8-24-73

BEFORE THE UNITED STATES

ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. [Indian Point Unit No. 2]	)	Docket No. 50-247

ANSWER OF THE STATE OF NEW YORK TO THE MOTION OF THE APPLICANT FOR EXTENSION OF TIME TO ANSWER MOTION OF THE STATE OF NEW YORK FOR RECONSIDERATION.

In response to the motion of the State of New York dated August 13, 1973 for reconsideration of the Initial Decision and Order of the Atomic Safety and Licensing Board ("Board") authorizing steady state operation of Indian Point Unit No. 2 at 50 percent of full power, the applicant Consolidated Edison Company of New York, Inc. ("Con Edison"), by motion dated August 22, 1973 has requested the Board to grant it an extension of time until September 4, 1973 to file its answer to said motion.

The good cause asserted by the applicant is that the State of New York, by its motion and by its letter dated August 8, 1973, has made "certain assertions which are being presented

suddenly and for the first time in this lengthy proceeding." Con Edison has been in intimate contact with the State of New York for months concerning its request to the State for the required water quality certification. It has visited the offices of the Executive Deputy Commissioner of the Department of Environmental Conservation of the State of New York on numerous occasions, seeking § 401 certification. It has known from the outset that the § 21(b) certificate it received on December 14, 1970 was issued without any public notice, that § 21(b) has a mandatory requirement for public notice, and that the § 21(b) certificate was therefore invalid. It has known for months that the State of New York did not consider said § 21(b) certification to be operative, and the State of New York intended to evaluate the water quality aspects of Indian Point Unit No. 2 pursuant to § 401 of the Federal Water Quality Act Amendments of 1972 ("1972 Act").

Accordingly, on January 31, 1973, it requested such § 401 certification from the State of New York. In March of 1973, it reiterated its request with respect to its motion before the Board for authorization to operate its Indian Point facility at from 20 to 50 percent of full power for testing purposes, and it received such a limited § 401 certificate from the State of New York on April 24, 1973, which it duly presented

to the Board in support of its motion. On July 17, 1973, with its 50 percent testing program nearing completion, Con Edison again requested a § 401 certificate for its Indian Point Unit No. 2 facility.

It is the applicant, and not the State of New York, which has engaged in sudden and unexpected maneuvers in this proceeding. After proceeding on the basis of § 401 of the 1972 Act, before the State of New York by its repeated requests for § 401 certification and before the Board by the presentation of such certification for its 50 percent testing program, Con Edison suddenly, in its proposed Initial Decision and Order, rather than its moving papers, asserted a reliance on its outdated and invalid § 21(b) certificate. The objections of the State of New York to such actions cannot possibly come as a surprise to the applicant, and it is specious for the applicant to now assert that good cause for delay has been shown because the Board was not aware of the invalidity of the § 21(b) certificate until the receipt of the August 8, 1973 letter of the State of New York. It is the applicant which is requesting additional time to answer, and as to it, the position of the State of New York has been well known.

In addition, there is now an extant Decision and Order of this Board which Con Edison will undoubtedly present to the Director of Regulation of the Atomic Energy Commission for a license to operate Unit No. 2 at 50 percent steady state during the pendency of New York's motion. Said Decision and Order was issued without the necessary water quality certification, and expeditious steps should be taken by the Board to assure that operation of Unit No. 2 does not take place in violation of the 1972 Act.

Furthermore, the Atomic Safety and Licensing Appeal Board, by Memorandum and Order dated August 23, 1973, has granted the motion of the A.E.C. Regulatory Staff for an extension of time to file exceptions to the Board's Initial Decision and Order with respect to water quality certification until seven days after the date of the Board's final action on the motion of the State of New York for reconsideration, and, with respect to said motion for reconsideration, stated, "we urge the Licensing Board to act on the motion expeditiously."

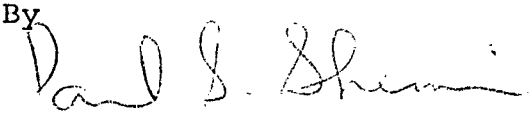
There is quite simply no need for the extension of time requested by the applicant. The public notice requirements of § 21(b) of the Federal Water Quality Act of 1970 are mandatory. There was no public notice at all with respect to the § 21(b)

certificate proffered by Con Edison, and as a result thereof, the public, including the public interest groups that are parties to this proceeding, was given no opportunity to present to the State of New York prior to its issuance of said § 21(b) certificate the information which has been presented extensively to the Board with respect to water quality matters.

For these reasons, the motion of the applicant for an extension of time should be denied.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
By



PAUL S. SHEMIN
Assistant Attorney General

Dated: August 24, 1973

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ATOMIC ENERGY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that I have served the annexed "Answer of the State of New York to the Motion of the Applicant for Extension of Time to Answer Motion of the State of New York for Reconsideration" by mailing copies thereof first class and postage prepaid to each of the following persons this 24th day of August 1973:

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