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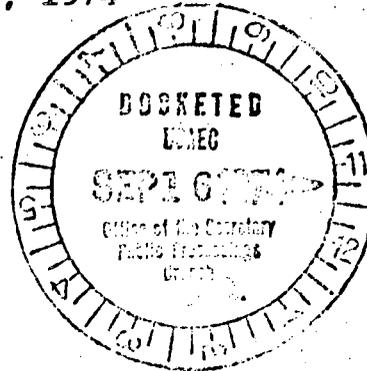
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September 12, 1974

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Samuel W. Jensch, Esq.
Chairman
Atomic Safety and Licensing Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Re: Consolidated Edison Company
of New York, Inc.
(Indian Point Station Unit No. 3)
Docket No. 50-286

Dear Chairman Jensch:

In response to your letter of August 7, 1974, we hereby submit a supplemental affidavit by Mr. William J. Cahill, Jr., concerning the remaining construction and testing items that must be completed prior to fuel loading at Indian Point Unit 3.

Your letter to the parties raised certain questions concerning the scope of the hearing in light of the Commission's July 16, 1974 Memorandum and Order, and the necessity for a Final NEPA Statement prior to consideration of the issuance of the requested license under § 50.57(c) of the Commission's regulations.

Based on our examination of the Commission's July 16, 1974, decision on the certified question in this case, CLI-74-28, RAI-74-7, 7, it is our position that there are no issues for the Board to consider other than those placed in contention by the parties in the manner provided in the Commission's Rules of Practice.

The Commission's action was a narrow one. As the decision points out, "[t]he fact that the [Licensing] Boards

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may inquire into matters that concern them should in no way be construed as a license to conduct fishing expeditions. . . . The power . . . should be exercised sparingly and utilized only in extraordinary circumstances where a Board considers that a serious safety or environmental issue remains." (Emphasis added.)

In this case there are no such extraordinary circumstances as would warrant the Board's exercise of its newly-announced power. There has been no suggestion of "serious safety or environmental" issues other than the environmental issues already in contention. Accordingly, the Board would be abusing its discretion by deciding that any uncontested issues should be aired.

The Board's other question is plainly answered by the Commission's regulations. Under the Notice of Consideration of Issuance of Facility License and Notice of Opportunity for Hearing in this case, 37 Fed. Reg. 22816 (1972), this proceeding is governed by paragraph C.3(a) of the former Appendix D to Part 50. That paragraph in turn refers to paragraphs D.2 and D.3 of Appendix D. Under paragraph D.2, a motion may be made for a § 50.57(c) authorization, and the Board may act thereon "where the final detailed statement required by paragraph 8 of section A has not been completed" The only limitation is that the Commission must approve any operation beyond 20% of full power. Accordingly, there is no impediment to the Board's consideration of the § 50.57(c) Motion and, subject to Commission approval of the portion in excess of 20% of power, issuance of the requested authorization.

Very truly yours,

LeBOEUF, LAMB, LEIBY & MacRAE

By Harry H. Voigt
Partner

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