

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD  
Before Administrative Judges:  
James P. Gleason, Chairman  
Frederick J. Shon  
Dr. Oscar H. Paris

DOCKETED  
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In the Matter of : Docket Nos.  
:   
CONSOLIDATED EDISON COMPANY OF NEW YORK : 50-247 SP  
INC. (Indian Point, Unit No. 2) : 50-286 SP  
  
POWER AUTHORITY OF THE STATE OF NEW YORK, : March 8, 1983  
(Indian Point, Unit No. 3) :  
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POWER AUTHORITY'S MOTION TO MODIFY  
MEMORANDUM AND ORDER (SCHEDULE ON  
COMMISSION QUESTIONS 3 AND 4 AND  
NOTICE OF HEARING)

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### Preliminary Statement

Power Authority of the State of New York ("Power Authority"), licensee of Indian Point 3 Nuclear Power Plant, hereby moves the Board for an order modifying and clarifying the Memorandum and Order (Schedule on Commission Questions 3 and 4 and Notice of Hearing) in several limited respects.

The Power Authority generally supports most of the Board's approaches. In particular, we agree that the allocation of hearing time among the parties is the only practical way to proceed.<sup>1</sup> We also support the prohibition of non-adversarial cross-examination.

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<sup>1</sup> We note Judge Laurenson's "disappointment" that the licensees did not identify testimony which they believe should be eliminated. (Recommended Decision at 11.) In fact, while the Power Authority's position -- supported by Consolidated Edison Company of New York, Inc. ("Con Edison") (Con Edison's Proposal for Scheduling Remaining Testimony at 6-9) and the Commission Staff (LT:74) -- is that a party should not be put in the position of determining which witnesses an adverse party should call, we responded to Judge Laurenson's question on this issue by stating that all non-expert intervenor witnesses could properly be stricken as irrelevant, immaterial, or cumulative (LT:93). (References to "LT:\_\_\_" denote citations to the transcript of the Special Conference conducted by Judge Laurenson; references to "T:\_\_\_" denote citations to the main hearing transcript.) Moreover, Judge Laurenson himself noted that "the majority of [intervenors' testimony] was of little or no probative value in light of the state of the record at the present time." (Recommended Decision at 16.) Thus, we believe that the Board had a sufficient basis in the record for striking witnesses as well as allocating time among the participants.

On the other hand, the Board's Order contains several items which, we submit, should be revised or clarified, including:

- (1) limitations upon cross-examination;  
and
  - (2) intervenors' use of so-called "panels".
- (1) Arbitrary limitations on cross-examination which prejudice the parties should be rejected.

The Power Authority respectfully urges the Board to reconsider the arbitrary time limitations placed upon cross-examination. We have a standing objection to any limitation upon cross-examination which would prejudice the parties. Both constitutional due process and the Commission's Rules of Practice guarantee a party's right "to conduct such cross-examination as may be required for full and true disclosure of the facts" (10 CFR §2.743(a)) and to protect the party's interests. The Commission's Rules provide a specific method for limiting unreasonable cross-examination:

To prevent unnecessary delays or an unnecessarily large record, the presiding officer shall:

\* \* \*

- (c) Take necessary and proper measures to prevent argumentative, repetitious or cumulative cross-examination...

10 CFR §2.757. In light of this established procedure, there is little reason to adopt arbitrary time limits which would, in many cases, cause prejudice.

The applicability of the 1/2 hour limit per licensee for each witness, regardless of the length or importance of his testimony, is particularly objectionable. Judge Laurenson conceded that the two cases he cited<sup>2</sup> in limiting cross-examination are inapposite, since the limitations on cross-examination were drawn in accordance with limits placed on direct testimony (which was not pre-filed). (Recommended Decision at 12.) Limitations would cause particular prejudice if applied to cross-examination of intervenors' expert witnesses, some of whose testimony may be more material and subject to closer scrutiny than the non-experts'. While the Power Authority continues to object to any time limits whatsoever on cross-examination, we respectfully urge the Board, at the very least, to consider less draconian alternatives, such as:

- (a) increasing time limitations on cross-examination of experts; or
- (b) allowing the parties to accumulate time not expended in cross-examining certain witnesses and apply it to the cross-examination of other witnesses.

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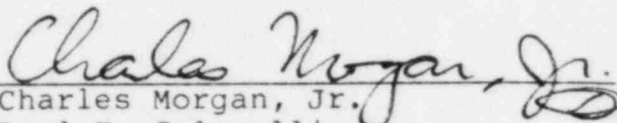
<sup>2</sup> Judge Laurenson cited SCM Corp. v. Xerox Corp., 77 F.R.D. 10 (D. Conn. 1977) and MCI Communications Corp. v. American Telephone and Telegraph Co., 85 F.R.D. 28 (N.D. Ill. 1979).

(2) The use of panels should be clarified.

The Power Authority further requests that the Board clarify its Order with respect to the use of panels. We have no objection, per se, to the presentation of multiple witnesses as a panel. We do object, however, to the belated combination of witnesses who have each pre-filed their own, separate direct testimony into artificial "panels" for the purported purpose of saving time. In fact, the use of panels saves no time at all unless the testimony was originally pre-filed in panel form. As the Board itself has recognized, this device was responsible for the collapse of prior efforts to manage the hearings. (T:6938.) Judge Laurenson also questioned the fairness of combining "disparate witnesses." (LT:80.)

If time limitations on cross-examination are in fact adopted, the Power Authority respectfully urges the Board to clarify that the time limitation shall apply individually to each witness, regardless of how the witness is presented, unless the testimony was originally pre-filed in panel form.

Respectfully submitted,

  
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UNITED STATES OF AMERICA  
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CERTIFICATE OF SERVICE

I hereby certify that copies of POWER AUTHORITY'S  
MOTION TO MODIFY MEMORANDUM AND ORDER (SCHEDULE ON  
COMMISSION QUESTIONS 3 AND 4 AND NOTICE OF HEARING) in the  
above-captioned proceeding have been served on the following by  
deposit in the United States mail, first class, this 8th day of  
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- \* Service also effected by hand delivery on March 9, 1983.
- \*\* Service also effected by hand delivery on March 8, 1983  
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