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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

January 21, 1977

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

REPLY OF THE NRC STAFF TO
LICENSEE'S BRIEF IN SUPPORT OF
EXCEPTION TO THE SUPPLEMENTAL
PARTIAL INITIAL DECISION

On November 30, 1976, the Atomic Safety and Licensing Board (Licensing Board) issued a Partial Initial Decision in Reference to Stipulated Preferred Type of Closed-Cycle Cooling System and Receipt of Governmental Approvals (Partial Initial Decision). Consolidated Edison Company of New York, Inc. (Licensee) filed exceptions to the Partial Initial Decision on December 6, 1976, and filed a brief in support of its exceptions on December 21, 1976. The Staff filed a brief in reply on January 13, 1977. On December 27, 1976, the Licensing Board issued a Supplemental Partial Initial Decision Concerning Issues of Date for Termination of Closed-Cycle Cooling and of Bird Monitoring (Supplemental Initial Decision). The Licensee filed an exception and brief in support of the exception to the Supplemental Initial Decision on January 5, 1977. The Staff addresses this exception in this brief.

Licensee objects to the finding of the Licensing Board which states that
". . . the Board finds and concludes that the reasonable termination date

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for once-through cooling of Indian Point, Unit No. 2 shall now be postponed from May 1, 1979 to May 1, 1980"^{1/} and to the order by the Licensing Board that "... the Director of Nuclear Reactor Regulation is hereby authorized . . . to issue an amendment to License No. DPR-26 which changes the reasonable date for termination of once-through cooling of Indian Point Unit No. 2 from May 1, 1979 to May 1, 1980."^{2/} The objection is that the Licensing Board failed to include language to the effect that only "if all necessary governmental approvals [have been] obtained by January 1, 1977" would the May 1, 1980 termination date result. The Staff submits that the Licensing Board properly omitted such conditioning language.

In its Partial Initial Decision the Licensing Board found that, with the issuance of the license amendment authorizing the construction of the natural draft cooling tower,^{3/} all necessary governmental approvals will have been obtained. The implementing amendment was issued on December 1, 1976. Consequently there is no function to be served by

^{1/} Supplemental Initial Decision, p. 4.

^{2/} Id., p. 5.

^{3/} Partial Initial Decision, p. 13.

the conditioning language. The Licensing Board recognized this express link when it preceded the finding excepted to with the phrase "Consistent with its prior findings concerning necessary governmental approvals and with issuance of Amendment No. 22 to License No. DPR-26 on December 1, 1976" ^{4/}

The Staff submits that all necessary governmental approvals have been obtained, and incorporates by reference its brief of January 13, 1977, which argues to that effect. There is no dispute that the effect of the obtaining of all necessary governmental approvals by January 1, 1977 is to establish May 1, 1980 as the reasonable date for termination of once-through cooling. ^{5/} Accordingly, the Staff submits that the exception to the Supplemental Initial Decision filed by Licensee should be rejected and that the Supplemental Initial Decision should be affirmed.

Respectfully submitted,

Marcia E. Mulkey

Marcia E. Mulkey
Counsel for NRC Staff

Stephen H. Lewis

Stephen H. Lewis
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 21st day of January, 1977

^{4/} Supplemental Initial Decision, p. 4.

^{5/} The Licensee takes no exception to the Licensing Board's statement in the Supplemental Initial Decision, page 3, that "All parties agree that if all necessary governmental approvals are obtained by January 1, 1977, the termination date for once-through cooling should be postponed to May 1, 1980." See also Licensee's submittal to the Licensing Board dated November 30, 1976, which sets forth alternative construction schedules based on alternative dates for receipt of all necessary governmental approvals, and the transcript of December 8, 1976, at page 326.

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CONSOLIDATED EDISON COMPANY
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(Indian Point Station,
Unit No. 2)

) Docket No. 50-247

) OL No. DPR-26

) (Selection of Preferred
) Alternative Closed-Cycle
) Cooling System)

CERTIFICATE OF SERVICE

I hereby certify that copies of "REPLY OF THE NRC STAFF TO LICENSEE'S BRIEF IN SUPPORT OF EXCEPTION TO THE SUPPLEMENTAL PARTIAL INITIAL DECISION," in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or air mail, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 21st day of January, 1977.

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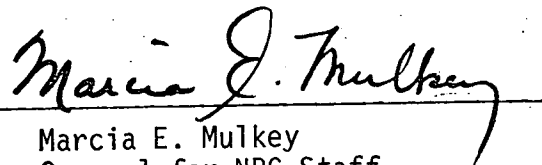
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Licensee objects to the finding of the Licensing Board which states that "... the Board finds and concludes that the reasonable termination date

for once-through cooling of Indian Point, Unit No. 2 shall now be postponed from May 1, 1979 to May 1, 1980"^{1/} and to the order by the Licensing Board that "... the Director of Nuclear Reactor Regulation is hereby authorized . . . to issue an amendment to License No. DPR-26 which changes the reasonable date for termination of once-through cooling of Indian Point Unit No. 2 from May 1, 1979 to May 1, 1980."^{2/} The objection is that the Licensing Board failed to include language to the effect that only "if all necessary governmental approvals [have been] obtained by January 1, 1977" would the May 1, 1980 termination date result. The Staff submits that the Licensing Board properly omitted such conditioning language.

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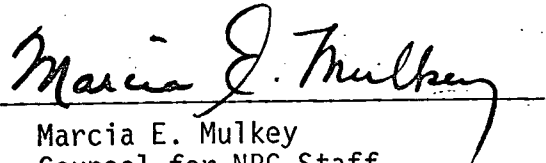
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