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Samuel W. Jensch, Esq.
Chairman
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C.
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In re: Consolidated Edison Company of New York, Inc. (Indian Point No. 2) Docket No. 50-247

Dear Mr. Chairman:

I am writing in regard to two orders issued by the Atomic Safety and Licensing Board in this proceeding on May 26, 1971, the first of which denied in part and granted in part the motions of the Intervenors HRFA and EDF for discovery and the second of which directed the Secretary of the Atomic Energy Commission to produce all documentary data and material solely related to the phrases "transitional period required" as reflected in Appendix D to 10 CFR Part 50 and "orderly period of transition" as utilized in paragraph 3 of the implementation statement accompanying Appendix D.

This week I received from the Secretary of the Commission a copy of a letter to the Chairman of the Atomic Safety and Licensing Board in this proceeding in which the Secretary complied with the Board's order by making available the record of the Appendix D rule-making proceeding. I believe this to be the entire record of the proceeding up to December 4, 1970, the date on which Appendix D was promulgated.

All of the parties to this proceeding have known of this docketed record since the

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original motions of EDF and HRFA for the determination of environmental issues were filed on February 26, 1971 and March 2, 1971. The 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. None of the parties have ever pointed to any data or material in the Appendix D docket as supporting the need for a period of orderly transition. This is so despite the fact that both the Applicant and the Staff have strenuously opposed Intervenors' contention that the Commission had no basis for its requirement of a period of orderly transition. This failure to find documented support for the Commission's position has persisted through voluminous papers filed by the parties on the motions before the Board.

In response to the Board's order, it must be presumed that the Commission has produced all of the material and data with which it could support the need for a period of orderly transition. The Commission has not produced anything new to add to the material of which the parties have long been cognizant.

I think the record is now perfectly clear. 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. On the basis of the facts before the Commission on December 4, 1970, the National Environmental Policy Act could and should have been implemented immediately in the Indian Point Unit No. 2 proceeding. The imposition of the March 4th date has no rational basis in fact in so far 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.

Since the last hearing, new circumstances have also arisen. A senior task force of the Atomic Energy Commission is presently conducting a review of the emergency core cooling systems employed in plants like Indian Point Unit No. 2. In a letter dated April 27, 1971, to the Joint Committee on Atomic Energy, the Chairman of the AEC, Glenn T. Seaborg, announced the ECCS review and told the committee, "Pending completion of this review, we anticipate that there will be delays in licensing of some plants now under construction." In May an unidentified AEC source identified Consolidated Edison's Indian Point Unit No. 2 as one of the plants which would be delayed in licensing at least one month and probably three months. Nucleonics Week, May 13, 1971; Washington Post News Service, May 25, 1971.

On June 19, 1971, the Atomic Energy Commission released a document entitled "Interim Policy Statement: Interim Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Power Reactors." It is not clear to the Intervenors whether this document is the report of the Senior Task Force. In any event, it is clear that further study of ECCS will be necessary and that the delays and reevaluations caused by the Commission's review are not yet at an end.

The addition of this review period to the length of the licensing proceeding should be sufficient to allow the Commission to complete its orderly transition and be prepared to implement NEPA in this proceeding.

Since this proceeding will probably be delayed for a significant period of time, there should no longer be any basis - if there ever was one - for excluding non-radiological environmental evidence from this hearing on the grounds of needing a period of orderly transition.

Intervenors 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.

Intervenors contend that these two points taken in conjunction with the briefs and arguments already had on this issue present a substantial question as to whether or not, on fresh consideration, the Commission would exclude the taking of environmental evidence in this proceeding.

Therefore, at this time Intervenors EDF and HRFA renew their motions for the determination of non-radiological environmental issues first made on February 26, 1971, and

March 2, 1971, and move the Atomic Safety and Licensing Board to certify those motions to the Appeals Board,a substantial question as to the validity of Appendix D having been presented to the Atomic Safety and Licensing Board.

I have been authorized by Anthony Z. Roisman, attorney for Intervenor Environmental Defense Fund, to inform the Board that the Environmental Defense Fund joins the Hudson River Fishermen's Association in this letter.

Yours sincerely,

Angus Macbeth
Attorney for Hudson
River Fishermen's
Association

AM/ab

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