July 8, 1971

Samuel W. Jensch, Esq., Chairman
Atomic Safety and Licensing Board
U. S. Atomic Energy Commission
Washington, D. C. 20545

Mr. R. B. Briggs
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Oak Ridge National Laboratory
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Dr. John C. Geyer, Chairman
Department of Geography and
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The Johns Hopkins University
Baltimore, Maryland 21218

In the Matter of Consolidated Edison Company of New York, Inc.
Indian Point Nuclear Generating Unit No. 2
Docket No. 50-247

Gentlemen:

On June 25, 1971, counsel for Hudson River Fishermen's Association (HRFA) wrote to you on behalf of HRFA and the Environmental Defense Fund (EDF) to

> "reassert all the arguments they have made earlier for the certification of their motions for the determination of environmental issues and, on the basis of the events which have followed the last hearing, add two further points:
>
> 1. It is now evident that the Commission can not point to a persuasive factual basis for its determination that a period of orderly transition was necessary before the National Environmental Policy Act was implemented in Commission proceedings.
>
> 2. The Commission's own review of emergency core cooling systems has required a delay in this proceeding which should allow the Commission to complete any transition period which it can legitimately claim and be prepared to accept environmental evidence in this proceeding."

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HRFA and EDF assert, in view of the letter to the Chairman of this Board from the Secretary of the Commission dated June 18, 1971, transmitting the certified record of the 10 CFR Part 50, Appendix D, rule making proceeding, that

> "[T]he Intervenors have been unable to find any data in the docket which they think supports the Commission's decision to include the requirement of a period of orderly transition in Appendix D."

HRFA and EDF conclude that

> "There is no rational basis in fact to support the Commission's determination that a period of orderly transition was required in this proceeding before the National Environmental Policy Act could be implemented....The imposition of the March 4th date has no rational basis in fact insofar as it rests on the need for a period of orderly transition. The Commission has failed to meet the requirement of administrative law that the conclusions embodied in its rules be supportable by facts in the record on which its conclusions are based."

In response to intervenors' assertion, it bears emphasis that in a rule making proceeding the Commission is not required to make detailed findings of fact nor to consider only a formal record, but is free to draw upon other factors, including its own knowledge and experience as an expert body. Moreover, to the extent that factual matter considered by the Commission may be pertinent, we note that the matter of orderly transition (as we stated at page 776 of the transcript) may be related to the need for electric power so that data supporting the need for power also support a period of transition. We would again refer in this connection to the discussion of the "transitional period to avoid unreasonable delays in the construction and operation of nuclear power plants urgently needed to meet national requirements for electric power" at pages 46-64 of the government's brief in the case of Calvert Cliffs Coordinating Committee v. AEC (C.A.D.C. No. 24,871).

HRFA and EDF also argue, in effect, that circumstances have changed as to the need for a transition period in 10 CFR Part 50, Appendix D, in view of delays which might be occasioned by further review of emergency core cooling systems. In this regard, we generally agree with the applicant's response to this assertion in Mr. Trosten's letter to the Board of July 6, 1971.

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For the reasons stated above and for all of the reasons which we have previously advanced in this connection, we urge the Board to find that HRFA and EDF have not raised a substantial question under the Commission's "Calvert Cliffs doctrine."

Sincerely,

Myron Karman
Counsel for
AEC Regulatory Staff

cc: J. Bruce MacDonald, Esq.
Angus Macbeth, Esq.
Anthony Z. Roisman, Esq.
Honorable William J. Burke
Paul S. Shemin, Esq.
Leonard M. Trosten, Esq.
Algie A. Wells, Esq.
Mr. Stanley T. Robinson, Jr.

bcc: OGC Files - Beth/GT/Docket
DRL - Dr Morris
Mr Muller
REG Files

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