

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'82 DEC 29 A10:23

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))

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

) Docket Nos.

) 50-247 SP

) 50-286 SP

) December 28, 1982

LICENSEES' MOTION FOR EXPEDITED ORDER COMPELLING
CONTINUATION OF DEPOSITIONS OF GORDON R. THOMPSON
AND STEVEN C. SHOLLY

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 (licensees), move the Atomic Safety and Licensing Board (Board) for an order compelling the continued deposition of Gordon R. Thompson and Steven C. Sholly, Union of Concerned Scientists/New York Public Interest Research Group (UCS/NYPIRG), witnesses on Contentions 2.1(a) and (d).¹ The last date for completing

1. UCS/NYPIRG has continually ignored Board-ordered deadlines respecting Contentions 2.1(a) and (d). See Power Authority's Memorandum in Support of Consolidated Edison's Renewed Motion to Dismiss UCS/NYPIRG Contentions 2.1(a) and 2.1(d) at 1-3 (Dec. 20, 1982); Con Edison Mailgram (Dec. 15, 1982).

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licensee depositions of intervenor witnesses on Commission Question 2 contentions was December 23. As grounds, licensees set out the following:

1. On Thursday morning, December 16, 1982, counsel for the Power Authority of the State of New York (Power Authority) contacted counsel for UCS/NYPIRG by telephone in an effort to establish a date, time, and place for the Power Authority to take the depositions of UCS/NYPIRG witnesses Thompson and Sholly.¹ Counsel for the Power Authority offered to take the depositions on Friday, December 17, or Monday and Tuesday of the following week, and pointed out that the deadline for concluding depositions was December 23.² Counsel for UCS/NYPIRG stated that he would contact his witnesses to determine their availability.

1. At that time Consolidated Edison Co. of New York, Inc. (Con Edison) had pending before the Board a motion to dismiss Contentions 2.1(a) and (d) for failure of UCS/NYPIRG to comply with Board Orders regarding identification and qualifications of witnesses and designation of documents.

2. The Power Authority had only the afternoon before, Wednesday, December 15, received by mail, in violation of the Board's Order of December 3, Memorandum and Order (Memorializing Rulings of Telephone Conference on December 3, 1982) at 3 (Dec. 8, 1982), UCS/NYPIRG's witness qualifications and a list of 121 documents upon which UCS/NYPIRG claimed its witnesses would rely. See Qualifications Statements for UCS/NYPIRG Witnesses on Commission Question Two (Dec. 13, 1982). Con Edison did not receive this material until Friday, December 17. The "list" was not actually an identification of documents but rather a reference to all the documents UCS/NYPIRG had earlier identified in response to interrogatories. Id. at 1-2.

2. Counsel for the Power Authority and UCS/NYPIRG spoke again on Friday morning, December 17. Counsel for UCS/NYPIRG stated that the witnesses could be made available on either Wednesday, December 22, or Thursday, December

23. Counsel for the Power Authority expressed concern over scheduling the deposition so close to the deadline, but was informed by counsel for UCS/NYPIRG that the state of preparation of the witnesses was such that if licensees wished to secure useful information the depositions should be held later in the week. Based upon that representation counsel for the Power Authority tentatively agreed to hold the deposition on Thursday, but informed counsel for UCS/NYPIRG that it would be necessary to clear that day internally with other Power Authority counsel, with Con Edison (whose motion for dismissal was still unresolved at the time of that conversation), and with Nuclear Regulatory Commission (NRC) staff.

3. After discussions with the interested parties, counsel for the Power Authority once again contacted counsel for UCS/NYPIRG and explained that for several reasons, beginning the depositions on Wednesday would be preferable: first, it would allow those licensee lawyers who were responsible for the probabilistic risk portion of the case to be present in the event that the witnesses intended to

testify about risk analyses¹; second, it would allow sufficient time to assure completion of the deposition, which might run more than one day. It was tentatively agreed that the depositions would begin at noon, December 22.

4. Late Monday afternoon, December 20, counsel for UCS/NYPIRG telephoned counsel for the Power Authority and stated that, despite the earlier representation, Dr. Thompson would be unavailable on December 22, but could be in Washington for a deposition on December 23.² Counsel for the Power Authority reluctantly agreed, and requested that the deposition begin at 9:30 or 10:00 a.m. in order to have some chance of completing the deposition that same day. Counsel for UCS/NYPIRG would commit only to 11:00 a.m. Counsel for the Power Authority again expressed concern that there would be insufficient time to complete the deposition and stated that it might be necessary to go late Thursday evening and perhaps continue on Friday. Counsel for UCS/NYPIRG, while expressing the view that the depositions could be completed, did not reject or suggest in any way that

1. A conflict existed in these lawyers' schedules due to the prior scheduling of the deposition of a Friends of the Earth/New York City Audubon Society Question 1 probabilistic witness in New York on Thursday, December 23.

2. It was counsel for UCS/NYPIRG who suggested that Dr. Thompson appear in Washington rather than his office in Cambridge, Massachusetts. The reason given for this preferred arrangement was UCS/NYPIRG's plan to present Dr. Thompson and Mr. Sholly, who is based in Washington, as a panel.

either Dr. Thompson or Mr. Sholly would be unavailable Thursday evening or Friday.

5. On Tuesday, December 21, counsel for the Power Authority served upon counsel for UCS/NYPIRG, by express mail, a confirmation of the date, time, and place of the depositions, and stated clearly that the depositions would "continue until completion." Letter from Joseph J. Levin, Jr., Esq. to Jeffrey Blum, Esq. (Dec. 21, 1972) (attached). Late Tuesday afternoon counsel for the Power Authority received a message from counsel for UCS/NYPIRG informing him that Dr. Thompson could not be available for deposition until noon Thursday. In a Wednesday afternoon conversation, counsel for UCS/NYPIRG confirmed his message of the previous day, acknowledged receipt of the Power Authority's express mail letter, and made no objection to the statement in the letter that the deposition would continue until completion.

