

Consolidated Edison Company of New York, Inc.  
4 Irving Place, New York, NY 10003  
Telephone (212) 460-2533

April 30, 1986

Mr. C. James Holloway, Jr.  
Acting Director, License Fee  
Management Staff  
Office of Administration  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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U.S. N.R.C.  
LIC. FEE MGMT. BRANCH

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

Dear Mr. Holloway:

This is in response to your letter dated March 31, 1986 which purported to deny Consolidated Edison's (the "Company") request by letter dated March 10, 1986 that the Nuclear Regulatory Commission (the "NRC") review the propriety of a \$66,717 charge against the Company and extend the due date for its payment. The disputed invoice, No. E0390 dated February 12, 1986 (the "Invoice"), indicates that the charge is being asserted in connection with a Part 50 application said to have been filed by the Company on August 13, 1984 with respect to a "reactor vessel flaw". The Invoice indicated further that the assessment is being made pursuant to 10 CFR 170.12(c) and 170.21.

In our March 10 letter we explained that the Company's August 13, 1984 letter to your Office of Nuclear Reactor Regulation cannot fairly be construed as an application for license amendment, other required approvals, or a request for dismantling, decommissioning and termination of licensed activities, such as would make the disputed charges subject to a fee assessment under 10 CFR 170.12(c) and 170.21. Accordingly, we requested that the NRC review its records on this matter and extend the payment due date pending a final determination of the issue.

Your March 31 letter apparently concurs that there is no 10 CFR 170.12(c) basis for the claimed assessment. However, you now assert that the Company's August 13, 1984 letter falls under the "other required approvals"

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provisions of 10 CFR 170.12(e) and 170.21, which makes it subject to the same charge. Moreover, you now seek interest penalties for a claimed overdue balance.

We have reviewed the referenced regulations and believe that your reference to 10 CFR 170.12(e) is also in error, since the phrase "other required approvals" does not appear in that section but does appear in 10 CFR 170.12(c), the section originally cited in the Invoice. After a further careful review of the cited regulatory authority in 10 CFR, we continue to find no basis for the charge. Sections 170.12(c), 170.12(e) and 170.21 clearly impose fees only in connection with applications for approvals, required or otherwise. Under 10 CFR Part 170.3, an "application" is defined as "any request filed with the Commission for a permit, license, approval, exemption, certificate, other permission, or for any other service." (emphasis supplied)

As explained in our March 10 letter, the Company's August 13, 1984 letter was not a request of any sort to the NRC, but merely an informational communication regarding the Indian Point Unit No. 2 reactor vessel. Thus, under the controlling definition of an "application" as set out at 10 CFR 170.3(y), the August 13, 1984 letter cannot possibly be construed as an application request subject to fee assessment under either 10 CFR 170.12(c) or 170.12(e). While we agree that costs incurred by the NRC subsequent to receipt of and in connection with the processing of an application for approval are subject to reimbursement by the applicant, a reading of both 10 CFR 170.12(c) and 170.12(e) demonstrates that without the requisite license application, costs incurred by the NRC as a result of self-initiated investigations are properly the agency's responsibility.

In our August 13 letter discussing the reactor vessel condition we stated that "[w]e have concluded that this condition is acceptable under applicable ASME Code provisions and the reactor vessel can be returned to service as scheduled." That the NRC chose to commence an investigation into this matter, or that it made review of Company-supplied information and NRC approval a prerequisite to unit restart, is no justification for imposing a fee assessment against the Company in the absence of a licensee-initiated application as required by

the regulations. As you note in your March 31 letter, the Company made no such application regarding the reactor vessel issue prior to December 14, 1984. Even then, the application was made involuntarily and at the insistence of the NRC, which conditioned unit restart upon its submittal (see letter from Steven A. Varga to John D. O'Toole dated October 16, 1984, copy attached). Moreover, we have not found any regulatory authority which would support an inference that an NRC-initiated evaluation could be deemed analogous to such an application for a license amendment. Indeed, the case law in this area suggests that agency fees must be incident to a voluntary act by a licensee who derives a special benefit from the agency's service. See, Mississippi Power & Light v. NRC, 601 F.2d 223 (5th Cir. 1979), cert. denied, 444 U.S. 1102 (1980). We therefore conclude that the Company's August 13 letter cannot be construed as either an application or a request for approval justifying a fee assessment under 10 CFR 170.12(c), 170.12(e) or 170.21.

