

BERLIN, ROISMAN AND KESSLER

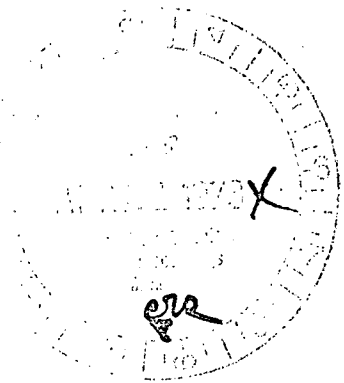
1712 N STREET, NORTHWEST

WASHINGTON, D. C. 20036

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CRUD & DUE, TAG. 50-247

EDWARD BERLIN
ANTHONY Z. ROISMAN
GLADYS KESSLER
DAVID R. CASHIDAN
KARIN P. SHELDON
STUART M. BLUESTONE

AREA CODE 202
PHONE 833-8070



April 20, 1973

Sidney Kingsley, Chairman
Atomic Safety & Licensing
Appeals 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:

After careful examination of the fuel densification problem we concluded (with respect to 50% testing) in our statement of contentions on fuel densification (March 29, 1973) p. 22:

Until the defects [not relevant here]
identified in A and B are corrected,
Indian Point #2 should not be permitted
to operate except that operation pursuant
to the currently proposed 50% testing
license could be allowed if and only if no
costs incurred or time lost by such testing
or any other consequence of such testing
is allowed in any manner to limit the
examination or selection of alternative
solutions to the fuel densification by the
Applicant, the Staff, the Board, the Appeals
Board or the Commission.

The Licensing Board has not ruled on this contention although both the Applicant and the Staff have addressed the contention and to some extent accepted the principle there enunciated. Letter from O'Leary to Roisman dated March 30, 1973 and Applicant's Response to Contentions (April 4, 1973) p. 6, fn. 1.

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Sidney Kingsley
April 20, 1973
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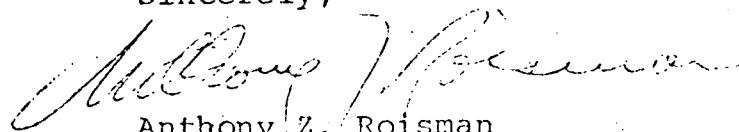
Applicant's telegram of April 13, 1973 to you indicates that based upon the entire record in this proceeding, including recent evidence received on fuel densification, the ASLAB should authorize a 50% testing license.

The Staff in their letter of April 16, 1973 also alluded to the full record on fuel densification in this proceeding and urged approval by the ASLAB of issuance of a 50% testing license.

The fuel densification problem has caused the Applicant to alter several aspects of reactor core design from that identified in the FSAR and previously reviewed in this proceeding. Staff Additional Testimony on Fuel Densification (March 22, 1973).

We interpret your telegram of April 18, 1973 as a solicitation of our comments, as well as our position. Our position is stated above. Our comments relate to the apparent difficulty faced by this Board in resolving the fuel densification issue for 50% testing prior to a ruling by the Licensing Board. The actions of all parties since the decision in Consolidated Edison Co. (Indian Point #2) ALAB-75 (WASH-1218 (Supp. 1) 507 have been to accept CCPE's request for a re-opened hearing on fuel densification prior to issuance of a license for testing above 20%. This was probably unavoidable under Wisconsin Electric Power Company (Point Beach #2) ALAB-86 (WASH-1218 (Supp. 1) 574 and CLI-73-4 (RAI-73-1) 6. In this event it would appear that the decision in Northern States Power Company (Prairie Island Units 1 and 2) ALAB-104 (RAI-73-3) 179, particularly fn. 2, prohibits the Appeal Board from passing upon a matter prior to its resolution by the licensing board. We take no position on this aspect of the present case but do feel it is our obligation both as "officers of the Board" and in response to your telegram to note the possible problem.

Sincerely,



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

AZR/pq

cc: All persons on the service list.