

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

James P. Gleason, Chairman

Frederick J. Sloan

Dr. Oscar H. Hatis



In the Matter of)

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

Docket Nos. 50-247
50-286

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

March 4, 1983

LICENSEES' MOTION TO COMPEL FURTHER RESPONSES FROM GNYCE
TO FIRST SET OF INTERROGATORIES AND
DOCUMENT REQUESTS UNDER COMMISSION QUESTION 6

Pursuant to 10 C.F.R. § 2.740(f) (1982), the Consolidated Edison Company of New York, Inc. and Power Authority of the State of New York, licensees, hereby move to compel the Greater New York Council on Energy (GNYCE) to further respond to the licensees' First Set of Interrogatories and Document Requests Under Commission Question 6.

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INTRODUCTION

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, hereby move the Atomic Safety and Licensing Board (Board) to issue an order to compel the Greater New York Council on Energy (GNYCE) to respond further to Licensees' First Set of Interrogatories and Document Requests Under Commission Question 6.¹ GNYCE's responses to the licensees' discovery requests are evasive and incomplete, and must be supplemented in accordance with the rules of the Nuclear Regulatory Commission.

Licensees have made two attempts to obtain complete responses to its interrogatories and document requests under Question Number 6. The first attempt was a formal one submitted on June 9, 1982. When the June 23rd deadline passed, the Power Authority admonished GNYCE for its tardiness in submitting its responses to the June 9 interrogatories and its failure to provide prompt responses to interrogatories for which answers were known.² No answers were received until three weeks after the deadline imposed by Commission regulations.³ See 10 CFR §2.740b.

1. Licensees' First Set of Interrogatories and Document Requests Under Commission Question 6 (June 9, 1982) (attached as Appendix A).

2. Letter from Charles M. Pratt to Greater New York Council on Energy c/o Dean R. Corren, Director (July 2, 1982) (attached as Appendix B).

3. Response of GNYCE to Interrogatories of Licensees Under Commission Question 6 (July 14, 1982) (attached as Appendix C).

Subsequently, the hearings were suspended indefinitely on July 27, 1982. Soon after the hearing process began anew, licensees made a second and informal request for complete responses to its interrogatories.⁴ A letter format was selected as licensees sought to resolve discovery problems without approaching the Board as provided in its July 6, 1982 order. Again, licensees' efforts were in vain as GNYCE failed to recognize deficiencies which plagued approximately half of the responses for which we requested supplemental answers.

Identification of witnesses and the substance of each witness' testimony is a problem of special concern for two reasons. First, Interrogatory 121 (See Appendix A at 28-29) requests detailed information on each prospective witness and the testimony of each witness. GNYCE has provided sketchy information on its witnesses in the Response of GNYCE to N.R.C. Staff Interrogatories and Document Requests Regarding Question 6, November 3, 1982 at 2-4. Mere reference to this sketchy information fails to answer sufficiently Interrogatory 121. Complete answers to all parts of this interrogatory are necessary to adequate preparation of licensees' case.

Moreover, each party is under a continuing duty to supplement its responses, not only to responses which were

4. Letter from Charles M. Pratt to Greater New York Council on Energy c/o Dean R. Corren, Director (December 3, 1982) (attached as Appendix D).

accurate when made, but also to supply current information for responses which were insufficient when stated previously. See Board Memorandum and Order, June 3, 1982.

Secondly, GNYCE as lead intervenor for Contention 6.3 and UCS/NYPIRG as contributing intervenor are, in effect, consolidated intervenors for the purpose of this contention. GNYCE must, therefore, provide complete information on the witnesses to be presented on the contention. Moreover, the Interrogatory Number 121 required GNYCE to identify its witnesses on Question 6, generally. While GNYCE has provided a list of names and some information on its witnesses in a response to an NRC Staff request, UCS/NYPIRG has asserted that yet another witness, Vince Taylor, will provide testimony on, presumably, the same subjects as the GNYCE witness or witnesses. See UCS/NYPIRG Response to Licensees' First Set of Interrogatories Under Commission Question One, July 23, 1982 at 7. GNYCE failed to mention the UCS/NYPIRG witness in its list of witnesses. Thus, GNYCE has failed to follow the Board's description of the role to be played by lead and contributing intervenors.

