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UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

08/06/73

Before the Atomic Safety and Licensing Board

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

RESPONSE OF AEC REGULATORY STAFF TO ANSWER
 OF HUDSON RIVER FISHERMEN'S ASSOCIATION,
 ENVIRONMENTAL DEFENSE FUND, AND CITIZENS
 COMMITTEE FOR THE PROTECTION OF THE ENVIRONMENT
 TO APPLICANT'S MOTION FOR ISSUANCE OF
LICENSE AUTHORIZING LIMITED OPERATION

In their Answers to Applicant's Motion For Issuance of a License Authorizing Limited Operation, the Intervenors, Hudson River Fishermen's Association, Environmental Defense Fund and Citizens Committee For The Protection of The Environment, base their opposition to the motion primarily on the ground that the action sought by applicant under 10 CFR 50.57(c) is not available since the passage of Section 192b of the Atomic Energy Act of 1954, as amended. The staff disagrees with such contention, and cites the Commission's Statement of Consideration relating to Temporary Operating Licenses (37 F.R. 11871, June 15, 1972) wherein it was stated "Under the Act, prior to the addition of new section 192 the Commission was afforded considerable flexibility to develop and apply hearing procedures suitable to the nature of its proceedings. Section 192 is in no way a limitation on the

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hearing

Commission's preexisting authority, rather, in keeping with the expedited procedures now mandated it expands the procedural flexibility formerly provided". In addition, it is stated in said Statement of Consideration "The availability of expedited procedures for a temporary operating license does not preclude an applicant from making a motion for a license for limited operation pursuant to the Commission's present regulations in Part 50".

It is readily apparent that the Applicant had an option to select whether to request the action herein under 10 CFR 50.57(c) or 10 CFR 50.57(d) (temporary operating license). Section 50.57(c) has consistently been utilized for the issuance of limited operation licenses. The staff believes, however, that under Section 50.57(c) the Board cannot authorize issuance of any license calling for 100% power^{1/}. The Board can, under subject motion authorize issuance of license short of full power operation. The staff, as indicated in our Answer of August 1, has no objection to such authorization.

With respect to the intervenors other grounds for objection, namely, no certain date for termination of license, lack of specificity with respect to need for

1/ Lest there be any confusion concerning the staff's Answer of August 1, 1973, the staff's position is that it has no objection to the action requested by the Applicant is its Motion, provided that such license issued in accordance with §50.57(c) the Commission's regulations, authorize operations requested short of full power operation.

power, and damage to biota, the staff must point out that the evidentiary hearings have been completed and the parties are awaiting the Initial Decision on the application for a full term, full power license. The evidence is in; the staff has taken the position that there is a need for power, particularly during the summer months in the New York area, and applicant's affidavit in support of the motion is consistent with the evidence in the proceeding as well as with the staff position. The evidence adduced at the hearing support applicant's contention relative to possible damage to Hudson River biota at this time of year. The applicant's motion requests authority for limited operation for a short period of time until any full term license is issued pursuant to authorization resulting from an Initial Decision of the Board - a decision which is imminent.

The staff repeats the position it took in our answer to the motion in that it has no objection to applicant's motion of the authorization for issuance of an interim license short of full power in accordance with 10 CFR 50.57(c).

Respectfully submitted,



Myron Karman
Counsel for AEC Regulatory staff

Dated at Bethesda, Maryland
this 6th day of August, 1973.

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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CONSOLIDATED EDISON COMPANY) Docket No. 50-247
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(Indian Point Nuclear Generating)
Station, Unit No. 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of "Response of AEC Regulatory Staff to Answer of Hudson River Fishermen's Association, Environmental Defense Fund, and Citizens Committee for the Protection of the Environment to Applicant's Motion for Issuance of License Authorizing Limited Operation," in the captioned matter, dated August 6, 1973, have been served on the following by deposit in the United States mail, first class or air mail, this 6th day of August, 1973:

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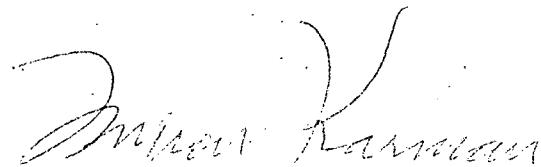
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