

SUPREME COURT, NEW YORK COUNTY

HARRY LEWIS,

Plaintiff,

Plaintiff designates
New York County as
the place of trial.

-against-

HENRY C. ALEXANDER, JOHN V. CLEARY,
FREDERICK M. EATON, CHARLES E. EBLE,
GILBERT W. FITZHUGH, THOMAS C. FOGARTY,
HARLAND C. FORBES, GRAYSON L. KIRK,
MILTON C. NUMFORD, J. WILSON NEWMAN,
RICHARD K. PAYNTER, JR., RICHARD S.
PERKINS, EDMUND F. WAGNER, LAWRENCE A.
WIEN, JAMES DE CAMP WISE and
CONSOLIDATED EDISON COMPANY OF NEW YORK,
INC.,

Defendants.

SUMMONS

The basis of venue is
Consolidated Edison's
principal office at
4 Irving Place,
New York, N. Y.

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this
action, and to serve a copy of your answer, or, if the complaint
is not served with this summons, to serve a notice of appearance,
on the Plaintiff's Attorney within twenty days after the service
of this summons, exclusive of the day of service; and in case of
your failure to appear, or answer, judgment will be taken against
you by default, for the relief demanded in the complaint.

Dated, New York, New York

October 21, 1966

LOUIS KIPNIS
Attorney for Plaintiff
Office & Post Office Address
50 Broad Street,
New York, New York 10004

SUPREME COURT:NEW YORK COUNTY

HARRY LEWIS,

Plaintiff,

-against-

HENRY C. ALEXANDER, JOHN V. CLEARY,
FREDERICK M. EATON, CHARLES E. EBLE,
GILBERT W. FITZHUGH, THOMAS C. FOGARTY,
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PERKINS, EDMUND F. WAGNER, LAWRENCE A.
WIEN, JAMES DE CAMP WISE and
CONSOLIDATED EDISON COMPANY OF NEW YORK,
INC.,

COMPLAINT

Defendants.

Plaintiff by Louis Kipnis, his attorney, upon information and belief, except as to paragraphs "1" and "2", respectfully shows to this Court and alleges:

1. Plaintiff is the beneficial owner of shares of Consolidated Edison Company of New York, Inc. ("Con Ed") which devolved upon him in 1960 by operation of law and of other shares of Con Ed purchased thereafter all of which are in street name with the New York Stock Exchange firm of Granger & Company.
2. Plaintiff brings this action derivatively in the right of and for the benefit of Con Ed and representatively on behalf of all stockholders of Con Ed similarly situated who may come in and contribute to the expense of the prosecution of the within action.
3. Con Ed is engaged in the business of generating and supplying electricity in each of the five boroughs of the City of New York and in Westchester County. It also sells power to the New York City Transit Authority and other transit systems in the metropolitan area.

4. Con Ed is a domestic corporation and has 37,257,292 shares of common stock and 1,915,319 shares of \$5.00 Cumulative preferred stock outstanding with each share of each class of shares being entitled to one vote.

5. The individual defendants named in the caption hereof constitute the Board of Trustees of Con Ed and have been Trustees since the dates set out alongside their names below:

<u>NAME</u>	<u>BECAME TRUSTEE IN</u>
Henry C. Alexander	1964
John V. Cleary	1965
Frederick M. Eaton	1962
Charles E. Eble	1957
Gilbert W. Fitzhugh	1963
Thomas C. Fogarty	1964
Harland C. Forbes	1948
Grayson L. Kirk	1961
Milton C. Mumford	1964
J. Wilson Newmen	1962
Richard K. Paynter, Jr.	1966
Richard S. Perkins	1965
Edmund F. Wagner	1955
Lawrence A. Wien	1963
James De Camp Wise	1952

6. In or about December 1962 Con Ed announced plans for a 1-million kilowatt nuclear plant in Ravenswood, Queens. Opposition to the proposed nuclear plant took place and testimony by David Lilienthal, a former chairman of the Atomic Energy Commission, before a Congressional Committee included the comment that he "wouldn't dream of living in Queens" if the plant was built there. Other opposition to the Ravenswood plant also arose, based on expressed fears of having a nuclear plant in so densely populated an area.

7. In January 1964 Con Ed announced that it was withdrawing its application to the Atomic Energy Commission for a permit to construct a 1-million kilowatt nuclear plant at its Ravenswood site in Queens.