In the Board's view, any parties who raise substantially the same issue must "consolidate their presentation of evidence, cross-examination, briefs, proposed findings of fact, conclusions of law and argument." 10 CFR § 2.715a. The Board's description of the lead and contributing intervenors' roles allows an active, participatory part for the lead

intervenor, while it calls for a supportive, passive part for the contributing intervenor.⁵ In short, GNYCE as lead intervenor must present witnesses and documentary evidence on Contention 6.3, supported by the contributions of UCS/NYPIRG. It must consolidate and coordinate its witnesses and testimony with that of UCS/NYPIRG and any other contributing intervenors. Failure to do so should result in a dismissal of any evidence presented by or in behalf of the lead or contributing intervenor.

I. GENERAL GROUNDS FOR LICENSEES' MOTION

The responses of GNYCE are inadequate in a number of aspects and seriously prejudice licensees' ability to respond to its claims.

5. See Board Order, October 1, 1982 at 5, 38-39. The April 2, 1982 order consolidated parties for the purposes of presenting testimony by stating as follows:

It will be the responsibility of the lead Intervenor to prepare filings, present witnesses, introduce documentary evidence, conduct cross-examination, and submit findings of fact with respect to the contention or contentions assigned to it. Contributing Intervenor shall assist the lead Intervenor by supplying evidence, suggesting questions and plans for cross-examination, contributing to the findings of fact, and providing any other assistance and cooperation that will aid the lead Intervenor in contributing to the development of a complete record in this case.

Board Order at 40; see also Board Order of April 9, 1982 and April 23, 1982.

General Ground Number 1.

GNYCE Has Refused to Respond to Some of Licensees' Interrogatories

In a number of instances, GNYCE has simply refused to respond to certain requests. The excuses vary. In one instance, GNYCE stated the assertion made in the question was not the assertion upon which the question was based. In other cases, the excuse was that to answer would be burdensome or expensive.⁶ In still other cases, GNYCE refused to answer, because the question, to them, was "unclear," "puzzling" or too "broad."

Such outright refusals to answer are expressly forbidden by the regulations, case law, and the orders of this Board. 10 C.F.R. § 2.740(f) provides:

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.

No such protective order has been sought.

Objections to interrogatories or document requests shall be set forth in an appropriate motion for protective order, accompanied by points and authorities sufficient to enable the Board to rule immediately upon receipt of the opposing party's answer

6. The fact that a request may be burdensome or expensive will not relieve GNYCE of the obligation to answer or move for a protective order. See, e.g., In re Boston Edison Co., 1 NRC at 584. Objections that interrogatories are burdensome are insufficient and invalid if the information requested is relevant and material. Id. "Burdensome discovery requests are not necessarily inappropriate." In re Metropolitan Edison Company, 11 NRC 893,897 (1980); see In re Pennsylvania Power & Light Co., 12 NRC at 334, n. 26.

Memorandum and Order (Ruling on Motion to Compel Discovery and Setting Forth Additional Rules Governing Discovery) at 3 (June 3, 1982) (June 3 Memorandum and Order). The Commission has stated:

It is not proper for a party to ignore a discovery request. Interrogatories, for example, must either be answered or objected to in the time allowed. ... Objections may be accompanied by a motion for a "protective order" to modify or eliminate the obligation to respond, but the movant must establish "good cause" for issuing such an order. ... And as in judicial practice, general objections do not provide that cause.

In re Pennsylvania Power & Light Co., 12 NRC at 322-23.

Therefore, in the absence of a motion for a protective order supported by more than generalized objections, GNYCE may not refuse to answer licensees' interrogatories.⁷

General Ground Number 2.

