

Law Department
Consolidated Edison Company of New York, Inc.
4 Irving Place, New York, N Y 10003

8/23/77
August 23, 1977

Richard C. Browne, Esq.
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555



Re: Indian Point 2 - Docket No. 50-247

Dear Mr. Browne:

Reference is made to Amendment No. 32 to License No. DPR-26, which was forwarded to Con Edison by letter of Mr. Robert W. Reid dated July 29, 1977. I would like to call your attention to the fact that that license amendment appears to be inconsistent with the decision of the Atomic Safety and Licensing Appeal Board, ALAB-399, dated May 20, 1977.

Amendment No. 32 amends Paragraph 2.E.(1)(b) to contain the following sentence:

"The Commission has determined that the licensee, acting with due diligence, has obtained all governmental approvals required to proceed with construction of the closed cycle system as of December 1, 1976."

This sentence is based on a decision of the Atomic Safety and Licensing Board which was reversed on this point by the Appeal Board in ALAB-399. ALAB-399, pp. 20-25. Although the Commission's time to review ALAB-399 has not yet expired, that fact does not stay the effectiveness of the decision. 10 CFR § 2.786(b)(8). The retention of the sentence quoted above in the license is tantamount to a stay of ALAB-399, which has been specifically denied by the Appeal Board (ALAB-414, June 23, 1977), and on which the Commission has taken no action. In these circumstances, it is highly inappropriate for the Staff to act as if a stay were in effect.

We suggest that conformance with ALAB-399 would

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require that this sentence read as follows:

"The Commission has determined that the licensee has acted with due diligence and that all governmental approvals required to proceed with construction of the closed-cycle system have not been received pending further proceedings with respect to the Village of Buchanan Zoning approval."

We have no objection to the balance of Par. 2.E.(1)(b) which appears to be in accord with the applicable decisions in this docket.

Thank you for your attention to this matter.

Sincerely yours,



Edward J. Sack

EJS:ld

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