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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'83 MAR-9 P1:46

BEFORE THE COMMISSIONERS:
Nunzio J. Palladino, Chairman
Victor Gilinsky
John F. Ahearne
Thomas M. Roberts
James K. Asselstine

In the Matter of)
)
)

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

Docket Nos.
50-247 SP
50-286 SP

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

March 9, 1983

LICENSEES' OPPOSITION TO INTERVENORS' MOTION
FOR AN EXTENSION OF DEADLINES IN ORDER TO
COMPLETE THE RECORD ON EMERGENCY PLANNING
ISSUES IN COMMISSION QUESTIONS THREE AND FOUR

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 oppose
Intervenors' Motion For An Extension of Deadlines In Order
To Complete The Record On Emergency Planning Issues In
Commission Questions Three and Four (Feb. 28, 1983)
(Motion).

The recent recommendations of specially-appointed Judge
James A. Laurenson and their acceptance by the Atomic Safety
and Licensing Board (Board) presiding over the Indian Point
proceeding establish what the licensees have maintained for

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many months: the present schedule can be met given proper and necessary restraints upon the intervenors' presentation of cumulative, repetitive, and irrelevant testimony. See Recommended Decision (March 4, 1983) (Attachment A); Mailgram (Mar. 7, 1983) (Attachment B). Accordingly, because the Board has resolved this scheduling question, the intervenors' motion before the Commission should be denied.

BACKGROUND

In June 1982, the licensees filed testimony under Commission Questions 3 and 4 for 12 witnesses, the State of New York filed testimony for 2 witnesses, and the Commission Staff and the Federal Emergency Management Agency filed testimony for 6 witnesses.

At the same time, the intervenors filed testimony for more than 170 witnesses.

The Board directed that the intervenors submit a proposal "with the object of paring . . . the list." Transcript of Proceedings at 1064 (June 17, 1982). When it found the response inadequate, the Board "perform[ed] that paring job," id., and ruled that "the intervenors will be permitted to present for formal filing in the record the testimony of 50 witnesses." Id. at 1191 (June 18, 1982). The Board then qualified this limitation by allowing the intervenors to group their witnesses in panels, each of which would be treated as one witness. Id. at 1198. The presentation of

the first panel, a group of police chiefs, made clear that this method would not, in most instances, reduce the hearing time because the individually-filed testimony required individual cross-examination of each member of the panel.

Following the suspension of hearings by the Board, evidentiary hearings recommenced on the risk issues of the proceeding, Questions 1 and 2. To date, more hearing time has been devoted to consideration of emergency planning issues under Questions 3 and 4 in the Indian Point hearing than on any other topic. As was recently noted, the Board has heard testimony on "27 witnesses in 18 days comprising more than 4500 pages of testimony plus written direct testimony. Some of the 27 witnesses have not been cross-examined and others may be recalled for further cross-examination." Recommended Decision at 9.

Because intervenors continued to refuse to limit the number of witnesses that they would present, the Board on February 17, 1983, appointed James A. Laurenson as a special judge to address the question of scheduling emergency planning witnesses. Judge Laurenson filed a Recommended Decision on March 4, 1983, which proposed a schedule consistent with the Commission's July 29, 1983 deadline. On March 7, 1983, the Board adopted with minor modifications Judge Laurenson's recommendations.

ARGUMENT

The intervenors, who have failed to heed the Board's direction that they reduce their number of witnesses, and who have repeatedly accused the licensees of attempting to delay this proceeding, are now seeking Commission action which would delay by at least one month the Commission's receipt of the Board's recommendations. Motion at 2.¹ The licensees oppose this effort and concur in the Commission's position that the Board's recommendation be received by July 29, 1983, see Order at 1 (Dec. 15, 1982) (Commission sets July 29, 1983 deadline for Board recommendations), so that the Commission can expeditiously conclude this proceeding.

