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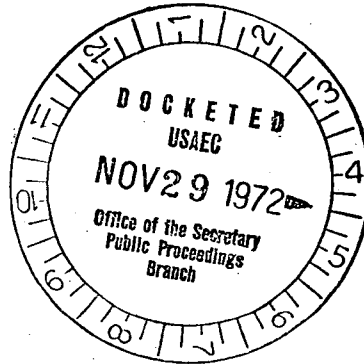
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November 28, 1972

Alan Rosenthal, Esq.
Chairman
Atomic Safety and
Licensing Appeal Board
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. Chairman:

Developments at the Emergency Core Cooling System Rule Making Hearings (Docket RM 50-1) indicate that the March 10, 1972 decision of the Appeals Board in the above entitled proceeding was factually in error.

That decision concludes, inter alia that:

...in accepting the Westinghouse evaluation model with full cooling flow for use with the Interim Criteria, the Commission intended to obviate the need for further case-by-case consideration by a licensing board of the phenomena of fuel clad swelling and rupture, and attendant flow channel blockage, in evaluating the adequacy of an ECCS.

Thus the decision assumes that a case-by-case analysis of the effect of flow blockage on peak clad temperatures is not required in order to determine if Criteria 3 of the Interim Criteria have been met and that approval of the Westinghouse Evaluation Model meant that any Westinghouse reactor which met Criteria 1 and 2 using the Evaluation Model automatically met Criteria 3 without further data.

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During the ECCS Hearings, Dr. Hannauer, testifying on behalf of the Regulatory Staff and explaining the meaning of the Interim Criteria said (Tr. 699):

Conformance with Criteria 1 and 2 can usually be determined directly from the calculations [the evaluation models], whereas additional information may be required to show conformance with Criteria 3 and 4. (Brackets added)

This position was further developed in Chapter 20 of the Staff's Rebuttal Testimony in the ECCS Hearing. In that Chapter the Staff indicates that flow blockage should be "considered". Because they do not suggest that Criteria 3 be changed they obviously interpret Criteria 3 as did Dr. Hannauer, as requiring consideration of flow blockage beyond the consideration within the Westinghouse Evaluation Model.

There is no doubt that the factual assumption which the Appeal Board relied upon in its decision was at the heart of its response to Certified Question No. 2 and that were this a Court, the provisions of Rule 60(b) of the Federal Rules of Civil Procedure would be applicable. The purpose of this letter is to inquire as to procedure which should be followed for correction of the error. As I see it the following possibilities exist:


1. The Appeal Board would modify the original decision and leave it to the licensing board to take whatever additional action is required.
2. The Appeal Board would allow its decision to stand for the time being and would only take action if a full term license is granted in which case the Appeal Board would stay the license and remand the case to the licensing board for the purpose of further action consistent with the new Appeal Board decision on Certified Question No. 2.

Alan Rosenthal, Esq.
November 28, 1972
page three

The former procedure seems far preferable. First, the full term license is still pending before the Licensing Board and thus the receipt of additional evidence on flow blockage could be integrated into the continuing hearing and be utilized by the Licensing Board in reaching its Initial Decision. ^{1/} Second, the Appeal Board's original decision has been used as precedent in other proceedings where the flow blockage issue has been raised and the sooner the error is corrected the sooner other proceedings can get on the right track.

I will await your determination of the procedure which should be followed to correct the factual determination but would appreciate it if you would treat this as an informal request for relief from the Appeal Board decision until such time as formal procedures are established.

Sincerely,


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

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cc: All parties of record.

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The Initial Decision on the 50% testing license does in theory involve the ECCS issue but for purposes of the Certified Question No. 2 we are willing to have the issue raised only in correction with further licensing action and do not seek to reopen the record with respect to 50% testing license.