

Natural Resources Defense Council, Inc.

Regulatory

File Cy4

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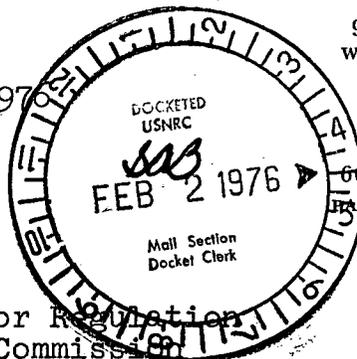
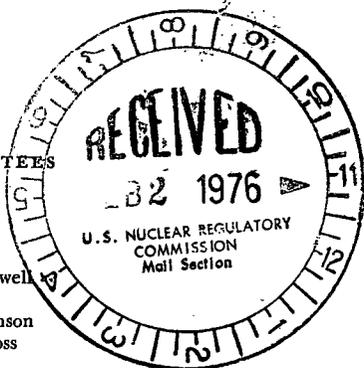
January 28, 1976

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Mr. Ben C. Rusche
Director of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Indian Point 2: Docket No. 50-247

Dear Mr. Rusche:

This letter is in response to a letter addressed to you dated January 8, 1976 from William J. Cahill, Jr., Vice-President of Consolidated Edison Co. of New York concerning Consolidated Edison's further argument for an indefinite postponement of the requirements of the Indian Point 2 license.

Consolidated Edison makes three arguments, none of which is frivolous, but all of which miss the point of protecting the public. Consolidated Edison points to the newly filed appeal by the Village of Buchanan. Consolidated Edison, although the Court has ruled in its favor, nevertheless suggests that its responsibility to the public as governed by the license should be interminably deferred so long as there is any chance that the Village of Buchanan may succeed in overturning the Court's decision. Appellate review can take a long time, years in fact. It is apparent that Consolidated Edison hopes that it will take that long. As it reads the license, it can sit inactive for however many years appeals take. Plainly, the license does not contemplate a standstill while the river suffers so as to permit the Village of Buchanan to continue its legal attacks which had so far been unsuccessful.

Currently, the decision upholding Consolidated Edison's right to build the cooling tower is stayed under an automatic stay provision available to any governmental unit. N.Y.C.P.L.R. §5519(a)(1). Consolidated Edison

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has not moved to vacate that stay, but has been content to allow it to remain. Consolidated Edison at the minimum, and pursuant to the license's requirement of due diligence, should promptly move to vacate the stay. The stay, in any event, does not affect the law of the case which is that Consolidated Edison does not need a local permit in order to build a closed-cycle system at Indian Point.

Consolidated Edison makes a second argument that HRFA misunderstood Consolidated Edison's time schedules. Consolidated Edison points to the tree to avoid seeing the forest. The purport of figure 4.2 in Consolidated Edison's earlier submission is that Consolidated Edison can go forward with substantial work in order to buy time to do what it wants to do, i.e., more studies. But when Consolidated Edison does not get the time it wants, it argues the converse: work cannot possibly go forward in a period of uncertainty.

The NRC must look with intense skepticism at Consolidated Edison's claim of impossibility to perform. Consolidated Edison has made no showing of harm and its own charts suggest that the alleged harm varies with the argument of the moment. The NRC should obtain a detailed statement of what can and cannot be performed during this period at a minimum.

Finally, Consolidated Edison relies most heavily upon NRC's own delays. HRFA feels as frustrated as Consolidated Edison does over NRC's delay. The NRC has come too far and done too much work to have important public policy decisions undermined by the agency's own failure to complete the last steps. We do not agree, as set forth in our earlier letter, that Consolidated Edison can delay ultimate license duties because of this situation. Yet Consolidated Edison's complaint is no less real. The agency must quickly complete its duties in this interminable round of studies, hearings and appeals. The public and Consolidated Edison deserve a final answer and quickly.

Respectfully yours,


Sarah Chasis
Ross Sandler
Sarah Chasis

Mr. Rusche

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January 28, 1976

cc: William J. Cahill, Jr., Vice President
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