

BEFORE THE UNITED STATES
ATOMIC ENERGY COMMISSION

5-10-72

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

APPLICANT'S MOTION TO STRIKE TESTIMONY OF ERIC AYNSLEY

Consolidated Edison Company of New York, Inc.
("Applicant") respectfully moves the Atomic Safety and
Licensing Board ("Board") to strike the testimony of Eric
Aynsley, Ph.D., on "Alternatives to Once Through Cooling at
Indian Point Unit No. 2," which was received into evidence
at the hearing held on April 5, 1972 (Tr. 4839), for pur-
poses of Applicant's pending motion for limited power authori-
zation under 10 CFR 50, Appendix D, Section D.2. The grounds
for this motion to strike are that the testimony of Dr.
Aynsley is not relevant or material to the consideration of
the issues to be reviewed in authorizing limited operation.

The issues to be considered and balanced in the
pending motion for limited power authorization are set forth

hearing

in Section D.2 of Appendix D, 10 CFR Part 50, as follows:

- "(a) Whether it is likely that limited operation during the prospective review period will give rise to a significant adverse impact on the environment; the nature and extent of such impact, if any; and whether redress of any such adverse environmental impact can reasonably be effected should modification or termination of the limited license result from the ongoing NEPA environmental review.
- "(b) Whether limited operation during the prospective review period would foreclose subsequent adoption of alternatives in facility design or operation of the type that could result from the ongoing NEPA environmental review.
- "(c) The effect of delay in facility operation upon the public interest. Of primary importance under this criterion are the power needs to be served by the facility; the availability of alternative sources, if any, to meet those needs on a timely basis; and delay costs to the licensee and to consumers."

The testimony of Dr. Aynsley contains a generalized discussion of condenser cooling techniques which might be alternatives to the present plant construction, the cost of the alternative water cooling devices, the environmental problems associated with alternative cooling techniques at Indian Point and the time requirements for construction of alternative cooling devices. These subjects are not relevant or material to the factors set forth above. Under Section D.2 the question

to be decided is whether the plant should be operated as designed pending the full environmental review required by Section D.1. Furthermore, none of the alternative methods of cooling could reasonably be designed and constructed during the period in question.

The first factor listed above concerns the environmental impact of limited operation and whether redress of any adverse impact can reasonably be effected after the full environmental review. Dr. Aynsley's testimony contains nothing bearing on this question. The testimony does indicate that alternative cooling methods can be constructed in the future. There is, however, nothing concerning the possible redress of environmental impacts which might occur before the alternatives are constructed.

Similarly, Dr. Aynsley's testimony contains no information on the second factor concerning whether limited operation forecloses subsequent adoption of the alternatives he discusses. And the testimony provides no information relating to the third factor concerning the effects of delay in facility operation upon the public interest.

The purpose of the submission of Dr. Aynsley's testimony at this time appears to be to involve the Board in the question of whether alternative cooling methods should be

constructed at the same time the Board is considering the authorization of limited operation. This will require the Board to determine the principal question in controversy in the full environmental review at the time of its consideration of limited operation under Section D.2 of Appendix D. This is directly contrary to the language and purpose of Section D.2. The purpose of this section is to allow limited operation pending the full environmental review where the public interest so requires, after an expedited review of three limited factors. If this review is to be expanded to include the major subject of the full environmental review, the whole purpose of Section D.2 would be frustrated. The Board is also referred to Applicant's May 1, 1972 reply to the intervenors' answer for further argument on this matter.

Accordingly, Applicant urges the Board to grant this motion. In making this motion, Applicant reserves its right to assert any other objections to the testimony of Dr. Aynsley.

Respectfully submitted,

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Dated May 10, 1972