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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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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.)	Docket Nos.
(Indian Point, Unit No. 2))	50-247 SP
)	50-286 SP
POWER AUTHORITY OF THE STATE)	
OF NEW YORK)	January 10, 1982
(Indian Point, Unit No. 3))	

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF LICENSEES'
MOTION TO DISMISS CONTENTIONS 2.1(A) AND 2.1(D)

The improper conduct of counsel for UCS/NYPIRG in relation to the deposition of Dr. Gordon Thompson and Mr. Stephen Sholly, which forms the basis of the Licensees' Motion to Dismiss Contentions 2.1(a) and 2.1(d) (Jan. 6, 1982), has continued with respect to the deposition of other witnesses. UCS/NYPIRG's counsel has again made it impossible for the licensees to properly depose intervenors' expert witnesses, this time Mr. Robert Weatherwax, one of UCS/NYPIRG's experts on Question 1. The licensees plan to file separate motions to preclude Mr. Weatherwax' testimony or to compel the continuance of the deposition of Mr.

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Weatherwax as well as answers to specific questions, and requested documents. Nonetheless, the licensees believe that the information contained in this supplemental memorandum is highly relevant to the Licensees' Motion to Dismiss Contentions 2.1(a) and 2.1(d), in establishing a pattern of improper conduct on the part of counsel for UCS/NYPIRG.

On Friday, January 7, 1983, licensee Power Authority was unable to complete and licensee Con Edison was unable even to commence the scheduled deposition of Mr. Robert Weatherwax. Mr. Blum and counsel for the licensees had agreed to make available each party's California experts during one trip to California. However, the deposition of Mr. Weatherwax was terminated by Mr. Blum's refusal to insist on Mr. Weatherwax' continued availability for questioning, even though Mr. Blum was able to depose the licensees' expert witnesses at length, and until completion.

On Thursday, January 6, 1983, Mr. Blum deposed three of the licensees' experts on Question 1. During lengthy telephone conversations to arrange the depositions, in the 10 days preceding the California trip, the licensees offered their witnesses for deposition without a time limit. In fact, the licensees expected a two day deposition of their witnesses. Mr. Blum requested that the deposition of the licensees' witnesses commence at 10:00 a.m. Mr. Blum, because of weather conditions, was approximately one hour

late in beginning the deposition. The licensees, therefore, agreed to Mr. Blum's request that the deposition continue until completion, even into the evening. At the same time, Mr. Blum once again confirmed Mr. Weatherwax' availability for his deposition on the following day.

On Friday, January 7, the deposition of Mr. Weatherwax did not commence until approximately 10:45 a.m. because of a delay in arrival by Mr. Weatherwax due to weather conditions. Immediately preceding the deposition, Mr. Blum for the first time informed the licensees that Mr. Weatherwax had two meetings to attend in the afternoon. The first meeting was scheduled for 1:30 p.m., the second for 3:00 p.m. When pressed as to when Mr. Blum learned of these meetings, he stated that he had learned of them on the evening of January 6. Notwithstanding this, Mr. Blum neither telephoned the licensees on the evening of January 6, nor telephoned the licensees the morning of January 7, to inform them of these meetings. Rather, Mr. Blum waited until minutes before the deposition to reveal to the licensees Mr. Weatherwax' "conflict."

Moreover, when Mr. Weatherwax was asked when he knew of these meetings, he stated that the 3:00 p.m. meeting had been tentative for quite a while, and that it had been reconfirmed on the 6th. In addition, Mr. Weatherwax, in complete disregard of his scheduled deposition, arranged a second meeting for the afternoon of the 7th. Notwithstand-

ing these facts, neither Mr. Blum nor Mr. Weatherwax informed the licensees of these meetings until the deposition was ready to begin.

Having made their expert witnesses available to Mr. Blum for as long as he requested, the licensees insisted that Mr. Weatherwax be made available for the remainder of Friday without interruption. This position elicited offers and then a withdrawal of offers by Mr. Blum concerning some other possible arrangements that could be made. One offer that Mr. Blum made at the beginning of the day and then withdrew later in a colloquy with counsel for the licensees was that the deposition of Mr. Weatherwax proceed from approximately 11:00 a.m. until 1:40 p.m., and then the licensees could return to California later in the month to continue the deposition.

