2-14-74

BEFORE THE UNITED STATES

ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
	)	
Consolidated Edison Company of New York, Inc. (Indian Point Station, Unit No. 2)	)	Docket 50-247
	)	
	)	

BEFORE THE ATOMIC SAFETY
AND LICENSING APPEAL BOARD

MOTION FOR RECONSIDERATION OF
MEMORANDUM AND ORDER, ALAB-174

By Memorandum and Order, ALAB-174, dated January 29, 1974, the Appeal Board granted the Applicant's Exception 13 extending to December 1, 1974 the date by which the Applicant must submit to the Commission an evaluation of the economic and environmental impacts of an alternative closed-cycle cooling system. Pursuant to 10 CFR §2.730 the Hudson River Fishermen's Association moves the Appeal Board for reconsideration of the Memorandum and Order.

The Appeal Board's Memorandum takes as a consistent theme the notion that the report on closed-cycle cooling should not be required before such time as the Applicant believes it will

have the report ready. The Memorandum ignores the responsibility of the Applicant to have its reports ready on a timely basis. It further misjudges the time-scale against which Con Edison's constantly slipping schedules should be measured when it states that

> The need to be concerned with environmental studies for cooling towers for Indian Point 2 did not become apparent until the Final Environmental Statement was issued in September, 1972. Memorandum at 9.

The National Environmental Policy Act was passed into law on January 1, 1970 and from that date the consideration of reasonable alternatives to planned operation was required under the Act. There can be no question that closed-cycle cooling was not only a reasonable alternative but also the alternative which would most obviously protect the Hudson River fishery from the impact of once-through cooling.

Con Edison chose not to follow the mandate of the law, but rather raised in this proceeding all the arguments which the Court of Appeals for the District of Columbia Circuit so roundly rejected in Calvert Cliffs' Coordinating Committee v. AEC, 449 F.2d 1109 (D.C. Cir. 1971). If there had been any doubt as to the scope of NEPA as it applied to Indian Point 2 during the first 18 months after the passage of the Act, there was no room for doubt or conjecture after the Calvert Cliffs' decision: Indian Point 2 had to be reviewed under the Act, and therefore all reasonable alternatives to the proposed course of action had to be considered.

Con Edison now recognized its responsibility. In September 1971, the company submitted to the Commission its Environmental Report Supplement No. 1. App. Exhibit 3-A. In that Report, the company set out the alternative methods by which to cool the plant's condensor water:

> Alternative methods of cooling that have been, or would be used for thermal (steam) electric generating plants are - evaporative cooling towers operating on either closed or open cycles, dry cooling towers, cooling ponds, spray ponds and exhaust waste heat usage. App. Ex. 3-A at 2.5-11.

Con Edison went on to assure the Commission that it knew the costs of cooling towers and that it was studying their impacts:

> Evaporative cooling towers were not used for Indian Point Unit No. 2 because there was no apparent need for them from an environmental standpoint. Had they been used in the initial design of the plant, they would have added about $15-$16 million to the cost of the unit. To add cooling towers at this time would cost about 30 million dollars. This cost is specific to Indian Point Unit No. 2. . . . Con Edison has embarked upon a research program to determine the design modifications required to convert commercially available towers to brackish water operations for future units and the environmental implications of their operations. App. Ex. 3-A at 2.5-12.

Thus, since before September 1971, a period of more than two and one-half years, Con Edison has had a research program going to discover the environmental effects of cooling towers.

The urgent need for studies if the company planned to take the position that closed-cycle cooling was inappropriate at Indian Point was made adamantly clear on December 1, 1971, when the Intervenors filed with the Licensing Board "Environmental Defense Fund and Hudson River Fishermen's Association Initial Statement of Contentions and Proposed Findings of Fact and Conclusions of Law With Respect to Environmental Issues" which made it clear that the Intervenors took the position that a closed-cycle cooling system was necessary at Indian Point 2 in order to protect the Hudson fishery.