Intervenors' Responses Were Incomplete or Evasive

Many of the responses to licensees' interrogatories are incomplete or evasive or both. The Commission's regulations expressly provide that "an evasive or incomplete answer or response shall be treated as a failure to answer." 10 C.F.R. § 2.740(f). The Commission has stated that evasive or incomplete responses "amount to no more than blatant refusals to answer."

7. "Unjustified failures or refusals to comply with discovery orders have resulted in the dismissal of parties or contentions." In re Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), 14 NRC 150, 154 (1981) (footnote omitted). "No intervenor can keep contentions alive at its own whim." Id.

In re Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), 11 NRC 559, 564 (1980); accord In re Houston Lighting & Power Co., 9 NRC at 195 ("an evasive or incomplete answer shall be treated as a failure to answer or respond"); see In re Wisconsin Electric Power Co., 15 NRC at 344 ("Language attempting to limit [a] response to ... interrogatories to anything less than a full, good faith response ... does not in any way reduce [the] responsibility to comply with" an order to respond to interrogatories).

General Ground Number 3.

GNYCE Has Failed to Follow Licensees' Instructions and Definitions

Licensees' interrogatories and document requests contain detailed definitions and instructions.⁸ Of particular importance are Definition Section B (defining "document"), Section C (defining "identify"), and Section I (defining "specify," "ground" and "basis").⁹ GNYCE either did not read these instructions or simply ignored them. Because the above terms recur constantly, the result is that many responses are deficient.

In addition, GNYCE was instructed in Section D to "[i]dentify all your witnesses, areas of their testimony, their

8. See Appendix A at 2-7.

9. 10 C.F.R. § 2.704(b) provides, in pertinent part, that "[e]ach interrogatory shall be answered separately and fully in writing." Accord In re Houston Lighting & Power Co., 9 NRC at 195.

qualifications, and all reports, studies, letters, graphs, and other documents they plan to use in support of their testimony." Licensees' First Set of Interrogatories and Document Request Under Commission Question 6, June 9, 1982 at 6.

Licensees defined these terms and set out instructions in order to facilitate the procurement of only relevant information. GNYCE's utter disregard of these instructions has merely served to increase the time and expenses of licensees seeking pertinent information, and consequently the time and expense of intervenors in responding thereto.

It is left to the parties to narrow those issues [to be litigated] through use of discovery devices so that evidence need be produced at the hearing only on matters actually controverted. This is why curtailing discovery tends to lengthen the trail -- with a corresponding increase in expense and inconvenience for all who must take part.

In re Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), 12 NRC 317, 334-35 (1980) (footnote omitted).

With respect to the identification of persons, GNYCE routinely failed to provide full information as requested in Instruction Section D and Definition Section E; in many instances GNYCE failed to provide the information listed in Instruction Sections C (1)-(4) with respect to documents. In response to requests to "specify" or "state" the "ground" or "basis" for their allegations, GNYCE contented themselves with brief summaries of their positions, often failing to supply any of the information required by Definition Section I.

GNYCE's failure to follow instructions in this matter is particularly prejudicial to licensees, as most of the

interrogatories to which this instruction is applicable were designed to elicit information from GNYCE regarding the factual bases underlying the asserted savings and alternative energy strategies proposed by GNYCE. Without this information, licensees cannot adequately prepare their case, for they have insufficient knowledge of GNYCE claims.

Learning the position of an adversary in litigation is a traditional and important aspect of discovery. It is also an important element in developing a full evidentiary record.

In re Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), 11 NRC 893, 896 (1980).

Licensees are entitled to obtain all unprivileged information¹⁰ relevant to the GNYCE' allegations. In re Pennsylvania Power & Light Co., 12 NRC at 331. Thus, they are entitled to learn the bases for GNYCE contentions, and such interrogatories are "wholly proper." In re Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), 1 NRC 579, 582 (1975).¹¹

10. GNYCE has made no allegations that information sought is subject to any claims of privilege.

11. Accord In re Pennsylvania Power & Light Co., 12 NRC at 333 ("The Rules of Practice expressly sanction discovery into the claims of an opposing party."); In re Metropolitan Edison Co., 11 NRC at 897 (Licensee "has the right to know the nature of the charges as to which its interests will be adjudicated"); In re Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), 11 NRC 477, 479 (1980) (party must respond to interrogatories seeking "the basis for and rationale of a contention," as "it must have relied on information of some sort to formulate a contention"); see In re Northern States Power Co. (Minnesota) (Tyrone Energy Park, Unit 1), 5 NRC 1298, 1302, n.4 (1977) ("If [intervenor's] representatives cannot understand reasonable inquiries about its own contentions, its contribution as a party to the proceeding would be negligible.").

