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DOCKET NUMBER

PROD. & UTIL. FAC. 50-286

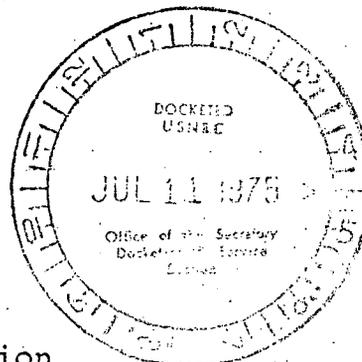
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Peter L. Strauss, Esq.
 General Counsel
 U.S. Nuclear Regulatory Commission
 Washington, D.C. 20555

Dear Mr. Strauss:

As attorneys for the Consolidated Edison Company of New York, Inc. ("Con Edison"), we hereby request an opinion of the General Counsel authoritatively interpreting certain provisions of a license issued by the former Atomic Energy Commission.

Con Edison owns the Indian Point Unit No. 2 nuclear power reactor and operates it pursuant to Facility Operating License No. DPR-26 ("the License"). That License, as conditioned by the Atomic Safety and Licensing Appeal Board ("the Appeal Board"), requires that Con Edison terminate operation with the installed once-through cooling system by May 1, 1979. See Facility Operating License No. DPR-26, ¶ 2.E(1), as amended by Amendment No. 6, May 6, 1974, pursuant to Consolidated Edison Co. of New York, Inc. (Indian Point Station, Unit No. 2), ALAB-188, RAI-74-4, 323, 407 (Apr. 4, 1974). (In an action not directly related to the present request for an interpretation, Con Edison applied on June 6, 1975 for a license amendment that would extend the period of interim operation allowed by the License to May 1, 1981.)

The License further provides that the May 1, 1979 termination date

"is grounded on a schedule under which the applicant, acting with due diligence, obtains all governmental approvals required to proceed with the construction of the closed-cycle cooling system by

December 1, 1975. In the event all such governmental approvals are obtained a month or more prior to December 1, 1975, then the May 1, 1979 date shall be advanced accordingly. In the event the applicant has acted with due diligence in seeking all such governmental approvals, but has not obtained such approvals by December 1, 1975, then the May 1, 1979 date shall be postponed accordingly." Facility Operating License No. DPR-26, ¶ 2.E(1)(b), pursuant to ALAB-188, RAI-74-4, supra, at 408.

Con Edison has acted in accordance with this condition and has timely sought all governmental approvals necessary for installation of a closed-cycle cooling system. One of the approvals necessary for installation is a building permit from the Village of Buchanan, New York, in which the facility is situated.

On March 4, 1975, Con Edison's application for a building permit was denied by the Building Inspector of the Village of Buchanan. On March 21, 1975, Con Edison took an appeal to the Village Zoning Board of Appeals ("the Zoning Board"). That Board conducted a public hearing on Con Edison's request for variances on May 6, 1975. The Hudson River Fishermen's Association, an intervenor in the Indian Point Unit No. 2 operating license proceeding, appeared and offered evidence at the hearing. The Regulatory Staff was advised of the hearing by letter dated April 14, 1975, but did not appear. On June 19, 1975, the Zoning Board denied the variances. A copy of the Board's Decision is attached hereto.

As may be seen from that Decision, the Zoning Board has refused to grant the requested variances from the Village's height and use limitations

"because the application is contingent, i.e., for the purported erection of a structure which may or may not ever be erected, depending on future events, and pro forma, i.e., made because an agency having jurisdiction over Con Edison has directed it to make the application, but involving no present intent, commitment or direction to begin excavation,

construction or any other activity on the premises for which a building permit would be required by the Village of Buchanan."

The Board's Decision appears to be based on the expectation that the results of ongoing ecological studies and other work by Con Edison and its consultants with respect to the environmental effects of plant operation with the installed once-through cooling system may in time lead to a conclusion that no change in the cooling system is needed. The Board thus deemed the variances requested to rest on speculation.

As an alternative ground for its decision, the Zoning Board found that the evidence was insufficient to show that "the variances requested are the minimal variances from the ordinance which must be granted in order to preserve the spirit of the ordinance while protecting the public interest...." The Board questioned the correctness of Con Edison's choice of a 565-foot tall natural draft wet cooling tower as the soundest closed-cycle cooling system. Con Edison had expressed that choice in a report filed with the former Atomic Energy Commission on December 2, 1974. The Commission has not yet responded to Con Edison's expression of choice.

Con Edison's application for variances having been denied, it must now determine its further course of action under the License. In view of the uncertain results of judicial review of the Zoning Board's recent action - an opinion which has been reached after a comprehensive analysis of the remedies available and legal questions pertinent thereto - Con Edison believes that it has satisfied for the present its obligation to exercise "due diligence" in seeking Village approval; and that it is not incumbent upon it to seek judicial review of the Zoning Board Decision, especially since the Decision does not reach the merits of Con Edison's request to the Village. Obviously, Con Edison may not unilaterally reach a definition of due diligence. Pending a reply to this letter Con Edison will take all prudent measures to perfect and protect its right to judicial review of the Zoning Board Decision.

Accordingly, it is respectfully requested that the General Counsel provide an interpretation of the term "due diligence" as used in the condition quoted above. In particular, it is requested that the General Counsel indicate whether the term extends to the seeking of judicial review in the circumstances described in this letter, and if so, whether appellate remedies up to and including the filing of

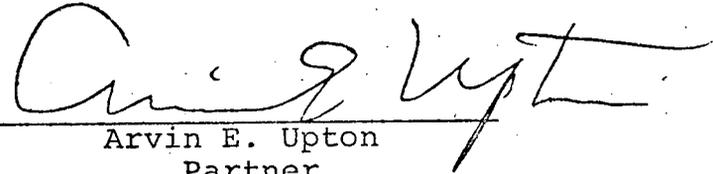
a petition for a writ of certiorari or application for other relief from the Supreme Court of the United States are encompassed within the term. Guidance is also sought on whether the Commission would intervene in any state or federal judicial review action that may be required to be initiated under the interpretation provided.

Copies of this letter are being sent to representatives of the parties of record to the Indian Point 2 licensing proceeding, the Mayor of Buchanan, the Chairman of the Zoning Board and Secretary of the Commission.

Very truly yours,

LeBOEUF, LAMB, LEIBY & MacRAE

By



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Enclosure