

BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	Docket No. 50-247
CONSOLIDATED EDISON COMPANY)	OL No. DPR-26
OF NEW YORK, INC.)	(Determination of Preferred
(Indian Point Station,)	Alternative Closed-Cycle
Unit No. 2))	Cooling System)

CON EDISON'S MEMORANDUM IN RESPONSE
TO THE BOARD'S REQUEST
FOR A DRAFT PARTIAL INITIAL DECISION

At the Prehearing Conference held in this proceeding on September 22, 1976 in White Plains, New York, 41 Fed. Reg., 38830 (1976), the Atomic Safety and Licensing Board ("the Board") directed the parties to submit, by October 1, 1976, their proposals for a Partial Initial Decision that would designate a preferred alternative closed-cycle cooling system for the Indian Point Station, Unit No. 2 facility ("Indian Point 2"). Tr. 30-31. Consolidated Edison Company of New York, Inc. ("Con Edison"), as holder of the Indian Point 2 operating license, Facility Operating License No. DPR-26 ("the License"), and as applicant for an amendment thereto in this proceeding, submits herewith its draft Partial Initial Decision in compliance with the Board's directive.

This draft Partial Initial Decision is submitted under protest. In Con Edison's view, bifurcation of the proceeding in

this fashion will not serve any useful purpose. We strongly urge the Board to decide, simultaneously with its issuance of a decision on the preferred alternative, the related questions of whether all necessary governmental approvals have been received with respect to the preferred alternative closed-cycle cooling system and the period of the automatic extension of interim operation to which Con Edison is already entitled under ¶ 2.E.(1)(b) of the License. These questions go to the heart of the controversy among the parties. Deferring resolution of these questions will simply lead to further disputes and delays.

Moreover, if the Board rules that all necessary governmental approvals have been received, the Board should at the same time announce the present date for termination of operation with the installed once-through cooling system. In the event the Board rules that all necessary governmental approvals have not yet been received, then the Board should indicate the earliest date to which the period of interim operation has been automatically extended under the License, in order that the amount of uncertainty to which Con Edison is exposed may be reduced, if not eliminated.

Con Edison also submits that the task of preparing a proposed form of Partial Initial Decision, even if it were otherwise appropriate, is made unnecessarily difficult by requiring its

submission not only before any evidentiary hearing has been held, but even before the limited appearances have been received by the Board. Not knowing what new information may be generated from those latter statements and the responses thereto (see 10 C.F.R. Part 2, Appendix A, section V(4), (6)), or from the Board's inquiry into the providence of the parties' concurrence as to the selection of the preferred cooling system (and the sufficiency of the Regulatory Staff's Final Environmental Statement--a question raised by at least one party to this proceeding, Tr. 25-26 (remarks of Mr. Kuhn)), preparation of a draft Partial Initial Decision at this point represents a wasteful exercise in conjecture. Con Edison believes that here, as elsewhere, the cart belongs in its customary place: behind, not before, the horse.

In submitting the attached draft Partial Initial Decision, Con Edison expressly reserves the right to argue that such a decision is inappropriate at this time in the circumstances of the case. Con Edison further expressly reserves the right to argue that the issuance of such a decision does not affect the schedule for construction of an alternative closed-cycle cooling system as required by the License. While we believe that no decision should be rendered that does not also address the "regulatory approvals" and "automatic extension" issues noted above

and referred to at length in the prehearing conference, Tr. 44-46 (remarks of Mr. Trosten), we have omitted from this draft any disposition of these critical (and we believe inseparable) matters in deference to the Board's directive.

Respectfully submitted,

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October 1, 1976

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CERTIFICATE OF SERVICE

I hereby certify that I have, this 1st day of October, 1976, served the foregoing documents entitled "Partial Initial Decision Designating a Preferred Alternative Closed-Cycle Cooling System" and "Con Edison's Memorandum in Response to the Board's Request for a Draft Partial Initial Decision" by mailing copies thereof, first class mail, postage prepaid, to the following persons:

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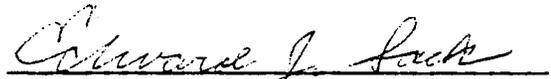
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