LAW OFFICES
BROOKHART, BECKER & DORSEY
1700 K STREET, N. W.
WASHINGTON, D. C. 20006

SMITH W. BROOKHART
RALPH E. BECKER
BENJAMIN H. DORSEY
F. MURRAY CALLAHAN
MALVERN J. SHEFFIELD, JR.
IRVING G. McCANN

CABLE ADDRESS
BROOKBECK
TELEPHONE
296-4950

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October 13, 1966

Atomic Energy Commission
Atomic Safety and Licensing Board
Washington, D. C. 20545

Attention: Mr. Samuel W. Jensch, Chairman

Re: Application of Consolidated Edison Company, Indian Point Nuclear Generating Unit No. 2, Docket No. 50-247. (Suppl)

Gentlemen:

In the Initial Decision by the Atomic Safety and Licensing Board, dated October 4, 1966, the Board acted upon Consolidated Edison Company's Motion to Expedite under Section 2.764(a) of the Commission's Rules of Practice, finding that:

> "Con-Ed has presented evidence respecting the capacity of its existing generating plants and its endeavors to provide additional capacity, including the protracted Storm King Mountain pumped water storage project. A failure to supply the demand would affect the public interest that buyers have in their concern that electricity be delivered when they make a call for it."

The fundamental question arises as to the authority of the Atomic Safety and Licensing Board to consider economic factors under the terms of reference of their hearing assignment, which is noted in the Initial Decision, at page 13, as:

> "The review by the Atomic Safety and Licensing Board is limited to a consideration of those criteria and technical design features which have been presented and which in the Board's opinion are adequate to provide reasonable assurance that the proposed facility can be constructed and operated without undue risk to the health and safety of the public."

The findings nevertheless take up a fundamental question of the needs of the applicant and reach a decision without having taken evidence on the motion.

The writer wishes to point out to the Board and the Commission the failure of the applicant to present evidence of material facts respecting its endeavors to provide additional capacity. Such evidence is pertinent to the finding of the Atomic Safety and Licensing Board "that substantial economic injury will occur if this initial decision is not made effective in accordance with the Rules" (pp. 16-17) and the order expediting the effective date for issuing a provisional construction permit.

It has been verified by the writer that on or about July 1, 1965, the Applicant, Consolidated Edison Company, received a concrete offer from Middle Atlantic Power Company, a company jointly owned by Tenneco (formerly Tennessee Gas Transmission Company) and International Utilities Company, to sell 2,000,000 k.w. capacity of electrical energy for a period of 40 years at a mean average cost of 4.94/mill.k.w. Delivery of the power would be made to Applicant's Farragut Station, Brooklyn, New York.

This proposal is understood to be currently pending and has not been acted upon by Applicant's Board of Directors.

The importance of this reasonable alternative in the Applicant's showing need not be emphasized, since a proposal of such magnitude made by a company acting for experienced and financially strong sources bears directly upon the public interest, and any decision by the Commission based on possible substantial economic injury which purportedly would result from not expediting the Indian Point No. 2 Project.

The Board and Commission's attention are invited to the finding of the United States Court of Appeals, Second Circuit, in Scenic Hudson Preservation Conference v. Federal Power Commission, decided December 29, 1965, 354 F.2d 608, wherein the court decreed that in permitting license of hydroelectric facilities it must see that its record is complete.

It is respectfully requested that appropriate action be taken to treat with this matter.

Very truly yours,

BROOKHART, BECKER & DORSEY

By 
Smith W. Brookhart
Counsel for National Parks Association

cc: Arvin E. Upton, Esq. - hand delivered