6. The deposition of Mr. Sholly and Dr. Thompson began at noon, Thursday, December 23, with counsel for the Power Authority, Con Edison, NRC staff, and UCS/NYPIRG present. Approximately 1 1/2 to 2 hours into the deposition, counsel for UCS/NYPIRG informed licensees' counsel that Dr. Thompson would have to leave at 6:00 p.m. and could not return on Friday.

7. Further complicating the deposition was the almost total lack of readiness of the UCS/NYPIRG witnesses. While the witnesses offered the opinion that their

testimony was approximately 50% complete, they then stated that they were unprepared at that time to commit to any particular design either for a filtered vented containment or separate containment device. Indeed, when asked to at least narrow the field of such designs to two, three, or even five, they again refused to commit themselves. Thus, fundamental information which is essential for preparation of licensees' responsive testimony on Contentions 2.1(a) and (d) had not been decided upon, as of December 23, by the UCS/NYPIRG witnesses. Additionally, because of the nature of written testimony, the licensees will be unable to secure any detailed information or even consider the underlying reasons for the witnesses' testimony until the hearing itself. Further examination suggested that the estimated 50% completion of testimony consisted almost exclusively of a review of the literature in preparation for making decisions about what direction the testimony would take.

8. Confronted with a truncated deposition, an almost complete lack of preparation by UCS/NYPIRG witnesses, and numerous additional areas to explore with these witnesses,¹ licensees requested that UCS/NYPIRG continue the

1. For example, licensees were not permitted time to explore the witnesses' knowledge of dominant risk scenarios, the claimed quantitative risk reduction of the particular designs suggested by UCS/NYPIRG vis-a-vis these scenarios, and the relationship between the filtered vent and separate containment designs suggested by UCS/NYPIRG and the accident mitigation features already in place inside containment at

deposition so that licensees would have an opportunity to discover prior to trial the underlying rationale for whatever specific proposals Dr. Thompson and Mr. Sholly might make. Counsel for UCS/NYPIRG refused.¹

9. The failure to grant licensees' request to continue the Thompson/Sholly deposition would severely prejudice licensees' preparation of their cases and will, consequently, violate the due process rights of licensees. Moreover, any curtailment of licensees' right to complete discovery would reward UCS/NYPIRG for defaulting on deadlines.

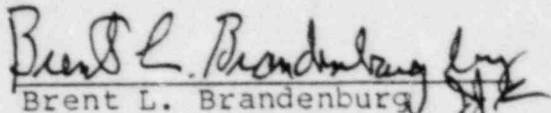
WHEREFORE, licensees respectfully request that UCS/NYPIRG be ordered to produce Dr. Thompson and Mr. Sholly for deposition on December 30, 1982, said deposition to continue until completion. Additionally, because of the extremely abbreviated time for filing licensees' testimony

the Indian Point facilities. Additionally, at this deposition, licensees received for the first time an accurate designation of those documents upon which the UCS/NYPIRG witnesses intend to rely. The prior list (provided on December 15) contained 121 documents consisting of several thousand pages. At the deposition the UCS/NYPIRG witnesses reduced the number of documents to 47 and specified those portions upon which they will rely. It is now possible to determine the extent to which further questioning on these documents is necessary.

1. When asked when they expected to know what their recommendations would be, the witnesses gave December 28 as the only certain date.

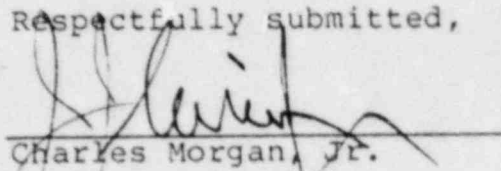
in response to UCS/NYPIRG,¹ licensees request that the December 28 filing date for the UCS/NYPIRG testimony remain unchanged.

1. It is due on January 12, 1982. Memorandum and Order (Memorializing Rulings of Telephone Conference on December 3, 1982) at 3 (Dec. 8, 1982).


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Respectfully submitted,


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Dated: December 28, 1982

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December 21, 1982

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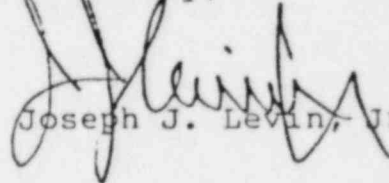
Re: Depositions of Steven Sholly and Gordon Thompson

Dear Mr. Blum:

This will confirm our agreement that the Union of Concerned Scientists will make Steven Sholly and Gordon Thompson available for deposition at 11:00 a.m., Thursday, December 23, 1982, at Mr. Sholly's office, Suite 1101, Dupont Building, 1346 Connecticut Avenue, N.W., Washington, D.C. This deposition will continue until completion.

This letter also serves to confirm that I notified you to have your witnesses bring with them to the deposition all documents upon which they intend to rely in their testimony.

Sincerely,


Joseph J. Levin, Jr.

JJL, Jr./pat

cc: Henry J. McGurren
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NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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NEW YORK)	
(Indian Point, Unit No. 3))	
)	

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of December, 1982, I caused a copy of Licensees' Motion For Expedited Order Compelling Continuation of Depositions Of Gordon R. Thompson And Steven C. Scholly to be hand delivered to those parties marked with an asterisk, and served by first class mail, postage prepaid on all others.

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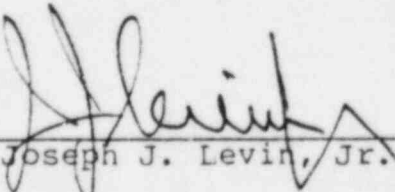
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