

BEFORE THE UNITED STATES
ATOMIC ENERGY COMMISSION

In the Matter of

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

}
} Docket No. 50-247
}

ANSWER OF INTERVENORS HUDSON RIVER FISHERMEN'S
ASSOCIATION AND ENVIRONMENTAL DEFENSE FUND TO
MOTION FOR RECONSIDERATION OF THE BOARD'S RULING
ON APPLICANT'S MOTION FOR 90% POWER OPERATING
LICENSE

By a motion dated May 19, 1972, Con Edison moved the Atomic Safety and Licensing Board for reconsideration of the Board's decision not to take up Con Edison's motion for a license to operate Indian Point 2 at 90% of full power. Intervenor respectfully request the Board to deny this motion for reconsideration.

Con Edison's motion for reconsideration presents no new facts or changed circumstances. The question of whether or not the Board should take up the 90% motion has been extensively brief by the parties. Con Edison brief of September 24, 1971; HRFA-EDF brief of April 3, 1972; Con Edison brief of May 1, 1972; HRFA-EDF brief of May 5, 1972; Con Edison brief of May 15, 1972. There has also been oral argument on the question at the hearings of April 5, 1972 and May 17-19, 1972. Thus the Board is well aware of the multitude of practical and legal considerations which are involved. The Intervenor reassert the arguments

made in the briefs and at oral argument, but will not burden the Board by rearguing those issues once again. Intervenors see no new basis in Con Edison's motion for reconsideration which should lead the Board to change its ruling on the 90% motion.

The Intervenors do wish to draw to the Board's attention two further considerations. First, the Intervenors have addressed a letter to counsel for Con Edison aimed at reducing the areas of factual disagreement which will have to be resolved at the hearings on the full power operating license. It will be difficult to proceed with that clarification and focussing if the parties are once more diverted to putting in their time and attention on the motion for a license at 90% of full power.

Second, the Congress has recently passed a bill, H.R. 14655, which covers the question of interim licensing of nuclear power plants. Petitions for rule-making under that act have been filed with the Atomic Energy Commission. Thus it is likely that the Commission will, before the 90% motion can be fully disposed of, be issuing new rules on the interim licensing of plants such as Indian Point 2. If the parties now turn their attention to the 90% license under Appendix D, Section D.2, we will in all likelihood find ourselves having to alter the form of the procedure before the hearing is complete in order to comply with whatever new rules the Commission promulgates. This is likely to complicate this proceeding

further and may very well result in waste of hearing time and unnecessary delay.

Con Edison finally requests the Board to certify its ruling to the Atomic Safety and Licensing Appeals Board, if the motion for reconsideration is denied. Certification is a matter within the Board's discretion. 10 C.F.R. §§ 2.718(1); 2.730(f). The Board's ruling on the 90% motion is based on its judgement of many practical considerations and concerns which are much better known to the Board, which is familiar with the course of this proceeding, than they can ever be to the Appeals Board. This is not the type of decision on strictly legal matters or on interpretation of the Commission's regulations on which the Appeals Board can give authoritative guidance to the Licensing Board. Thus it seems inappropriate for this question to be certified to the Appeals Board and the Intervenor urge the Licensing Board to exercise its discretion and not certify its ruling to the Appeals Board.

For the foregoing reasons, the Intervenor, Hudson River Fishermen's Association and Environmental Defense Fund, respectfully request the Atomic Safety and Licensing Board to deny Con Edison's motion for reconsideration of the ruling on the motion for a 90% power operating license and to exercise its discretion not to certify the question to the Appeals Board.

Respectfully submitted,

Angus Macbeth

Angus Macbeth
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Association

Anthony Z. Roisman

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Dated: May 26, 1972

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In the Matter of
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5-26-72
Docket No. 50-247

CERTIFICATE OF SERVICE

I hereby certify that I have served a document entitled:
"Answer of Intervenors Hudson River Fishermen's Association and
Environmental Defense Fund to Motion for Reconsideration of
the Board's Ruling on Applicant's Motion for 90% Power
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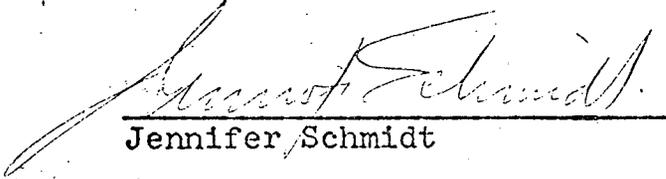
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