BEFORE THE UNITED STATES

ATOMIC ENERGY COMMISSION

In the Matter of	)	4-24-72.
	)	
Consolidated Edison Company of New York, Inc. (Indian Point Station, Unit No. 2)	)	Docket No. 50-247

APPLICANT'S ANSWER OPPOSING MOTION OF CITIZENS COMMITTEE FOR PROTECTION OF THE ENVIRONMENT TO REQUIRE APPLICANT AND STAFF TO SUBMIT EVIDENCE

In its motion, dated April 10, 1972, CCPE instructs the Board that if it does not compel the Applicant and Staff to introduce into the record "whatever evidence" they might possess relating to those matters set forth in its motion as Items 1 through 6, the Board cannot fulfill its responsibility of resolving the "ultimate issues in this proceeding of whether the plant has been constructed in substantial compliance with the construction permit and whether the plant will operate safely." CCPE presents as an additional basis for its motion the contention that the parties "cannot properly focus the Board's attention on matters of concern to them unless the pertinent data is disclosed."

Since the close of the record on radiological safety issues in the above-captioned proceeding following the hearing session on January 12, 1972 several matters concerning Unit No. 2 have been reflected in documents available to the Board, the parties and the public at the AEC Public Document Room. A number of these documents have been transmitted for the information of the Board and all parties.

Some of these matters are dealt with in Items 1 through 6 of CCPE's motion. CCPE's position concerning these items demonstrates a fundamental misconception of the role of the Board and the parties to this proceeding as well as a misunderstanding of those subjects it wishes to explore. Applicant opposes CCPE's motion on the grounds that it is ill-conceived, unnecessary and has no basis in law or logic. Applicant urges the Board to deny CCPE's motion.

I.

No Good Cause has Been Shown by CCPE Why the Board Should Further Reopen the Record for Additional Evidence on These Matters, All of Which are Subject to Review by the Regulatory Staff.

Subject to the matters on which the Board has stated it wishes a further evidentiary presentation, the hearing on radiological safety issues for Unit No. 2 has been concluded and the record on such issues has been closed. (See letter of Board to parties, dated December 7, 1971.) Matters in controversy in this proceeding within the issues set forth in the Notice of Hearing published on November 30, 1970 have been thoroughly considered and discussed on the record. Each party has presented its case. Proposed findings of fact and conclusions of law as well as responses or comments thereto have been filed. An adequate record has been developed on which the Board may make its requisite findings and conclusions and issue its determination.

It is obvious that over the course of time events will occur which will require particular modifications and actions relating to Unit No. 2. This is normal in a complicated new facility which is being tested and readied for operation. Moreover, in a large and rapidly developing nuclear industry, experience at other plants will have a bearing on the operation of Unit No. 2. However, the regulations and practices of the Commission do not require that every such matter be discussed and investigated in this hearing. At a time when hearings proceed for months and years the hearing process must have reasonable bounds, however broad.

This does not mean that such modifications and decisions proceed unchecked without review and consideration by the Commission. It does mean that once the hearing record has been closed the responsibility for review and evaluation shifts to other segments of the Commission which would more properly consider and resolve the particular matter, as is the case when a license has been issued. To encumber this proceeding with duplicative consideration of

every development is contrary to the division of responsibility of the Board and the Regulatory Staff and is unnecessary.

It is proper for the Regulatory Staff to address those items for which CCPE's motion requests the presentation of further evidence. The Division of Reactor Licensing has the responsibility to inform applicants or licensees of new developments and requirements for nuclear facilities. The Division of Compliance is given the responsibility of continuous investigation, inspection and monitoring of licensees and applicants. The Division of Compliance also has the responsibility to bring any deviations or inadequacies to the attention of a licensee or applicant and the Commission.

A review of those items set forth by CCPE demonstrates that it has failed to show that good cause exists for reopening the hearing record as proposed in CCPE's motion. Items 1 and 3 will be thoroughly reviewed by the Regulatory Staff. Item 1 concerns modifications in the steam safety valves undertaken to provide conformance

with the FSAR. Applicant has already testified on the reason for this modification at the April 5th session and additional testimony on this subject is being prepared in response to the Board's questions. Item 3 involves the fire repair program undertaken to restore Unit No. 2 in conformance with the application. The record in this proceeding adequately demonstrates that construction of Unit No. 2 has been substantially completed in accordance with the regulations of the Commission. The repair and restoration program undertaken by Applicant as a result of the fire which occurred in the PAB on November 4, 1971 is essentially complete. The Division of Compliance will verify the completeness of construction of Unit No. 2 for safe operation at the authorized power level. Such verification will include review of the repair and restoration as well as that of the modifications to the safety valves.

Items 2 and 5 include recent requirements for Unit No. 2 requested by the Division of Reactor Licensing. Applicant by letters dated February 2, 1972 and February 25, 1972 informed the Division of Reactor Licensing that these

requirements would be implemented. Copies of these letters are attached hereto as Appendix A. Verification of this implementation will be conducted by the Division of Compliance.

The modification in the design of the drain system to the moisture separator reheaters for Unit No. 2, and included in Item 4 in CCPE's motion, is a non-safety-related matter. It was forwarded for Regulatory Staff review because it technically would result in a change in the plant design as reported in the FSAR. This, too, is properly considered by the Division of Reactor Licensing and the Division of Compliance.

It is not up to CCPE to decide which issues warrant presentation of further evidence to the Board. In unusual circumstances after the closing of a record a party may seek to offer additional evidence or the Board in the exercise of reasonable discretion may desire and request clarifying or supplemental evidence to be submitted. Thus, if the Board determines that the record in a particular area is inadequate it may determine that good cause exists to require the record to be reopened and additional evidence

introduced. The Board has already implemented this procedure on April 5, 1972 by seeking additional information on the modification in the steam safety valves and by calling a hearing session on May 17, 1972 for the express purpose of introducing evidence in the record concerning the allegations contained in the letter from Mr. Brill to Mr. Muntzing dated March 14, 1972. This does not mean, however, that the Board should allow or require evidence to be introduced on any matter other than that for which the record has been expressly reopened. Nor does this mean that the Board is required or should reopen the record for every development and each event that occurs concerning Unit No. 2, or concerning other nuclear powerplants, which CCPE considers to be significant. Good cause not having been set forth by CCPE in its motion, the motion should be denied.

On Page 4 of its motion CCPE attempts to portray itself as seeking to avoid delay. This argument is specious. Granting CCPE's motion would result in an unwarranted, sweeping reopening of the record of this hearing without

good cause. Under the circumstances, Applicant is opposing the motion not only because it is unfounded but also because the result of granting the motion would be a serious delay in the resolution of the radiological safety issues.

II.

No Precisely Defined Controverted Issues Have Been Presented by CCPE Which Would Require Evidence to Be Introduced.

CCPE has not presented any specific contentions concerning the items set forth in its motion, nor has it defined the matters in controversy with sufficient precision to warrant the granting of its motion. Rather than setting forth detailed specification of matters to be considered, CCPE seeks to have the Applicant and Staff submit evidence in this proceeding which will be used not for determining the ultimate issues as set forth in the Notice of Hearing but rather as an instrument of discovery by which CCPE might be able to frame a contention. Such a procedure is

unwarranted not only after the close of the record but even during the course of an evidentiary proceeding.

Respectfully submitted,

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Dated: April 24, 1972