

4/2/73

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))	

ANSWER OF HUDSON RIVER FISHERMEN'S
ASSOCIATION TO APPLICANT'S MOTION
TO RECONSIDER OR ALTERNATIVELY TO
CLARIFY RULING ON ADMISSION OF
EVIDENCE CONCERNING BOWLINE POINT
AND ROSETON STEAM ELECTRIC PLANTS.

Intervenor, Hudson River Fishermen's Association, hereby incorporates by reference the arguments set forth in its Motion dated October 16, 1972, its Reply dated November 16, 1972, and in oral argument before the Board on November 22, 1972 and March 8, 1973. In addition, HRFA now answers Applicant's argument that review of the uses of Hudson River water with their attendant effects on Hudson River aquatic biota should be strictly left to the federal Environmental Protection Agency and the States.

First, under NEPA, the analysis of an action affecting the environment must take into account the totality of the environment affected. Here the environment includes the

Bowline Point and Roseton plants; and, therefore, they must be considered. NEPA contains no suggestion that these duties can be abdicated by the licensing agency to any other private or public group. Greene Cty. Planning Bd. v. FPC, 455 F.2d 412, (2d Cir. 1972), cert denied - U.S., 4 ERC 1752. Kalur v. Resor, 335 F.Supp. 1 (D.D.C. 1971).

Second, there is no statement in the Federal Water Pollution Control Act Amendments of 1972 which gives sole responsibility to the federal EPA and the States to take into account the operation, in the environment of a single river, of a number of different water users. Applicant's brief cites no section of that vast and labyrinthine Act in support of its argument and Intervenor's counsel have been unable to find such a section. The 1972 Amendments are primarily a discharge statute rather than a general environmental protection statute, and their emphasis is on developing technologically based controls on the discharge of pollutants. The Amendments do not take away the NEPA duties of the Atomic Energy Commission, and the clear requirements of that Act must be followed.

Finally, Con Edison now appears to agree that the entire array of plants on the River must be seen as a whole. On March 28, 1973, the Applicant filed with the Federal Power Commission an "Answer of Consolidated Edison Company of New York, Inc. to Petition of Hudson River Fishermen's Associa-

tion for Hearing and for Order Regulating Operation of Pumped Storage Project and Motion to Dismiss the Petition," FPC Project No. 2338. Those papers agreed with HRFA's fundamental position that there must be unitary analysis of the River:

"[T]he [HRFA] Petition (¶15) states that Cornwall's effect on fisheries cannot be considered in isolation from other developments on the Hudson which also affect the fisheries. There is nothing new in that observation. In fact, Con Edison is continuing its extensive fishery investigations in connection with both the Indian Point matter and as required by this Commission by Article 36 of the Cornwall license. These further investigations will of course further evaluate multiple plant impact." Answer at 32*.

If Con Edison is willing to lay its multiple plant analysis before the FPC, HRFA finds it hard to understand why the company so strenuously resists putting it before the AEC. It may, of course, simply be that the analysis begun for the FPC in 1965 is not complete and that Con Edison doesn't want to be hurried in reaching its conclusions. As long as Con Edison doesn't want to operate any of its plants on the Hudson, HRFA will be happy to consider an even more extended

* The further evaluation will be a very interesting one, since it will allow Con Edison an opportunity to synthesize and reconcile the markedly different approaches to analyzing the effect of power plants on the aquatic biota of the Hudson which have been adopted at Indian Point, Bowline Point and Storm King.

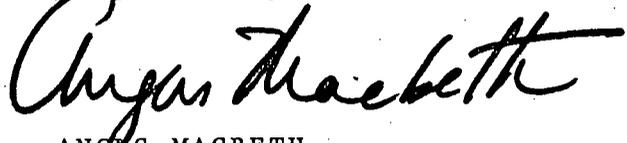
time for research. But until the company publicly adopts that position, its motion in the context of the pending licensing proceeding must be denied.

CONCLUSION

For the reasons stated above, the Motion of Consolidated Edison should be denied.

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

Respectfully submitted,



ANGUS MACBETH
Attorney for Hudson River
Fishermen's Association

Dated: New York, New York
April 2, 1973.

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CERTIFICATE OF SERVICE

I hereby certify that I have served a document entitled: "Answer of Hudson River Fishermen's Association to Applicant's Motion To Reconsider Or Alternatively To Clarify Ruling On Admission Of Evidence Concerning Bowline Point and Roseton Steam Electric Plants" by mailing copies thereof first class and postage prepaid to each of the following persons this 3rd day of April, 1973.

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