Judge Laurenson, addressing the issue of the emergency planning witnesses, recommended no changes that would require an extension of the Commission's deadline, although his authority to lengthen the evidentiary hearing was clear. Transcript of Proceedings at 8465 (Feb. 17, 1983); id. at 8286 (Feb. 16, 1983). In fact, Judge Laurenson believed that an addition of only two hearing days on emergency planning issues would suffice for a fair and adequate presentation of the intervenors' and other parties'

1. See Intervenor's Proposed Schedule for Testimony on Commission Questions 3 and 4 and Modified Schedule for Remainder of Special Proceeding at (unnumbered) 4 (Feb. 11, 1983).

witnesses. Recommended Decision at 18. Judge Laurenson's "review of the written direct testimony of intervenors' 170 witnesses led [him] to conclude that the majority of it was of little or no probative value in light of the state of the record at the present time." Recommended Decision at 16 (emphasis added). He further concluded that "much" of intervenors' testimony is "of questionable materiality and frequently repetitious." Id. at 11.

On March 7, 1983, the Board accepted Judge Laurenson's recommendations. Specifically, the Board has increased by two the number of hearing days devoted to emergency planning,¹ has imposed time limits on cross-examination, and has allocated the ten hearing days among the parties. Mailgram at 1 (Mar. 7, 1983).² The Board also required the intervenors to "provide their list of witnesses to all parties by March 11, 1983." Id. at 2.

In their Motion filed prior to the issuance of Judge Laurenson's recommendation and the Board's Order, the

1. The Board also reaffirmed its decision to hold four days of hearings on FEMA testimony concerning the results of the emergency planning hearings scheduled for March 9, 1983. Mailgram at 1.

2. The licensees have submitted their comments on the Board's Order directly to the Board. Power Authority's Motion to Modify Memorandum and Order (Schedule on Commission Questions 3 and 4 and Notice of Hearing) (Mar. 8, 1983); Motion of Consolidated Edison for Modification of the Board's March 7, 1983 Order Adopting the Recommended Decision of Alternate Board Member Laurenson (Mar. 8, 1983).

intervenors claimed that they had "eliminat[ed]" twenty-eight of their witnesses. Motion at 2. However, it should be emphasized that these witnesses will not appear because the licensees agreed to stipulate as to the content of their testimony and agreed to refrain from cross examining them.

The intervenors also argued that they had compromised by grouping their witnesses in panels. Id. This, too, is a hollow claim. The intervenors' "panels" do not consist of groups of witnesses offering a single, integrated piece of testimony. Rather, the "panels" consist of up to ten individuals, each offering an individual piece of testimony. Previous experience has shown that no hearing time will be saved by the intervenors' belated establishment of "panels." As Judge Laurensen noted

the bundling together of a large number of these disparate witnesses, who have maybe a common thread running through their testimony because they are all parents or they are all police chiefs or they are all school teachers or whatever, may the [sic] be unfair in terms of the time allowed for cross-examination.

Transcript of Conference at 80 (Feb. 28, 1983). Thus, the intervenors have not sacrificed by grouping their witnesses; rather, they have made the licensees' cross-examination more confusing and burdensome.

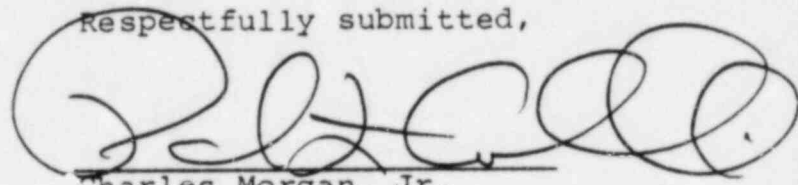
The Board has once again properly placed the responsibility of reducing the number of intervenors' witnesses on the intervenors, requiring them to file a new witness list

for their five days of allocated hearing time by Friday, March 11, 1983. Mailgram at 1-2. Accordingly, the Board's March 7 Order scheduling the remainder of the emergency planning testimony makes moot the intervenors' request that the Commission extend its deadline for receipt of the Board's recommendations. Therefore, the intervenors' Motion should be denied.


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Dated: March 9, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before the Alternate Board Member
Administrative Law Judge
James A. Laurenson

SERVED MAR 04 1983

In the Matter of
CONSOLIDATED EDISON COMPANY
OF NEW YORK
(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

(ASLBP 81-466-03 SP)

March 4, 1983

RECOMMENDED DECISION

I. JURISDICTION AND PROCEDURAL HISTORY

On February 17, 1983, I was appointed by the Atomic Safety and Licensing Board pursuant to 10 CFR §2.722(a)(3) as an Alternate Atomic Safety and Licensing Board Member "to make recommendations in an on-the-record report to the Board as to a fair and efficient method for receiving evidence on Commission Questions 3 and 4 in order to accomplish an expedited hearing schedule." The Board order listed eight specific things I was to do. The first six directed me to do things

Board. Other parties have expressed an interest in submitting testimony concerning their evaluation of the exercise. I find that all of these requests concerning testimony dealing with next week's exercise is beyond the scope of the matters assigned to me and I express no recommendation on any of these requests.

