

BEFORE THE UNITED STATES

ATOMIC ENERGY COMMISSION

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

RESPONSE TO POSITION OF HRFA
ON RESEARCH PROGRAM PROPOSED BY CON EDISON

The document filed with the Board on January 8, 1973 by Mr. Macbeth entitled "Position of Hudson River Fishermen's Association on Research Program Proposed by Con Edison" is an unwarranted and emotional attack and is not responsive to the Chairman's request for an analysis of the research program.
(Tr. 7503)

The attack also constitutes an unwarranted insult to the members of the Hudson River Policy Committee and Con Edison's Fish Advisory Board, whose roles in the study have already been explained to the ASLB. The Hudson River Policy Committee consists of representatives of cognizant state and Federal agencies who have devoted years of serious work to the study of the Hudson River. The Committee has on site a resident member who is on loan from the U.S. Bureau of Sports Fishing and Wildlife.

The Fish Advisory Board are among the best scientific minds available to review the study program and are persons of long experience. The fixation of the HRFA that persons of this stature are turned into liars or incompetents by the fact that they work with Con Edison is ridiculous and reflects the myopic viewpoint of the HRFA.

Furthermore, the Hudson River Fishermen's Association have been invited to participate in meetings of the Fish Advisory Board and to offer constructive comments - an offer which continues to be refused.

The results of the studies proposed by Con Edison will be made available to all government agencies and interested parties, including the Hudson River Fishermen's Association, and will be presented at public meetings. There is no need for any decision-maker to rely on Con Edison's analysis of the data. Each person is free to draw his own conclusions and make his own analysis of the data.

Nothing contained in Mr. Macbeth's document justifies his attack on the Company's integrity, honesty and competence. Although we believe a reply to such unsubstantiated allegations is not a requirement of the hearing, we believe it important to set the record straight and will respond to each of Mr. Macbeth's points in the order stated in his document.

I.A. Mr. Macbeth places great significance on an inconsistency in the Environmental Report Supplement for Indian Point 2. The Environmental Report Supplement did not purport to be a scientific study but was simply a summary of previous studies. It is true that the Environmental Report Supplement at one place contains a sentence that striped bass eggs and larvae are not vulnerable to the intake and thermal plume at Indian Point. (Page 2.3.6-5) The Report also states that NYU was to perform studies on the effect of passing aquatic organisms through the condenser. (Page 2.3.6-7) Although the organisms are not identified in the Report, they included striped bass eggs and larvae and, as Mr. Macbeth notes, Appendix Q of the Environmental Report contains the data which contradicted the statement on Page 2.3.6-5. The fact that there was an inconsistency in a report prepared under the most stringent time pressures in response to a new AEC requirement implementing the Calvert Cliffs decision does not impugn the reliability of the basic data presented in Appendix Q.

I.B. The fact that the Environmental Report for Indian Point No. 3 has not yet been corrected in this regard simply reflects the current status of that proceeding. The Report has been under review for several months.

I.C. Mr. Macbeth criticizes Dr. Lauer's testimony (Testimony of Gerald J. Lauer, Ph.D., on Effects of Indian Point Units 1 and 2 Operation on Hudson River Biota, dated October 30, 1972) for the omission of certain analytical details. The portion of the testimony referred to was simply a preliminary, and very brief, progress report of data which had not yet been fully analyzed. The testimony states, (p. 50) "Much additional analysis of data must be done to refine the estimate, which could increase or decrease the present survival estimate somewhat depending on the net effect of the variables which must be considered." This hardly supports Mr. Macbeth's allegations of bad faith and incompetency.

I.D. On pages 4-5 of Mr. Macbeth's document, he purports to make the point that Con Edison tried to keep certain information secret in Dr. Lawler's testimony. This is entirely without substance or foundation.

Mr. Macbeth says that the written testimony of Dr. Lawler (Testimony of John P. Lawler, Ph.D., on Effect of Entrainment and Impingement at Indian Point on the Population of the Hudson River Striped Bass, dated October 30, 1972) failed to mention that all sampling referred to in Table 19 was done on a single day. Page 60 in the testimony referred to sampling

"throughout the 24-hour period". Any ambiguity was clarified in the testimony submitted on February 5, 1973.