To permit a party to make skeletal contentions, keep the bases for them secret, then require its adversaries to meet any conceivable thrust at hearing [sic] would be patently unfair, and inconsistent with a sound record.

In re Northern States Power Co. (Minnesota), 5 NRC at 1301.

GNYCE's attempt to keep licensees in the dark as to the bases of their allegations deprives licensees "of a full and fair opportunity to prepare [their] response" to these allegations. In re Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), 15 NRC 341, 345 (1982). A failure to order GNYCE to respond to these interrogatories will force licensees to guess the grounds for these GNYCE charges. "It would be naive to expect licensee[s] to postulate the particulars of [GNYCE] contentions, then present a losing case against them" In re Metropolitan Edison Co., 11 NRC at 904. This proceeding should "be governed by principles of full disclosure and [should not] resemble a game of hide-and-go-seek." In re Wisconsin Electric Power Co., 15 NRC at 345.¹²

General Ground Number 4.

Requests for Specific Information Were Often Answered by a General Reference to a Source in Which the Response Allegedly May Be Found

GNYCE, in response to a request for specific information, responded by making a general reference to a large document in which the information allegedly could be found.

12. See In re Commonwealth Edison Co. (Byron Station, Units 1 and 2), 15 NRC 209, 215 (1982). The "evidentiary record [will not] be enhanced by a show of the licensee[s] defending against strawman contentions cast into litigable form by [the] licensee[s]" themselves. In re Metropolitan Edison Co., 11 NRC at 904.

Such general answers are insufficient responses to specific interrogatories. Answers should be complete in themselves. The interrogating party should not need to sift through documents or other materials to obtain a complete answer.

GNYCE's apparent lack of documents is "improperly frustrating [the licensees'] legitimate efforts to prepare for the cross-examination." In re Northern States Power Co. (Minnesota), 5 NRC at 1301 n.3. Moreover, "a party must furnish in his answer to interrogatories whatever information is available to it." In re Boston Edison Co., 1 NRC at 584.

General Ground Number 5

GNYCE has Failed to Supplement Its Answers to Licensees' Interrogatories

10 C.F.R. § 2.740(e) requires parties to supplement incomplete responses to discovery requests.¹³ Responses alleged to be complete must be supplemented when the identities of persons having knowledge of discoverable matters, and of expert witnesses, are requested or when the response was incorrect when made or has become incorrect since it was made.

13. See also Memorandum and Order (Ruling on Motion to Compel Discovery and Setting Forth Additional Rules Governing Discovery) at 3 (June 3, 1982) ("all interrogatories filed by any party to this proceeding, past or future, shall be deemed to be continuing in nature and the party to whom they are addressed shall be under a continuing duty to supplement the responses as necessary to keep them currently accurate").

In several instances, GNYCE responded to licensees' discovery requests by stating that they did not then have the answers which licensees sought. In particular, GNYCE has failed to identify any witnesses who will testify on matters relating to Board Contention 6.3 or any documents relating to the economic study which was being performed by ESRG. GNYCE stated that the ESRG report would be available in July of 1982. See Hearing Transcripts, April 14, 1982 at 902. GNYCE is under a continuing duty not only to provide supplements to responses which were accurate when made, but also to supply current information for responses which were insufficient when stated. See Board Memorandum and Order, June 3, 1982.

