

BERLIN, ROISMAN AND KESSLER

1712 N STREET, NORTHWEST
WASHINGTON, D. C. 20036

EDWARD BERLIN
ANTHONY Z. ROISMAN
GLADYS KESSLER
DAVID R. CASHDAN
KARIN P. SHELDON
STUART M. BLUESTONE

AREA CODE 202
PHONE 833-9070

March 13, 1973



Mr. J. F. O'Leary, Director
Directorate of Licensing
U. S. Atomic Energy Commission
Washington, D. C. 20545

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

Dear Mr. O'Leary:

We have just received a copy of the decision of the United States Court of Appeals for the District of Columbia Circuit in Brooks v. Atomic Energy Commission (CADC No. 72-2177) (copy attached). That decision holds that no alteration in a license can be made without prior notice in the Federal Register and without an opportunity for hearing irrespective of the last sentence of Section 189a of the Atomic Energy Act. The Court holds that Congress intended to waive a hearing only when there was no request for a hearing and a finding of no significant hazard. In addition, the Court held that a finding of no significant hazard must be accompanied by a statement of reasons and your February 22 letter does not meet that standard.

The technical specifications appended to a license are clearly part of the license and amendments to those technical specifications must be preceded by an opportunity for hearing. Thus the grant of the change requested by the Applicant in DPR-26 was improper and must be revoked.

We recommend that your office consolidate the hearing required with the hearing now scheduled by the ASLB for consideration of fuel densification and thus avoid unnecessary duplication of effort.

Sincerely,

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

AZR/pq
Encl.

cc (without encl.): All parties of record.

Rec'd Off. Dir. of Reg.


Date 3/15/73

Time 3:20

8110310397 730321
PDR ADOCK 05000247
PDR

DR-5408

FROM Anthony Lozman Counselor Citizens Com. for Protection of the Environment	CONTROL NUMBER 5408	FILE LOCATION
	DATE OF DOCUMENT 9/19/73	ACTION COMPLETION DEADLINE 9/29/73
TO J. F. O'Leary	ACTION PROCESSING DATES Acknowledged _____ Interim Report _____ Final _____	PREPARE FOR SIGNATURE OF: _____ Chairman _____ Director of Regulation I CCS

DESCRIPTION <input checked="" type="checkbox"/> Original <input type="checkbox"/> Copy <input type="checkbox"/> Other	REMARKS DN-5306, 5222, 5295, 5402						
Incurrence of change requested by applicant in DPR-26, Indian Point 2, was improper & must be revoked and recommends that hearing required on the change be consolidated with hearing scheduled by AEC for consideration of fuel densification							
Encl: Court Decision - Droths v. AEC							
<table border="1"> <thead> <tr> <th>REFERRED TO</th> <th>DATE</th> <th>IS NOTIFICATION TO THE JCAE RECOMMENDED?</th> </tr> </thead> <tbody> <tr> <td>Shaper S/action</td> <td>9/19/73</td> <td>_____</td> </tr> </tbody> </table>	REFERRED TO	DATE	IS NOTIFICATION TO THE JCAE RECOMMENDED?	Shaper S/action	9/19/73	_____	
REFERRED TO	DATE	IS NOTIFICATION TO THE JCAE RECOMMENDED?					
Shaper S/action	9/19/73	_____					
Cys: Mantelung Bloch O'Leary Giambusso FRI LFR							

FROM: Anthony Looney Counselor Citizens Com. for Protection of the Environment	CONTROL NUMBER 5408	FILE LOCATION
	DATE OF DOCUMENT 3/13/73	ACTION COMPLETION DEADLINE 3/29/73

TO J. P. O'Leary	ACTION PROCESSING DATES Acknowledged _____ Interim Report _____ Final _____	PREPARE FOR SIGNATURE OF: _____ Chairman _____ Director of Regulation X CE
--------------------------------	--	---

DESCRIPTION <input checked="" type="checkbox"/> Original <input type="checkbox"/> Copy <input type="checkbox"/> Other Incurrence of charge requested by applicant in DFR-26, Indian Point 2, was improper & must be revoked and recommends that hearing required on the charge be consolidated with hearing scheduled by AEB for consideration of fuel classification Deal: Court decision - Brooks v. AEB	REMARKS DR-5004, 5002, 5005, 5002
--	---

REFERRED TO Slaper S/Action	DATE 3/15/73	IS NOTIFICATION TO THE JCAE RECOMMENDED? _____
Cys: Mantolig Dloch O'Leary Cymbator FR DR		

DO NOT DETACH THIS COPY

DIRECTOR OF REGULATION
 COMMUNICATIONS CONTROL

Form HQ-32 (6-70)
 USA EC

FROM: Anthony Bolanag Counselor Citizens Com. for Protection of the Environment	CONTROL NUMBER 5408	FILE LOCATION
	DATE OF DOCUMENT 3/13/73	ACTION COMPLETION DEADLINE 3/20/73
TO J. F. O'Leary	ACTION PROCESSING DATES Acknowledged _____ Interim Report _____ Final _____	PREPARE FOR SIGNATURE OF: _____ Chairman _____ Director of Regulation X CSS

DESCRIPTION: 102 <input checked="" type="checkbox"/> Original <input type="checkbox"/> Copy <input type="checkbox"/> Other	REMARKS 102-5305, 5322, 5395, 5402
<p>Issuance of change requested by applicant in 102-26, Indian Point 2, was improper & must be revoked and recommends that hearing required on the change be consolidated with hearing scheduled by AEB for consideration of fuel identification</p> <p>Encl: Court decision - Brooks v. AEB</p>	

REFERRED TO Stager Section	DATE 3/13/73	IS NOTIFICATION TO THE JCAE RECOMMENDED? _____
Cys: Mantel Blach O'Leary Glambuso FBI AEB		

FROM: **Anthony Lehman,**
Counsel for Citizens Comm. for
Protection of the Environment

CONTROL NUMBER
5408

FILE LOCATION
 ACTION COMPLETION DEADLINE
3/23/73

TO
J. P. O'Leary

ACTION PROCESSING DATES
 Acknowledged _____
 Interim Report _____
 Final _____

PREPARE FOR SIGNATURE OF:
 _____ Chairman
 _____ Director of Regulation
X **OCB**

DESCRIPTION **222** Original Copy Other
Instance of change requested by applicant in WFD-25, Indian
Point 2, was improper & must be revoked and recommends that
hearing required on the change be consolidated with hearing
calculated by AEDB for consideration of fuel classification

Encl: Court decision - Brooks v. AEDB

REMARKS
22-3204, 3222, 3295, 3402

REFERRED TO	DATE
Stager 6/nation	3/13/73

IS NOTIFICATION TO THE JCAE
 RECOMMENDED? _____

Cys: **Montgomery**
Block
O'Leary
Glanville
SM
LRB