

John D. O'Toole
Vice President

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

Letter No. 81-149
September 11, 1981

Re: Indian Point Unit No. 1
Docket No. 50-3

Mr. Harold R. Denton, Director
Office of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555



Dear Mr. Denton:

On December 19, 1980, Consolidated Edison Company of New York, Inc. (Con Edison) submitted a check payable to the Commission in the amount of \$3,690, constituting the "indemnification fee" for Indian Point Unit 1 under License DPR-5 for the period December 4, 1980 to December 3, 1981. As stated in the letter transmitting the check, the payment was made under protest. It is Con Edison's position that only \$100 should be charged for that period of indemnification. Thus, payment was made without prejudice to Con Edison taking future action, legal or otherwise, to obtain a refund of this and previously submitted indemnity fees.

Indian Point Unit 1 has been shutdown since October 31, 1974 in compliance with the Commission's rules and regulations, and has been completely defueled since January 30, 1976. Authority to operate Indian Point Unit 1 as a nuclear reactor was revoked by the Commission on June 19, 1980 in compliance with the directive contained in the Commission's Order dated February 11, 1980. A decommissioning plan for the unit was submitted to the NRC on October 17, 1980.

The Commission has precluded operation of this reactor, and the Unit is now physically incapable of such operation. The thermal capacity originally authorized in our license is meaningless and should not be used as the basis for determining the indemnity fees since Con Edison is not currently authorized to operate Indian Point Unit 1 as a reactor. Since the risk for which Con Edison is receiving indemnification is for all intents and purposes non-existent, the chargeable fee should be the minimum \$100.

If you do not concur with our conclusions, kindly consider this letter as Con Edison's application, pursuant to 10 CFR 140.8, for the granting of an exemption from the requirement to pay an indemnity

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fee greater than \$100 pursuant to 10 CFR 140.7(a). The basis for this application is that a licensee should be exempted when that licensee is no longer authorized to operate a reactor under its license.

Con Edison also reiterates its request that the minimum indemnity fee be applicable to Indian Point Unit 1 starting October 31, 1974, when the plant was shut down in compliance with the Commission's directive, and a refund of excess fees paid since December 1973 be made. This request was originally made in Con Edison's letter of December 28, 1976, a copy of which is attached.

Very truly yours,

William P. Bennett for John O'Toole

John D. O'Toole
Vice President

attachment

cc: Mr. Jerome Saltzman, Chief
Antitrust and Indemnity Group
Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555