

SEP 17 1974

Docket No. 50-286

D. R. Muller, Assistant Director for Environmental Projects, L
THRU: G. W. Knighton, Chief, Environmental Projects Branch No. 1, L

FEDERAL POWER COMMISSION HEARING ON CONSOLIDATED EDISON'S CORNWALL
(STORM KING) PUMPED STORAGE FACILITY

I. CONGRESSIONAL HEARINGS BY THE DINGELL SUBCOMMITTEE ON THE STORM
KING PROJECT

On February 19-20, 1974, the Storm King Mountain Project hearings was held before the Subcommittee on Fisheries and Wildlife Conservation and the Environment, chaired by R^{ep}. John Dingell (N.Y.), of the House Committee on Merchant Marine and the Fisheries. The purpose of the hearing was to consider the nature of the impact of the Storm King Project on the fish and wildlife resources of the Hudson and to determine whether the problems of the construction and operation of the project had been adequately considered in other hearings and to find out where the decision making process has been broken down. The three laws which Dingell's Committee referred to in the hearing were the Fish and Wildlife Coordination Act, NEPA, and the Endangered Species Act. Testimony was presented by Rep. Hamilton Fish, Hon. Nathaniel P. Reed, (DOI), J. McCann (of Carlson-McCann Report) (DOI), G.S.P. Bergen (Con Ed), H. Woodbury (Con Ed), J. Lawler (QLM), witnesses from the Scenic Hudson Preservation Conference, HRFA, Dr. Charles Hall (BNL), C. P. Goodyear and A. Eraslan, (ORNL), A letter from Senator E. Kennedy (Mass.) regarding the concerns of the fishermen along the Massachusetts coast was also read into the record. J. Clark, Goodyear, Eraslan, and Hall appeared as a panel. No cross examination of the witnesses occurred. Only questions from the Dingell Committee were asked of the panel. I attended the February 19 hearing and heard the testimony presented of the witnesses. I also have copies of the transcript with all testimonies for the hearing. Copies of the testimonies have been sent to M. Karman and F. Gray in OGC.

II. THE FPC HEARINGS ON STORM KING PROJECT

A. Historical Summary

Construction of the Project was first approved and licensed by the FPC in 1965. The decision to issue a license was over-

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turned by the Second Circuit Court of Appeals (Scenic Hudson Preservation Conference vs FPC, 1965) in which the Court ruled that greater consideration to the impact on the fishery had to be taken into account. To comply with the Court rulings, FPC required the Carlson-McCann fishery study be carried out during 1965-1968. As required by the Court, the FPC held hearings in 1967 and 1969 and after considering all feasible alternatives issued a new license in August 1970 at which time the FPC ruled that limited damage to fish (4% impact on the striped bass) would occur based on the Carlson-McCann study. Then the SHPC and HRFA continued litigation but in October 1971 the Second Circuit Court of Appeals ruled that there was "substantial evidence" to support the FPC's findings that the impact was small, and that the FPC had complied with NEPA and the Federal Power Act. In June 1972, the U. S. Supreme Court refused to rehear the case on appeal. Con Ed announced in August 1973 that the construction of the project would begin in the fall of 1973, after the Board of Trustees approved purchase of part of the land area from Harvard University. A water quality certificate (21b) was also issued by the NYS Dept. of Environmental Conservation in August 1971.

B. AEC - FPC Interaction

In February and March 1973, the intervenors filed motions with the FPC seeking the holding of further hearings for the purpose of determining whether the plant should be prohibited from operating during the months of May, June, and July each year because of the alleged adverse effect on the fisheries and whether the Project could be justified based on benefit-cost analysis of alternate fuel systems (gas turbines). In March 1973, HRFA mentioned the "new" information by Goodyear in the IP case which should be brought into the FPC case. The FPC denied these motions on May 31, 1973. The intervenors have appealed such denial to the U. S. Second Circuit Court of Appeals on February 11, 1974.

In September 1973, Senator A. Ribicoff approached AEC requesting that ORNL should investigate the importance of the Storm King impact on the New England fisheries. Goodyear at ORNL conducted a two-week study which refuted the conclusions reached in the Carlson-McCann report and found that the impact of the pumped storage facility ranged from 25-75%. This information was presented before the Dingell Committee hearings in February 1974. Goodyear presented three or four different testimonies on this subject at that time. In addition, the intervenors filed a

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petition in December 1973 with the FPC to take into account this new ORNL evidence, but the FPC denied the petitions on February 5, 1974. The opponents have filed an application dated March 2, 1974, for rehearing of FPC's denial of these petitions.

C. New FPC Hearings

With the new evidence presented at the Dingell Committee hearing and the pressures brought on by various Senators and Representatives and other, renewed interest to reopen the FPC case on Storm King has recently developed. A prehearing conference was called by the FPC Administrative Law Judge William Levy (Hearing Examiner) on August 19, 1974. At that time the HFRA, SHPC, and the NYS Attorney General alerted Judge Levy of the work going on at Indian Point by the ORNL team members. The names of Eraslan, Goodyear Hall were brought to the attention of Judge Levy. Since the intervenors could not finance the expenses of these men to participate in the hearing, the FPC said that it would subpoena these men as witnesses for the FPC. The names of W. VanWinkle and S. Christensen were also mentioned by the Attorney General. The FPC and F. Gray, OGC, are working on an agreement regarding the participation of Eraslan, and the ORNL team members.

Con Ed is to supply a lot of ecological reports by September 19, 1974, some of which we do not have. The hearing will be held on October 8, 1974, in the FPC building on N. Capitol Street, Washington, D. C. It is expected that the hearing will be completed in October and Judge Levy will make his determination in November to the Federal Power Commission. The Commission is to finalize its decision by January 1, 1975.

P. Skinner, Attorney General's office, will send me some of the information involved in the case. In addition, Con Ed's responses to the NYS Attorney General's interrogatories dated May 10, 1974 will also be sent. A meeting to discuss the FPC case and the status of the ORNL witnesses involved has been held at ORNL on September 10, 1974. Wilson Hoard of Union Carbide will be the Attorney for the ORNL witnesses. O major concern

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to the AEC is the effect of the FPC hearing on the schedule for issuance of the PES for Indian Point. We discussed this point on September 10, 1974. A trip report will outline the discussion of this meeting.

Original signed by
M. J. Oestmann

MS

Mary Jane Oestmann, Project Manager
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