8. In connection with this announcement Con Ed stated that prospects of securing hydroelectric power from Canada made it inappropriate to proceed with its application to the Atomic Energy Commission. Moreover, Con Ed announced that if for any reason the Canadian prospect failed to materialize it would proceed with an alternative program of providing generating capacity for its future needs.

9. The Canadian sources of hydroelectric power were revealed to be British Newfoundland Corp. Ltd. ("Brinco") and Quebec Hydro-Electric Commission, with Brinco looking toward development of the hydroelectric potential at Hamilton Falls in Labrador.

10. The potential capacity at Hamilton Falls was stated by Con Ed to be in excess of 4-million kilowatts and engineering studies indicated that this capacity can be developed at low cost and despite the distance involved, advances in transmission technology would permit delivery of this power to Con Ed on a favorable basis. Con Ed looked to this source to secure 2-million kilowatts of firm capacity from this project.

11. Heretofore and subsequent to January 1964 but prior to July 30, 1966 Con Ed with the authorization and at the direction of its Trustees then in office filed an application with the Atomic Energy Commission ("AEC") for licenses seeking a construction permit to build a pressurized water reactor designed to operate at its Indian Point site on the Hudson River at Indian Point in the Town of Buchanan, Westchester County, New York.

12. Under the aforesaid application the nuclear plant will be constructed for Con Ed pursuant to a contract with Westinghouse Electric Corporation.

13. The AEC scheduled a hearing before its Atomic Safety

and Licensing Board at Buchanan for September 13th, and it was held on September 14th and 15th, 1966.

14. At the conclusion of the aforesaid hearing Con Ed moved for expedited effectiveness of the initial decision of the Atomic Safety and Licensing Board which motion the Board granted. The Board also directed the issuance of a provisional construction permit. Said permit contained the following:

"This permit is provisional to the extent that a license authorizing operation of the facility will not be issued by the Commission unless: (a) Consolidated Edison submits to the Commission, by amendment to the application, the complete final hazards summary report, portions of which may be submitted and evaluated from time to time; (b) the assurance that the health and safety of the public will not be endangered by the operation of the facility in accordance with procedures approved by it in connection with the issuance of said license; and (c) Consolidated Edison submits proof of financial protection and the execution of an indemnity agreement as required by Section 170 of the Act."

15. The same rules of the AEC which authorize the issuance of a provisional construction permit provides for subsequent application for an operating license.

16. It is therefore within the contemplation of the rules of the AEC that despite the licensing of construction of an atomic power plant a license to operate the same may not be forthcoming.

17. The cost of construction of the proposed nuclear plant will require the expenditure by Con Ed of internally generated funds and the sale of additional amounts of stocks and bonds in multimillion dollar amounts.

18. The proposed nuclear plant is the largest reactor considered for licensing at this time. Since it will be located in a region of high population density (the New York metropolitan area) the Advisory Committee on Reactor Safeguards has reviewed

Con Ed's application and suggested review of the final design prior to irrevocable commitments relative to construction of the facilities components.

19. Con Ed's experience with its nuclear facility No. 1 at Indian Point in Buchanan, New York, has not been an unqualified success and has been out of operation 20 months out of 48 months.

20. Of the eleven public utility atomic power plants through the United States there have been varying degrees of non-success with the greatest failure being Detroit Edison's Enrico Fermi Atomic Power Plant resulting in a \$120,000,000 plant of dubious merit not delivering power.

21. The predictions and expectations by reactor fabricators regarding atomic power in the public utility field have not materialized.

22. The proposed second Indian Point atomic power plant at Buchanan, New York, cannot be constructed and operated without undue risk to health and safety of the populace in one of the most densely areas of the United States.

23. In respect of Con Ed's proposed second atomic unit at Indian Point the Advisory Committee on Reactor Safeguards indicate that while many items are in the range of known technology "The others will be the subject of a development program proposed by Con Ed. The development of the final design of the containment and the accident mitigating components will be carefully followed by the AEC Staff as recommended by the ACRS."

24. The Advisory Committee on Reactor Safeguards recommended in 1966 that sudden catastrophic failure of a pressure vessel previously classified as an incredible accident and one that need not be taken into account in reactor safety determinations, should be reclassified as a possible accident hazard and

that future nuclear power station plans design to provide against such possible consequences.

25. The potential destruction, in the event of a serious accident, is incomparably greater in an atomic power plant than from any other type of industrial plant. Property damage from an accidental failure of a reactor and from release of radioactive material could reach several billion dollars and radiation injuries to tens of thousands of persons.

