

BEFORE THE UNITED STATES
ATOMIC ENERGY COMMISSION

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

ANSWER OF INTERVENORS TO
APPLICANT'S MOTION TO STRIKE
CERTAIN TESTIMONY OF
DR. C. PHILIP GOODYEAR

Applicant Con Edison has, by letter dated January 24, 1973, moved to strike certain testimony of Dr. C. Philip Goodyear in this proceeding. Intervenor Hudson River Fishermen's Association and Environmental Defense Fund oppose that motion on the ground that Dr. Goodyear's testimony is relevant, material and reliable and hence admissable under 10 CFR 2.743.

Throughout the environmental phase of this proceeding, Con Edison has repeatedly offered evidence on the state of technical knowledge about entrainment or withdrawal of fish, the need for research on this issue and on the fisheries of the Hudson and on its proposed research program. At the outset of the environmental hearing, HRFA objected to the admission of evidence from Con Edison on the proposed

research program on the ground that it was irrelevant to the unrestricted license which Con Edison seeks. (Tr 6250-6253). That objection was overruled and the evidence was admitted (Tr. 6253-6254). This opened the whole subject of research, not only Con Edison's plans but its past performance on the Hudson on issues identical or related to those presented at Indian Point.

Part and parcel of Con Edison's position on research is the assertion that until very recently there was no technical knowledge or concern on the problem of entrainment. Tr. 6223-24, 7121-7158, but see Tr. 7598.

Further, at the request of Applicant's counsel and on the inquiry of the Board (Tr. 7494-7505), HRFA submitted to the Board on January 8, 1973 a statement of its position on the research program proposed by Con Edison. Looking at both past research on the Hudson and present plans, HRFA took the position that Con Edison's presentation of its data and conclusions had not been full, frank and fair; that it had not been untinged by self-serving presentation and that there was serious doubt as to how much confidence decision makers could place in the reliability of Con Edison's data collection and analysis.

The evidence which Con Edison now seeks to strike is relevant to this entire issue of research and research

performance which Con Edison introduced into this proceeding over the objection of HRFA. Con Edison cannot have it both ways. It cannot come forward proposing research as the proper solution to the present problems at Indian Point and then seek to exclude cross-examination which questions the past research on striped bass in the Hudson which Con Edison financed and on which it has relied before the courts. If Con Edison proposes research to the Board and contends that entrainment is a new problem about which there has not been concern in the past, then the HRFA is entitled to show that entrainment is not a new problem and that Con Edison's contention rests on a flawed analysis in the Carlson-McCann Report which produced a substantial error in the conclusions of the Report. The Goodyear testimony both supports HRFA's contentions on the Con Edison research program, and it elucidates and rebuts Con Edison's contentions on entrainment problems. Thus, the testimony is relevant to the very issues which Con Edison has introduced into the proceeding.

The testimony also elucidates and provides a full record on the bases on which the Staff model on distribution and entrainment of striped bass rests. This is a central issue to the proceeding and one which properly should be examined fully.

Con Edison further opened the door to this line

of questioning, which concerns the results of the Carlson-McCann Report, by its cross-examination of Mr. Clark on the procedures and results of Carlson-McCann (Tr. 8683-8687).

In a letter to the Chairman of the Board dated February 12, 1973, Con Edison further presses its motion to strike on the grounds that an affidavit of counsel for HRFA filed with the Federal Power Commission contains material which Con Edison seeks to strike. This letter is yet another example of a fundamental difference of view between Con Edison and HRFA. HRFA contends that the Hudson estuary, the use of its waters and the survival of its fishery must be viewed as a unitary whole if there is to be sound management and sound biological analysis of the River system. Con Edison appears to believe that each power plant on the Hudson is totally separate from every other power plant on the Hudson. Thus, HRFA contends that Indian Point must be seen in the context of other plants on the River such as Bowline Point and Roseton, and Con Edison contends that Indian Point should be analysed as if Bowline Point and Roseton did not exist. HRFA perceives a clear relationship between Storm King and Indian Point - not only are they power plants in the same reach of the River, but Indian Point will kill fish in its cooling system in order to generate power which will pump fish up the mountain at Storm

King, thus inflicting further damage on the fishery. Even Con Edison admits a relation between Storm King and Indian Point through the Carlson-McCann Report, the data base on which the company's analysis of entrainment at both plants relies. Tr. 7253-7257. Thus, there is nothing surprising or improper in the public record concerning one plant being employed in analysing the other. The intemperate letter of Con Edison's counsel of February 12, 1973 should be disregarded.

CONCLUSION

For the reasons stated above, the motion of Con Edison to strike the testimony of Dr. C. Philip Goodyear should be denied in its entirety.

Anthony Z. Roisman authorizes me to state that he joins me in this Answer on behalf of the Environmental Defense Fund.

Respectfully submitted,

A handwritten signature in cursive script that reads "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: New York, New York
February 27, 1973.

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CERTIFICATE OF SERVICE

I hereby certify that I have served a document
entitled: "Answer of Intervenors to Applicant's Motion
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by mailing copies thereof first class and postage prepaid
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