



Before the  
UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

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In the Matter of :

CONSOLIDATED EDISON COMPANY :  
OF NEW YORK, INC. :  
(Indian Point Unit No. 2) :

Docket No. 50-247

3-22-71

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REPLY BY INTERVENOR HUDSON RIVER  
FISHERMEN'S ASSOCIATION TO THE ANSWERS  
OF APPLICANT AND THE REGULATORY STAFF TO THE  
MOTION FOR DETERMINATION OF ENVIRONMENTAL ISSUES

The Motion by Intervenor Hudson River Fishermen's Association (the Fishermen) has been answered by Consolidated Edison and the Regulatory Staff of the A.E.C., the Staff reserving arguments on the issues similar to those presented in Calvert Cliffs Coordinating Committee v. AEC, (D.C. Cir. No. 24, 871) until the Government has filed its brief in that case.

The Regulatory Staff argues that the Fishermen have not properly presented the issue for resolution by the Board under the terms of the Commission's Memorandum in Calvert Cliffs (In the Matter of Baltimore Gas and Electric Company (Calvert Cliffs) Nuclear Power Plant, Units 1 and 2, Docket Nos. 50-317 and 318).

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The Staff agrees that the ruling in Calvert Cliffs applies to a challenge to any part of Appendix D to 10 CFR Part 50. The Fishermen challenge the validity of Appendix D both in its limiting the consideration of non-radiological environmental evidence to hearings noticed after March 4, 1971 and in the limited scope it imposes on hearings noticed after that date.

The Regulatory Staff appears to raise two procedural objections to this challenge: first, that a substantial question must be presented on the record before the Board can consider the validity of the challenged regulation; second, that the intervenors have asked the Board to challenge the regulation rather than challenging it themselves.

In their moving papers, the Fishermen have indicated the evidence which they will put before the Board, if non-radiological evidence is admitted. Since the issue presented in the motion is the legal one of measuring the validity of the Appendix D regulations against the standard of the National Environmental Policy Act, it seems unnecessary to go through the form of a contested evidentiary hearing in order to demonstrate that a substantial question has been presented on the record. The Fishermen have presented a substantial question and the Board has a sufficient record on which to rule.

The Regulatory Staff's second objection rests on nothing more than possible ambiguities in the language of the moving papers. If it was not clear in the moving papers, the Fishermen want to make it clear now that they challenge contested parts of Appendix D and ask the Board to rule on that challenge. Calvert Cliffs makes it clear that the Board must render the initial decision. Therefore it was appropriate to ask the Board to rule on the question. There was no intention to brush aside the statement in Calvert Cliffs that "if a board believes there is a substantial question presented in the record as to the validity of a challenged regulation, the board should certify that question to the Commission for guidance prior to rendering an initial decision."

The Fishermen have presented the issue of the motion to the Board which must determine the substantiality of the question involved and make the initial decision in the issue. Therefore the Fishermen have complied with the terms of the Calvert Cliffs memorandum.

In a memorandum filed with the Board, Environmental Defense Fund has replied to the arguments made by Con Edison and the Regulatory Staff. The Fishermen join in the arguments made by E.D.F. in that reply, reserving the right to make further reply to any additional arguments made by the Regulatory

Staff in the brief which will be filed on the issues similar to those in Calvert Cliffs Coordinating Committee v. AEC, (D.C. Cir. No. 24, 871)

CONCLUSION

For the reasons stated above and included in the reply brief of Environmental Defense Fund, Inc., the motion of intervenor Hudson River Fishermen's Association should be granted in all respects.

Respectfully submitted,



ANGUS MACBETH  
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Dated: New York, New York

March 22, 1971

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Reply by Intervenor Hudson River Fishermen's Association to the Answers of Applicant and the Regulatory Staff to Motion for Determination of Environmental Issues" dated March 22, 1971 in the captioned matter have been served this 22nd day of March, 1971 by deposit in the United States mail (first class) on the following:

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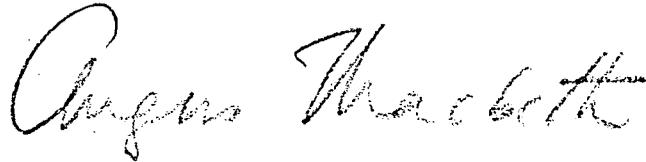
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