Moreover, seven months have elapsed since GNYCE responded to licensees' first set of interrogatories and document requests, thus it strains credulity to believe that neither the leading intervenor nor contributing intervenors on Board Contention 6.3 has witnesses to present and that GNYCE has not evaluated the document which forms the backbone to this proceeding.

II. LICENSEES' DISCUSSION OF DISCOVERY REQUESTS

Licensee Interrogatories Numbers 22, 23, 24

See General Ground for Motion Number 5.

These interrogatories ask for a scope of study, working papers, intermediate and final drafts of testimony and exhibits to be relied upon by ESRG, consultants to GNYCE. GNYCE stated

in June of 1982 that this work would be completed by one month from the time ESRG received answers to the interrogatories served on the licensees.¹⁴ Hearing Transcript, June 18, 1982, at 1249. In April of 1982, GNYCE claimed that the report would be ready by the beginning of July. Transcript, April 14, 1982 at 902. Licensees' responses to GNYCE's interrogatories were served on July 2 and 6, 1982,¹⁵ thus ESRG's report should have been available during the first week in August. GNYCE still claims without any explanation that the requested information is "not available to GNYCE at this time." Response of GNYCE to Informal Licensee Request for Supplemental Interrogatory Responses in Letter Dated December 3, 1982. (January 6, 1983). Thorough preparation of licensees' case is impossible without knowledge of intervenor's assumptions and conclusions regarding the economic impact of shutting down the Indian Point Nuclear Power Plants. Therefore, GNYCE should produce the requested information and documents immediately.

Licensee Interrogatories Numbers 25 and 26.

See General Grounds for Motion Numbers 3 and 5.

This interrogatory asks that GNYCE to identify ESRG personnel who are working on the economic study. GNYCE simply

14. GNYCE's First Set of Interrogatories to Both Licensee Con Edison for Indian Point #2 and and Licensee PASNY for Indian Point #3 (June 16, 1982).

15. Consolidated Edison's Response to GNYCE's First Set of Interrogatories on Question 6, July 2, 1982. Power Authority's Responses to GNYCE's First Set of Interrogatories on Commission Question 6, July 6, 1982.

named the personnel and failed to fully identify the personnel as requested in Definition Section E. The definition states that the person's full name, name of his employer, position with such employer, business address and telephone number and present or last known home address and telephone number should be provided. Such information was provided for only one witness, Dan R. Anderson, in GNYCE's response to NRC Staff interrogatories regarding Question 6. Thus, intervenor's response is insufficient.

Licensee Interrogatory Number 27

See General Grounds for Motion Numbers 2 and 3.

Interrogatory 27 asks GNYCE to identify the cost model is being prepared by ESRG for the economic study. The response not only failed to provide information concerning prior use of the cost model, but also failed to comply with Definition Section C.

Licensee Interrogatories Numbers 29 and 30

See General Grounds for Motion Numbers 1 and 3.

GNYCE failed to respond to both interrogatories which requested that it produce correspondence concerning Indian Point (Number 29) and refuse-to-energy plants (Number 30). Such correspondence is relevant to discerning the bases of conclusions or facts GNYCE may have gathered to support its contentions in this case.

Licensee Interrogatory Number 33

See General Grounds for Motion Numbers 2 and 3.

This interrogatory asks the meaning of the assertion that conservation and cogeneration are "proceeding apace" in New York. Intervenors failed to provide data, calculations or detailed facts to support its claim. GNYCE uses general terms of reference such as "growing numbers of organizations" or "a wide variety of forms." Such answers fail to give adequate information as required by Commission regulations. See 10 C.F.R. § 2.740(f).

Licensee Interrogatory Number 34

See General Grounds for Motion Number 5.

The interrogatory asks that GNYCE quantify the amount of conservation currently being achieved in New York. One of GNYCE's most important contentions is that greater amounts of conservation can be achieved in New York. However, it fails to provide parties even a starting place or basis for testing its assertions. After seven months, either GNYCE or its paid consultant, ESRG, should have information available in answer to this interrogatory.

Licensee Interrogatory Number 36

See General Grounds for Motion Numbers 2 and 3.

