

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))

INTERVENOR'S ANSWER TO SUMMARY
OF CON EDISON'S POSITION
CONCERNING ENVIRONMENTAL ISSUES.

In keeping with the agreed schedule for this proceeding, Con Edison filed a summary of its position on environmental issues as its statement of legal issues and contentions. The major difficulty in answering this paper is in determining what legal contentions Con Edison is making. As a series of legal contentions, the Con Edison document is a model of vagueness. The heart of Con Edison's statement appears to be factual: Con Edison contests the Staff's judgment on the recommendation that the installation and operation of a closed cycle cooling system be made a condition of the license. If there is a legal aspect to this disagreement, it seems to be that Con Edison believes that additional quantification is required in the cost-benefit analysis.

The regulations of the Atomic Energy Commission require that the Final Environmental Statement include a cost-benefit

analysis which will, "to the fullest extent practicable, quantify the various factors considered." 10 CFR 50, App. D, §A.8. That requirement applies to this proceeding. 10 CFR 50, App. D, §D.1. In addition, the same requirement is made of the applicant in the preparation of its environmental report. 10 CFR 50, App. D, §A.3.

In its Environmental Report Supplement No. 3, filed in February 1972, Con Edison provided a cost-benefit analysis and presumably did its best to follow the AEC regulations by quantifying to the fullest extent practicable. ERS No. 3, S3-126 et seq. None of the environmental costs or benefits in the Con Edison Report, with the exception of property values, is given in dollars and cents terms. The Con Edison cost-benefit analysis describes the environmental costs in terms such as "pounds of fish per year" and visitors per year at historical sites. In its present Summary, Con Edison has failed to explain either why it did not quantify more in its Report - which is designed to aid the Staff in the preparation of the Final Environmental Statement - or, if more could not have been quantified in the Report, how the circumstances have changed so that more should be quantified now.

Con Edison also ignores the quantified measures of environmental damage which are to hand. The Attorney General of New York in a letter to the ASLB dated October 13, 1972, has pointed out that Con Edison is liable for a civil penalty of \$10 for each fish taken at the screens of the plant. Since it is anticipated

by the Staff that between 2 and 5 million fish will be killed annually at Indian Point Unit No. 2, the Staff's cost-benefit analysis may simply be altered to indicate a cost of \$20-50 million annually due to fish kills as long as a closed cycle cooling system is not operating.

In addition, the Intervenors are today submitting testimony which indicates the multi-million dollar value of the striped bass fishery which will be decimated by the operation of the plant with the present cooling system. In light of this testimony, more millions annually must be added to the environmental damage which Indian Point Unit No. 2 will do to the Hudson with the present cooling system.

Of course, entrainment of striped bass larvae and juveniles and the impingement of white perch, striped bass and other fish are the foreseeable direct adverse effects of the operation of Indian Point Unit No. 2 to which the parties have addressed themselves. There are also the indirect effects which are not clearly foreseeable and which will add measurably to what is already a staggering bill for the environmental destruction which Con Edison will commit if Indian Point is run without a closed cycle cooling system.

When in doubt about the balance of costs and benefits, the clear policy of the National Environmental Policy Act directs agencies to opt for environmental protection. But even the use of such a presumption is not necessary here. The cost-benefit

analysis put either in quantitative or qualitative terms weighs clearly and unambiguously in favor of a closed cycle cooling system. This is obvious not only from the Staff's Final Environmental Statement, the vast liabilities to which the company will open itself through the killing of fish at the plant intakes and the direct and indirect damage to the fisheries dependant on the Hudson which the plant will cause; it is also clear from the comments on the Draft Environmental Statement received from other federal agencies with special expertise on environmental matters. In the Draft Environmental Statement, the Staff estimated much less impact on the Hudson fishery than is predicted in the Final Environmental Statement. Nevertheless, the federal Environmental Protection Agency wrote the Commission recommending "implementation of a closed-cycle cooling system at the earliest date practicable." 2 FES 15. The Department of the Interior recommended to the Commission that a condition be placed in the operating license requiring that

[t]he applicant shall construct and place in operation at the earliest possible time, and in no case later than July 1, 1975, the closed cycle cooling system . . . 2 FES 48.

The only conclusion which can be reached from an impartial judgment is that the costs of operating Indian Point Unit No. 2 without a closed cycle cooling system far outweigh the benefits and that construction should begin immediately. Con Edison has stated in its Summary that three years are required to build cooling towers. Summary at 2 et passim. No time period longer

than that should be accepted for putting the system into operation and, if possible, a shorter building period should be required.

Con Edison's Summary should be dismissed as a legal contention and treated as a broad factual allegation. Alternatively, if Con Edison is making any contention beside that answered here, Con Edison should be required to state its legal contention in reasonable specificity so that the parties and the Board may address themselves to whatever contentions Con Edison is attempting to set forth.

Respectfully submitted,



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Dated: New York, New York
October 30, 1972.

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CERTIFICATE OF SERVICE

I hereby certify that I have served a document entitled:
"Intervenor's Answer to Summary of Con Edison's Position Concern-
ing Environmental Issues", by mailing copies thereof first class
and postage prepaid to each of the following persons this 30th
day of October, 1972.

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