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Docket No. 50-286

Note to: Joseph F. Scinto, Assistant Chief Hearing Counsel

INDIAN POINT UNIT NO. 3 - CONSOLIDATED EDISON'S INTERROGATORIES TO THE REGULATORY STAFF

On December 28, 1973, the applicant filed a set of interrogatories for the staff to respond to by February 15, 1974 under Sections 2.740b and 2.741. In regard to your note of January 8, 1974 to A. Giambusso, we have reviewed the three options you listed and believe the third option would be preferable. Informal request for information and production of documents under discovery would be similar to the situation followed in the IP-2 hearing, in which the applicant requested such information on October 20, 1972.

On January 14, 1974, M. J. Oestmann, the Environmental Project Manager visited the ORNL team to determine the extent of effort required to comply with such a request and the date when responses will be available. In certain questions, production of documents is required and in other questions, some new calculations may have to be made to prepare a response. The team leader is preparing an evaluation of effort and schedule required to provide the information informally.

Original signed by
Gordon K. Dicker

For

Daniel R. Muller, Assistant Director
for Environmental Projects
Directorate of Licensing

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JAN 25 1974

Docket Nos. 50-3
50-247
50-286✓

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

SUMMARY OF HIGHLIGHTS OF MAJOR EVENTS IN THE INDIAN POINT UNIT NO. 2
HEARING AND LICENSING ACTION REGARDING ENVIRONMENTAL ISSUES

I. Summary of Major Events in FY 1972 - 73

After the Regulatory staff published its Final Environmental Statement for the highly controversial Indian Point Unit No. 2 case in September 1972, the applicant, Consolidated Edison Company of New York, Inc., as well as the Intervenor, the Hudson River Fishermen's Association, and New York State submitted a list of contentions and topics of controversy and extensive rebuttal testimony at the end of October 1972. Much of the information the applicant submitted was updated information (1971-72) which was not available to the staff at the time of the preparation of the FES. Extensive cross examination of the new material had to be prepared for the hearing.

The hearing began on December 4, 1971 and, although the original intent was to complete the hearing on environmental issues by the end of January 1973, it ended on April 26, 1973, and involved thousands of pages of testimony from all parties in the proceeding. A list of the staff's contributions is enclosed in Attachment I.

Major subjects of contention dealt with:

- (a) Magnitude of biological impact, primarily the entrainment of striped bass eggs, larvae and young juveniles from once-through cooling.
- (b) The ecological study program by Texas Instruments Company and stocking of striped bass
- (c) The importance of the Mid-Atlantic fishery
- (d) The closed-cycle cooling system alternative, costs, and timing of its installation.
- (e) The benefit-cost analysis of the various cooling systems.

Of importance in the hearing was the inclusion of the impacts from other non-nuclear plants on the Hudson River fishery. Thus a regional approach was taken in which cumulative effects of all

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the steam-generating plants on the lower Hudson estuary were established. No impacts from Indian Point Unit No. 3, however, were included.

On May 17, 1973, the applicant issued its proposed Findings of Fact and Conclusions of Law, followed by those from the intervenors and the staff on June 11, 1973. It appeared that the positions on all major issues taken by each party had remained essentially the same as at the start of the hearing. The applicant also summarized its Findings on June 1, 1973, and responded to the Findings from the other parties on June 25, 1973.

In addition, after three meetings in the Spring 1973 with the applicant, a set of proposed Environmental Technical Specifications was sent on June 30, 1973, to the ASLB and the parties for their review and comment.

During 1972 - 73 the applicant had a series of construction difficulties in getting the plant ready for operation. The fuel had to be removed and replaced with pre-pressurized fuel elements. Several components also had to be replaced. Although the ASLB issued its Initial Decision for a testing license on July 14, 1972, the plant was not ready for operation until April 1973. On April 20 and April 27, 1973, the applicant received operating licenses to test up to 20% and 50% power, respectively. Because of additional difficulties regarding a jammed door to provide entry into the containment building, the plant did not go critical until May 22, 1973. The testing period began and continued until August 1973.

II. Summary of Major Events During July 1973 to January 1974

- July 2, 1973 - Oral arguments on each party's position in the Findings of Fact and comments on the Environmental Technical Specifications designed to limit impacts during the interim period prior to operation with cooling towers.
- July 6, 1973 - EPH was informed by the NYS Department of Conservation of damage of the discharge canal structure.
- July 20, 1973 All parties had opportunity to comment further on the ETS.

