



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

August 11, 1982

Ellyn R. Weiss, Esquire
Union of Concerned Scientists
1346 Connecticut Avenue, N.W.
Suite 1101
Washington, DC 20036

IN RESPONSE REFER
TO FOIA-82-281

Dear Ms. Weiss:

This is in response to your letter dated June 24, 1982 in which you requested, pursuant to the Freedom of Information Act, three categories of records regarding documentation of contacts between the Consolidated Edison Company (Con Ed) and/or the Power Authority of the State of New York from September 1979 to date.

With respect to items 1 and 3, the NRC has located no records subject to your request.

In 1981, the NRC and the United States brought suit against Con Ed in the Southern District of New York in order to collect a civil penalty imposed as a result of the company's conduct during and after an October 17-20, 1980 water spill accident in the Unit 2 vapor containment. That lawsuit was recently settled.

The documents listed on the appendix are notes and correspondence involving that lawsuit. Documents 17 through 21 are being placed in the NRC Public Document Room (PDR), 1717 H Street, N.W., Washington, DC. Documents 1 through 16 contain attorney work-product, attorney-client privilege, or deliberative process privilege information and are being withheld from public disclosure pursuant to Exemption (5) of the Freedom of Information Act (5 U.S.C. 552(b)(5)) and 10 CFR 9.5(a)(5) of the Commission's regulations. These documents contain no reasonably segregable portions.

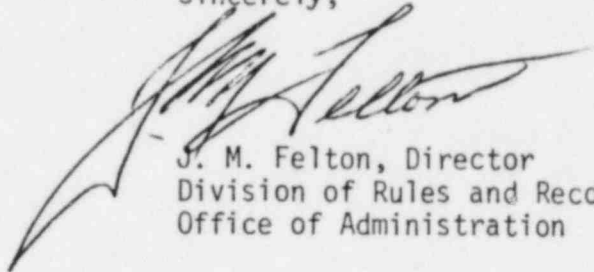
Pursuant to 10 CFR 9.15 of the Commission's regulations, it has been determined that the information withheld is exempt from production or disclosure and that its production or disclosure is contrary to the public interest. The person responsible for this denial is Mr. Leonard Bickwit, Jr., General Counsel.

Ellyn R. Weiss, Esquire

-2-

This denial may be appealed to the Commission within 30 days from the receipt of this letter. Any such appeal must be in writing, addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision."

Sincerely,

A handwritten signature in black ink, appearing to read "J. M. Felton". The signature is fluid and cursive, with a long, sweeping underline that extends to the left.

J. M. Felton, Director
Division of Rules and Records
Office of Administration

Enclosure: As stated

APPENDIX

1. Undated notes by P. Crane, NRC attorney, on a telephone call from B. Brandenburg, Con Ed attorney, stating Con Ed's preliminary proposed terms for settling the lawsuit. Other notes on the page record the comments, by phone, of J. Lieberman, ELD attorney, on those proposed terms. These notes constitute attorney work-product under Exemption 5.
2. December 7, 1981 letter from M. Chopko, NRC attorney, to G. Gwathmey, Assistant U.S. attorney, commenting on Con Ed's proposal to strike jury demand. This letter was written by the NRC in its role as client to the Justice Department, who represented it in this lawsuit. It contains the confidences of the client regarding Con Ed's demand. As such it falls within the attorney-client privilege under Exemption 5.
3. February 11, 1982 note from M. Chopko to S. Campbell, Assistant U.S. attorney, regarding affidavits for opposition to motion for protective order. This note was also written by the NRC in its role as client to the United States and contains the recommendations of the client. As such it falls within the attorney-client privilege of Exemption 5.
4. October 8, 1981 memo to files from M. Chopko commenting on status conference held October 6, 1981 in chambers. This document qualifies as attorney work-product under Exemption 5.
5. March 4, 1982 letter to S. Campbell from M. Chopko and P. Crane commenting on Con Ed's representations to magistrate. This document contains the confidences of the NRC as a client and falls under the attorney-client privilege.
6. March 10, 1982 handwritten notes of M. Chopko regarding pre-sanctions (discovery) conference and negotiations with Con Ed. This document constitutes attorney work-product.
7. April 30, 1982 memo from M. Chopko to E. Slaggie outlining latest Con Ed terms for settlement. This document also constitutes attorney work-product.
8. May 4, 1982 memo to Commission from E. Slaggie - Negotiations to Settle Collection Action (Limited Distribution). This document contains the advice, opinions and recommendations of the General Counsel regarding the ongoing attempts to settle this case. It is therefore a pre-decisional document withholdable under Exemption 5. It contains no segregable portions not already available in the public record.

