

John D. O'Toole
Vice President

Consolidated Edison Company of New York, Inc.
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Telephone (212) 460-2533

May 8, 1984

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

Mr. Thomas T. Martin, Director
Division of Engineering and Technical
Programs
U. S. Nuclear Regulatory Commission
Region I
631 Park Avenue
King of Prussia, Pa. 19406

Dear Mr. Martin:

We write regarding your letter of December 15, 1983 and the Notice of Violation which accompanied your letter of September 9, 1983. We continue the view that there was no item of non-compliance with NRC requirements, and for the reasons set forth below respectfully request that the NRC's position in this matter again be reevaluated and that the Notice of Violation be rescinded.

In addition, we have learned that key information, available for the state of South Carolina in making their determination that no violation occurred, may not have been known by your staff prior to December 15, 1983. The licensed material was fixed and for the reasons described below could not have possibly become unfixed.

The Notice of Violation suggests that in connection with a shipment of license material on July 26, 1983, provisions of 49 CFR 173.24 were not complied with. That section provides in pertinent part that:

"(a) Each package used for shipping hazardous materials under this subchapter shall be so designed and constructed, and its contents so limited, that under conditions normally incident to transportation -

- (1) There will be no significant release of the hazardous materials to the environment; [and]
- (2) The effectiveness of the packaging will not be substantially reduced...."

We submit that the circumstances of the July 26 shipment conclusively establish the effectiveness of the packaging could not possibly have been reduced, notwithstanding the two puncture holes which form the basis for the claimed violation. As indicated in our September 13, 1983 letter to the South Carolina Department of Health and Environmental Control (copy enclosed), the licensed material comprising this shipment consisted of

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scrap steel, which had undergone two successive decontamination washes at the site prior to shipment. There was thus no possibility that the contamination could have become unfixed, with resultant leakage. Since the two container pin-hole punctures to which you refer could not possibly have permitted any release of the licensed material within, there could have been no reduction in the effectiveness of the packaging, much less the "substantial" reduction which would be necessary to sustain a violation.

Your December 15 letter was therefore not applicable in suggesting that "experience with similar packages and contents indicate potential for releases of radioactivity under these conditions." In fact, surveys of the container upon arrival at the disposal site verified that there was no violation of regulatory limits for contamination on the exterior of the packaging. We realize that your office was not informed in our October 9, 1983 letter of these circumstances, and thus could have assumed that a potential for a release existed, which for the reasons stated was not in fact the case.

We believe that subsection (c) (6) of 49 CFR 173.24 upon which the NRC relies in the Notice of Violation offers a close analogy to the present circumstances. It provides that:

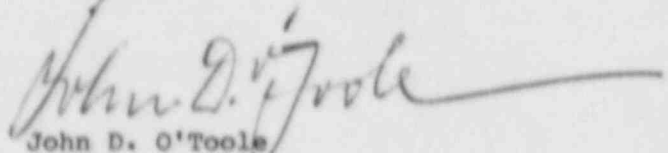
"Closures shall be adequate to prevent inadvertent leakage of the contents under normal conditions incident to transportation..."

Other sections of the applicable regulations even permit the use of "fiberboard boxes" under certain conditions (49 CFR 173.25) so long as the principal objectives of preventing significant releases and substantial reduction in packaging effectiveness are assured. The absence of any NRC observation necessitates that the licensee and the South Carolina officials be depended upon for the basic underlying facts of this occurrence. These circumstances and facts preclude either a significant release or a substantial reduction in packaging effectiveness. There can therefore be no basis for a finding that a violation of 49 CFR 173.24 occurred.

In light of the packaging circumstance and the condition of the licensed materials as described above, we accordingly request that you reevaluate whether the effectiveness of the packaging in preventing a significant release of hazardous materials to the environment was in fact substantially reduced in this instance. We emphasize that our conviction that there was no violation of NRC regulations does not diminish our commitment to effective and thorough waste handling procedures; however, we must oppose the imposition of a violation which we are convinced is

unwarranted in this instance. If you desire any further information regarding this event or the circumstances which we have set forth above, please contact us.

Very truly yours,


John D. O'Toole
Vice President

cc: Mr. Thomas Foley, Senior Resident Inspector
U. S. Nuclear Regulatory Commission
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