

APPLICANT'S COMMISSION

In the Matter of

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

5-5-72.
Docket No. 50-247

REPLY OF INTERVENORS, HUDSON RIVER FISHERMEN'S
ASSOCIATION AND ENVIRONMENTAL DEFENSE FUND, ON
INTERVENOR'S OPPOSITION TO APPLICANT'S MOTION
FOR ISSUANCE OF A LICENSE FOR LIMITED OPERATION

In an answer dated May 1, 1972 Con Edison undertakes to reply to Intervenor's memorandum of law of April 3, 1972. Con Edison makes a number of broad and conclusory statements which misrepresent the position of HRFA and EDF and do nothing to refute the legal points made in the April 3 brief. But the major flaw of the Con Edison statement lies in its failure to give the Board and the parties a candid account of the power supply situation.

It is beyond dispute that the principal factual basis on which Con Edison has pressed its motion for an interim operating license at up to 90% of full power has been the claim that there is a power shortage in the Con Edison service area, particularly in the summer of 1972. Attention need only be drawn to Con Edison's moving papers of September 24, 1971 in which power demands in the summer of 1972 are a constant theme and to the May 1, 1972 brief in which the last few pages are devoted to arguing that in the best of all possible worlds

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Indian Point 2 will produce power for New York City before the end of the summer. The same theme is repeated in Section X of the Staff's Draft Environmental Statement, a document obviously written before the latest design change delay became public.

The question of the power supply situation was sufficiently important for the Chairman of this Licensing Board to request Con Edison's counsel to specify to the Board the sources of power supply which might be available to Con Edison in the summer of 1972 (Tr 4737-4738).

Con Edison itself has now publicly stated - in another forum - that there has been a dramatic improvement in the power supply situation for the summer of 1972. In January, Mr. Schwartz testified before the Licensing Board that Con Edison had been able to make firm purchases of 395 megawatts for the summer of 1972 (Tr. 4726).

In a statement, in a public hearing before the Power Authority of the State of New York made on May 3, 1972, Mr. Schwartz stated that, including the 150 megawatt purchase from PASNY which was the subject of the hearing, Con Edison now had 920 MW of firm purchase capacity. (p. 2-3 of Schwartz's statement, attached hereto for the convenience of the Board and parties). Mr. Schwartz went on to say that without Indian Point 2 Con Edison, in early September, would have 795 MW (21.4%) reserve capacity.

Mr. Schwartz further pointed out, in a departure from his

written statement, that Con Edison is negotiating for an additional 100 MW from Long Island. This is probably the same 100 MW which were mentioned in a New York Times story on May 4, 1972 (at 32, col 3): "Louis H. Roddis [president of Con Edison], announced an agreement reached yesterday morning for the purchase of 100,000 kilowatts daily from a Canadian source."

All of this amounts to a second demonstration, again out of Con Edison's own documents, that the motion for operation at 90% of full power is moot. We are faced with a situation in which Con Edison has failed to make out a prima facie case to support its 90% motion.

HRFA and EDF contend that Con Edison's brief of May 1, 1972 does nothing to refute the legal points made in the HRFA-EDF brief of April 3, 1972. HRFA and EDF also contend that the present power supply situation requires the Board to deal with two fundamental questions.

First, has Con Edison made a sufficient prima facie showing on the factors which the Commission listed for consideration in Section D.2 of Appendix D to 10 CFR Part 50? In particular has Con Edison made an appropriate showing under factor (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.

In the light of the unlikelihood that Indian Point 2 will contribute to the power demands of New York City in the

summer of 1972 and in light of the much improved supply situation in which Con Edison now has more than a 20% reserve, HRFA and EDF contend that Con Edison has failed to make a prima facie showing of detriment to the public interest.

Secondly, the question is raised of whether or not time will be saved and delays decreased by moving immediately to the consideration of the full power license.

By asking for a license at 90% of full power, Con Edison has inevitably assured that, if hearings are held on both 90% and 100% of full operation, there will be duplicative and repetitious testimony. That simply cannot be avoided.

Assuming that the Board and Staff will not wish to close the hearing on the 90% motion until the final detailed environmental statement is published, a period after the publication of the final statement will have to be set aside for environmental hearings on the 90% license and a schedule for findings of fact and conclusions of law will have to be drawn up. Additional time will have to be allotted for the Board to consider and decide the motion. Somewhere in the middle or at the end of this process, hearings on the 100% license will have to be set and the same procedure commenced again. The net result may well be that in the flurry of papers and hearings the resolution of any licensing request will be delayed.

HRFA and EDF are anxious to proceed to the hearing on the full power license. They contend that the proper course for the

Licensing Board to take is to deny Con Edison's motion for a 90% license and to set a date for the commencement of the full-power hearings, say 25 days after the publication of the final detailed statement. This will allow expeditious resolution of the issues in this proceeding. In light of the marked improvement in the power supply situation which has now become apparent, proceeding directly to the full power license will cause no detrimental effect on New York's power supply. It will, in all probability, produce a net saving in time and effort and expense to the Licensing Board and the parties in this proceeding.

Respectfully submitted,

A handwritten signature in cursive script, reading "Angus Macbeth". The signature is written in dark ink and is positioned above a horizontal line.

Angus Macbeth
Attorney for Hudson River
Fishermen's Association

Dated: May 5, 1972

BEFORE THE UNITED STATES
ATOMIC ENERGY COMMISSION

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

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Docket No. 50-247
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CERTIFICATE OF SERVICE

I hereby certify that I have served a document entitled:
"Reply of Intervenors, Hudson River Fishermen's Association
and Environmental Defense Fund, on Intervenors' Opposition to
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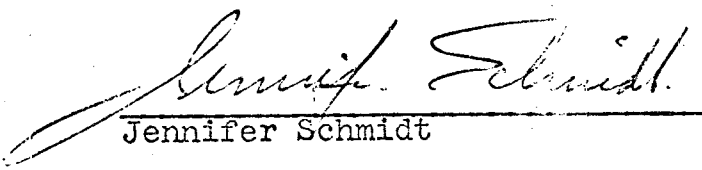
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