Another offer was for the deposition to be recessed after only approximately two and a half hours of questioning of Mr. Weatherwax. Mr. Blum then proposed a "break" in the deposition that initially would have lasted approximately four hours and then later was revised downward by Mr. Blum to a maximum of approximately three hours. Such a "break" would clearly have been a major disruption to the questioning of Mr. Weatherwax, and, in fact, would have constituted a termination of the deposition. Additionally, the licensees had travel plans in connection with preparations for the January 10 hearing that would have precluded

completion of the deposition under the circumstances offered by Mr. Blum.

The licensees declined this "offer" concerning the deposition and insisted upon their right to properly conduct a deposition for the day upon which the deposition was noticed and to which UCS/NYPIRG had agreed. The licensees continued to question Mr. Weatherwax who, at approximately 2:35 p.m., refused to answer any further questions and, accompanied by Mr. Blum, left the deposition, thereby terminating it without the licensees' consent.


Mr. Blum's and his witness' actions regarding this deposition evidence further disrespect for and flouting of the Commission's regulations concerning depositions, and specifically fly in the face of Chairman Gleason's statement to Mr. Blum during a telephone conference on December 28, 1982, that the time required to depose a witness is under the control of the party taking the deposition, and that the party cannot be deprived of that opportunity except under extraordinary circumstances. Clearly, there were no extraordinary circumstances here. Rather, Mr. Weatherwax and Mr. Blum decided without the concurrence of the licensees that it was more important for Mr. Weatherwax to subsequently schedule and attend a conflicting meeting with one of Mr. Weatherwax' other clients than to be in attendance at a properly convened deposition in this proceeding.

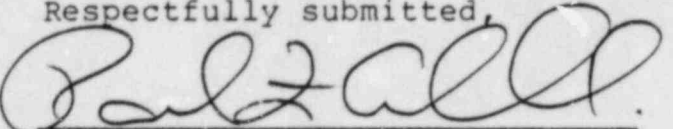
Mr. Blum's behavior is part of a pattern of conduct in which Mr. Blum insists that the licensees and staff follow the rules and regulations of the Commission and make their witnesses fully available to him for deposition, but denies the licensees proper access to depositions of proposed UCS/NYPIRG witnesses. This pattern of conduct is clear with regard to UCS/NYPIRG's witnesses Gordon Thompson, Stephen Sholly, and now Robert Weatherwax.¹ In total, licensees were allowed only approximately two and one half hours of actual questioning of Mr. Weatherwax.

Licensees, therefore, urge this Board to censure UCS/NYPIRG's conduct and to grant the licensees' January 6 motions seeking dismissal of Contentions 2.1(a) and 2.1(d).

1. Moreover, while Mr. Blum had informed licensees earlier in the week of January 3, that Mr. Weatherwax had not completed his testimony, it became apparent through questioning of Mr. Weatherwax that he has not even begun to write his testimony. Further, Mr. Weatherwax claimed to have formed no conclusions whatsoever concerning the documents upon which he stated he would rely and how those documents relate to the Indian Point Probabilistic Safety Study (IPPSS). In fact, Mr. Weatherwax testified that he has formed no conclusions whatsoever about the IPPSS, itself. Rather, at Mr. Blum's direction, Mr. Weatherwax would only answer questions which went to his "tentative impressions." Because Mr. Weatherwax was provided with a copy of the IPPSS on May 26, 1982, and further because the testimony on Question 1 was originally scheduled for filing in August of 1982, the licensees have good cause to infer that the preparation of testimony by Mr. Blum's primary expert on the IPPSS has been delayed intentionally in a further attempt to deny the licensees their rights under the discovery schedule imposed by this Board.

Respectfully submitted,


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Dated: January 10, 1983

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Jan. 10, 1983

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of January, 1983,
I caused a copy of Supplemental Memorandum In Support Of
Licensees' Motion To Dismiss Contentions 2.1(a) And 2.1(d)
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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