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November 12, 1972

Samuel W. Jensch, Esq.
Chairman, Atomic Safety
and Licensing Board
U. S. Atomic Energy Commission
Washington, D. C. 20545

In re: Consolidated Edison Company
of New York, Inc.
Indian Point Station
Unit No. 2
Docket No. 50-247

Dear Mr. Chairman:

I enclose Intervenors' Statement of Contentions and Matters in Controversy Concerning Environmental Issues.

It is important that the matters in controversy be set in the context of the application for an operating license. Con Edison has applied for a license to operate Indian Point Unit No. 2. After reviewing that application under the terms of the National Environmental Policy Act, the Staff has recommended that an operating license be issued with five conditions, the most prominent ones being the installation of a closed cycle cooling system, a monitoring program and a program to protect the biota of the Hudson. 1 FES vii-viii. Intervenors take the position that the first three conditions must be altered to achieve a faster construction schedule and restricted operation of Indian Point 2 during the construction period. See attached statement.

It is impossible to make out Con Edison's position. Con Edison apparently opposes some of the conditions proposed by the Staff and by the Intervenors, but it apparently believes other conditions, for instance one requiring research, are appropriate. Con Edison did not clarify its position through the statements submitted on October 30th. In fact Con Edison not only failed to state what license terms it is presently seeking, it

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further confused its already tangled position. Despite the schedule agreed on for expediting this proceeding, Con Edison did not file any statement of factual contentions. It filed testimony which is frequently in contradiction to its earlier statements and which rarely clears up previous contradictions in the testimony. Con Edison must now clearly state, first, what license with what environmental conditions it is now seeking and, secondly, what facts it relies on and contends must be incorporated into the final Environmental Statement to provide the adequate environmental analysis which will support the issuance of the license which it seeks.

I will supply only two examples of the present confusion of Con Edison's position which makes this statement of position essential. First, the question of entrainment. In its Environmental Report Supplement, Applicant's Exhibit 3 in this proceeding, dated September, 1971, Con Edison stated:

"Of the six key fish species ... four (alewife, blueback herring, striped bass and American shad) spawn upriver from Indian Point. Therefore, their eggs and larvae are not vulnerable to the intake and thermal plume at Indian Point." ERS 2.3.6-5.

In testimony submitted to the Board on October 19, 1971 in support of its motion for issuance of a license authorizing limited operation, Con Edison's position was somewhat different:

" ... the plant is below the area of major fish spawning in this river. Thus, relatively few fish larva will be withdrawn." October 19, 1971 testimony at 49.

In testimony submitted on April 5, 1972 by John P. Lawler in support of a license to operate Indian Point 2 at 90% of full power a chart is provided

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showing that 18 - 21% of striped bass in the Hudson less than one year old will be entrained at Indian Point. Lawler, April 5, 1972, Figure 7. Finally in testimony dated October 30, 1972 (but mailed to the parties five days later), further testimony from Dr. Lawler is offered in which entrainment percentages are no longer given, but it is stated that the effect of entrainment and impingement on the striped bass will be to reduce the population 2 - 6%. Lawler, October 30, 1972 at Table 24.

The sequence of contradictions is equally disturbing on the question of the cost of a closed cycle cooling system. In the Environmental Report Supplement, in September 1971, Con Edison stated:

"To add cooling towers at this time would cost about 30 million dollars. This cost is specific to Indian Point 2." ERS 2.5-12.

In a further Supplement to the Environmental Report filed in February 1972 Con Edison estimated the additional capital investment for a two-tower natural draft closed cycle system at \$97.5 million. ERS S3-14. In the testimony of Carl L. Newman filed October 30, 1972, the additional capital expenditure for the two-tower natural draft closed cycle system is given as \$119.7 million. Newman, October 30, 1972 at Table B. (In a letter to the Editor of the New York Times dated October 31, 1972 and published this morning, Charles F. Luce, Chairman of the Board of Consolidated Edison, discusses cooling towers at Indian Point 2 and states that they would cost "about \$97 million." New York Times, November 13, 1972, at 36, Col. 3.)

Lawler's October testimony builds on his April testimony, but none of the other statements make any attempt to fit in with one another or to repudiate past statements. The parties and the Board are given a litter of contradictions and left to their own devices to figure out what Con Edison's position is.

It is perfectly obvious that if further hearings are to go forward in a fruitful manner, the Board and the parties must receive from Con Edison,

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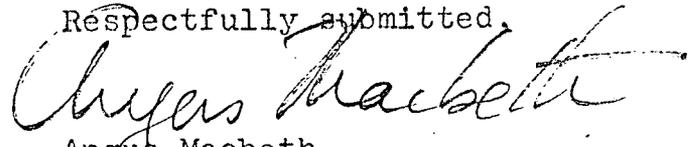
first, a clear statement of exactly what license with what environmental conditions it is now seeking and, second; a brief outline of the factual position which it now takes and which it believes should be incorporated into the final Environmental Statement and which will support the license terms it seeks.

It is Con Edison which seeks a license authorization from this Board and it is thus Con Edison that bears the burden of demonstrating that whatever license it requests is supported by an adequate environmental analysis. It is not enough for Con Edison to express its dissatisfaction with the positions taken by the Staff and the other parties. It must put forth clearly what its position is and carry the burden on that position.

The Statement of Contentions and Matters in Controversy filed by the Intervenors today is phrased in broad terms because Con Edison has failed to provide either a clear factual outline of its position such as the Intervenors provided in the "Outline Summary" of October 30, 1972 or a clear indication of the license terms it contends it can present a case to support. We do not believe that Con Edison has chosen either an expeditious or a proper way to proceed. If the papers filed by Con Edison today remain vague and undefined the Intervenors intend to move the Board to take appropriate action to assure that a focussed and comprehensible proceeding is carried forward on the environmental issues. The intervenors further reserve the right to amend and refine their contentions and matters in controversy in the spirit of the agreed on schedule at such time as Con Edison provides a focussed and comprehensible statement of its position.

Anthony Z. Roisman joins me in this letter and submittal on behalf of the Environmental Defense Fund.

Respectfully submitted,



Angus Macbeth
Attorney for Hudson River
Fishermen's Association

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