

12-7-70

BEFORE THE UNITED STATES  
ATOMIC ENERGY COMMISSION

In the Matter of )  
 )  
Consolidated Edison Company of ) Docket No. 50-247  
New York, Inc. )  
(Indian Point Unit No. 2) )

APPLICANT'S ANSWER TO MOTION OF  
ENVIRONMENTAL DEFENSE FUND, INC.  
TO ADJOURN PROCEEDING OR WITHDRAW NOTICE OF HEARING

By motion served on December 1, 1970 the Environmental Defense Fund, Inc. ("EDF") requested the entry of an order adjourning the above-captioned proceeding or withdrawing the notice of hearing herein until certain actions had been taken relative to compliance with the National Environmental Policy Act of 1969 ("NEPA").

Pursuant to section 2.730 of the Commission's Rules of Practice, Consolidated Edison Company of New York, Inc. ("Applicant") hereby answers as follows in opposition to said motion:

1. EDF makes two substantive assertions: (a) that Applicant's environmental report, dated August 6, 1970, fails to

*hearing*

comply with the Commission's interim guidelines for implementation of NEPA published by the AEC for comment on June 3, 1970 (35 Fed. Reg. 8594); and (b) that the Commission's detailed environmental statement, issued November 20, 1970, fails to comply with NEPA. In addition, EDF asserts that intervenors in this proceeding and the public have not had an adequate opportunity carefully to examine the Commission's detailed statement and to prepare for a hearing with respect to environmental considerations.

2. EDF's assertions in this respect are essentially the same as those contained in the first, second and fifth contentions in its Petition for Leave to Intervene in this proceeding, dated November 25, 1970. In its Answer, dated November 27, 1970, to EDF's Petition for Leave to Intervene Applicant denied the aforesaid contentions. Applicant asserted in its Answer that the Commission's proposed guidelines dated June 3, 1970 for implementation of NEPA represent an adequate interim implementation of NEPA pending further Commission rule-making determination on the complex matter of permanent implementation of NEPA.

3. On December 4, 1970, after the filing of Applicant's Answer to EDF's Petition for Leave to Intervene, the Commission

published in the Federal Register (35 Fed. Reg. 18469) a revised Appendix D to 10 CFR Part 50, to be effective thirty days after publication. This Appendix contains a further statement of general policy and procedure for the implementation of NEPA.

4. A prehearing conference was held in this proceeding on December 1, 1970 and the hearing is scheduled to commence at 10 a.m. on December 17, 1970. At the prehearing conference counsel for EDF advised the Atomic Safety and Licensing Board of his intention to file a brief in this proceeding on the legal questions raised by EDF concerning NEPA as soon as possible. Applicant agrees that it would be desirable to resolve the legal questions raised by EDF as soon as possible. Applicant desires to establish at a hearing conference to be convened immediately after the hearing on December 17, 1970 a schedule for filing of briefs on these legal questions and for further proceedings herein.

5. There is no reason to adjourn or recess this proceeding or withdraw the notice of hearing for the reasons given by EDF. The legal questions raised by EDF can be argued and ruled upon during the course of this proceeding,

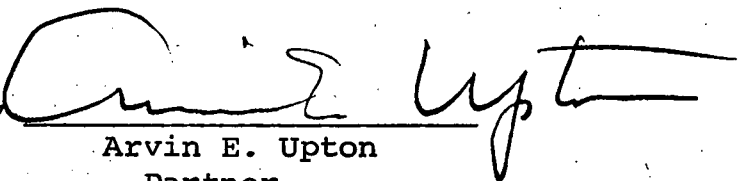
which has been validly commenced under the present Commission rules, whether these questions are considered in the context of the interim guidelines already referred to or in the context of the guidelines published in the Federal Register on December 4, 1970. If EDF prevails on these legal questions during the proceeding, appropriate steps can be taken at that time to schedule further sessions of the hearing (with an amendment to the notice of hearing, if necessary) to permit all parties to prepare adequately with respect to non-radiological environmental considerations.

Accordingly, Applicant requests that EDF's motion be denied.

Respectfully submitted,

LeBOEUF, LAMB, LEIBY & MacRAE  
Attorneys for Applicant

By

  
Arvin E. Upton  
Partner

Dated: December 7, 1970

