BEFORE THE
UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

5-2-72.

In the Matter of

CONSOLIDATED EDISON OF NEW YORK (Indian Point, Unit No. 2)

Docket No. 50-247

CITIZENS COMMITTEE FOR THE PROTECTION OF THE ENVIRONMENT MEMORANDUM IN SUPPORT OF MOTION FOR PRODUCTION OF DOCUMENTS DIRECTED TO THE APPLICANT

This Motion is filed pursuant to 10 CFR Part 2 Section 2.741. There is good cause for it to be granted. A brief history of the negotiations between CCPE and Con Ed will help to focus on this good cause.

On or about March 29, 1972, counsel for CCPE received a copy of the March 14, 1972, letter of H. K. Brill. Shortly thereafter counsel for CCPE contacted counsel for Con Ed to discuss the matter of early discovery with respect to the Brill charges in order to expedite these proceedings. */ Con Ed's counsel indicated reluctance to produce all relevant documents but did indicate a willingness to produce all documents relied upon by Con Ed in its investigation. If the documents relied upon had been produced

*/ The use of early and full and voluntary discovery, particularly production of documents, is enthusiastically endorsed by the Commission in its recently circulated draft amendments to 10 CFR Part 2 relating to contested licensing proceedings.

promptly it might have been possible to negotiate the production of any further documents that were deemed necessary.

At the deposition on April 20, 1972, counsel for CCPE again raised this issue of voluntary production of documents with counsel for Con Ed but without any satisfactory response being obtained. Apparently Con Ed and the regulatory staff met with Mr. Brill two days before the deposition - a meeting to which counsel for CCPE was not invited. Attendance at that meeting might have enabled CCPE's counsel to obtain sufficient information to conduct most of his examination of Mr. Brill at the deposition.

On April 28, 1972, counsel for Con Ed advised that:

> As I previously told you, Con Edison will be prepared to make available to you the documents on which Con Edison relies in its above-mentioned testimony. These documents will be made available to you at or about the time that the proposed testimony is submitted to the Board and the parties.

In a telephone conversation with counsel for Con Ed on May 1, 1972, he confirmed that this is Con Ed's position and was unable to indicate when the testimony and documents would be available except that it would be before May 17, 1972.

It cannot be doubted that the matters raised by Mr. Brill are complicated and required substantial study. Applicant and the Staff have been working on these matters at least since March 29, 1972. During that period CCPE has tried to obtain data from Applicant so that CCPE's analysis of this problem would be co-extensive with the Staff and Applicant review. Even if all of the pertinent documents were produced today it is possible that the

CCPE review could not be sufficiently completed by May 17 to conclude all cross-examination at that time. Clearly at this late date it is not feasible for CCPE to provide an outline of the areas of cross-examination prior to the May 17 hearing. Thus already Applicant's refusal to freely allow inspection and copying of all documents relevant to the Brill letter has built into the hearing process an element of delay and confusion which need not have been there. As time passes without production of the documents these problems will be further exacerbated.

During his deposition Mr. Brill disclosed that the reactor support ring was not manufactured to the strict tolerance requirements of the purchase order - a levelness of plus 0% and minus .01%. As a result of this discrepancy stresses could be produced in the reactor pressure vessel which would hasten its rupture. In addition the chain of events in which the improperly fabricated support ring was approved by a field inspector and for which no disclosure of the discrepancy was made to Con Ed or the AEC raises a substantial question of the adequacy of the Applicant's quality assurance program.

According to Mr. Brill's deposition, the generator support shoes were properly manufactured but after their delivery substantial modification may have been made in them. The modifications included alteration in the size, shape and thickness of the support shoes, any and all of which would affect their strength.

In addition, according to Mr. Brill the support shoes were properly constructed to fit the generators if the generators which were delivered and installed in the plant conformed to the generators included in the original specifications. Thus the need to alter the support shoes to permit them to fit the generator is an indication of some specification deviation in the generators. These deviations were also not brought to the attention of Con Ed or the AEC and also raise serious questions about the adequacy of the Applicant's quality assurance program.

With respect to all of these deviations in design or specification, there is the underlying question of whether the plant was built in substantial compliance with its construction permit.

The documents requested are clearly pertinent to these inquiries. Of course the data need not be admissible to be produced but need only be reasonably calculated to lead to admissible evidence. Even data respecting the contracts dispute between PECOR and PB&I may well include references to the component deviations which will help complete the factual picture. In addition Applicant contended at the deposition that the contract dispute is relevant to the hearing.

Those documents in the possession of the contractors, subcontractors or consultants of Applicant are within its control as a result of their contractual relationship with the Applicant. Moreover, it is apparent that the documents requested were or are in the Applicant's possession as part of its own analysis of the problem.

We are greatly disturbed by Con Ed's attempt to inhibit our review of these safety problems and to suppress any documents other those upon which it relies. This is inconsistent with the purpose of this hearing and with the previous relationship between Con Ed and CCPE. We hope that this is merely an aberration in the Con Ed approach to this case and believe that the prompt issuance of an order requiring production of the requested documents will assure a prompt correction of the aberration. To expedite consideration of this request we urge the Board to schedule a conference call upon receipt of this Motion to elicit orally the views of the other parties. As a minimum we request that the Board strictly adhere to the 5 day response time for the Motion specified in 10 CFR Part 2, Section 2.730(c). In this regard we have made service by hand delivery of this Motion and Memorandum on the counsel for Applicant on May 2, 1972.

Respectfully Submitted,

Anthony Z. Roisman
Counsel for Citizens Committee for
the Protection of the Environment

Dated: May 2, 1972