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February 8, 1972

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

Gentlemen:

We enclose a copy of "Applicant's Proposed Findings of Fact and Conclusions of Law in the Form of a Proposed Initial Decision With Respect to Motion for 50 Percent Testing License - Part II", dated February 8, 1972.

It was Applicant's original position as expressed in its October 19, 1971 motion that the Board should issue an initial decision on all aspects of Applicant's motion for a 50% testing license, with the issuance of the license subject to the prior approval of the Commission in accordance with the requirements of 10 CFR 50 Appendix D, Section D.2 insofar as testing over 20% of full power is concerned. That course, however, is not consistent with the supplementary notice of hearing, dated November 29, 1971.

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*see separate binder
for encl.*

In light of the supplementary notice, Applicant believes that the best course for the Board to follow with regard to Applicant's motion for a 50% testing license is to issue an Initial Decision dealing only with the issues specified in 10 CFR 50.57(a). With respect to those matters which must be decided relative to a 50% testing license pursuant to Appendix D, Applicant requests that the Board promptly certify the record of the proceeding directly to the Commission for its determination, without ruling thereon. Accordingly, it is Applicant's intention that the enclosed proposed findings and conclusions identified as "Part II" be incorporated in an Initial Decision by the Atomic Energy Commission rather than the Board.

Applicant believes that the Board's Initial Decision should include an order authorizing the Director of Regulation to issue the license, subject to the Atomic Energy Commission's decision under Appendix D. Accordingly, a supplement to our proposed findings submitted on January 28 is enclosed for consideration by the Board.

The evidence in the proceeding shows that testing associated with criticality and up to 20% of full power could be accomplished in 7 days and more realistically could take twice that long. Testing from 20% to 50% of full power could be accomplished within an additional 42 to 84 days. In view of the short testing time involved Applicant considers that it is not logical for the Board to spend the time to render a separate initial decision related solely to 20% testing activities, leaving the Commission to decide whether testing from 20% to 50% should be authorized. Moreover, such a procedure would require a somewhat strained analysis, by both the Board and the Commission, of the evidence in the proceeding.

Applicant believes that the Board has the authority to and should follow the course outlined in this letter. Should the Board conclude otherwise, Applicant requests an immediate certification of the question to the Commission or to the Atomic Safety and Licensing Appeal Board, whichever the Board feels is appropriate.

The original and twenty (20) copies of this letter and of its two enclosures are being filed with the Commission today.

Very truly yours,

LEBOEUF, LAMB, LEIBY & MACRAE
Attorneys for Applicant

By Leonard M. Trosten
Leonard M. Trosten
Partner

Enclosures:

Proposed Findings and Conclusions
Proposed Order by Board

cc: Myron Karman, Esq.
Anthony Z. Roisman, Esq.
Angus Macbeth, Esq.
J. Bruce MacDonald, Esq.
Honorable Louis J. Lefkowitz