8-21-73

UNITED STATES OF AMERICA

ATOMIC ENERGY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of	)	
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,	)	Docket No. 50-247
(Indian Point Nuclear Generating Station, Unit No. 2)	)	

ANSWER OF THE STATE OF NEW YORK TO THE MOTION OF THE AEC REGULATORY STAFF FOR EXTENSION OF TIME TO FILE EXCEPTIONS TO INITIAL DECISION AUTHORIZING CONTINUED TESTING AND STEADY STATE POWER OPERATION AT 50 PERCENT OF FULL POWER THROUGH SEPTEMBER 30, 1973

The motion of applicant Consolidated Edison Company of New York, Inc. ("Con Edison") for a license authorizing continued testing and steady state power operation at 50 percent of full power was served on the State of New York on July 30, 1973. Said motion made no reference to the required water quality certification, under either § 21(b) of the Federal Water Pollution Control Act of 1970 or § 401 of the Amendments thereto of 1972. New York's Answer, dated August 1, 1973, noted that Con Edison had not presented the Atomic Safety & Licensing Board ("Board") with the required § 401 certification. On August 6, 1973, the applicant submitted a

proposed Initial Decision and Order with a cover letter, in which it stated that certification under § 401 had been waived and that a water quality certificate had been issued to it under § 21(b) of the 1970 Act, which certification satisfied the water quality assurance from the State of New York required by the Board.

Despite the fact that the said § 21(b) certificate was put in evidence by the applicant and listed on a table of required approvals in the AEC Regulatory Staff's Final Environmental Statement ("FES") (p. I-9), this was the first time that any party to the proceeding had cited said certificate as operative in this proceeding. It is to be noted that the placing of the certificate in evidence and the Regulatory Staff's reference to it in its FES both predated the enactment of the Federal Water Quality Act Amendments of 1972 ("1972 Act"), which Act included the § 401 certification requirement.

By letter dated January 31, 1973, Con Edison requested certification by the State of New York under said § 401. In response to a request by the applicant, a limited certificate for 20 to 50 percent testing purposes was issued by the State of New York on April 24, 1973, and presented to the Board by Con Edison in support of its motion for a 20 to 50 percent testing license. The applicant has similarly requested such certification for operation of its plant at 50 percent steady

state. The State of New York thus had no reason to believe Con Edison was planning to place any reliance on the § 21(b) certificate, which the State had informed Con Edison was invalidly issued as well as superseded by § 401 of the 1972 Act.

After receiving the August 6, 1973 proposed Initial Decision and Order, the State of New York by letter dated August 8, 1973 notified the Board that said § 21(b) certificate was invalid. Had New York known that the applicant intended to rely on said certificate, despite all the indications to the contrary, it would have informed the Board of its invalidity at an earlier date.

Because the Board issued its Initial Decision and Order on August 9, 1973, it did not have the benefit of this information prior to issuing its decision. Inasmuch as the § 21(b) certificate was issued without the mandatory public notice, and was superseded by § 401 of the 1972 Act, New York on August 13, 1973 moved for reconsideration of the Board's decision. New York chose this route rather than merely filing exceptions to the Board's ruling in order to avoid the inevitable appeals which it felt would eventually result in a reversal of said Decision and Order and a decision requiring the applicant to submit a § 401 certificate.

Should the Board deny New York's motion for reconsideration, the State would then seek to file an exception to both the Initial Decision and Order granting Con Edison's motion and a subsequent order denying the motion of the State of New York. It should be obvious at this juncture that the procedure suggested by the AEC Regulatory Staff in its motion for an extension of time to file exceptions to the Board's Decision and Order is the most expeditious one for resolving the current controversy.

It is to be hoped that expeditious reconsideration of the applicant's motion on the basis of the above-mentioned information presented to the Board, along with appropriate certification under § 401, will resolve this matter.

Dated: New York, New York
August 21, 1973

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General
By

PSS:gk

PAUL S. SHEMIN
Assistant Attorney General

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ATOMIC ENERGY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "Answer of the State of New York to the Motion of the AEC Regulatory Staff for Extension of Time to File Exceptions to Initial Decision Authorizing Continued Testing and Steady State Power Operation at 50 Percent of Full Power through September 30, 1973," in the captioned matter, dated August 21, 1973, have been served on the following by deposit in the United States mail, first class or air mail, this 22nd day of August, 1973:

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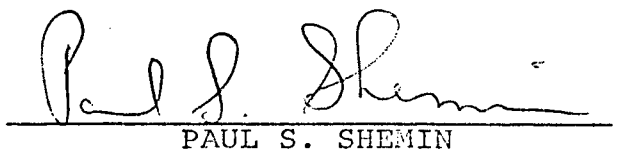

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