

BERLIN, ROISMAN AND KESSLER

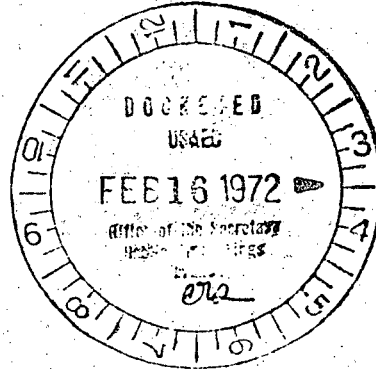
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February 14, 1972



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

Re: Consolidated Edison Company of New York
(Indian Point No. 2) - Docket No. 50-247

Dear Mr. Chairman:

We have just learned that the hearing board conducting the hearings with respect to ECCS Criteria has made a ruling which bears on the question of Official Notice. The ruling appears at Tr. 1665 and holds that individuals working for National Laboratories such as Aerojet Nuclear are AEC personnel "for the general purpose of applying regulatory prohibitions, restrictions, or what-have-you".

The ruling arose as a result of an attempt by the National Intervenors in that proceeding to obtain a copy of the draft of a paper prepared by an employee of Aerojet Nuclear. The Commission had ruled that working notes of "its personnel" would be shielded from discovery. The hearing board's ruling places the employees of these National Laboratories (and the authors of the documents here in question) in the status of AEC employees and further strengthens our contention that the data involved in the documents is within the knowledge of the Commission. It also further underscores our contention that the Staff has failed to fulfill its statutory duty in not bringing forth these individuals in this proceeding to testify as experts.

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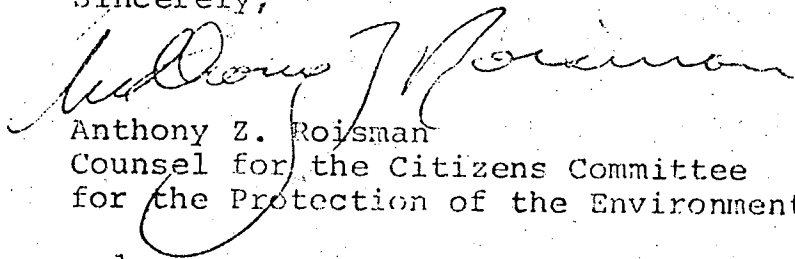
hearing

Samuel W. Jensch, Esq., Chairman
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The transcript of the ECCS Hearings already demonstrates that even within the Staff (including some witnesses who appeared at our hearing) there is doubt as to the validity of the ECCS Criteria. We do not argue that where such differing views exist the Commission can not adopt a position contrary to the views of some Staff members. But we adamantly oppose any attempt by the Staff to hide the existence of this disagreement or the views of those who have disagreed.

One matter unrelated to the Official Notice issue deserves comment. By letter dated February 10, 1972, the Applicant transmitted to you three documents related to electric power without providing copies to any of the other parties. We believe such a procedure is neither legal nor proper and urge you to advise the Applicant that we wish to be included when any documents or materials are transmitted to the Board.

Sincerely,



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

The Environmental Defense Fund, Inc.

AZR/ah

CC: All Parties of Record