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Vice President

ATTACHMENT

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January 8, 1976

Mr. Ben C. Rusche, Director
Office of Nuclear Reactor
Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Dear Mr. Rusche:

This letter is in reference to the letter to you dated December 9, 1975 from Sarah Chasis and Ross Sandler as attorneys for the Hudson River Fishermen's Association, concerning my letter to you dated November 17, 1975.

In its December 9 letter, HRFA's principal point appears to be that Con Edison will not suffer any "irreparable harm" if the Company is required to terminate operation of Indian Point 2 with once-through cooling on May 1, 1979. This is not only an irrelevant consideration under the terms of License No. DPR-26 but it is also a highly inaccurate statement.

Paragraph 2.E(1)(b) of License No. DPR-26 specifically provides that the May 1, 1979 date shall be postponed in the event that all regulatory approvals are not obtained by December 1, 1975 if Con Edison has acted with due diligence. Con Edison is not required to show "irreparable harm" as a basis for the postponement. In ALAB-188 the Appeal Board stated the basis for this license condition:

> "Although the applicant must act with due diligence in carrying out its responsibilities . . . it is beyond dispute that the applicant cannot control the time required for regulatory actions. And, moreover, we are not endowed with the powers of clairvoyance which would enable us to know how those matters will

> be resolved or when. Thus, a fundamental point which should be understood is that the reasonableness of the construction schedule has to be judged on its own merits and the necessary time provided . . . . In view of the uncertainties which surround the events over which the applicant has no control, tying the completion of construction now to some date certain in the future would not appear to be correct." RAI-74-4 at 389.

Con Edison has been proceeding in good faith and with due diligence with the cooling tower program as required by the terms of License No. DPR-26 and ALAB-188 even while pursuing its continuing ecological research efforts to determine whether or not a closed-cycle cooling system is necessary. Con Edison has completed its studies of the environmental effects of cooling towers, has analyzed the available data and submitted a report on December 2, 1974 containing its recommendation for a natural-draft cooling tower system. It has also studied the engineering concepts of closed-cycle cooling systems and has completed substantial engineering and design work.

"Irreparable harm" would be incurred by Con Edison if it were to proceed any further with this program prior to completion of regulatory reviews. As noted in HRFA's letter, the next steps in the construction program are finalizing designs, obtaining bids for site preparation, incorporation of comments of agency reviews and awarding contracts for cooling towers. It is simply not possible to finalize designs, obtain bids for construction, etc., unless the basic closed-cycle cooling system has been identified and approved so that Con Edison knows what it is to design and construct. As the Appeal Board recognized, this work should not proceed in the absence of regulatory approvals of the closed-cycle cooling system proposed by Con Edison.

To proceed otherwise would create a substantial risk to the Company and its ratepayers in making expenditures for construction of a system which may not be authorized by

the cognizant agencies in accordance with the requirements of License No. DPR-26 and applicable laws and regulations. Moreover, Con Edison cannot properly negotiate with suppliers when the suppliers are aware that there is a substantial probability that the project may be altered. Vendors incur substantial expenditures in reviewing detailed specifications and submitting bids, and it is not consistent with prudent procedure for a construction project of this magnitude to request them to perform such work when there is a strong possibility that the basic design of the cooling tower may change.

HRFA's reference to Figure 4.2 of the Cooling Tower Report demonstrates a fundamental misunderstanding of that figure. Figure 4.2 shows Con Edison's alternative schedule for potential cooling tower system construction following completion of ecological studies. The regulatory review which is completed after commencement of the activities to which HRFA referred (Item 1438 on Figure 4.2) is regulatory review of the ecological studies, not regulatory review of the approval of the closed-cycle cooling system alternative. In Figure 4.2 the evaluation by regulatory agencies of the Cooling Tower Report is scheduled, as it is in Figure 4.1, for completion by December 1, 1975 (Item 1936 on Figure 4.2).

In its December 9 letter HRFA also states that permits from the Village of Buchanan and the State of New York are not required because of a decision of the New York State Supreme Court, Westchester County. It is elementary that a judicial decision is not final until all rights to appeal have been exhausted or have expired by lapse of time. As the authors of the December 9 letter well knew, the Buchanan Zoning Board's time to appeal this decision had not yet expired when the December 9 letter was written. On January 2, 1976, the attorneys for the Buchanan Zoning Board filed a Notice of Appeal to the Appellate Division of the Supreme Court. Further appeals are thereafter possible to higher courts. Con Edison should not be required to make expenditures and commence negotiations with suppliers on the basis of a judicial decision which is not final.

The last argument in the December 9 letter appears to be that the NRC, if it agrees with Con Edison's position, is somehow bestowing a benefit on itself which it cannot do

on the basis of its own failure to act. This is a strange argument because the rights involved are those of Con Edison, not those of the NRC Staff. Con Edison has no knowledge of the reasons for the NRC Staff's delay in this matter apart from the obvious need to comply with the requirements of NEPA. In any event, the terms of the license make it clear that Con Edison is entitled to an extension of the May 1, 1979 date if all regulatory approvals -- including that of the NRC -- are not received by December 1, 1975.