26. In a statement issued June 2, 1965 by William D. Manley, Chairman of the Advisory Committee on Reactor Safeguards, which appears as Appendix 4 of the hearings printed for the use of the Joint Committee on Atomic Energy entitled "Proposed Extension of AEC Indemnity Legislation", pages 248-257, it is stated in the section entitled "Engineered Safeguards", in pertinent part, on page 251:

"None of the large power reactor facilities now under construction or described in current license applications is considered suitable for location in metropolitan areas. To put the matter in a different way, the devices and safeguards that prevent all accidents, large or small, must be made even more reliable than they are now, and the consequences-limiting safeguards must be made even more foolproof. The questions to be settled are complex ones whose resolution would depend on the nature and details of each proposal. It also appears that novel reactor systems and reactors that have considerably higher power levels than previous ones should not be operated in population centers."

27. Con Ed's second atomic power plant is to be constructed on the surface of the site at Indian Point. Dr. Edward H. Teller of Lawrence Radiation Laboratories has stated, in respect of above ground installations:

"In principle, nuclear reactors are dangerous. They are not dangerous because they may blow up. The explosion of a nuclear reactor is not likely to be as violent as an explosion of a chemical plant. But a powerful nuclear reactor which has functioned for

some time has radioactivity store in it greatly in excess of that released from a powerful nuclear bomb. There is one difference and this difference makes the nuclear bomb look like a relatively safe instrument . . . A gently seeping reactor can put its radioactive poison under a stable inversion layer and concentrate it onto a few hundred square miles in a truly deadly fashion. This is why we must be exceedingly careful in constructing nuclear reactors . . . In my mind nuclear reactors do not belong on the surface of the earth. Nuclear reactors belong underground."

28. All of the matters set out in paragraphs "19" through "27", supra, have been known to or should have been known to the members of the Board of Trustees of Con Ed who were such at the time of the filing of the application with the AEC.

29. The proposed construction of a second atomic power plant by Con Ed at Indian Point, in Buchanan, Westchester County, in the light of the matters known or constructively known by the Board of Trustees of Con Ed and the authorization of the prosecution of the application for said construction are grossly improvident and wasteful and unless this Court of Equity restrains and enjoins Con Ed from constructing the proposed second atomic plant at Indian Point Con Ed may suffer not only reparable but also irreparable damage because (a) an operating license may not be forthcoming after the construction of the plant, (b) an accident may occur following construction of said plant resulting in death and property damage, (c) leakage of pollutants into the Hudson River may result in fish destruction, (d) after construction the plant may be an operating failure by reason of "bugs" in the new and untested design, (e) alternate sources of power may become pre-empted, and (f) the Price-Anderson Federal Indemnity Act may be allowed by Congress to expire in 1967.

30. Of the 15 Trustees of Con Ed 12 of them or 80% of them are busy men of affairs earning their livelihoods in other

and diverse enterprises who in contravention of their fiduciary obligations to Con Ed and the shareholders who elected them have negligently and recklessly failed to inform themselves fully and independently of the dangers and potential dangers to Con Ed and its shareholders before authorizing the prosecution of an application for a second atomic power plant at Indian Point in Buchanan. The remaining three Trustees of Con Ed are employees or former employees of Con Ed and as such possessed special and detailed information and knowledge of the matters alleged in paragraphs "19" through "27" but they have failed and neglected to supply said knowledge and detailed information herein referred to the "outside" Trustees thereby enabling these employee-Trustees to obtain concurrence from the "outside" Trustees to authorize Con Ed to proceed with the proposed construction of the second nuclear power plant at Indian Point.

31. By reason of the foregoing Con Ed has been adversely affected by exposure to the risks hereinabove described in its second atomic power plant as well as the following risks:

1. It may not be able to meet future customer demand for power if atomic plant #2 performs as poorly as atomic plant No. 1.

2. Con Ed may not be able to resort to alternative sources of power while concentrating its funds, employees and credit on an atomic power plant unless it plans ahead as with Brinco.

3. Con Ed may be damaging its corporate image and alienating good will by persisting in erecting an above-ground nuclear facility on the banks of the Hudson just above the most densely populated area in the United States.