We view the distinction we make as more than semantic, since under the fee assessment arrangements which you propose, any variety of NRC expenses -- uninvited by a licensee and bearing no relationship whatsoever to a licensing action which a licensee initiated or sought -- could nonetheless be shifted from the NRC's budget onto the regulated community. This would be a result which we respectfully submit is at odds with the fee assessment regulations.

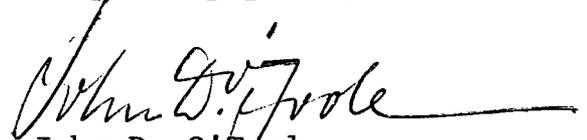
Finally, while substantial issues regarding the validity of this assessment are under discussion, we believe that it is inappropriate for the NRC to assert a claim for an overdue balance. We took the liberty of discussing this issue today with Ronald Smith in your Office of the Executive Legal Director who said that in his opinion the matters raised here merit further examination by the NRC and should at least be sufficient to warrant tolling of subsequent interest and penalty charges until there is a final NRC determination. We further submit that an extension of the due date for payment is also appropriate pending a final determination of the issue. This is particularly true if, as your March 31 letter indicates, the disputed Invoice sets forth an incorrect basis for assessment. We do not believe that it is

appropriate for the NRC to impose interest charges for late payment when the NRC itself admits that the Invoice in question was incorrect.

For the reasons set forth above, the Company again respectfully requests that you review your records and the cited regulations governing this matter and confirm that no assessments are authorized by these regulations for NRC-initiated evaluations unaccompanied by any licensee application. For the same reasons, the Company also questions the validity of a charge of \$6,116 set forth in your Invoice No. E0622 dated March 20, 1986, attributed to our alleged August 13, 1984 license application. Accordingly, we again request that you extend the due dates of these disputed amounts pending a final determination of the applicability of 10 CFR 170.12(c), 170.12(e) and 170.21 in the present situation.

If you wish, we would be pleased to confer with you in person in an attempt to resolve this matter quickly and amicably. I look forward to hearing from you.

Very truly yours,

  
John D. O'Toole  
Vice President

Attachment

cc: Ronald Smith, Esq.  
Office of the Executive Legal Director  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Senior Resident Inspector  
U.S. Nuclear Regulatory Commission  
P.O. Box 38  
Buchanan, NY 10511

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

October 16, 1984

Docket No. 50-247

Mr. John D. O'Toole  
Vice President  
Consolidated Edison Company of New York  
4 Irving Place  
New York, N. Y. 10003

Dear Mr. O'Toole:

SUBJECT: REACTOR VESSEL FLAW AT THE INDIAN POINT NUCLEAR  
GENERATING PLANT, UNIT NO. 2 (IP-2)

On August 5, 1984, you identified a reactor vessel flaw which was uncovered during the 10 year inservice inspection of the vessel. Subsequently, by letter dated August 16, 1984 you were advised that NRC review and approval regarding this flaw would be required prior to the IP-2 resumption of power operation at the completion of the present refueling outage.

By letters dated August 16, 1984 and September 19, 1984 and during meetings of August 11, 1984 (Bethesda, Md.), August 15, 16, 17, 1984 (Pittsburg, Pa.), and October 3, 1984 (Bethesda, Md.) additional information was requested. You responded by letters dated September 7, 1984, September 21, 1984, October 10, 1984 and October 12, 1984.

We have reviewed the information requested and the enclosed safety evaluation (Enclosure 1) concludes that the flaw size is well within the maximum flaw size as calculated by fracture mechanics analyses. Based on the conclusions of our Safety Evaluation, restart of Indian Point Unit 2 is approved.

However, we are unable to conclude that the flaw size is less than ASME Section XI allowable. Consequently, augmented inservice inspection of the Indian Point 2 pressure vessel is appropriate during the next 10 year IP-2 inservice inspection program.