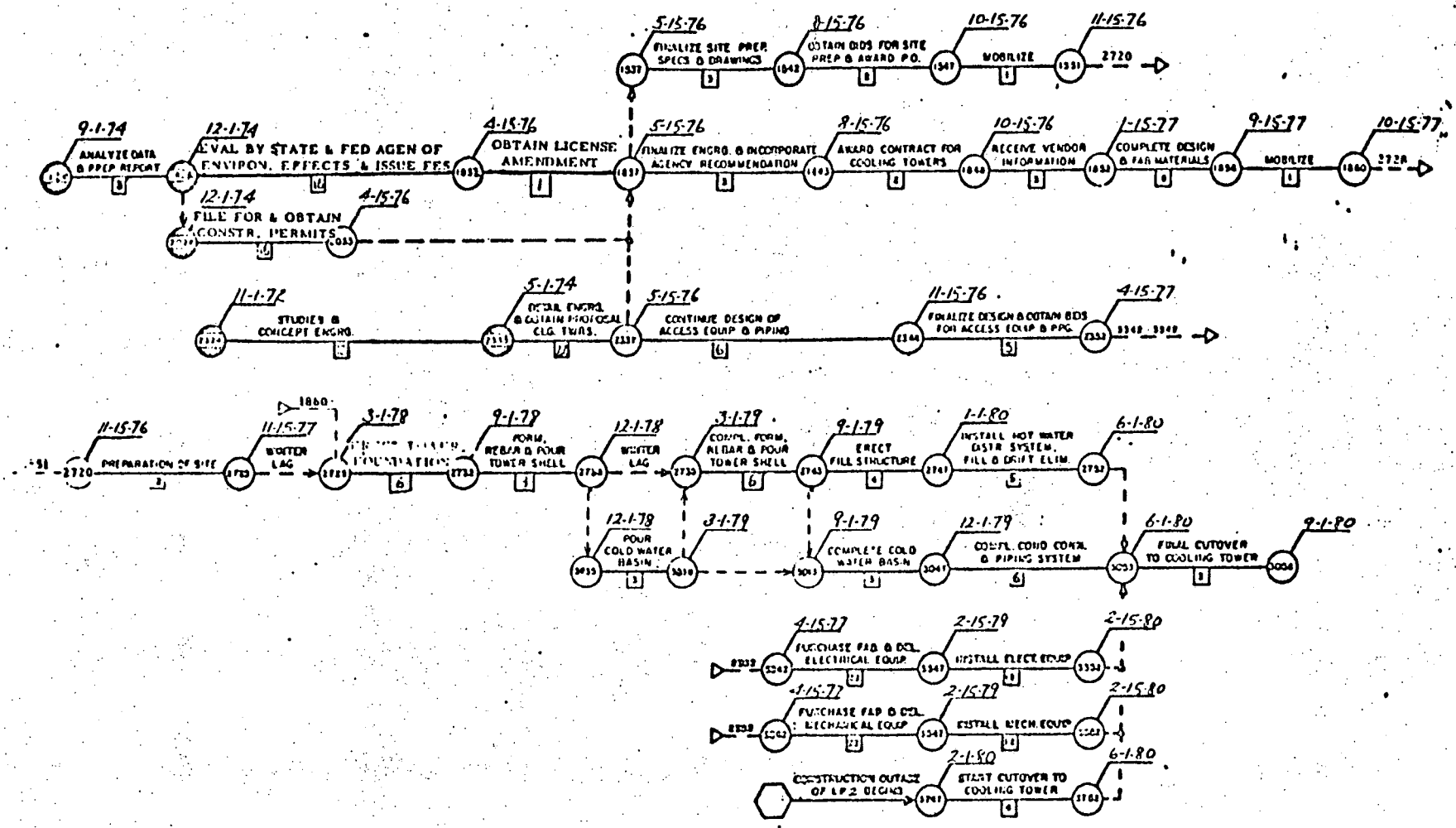
For the reasons stated above, HRFA's letter of December 9, 1975 should be disregarded. Moreover, on the basis of the new target schedule established by Mr. Knighton in his telephone call of December 12, 1975, the Final Environmental Statement concerning Con Edison's December 2, 1974 application for approval of a preferred closed-cycle cooling system is now scheduled to be published on April 15, 1976. The Commission's regulations contemplate that no licensing action will be taken less than 30 days after availability of the Final Environmental Statement. Since the NRC may not issue a final order on Con Edison's application prior to May 15, 1976, the reasonable date for terminating once-through cooling for Indian Point 2 must now be deemed to be further extended by an additional 12 weeks to February 1, 1980. (An additional two weeks' winter lag is created because site preparation is shown as completed on November 15 and it is not feasible to start major foundation work in the two-week interval before December 1.) A revised schedule taking into account this additional delay is attached.

Finally, Con Edison continues to urge the Staff to accelerate its review of Con Edison's June 4, 1975 application for an extension of the period of once-through cooling to May 1, 1981. For the reasons stated in my November 17, 1975 letter, Con Edison considers unduly distant the new April 30, 1976 target date established by the Staff for issuance of the FES concerning this application.

Sincerely yours,

William J. Cahill, Jr.
Vice President

Attachment



"NRC LICENSING SCHEDULE" WITH
F.E.S. ON 4-15-76 AND AMENDMENT ON 5-15-76