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

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)	)	April 11, 1983

GNYCE'S FURTHER RESPONSE TO
LICENSEES' MOTION TO IMPOSE SANCTIONS

Pursuant to a Board order granting a portion of a spurious and disingenuous Licensee motion, GNYCE has gone to extraordinary lengths to cooperate with the Licensees and satisfy their discovery desires. This, after being subjected to a series of harrassing filings and having to respond to each at great burden and detriment to the substantive work necessary to complete the record in this proceeding. Now, with the most recent filing of the Licensees on this subject, dated April 7, 1983, it is clear that the licensees cannot be satisfied because their motion has nothing to do with discovery. They are interested only in barring what they know is valuable testimony in strong disagreement with their corporate policies, or failing that, at least to disrupt and harrass this intervenor.

Throughout this entire process, GNYCE has been cooperative, truthful, and consistant. The extra depositions to which we willingly subjected ourselves resulted in transcripts (which the Board has been provided) which are superbly clear in demonstrating the candor, openness, and continuing good faith of

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GNYCE, Dean Corren, and GNYCE's witness, Dr. Richard Rosen. The licensees' incredible attempt to draw an alternate conclusion shows a willingness to dissemble and to intentionally mislead and confound the Board. Licensee attorneys Pratt and Brandenburg make conclusory statements and charcterizations totally unsupported by the facts in this matter as revealed by both our filings and depositions. They have without doubt crossed the line from reasonable interpretation to deliberate misrepresentation - behavior which the Board should not condone on the part of any person, even lawyers.

For example, licensees claim that Corren and Rosen have acted as a team to frustrate their discovery. It is superabundantly clear from every aspect of the record in this matter that the licensee's discovery and indeed that of GNYCE itself was frustrated only by a misunderstanding between Corren and Rosen, certainly not a case of good teamwork. Another example is their use of the word "conceded" in describing responses of Corren to deposition question. Corren at no point "conceded" anything, but simply stated the facts, limited only by Pratt's abusive and unconstructive questioning. That questioning followed an offer at the outset of the deposition by Corren to simply relate the facts in order to eliminate Pratt's confusion, thereby saving time, which offer Pratt refused.

Even though our witness agreed to provide the licensees with a very large number of additional documents (which I have indicated to licensees will be delivered today) Pratt and Brandenburg are still unsatisfied. They persist in arguing to receive documents to which they are not entitled - indeed, the types of documents they refuse to supply to GNYCE for our discovery of their case. First, they want our draft testimony, something we cannot get from them, and for good reason. It is not discoverable. Their arguments for getting ours are nonsense. It was never made public, but only supplied to certain individuals for either comments or for funding reasons. ESRG will be today supplying us all with a list of funders it was supplied to. One of these individuals was Mathew Wald, a reporter with the New York Times, for his opinion. The report was not made public by being either published in or reported in the Times. The licensees are fully aware that GNYCE gave copies of the early ESRG report to three individuals only. Their assertion that we "distributed it widely" is a blatant misrepresentation to the Board. Why the Board should stand for this is a mystery to GNYCE.

The licensees argument that the draft testimony privelege is waived because we gave them the testimony early is similarly ludicrous. Our action, to go beyond strict requirements in order

to aid the licensees and reduce their inconvenience by supplying them with our testimony almost a month early, cannot be used against us, and bears in no concrete way on the issue of discoverability of draft testimony. Not only do the licensees not reciprocate, but they make the noxious proposal that we thereby waived our rights with regard to draft testimony. GNYCE has waived no rights.

Licensees also now argue at length for the "Komanoff letter." As we stated in our letter to the licensees of March 31, 1983 (which has been provided to the Board by the licensees), since the Komanoff comments on the ESRG study were not relied upon in the testimony, or used by ESRG in any other way in this proceeding, it is not discoverable. Pratt and Brandenburg seem to argue that GNYCE has the duty to supply them with anything that will help their case regardless of its relevance to our case. Under their stupid logic we should be required to supply them with better witnesses than they have for it would help their case. Further, Komanoff's letter contains nothing about discovery.

We are unable to respond to each instance of misleading characterization and innuendo, and bizarre theorization of the licensee attorneys. We can correct what we believe to be one honest mistake on their part: their claim that Corren argued that he could not find the early ESRG draft report. Such was never claimed.

As always, Pratt and Brandenburg are free to presume and imagine anything they like (especially if they are not concerned with professionalism or competence). Now that depositions have taken place and they have seen how much stronger our case is than theirs, they are even more desperate to have our testimony barred, and their bizarre behavior is to be expected. GNYCE does not ask or expect them to change their spots. It is up to the Board to control this proceeding, preventing one party from harrassing another. Up to this point, the fact that the Board has allowed this abuse to proceed could be attributed to its desire to hear every argument, regardless of how far-fetched. But no longer. Any further entertaining by the Board of the present motion can only be construed as its conspiring with the licensees to harrass this party. If it chooses to do so, it will succeed in stripping from this proceeding every last shred of credibility it has with the public which believes in and wants a full and fair airing of the issues.

GNYCE believes that Pratt and Brandenburg have clearly stepped

over the line of honesty in this matter, and that the Board has sufficient cause for barring them from further participation. If such behavior continues, GNYCE will so move.

Pratt and Brandenburg disingenuously call for "fairness" while:

1. They insist on receiving information that they refuse us.
2. They claim prejudice because they have had our complete testimony only one month prior to crossexamination, while we have yet to get theirs, and while they have virtually unlimited funds and personnel to review testimony and prepare crossexamination as opposed to our volunteer public interest effort.
3. They deluge us with freewheeling legal theorizing which is abusive and burdensome regardless of its bankruptcy.
4. They were granted an extraordinary deposition of our Director and witness which they used to harrass and then made purposefully, unsupported conclusions which misrepresent the facts in the matter.

Finally, we note that the members of the NRC staff left the deposition of Corren and Rosen on the issue of discovery intent because they thought it a total waste of time, and they considered the barring of the ESRG information from the hearing to be incredible and outrageous, especially because of its essential nature.

Allowing the present licensee motion to go forward in any way is equally outrageous. There must be a limit to the harrassment a party can be reasonably expected to endure.

Respectfully Submitted,

Dean R. Corren
Director, GNYCE

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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)	
	April 12, 1983

CERTIFICATE OF SERVICE

I hereby certify that copies of "GNYCE's Further Response to Licensees' Motion to Impose Sanctions" have been served on all parties on the service list for the above-captioned proceeding by deposit in the U.S. mails, first class, this 11th day of April, 1983.

Dean R. Corren
Director, GNYCE