

BEFORE THE  
UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

In the Matter of

CONSOLIDATED EDISON COMPANY     )  
OF NEW YORK (Indian Point,     )     Docket No. 50-247  
Unit 2)     )

MOTION FOR SUSPENSION,  
OR ALTERNATIVELY FOR  
CENSURE, OF  
LEBEOUF, LAMB, LEIBY AND MACRAE

On May 18, 1972, (Tr. pp. 5440-5450) counsel for Citizens Committee for Protection of the Environment requested that the Applicant be ordered to provide copies of all communications between it and the Staff at the time the documents were submitted to the Staff. (Tr. 5442, lines 8-15) The Applicant's counsel, LeBeouf, Lamb, Leiby and MacRae opposed the request. (Tr. 5447) The Atomic Safety and Licensing Board granted the request. (Tr. 5447-48)

LeBeouf, Lamb, Leiby and MacRae has deliberately and willfully failed to obey that Board order and on two occasions has seriously impaired the rights of CCPE to participate in decisions being made by the Regulatory Staff with respect to this plant. <sup>\*/</sup>

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<sup>\*/</sup> The actions taken were those of the entire law firm and not merely one member. The most recent letter transmitting correspondence is signed in the firm name without identification of any individual firm member. It is a well established legal principle that the acts of partners and their agents bind all general members of the partnership.

On October 6, 1972, Applicant filed an Application For A Special Nuclear Material License (the material being pre-pressurized fuel rods allegedly to be used to reduce the effects of fuel densification). Service of that document by LeBeouf, Lamb, Leiby and MacRae was not made upon CCPE until November 7, 1972. By that time the requested action had been taken. See letter of January 3, 1973 to Berlin, Roisman and Kessler from R. B. Chitwood. At that time CCPE made crystal clear its opposition to the continued practice of LeBeouf, Lamb, Leiby and MacRae in delaying transmittal of communications to CCPE. See CCPE letter to Director, Materials Branch, dated November 8, 1972.

Despite having been specifically advised of CCPE's opposition to the continued flouting of the directive of this Atomic Safety and Licensing Board, LeBeouf, Lamb, Leiby and MacRae continued the practice and in the most recent instance of this action again seriously impaired the rights of CCPE, rights specifically intended to be protected by the Atomic Safety and Licensing Board directive. <sup>\*/</sup>

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<sup>\*/</sup> This is not the only instance of LeBeouf, Lamb, Leiby and MacRae's violation of this Board's directive on service of Applicant to Staff correspondence. On September 12, 1972, the Chairman had to advise LeBeouf, Lamb, Leiby and MacRae that it was failing to serve copies of Applicant's correspondence with the Staff on the Atomic Safety and Licensing Board. Nor has the improper conduct of LeBeouf, Lamb, Leiby, and MacRae in this proceeding been limited to violation of the directive under discussion here. Only the timely intervention of the Atomic Safety and Licensing Board prevented LeBeouf, Lamb, Leiby and MacRae in concert with the Regulatory Staff from issuing a 50% testing license in substantial variance with this Board's Initial Decision. See Motion To Amend The Atomic Safety and Licensing Board Initial Decision Authorizing A Testing License, dated February 21, 1973.

On February 9, 1973, Applicant filed a request for a change to Operating License No. DPR - 26 to obtain permission to load and subcritically test pre-pressurized fuel rods it earlier received permission to possess. On February 22, 1973, the requested change was granted by the Regulatory Staff. On March 3, 1973, LeBeouf, Lamb, Leiby and MacRae made service of the February 9, 1973, letter on CCPE and the other parties to this proceeding. Once again by the deliberate and willful act of LeBeouf, Lamb, Leiby and MacRae, the CCPE was denied an opportunity to participate in the Regulatory Staff review of an important matter of radiological safety. <sup>\*/</sup>

A review of the relevant pages of the transcript (Tr. 5440-5450) makes abundantly clear that LeBeouf, Lamb, Leiby and MacRae's "delayed service technique" violates this Board's directive. As the discussion on those pages indicates the data was sought by CCPE to enable it to meaningfully participate in the matters

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<sup>\*/</sup> The magnitude of the prejudice to CCPE is apparent in the Atomic Safety and Licensing Board's recent Initial Decision In the Matter of Vermont Yankee Nuclear Power Corporation (Docket No. 50-271) where the failure to raise an issue on a timely basis was ruled to be an absolute bar to raising the issue subsequently. Here, CCPE's lack of timeliness, which at the least places it at a significant disadvantage in having to seek reconsideration of the change already approved by the Regulatory Staff (see CCPE letter to O'Leary dated March 7, 1973), is the direct and sole result of LeBeouf, Lamb, Leiby and MacRae's refusal to make simultaneous service on CCPE of correspondence with the Staff.

covered by the correspondence. Obviously that cannot be done if the correspondence is not served until after the requested action has been taken. In addition, as the Board Chairman noted (Tr. 5447-48), where the action has not yet been taken, the delayed service may cause a delay in the hearing while the parties review the subject matter of the correspondence.

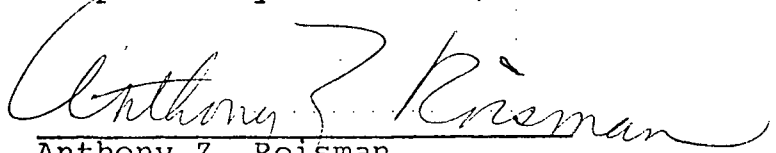
The violation of an ASLB directive has been proven. The penalty to be imposed is governed by 10 CFR Part 2 Sections 2.713(c) and 2.718(e). The former authorizes suspension of lawyers whose conduct is contemptuous. LeBeouf, Lamb, Leiby and MacRae could not have been more contemptuous. It had originally resisted the Atomic Safety and Licensing Board directive and after losing obviously resolved to be as obstreperous as possible. Its intent, as manifested by its actions, was to serve correspondence in such a way that CCPE would be denied the opportunity to do anything about the matters covered in the correspondence.

Under Section 2.718(e) the Board is authorized to control the conduct of the participants to a hearing. This authority, which is supplemental to Section 2.713(c) would clearly authorize the Board to at least impose a public censure on lawyers who flout its orders and to place said lawyers under a threat of immediate suspension if the illegal conduct is repeated.

The willingness of Hearing Boards to consider exercising these powers is apparent from recent actions taken In the Matter of Consumers Power Company (Midland Units 1 and 2) Docket Nos. 50-299, 300 where the Board issued an Order to show cause why an attorney should not be held in contempt for allegedly violating a Board order. The Board subsequently concluded not to hold the attorney in contempt.

Unless this Atomic Safety and Licensing Board takes a strong stand now, LeBeouf, Lamb, Leiby and MacRae will be encouraged to continue its present practice of delayed service. Moreover, lawyers for all parties in AEC proceedings will be encouraged to flout orders of Atomic Safety and Licensing Board which they do not like and do not want to follow, secure in the knowledge that their refusal to obey will not result in any adverse consequence to them or their clients. We urge this Board to either suspend LeBeouf, Lamb, Leiby and MacRae or to publicly censure them for their conduct and place them on notice that if it occurs again they will be automatically suspended.

Respectfully submitted,

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

Dated: March 8, 1973