Immediately upon my appointment as an Alternate Board Member herein, I issued an order scheduling a conference concerning the procedure for taking evidence on Commission Questions 3 and 4. The conference was held on Monday, February 28, 1983 in New York City. Prior to the hearing, the parties were directed to confer and discuss specific matters concerning proposed and possible stipulations; allocation of hearing dates; identification and elimination of argumentative, cumulative, repetitive or irrelevant testimony; possible limitations on the time allowed for cross-examination; and the order of presentation of evidence. Prior to the hearing, written proposals concerning the scheduling and/or limiting of testimony on Commission Questions 3 and 4 were filed by the following: both licensees, intervenors, NRC Staff, and State of New York Department of Public Service. Other documents filed which relate to the subject matter herein are as follows: letter from Craig Kaplan, Esq. dated February 18, 1983 requesting an opportunity to reschedule the testimony of Dr. Simos; letter from Assemblyman Richard L. Brodsky dated February 21, 1983 regarding the proposed testimony of Roger Seasonwein;

such as examine the existing record on Questions 3 and 4, review prefiled testimony, review the recommendations of the parties concerning the subject matter of my appointment, conduct hearing conferences, assist in negotiating stipulations, and explore agreements to reduce the testimony by various means. The crux of the matter is set forth in items 7 and 8 and they are as follows:

"7. Recommend elimination of testimony that is argumentative, cumulative, repetitive or irrelevant.

8. After reducing testimony and cross-examination to a minimum consistent with the accomplishment of a complete and reliable record on the contentions under Commission Questions 3 and 4, to recommend how the receipt of such testimony and cross-examination can be carried out with minimum disruption of the Board's schedule."

The schedule of the Board concerning the taking of evidence on Commission Questions 3 and 4 and the contentions thereunder is as follows: (1) Four hearing days during the week commencing on Tuesday, March 1, 1983, from 9:00 a.m. to 5:00 p.m.; (2) Four hearing days during the week commencing on Tuesday, March 15, during the same hours; and (3) Four hearing days during the week commencing on March 22, during the same hours. I will make no comments concerning scheduling witnesses during the week of March 1, 1983.

I also note that an emergency planning exercise is scheduled during the week of March 8, 1983. The Federal Emergency Management Agency (hereinafter "FEMA") has filed a request concerning the date on which their report evaluating next week's exercise will be submitted to the

Board. Other parties have expressed an interest in submitting testimony concerning their evaluation of the exercise. I find that all of these requests concerning testimony dealing with next week's exercise is beyond the scope of the matters assigned to me and I express no recommendation on any of these requests.

Immediately upon my appointment as an Alternate Board Member herein, I issued an order scheduling a conference concerning the procedure for taking evidence on Commission Questions 3 and 4. The conference was held on Monday, February 28, 1983 in New York City. Prior to the hearing, the parties were directed to confer and discuss specific matters concerning proposed and possible stipulations; allocation of hearing dates; identification and elimination of argumentative, cumulative, repetitive or irrelevant testimony; possible limitations on the time allowed for cross-examination; and the order of presentation of evidence. Prior to the hearing, written proposals concerning the scheduling and/or limiting of testimony on Commission Questions 3 and 4 were filed by the following: both licensees, intervenors, NRC Staff, and State of New York Department of Public Service. Other documents filed which relate to the subject matter herein are as follows: letter from Craig Kaplan, Esq. dated February 18, 1983 requesting an opportunity to reschedule the testimony of Dr. Simos; letter from Assemblyman Richard L. Brodsky dated February 21, 1983 regarding the proposed testimony of Roger Seasonwein;

and a request from the Westchester County Executive to be permitted to call two additional witnesses.

II. THE HEARING OF FEBRUARY 28, 1983

All parties and interested states, except Rockland County and Rockland Citizens for Safe Energy, were represented at this hearing. The parties reported that a meeting was held on Friday, February 25, 1983 among the licensees, intervenors, the Staff and the State of New York to discuss the matters listed in my Order of February 17, 1983. The parties reported that 20 stipulations had been agreed upon and were being redrafted in final form. I directed the parties to submit those stipulations directly to the Board. Discussions were to continue on other proposed stipulations that had not been accepted by all parties. The parties further reported that they agreed that intervenors should present their testimony first beginning on Tuesday, March 15, 1983. No other significant agreements or stipulations had been achieved at the February 25, 1983 meeting.

