

7/16/75

BOOKLET NUMBER
PROD. & UTIL. FAC. 50-247

RELATED CORRESPONDENCE

STATE OF NEW YORK

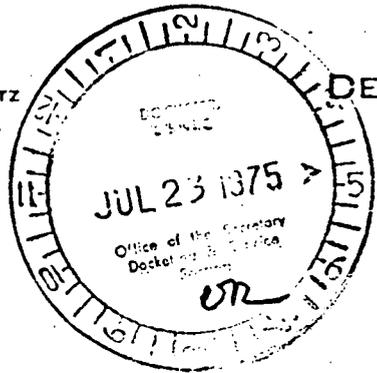
DEPARTMENT OF LAW

TWO WORLD TRADE CENTER
NEW YORK, N.Y. 10047

TELEPHONE: (212) 488-7500

PHILIP WEINBERG
ASSISTANT ATTORNEY GENERAL
IN CHARGE OF
ENVIRONMENTAL PROTECTION
BUREAU

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL



July 16, 1975

Peter L. Strauss, Esq.
General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Request of Con Edison for an
opinion re due diligence

Dear Mr. Strauss:

Counsel for Consolidated Edison Company of New York, Inc., by letter to you dated July 11, 1975, has solicited your opinion as to whether the "due diligence" directive in Con Edison's operating license for its Indian Point II power plant requires the company to seek judicial review of the determination of the Zoning Board of Appeals of the Village of Buchanan, New York denying Con Edison's request for a variance to construct natural draft cooling towers in order to comply with the terms of the operating license.

Due diligence has generally been defined as that degree of diligence required by the particular circumstances of the case, giving weight to the effort involved and the consequences of any failure to act. At present, Con Edison cannot construct any cooling towers without a variance from the Village of Buchanan. Inasmuch as the present Village determination would preclude Con Edison from constructing cooling towers until well after the present May 1, 1979 license deadline (and well after the May 1, 1981 deadline requested by Con Edison in its application for a license amendment), it appears obvious that due diligence requires the use of all available traditional means for obtaining the necessary permits, including judicial review.

Put more bluntly, if Con Edison wanted to put up cooling towers at its Indian Point II facility, it would not hesitate to appeal the Zoning Board's determination. "Due diligence" can require no less.

8110240188 750716
PDR ADDCK 05000247
G PDR

H 4

The Zoning Board decision rejected Con Edison's application on two grounds. In addition to finding the application to be speculative -- a conclusion wholly at odds with the mandate of the operating license -- the Village questioned the need for natural draft cooling towers, indicating a possible preference for mechanical draft towers, which would create less of a visual impact on the surrounding area. Inasmuch as the operating license did not specify that natural draft cooling towers were to be constructed, the Attorney General of the State of New York would like an opinion from you as to whether due diligence would require Con Edison to apply to the Village for a variance to construct mechanical draft cooling towers as well as the natural draft system presently under consideration by Con Edison.

Finally, it should be noted that there is presently before the Governor of the State of New York for signature a bill which would remove jurisdiction over cooling tower siting from localities and place it in the hands of the New York State Board on Electric Generation Siting and the Environment. If this bill becomes law, the entire issue posed by Con Edison may become moot. In view of this, it is suggested that action on Con Edison's request for an opinion be held in abeyance pending action by Governor Carey on the above-mentioned legislation.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

By


PAUL S. SHEMIN
Assistant Attorney General

PSS:dg

cc: Parties to Indian Point II
proceeding
Secretary of of the Commission