

BEFORE THE
UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

11-25-70

In the Matter of)
)
CONSOLIDATED EDISON COMPANY)
OF NEW YORK, INC.)
(INDIAN POINT UNIT NO. 2))

Docket No. 50-247

PETITION FOR LEAVE TO INTERVENE

This Petition for Leave to Intervene is filed on behalf of the Environmental Defense Fund, Inc. (hereinafter "EDF").

Interest of Petitioner

EDF is a nonprofit, tax-exempt membership corporation organized under the laws of the State of New York. EDF is made up of scientists and other citizens dedicated to the protection of man's environment, employing legal action where necessary. EDF has, through litigation, sought to protect the environment from various forms of pollution. Its Scientists Advisory Committee, with more than 200 members, including some of the world's foremost environmental scientists, assures that positions taken are thoroughly supported by scientific evidence. In its activities, EDF does not concern

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itself with the pecuniary interests of individuals; rather, it seeks to assure the preservation or restoration of environmental quality on behalf of the general public. Its concern with environmental protection throughout the nation is well known and it has been recognized as having standing to challenge the use of DDT (Environmental Defense Fund, Inc. v. Hardin, ____ F. 2d ____ (CA D.C., 1970), and Environmental Defense Fund, Inc. v. Finch, ____ F. 2d ____ (CA D.C., 1970)) to challenge dumping of nerve gas in the ocean (Environmental Defense Fund, Inc. v. Resor, ____ F. 2d ____ (CA D.C., 1970)) to challenge the construction of the Cross-Florida Barge Canal (the Environmental Defense Fund, Inc. v. Corps of Engineers of the U. S. Army (now pending in the District Court for the District of Columbia)). It clearly is an interested party with respect to environmental considerations of nuclear power plants.

Interest Affected

The Commission has acknowledged in its proposed regulations relating to the National Environmental Policy Act (35 Fed. Reg. 8594, June 3, 1970) that the issuance of a construction permit or an operating license for a nuclear power plant constitutes major federal action which may significantly affect the quality of the environment. The AEC also acknowledges that these actions can not be taken until the detailed environmental statement required by NEPA has been prepared

Part of the mission of EOP is to guarantee that whenever major Federal actions which may affect the environment are proposed a full exploration of the impact of the project on the environment and alternatives to it is conducted. Only when the necessary facts are known is it possible to make the judgment required in considering issuance of an operating license for nuclear power plants.

Contentions

1. The environmental statement prepared by applicant and filed in this proceeding, as supplemented by applicant, does not comply with the interim guidelines for implementation of NEPA as announced by the AEC on June 3, 1970.
2. The notice of hearing in this proceeding is premature in that no detailed statement as required by NEPA, has been filed in sufficient time to allow this intervenor and other members of the public to adequately prepare for the hearing with respect to environmental considerations.
3. The notice of hearing in this proceeding is defective in that it fails to advise the public that consistent with NEPA and with Executive Order 11514 (March 5, 1970) the hearings will also include an examination of 1) the environmental impact of the proposed action; 2) any adverse environmental effects which cannot be avoided should the proposal be implemented; 3) alternatives to the proposed action; 4) the relationship between local short-term

... of man's environment and the maintenance and enhancement of long-term productivity; and 5) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

4. In considering the environmental impact of the operation of the nuclear power plant the Board must consider all environmental factors including non-radiological factors such as thermal pollution.

5. Although the detailed environmental statement has not been received by this intervenor, based upon past experience of the AEC with these statements it can be anticipated that the statement will be inadequate because of the failure of the AEC to conduct, or to have conducted, in depth studies of the environmental factors set forth in Section 102(C)(D) and (G) of NEPA.

6. Based upon the information now available from the applicants environmental statement and from comments received from Federal and State agencies the following factual questions will be in contention:

- a. Are the needs for electricity as now projected for the area served by applicant sufficient to warrant the operation of this plant in the near future or at all? To what extent is any electric power need a peaking need which can better be met by other types of power plants or by the purchase or exchange of power from or with other companies?

- b. What is the reliability of nuclear power as a regular source of electricity?
- c. What other fuels are available for power plants? What are the environmental costs of using these fuels? Are any of these fuels more available during the peak electricity demand periods than at other times of the year?
- d. Is nuclear power economically feasible at the point where safety and environmental protection are provided to the maximum technologically feasible level?
- e. Are the proposed changes in the operation of Unit No. 2 sufficient to assure the public that significant adverse effects to marine life caused by the smaller Unit No. 1 will not occur? Have the new techniques for coping with these problems been adequately tested?
- f. Have studies been completed which conclusively determines the cause of the adverse effects on marine life in Unit No. 1? If so, such studies and any other related studies must be produced sufficiently in advance of the hearing to allow intervenors to assess the facts and conclusions of these studies.
- g. Have adequate base line studies been done on the environment which will be affected by the plant to form a basis for judging whether the plant when operating is adversely affecting the environment?
- h. Has the applicant incorporated every technologically available system for reducing the impact to the environment of the plant under normal operating conditions?
- i. Have any studies been conducted to provide a basis for adequately predicting the impact on non-human living organisms of the release of radioactive and thermal wastes under normal operating conditions, under design basis accident conditions and under extreme accident conditions?

3. How realistic is the applicant's experience with other radioactive water reactors and the applicant's predicted releases of liquid and gaseous radioactive effluents?
4. Has adequate consideration been given to the environmental impact which will be caused by the proposed five nuclear reactors at this site?

It is anticipated that the preparation and submission of a complete and thorough detailed environmental statement with supporting studies may provide adequate evidence on some of these questions to obviate further exploration at the hearing and may also indicate other areas that deserve greater examination at the hearing.

7. As indicated above the presently proposed hearing cannot validly proceed until the applicant has complied with AEC regulations for implementation of NEPA and until the AEC has complied with NEPA. Therefore intervenors are submitting at the prehearing conference a motion for suspension of the proposed hearing until such time as the requirements of the AEC's regulations and of NEPA have been met. If proceedings commence without compliance with NEPA the attempted issuance of the operating license will be null and void and a court imposed injunction will be obtained to prevent issuance of the license. Zabel v. Tabb, ___ F. 2d ___ (C.A. 5th, July 16, 1970) holding that NEPA requires the U. S. Army Corps of Engineers to fully consider all environmental factors before granting a dredge and fill permit); Wilderness Society v. Hickel, ___ F. Supp. ___ (D.C., April 23, 1970, order of Court granting preliminary

injunction against defendants for failure to comply with NEPA);

Sierra Club v. Laird, _____ F. Supp. _____ (Aris., June 23, 1970,

order of Court granting preliminary injunction against defendant for failure to comply with NEPA).

For the reasons stated above the Environmental Defense Fund requests that it be permitted to intervene in this proceeding to challenge the issuance of an operating license to the Applicant.

Respectfully submitted,

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By _____
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SWORN TO before me, _____, a notary public in and for the District of Columbia, this _____ day of November, 1970.

Notary Public, DC

My Commission Expires: _____