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AREA CODE 914

December 17, 1971

Dr. James R. Schlesinger
Chairman
U.S. Atomic Energy Commission
Washington, D.C. 20545

RE: Consolidated Edison Indian Point Unit No. 3
Docket No. 50-286
Suspension pending NEPA Review

Dear Dr. Schlesinger:

This letter, submitted on behalf of the Citizens Committee for the Protection of the Environment and the Cortlandt Conservation Association, Inc., is to bring to your direct attention some disturbing facts which we believe evidence cavalier and superficial handling of the above matter by the Commission:

1. In accordance with Appendix D, Sect. E.3 of 10 CFR Part 50, Con Edison submitted a statement opposing suspension of the subject construction license dated October 19, 1971.

2. The Commission determined not to suspend construction in a determination dated November 26, 1971.

3. The undersigned submitted comments, on behalf of CCPE and CCA, favoring suspension to the Commission's Division of Reactor Licensing on November 30, 1971, unaware at that time of the previous determination.

4. On December 4, 1971, immediately after learning of the Commission's decision, I wrote the Director of Regulation, requesting a supplemental determination on the suspension issue in the light of our comments. To date, there has been no response to that request.

What is disturbing about the foregoing? Notwithstanding its invitation for interested persons to submit comments on statements of licensees opposing suspension (see App. D, Sect. E.3), the Commission reached its decision on the issue within a time frame which effectively precluded consideration of any comments filed. Unless the invitation to comment

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Rec'd Off. Dir. of Reg.
Date 12/22/71
Time 2:30

DR - 4835

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is to be construed simply as public relations boilerplate, the Commission should have waited a reasonable time for such to be prepared and filed before proceeding to decision-making.

A reasonable time must be construed in the context of the applicable regulation. Here, the licensee had 40 days to prepare its statement and it would appear reasonable that a like time be allowed to prepare responsible commentary. In this regard it is to be noted that the suspension issue calls for no-crisis decisions since construction of any given plant continues during the consideration process.

Unfortunately, and because the Commission has made a score of substantially identical decisions on suspension, none of which has resulted in temporary revocation of central facility construction (as opposed to distribution facilities), it would appear that the instant decision, along with the others, falls far short of responsible AEC action. Indeed, the appearance leads readily to the conclusion that there never was any serious intention by the Commission to suspend any construction license and that the Sect. E regulations are little more than a disgruntled and insubstantial compliance with the Court of Appeals mandate in Calvert Cliffs.

In submitting our comments directed to suspension we had hoped the Commission would take seriously the need for an effective NEPA Review, a need that obviously troubled the Court in Calvert Cliffs. The fact that our comments were never even considered, and that the decision was so rapidly made, along with a bundle of others in basically identical language, can only serve to create a credibility gap respecting the AEC role as impartial referee. The frosting on the cake is the absence of any discussion by the Commission as to whether the forthcoming review could be or would be effective absent suspension.

We believe that the superficial discussion and findings of the Division of Reactor Licensing, dated November 24, 1971, wholly keyed to criteria which have little, if anything, to do with the overriding concern for effective environmental review (a concern founded in due process considerations), is unsatisfactory given the magnitude of the underlying problems of the subject facility in its location amidst ten per cent of the U.S. population.

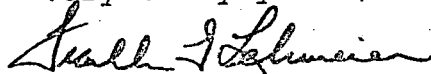
We have brought this matter to your attention so that appropriate ameliorative action may be taken to insure that

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the NEPA Review of Indian Point Unit No. 3 can be conducted so that a fair hearing of the real issues is possible. To that end we urge that a supplemental determination, based upon supplemental findings and discussion, be made herein in the light of our November 30 comments and the question of whether an effective hearing can be held absent suspension of the Unit No. 3 construction license. For the reasons set forth in our comments we believe that suspension at this time is required. Given the certification of questions by the Licensing Board following our submission of comments, and the nature of those questions, suspension seems the more clearly indicated.

Thank you for your consideration of this matter.

Very truly yours,



FRANKLIN G. LEHMEIER
Attorney for CCPE and CCA

SIGNATURE MAIL ROUTING SLIP

(Director's Office)

Mr. Muntzing : SIGNATURE

Mr. Bloch : Concurrence *DBS/17*

Dr. Beck : ~~Concurrence~~

Mr. Henderson : ~~Concurrence~~ *has seen*

Is notification the JCAE recommended? _____ _____

Concurrences received from:

Compliance _____ ()

Materials Licensing _____ ()

Nuclear Materials Safeguards _____ ()

Radiological & Environmental Protection _____ ()

Reactor Licensing _____ (1/4/72)

Reactor Standards _____ ()

State & Licensee Relations _____ ()

Office of General Counsel _____ (1 / / 72)

Others _____ ()

Remarks:

Ltr to Lehmeier - In the Matter of Consolidated Edison Company of New York, Inc. Indian Point Nuclear Generating Unit No. 3

DBS 1/11/72

Date 1/4/72

Originator Wallig

DL-3977 + 4035

FROM
Franklin G. Lehmeier
Peekskill, N. Y.

CONTROL NUMBER

3977

FILE LOCATION

DATE OF DOCUMENT

12/4/71

ACTION COMPLETION DEADLINE

TO

L. Manning Muntzing

ACTION PROCESSING DATES

Acknowledged _____

Interim Report _____

Final

S/LMM 1/11/72

PREPARE FOR SIGNATURE OF:

_____ Chairman

_____ Director of Regulation

DESCRIPTION **2 ltrs**

Original

Copy

Other

REMARKS

Req. cys of all notices & other pertinent documents issued concerning Indian Point 3 as close to publication as possible. Also refers to comments of Nov. 30 on suspension issue & suggests, that in order to avoid a hearing request, the Commission issue a supplement to the decision not to suspend const. permit.

REFERRED TO

DATE

IS NOTIFICATION TO THE JCAE

RECOMMENDED? _____

Shapar f/action

12/9/71

Cys:

**Morris
ASLEP
PDR (50-286)**