At the hearing, all parties were given an opportunity to present their arguments and positions concerning various proposals which had been previously filed or were presented at the hearing.

III. RECOMMENDATIONS OF THE PARTIES

A. Licensees

The proposals and statements of Consolidated Edison and Power Authority of the State of New York can be summarized as follows: (1) the Board should adhere to its announced schedule of hearing only two more weeks of testimony on Commission Questions 3 and 4 (T. 118-120); (2) while restrictions should be placed on cross-examination, any arbitrary limitations are opposed (T. 42-43); and (3) much of the intervenors' prefiled testimony is repetitive, beyond the scope of Commission Questions 3 and 4, immaterial, and, at best, of marginal use. Licensees vociferously oppose any time limitations on their cross-examination of witnesses called on behalf of intervenors. They especially oppose limitations concerning the cross-examination of expert witnesses. (T. 115). They have not specifically identified any proposed testimony which could be eliminated as argumentative, cumulative, repetitive, or irrelevant. (T. 89-94).

B. Intervenors

At the outset of the hearing, intervenors requested that ten hearing days and two evenings be allocated to their joint direct case on emergency planning. They acknowledged that this could not be accomplished without an extension of the current schedule. During the course of the hearing, intervenors indicated that if there were effective limits on cross-examination of their witnesses, they would

reduce their request to eight days and two evenings. (T. 54). Later, they indicated that they would be interested in a compromise proposal with limited cross-examination if they could have seven days allocated to their case. (T. 116-7). Intervenors indicated that they would agree to limit their cross-examination of any individual witness or panel of witnesses to a total of one hour if similar limitations were placed upon licensees. (T. 54). They object to any attempt to strike their witnesses' testimony or preclude their witnesses from testifying in advance of the hearing. Rather, they believe that restrictions on time available to present their case are less onerous. (T. 58).

C. NRC STAFF

It was the position of NRC Staff that an allocation of days available for the presentation of evidence was preferable to limiting in advance of the hearing the number or identification of witnesses who could testify. (T. 74). Staff believes that it can present the remainder of its case in one day and is willing to limit its cross-examination of any witness to a period of one-half hour which it will share with FEMA. (T. 65). FEMA concurs in this proposal. (T. 68).

NRC Staff submitted a compromise proposal to complete the presentation of testimony on the contentions under Commission Questions 3 and 4 as follows: (1) the number of days available for hearing in each of the remaining two weeks shall be extended to at least five and possibly six; (2) the proposal assumes the imposition of some

limitations on cross-examination; and (3) in the event ten remaining hearing days are available for allocation, they should be distributed as follows:

Intervenors - five days.

Licensees - two days.

Staff - one day.

New York State Department of Public Service - one day.

Rockland County - one-half day.

Westchester County - one-half day.

In the event the hearing schedule is expanded to six days a week, the additional two days should be allocated to intervenors. In any event, NRC Staff proposed that the length of time scheduled for the hearing should be extended to 6:00 p.m. (T. 105-6).

IV. APPLICABLE LAW

There is precedent for imposing reasonable limitations on direct examination and cross-examination in decisions of the courts and the Atomic Safety and Licensing Appeal Board. In SCM Corp. v. Xerox Corp., 77 F.R.D. 10 (D. Conn. 1977), District Judge Newman, after hearing 14 weeks of trial of an antitrust case, reviewed the applicable case law, treatises, and the Manual for Complex Litigation. He also considered Rule 403 of the Federal Rules of Evidence which provides that

even relevant evidence may be excluded if its probative value is substantially outweighed by several factors including "undue delay" and "waste of time." He concluded, "[h]owever, in a protracted case such as this, the purpose of the rule can best be achieved by considering time in the aggregate and leaving to counsel the initial responsibility for making individualized selection as to the relative degree of probative value of the mass of evidence available." 77 F.R.D. at 13. After considering all of these factors, Judge Newman put an absolute limit on the number of trial days available to the plaintiff to complete the presentation of its case-in-chief and limited cross-examination to the length of time taken for direct examination.