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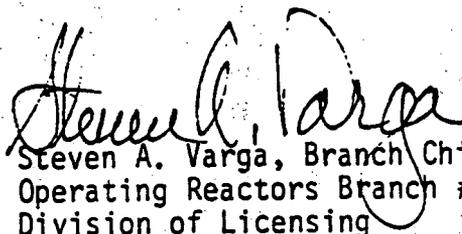
Mr. John D. O'Toole

- 2 -

October 16, 1984

As you and I agreed, within 60 days of the date of this letter, you will submit a license amendment request confirming the requirement for augmented inservice inspections of the reactor vessel. The wording of the appropriate technical specification which was mutually agreed upon is enclosed (Enclosure 2). If our understanding is incorrect please inform me before startup.

Sincerely,

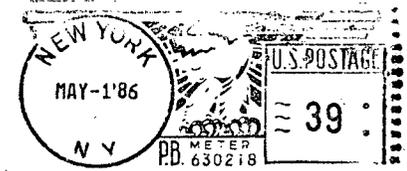
  
Steven A. Varga, Branch Chief  
Operating Reactors Branch #1  
Division of Licensing

Enclosures:  
As stated

cc w/enclosures:  
See next page

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Edison**

*Carlman 11300*  
Consolidated Edison Company of New York, Inc.  
4 Irving Place, New York, NY 10003



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Edison**

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New York, NY 10003

Mr. C. James Holloway, Jr.  
Acting Director, License Fee  
Management Staff  
Office of Administration  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

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DISTRIBUTION  
 Docket File w/o encl.  
 PAD-3 Rdg. w/o encl.  
 C. Vogan w/o encl.  
 M. Slosson w/o encl.

May 15, 1986

DOCKET NO(S). 50-247

Mr. John D. O'Toole, Vice President  
 Nuclear Engineering and and Quality Assurance  
 Consolidated Edison Company of New York, Inc.  
 4 Irving Place  
 New York, New York 10003

SUBJECT: Indian Point Nuclear Generating Unit 2

The following documents concerning our review of the subject facility are transmitted for your information.

- Notice of Receipt of Application, dated \_\_\_\_\_.
- Draft/Final Environmental Statment, dated \_\_\_\_\_.
- Notice of Availability of Draft/Final Environmental Statement, dated \_\_\_\_\_.
- Safety Evaluation Report, or Supplement No. \_\_\_\_\_, dated \_\_\_\_\_.
- Notice of Hearing on Application for Construction Permit, dated \_\_\_\_\_.
- Notice of Consideration of Issuance of Facility Operating License, dated \_\_\_\_\_.
- Monthly Notice; Applications and Amendments to Operating Licenses Involving no Significant Hazards Considerations, dated \_\_\_\_\_.
- Application and Safety Analysis Report, Volume \_\_\_\_\_.
- Amendment No. \_\_\_\_\_ to Application/SAR dated \_\_\_\_\_.
- Construction Permit No. CPPR- \_\_\_\_\_, Amendment No. \_\_\_\_\_ dated \_\_\_\_\_.
- Facility Operating License No. \_\_\_\_\_, Amendment No. \_\_\_\_\_, dated \_\_\_\_\_.
- Order Extending Construction Completion Date, dated \_\_\_\_\_.
- Other (Specify) Bi-weekly Notice covering period May 7, 1986. Expiration date for hearing requests and comments June 6, 1986.

Division of PWR Licensing-A  
 Office of Nuclear Reactor Regulation

Enclosures:  
 As stated

cc:

OFFICE	PAD-3						
SURNAME	C. Vogan:bs						
DATE	05/17/86						

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 C. Vogan w/o encl.  
 M. Slosson w/o encl.

May 1, 1986

DOCKET NO(S). 50-247  
 Mr. John D. O'Toole, Vice President  
 Nuclear Engineering and Quality Assurance  
 Consolidated Edison Company of New York, Inc.  
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 New York, New York 10003

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- Facility Operating License No. \_\_\_\_\_, Amendment No. \_\_\_\_\_, dated \_\_\_\_\_.
- Order Extending Construction Completion Date, dated \_\_\_\_\_.
- Other (*Specify*) Bi-weekly Notice covering period April 23, 1986. Expiration date  
for hearing requests and comments May 23, 1986.

Division of PWR Licensing-A  
 Office of Nuclear Reactor Regulation

Enclosures:  
 As stated

cc:

OFFICE	PAD-3 <i>W</i>						
SURNAME	C. Vogan;bs						
DATE	05/V/86						