

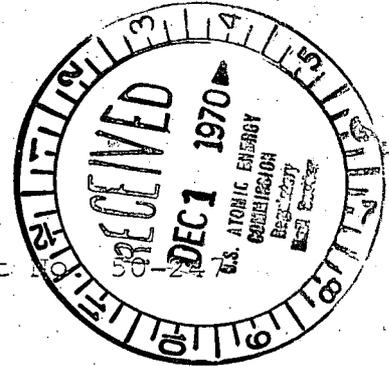
BEFORE THE UNITED STATES
ATOMIC ENERGY COMMISSION

247

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

1127-70

Docket No.



APPLICANT'S ANSWER TO PETITION
FOR LEAVE TO INTERVENE OF THE
ENVIRONMENTAL DEFENSE FUND, INC.

The Environmental Defense Fund, Inc. ("EDF") has filed with the Commission in the above-captioned proceeding a Petition for Leave to Intervene in order to challenge the issuance of an operating license to the Applicant.

Applicant believes that the adequacy of EDF's stated interest in the proceeding--that of a national organization concerned with the environment and representing the general public--is questionable under present law. The petition also fails to state how its interest, or that of members of the general public it purports to represent, would be specifically affected in any way by the granting of a license to the Applicant. Nevertheless, Applicant does

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not oppose participation by EDF as a party in this proceeding within the framework outlined below.

The seven contentions raised by EDF in its petition contain two basic assertions: the inadequacy of the Commission's implementation of the National Environmental Policy Act of 1969 ("NEPA") as it relates to this proceeding, and the lack of compliance of the Applicant's environmental report with the Commission's proposed guidelines for implementation of NEPA published for comment on June 3, 1970 (35 Fed. Reg. 8594). The rest of the contentions allege various procedural deficiencies which follow from the above. Applicant denies each of EDF's first six contentions. Applicant's position is that there is no noncompliance of the kind underlying the seventh contention and that therefore the hearing can validly proceed and a valid license may be issued.

EDF suggests that the Commission has not complied with the requirements of NEPA unless the hearing in this proceeding includes consideration of all environmental factors including non-radiological ones such as thermal effects.

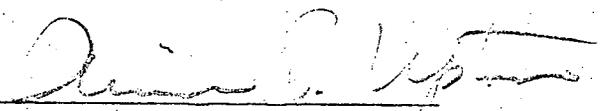
Prior to the enactment of NEPA it was well established that non-radiological environmental factors were beyond the jurisdiction of the Commission in its facility licensing proceedings. State of New Hampshire v. Atomic Energy Commission, 406 F.2d 170 (1st Cir. 1969). When NEPA became law on January 1, 1970 a re-evaluation of the Commission's role with respect to these other environmental factors became necessary. Both in the April 2, 1970 guidelines and in the June 3, 1970 proposed guidelines the Commission has taken a different approach to implementing NEPA on an interim basis than that suggested by EDF. While not permitting independent determinations in a licensing proceeding on non-radiological matters, the guidelines require, among other things, a license condition (which will be contained in the Unit No. 2 license) to be imposed requiring compliance with applicable state and Federal environmental standards and requirements. It is Applicant's position that these guidelines represent an adequate interim implementation of NEPA pending Commission rule making determination on the complex matter of permanent implementation of NEPA.

It follows that there is no reason to re-notice
or reschedule the hearing for the reasons given by EDF.
EDF has raised a legal question which can be argued and
ruled upon during the course of the proceeding which has
been validly commenced under present Commission rules.

If EDF prevails on the legal question 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.

Respectfully submitted,

LeBOEUF, LAMB, LEIBY & MacRAE
Attorneys for Applicant

By 

Arvin E. Upton
Partner

Dated: November 27, 1970