

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

8/16/73

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)

CONSOLIDATED EDISON COMPANY)
OF NEW YORK, INC.)

Docket No. 50-247

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

AEC REGULATORY STAFF MOTION FOR EXTENSION OF TIME TO
FILE EXCEPTIONS TO INITIAL DECISION AUTHORIZING
CONTINUED TESTING AND STEADY STATE POWER OPERATION
AT 50 PERCENT OF FULL POWER THROUGH SEPTEMBER 30, 1973

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. In accordance with the Commission's Rules of Practice, 10 CFR Part 2, §2.762, exceptions to initial decisions must be filed within seven days after service.

As a part of the Initial Decision, the Licensing Board addressed the assertion in the Answer 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. The letter was not received by the Secretary of the Commission until August 13, 1973, and, consequently, could not have been, and was not, reflected in the Board's Initial Decision of August 9, 1973. 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 none the less 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...".

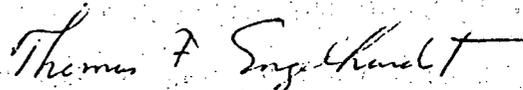
Such new information strikes at the information in the record upon which the Board based its conclusions on an important procedural requirement for the issuance of the license authorizing steady state operation at 50% of full power. This same new information strikes at the information in the record with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

In view of this unusual and very late presentation of information which may seriously undermine evidence in the record concerning an important procedural requirement for the issuance of the licenses, the staff believes good cause exists to extend the time for filing of exceptions to the Initial Decision. We believe the Licensing Board should have the opportunity to adequately consider the allegations of the Attorney General both on the full-term license pending before it as well as on its Initial Decision and to reconsider applicant's motion in light of this information along with other information that may be relevant.

Accordingly, the staff requests the Atomic Safety and Licensing Appeal Board to extend the time for filing exceptions to the August 9, 1973 Initial Decision, until seven days after the Licensing Board has determined the Motion for Reconsideration by the Attorney General of the State of New York, and if the Licensing Board determined to grant such motion until seven days after the Licensing Board's determination of applicant's motion for issuance of a license authorizing limited operation.

The regulatory staff in its response to the Licensing Board with respect to the motion for reconsideration by the Attorney General will urge that the Licensing Board expeditiously determine these matters.

Respectfully submitted,



Thomas F. Engelhardt
Chief Hearing Counsel

Dated at Bethesda, Maryland,
this 16th day of August, 1973.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "AEC Regulatory Staff Motion for Extension of Time to File Exceptions to Initial Decision Authorizing Continued Testing and Steady State Power Operation at 50 Percent of Full Power through September 30, 1973," in the captioned matter, dated August 16, 1973, have been served on the following by deposit in the United States mail, first class or air mail, this 16th day of August, 1973:

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Atomic Safety and Licensing
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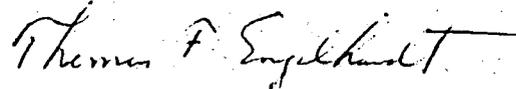
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