GNYCE's knowledge of the PSC's position regarding cogeneration is the subject of Interrogatory 36. GNYCE lashes out in a verbal attack on the PSC's position rather than giving

a direct succinct answer to the interrogatory. In addition, GNYCE attributes one remark to Power Authority Chairman, John Dyson, but fails to give a specific citation for the statements. Moreover, no specific data, facts, citations or calculations were provided to support GNYCE statements.

Licensee Interrogatory Number 37

See General Grounds for Motion Number 2.

Interrogatory 37 asks GNYCE to state the extent to which conservation is the result of rate increases. Intervenors simply repeat the question. No facts, figures or documentation was offered to support their assertion that "conservation is undoubtedly the result of rate increases."

Licensee Interrogatory Number 38

See General Grounds for Motion Numbers 2 and 4.

The interrogatory asks GNYCE to provide documents which compare the savings from conservation and cogeneration with the savings from the continued operation of Indian Point. Intervenors simply attached a copy of a document which purportedly answers only part of the interrogatory and failed to indicate on which page or pages the specific information could be found.

Licensee Interrogatory Number 41

See General Grounds for Motion Number 2.

GNYCE was asked to list existing and potential cogeneration sites and owners in New York City. GNYCE admitted

outright that "New York University and other projects underway" were not included on the list. If such projects are known to GNYCE, a detailed list should be provided. General assertions are insufficient.

Licensee Interrogatory Number 48

See General Grounds for Motion Number 5.

The interrogatory asks whether coal conversions, refuse burning [plants] and Canadian imports will substitute for Indian Point energy. GNYCE stated that it expected such substitutions, but failed to state any specific quantities to be produced by the substitute forms of energy. Again, GNYCE claims that "supplemental information is still not available to GNYCE at this time." Response of GNYCE to Informal Licensee Request at 1 (January 7, 1983).

Licensee Interrogatory Number 53

See General Grounds for Motion Numbers 2 and 3.

Interrogatory 53 seeks information on the tax consequences of substituting cogeneration and conservation for Indian Point power. GNYCE's answer is incomplete, because it fails to address the issue of conservation. Secondly, no specific citation was given for statements attributed to the Legislative Commission on Science and Technology. Finally, GNYCE seems to ignore the fact that tax law has a major impact on political decisions in spite of their assertion that "tax impacts are not economic impacts." Response of GNYCE to

Interrogatories of Licensees Under Commission Question 6 at 7
(July 14, 1982).

Licensee Interrogatories Numbers 55, 56, 57, 58 and 59

See General Grounds for Motion Number 5.

These interrogatories address a variety of issues related to the impact a shutdown of Indian Point might have on financing options and debt service for the licensees. (Numbers 55, 56 and 57). In addition, costs of early decommissioning were to be considered. (Numbers 58 and 59). GNYCE claimed that supplemental information regarding these questions was not yet available and would become available when the ESRG study is submitted as testimony.

Licensee Interrogatory Number 63

See General Grounds for Motion Number 3.

Interrogatory 63 asks GNYCE to produce a document, an outline mentioned during the prehearing conference held on April 14, 1982.

GNYCE claims, now, that the outline was merely conceptual, yet that this allegedly conceptual outline was written and was subsequently thrown away. GNYCE does not claim to have no knowledge of the subject of the interrogatory, thus a reasonable reproduction or recollection of the outline should satisfactorily answer the question. Instead, GNYCE sidesteps the issue by asserting that the "scrap of paper" was disposed of. The definition of "document" includes "any kind of written

matter," including, but not limited to originals, copies and drafts of papers, notes and notations. Thus, GNYCE concedes that it destroyed a potentially important piece of evidence.

Licensee Interrogatory Number 65

See General Grounds for Motion Numbers 2 and 3.

