

UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

8/21/73

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of )

CONSOLIDATED EDISON COMPANY )  
OF NEW YORK, INC. )

(Indian Point Nuclear Generating )  
Station, Unit No. 2 )

Docket No. 50-247 DOCKETED  
AECB

AUG 23 1973

Office of the Secretary  
Public Proceedings  
Branch

AEC REGULATORY STAFF ANSWER TO APPLICANT'S MOTION,  
DATED AUGUST 16, 1973, TO REDUCE THE TIME FOR FILING  
BRIEFS ON APPLICANT'S EXCEPTION

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). The Initial Decision authorized the issuance of a license providing for a portion of the authority requested by applicant's motion, dated July 27, 1973, pursuant to 10 CFR, §§2.730, 50.57(c) and Part 50, Appendix D, Sect. A. 12. On August 16, 1973, the applicant filed an Exception to that aspect of the Initial Decision which held that "Section 50.57(c) does not authorize testing operations up to full power". At the same time, applicant moved the Appeal Board for a reduction of time limits for the filing of briefs by all parties in support of, or in

opposition to, applicant's Exception, to require such briefs to be filed by August 22, 1973, by all parties except the staff, and by August 23, 1973, for the staff. On August 18, 1973, the Appeal Board requested the parties to provide the Appeal Board their views on the requested reduction of time limits for briefs by August 21, 1973.

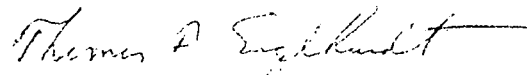
Applicant's request for a reduction of time is based on an assertion that without such reduction, a decision by the Appeal Board and an authorization for the additional testing requested by its July 27, 1973 Motion "most likely could not be issued substantially prior to the expiration of the Licensing Board's recent authorization [i.e., September 30, 1973] and would render Applicant's Exception pursuant to the Commission's rules ineffectual". Applicant also further asserts that its affidavits as well as the entire record in the proceeding demonstrate the need for the expedited schedule requested. It appears that applicant is suggesting that unless determined promptly, there would be little left of the period of higher power level operation authorized by the Licensing Board's Order of August 9, 1973.

As applicant's motion recognizes, the Licensing Board has not yet determined the merits of any issues before it on the motion with respect to operation over 50% steady state, and that such determination must be made before a license authorizing such operation can be issued under §50.57(c). Issues which require further consideration by the Licensing Board include the matter of the adequacy of the Water Quality Certificate raised by Intervenor, Attorney General of New York, in his Motion for Reconsideration, dated August 13, 1973. The Licensing Board must also resolve those quality assurance matters, if any, as to which it believes it requires additional evidence in order to authorize operation in excess of 50% of full power. It is not clear from the Board's letter of August 9, 1973, that there are such matters, but if there are any, they must be properly resolved. Further, both the Board and the applicant construe the objection of Intervenor Citizen's Committee For Protection of the Environment, dated August 1, 1973, to raise the entire spectrum of radiological issues (in Initial Decision, p. 2, and Applicant's Proposed Initial Decision, dated August 6, 1973, p. 4). Accordingly, the Licensing Board must, on the basis of the record before it, determine the radiological issues with respect to operation at 99% of full power (as requested by applicant's amended motion) and must further determine those environmental issues, if any, contested by the parties with respect to operation at such level.

Consequently, the determination of the Exception does not assure that the requested license for testing operation above 50% power level will, on the merits, be authorized. At the same time, a determination by the Appeal Board of the applicant's Exception favorable to applicant could form the basis for resubmission of a similar motion covering a subsequent period if necessary. Accordingly, we cannot agree that determination of applicant's Exception within the customary time periods would render applicant's Exception "ineffectual".

Nevertheless, the plant is completed and is essentially ready for full power operation. Pending decision on the full power license, 10 CFR §50.57(c) and Part 50, Appendix D. A. 12, provide for authorization of operation short of full power, as requested by applicant's motion of July 27, 1973, and as amended by its motion of August 9, 1973, which has been denied by the Board on erroneous grounds. Prompt resolution of applicant's Exception would enable the Licensing Board to promptly consider applicant's amended motion on its merits. Accordingly, the staff does not object to the applicant's motion with respect to reduction of the period of time for the submission of a brief by the Staff.

Respectfully submitted,



Thomas F. Engelhardt  
Chief Hearing Counsel

Dated at Bethesda, Maryland,  
this 21st day of August, 1973.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "AEC Regulatory Staff Answer to Applicant's Motion, Dated August 16, 1973, to Reduce the Time for Filing Briefs on Applicant's Exception," dated August 21, 1973, in the captioned matter, have been served on the following by deposit in the United States mail, first class or air mail, this 21st day of August, 1973:

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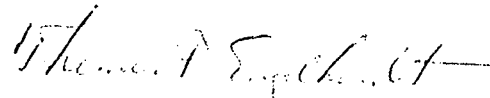
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