APPENDIX

9. May 17, 1982 letter to S. Campbell from M. Chopko commenting on the proposed NRC position in the settlement. This document contains the confidences of the client to its attorney and thus falls under the attorney-client privilege.
10. February 24, 1982 letter to S. Campbell from M. Chopko commenting on the first proposal for settlement and negotiations strategy. This document also falls under the attorney-client privilege.
11. May 25, 1982 note from S. Campbell to M. Chopko enclosing the Con Ed settlement proposal. This document was generated as part of the attorney-client dialogue in this case and NRC, the client, finds that it is privileged.
12. April 30, 1982 handwritten notes of pre-sanctions and settlement meeting by M. Chopko. This is attorney work-product.
13. June 3, 1982 memo to Commission from L. Bickwit outlining tentative settlement. This document contains the advice, opinions and recommendations of the General Counsel on the tentative settlement. It thus is a pre-decisional document withholdable under Exemption 5. It contains no segregable portions.
14. April 28, 1982 letter to S. Campbell from M. Chopko enclosing comments on Con Ed's discovery responses and negotiating points and proposed discovery. This falls under the attorney-client privilege as it represents the confidential communications of client to attorney.
15. June 7, 1982 letter to S. Campbell from M. Chopko enclosing proposed letter to B. Brandenburg (Con Ed) in settlement. This falls under the attorney-client privilege as it represents the confidential communications of client to attorney.
16. Undated memorandum (written approximately May 3, 1982) from P. Crane, NRC attorney, to Leonard Bickwit, Jr., discussing the history of the lawsuit and the negotiations leading to the proposed settlement then under review. These notes constitute attorney work-product under Exemption 5.
17. June 9, 1982 letter from B. Brandenburg to L. Bickwit on terms of settlement. Release.
18. June 9, 1982 letter Bickwit to Brandenburg on terms of settlement. Release.

APPENDIX

19. June 10, 1982 Stipulation and Order. Release.
20. March 12, 1982 letter to P. Freuling (Con Ed) from M. Chopko commenting on first set of responses to discovery and understanding reached at March 10, 1982 meeting. Release.
21. Undated note from P. Freuling to M. Chopko enclosing first responses on discovery. Release.

17

Consolidated Edison Company of New York, Inc.
4 Irving Place, New York, N.Y. 10003
Telephone (212) 460-4333

June 9, 1982

Leonard Bickwit, Jr., Esq.
General Counsel
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: United States of America and United States
Nuclear Regulatory Commission v. Consolidated
Edison Company of New York, Inc.
Docket No. 81 Civ. 4347 (GLG)

Dear Mr. Bickwit,

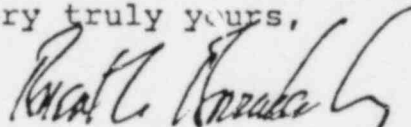
This letter relates to our continuing dispute over the NRC's enforcement actions growing out of the December 11, 1980 Notice of Violation and Proposed Imposition of Civil Penalties, EA 81-11. As you know, we have vigorously contested the NRC's claims of liability for civil penalties, based upon what we believe to have been erroneous applications of NRC regulations, the lack of clarity of the interim enforcement policy which formed the basis for the penalty claim, and the fact that the NRC had ratified the course of conduct at issue through its oversight activities. Moreover, the NRC's own conclusion that the events complained of lacked safety significance would preclude the imposition of a civil penalty under the Commission's own enforcement guidelines. While we do not retreat from these positions we have taken throughout this dispute, and do not acknowledge our responsibility for any civil penalties as a result of the events in question, the extensive litigation to date has led us to conclude that the costs of carrying the matter to a conclusion would far exceed the amount in dispute. Furthermore, continued litigation would create the likelihood of substantial distraction to Company management.