GNYCE was asked to identify conservation and cogeneration projects which would replace Indian Point power, as opposed to those projects which would come on line even if Indian Point continues to operate. GNYCE failed to suggest even one project or source or even to suggest the quantity of additional conservation or cogeneration projects necessary to replace Indian Point power. It simply stated, without qualification, that "conservation (electrical) and cogeneration are alternatives to the way Con Edison operates." Response of GNYCE to Interrogatories of Licensees Under Commission Question 6 at 10. (July 15, 1982). This answer is vague and unresponsive.

In addition, GNYCE refers only to Con Ed in its answer. The Power Authority is not mentioned, thus GNYCE's answer is not only evasive, but also incomplete.

Licensee Interrogatories Numbers 67 and 68

See General Grounds for Motion Number 5.

Documents were requested by interrogatories 67 and 68. GNYCE implied that documents concerning the reduced levels of power due to reactor vessel embrittlement were not yet available

as of January 7, 1983. (Number 67). Furthermore, it made no comments on the methodology to be used to quantify the socioeconomic cost of continuing to operate Indian Point. (Number 68). Again, the passing of time (seven months) makes the unavailability of documents difficult, if not impossible to believe.

Licensee Interrogatory Number 75

See General Grounds for Motion Number 2.

The interrogatory asks whether GNYCE has included the costs of interconnection equipment between cogenerators and the utility grid as a capital cost of installing 1,500 MW of cogeneration. GNYCE responded with a query on whether the interrogatory refers to a specific study or calculation and then launched into an attack on Con Edison's rate practices.

The interrogatory was intended to elicit a simple yes or no and, in the most optimistic scenario, to prompt GNYCE to provide the information requested. Interrogatories do not have to refer to a specific writing, but only have to address issues and facts relevant to the issues at hand.

Licensee Interrogatories Numbers 81 and 83

See General Grounds for Motion Number 2, 3 and 4.

Interrogatory 81 asks GNYCE to state its estimates and grounds for market penetration of conservation and cogeneration. The vague response elicited by the question

addressed only cogeneration and failed to address conservation. Moreover, no reasoning, facts, data or calculations are stated to support even the unexplicit answer given by GNYCE.

Interrogatory 82 asks whether GNYCE considered various barriers (institutional, legal, political and regulatory) to the initiation of conservation measures. GNYCE asserted that lack of awareness is the only significant barrier. It failed to establish any logical connection between the specific barriers stated in the question and the hazy, general assertion in the response.

Licensee Interrogatory Number 87

See General Grounds for Motion Numbers, 2, 4 and 5.

The interrogatory asks several questions about the GNYCE study of cogeneration. Specifically, it asks whether the study compared 1,500 mW of cogeneration with Indian Point in operation to the same situation without Indian Point. GNYCE stated that its analysis failed to state the comparison. In addition, no sensitivity analyses were made with higher or lower amounts of cogeneration. Stating that its study supplied only a "crude level of detail," GNYCE claimed that its only purpose was to advocate further, detailed study by the City of New York. In short, by its own admission, GNYCE is using a two-year old, unrefined study to support allegations in a hearing on an entirely different matter.

Licensee Interrogatory Number 88

See General Grounds for Motion Numbers 1 and 2.

GNYCE fails to give any indication of even a few governmental agencies which have adopted ESG conclusions in legal proceedings. (Number 88) It provided only a list of its clients without even an asterisk or some other mark to determine whether ESG conclusions had been adopted by the particular agency. Thus, GNYCE's answer is incomplete. It is submitted that it would not be burdensome to make a simple disposition survey of its files to determine the fact of ESG's success or failure.

Licensee Interrogatory Number 89

See discussion concerning Interrogatory Number 88, supra.

This interrogatory asks for agencies which have adopted ESG conclusions in any contested proceeding. GNYCE's response is the same as in Number 88.

Licensee Interrogatory Number 92

See General Grounds for Motion Number 5.

Interrogatory 92 seeks an explanation of how cogeneration and conservation will mitigate the cost of replacement power and for documentation in support of GNYCE assertions. GNYCE claims not to have analyzed the situation. Intervenor's refer briefly to a study "soon to be done for the City," but they fail to state the name or names of its authors,

its title or publication date. Licensees seek to determine whether GNYCE or anyone during the past seven months perfected such an analysis. If GNYCE has such knowledge a complete identification should be stated expressly.