In MCI Communications Corp. v. American Telephone and Telegraph Co., 85 F.R.D. 28 (N.D. Ill. 1979), the court was confronted with another protracted antitrust case. There, prior to the commencement of the trial, Judge Grady posed the issue thus, "Whether I have authority to impose reasonable time limits upon the conduct of the trial." Id. at 30. Judge Grady quoted portions of Judge Newman's decision in SCM Corp., supra, including the following passage from Wigmore, "It has never been supposed that a party has the absolute right to force upon an unwilling tribunal an unending and superfluous mass of testimony limited only by his own judgment and whim." 6 Wigmore Evidence §1907 (Chadbourn Rev. 1976). Thereupon, Judge Grady limited the presentation of plaintiff's case-in-chief to 26 trial days, limited cross-examination of each witness to approximately the length of time consumed by direct

examination, and limited defendant's case to approximately the length of time consumed by plaintiff's case-in-chief.

In Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-252, 8 AEC 1175 (1975), the Appeal Board found, inter alia, that a licensing board could properly preclude or limit cross-examination and consolidate the presentation of cross-examination of several parties where appropriate.

V. STATEMENT OF THE PROBLEM

As of the date of my appointment as an Alternate Board Member in this case, the Board had heard testimony on Questions 3 and 4 and their underlying contentions as follows: 27 witnesses in 18 days comprising more than 4500 pages of testimony plus written direct testimony. Some of the 27 witnesses have not been cross-examined and others may be recalled for further cross-examination. In addition to Questions 3 and 4 which deal with emergency planning, the Commission directed four other substantive questions to this Board. The final recommendations of the Board to the Nuclear Regulatory Commission on all pending questions are due on July 29, 1983. The Board has not yet heard evidence concerning Commission Questions 5 and 6. Thereafter, the parties must file proposed findings of fact and conclusions of law. In short, there is not enough time available to permit intervenors to call every potential witness who may have some relevant testimony concerning emergency

planning or to allow licensees an unlimited right of cross-examination of those witnesses. Counsel for Consolidated Edison estimated that it would take a total of 62 days to hear all evidence on Questions 3 and 4. (T. 44).

VI. OPINION

Neither the right to present evidence nor the right to cross-examine evidence submitted by an opponent is without limitation. However, any limitation on these rights must be fair, evenhanded and necessary. Considering the amount of time already devoted to hearing testimony concerning these questions, the adoption of certain stipulations of fact, and the representations and arguments of all parties, I conclude that the Board should impose reasonable restrictions on the intervenors' right to present direct evidence through witnesses and upon the licensees' rights to cross-examine such witnesses. As I noted supra, the Board has already spent 18 days listening to 27 witnesses on Commission Questions 3 and 4. Intervenors now propose, even if all of their proposed stipulations are accepted, to call an additional 110 witnesses. Intervenors Proposed Schedule for Testimony (February 11, 1983). While licensees complained vociferously about the magnitude of attempting to cross-examine that number of witnesses, they do not identify prefiled testimony that they believe to be "argumentative, cumulative, repetitive or irrelevant." (T. 89-94). In

fact, counsel for PASN^v stated, "we don't think that the way this hearing ought to work is that the intervenors dump 175 witnesses on the table and then it is up to the licensees or the judge or now yourself to sort out what is cumulative and what is irrelevant." Id. 92-93. Since licensees have not taken any steps toward identifying testimony which could be eliminated under the Board's Order of February 17, 1983, I would be acting sua sponte in any such venture. While I have read all of the testimony submitted by the intervenors and I find much of it to be of questionable materiality and frequently repetitious, I conclude that a judge acting sua sponte to strike significant portions of such testimony would probably make errors which could deprive intervenors of the opportunity to present their case as they see fit. Rather, I am persuaded by Judge Newman's rationale in SCM Corp., supra, that a better way to control this hearing is to allocate aggregate amounts of time and leave to counsel the initial responsibility for making the selections as to the degree of probative value from the mass of evidence available. See my additional comments, infra, concerning "Limitations on the Number of Witnesses to be called by Intervenors."

I am disappointed that the licensees did not identify testimony which they believe should be eliminated. If they had done so and if intervenors had been given the opportunity to respond, I believe that I could have performed that part of the Board's charge to me to "recommend elimination of testimony that is argumentative, cumulative, repetitive or irrelevant." Under the above circumstances, I do not make any such

recommendation. However, this does not mean that the remainder of the assignment must fail. I believe that time is relevant in the conduct of litigation and that methods must be found to shorten and simplify lengthy hearings.

