

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of)
)
Consolidated Edison Company) Docket No. 50-247
of New York, Inc.)
(Indian Point Station, Unit No. 2))

BEFORE THE ATOMIC SAFETY
AND LICENSING APPEAL BOARD

APPLICANT'S EXCEPTION TO
THE INITIAL DECISION AUTHORIZING
CONTINUED TESTING AND STEADY-STATE
POWER OPERATION AT 50 PERCENT OF
FULL POWER THROUGH SEPTEMBER 30, 1973
AND MOTION FOR REDUCTION
OF TIME LIMITS

Pursuant to 10 C.F.R. Section 2.762 Applicant files its exceptions to the Initial Decision issued by the Atomic Safety and Licensing Board ("Licensing Board") on August 9, 1973 authorizing continued testing and steady-state power operation at 50 percent of full power through September 30, 1973. In addition, pursuant to 10 C.F.R. Section 2.711, Applicant respectfully requests the Atomic Safety and Licensing Appeal Board ("Appeal Board") to reduce

the time periods prescribed in 10 C.F.R. Section 2.762 and to adopt the schedule set forth below.

I.

Applicant's Exception

1. Applicant takes exception to the Licensing Board's holding that 10 C.F.R. Section 50.57(c) permits the Licensing Board to authorize testing operations only to the extent of 1 percent of total rated power. Applicant's exception is addressed to page 8, lines 5-6 of the Licensing Board's Initial Decision:

"Section 50.57(c) does not authorize testing operations up to full power"

as clarified by the Licensing Board's statement contained in the document entitled, "Order Denying Applicant's Motion for Issuance of License Authorizing 99 Percent Testing Operations" issued on August 10, 1973 at page 2, lines 13 through 18:

"The Board held that the terms of this section [50.57(c)] were a limitation on the authority of the Board in that testing operations could be authorized only to the extent of 1 percent of total rated power level. The phrase '... and further operations short of full power' was believed to be distinct from the direction given respecting the testing operations."

II.

Applicant's Request For
Reduction of Time Limits

Applicant requests the Board to reduce the time limits set forth in 10 C.F.R. Section 2.762 for the consideration of Applicant's exception to the Licensing Board's Initial Decision of August 9, 1973. Specifically, Applicant requests the Appeal Board to rule that briefs of all parties in support of, or in opposition to, Applicant's exception be filed and served by August 22, 1973 (August 23, 1973 in the case of the Regulatory Staff). Applicant further requests the issuance of a decision by the Appeal Board at the earliest practicable time following the filing of such briefs. In this regard Applicant is filing this exception and motion and effecting service by mail today and shall serve copies by hand tomorrow to the Chairman of the Appeal Board, Messrs. Karman, Roisman, Macbeth and the Attorney General of the State of New York. Furthermore, Applicant will file promptly its brief in support of its exception and shall effect service by hand delivering such

document to the Chairman of the Appeal Board, Messrs. Karman, Roisman, Macbeth and the Attorney General of the State of New York.

In support of this request, Applicant states that in accordance with the Licensing Board's Initial Decision of August 9, 1973 the Commission issued Amendment No. 3 to Facility Operating License No. DPR-26 on August 9, 1973. Such amendment authorized steady-state operation of Indian Point 2 at 50 percent of rated power through September 30, 1973. Without the requested reduction in the time periods for the filing of briefs by the other parties in response to Applicant's exception, a decision by the Appeal Board and a concomitant authorization for the additional testing operation requested by the Applicant in its July 27, 1973 motion (as supplemented on August 9, 1973) most likely could not be issued substantially prior to the expiration of the Licensing Board's recent authorization and would render Applicant's exception pursuant to the Commission's rules ineffectual. Furthermore, the affidavits filed in support of Applicant's Motion for Issuance of a License

Authorizing Limited Operation dated July 27, 1973, the document entitled "100-Day Report of the Indian Point Unit No. 2 Testing Program" dated August 8, 1973, as well as the entire record in the above-captioned proceeding demonstrate the need for the expedited schedule requested herein.

III.

Applicant's Request for Relief

Applicant requests the Appeal Board to reverse summarily that portion of the Licensing Board's Initial Decision of August 9, 1973 denying Applicant's motion for additional testing authorization. Applicant further requests the Appeal Board to remand to the Licensing Board with directions to reconsider Applicant's motions of July 27, 1973 and August 9, 1973 forthwith and to issue a supplemental Initial Decision effective as of August 9, 1973 consistent with

the Appeal Board's order not later than three days after
the date of issuance of such order.

Respectfully submitted,

LeBoeuf, Lamb, Leiby & MacRae
1821 Jefferson Place, N.W.
Washington, D. C. 20036

Attorneys for Consolidated Edison
Company of New York, Inc.

By

Leonard M. Trosten

Leonard M. Trosten
Partner

Dated: August 16, 1973