4/4/73

UNITED STATES OF AMERICA

ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.	)	Docket No. 50-247
(Indian Point Unit No. 2)	)	

APPLICANT'S RESPONSE TO CONTENTIONS

Consolidated Edison Company of New York, Inc. ("Applicant") hereby files its response to the contentions with respect to fuel densification served by Citizens Committee for the Protection of the Environment ("CCPE") on March 29, 1973.

Introduction

This response is directed to Part IV of the document entitled "Citizens Committee for Protection of the Environment Statement of Evidence, Cross-Examination and Contentions With Respect to Fuel Densification" served by CCPE on March 29. In Part IV, CCPE attempts to incorporate by reference "detailed sub-contentions . . . from Parts II and III". A reading of Parts II and III by the Board will quickly reveal that there are no "detailed

sub-contentions" specified in those Parts. Part II purports to be a statement of topics for cross-examination. Part III is a discursive statement of position, largely devoted to the alleged inadequacies of the Commission's interim ECCS criteria, which is in the nature of a trial brief. Only by an extended process of interpretation, extrapolation, and pure guesswork could Applicant--or the Board--derive from Parts II and III any list of "detailed sub-contentions" directed to the Indian Point 2 plant. Any such list would be subject to objection by the other parties (including CCPE itself) on the grounds that it included too much or too little or did not accurately state CCPE's real position. Neither Applicant nor the Board should be required to speculate concerning what the matters in controversy really are. CCPE's contentions, as set forth in Part IV, must stand or fall on their own.

Detailed Responses

The following responses are keyed to the lettered paragraphs and numbered subparagraphs of CCPE's Part IV:

A.1. This contention is vague, argumentative, and conclusionary. CCPE has failed to state what assumptions it does not agree with, why each such assumption is

incorrect, or what a correct assumption would be. In the absence of such specificity, no issue of fact is raised by CCPE's allegation.

A.2. This contention is vague, argumentative, and conclusionary. CCPE has failed to state what "other operational changes" it (i) contends were made and (ii) disagrees with, what reduction it claims has resulted in "the margins of safety for ECCS performance", what indeed is meant by "margins of safety for ECCS performance", what "a definable conservatism" is, and why "a definable conservatism" is or should be required. In short, there is a total failure to pinpoint any factual criticism of the analyses submitted by Applicant and the Regulatory Staff. It appears that CCPE does not seek to establish that Applicant will not comply with the AEC's criteria, but rather that the criteria themselves are insufficient. Such a contention is outside the scope of this proceeding and clearly barred. See, e.g., Consolidated Edison Co. (Indian Point #2), ALAB-46, WASH-1218, 293 (March 10, 1972); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-56, WASH-1218, 395 (June 6, 1972).

A.3. This contention is argumentative and

conclusionary. It assumes that some "margin of safety" is required and that there are unidentified and unquantified "uncertainties" in the analyses submitted by Applicant and the Regulatory Staff. Here again, it appears that CCPE's real interest is not in contesting the accuracy of those analyses, but in attacking the Commission's criteria. It is Applicant's position that the only question for determination by the Board is whether Applicant has shown that it will meet the criteria, and that CCPE has failed to address that question.

B. This contention is hypothetical and argumentative. It assumes "a miscalculation of ECCS and fuel densification", a hypothetical situation that has not been shown to exist. It also assumes a legal requirement for the consideration of "alternative solutions" and a further legal requirement that the effects of Class 8 and Class 9 accidents be calculated. CCPE's position is a blatant attempt to confuse the requirements for safety analysis with the requirements for environmental analysis. Staff is under no obligation to consider "alternative solutions", but merely to satisfy itself that the solution chosen by Applicant provides reasonable assurance that

the public health and safety will be protected. Similarly, the Commission's regulations and policies establish that Staff is not required to consider the environmental effects of any Class 9 accident. Annex to Appendix D to 10 C.F.R. Part 50, 36 Fed. Reg. 22851 (1971); see Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), ASLB decision dated August 11, 1972, paras. 47-49, aff'd, ALAB-69, WASH-1218 (Supp. 1), 477 (September 14, 1972). As to Class 8 accidents, they have already been analyzed as required, and CCPE makes no showing of changed circumstances to require further analysis. As the Commission has previously noted, "Licensing Boards, in their discretion, are empowered to exclude contentions or challenges which have no substantial or prima facie basis . . . ." In the Matter of Consolidated Edison Company of New York, Docket No. 50-247, Commission Memorandum and Order issued October 26, 1972, p. 4 n.5. Once again, CCPE raises no issue of fact, but instead proffers a contention that in substance attacks the Commission's policies. No triable issue for consideration by the Board is thereby presented.

C. This contention is wholly conclusionary and requires neither a response by Applicant nor any

consideration by the Board.[1/]

Conclusion

The contentions with respect to fuel densification filed by CCPE are "fatally deficient in their failure to identify . . . specific contentions and the particular factual basis therefor." In the Matter of Consolidated Edison Company of New York, Inc. (Indian Point Nuclear Generating Unit No. 3), Docket No. 50-286, ASLB Memorandum and Order issued February 28, 1973. The Board should so find,

---

[1/] With respect to the exception stated in this contention, Applicant agrees that testing operations should be allowed pursuant to the proposed 50% testing license and that CCPE's position with respect to the full-power, full-term license should not be prejudiced thereby. The proposed testing license forwarded to the Board by the Staff on September 21, 1972, states:

> "4. This amendment is issued without prejudice to subsequent licensing action which may be taken by the Commission with regard to the environmental aspects of the facility. Issuance of this license shall not preclude subsequent adoption of alternatives in facility design or operations of the type that could result from the environmental review called for by 10 CFR Part 50, Appendix D."

and should conclude that CCPE has failed to raise any triable issue concerning fuel densification.

Respectfully submitted,

LeBOEUF, LAMB, LEIBY & MacRAE

By _____
Partner

Attorneys for Applicant
1821 Jefferson Place, N.W.
Washington, D.C. 20036

April 4, 1973