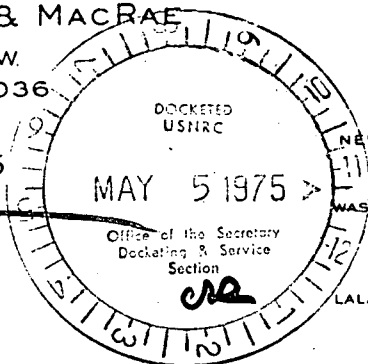


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April 30, 1975



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

Gentlemen:

On behalf of Consolidated Edison Company of New York, Inc. ("Applicant"), we wish to respond briefly to the statements made in the letter of April 25 from the New York State Atomic Energy Council ("the State") to you, as well as those contained in the Regulatory Staff's letter to you of April 24.

In the State's letter, Mr. MacDonald asserts that Section 274 of the Atomic Energy Act of the Commission's Rules of Practice give the State latitude to "choose from among various available forums, that forum which would most nearly serve its interest." Neither the statute nor the Regulations support the State's position. Section 274(1) of the Act and Section 2.715(c) of the Regulations give the State the right to participate in licensing cases. There is simply no provision that permits the State to select another forum. Accordingly, it is Applicant's position that the State must present whatever case it desires to make in this proceeding. If the State chooses not to proceed further before this Board, then it should be foreclosed from raising the same issue elsewhere.

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April 30, 1975  
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We agree with the Regulatory Staff that the present record is sufficient to support approval of a full-term operating license by this Board, and that no further inquiry is necessary if the State chooses not to proceed further. However, we cannot accept the Staff's position that the provisions of Section 2.760a with respect to matters "not put into controversy by the parties" do not apply. The State originally intervened in this case as a party under Section 2.714. Thereafter, the State withdrew its environmental contentions and joined in the Stipulation dated January 13, 1975. The State now appears as a non-party under Section 2.715. See Tr. 371. As a non-party, with no request for a hearing or contentions filed under Section 2.714, the State cannot create a "matter in controversy." There is no "matter in controversy" with respect to the Staff's seismic analysis, unless the Board, on its own motion, determines that findings and conclusions are required. It is our understanding that the Board has already done so (Tr. 728 [sic] -- should be 735).

We reiterate Applicant's position: The Board should promptly schedule a further hearing for the presentation of direct testimony by the State. If the State declines the opportunity to present such testimony, the Board should then close the record and proceed to an initial decision upon such matters as the Board, by order, determines require findings and conclusions.

Very truly yours,

*Harry H. Voigt*

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