Mr. Macbeth says that Dr. Lawler's testimony of October 30, 1972 failed to mention that "not one striped bass was taken in the samples outside the intake". The testimony stated, as noted by Mr. Macbeth, that "the number of striped bass caught was too small to perform any valid analysis". The transcript reference (Tr. 7370) clearly shows that Dr. Lawler volunteered the information concerning samples outside the intake. The information was not in response to any specific question asked by Mr. Macbeth. The fact is that classification of the larvae had not been completed by October 30, and Dr. Lawler took the first opportunity he had to clarify this point. In these circumstances we can hardly see how Con Edison can be accused of keeping the information secret.

I.E. Mr. Macbeth's criticism of Dr. Lawler's use of the Carlson-McCann report is most strange. Page 45 of Dr. Lawler's testimony of October 30, 1972, clearly states that the computations utilized an approach similar to that of John R. Clark, consultant to Hudson River Fishermen's Association. All the testimony of the Hudson River Fishermen's Association and the Atomic Energy Commission Staff utilizes data derived from the

Carlson-McCann report because the consultants to the parties appear to agree that, in spite of their limitations, they are the best data available. Certainly, Con Edison cannot be criticized for utilizing the same data the other parties utilize and cannot be accused of bad faith in doing so. The quotation referred to by Mr. Macbeth concerning the use of the Cornwall data for quantitative analysis was well known to all parties, and there was no need to repeat it in this testimony.

Furthermore, the testimony (p. 45) stated that "model runs to date" had used Carlson and McCann data. This indicated that future runs would use other migration preference values, and these runs have been described in the testimony submitted on February 5, 1973.

II.A. On pages 5-6 of Mr. Macbeth's document, he appears to indicate some inconsistency in Con Edison's approach to the Cornwall studies. Mr. Macbeth cites Con Edison's brief in the Cornwall case (without page reference) for statements that the Cornwall studies were "the best possible" after having "studied the distribution and abundance of fishes in the river and published an extensive report". In the cited transcript reference, Dr. Raney testified that the studies were good for the Cornwall area but were inadequate to estimate the relative

abundance of larvae at Indian Point. Dr. Raney's point was that the Cornwall data which were good for the purposes intended by that study, were totally inadequate to draw the types of generalizations which Dr. Goodyear drew in his testimony.

We cannot perceive any inconsistency between this testimony and the quotation from the brief in the Cornwall case. The studies, and the Cornwall brief, were obviously primarily concerned with abundance in the Cornwall area.

II.B. Mr. Macbeth uses out of context quotations from the Cornwall case and the Indian Point record to create a facade of inconsistency where none in fact exists. Mr. Macbeth appears to take the position that the Cornwall studies should have alerted Con Edison to a potential problem at Indian Point. This is not true. The Cornwall studies concluded that the passage of eggs and larvae through that pumped storage hydro-electric plant would not create a significant problem. Since Cornwall would utilize eight times the amount of water that Indian Point will use, the only logical conclusion from that study is that entrainment could not be a significant problem at Indian Point. This is further reinforced by the concept advanced in the Cornwall case, quoted by Mr. Macbeth, that the major spawning grounds for Hudson River striped bass was in

the immediate vicinity of the proposed Cornwall Project. It would follow that a plant utilizing one-eighth the quantity of water in another sector of the river would probably not have an impact worth studying.

III.C. The material omissions from the discussion on pages 9-10 of Mr. Macbeth's document raise a serious question as to the good faith of Mr. Macbeth. The facts, which are not stated by Mr. Macbeth, are that Raytheon Corporation was selected as the study contractor on the recommendation of the Technical Committee of the Hudson River Policy Committee. As indicated by Mr. Macbeth, some members of that committee were not fully satisfied with Raytheon's performance. Accordingly, they recommended that Con Edison change the study contractor, which was done. We fail to see how Con Edison's compliance with the request of the Technical Committee can be used to support Mr. Macbeth's allegations -- quite the contrary.

IV. The material on page 10 of Mr. Macbeth's document constitutes inadequate attempts to respond to the Chairman's request. This subject is dealt with in the testimony of Dr. James McFadden dated February 5, 1973.

The copy of Mr. Macbeth's document served on applicant ended on page 10, although it is not clear that this is the

end of the document served on the Board and other parties.

Respectfully submitted,

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Date: March 2, 1973