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UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

8/27/73

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

AEC REGULATORY STAFF ANSWER TO MOTION DATED
 AUGUST 13, 1973, BY ATTORNEY GENERAL OF NEW YORK
 FOR RECONSIDERATION OF AUGUST 9, 1973 INITIAL DECISION
 OF BOARD AND AEC REGULATORY STAFF ANSWER TO APPLICANT'S
 MOTION DATED AUGUST 22, 1973, FOR EXTENSION OF TIME TO
 ANSWER SAID MOTION OF ATTORNEY GENERAL.

On August 9, 1973, the Atomic Safety and Licensing Board (Licensing Board) issued an "Initial Decision Authorizing Continued Testing and Steady State Power Operation at 50 Percent of Full Power through September 30, 1973," (Initial Decision) and on that same date an amendment to License DPR-26 was issued reflecting the Licensing Board's decision. On August 13, 1973, intervenor Attorney General of New York, filed a motion requesting reconsideration of such Initial Decision by the Board. On August 22, 1973, applicant filed a motion requesting an extension of time until September 4, 1973, to file an answer to said motion by Attorney General of New York.

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As a part of the Initial Decision, the Licensing Board addressed the assertion in the Answer, dated August 1, 1973, of intervenor, Attorney General of the State of New York, that a new certification under §401 of the Federal Water Pollution Control Act (FWPCA) was required before approval of the request for higher power steady state operation could be granted. The Board in rejecting this assertion relied upon the existence of a §21(b) certificate previously supplied by applicant to the Commission in accordance with the provisions of the FWPCA prior to its 1972 amendments. This certification was referred to, and relied upon, in the staff's Final Environmental Statement (p. I-9). The FES was issued in September, 1972, and received in evidence on December 4, 1972 (Tr. 6271).

However, on August 9, 1973, the Attorney General's Office sent to the Board and the parties a letter, dated August 8, 1973, which raised for the first time an allegation that the certificate issued by the New York State Department of Environmental Conservation on December 7, 1970, was invalid. Subsequently, on August 13, 1973, the Attorney General moved the Licensing Board to reconsider its Initial Decision of August 9, 1973, and to deny the applicant's request for further authorization to operate the facility. The principal basis for said motion is the invalidity of the former §21(b) certification; as an alternative, the Attorney General argues that,

even if said certification were valid, a new certification under §401 of the FWPCA is, nevertheless, required. While the letter dated August 8, 1973, is not entirely clear, the motion appears to set forth an authoritative determination by the State of New York of the invalidity of its prior certification: "It is the official position of the State of New York that the aforementioned §21(b) certificate is invalid...".

Such new information strikes at the information in the record upon which the Board based its conclusions on an important procedural requirement for the issuance of the license authorizing steady state operation at 50% of full power. This same new information strikes at the information in the record with respect to the same procedural requirement for the full term, full power license which the Board has under consideration.

In view of the declaration by the Attorney General of the State of New York of the invalidity of a water quality certification supplied by the State of New York--a certificate which is a prerequisite to the valid issuance of a license to applicant--we believe that the Board should reconsider the basis, with respect to satisfaction of the requirements of the FWPCA, upon which the 50% steady state power license was authorized by the Initial Decision of August 9,

1973, and should also consider, with respect to the full power license, whether the requirements of the FWPCA have been satisfied.

To this extent, the staff agrees with the motion of the Attorney General that the Board reconsider the Initial Decision. However, despite the allegation of invalidity of the §21(b) certification, the applicant may have further information upon which licensing action may properly be based. The staff believes that the applicant should be provided an opportunity to present such information provided he does so promptly. For this reason, we oppose Attorney General's motion for a "decision", at this time, denying applicant's motion for an interim operating license.

Nevertheless, the staff believes this matter must be resolved expeditiously. For this reason, we oppose applicant's motion for extension of time to file an Answer to the Attorney General's motion, unless applicant is directed or agrees to submit forthwith any evidence or argument it may have to support its position that a license may be issued authorizing operation in excess of the 50% testing license previously issued (DRP-26 Amendment No. 2).

We do not believe that good cause exists for a 12-day extension of time to respond to the straight forward motion of the Attorney General

of New York, which carries on its face a sufficient assertion to warrant reconsideration of the Initial Decision, unless applicant's request is intended to enable applicant to come forth with a full response, including any evidence not now in the record, upon which it relies to support its position that the requirements of the FWPCA have been satisfied.

If applicant places any continued reliance on the certification issued December 7, 1970, pursuant to the provisions of former §21(b) of the FWPCA, in face of the statements by the Attorney General of New York, applicant is, we believe, obliged to come forth immediately with such evidence, or the basis on which it urges the Commission to place reliance on such certification. If the applicant argues another ground, it should be required to forthwith present its legal argument in support of such other ground and to forthwith provide to the Board and the parties any evidence it may have, in support of such other grounds. The other parties should be provided an opportunity to respond, prior to the hearing session scheduled for September 12, 1973, to such argument or evidence by applicant.

The AEC regulatory staff opposes applicant's motion of August 22, 1973, for an extension of time, until September 4, 1973, to file

its response to the Motion for Reconsideration filed by intervenor Attorney General of New York, unless applicant is directed or agrees to come forth by September 4, 1973, with any evidence or argument on which it relies to support its position that the requirements of the FWPCA have been satisfied with respect to the interim authorization granted August 9, 1973, and with respect to the full term full power license before the Board.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Myron Karman".

Myron Karman
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland, this
27th day of August, 1973.

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CERTIFICATE OF SERVICE

I hereby certify that service was made on the following, in the above-captioned matter, by depositing in the United States mail, first class or air mail, this 27th day of August, 1973, a copy of "AEC Regulatory Staff Answer to Motion Dated August 13, 1973, by Attorney General of New York for Reconsideration of August 9, 1973 Initial Decision of Board and AEC Regulatory Staff Answer to Applicant's Motion Dated August 22, 1973, for Extension of Time to Answer Said Motion of Attorney General".

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Myron Karman
Counsel for AEC Regulatory Staff