

BERLIN, ROISMAN AND KESSLER

1712 N STREET, NORTHWEST

WASHINGTON, D. C. 20036

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EDWARD BERLIN  
ANTHONY Z. ROISMAN  
GLADYS KESSLER  
DAVID R. CASHDAN

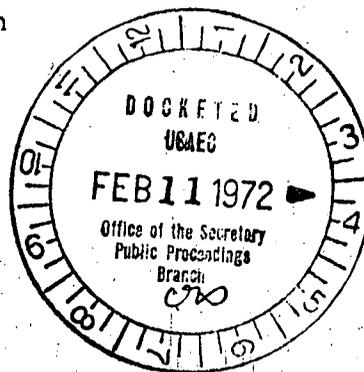
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PHONE 833-9070

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

Mr. R. B. Briggs, Director  
Molten-Salt Reactor Program  
Oak Ridge National Laboratory  
P. O. Box Y  
Oak Ridge, Tennessee 37830

Dr. John C. Geyer, Chairman  
Department of Geography and  
Environmental Engineering  
The Johns Hopkins University  
Baltimore, Maryland 21218



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

Gentlemen:

On February 8, 1972, the Applicant suggested by letter and other filings that this Board abdicate its responsibilities under Appendix D, Paragraph D.2 and the Notice of Hearing in this proceeding with respect to the 50% Testing License application and leave to the Commission the balancing of factors required under Paragraph D.2. The Citizens Committee for the Protection of the Environment vigorously opposes this suggestion. Applicant has been all too anxious to remove this Board from the decision-making process (see Motion of Applicant for an Order Establishing Further Requirements to Implement NEPA, dated August 17, 1971 and addressed to the Commission rather than this Board) an anxiety apparently created by the Board's deep concern with safety as

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expressed in its probing analysis of the application. All parties concede that the balancing of factors required by Paragraph D.2 includes an analysis of matters of radiological safety. CCPE believes it is entitled to this Board's careful opinion on that subject and on the ultimate balance of factors.

The Applicant's position is not only bad policy, it is bad law. Appendix D, Paragraph D.2 and the Supplemental Notice of Hearing (p. 4) both require this Board to consider and balance all relevant factors on the record. This Board has many times noted that it is bound by the regulations of the Commission and the Notice of Hearing.

Applicant apparently recognizes that what it requests is illegal and thus urges this Board to certify the issue to the Commission or the Appeals Board. Pursuant to the Calvert Cliffs doctrine such a certification can only be made if there is a showing on the record of substantial doubt as to the validity of a Commission regulation. No such showing has been made. The Commission selected the procedures of Paragraph D.2 because it believed, as we do, that the Board which is the closest to the facts of the case, is best equipped to make the initial balancing judgment. Applicant is not entitled to certification of the issue.

Applicant might consider requesting this Board to authorize an interlocutory appeal pursuant to Section 2.730(f). Such an appeal is authorized only for extraordinary circumstances and after a ruling by the Board. No ruling has been made and no extraordinary circumstances have been shown.

We therefore urge this Board to reject the Applicant's request and to balance the radiological costs with other costs and benefits to determine whether the Applicant has proven that issuance of a limited operating license is warranted in the public interest.

Sincerely,



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

AZR/ah

CC: All Parties of Record