Consequently, pursuant to the understanding reached with the Office of the United States Attorney for the Southern District of New York, our payment, which is enclosed, constitutes full accord and satisfaction of all civil penalties and other NRC liabilities which have been or may be asserted against Consolidated Edison, or its officers, trustees or employees, under either the NRC's December 11, 1980 Notice of Violation and Proposed Imposition of Civil Penalties, the March 2, 1981

8206170250
PDR/LPAR

Order Imposing Civil Monetary Penalties, or the events occurring in or about October 1980 as referred to in the foregoing documents.

Very truly yours,



Brent L. Brandenburg

Enclosure

cc: Mr. Richard C. DeYoung
Director
Office of Inspection & Enforcement

50-235
219

Con
Edison

Payable At

Bank of New York
County Trust Region

004274

To the Order of

U. S. TREASURY
WASHINGTON D. C. 20555

Date

Amount

06/8/82*****\$185,000.00*****

Lawrence F. Hughes
Authorized Signature

⑈00004274⑈ ⑆021902352⑆ 01⑈103946⑈



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

#18

JUNE 9, 1982

Brent L. Brandenburg, Esq.
Assistant General Counsel
Consolidated Edison Company
of New York
4 Irving Place
New York, NY 10003

SUBJECT: UNITED STATES OF AMERICA AND UNITED STATES NUCLEAR
REGULATORY COMMISSION V. CONSOLIDATED EDISON CO.
OF NEW YORK, INC., DOCKET NO. 81 CIV. 4347 (GLG)

Dear Mr. Brandenburg:

This will acknowledge receipt of Consolidated Edison's certified check for \$185,000 payable to the United States Treasury, in settlement of a \$210,000 civil penalty proposed by the U.S. Nuclear Regulatory Commission on December 11, 1980 (Ref.: NRC EA-81-11). The Commission believes that the Company's conduct merited the imposition of a civil penalty, notwithstanding the fact that the underlying events did not result in any endangerment of the health and safety of the public. For purposes of measuring future enforcement action, the Commission will count the October 17-20, 1980 events as three Severity Level III violations, one each in the activity areas of failure to report an accident in a timely manner, management control system not functioning in an acceptable manner, and improper use of shift technical advisors. The Commission notes that the Company's management system had improved sufficiently such that the NRC staff was satisfied there was reasonable assurance that the reactor could resume operation in 1981.

Sincerely,

A handwritten signature in cursive script, appearing to read "L. Bickwit, Jr.".

Leonard Bickwit, Jr.
General Counsel

8206190257
PDR/LPDR

U
Goelbel #19
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
UNITED STATES NUCLEAR REGULATORY COMMISSION,

Plaintiffs,

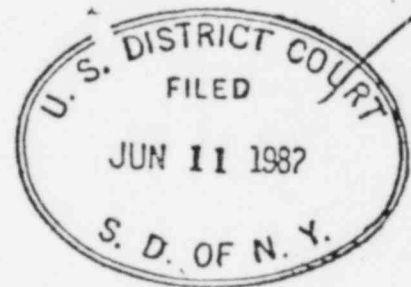
-against-

CONSOLIDATED EDISON CO. OF NEW YORK,

Defendant.

STIPULATION & ORDER

81 Civ. 4347 (GLG)



IT IS HEREBY STIPULATED AND AGREED, by and between
the undersigned attorneys of record for the parties hereto, that
the within action is hereby discontinued with prejudice, each party
to bear its own costs.

Dated: New York, New York

June 9, 1982

JOHN S. MARTIN, JR.
United States Attorney for the
Southern District of New York,
Attorney for Plaintiffs

By:

Susan Millington Campbell
SUSAN MILLINGTON CAMPBELL
Assistant United States Attorney
Office and Post Office Address:
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007
Tel. No.: (212) 791-9076

BRENT BRANDENBURG, ESQ.
Attorney for Defendant

8796170262
PDR/LPDR

By: Brent L. Brandenburg (P)

Office and Post Office Address:
4 Irving Place
New York, New York 10003

SO ORDERED: JUNE 10 - 1982

Ernest L. Smith
U. S. D. J. WF