6/11/82

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
CONSOLIDATED EDISON COMPANY	)	
OF NEW YORK (Indian Point Unit 2)	)	Docket Nos. 50-247
	)	50-286
POWER AUTHORITY OF THE STATE	)	
OF NEW YORK (Indian Point Unit 3)	)	

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

The Licensees have scaled new heights of hyperbole in their Motion for an Order Compelling Responses to Interrogatories or, in the Alternative, Imposing Sanctions for Failure to Respond, and Striking Certain Contentions. Their motion, which, when one pierces through the inflated rhetoric, does little but repeat over and over again a generalized and unjustified claim of non-responsiveness, is the latest in Licensees' continuing effort to derail this entire investigation. It cites cases which are inapposite, seeks remedies (striking the "bases" for contentions) which have no precedent and makes serious charges against UCS and NYPIRG which are never substantiated in the body of the pleading.

D503

UCS was served with several hundred questions by Licensees, counting subparts. We responded in a document of 43 pages in length which was produced under extremely tight time constraints at the same time that UCS and NYPIRG were preparing the testimony of our witnesses. There can be no serious question that we have throughout this proceeding responded to discovery requests adequately and in good faith. In addition, Licensees have by now received the bulk of our prefiled testimony. Our case is spread out for Licensees to see and respond to. It is simply preposterous for them to claim that they are unable to adequately prepare for the hearings.

Licensees' instant motion, and its conduct throughout the discovery process, contravenes the spirit and letter of the Memorandum and Order of the Board of June 3, 1982 (which was occasioned by another Licensee effort in wasting the time and resources of the Board and UCS/NYPIRG by objecting to timely-noticed depositions). Point #1 of the Board's Order directs the parties to confer before involving the Board and takes the common sense approach of encouraging voluntary discovery. Con Ed and PASNY have made no attempt to settle this dispute with UCS/NYPIRG and are thus in violation of this section of the Board's Order. Point #5 of the Board's Order directs reduction of the sheer number, volume and complexity of the interrogatories and particularly singles out boiler plate formulas. Although

UCS and NYPIRG had considered making a general objection to the length and incredible detail of the Licensees' interrogatories, we elected not to delay the proceedings but to proceed to answer them to the best of our ability. However, the Board need only peruse the Licensees' boilerplate (see the note on pages 8-9 of its instant motion for just one example) to conclude that it is excessive by anY reasonable standard. Many of the alleged deficiencies pointed to by Licensees are purported failures to respond in the detail they demand to their boilerplate instructions. The Licensees interrogatories are over-reaching, particularly its boilerplate "definition" H, and in violation of point #5 of the Board s Order.

Point #10 of the Board's Order directs that all efforts be made to minimize the Board's involvement in discovery. Licensees have consistently acted in precisely the opposite manner. This motion is the antithesis of the Board's and Intervenors idea of the discovery process, as reflected in point #10.

In support of their motion, Licensees cite inapposite cases and make irresponsible charges which they do not even attempt to support in the sections of the motion dealing with specific alleged deficiencies in the UCS/NYPIRG responses. Licensees cite remedies and language dealing with "blatant refusals to answer" (p. 5), "recalcitrant parties". . . "refusing to comply with a direct order of the Board" (pp. 6-7)

and claim in a flight of rhetorical excess that Intervenors' responses "constitute egregous flauntings" of a Commission policy (p. 5). The "blatant refusals to answer" involved in Pensylvania Power and Light Co., et al, Susquehanna Steam Electric Station, Units 1 and 2), LBP-80-13, 11 NRC 55, 564 (1980) were just that: the party had provided "no substantive answers to any inquiry" nor had it objected properly, despite eight (8) months of time in which to respond. (Id. at 564-565). Even so, the party was not dismissed, although a sanction was imposed. This should be contrasted with the Board's refusal to impose sanctions against other Intervenors who were found to have made good faith efforts to respond to complex questions (Id. at 563-564) Licensees citations generally follow this pattern; they bear no similarity to the facts of this case. (E.g., Metropolitan Edison Co., Three Mile Island Nuclear Station, Unit No. 1, LBP-80-17, 11 NRC 893 (1980) cited at pp. 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 of Licensees' Motion. The case again involved a total failure to respond both to interrogatories and continuing refusal to comply with direct Board Order. It hardly applies to this situation.)

Licensees also miss the fundamental distinctions between this investigative proceeding and licensing cases: the company does not have the burden of proof here, nor can the Board's decision result in an enforceable order against them.

