan Edison Co., supra.

(4) Board Contention 4.4

Parents is designated contributing intervenor "with respect to special problems associated with children and those responsible for the safety of children"; Parents' contention I, basis (22) and contention II, basis (7) form part of the basis for the Board's contention. Order at p. 15.

Interrogatories 146, 147, 162 through 174 address Parents' I(22) and II(7). Incredibly, Parents has chosen not to reply to any of those propounded interrogatories. Such blatant

refusal to supply obviously relevant information requires, and licensees hereby so move, that Parents' I(22) and II(7) be stricken for failure of Parents to substantiate that a basis exists in fact for the contentions. See Northern States Power et al., supra; Pennsylvania Power & Light Co., supra; Metropolitan Edison Co., supra.

(5) Board Contention 4.6

Parents is designated contributing intervenor "with respect to a maximum acceptable radiation exposure level for children; no Parents' contention was designated as being part of the basis for the Board's contention. Order at p. 16. However, interrogatory 151 refers to this Board contention and, again, Parents has not replied.

Consequently, licensees move the Board to remove Parents as contributing intervenor on the ground that Parents has failed that it has any basis in fact for the contention.

(6) Board Contention 4.7

Parents is designated lead intervenor; no underlying contentions form the basis for this Board contention. Order at p. 17.

Interrogatory 152 refers to this contention. Once again, Parents, the designated lead intervenor, has chosen not to reply to the posed interrogatory.

Accordingly, due to Parents' failure to substantiate that a basis exists in fact for the contention, licensees

move the Board to remove Parents from participation with respect to Board Contention 4.7.

(7) General Interrogatories

Interrogatories 180 through 184 are general ones, referring to testimony, witnesses, and documents. These interrogatories were posed to all intervenors.

Parents' replies are again sadly deficient. In reply to interrogatory 180, Parents has failed to supply resumes, lists of publications, substance of facts and opinions of prospective witnesses, references to documents underlying testimony, statements as to any relationship between the witnesses and any intervenor or party, and statements as to prior proceedings in which the witness has testified.

Parents has not replied in any fashion to interrogatory 181.

Parents has failed to provide the grounds for its contention I(22), II(7), and III as required under interrogatory 182.

Parents did not comply with "identify" as respects interrogatories 183 and 184.

Therefore, licensees urge the Board to compel Parents to respond fully to these general interrogatories.

C. FOE/Audubon's Responses

FOE/Audubon declined to respond to a large number of interrogatories on the ground that they "do not intend to present evidence with regard to the ... interrogatories."

Licensees are entitled to responsive information known to FOE/Audubon regardless of whether FOE/Audubon intends to present evidence "with regard to the interrogatory."

The only exception to this requirement (as set forth at p. 2 of licensees' interrogatories) are those instances in which FOE/Audubon does not make the particular allegation, claim, or contention dealt with in the interrogatory and has not been assigned lead or contributing intervenor status with respect to such allegation, claim, or contention.

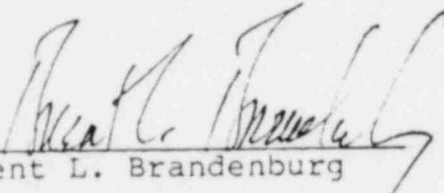
With respect to each interrogatory, FOE/Audubon should be required to respond or (for those allegations for which it has not been assigned lead or contributing intervenor status) to state that it does not make the particular allegation, claim, or contention set forth in the interrogatory.

On only one of the Board's contentions on emergency planning is FOE/Audubon designated as an intervenor, viz., Board Contention 4.3 for which FOE/Audubon is designated lead intervenor. Order at p. 14.

Licensees propounded interrogatories 140, 144, 147, 154, 158, and 159 with reference to Board Contention 4.3. FOE/Audubon, lead intervenor on that contention, flatly ignored Nos. 140, 144, 145 and 159 and replied nonresponsively to Nos. 154 and 158, failing to comply with definition "K".

Accordingly, due to FOE/Audubon's failure to substantiate that a basis exists in fact for this contention, licensees move the Board to strike that contention and to deny FOE/Audubon's participation with respect to Board Contention 4.3.

WHEREFORE, licensees respectfully request that the Board issue an order: compelling intervenors UCS/NYPIRG, Parents and FOE/ Audubon to respond fully to licensees' interrogatories, and cure their nonresponsive answers, as set forth herein, within five (5) days; striking non-complying intervenors' contentions, as set forth at p. 3, supra; striking Board Contentions 3.2, 3.3, 3.7, 4.2 and 4.7; prohibiting non-complying intervenors from conducting cross-examination, or prohibiting non-complying intervenors from introducing evidence on emergency planning; requiring all responses to this motion be filed by Thursday, June 10, 1982; and imposing such further and other sanctions that the Board deems reasonable and just.

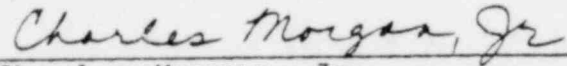
  
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Respectfully submitted,

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:  
Louis J. Carter, Chairman  
Frederick J. Shon  
Dr. Oscar H. Paris

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OFFICE OF THE SECRETARY  
DOCKETING & SERVICE  
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CONSOLIDATED EDISON COMPANY OF : Docket Nos. 50-247-SP  
NEW YORK, INC. (Indian Point, 50-286-SP  
Unit No. 2) :  
POWER AUTHORITY OF THE STATE OF : June 3, 1982  
NEW YORK, (Indian Point,  
Unit No. 3) :  
-----x

CERTIFICATE OF SERVICE

I certify that I have served copies of the "Licensees' Motion for an Order to Compel Response to Interrogatories or, in the Alternative, to Impose Sanctions For Failure to Respond" on the following parties by first class mail, postage prepaid, or, as indicated by asterisk, by hand delivery this 3rd day of June, 1982.

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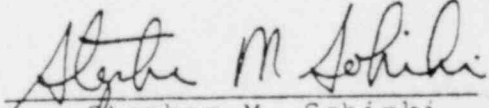
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