

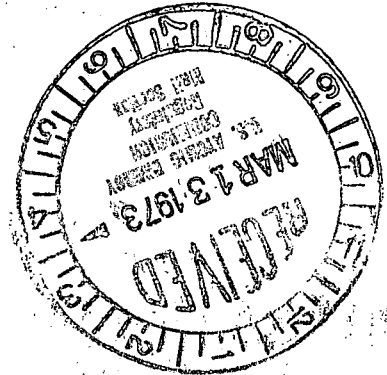
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March 12, 1973



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:

As you can see from the letters filed by the Applicant on March 9, it is very emotionally upset (to the extent a corporation is assumed to have emotions). We wish to clarify some statements made by the Applicant which do not accurately reflect our position.

First, as we noted in our letter of March 7, 1973, we are opposed to issuance of an amendment to the terms of operating license DPR-26 insofar as the amendment would allow loading of fuel different than that originally authorized. Our concern, as expressed there was that the new fuel should not be used until a thorough resolution has been made of the fuel densification problem. We noted the prejudice which we would suffer if the Applicant were allowed to fragment the issue into several parts.

This position is in no way inconsistent with our view that we are not opposing the 50% testing license. The authorization for that license is based upon a safety review utilizing unpressurized fuel rods. The Applicant here has now voluntarily abandoned use of those rods. Thus the original authorization is a nullity. Applicant must therefore obtain a new authorization from the ASLB for 50% testing with the new fuel rods. The Applicant

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Rec'd Off. Dir. of Reg.  
Date 3/13/73  
Time 4:15

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Mr. J. F. O'Leary  
March 12, 1973  
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could have tested the plant with unpressurized rods. It has not chosen to do so and now regrets the logical and legal consequences of that act.

We will have a hearing on fuel densification on April 9, 1973. The question is whether the review at that hearing, particularly the cost-benefit analysis, will be hindered by the prior approval by your office of the request to load fuel and subcritically test. We contend that it will. Moreover, the change requested may be authorized with a hearing only if the findings in Section 50.59(e)(2) are made. In your February 22 letter, you acknowledge that the staff review of the safety implications of operating of Indian Point #2 with prepressurized fuel rods is not complete. We believe it is improper both under the National Environmental Policy Act and under the Atomic Energy Act for your office to conduct the review referred to in Section 50.59(e)(2) as though the use to which the rods will be put is irrelevant. Clearly, the rods are only usefully loaded and subcritically tested if they are usable in operation and thus the full implications of the proposed change should be considered. Based on the data before you, you should deny the proposed change because you are unable to support the findings required by Section 50.59. Those findings will be one of the subjects of the hearing on April 9.

As its March 9, 1973 letter demonstrates, the Applicant intends to use the fuel rods without further safety review under the authority of the 50% testing license. Certainly in this situation, your office cannot authorize loading of the fuel rods when you are aware that operation will occur without an adequate safety review.

We again urge you to reconsider your February 22 action.

Sincerely,



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

AZR/pq

cc: All parties of record.

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

Dear Mr. Roisman:

This letter is in response to yours of September 21, 1972. On June 9, we sent you Con Edison's letter to Mr. E. J. Bloch dated May 30, 1972 which in turn forwarded a copy of the Westinghouse report entitled "Evaluation of Ultrasonic Indication in Indian Point #2 Steam Generator #21". As stated in our June 9 letter we do not intend to make routine distribution of attachments to correspondence in view of the expense and inconvenience involved. Enclosed herewith is a copy of the Westinghouse report. Please return it to us after you have reviewed it since there are only a limited number of copies available.

Very truly yours,

LEBOEUF, LAMB, LEIBY & MACRAE  
Attorneys for Applicant

By Leonard M. Trosten  
Leonard M. Trosten  
Partner

Enclosure

cc w/o enc.:

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Honorable Louis J. Lefkowitz

Atomic Safety and Licensing

Board Panel