A. Limitations on Cross-examination

Since the NRC follows a rule requiring the filing of direct testimony of witnesses in written form, 10 CFR §2.743, the standards employed by the judges in SCM Corp., supra and MCI Communications Corp., supra are not applicable here. However, in order to fairly allocate the time available for hearing testimony on Commission Questions 3 and 4, some limitation must be placed on the right of cross-examination. To fail to do so would permit an opponent to effectively preclude a party from presenting its case by conducting extensive yet plausibly relevant cross-examination. Illustrative of this problem is what transpired before the Board on the afternoon of June 23, 1982. During the afternoon session, intervenors called the Chiefs of Police of two local communities. After overruling numerous objections, the direct testimony of these two witnesses was received in evidence. Thereafter, extensive cross-examination took place. The cross-examination was punctuated with frequent objections to the entire line of questioning because it was "taking up quite a bit of time unnecessarily." (T. 1706). At the conclusion of the afternoon session, almost four hours after it began, the parties had questioned only one of the witnesses. More recently, on

January 10, 1983, Westchester County presented witness Daniel P. Guido, Commissioner/Sheriff of the Department of Public Safety with 5 pages of direct testimony. Nevertheless, the interrogation of this witness covered 124 pages of the transcript and lasted for more than half a day. (T. 4916-5040).

As I noted supra, the five intervenors are willing to limit their aggregate cross-examination of any witness or panel of witnesses to one hour. NRC Staff and FEMA are willing to limit their combined cross-examination of such witnesses to one-half hour. Licensees refuse to make any concession on limiting their right of cross-examination. I have considered their arguments, but I find them outweighed by the other factors enumerated above. Specifically, I reject their claim that they have a due process right guaranteed by the U.S. Constitution to conduct cross-examination without advance limitation. The decisions of the district courts in SCM Corp., supra and MCI Communications Corp., supra refute that contention. Moreover, I find that the participants have wasted a great deal of time by failing to focus their cross-examination. Therefore, I recommend that the Board impose time limits on all participants concerning their cross-examination of witnesses and that these limitations be enforced. I believe that this will require all parties to concentrate on significant matters without depriving any one of a fair hearing. For this purpose, I have grouped the participants into four categories as follows: (1) licensees; (2) intervenors; (3) NRC Staff and FEMA; and (4) interested states. I recommend that

each party within the above groupings not be permitted to question witnesses called by any other party within that grouping absent a specific showing of exceptional need. I further recommend that in applying the following limitations concerning cross-examination, any time spent on interrogation by the Board not be included in these categories. Furthermore, the Board should support each cross-examiner in controlling witnesses and obtaining direct responses to questions. Attorneys or representatives for the witness should not be permitted to interrupt needlessly. If they do so, the amount of time taken for such interruptions should be added to the time allowed for cross-examination. With these factors in mind, I recommend that cross-examination of witnesses on Commission Questions 3 and 4 be limited as follows:

Licensees - one hour.

Intervenors - one hour.

NRC Staff/FEMA - one-half hour.

Interested States - one-half hour.

Intervenors and NRC Staff/FEMA have indicated that they will be able to allocate the above times among themselves. Interested states who appear at each hearing should be given that opportunity before times are assigned to each. Since licensees have stated that they will not agree among themselves to divide the time allocated to them, the Board must do that for them. I recommend that each licensee be given one-half hour of cross-examination per witness or panel. Under these guidelines the

questioning of each witness or panel of witnesses should be completed in less than half a day.

B. Hearing Dates

I am aware that the Manual for Administrative Law Judges recommends that in ordinary circumstances hearings be limited to five hours per day in order to avoid the effects of fatigue upon all participants. Ruhlen, Manual for Administrative Law Judges 65 (Rev. Ed. 1982). In the instant matter, the schedule already calls for approximately seven hours of hearing per day. There has been a suggestion that this be enlarged to eight hours per day, evenings be added, and hearings be conducted five or six days a week. I find that the determination of the hours of taking testimony is a matter which should be left to the sound discretion of the Board without any recommendation from me. This is so because they are in a better position to evaluate the effects, if any, of fatigue upon the participants. However, in order for my proposed allocation of hearing days to be effective, the schedule for the remaining two weeks of testimony on Questions 3 and 4 will have to be expanded by at least one day each week to a total of ten more hearing days on Questions 3 and 4. These ten additional days would not include the time, if any, that the Board allocates to FEMA and others for testimony concerning the exercise scheduled for March 9, 1983. If the Board agrees to schedule ten days for further testimony as recommended, those ten days should be allocated among the parties for the presentation of their witnesses as follows:

Licensees - two days.

