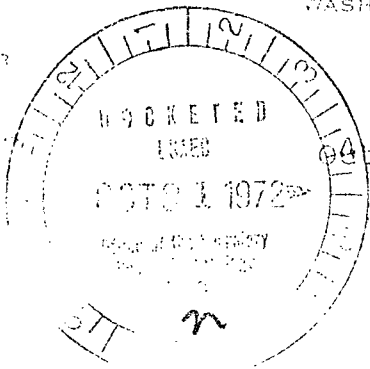


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Re: Consolidated Edison Company of
New York, Inc.
Indian Point Unit No. 2
AEC Docket No. 50-247

Gentlemen:

In his letter under date of October 13, 1972, the Attorney General of the State of New York suggested that any fines which might be imposed on Consolidated Edison as a result of the operation of Indian Point 2 should be considered as an additional financial cost in determining the cost-benefit analysis for the operation of Indian Point 2 with a once-through cooling system. Applicant submits that the incorporation of such conjectural penalties into a cost-benefit analysis is improper.

The matter to which the Attorney General refers is presently the subject of litigation in the courts of the State of New York. The matter has not yet been set

down for trial for the purpose of assessing damages, if any. Moreover, Consolidated Edison intends to appeal the lower court decision to which the Attorney General refers. To inject into the benefit-cost analysis a speculative element which can be determined only after judicial review and deliberation would be an improper basis for the balancing of benefits and costs in the Final Environmental Statement for Indian Point 2.

By its order dated April 28, 1972 the New York State Department of Environmental Conservation vacated its previous order of February 29, 1972, thus allowing the operation of the cooling water circulators at Indian Point 2. By this order Consolidated Edison also consented to the imposition of specific operating provisions for Indian Point 2. These were adopted specifically to provide protection for the Hudson River environment. Particularly in view of this order the allegation that the operation of Indian Point 2 will kill two to five million fish per year in violation of New York State law is unwarranted.

Apart from the speculative nature of the allegations concerning the number of fish which might be killed at Indian Point 2 as well as the penalties which might be imposed for the alleged violation of State law, the approach suggested by the Attorney General could result in a multiple and improper accounting of the costs and benefits of the once-through cooling system.

Very truly yours,

LEBOEUF, LAMB, LEIBY & MACRAE
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Leonard M. Trosten

By

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