Licensee Interrogatory Number 93

See General Grounds for Motion Numbers 2 and 5.

Interrogatory 93 asks whether cogeneration will decrease electricity costs to noncogeneration customers. Seven months ago, no analysis of the rate structure had been done. Licensees seek to determine if such an analysis has been done within the last seven months.

Licensee Interrogatory Number 96

See General Grounds for Motion Numbers 2 and 5.

See comments on Licensee Interrogatory Number 87.

Licensee Interrogatory Number 101

See General Grounds for Motion Numbers 2, 4 and 5.

This interrogatory seeks to determine the economic benefit of conservation and cogeneration to Con Edison customers as compared to the cost of oil, natural gas, coal and nuclear power. Each of the alternatives was to be compared in its turn to conservation and cogeneration. Although GNYCE contemptuously labels such comparisons as "mere busy-work," the answers to these questions go to the very substance of the GNYCE case.

A clear statement of how the cost of replacing oil, gas etc. with conservation and cogeneration is required to make a reasoned judgment regarding the economics of various generation or savings methods.

Licensee Interrogatory Number 110

See General Grounds for Motion Number 3.

GNYCE failed to provide any supporting documents for the list of operating expenses to be saved by a shutdown of Indian Point.

Licensee Interrogatory Number 113

See General Grounds for Motion Number 2.

Number 113 asks GNYCE to identify and list any 5 mW hydropower site which would support southeast New York customers. It also asks for the baseload of each site listed, the potential transmission route and whether that route would fall within the Adirondacks "Blue Line". GNYCE failed to provide answers on the latter three issues.

Licensee Interrogatory Number 121

See General Grounds for Motion Numbers 3, 4 and 5.

See discussion concerning Interrogatory Number 25. There are six parts to Interrogatory 121 which ask that intervenor supply a resume, a list of publications, and the subject matter and contention to be addressed by each witness among other things.

While GNYCE has provided some information on its witnesses in an earlier submission, the information fails to fulfill the request of this interrogatory. As noted above, a great deal of time has passed since GNYCE first provided information on their witnesses, thus the detailed information should now be available.

In addition, any witnesses to be presented by contributing intervenors must be consolidated with those of the lead intervenor. In July of last year, UCS/NYPIRG stated that it would present a witness to give Question 6 testimony. GNYCE did not list the UCS/NYPIRG witness along with their witnesses in either the formal or informal interrogatory responses. The Board explicitly stated that the evidence of lead and contributing intervenors is consolidated. Therefore, any information provided on GNYCE witnesses should include information on witnesses to be sponsored by any contributing intervenors. As it now stands, licensees must assume that UCS/NYPIRG has withdrawn its witness or that intervenors cannot agree between themselves.

Licensee Interrogatory Number 122

See General Grounds for Motion Numbers 2 and 5.

GNYCE was asked to identify all communications, written or oral, with federal, state, county or local officials which they rely upon in answering any interrogatories. GNYCE fails to refer to any correspondence cited elsewhere in their responses.

Intervenors failed to identify thoroughly their sources as instructed in Definition Sections C and D. Thus, the GNYCE answer is sorely insufficient.

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Dated: March 4, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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)
(Indian Point, Unit No. 3)) March 4, 1983

Certificate of Service

I hereby certify that I have served copies of the MOTION TO COMPEL FURTHER RESPONSES FROM GNYCE TO FIRST SET OF INTERROGATORIES AND DOCUMENT REQUESTS UNDER COMMISSION QUESTION 6 to the service list below on this 4th day of March, 1983 by depositing it in the United States mail, first class.

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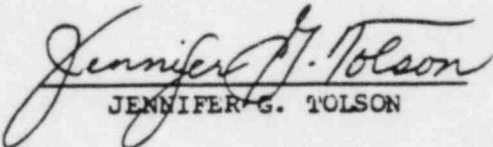
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