Intervenors - five days.

NRC Staff - one day.

Rockland County - one-half day.

Westchester County - one-half day.

C. Limitations on the Number of Witnesses to be Called by Intervenors

The fact that I have not recommended the elimination of certain testimony proffered by intervenors should not be construed as an indication of its admissibility. In fact, my review of the written direct testimony of intervenors' 170 witnesses led me to conclude that the majority of it was of little or no probative value in light of the state of the record at the present time. I previously stated my reasons for not recommending its elimination at this time. However, it should be readily apparent from the suggested schedule of remaining days available to intervenors that even with limitations on cross-examination, only a fraction of their witnesses will be able to testify. Frankly, I believe that this is a benefit rather than a flaw in my proposal. The intervenors should be given the opportunity to again review their schedule of proposed witnesses and cull out only those with significant testimony on the issues at hand.

Based upon my review of the record and the intervenors' proposed testimony, I submit my observations for the record. In my opinion, very little, if any, of the testimony proposed for panels of community witnesses is of any probative value. For example, I found nothing in

the testimony of the panel of pastors which, by virtue of their positions as clergy, distinguishes their testimony from that of any other lay witness. The Board has already heard testimony from county and local officials concerning the subjects of transportation, schools, police, ambulance, reception centers, communications, condition of roads, and certain handicapped groups. In light of the limited time available for this matter, intervenors should take this opportunity to reexamine their list of witnesses and pare it to those who have relevant, material and probative evidence to offer. While I understand the intervenors' concern that affected residents of the area should be permitted to testify, I believe that this position should yield to the necessity to present expert testimony on the subject of emergency planning in the limited time available.

If intervenors do not voluntarily reduce the number of proposed witnesses, but attempt to call the panels of community witnesses on subjects that have already been the subject of previous testimony, the Board should be prepared to rule on the admissibility of such evidence pursuant to 10 CFR §2.757.

VII. RECOMMENDED ORDER

As an Alternate Board Member, I believe that the recommendations contained herein constitute "a fair and efficient method for receiving evidence on Commission Questions 3 and 4" and I recommend that the Board enter the following order:

1. The schedule should be expanded for the taking of testimony on Commission Questions 3 and 4 and the contentions thereunder to five days during the week commencing March 14 and five days during the week commencing on March 21.

2. The ten days allocated pursuant to paragraph 1. above are in addition to whatever time, if any, the Board decides to allocate to FEMA and others for testimony concerning the emergency planning exercise of March 9, 1983.

3. The ten days allocated to complete the testimony should be divided among the parties for the presentation of their witnesses as follows:

Licensees - two days.

Intervenors - five days.

NRC Staff - one day.

New York State - one day.

Rockland County - one-half day.

Westchester County - one-half day.

4. Cross-examination of witnesses shall be limited on Commission Questions 3 and 4 as follows:

Consolidated Edison Company - one-half hour.

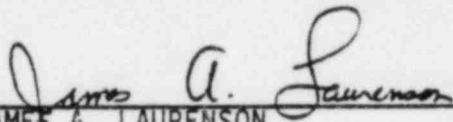
Power Authority of the State of New York - one-half hour.

Intervenors - one hour.

NRC Staff/FEMA - one-half hour.

Interested States - one-half hour.

ATOMIC SAFETY AND LICENSING BOARD



JAMES A. LAURENSEN
Alternate Board Member and
Administrative Law Judge

Bethesda, Maryland
this 4th day of March, 1983.