- July 23, 1973 - RO informed EPM of damage to the sheet piling and adjustable gates of discharge canal, requiring reinforcement of the wall and replacement of steel plates on the submerged discharge structure.
- July 27, 1973 - Applicant submits motion for steady-state operation up to 50% power and testing up to 100%.
- August 1, 8, 16, 1973 - N.Y.S. Attorney General informs ASLB and parties that applicant does not have a valid water quality certification under Section 401 of FWPCA of 1972, although it had received a 21(b) certificate in December 10, 1970. It had received only a temporary 401 certificate for the testing license on April 24, 1973.
- August 7, 1973 The ASLB issued its Initial Decision for 50% steady-state operation but denied testing up to 100% power.
- August 9, 1973 Amendment No. 3 to OL DPR-26 Issued including the ETS of August 7, 1973.
- August 10, 1973 Parties submitted exceptions to the Initial Decision and applicant submitted a motion to test up to 99% power.
- August 15, 1973 - September 12, 1973 - Extensive legal briefs exchanged among the parties dealing with validity of 401 water quality certification and quality assurance.
- September 11, 1973 - Interim 401 water quality certificate issued by N. Y. S. for 50% steady-state operation.
- September 12, 1973 - Hearing was reopened to discuss the water quality certification for full power operation and quality assurance.
- September 24, 1973 - NYS grants applicant a 401 water quality certificate for full power operation and full flow.
- September 25, 1973 - ASLB issues its Initial Decision for Full Power Operation, supporting staff's requirement for closed-cycle cooling by May 1, 1978 (rather than staff's January 1, 1978 date as in FES)

D. R. Muller

- 4 -

September 28, 1973 - Applicant receives Amendment 4 to OL DPR-26 for full power, full term operation.

October 1, 1973 - Parties filed Exceptions to Initial Decision before the ASLAB Con Ed submits 23, and intervenors, 14 exceptions.

October 29, 1973 - Supporting briefs for exceptions filed before the ASLAB.

October 16, 1973) ASLB order to correct citations in the record
November 7, 1973) ASLAB 159 order citations in the record for the
December 5, 1973) supporting briefs on exceptions and order to check files for exhibits and other submittals in the record.

November 26, 1973 - Responsive briefs filed by parties on each other's exceptions and supporting briefs.

December 10, 1973 - Staff files its brief in opposition to other parties exceptions and supporting briefs.

December 21, 1973 - ASLAB orders oral arguments to be held on January 9, 1974 and to focus on five items of controversy.

January 1, 1973 Applicant submits its Plan of Action as required by Amendment 4 to O.L.

January 9, 1973 - Oral arguments presented by parties and ASLAB plans to send the staff a series of questions on specific technical issues.

Although the ASLB's Initial Decision of September 25, 1973 favored the staff's requirement to operate with cooling towers by 1973 (the date changed from January 1 to May 1, 1978), the applicant filed strong exceptions to many of the points in the decision (before the ASLAB) which essentially refuted the staff's position on major issues of contentions.

D. R. Muller

The final decision on the exceptions has yet to be finalized by the ASLAB.

At the present the applicant is repairing the feed water line to the steam generator and the bulged inner liner of the containment building resulting from an accident on November 13, 1973. It is anticipated the plant will be ready for operation by the end of January.

Original signed by
M. J. Oestmann

Mary Jane Oestmann, Project Manager
Environmental Projects Branch No. 1
Directorate of Licensing

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Docket File (2)

JAN 17 1974

Docket Nos. 50-286
and 50-247

A. Giambusso, Deputy Director for Reactor Projects, L
THRU: D. R. Muller, Assistant Director for Environmental Projects, L

IMPACT ANALYSIS ON SCHEDULE FOR INDIAN POINT UNIT NO. 3 HEARING AND PROSPECTIVE DECISION DATE

In regards to the schedule for the Indian Point Unit No. 3 hearing and Prospective Decision Date, at a special prehearing conference held on November 27, 1973, the ASLB and parties discussed schedules for the issuance of the FES, environmental hearing, and issuance of the Initial Decision. Consolidated Edison first stated that the fuel loading date for IP-3 had slipped until August 1, 1974 (now slipped to November 1974) and requested strongly that the start of the environmental hearing be delayed until June 3, 1974 in order to complete the Texas Instruments Annual Report on ecological studies by April or May of 1974. At the May 21, 1973 special prehearing conference, Consolidated Edison also requested the hearing be delayed until February 4, 1973 for the same reason. Throughout the spring of 1974 Consolidated Edison plans to continue to submit additional supplements to the Environmental Report and additional reports and documents on ecological studies to develop the hearing record for IP-3 independent of the IP-2 case and of the staff's DES or FES for IP-3. The applicant has already submitted Supplement No. 10 to the ER for IP-3. The delaying tactics are to substantiate its position that only after the completion of the ecological studies by 1977, should the AEC make a decision to require cooling towers. Thus, according to Consolidated Edison, construction of cooling towers should not be started until 1978 and operation with the towers by September 1981 only if the towers are ready by then.

