BEFORE THE UNITED STATES

ATOMIC ENERGY COMMISSION

In the Matter of	)	5-4-72.
	)	
Consolidated Edison Company	)	Docket No. 50-247
of New York, Inc.	)	
(Indian Point Station, Unit No. 2)	)	

APPLICANT'S ANSWER TO MOTION
BY CITIZENS COMMITTEE FOR
THE PROTECTION OF THE ENVIRONMENT
FOR PRODUCTION OF DOCUMENTS
BY APPLICANT

On May 2, 1972 Applicant received from the Citizens Committee for the Protection of the Environment ("CCPE") a copy of a motion for production of documents falling into six categories. For the reasons set forth below, the Board should deny CCPE's motion in its entirety.

I. CCPE Has Not Shown Good Cause for the Production of Documents, as Required by 10 CFR 2.741

Following extensive discovery and exhaustive hearings with full opportuni-
ty for cross-examination, the record

hearing

on the radiological safety issues in this proceeding has been closed subject to certain exceptions not pertinent to CCPE's motion. Unless CCPE convincingly demonstrates that the record should be reopened for the presentation of further evidence by CCPE, there is no foundation for CCPE's sweeping, eleventh-hour discovery motion.

CCPE has thus far failed to make any showing that it should be permitted to submit evidence pertaining to the subject matter of the letter of H. K. Brill to L. Manning Muntzing, dated March 14, 1972. CCPE has not made any detailed contentions. (See In the Matter of Florida Power & Light Co., Turkey Point Units 3 and 4, Dkt. Nos. 50-250, 50-251, Memorandum and Order, Atomic Energy Commission, March 30, 1972.) By its own admission, CCPE has no knowledge of the matters raised in Mr. Brill's letter. Accordingly, CCPE has not shown it has anything to contribute by way of an evidentiary presentation.

The underlying theory of CCPE's motion is that the Board should compel production of documents so that CCPE may prepare to make an evidentiary presentation, more specifically to perform an "analysis of the problems [that] would be coextensive with the Staff and Applicant review." There is no merit in this position. The time for discovery in this proceeding on a "business as usual" basis is long since past. Only for the most compelling reasons, none of which has been demonstrated by CCPE, should a motion of this character be granted at this time.

Even at an earlier stage this motion would be objectionable. To be sure, CCPE is a party to this proceeding, but it is not the Applicant for a license to operate Unit No. 2 and it does not have the burden of proof with respect to the application. It is not charged with the responsibility to the public of the Regulatory Staff of

the Commission, particularly the Division of Compliance, to determine compliance with license conditions and regulations pertaining to health and safety. It does not bear the responsibility of the Board to determine that an adequate evidentiary record has been developed. In sum, there is no basis for CCPE's claim that it should be authorized to make a presentation "coextensive with the Staff and Applicant."

Applicant is presently completing its analysis of the allegations of Mr. Brill, as he explained them during the deposition on April 20, 1972. Applicant understands that the Division of Compliance review of this matter is also in its final stages. Pursuant to the request of the Board, Applicant will offer its analysis in evidence at the hearing commencing on May 17, 1972, and we understand the Staff analysis will be similarly offered.

CCPE is, of course, entitled to cross-examine any evidence received from another party. Consistent with Applicant's objective since the outset of this hearing to avoid unnecessary procedural disputes with CCPE, Applicant stands ready to provide CCPE with the documents fairly needed by it to conduct such a cross-examination, i.e., the documents relied upon by Applicant in its testimony. Counsel for CCPE has been advised of this from the outset. Applicant intends to make most of these documents available to counsel for CCPE not later than May 6, 1972. Further, Applicant's testimony will be submitted not later than a week in advance of the May 17 hearing.

Obviously, one cannot produce the documents relied upon for one's testimony until the scope and content of that testimony have been defined. Applicant became

aware of Mr. Brill's letter on March 27, 1972. The matters described in his letter occurred four to five years ago and involved Applicant's sub-sub-contractors whose offices and records are in different cities. The scope of Mr. Brill's allegations was substantially narrowed and clarified during his deposition on April 20, 1972. The assertions by counsel for CCPE that he should have been furnished documents by Applicant before its testimony is ready are plainly overreaching.*

Moreover, CCPE cannot be allowed to profit by failing to take advantage of its opportunities to learn about the

*Counsel for CCPE cavils about his non-attendance at the meeting held among Mr. Brill and his attorneys, the Regulatory Staff and Applicant on April 18, 1972. Counsel for CCPE did not inform Applicant until May 1, 1972 that he had attempted to discuss Mr. Brill's letter with him and to obtain information from Mr. Brill prior to the deposition. Had counsel for CCPE heretofore informed Applicant's counsel that he was attempting to communicate with Mr. Brill, perhaps a better exchange of information could have been developed.

matters raised in Mr. Brill's letter. CCPE was on notice on April 10 that Mr. Brill's deposition was to be taken. CCPE made no effort to depose Mr. Brill itself, nor to seek to join with Applicant in a full examination of the deponent. At the deposition, counsel for CCPE expressly refused to review documents produced by Mr. Brill at Applicant's request. Under all these circumstances, CCPE's threat to seek a delay in the May 17 hearing and its refusal to outline its proposed cross-examination (all without even having seen the testimony of Applicant or the Staff) need not detain the Board. CCPE is represented by counsel experienced in nuclear licensing matters and there is no reason why cross-examination cannot proceed as scheduled.

II. CCPE's Request is Excessively Broad and Is Oppressive

Mr. Brill's deposition revealed that his concerns were limited to the "fit" of the steam generator shoes and the steam generator lugs and the possible effect of distortion of the reactor vessel support ring as a result of heat treatment.

Putting aside CCPE's incorrect characterization of Mr. Brill's responses at the deposition and the implications thereof, it is clear that CCPE's request exceeds the scope of the questions raised by Mr. Brill. Obviously, and regardless of the stage of a proceeding, a party is not entitled to sweeping discovery based upon such gossamer allegations as are contained in CCPE's motion. (In the Matter of Wisconsin Electric Power Co., Point Beach Nuclear Plant, Unit 2, Dkt. No. 50-301, Memorandum and Order, Atomic Safety and Licensing Appeal Board, Aug. 18, 1971, at 4.) The Commission's Rules

of Practice require that "good cause" be shown before discovery may be compelled. Under the present circumstances Applicant cannot be subjected to the harassment implicit in CCPE's request. All of CCPE's requests for information fall in the objectionable category. To cite merely one example, in request number 6 CCPE demands "a copy of all documents which are or have been in [Applicant's] possession or the possession of its contractors, sub-contractors or consultants . . . which are in any wise related to the subject matter of the letter dated March 14, 1972 from H. K. Brill to L. Manning Muntzing" (emphasis added). This request seeks documents, most of which are not in Applicant's possession, and most of which have nothing to do with the safety concerns of Mr. Brill as defined by his deposition. CCPE even goes so far as to demand that documents be produced in Washington, D. C. in the

offices of Applicant's counsel. The foregoing is merely illustrative of the improper nature of CCPE's request and Applicant reserves the right to supplement this answer in any further proceedings before the Board on this matter.

Accordingly, Applicant reiterates its request that CCPE's motion be denied.

Respectfully submitted,

LEBOEUF, LAMB, LEIBY & MACRAE
1821 Jefferson Place, N. W.
Washington, D. C. 20036
Attorneys for Applicant

By Leonard M. Trosten
Leonard M. Trosten
Partner

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