In February, 1972, Con Edison submitted to the Commission its "Benefit-Cost Descriptions of Alternative Plant Designs for Indian Point Unit No.2" in order to meet the requirements of the "Proposed AEC Guide for the Preparation of Benefit-Cost Analyses . . ." of January 7, 1972. Applicant's Environmental Report Supplement 3. Con Edison set out plainly what the purpose of the document was:

> The data and interpretation contained in this report is intended to provide information to the U.S. Atomic Energy Commission for its development of a benefit-cost analysis which balances the environmental effects of the facility and the alternatives for reducing or avoiding adverse environmental effects as well as the environmental, economic, technical, and other benefits of the facility. Environmental Report Supplement 3 at S3-1.

This document was drawn up on the basis of the Burns and Roe Report (HRFA Exhibit V) and it discussed at some length the effects of fogging, icing, saline drift, noise and aesthetic

intrusion, finding that the only major impact from a natural draft tower would be aesthetic and that fogging, icing and saline drift presented no problems. The company must have taken the position that it presented probative, reliable and substantial date to the Commission or it would not have been dealing with the Commission in good faith.

Turning to the program which Con Edison has now undertaken, the company has itself admitted that its schedule has slipped a full seven months, so that the tower began operation in September 1973 rather than February 1973. Compare Newman, Redirect-Rebuttal, February 5, 1973 at Exhibit 1, following Tr. 9405 with Applicant's Brief in Support of Exceptions, October 29, 1973 at 43-44. Thus, we arrive at the present situation in which the company contends that it cannot submit an appropriate report to the Commission before December 1, 1974.

December, 1974 is five years after the National Environmental Policy Act was passed and the responsibility to analyze alternatives came into law. It is three and one-half years after Calvert Cliffs' and the imperative mandate of the D.C. Circuit Court came down. It is three years and four months after the company told the Commission that it was carrying out a program of research on the environmental effects of cooling towers. It is three years after the Fishermen's Association made it clear that it would press for cooling towers at the plant. It is two years and ten months after the company presented a cost-benefit report to the Commission dealing with closed-cycle cooling and came to the conclusion that the

only major impact from natural draft closed-cycle towers would be aesthetic. In incorporates at least seven months of further slippage in the company's schedules.

If the Commission now takes the position in the light of this dismal record that the company is simply to be given the time it now requests to do research with no penalty to the company either in financial form or in restricting the operation of the plant, the Commission will establish a frightening precedent. What applicant for a license will ever undertake research which, both by law and by its own admission, may be required by the Commission, until it is actually ordered to do so? And what applicant will pursue that research with diligence? Applicants will be able to rest assured that they are free to go forward with their plans confident that no penalties will ensue from their failure to discharge their responsibilities to the law and the Commission. They will file whatever papers and analysis they choose as they go along, confident that when the chips are down they will be given whatever time they request to meet, at long last, the requirements laid upon them years before.

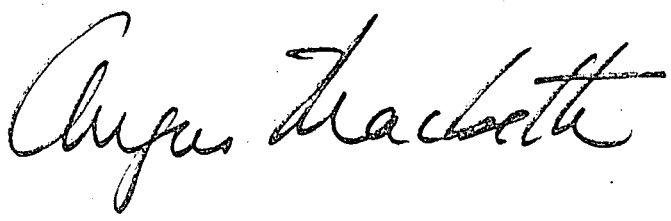
It should also be pointed out that the License issued under the Initial Decision must control the Environmental Technical Specifications and not the other way about.

CONCLUSION

HRFA moves the Appeal Board to reconsider its Memorandum and Order of January 29, 1974 (ALAB-174); to withdraw the

Order and reinstate the license terms established by the Atomic Safety and Licensing Board or alternatively to impose an appropriate penalty on the Applicant.

Respectfully submitted,



ANGUS MACBETH
SARAH CHASIS

Attorneys for Hudson River
Fishermen's Association

Dated: New York, New York
February 14, 1974