The staff's position has been made very clear. The results of the applicant's ecological studies, with its many shortcomings as well as benefits, will in no way influence whether or not cooling towers are needed, nor the date when they should be operational. It is the reproductive life cycle of the striped bass (4 to 5 years) which

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has determined the time when once-through cooling operation is unacceptable. Although the date of January 1, 1978 to operate with towers was originally recommended by the staff in the FES for IP-2, the date of May 1, 1978 selected by the ASLB in its Initial Decision for IP-2 is the date the staff has also used in its DES for IP-3. If one assumes IP-2 operation for 1973-78 and IP-3 operation for 1975-78 using once-through cooling, the consequences of the biological impacts could be felt up to 1982-83, even though cooling tower operation would start in May 1978. In addition, NEPA requires that the AEC make decisions (before the fact rather than after the fact) based on assessments of potential impacts which can occur in the future, and, after review of alternatives to resolve conflicts, decide on a cost-benefit basis which system is the preferable one to mitigate impacts. The staff did so in the IP-2 and IP-3 cases. The ASLB in its Initial Decision for IP-2 supported that same position.

For further clarification, the January 1, 1978 date originally selected by the staff in the IP-2 case would allow the applicant a reasonable time period for construction of the cooling towers. During the interim period of operation, damage will be limited through the Environmental Technical Specifications and a Plan of Action. Based on a cost-benefit analyses of the need for the plant, the staff believes the short term benefits outweigh any damage, which is expected to be recoverable, but over the long term the benefits for the plant can be obtained with an alternate cooling system.

At the November 27 hearing, the staff insisted that the environmental hearing for IP-3 begin March 19, 1974 and be completed by April 19, 1974. However, Consolidated Edison wants at least two months after the issuance of the FES to develop rebuttal testimony on the FES. This was the same situation for the IP-2 hearing in which one month after the FES was issued, Consolidated Edison literally started for the first time to submit updated information on IP-2. The staff has continually encountered a persistent problem with Consolidated Edison in not obtaining adequate updated information in a timely manner. The possible reason the October 1972 information was submitted by Consolidated Edison was the staff position taken on the cooling tower requirement in the IP-2 FES of September 1972. The ER for both IP-2 and IP-3 submitted in 1971 contained material dated 1955-1969, much of which was no longer relevant or applicable to the case. Consolidated Edison took one year (from May 1972 to May

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1973) to respond to our letter of April 24, 1972 requesting information to obtain an acceptable ER. However, the ORNL Lab team began its review to prepare the DES/FES for IP-3 in January 1973.

The staff plans to issue the FES for IP-3 by February 8, 1974 based on the material we had on hand during the week of December 10, 1973, the due date for submittal of comments on the DES. On this date, no party to the hearing had submitted its comments on the DES. On December 10, 1973, Consolidated Edison requested to delay issuance of comments on the DES from December 10 until December 24. Consolidated Edison's extensive comments were received on December 26. The late comments received from Consolidated Edison will result in essentially eliminating a response to them in the FES. A separate response in a Supplement to the FES will be prepared as rebuttal testimony for the hearing. This also applies to whatever additional information the staff obtains from Consolidated Edison after the FES for IP-3 is issued.

At the time of the May 21, 1973 hearing, the ASLB established the target date to start the hearing on February 4, 1974, based on the fuel loading date of April 1, 1974, and the applicant's submission of reports on ecological studies. However, in the November 27 hearing the ASLB ordered that a prehearing conference be held on April 24, 1974, with limited appearances for the public on April 25, 1974. The start of the evidentiary environmental hearings will begin May 14 and end June 14, 1974 and will be continuous with no chance of submission of rebuttal testimony during the hearing. During the spring of 1974, the parties will attempt to reach a stipulation of consolidating by reference the IP-2 case. However, Consolidated Edison insists that the ER and supplements will represent its position and record rather than agreeing to a stipulation on consolidating the two cases.

In conclusion, the delay in issuance of the FES until February 8, 1974 will not impact the schedule of the Prospective Decision Date of November 1, 1974.

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