32. No demand has been made upon Con Ed or its Board of Trustees to bring this action because such a demand would be futile for the reasons herein set forth. The individual defendants comprise the Board of Trustees and have been named as defendants because of their participation in the acts herein complained of or ratified and approved the same after the event. And with respect to the continuing aspects of the matters herein complained of it is not possible to expect the Board of Trustees to sue themselves. Despite the widespread publicity of the matters herein complained of the Board of Trustees have not taken any steps to redress the same.

33. Plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff demands judgment as follows:

(a) Enjoining and restraining Con Ed and its Board of Trustees from prosecuting the application for the construction of a second atomic power plant at Indian Point, Westchester County, New York;

(b) Enjoining and restraining Con Ed from constructing a second atomic power plant at Indian Point, Westchester County, New York;

(c) Requiring Con Ed and its Board of Trustees to explore alternative methods for obtaining power, as for example from Brinco;

(d) Adjudging that the Board of Trustees account to Con Ed and pay over to it all of the costs and expenses incurred in connection with the prosecution of its application before the AEC for a license to construct a second atomic power plant at Indian Point;

(e) Granting plaintiff such other and further relief

as may be just and proper;

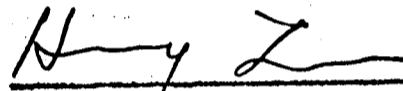
(f) Awarding plaintiff his costs and expenses of this action including a reasonable counsel fee.

LOUIS KIPNIS
Attorney for Plaintiff
Office & Post Office Address
50 Broad Street
New York, New York 10004

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } SS:

HARRY LEWIS, being duly sworn, deposes and says that deponent is the plaintiff in the within action; that deponent has read the foregoing Complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Sworn to before me this
21 day of October, 1966


HARRY LEWIS

LOUIS KIPNIS
Notary Public, State of New York
No. 31-212730
Qualified in New York County
Court filed in the following offices
Commission Expires March 30, 1967

STATE OF NEW YORK, COUNTY OF

CERTIFICATION BY ATTORNEY

The undersigned, an attorney admitted to practice in the courts of New York State, certifies that the within found to be a true and complete copy. has been compared by the undersigned with the original and

Dated: _____

STATE OF NEW YORK, COUNTY OF

ATTORNEY'S AFFIRMATION

The undersigned, an attorney admitted to practice in the courts of New York State, shows: that deponent is the attorney(s) of record for in the within action; that deponent has read the foregoing and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Deponent further says that the reason this verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: _____

STATE OF NEW YORK, COUNTY OF

ss.:

INDIVIDUAL VERIFICATION

deponent is the read the foregoing, being duly sworn, deposes and says that in the within action; that deponent has and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Sworn to before me, this day of 19 _____

STATE OF NEW YORK, COUNTY OF

ss.:

CORPORATE VERIFICATION

of, being duly sworn, deposes and says that deponent is the named in the within action; that deponent has read the foregoing the corporation and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.

This verification is made by deponent because is a corporation. Deponent is an officer thereof, to-wit, its The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me, this day of 19 _____

STATE OF NEW YORK, COUNTY OF

ss.:

AFFIDAVIT OF SERVICE BY MAIL

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19 deponent served the within attorney(s) for upon in this action, at

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States post office department within the State of New York.

Sworn to before me, this day of 19 _____

STATE OF NEW YORK, COUNTY OF

ss.:

AFFIDAVIT OF PERSONAL SERVICE

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19 at No. deponent served the within upon

the person so served to be the person mentioned and described in said papers as the h personally. Deponent knew the Sworn to before me, this day of 19 therein.

Sir :- Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,
LOUIS KIPNIS

Attorney for

Office and Post Office Address

50 Broad Street

Borough of Manhattan New York, N. Y. 10004

To

Attorney for

NOTICE OF SETTLEMENT

Sir :- Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19

at M.

Dated,

Yours, etc.,
LOUIS KIPNIS

Attorney for

Office and Post Office Address

50 Broad Street

Borough of Manhattan New York, N. Y. 10004

To

Attorney for

SUPREME COURT: NEW YORK COUNTY

HARRY LEWIS,

Plaintiff,

-against-

HENRY C. ALEXANDER, et al.,

Defendants

SUMMONS AND COMPLAINT

LOUIS KIPNIS

Attorney for

Plaintiff

Office and Post Office Address

50 Broad Street

Borough of Manhattan New York, N. Y. 10004

BOWling Green 9-7225

To

Attorney for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney for

SECRETARY

CLERK OF SUPREME COURT
NEW YORK COUNTY

1500-Broadhor-Legal Stationery, Inc., 43 Park Place, New York