Unlike licensing cases, Licensees are not obliged to come forward with direct evidence on all admitted contentions or risk an adverse ruling because of the allocation of the burden of proof. This risk to an Applicant in a licensing case is the underpinning of the section of the Metropolitan Edison decision quoted at page 10 of Licensees' motion.

Moreover, the Commission established this proceeding as an investigation, with waiver of the ex parte rule, in order to provide a mechanism for producing a record that contains the broadest range of pertinent evidence on these policy and technical issues of first impression. Licensees seek by use of every marginally applicable adversarial maneuver to limit the record, restrict the Intervenors, hamstring the Board and divert the resources of all concerned.

This motion should be denied.

Respectfully submitted,

Ellyn R. Weiss

Counsel for Union of
Concerned Scientists
HARMON & WEISS
1725 I Street, N.W.
Suite 506
Washington, D.C. 20006

Amanda Potterfield

Counsel for New York Public
Interest Research Group
9 Murray Street, Third Floor
New York, New York 10007

Date:

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
CONSOLIDATED EDISON COMPANY OF NEW YORK (Indian Point Unit 2)	)	Docket Nos.
	)	50-247
POWER AUTHORITY OF THE STATE OF NEW YORK (Indian Point Unit 3)	)	50-286
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing UCS/NYPIRG RESPONSE TO LICENSEES' MOTION FOR AN ORDER COMPELLING RESPONSES TO INTERROGATORIES OR, IN THE ALTERNATIVE, IMPOSING SANCTIONS FOR FAILURE TO RESPOND AND STRIKING CERTAIN CONTENTIONS was sent by first class mail, postage pre-paid, to the following:

** Louis J. Carter, Esq., Chairman
Atomic Safety and Licensing Board
7300 City Line Avenue
Philadelphia, Penn. 19151

*Dr. Oscar H. Paris
Atomic Safety and Licensing Board
United States Nuclear
Regulatory Commission
Washington D.C. 20555

Docketing & Service (2)
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Brent L. Brandenburg, Esq.
Richard P. Remshaw
John D. O'Toole
Consolidated Edison Company
of New York, Inc.
4 Irving Place
New York, New York 10003

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

Ms. Joan Holt
New York Public Interest Research
Group
5 Beekman Street
New York, New York 10038

*Mr. Frederick J. Shon
Atomic Safety and Licensing Board
United States Nuclear
Regulatory Commission
Washington, D.C. 20555

*Janice Moore, Esq.
Office of the Executive
Legal Director
United States Nuclear
Regulatory Commission
Washington, D.C. 20555

Charles J. Mailkish, Esq.
General Counsel
The Port Authority of New York
and New Jersey
One World Trade Center, 66S
New York, New York 10048

Ms. Pat Posner, Spokesperson
Parents Concerned About
Indian Point
P.O. Box 125
Croton-On-Hudson, New York 10520

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

Zipporah S. Fleisher, Secretary
West Branch Conservation Association
443 Buena Vista Road
New City, New York, 10956

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

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

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

Mayor George V. Begany
Village of Buchanan
236 Tate Avenue
Buchanan, New York 10511

Richard F. Czaja, Esq.
David H. Pikus, Esq.
Shea & Gould (PASNY)
330 Madison Ave.
New York, New York 10017

Alan Latman, Esq.
Westchester People's Action
Coalition, Inc.
44 Sunset Drive
Croton-On-Hudson, New York 10520

Judith K ssler, Coordinator
Rockland Citizens for Safe Energy
300 New Hempstead Road
New City, New York 10956

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

Richard L. Brodsky
County Office Building
White Plains, New York 10601

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

Marc L. Parris, Esq.
County Attorney
Eric Ole Thorsem, Esq.
County of Rockland
11 New Hempstead Road
New City, New York 10956

Renee Schwartz, Esq.
Botein, Hays, Sklar and Herzberg
200 Park Avenue
New York, New York 10166

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

Honorable Ruth W. Messinger
Council Member
4th District, Manhattan
City Hall
New York, New York 10007

Mr. Donald L. Sapir, Esquire
60 East Mount Airy Road
Croton-on-Hudson, N.Y. 10520

Ms. Lorna Salzman
Friends of the Earth
208 West 13th Street
New York, New York 10011

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

Mr. Alfred B. Del Bello
Westchester County Executive
Westchester County
148 Martine Avenue
New YOrk, New York 10601

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

Morgan Associates,
Chartered (PASNY)
1899 L. St., N.W.
Washington, D.C. 20036

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

Ellyn R. Weiss

Date: June 11, 1982

* Hand delivered by messenger

** Express mail