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May 31, 1973

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

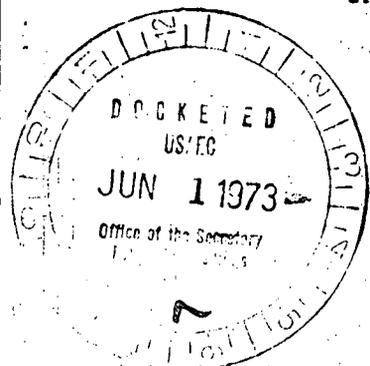
Dear Mr. Chairman:

I am writing in response to your letter of May 24, 1973 on the question of the letter from the Mayor of Buchanan to the Board.

It is the position of the Hudson River Fishermen's Association that if any party or the Board wishes to rely on the letter of the Mayor in support of any argument or position in this proceeding, it must be introduced into the record. If the letter is introduced, the contentions of the parties in relation to the issues raised by the letter must be plainly stated. In addition, if such an offer is made, further elucidation of the position of the Village will be necessary for a number of reasons set out below. This may require a process of discovery before further hearings since the facts surrounding the letter are very unclear.

First, the language of the third paragraph of the letter is confusing:

"Under the circumstances, we feel that only application by Consolidated Edison Company to build cooling towers with the dimensions required for the plans now completed or under construction would be acted upon



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unfavorably by the Planning Board of the Village of Buchanan."

Does the Mayor in fact mean "only"? If so, is he suggesting that minor modifications of the Con Edison proposal are necessary to meet the wishes of the Village?

Second, it is important to know on what basis the opinion of the Mayor is offered. Has an application for the construction of a cooling tower been made to the Village of Buchanan? Has any ruling been made by Buchanan? What has been the course of dealings between Con Edison and the Village?

Third, there must be reference to the parts of the Buchanan ordinances involved. For instance, the Mayor does not discuss the applicability of §59-19(A)(2) of the Buchanan Zoning Code which, in describing the regulation of the "General Industrial District", states:

The following uses shall be prohibited in this and all preceding districts: ... slaughter of animals. ...

Since I am not presently in possession of a copy of the Buchanan zoning map, I do not know whether Indian Point 2 falls within this prohibition; but if it does, serious questions are raised as to whether the plant can operate at all under the zoning laws of Buchanan.

Fourth, the question is raised of whether Con Edison has changed its closed cycle cooling plans in light of this letter; and, if so, how.

Fifth, there are the general questions of law and policy as to how the ordinance in question is affected by the policies of New York State and the National Environmental Policy Act and how it can or should affect the decision of this Board in the present licensing proceeding. If the letter of the Mayor of Buchanan is introduced into the record, this matter must be briefed by the parties.

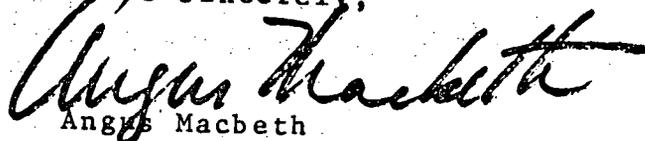
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Obviously, it is one matter if Con Edison does not intend to operate Indian Point 2 until all the necessary permits for final operation of the plant with a closed cycle cooling system are in hand and quite another matter if Con Edison now contends that its only choice is between destroying the Hudson River fishery or blacking out the City of New York.

In short, the Mayor's letter raises a new issue. If any party wishes to bring the matter before the Board, a thorough inquiry into the matter must be conducted, and the contentions of the parties on the matter must be clearly stated. But the Board should entertain no consideration of the general statements in the letter until the letter is placed in evidence, and no reliance should be placed on the letter until a full inquiry into the matter has been had.

Anthony Z. Roisman authorizes me to state that he joins me in this letter on behalf of E.D.F.

Yours sincerely,



Angus Macbeth
Attorney for Hudson River
Fishermen's Association

AM/sp

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