

BEFORE THE  
UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

In the Matter of

CONSOLIDATED EDISON COMPANY     )  
OF NEW YORK (Indian Point,     )  
Unit No. 2)                             )     Docket No. 50-247

ANSWER OF INTERVENORS, HUDSON RIVER  
FISHERMEN'S ASSOCIATION, AND ENVIRONMENTAL  
DEFENSE FUND, TO APPLICANT'S MOTION FOR  
ISSUANCE OF A LICENSE AUTHORIZING  
LIMITED OPERATION

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By papers dated July 27, 1973, the Applicant, Con Edison, has moved the Board for an amendment to its license for Indian Point 2 pursuant to 10 CFR 2.730, 50.57(c) and Part 50, Appendix D, §A.12. HRFA and EDF oppose that motion on the ground that it is improperly made since such an amendment may be granted only pursuant to 42 U.S.C. §2242, and the regulations thereunder, and, additionally, that the motion is vague and insufficiently supported.

Con Edison urges that it be granted an amendment to its license for the Indian Point 2 facility and in support of its motion presents affidavits, aimed at showing that there is a present need for the power which the plant may generate (e.g., Affidavit of Bertram Schwartz) and that the operation of the plant will not be harmful to the environment (e.g., Affidavit of Harry G. Woodbury, Jr.). On this foundation Con Edison asks to be allowed to operate the Indian Point 2 plant at 50 percent of full power with or without an authorization to test to 100 percent of full power.

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PDR ADOCK 05000247  
G PDR

This application comes squarely within the terms of the statute passed by Congress on June 2, 1972 dealing with the grant of temporary operating licenses for nuclear plants, 42 U.S.C. §2242. At the beginning of the summer of 1972, there was considerable fear in many quarters that if nuclear powerplants for which the licenses were then awaiting decision or NEPA statements were not allowed to operate the public might be deprived of needed power from plants whose operation would not in fact be environmentally harmful. In order to meet this possibility, Congress passed an act with carefully spelled out procedural and substantive requirements for the issuance of temporary operating licenses. The issues to be considered in the application for such licenses, and the bases on which they may be granted, the requirements for timing and notice are clearly set out in the statute.

Con Edison has simply attempted to evade the requirements of the statute by its motion. Section 50.57(c) of 10 CFR may reasonably be thought to cover licenses for testing purposes, but it cannot serve as a route for avoiding the Congressionally mandated requirements for obtaining a temporary operating license. Congress did not establish a scheme for the granting of temporary operating licenses in order to have the Atomic Energy Commission proceed to authorize temporary operating licenses under an entirely different scheme of its own devising. To accept the motion made by Con Edison would amount to administrative repeal of the explicit commands of the legislature.

What Con Edison is attempting in this motion amounts to little more than twisting the arm of the Board and the parties with the threat of cutting off power to the City of New York. For more than a year an initial decision has been outstanding on Con Edison's application for a license to test to 50 percent of full power. For more than three months Con Edison has been operating Indian Point 2 under an amendment to its license pursuant to that initial decision. Throughout that period Con Edison was aware of the statute governing the issuance of temporary operating licenses. It chose to ignore that statute with its provisions for the timely and orderly resolution of the issues surrounding temporary licenses. Now Con Edison seeks to obtain an operating license in an atmosphere of crisis and emergency and without meeting the requirements of the temporary operating license statute. These tactics should not be permitted by the Board and Con Edison's motion should be denied as improperly brought.

Also of importance are the vague and indefinite terms in which Con Edison has applied for relief. It requests that the motion "be authorized for a term ending with the issuance of an amendment to the license in accordance with an initial decision by the Board in this proceeding." Motion at 2. This request can be read to mean that the term sought ends with the issuance of an initial decision, or it can be read to end with issuance of a finally approved amendment following whatever appeal the parties take from the initial decision of this Board. In either case, the

term for which the license amendment is sought is indefinite and unsure; as a natural result it remains unclear whether or not the affidavits in support of the motion in fact cover the period which the license would cover if granted on the terms sought by Con Edison, and an insufficient basis is provided for the Board to decide on a license application which has no sure or certain terminal date.

The insufficiency of the supporting affidavits is most obvious on the issue of the impact on fish. The affidavit of Harry G. Woodbury, Jr. states that in August and September between 86,000 and 134,000 fish will probably be killed by impingement at Indian Point 2. In August these would primarily be tomcod and during September the dead fish would primarily be white perch, alewife, blueback herring and anchovy. The affidavit goes on to state:

Due to the abundance of fish in the Hudson River as a whole and the fact that the species which might be impinged have abundant and vigorous populations, the estimated loss during the period requested with any combination of operation and testing as discussed above would be negligible.

The basis for this statement as regards tomcod, alewife, blueback herring and anchovy is unidentified and perhaps unidentifiable. Through a lengthy proceeding, very little evidence was adduced on these species of fish and none that would support the sweeping generalizations of the affidavit. See, e.g., Applicant's Proposed Findings of Fact at 140-144. If Con Edison in fact has knowledge about these species of fish it should put it in a testable

form rather than make unsupported and broad allegations of fact.

The same failing is obvious in the Schwartz affidavit in which there is no discussion of the quantities of power which are available this summer through other than firm purchases. The Newman affidavit also rehearses untested information, providing figures on the levels of air pollutant reduction caused by the operation of Indian Point 2 but failing to relate those numbers either to ambient air quality or any effects on man or other objects in the environment.

Obviously, if the life of the license exceeds the two months which are covered in the affidavits, both the environmental impacts and the power supply and demand situation will change. If this piecemeal review of short term licenses based on affidavits with broad-brush assertions of fact is allowed despite the clear directions of the Congress, we quickly find ourselves in the position of looking at each slice of the salami but never seeing the whole sausage. Each month of operations might be justifiable, though all the months put together would never be approved. Con Edison should be prevented from employing this technique now at its first attempt.

Applicant's motion for a license authorizing limited operation should be denied on the grounds that such licenses may only be granted pursuant to the terms of 42 U.S.C. §2242 and, additionally, on the grounds that the license terms sought and the affidavits on which the application is based do not meet the standard of specificity and detail necessary to allow the

issuance of a temporary operating license.

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 black ink and is positioned above the typed name.

Angus Macbeth

Attorney for the

Hudson River Fishermen's Association

Dated:

July 31, 1973

New York, N. Y.

7-31-73

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ANSWER OF INTERVENORS, HUDSON RIVER FISHERMEN'S ASSOCIATION, AND ENVIRONMENTAL DEFENSE FUND TO APPLICANT'S MOTION FOR ISSUANCE OF A LICENSE AUTHORIZING LIMITED OPERATION was mailed, postage prepaid, this 31st day of July, 1973, to the following:

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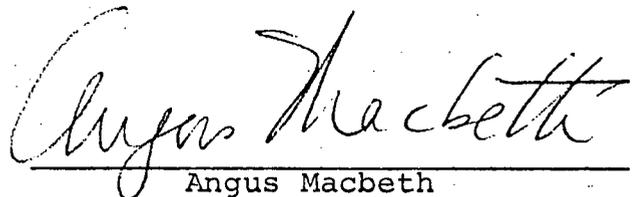
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