1-0233571066004 03/07/83 THX NRC-BHO WSH NYBA
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RE: CONSOLIDATED EDISON CO. OF NEW YORK (INDIAN POINT 2)
AND POWER AUTHORITY OF THE STATE OF NEW YORK (INDIAN POINT 3)
DOCKET NOS. 50-247-SP, 50-266-SP

MEMORANDUM AND ORDER (SCHEDULE ON COMMISSION QUESTIONS 3 AND 4
AND NOTICE OF HEARING)

HAVING REVIEWED THE RECOMMENDATIONS SUBMITTED ON MARCH 4, 1983
BY ALTERNATIVE BOARD MEMBER, JAMES A. LAURENSEN, AND THE RECORD
ON WHICH IT WAS BASED, THE BOARD HEREBY ACCEPTS THE RECOMMENDATIONS,
AMENDED AS FOLLOWS:

1. THE SCHEDULE FOR TESTIMONY ON QUESTIONS 3 AND 4 FROM MARCH 19
TO MARCH 18 AND MARCH 22 TO MARCH 25 SHALL BE EXTENDED
TO INCLUDE THE DAYS MARCH 30 AND MARCH 31. THESE HEARINGS
WILL BE HELD IN THE CEREMONIAL COURTROOM OF THE WESTCHESTER COUNTY
COURTHOUSE, 111 GROVE STREET, WHITE PLAINS, NEW YORK.

2. AN ADDITIONAL WEEK TO THE PRESENT SCHEDULE -- FROM APRIL 26
TO APRIL 29 -- IS ORDERED TO RECEIVE TESTIMONY FROM FEMA CONCERNING
THE RESULT OF THE EMERGENCY PLANNING EXERCISE SCHEDULED FOR
MARCH 9, 1983. AN ALLOCATION OF THE TIMES TO BE ALLOWED FOR
CROSS-EXAMINATION OF FEMA WITNESSES WILL BE SET FORTH BY SUBSEQUENT
ORDER.

3. THE TEN DAYS ALLOCATED TO COMPLETE TESTIMONY SHALL BE DIVIDED
AS FOLLOWS:

LICENSEES - TWO DAYS
INTERVENORS - FIVE DAYS
NRC STAFF - ONE DAY
NEW YORK STATE - ONE DAY
ROCKLAND COUNTY - ONE-HALF DAY
WESTCHESTER COUNTY - ONE-HALF DAY

4. CROSS EXAMINATION OF WITNESSES INCLUDING PANELS SHALL BE LIMITED
AS FOLLOWS:

CONED - ONE-HALF HOUR
PASNY - ONE-HALF HOUR
INTERVENORS - ONE HOUR
NRC STAFF/FEMA - ONE-HALF HOUR
INTERESTED STATES - ONE-HALF HOUR

THE LICENSEES MAY UTILIZE CROSS-EXAMINATION TIME ON A DIFFERENT

ALLOCATION THAN INDICATED, BUT THE TOTAL PERIOD OF TIME PER WITNESS OR PANEL CANNOT BE EXCEEDED. INTERVENORS MAY DIVIDE THEIR CROSS-EXAMINATION TIME BETWEEN TWO OR MORE INTERROGATORS.

5. ADEQUATE CROSS-EXAMINATION PLANS, PURSUANT TO BOARD ORDER OF NOVEMBER 15, 1982 AT 22, MUST BE IN THE HANDS OF THE BOARD ONE DAY PRIOR TO TESTIMONY OF WITNESSES TO WHICH THEY APPLY. NON-ADVERSARIAL CROSS-EXAMINATION WILL NOT BE PERMITTED.

6. - INTERVENORS PROVIDE THEIR LIST OF WITNESSES TO ALL PARTIES -- BY MARCH 11, 1983, AND MOTIONS TO STRIKE, IF ANY, SHALL BE FILED BY MARCH 14, 1983. BOTH FILINGS SHALL BE IN-HAND RECEIPT BY THE ABOVE DATES.

FOR THE ATOMIC SAFETY AND LICENSING
BOARD PANEL

-----DAVID R. LEWIS-----

FOR JAMES P. GLEASON, CHAIRMAN
ADMINISTRATIVE JUDGE

BETHESDA, MARYLAND
MARCH 7, 1983
U.S. NUCLEAR REGULATORY COMMISSION
WASHINGTON DC 20555.

22139 EST

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSIONERS:
Nunzio J. Palladino, Chairman
Victor Gilinsky
John F. Ahearne
Thomas M. Roberts
James K. Asselstine

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

March 9, 1983

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of March, 1983, I caused a copy of Licensees' Opposition to Intervenor's Motion for an Extension of Deadlines in Order to Complete the Record on Emergency Planning Issues in Commission Questions Three and Four 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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