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December 9, 1975

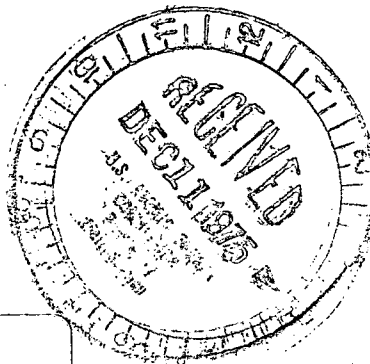
Mr. Ben C. Rusche
Director of Nuclear Reactor
Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Indian Point 2 - Docket No. 50-247

Dear Mr. Rusche:

We are in receipt of a letter addressed to you dated November 17, 1975 from William J. Cahill, Vice President of Consolidated Edison. In the letter Consolidated Edison claims that it is entitled to delay ceasing open-cycle cooling because it has yet to receive three governmental approvals: (1) a permit from the New York State Department of Environmental Conservation; (2) a building permit and zoning variance from the Village of Buchanan; and (3) NRC approval of the natural draft cooling tower as the preferred alternative closed-cycle system.

The Hudson River Fisherman's Association strongly opposes the delay sought by Consolidated Edison. Consolidated Edison's approach of its License duties treats protection of the Hudson River and its fishery as if such protection were a minor side-issue of no particular relevance. Yet the License makes clear that it is protection of valuable Hudson River resources that is at stake here. ¶2.E(1)(a) and (d); (3); (4). That being the goal, there should be no additional delay granted to Consolidated Edison, for three reasons:



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1. It appears that Consolidated Edison will not suffer any irreparable harm if it is held to the May 1, 1979 date, while to the contrary delay will significantly and adversely affect another entire spawning season.

2. The DEC permit and the Village of Buchanan building permit and zoning variance, are not approvals required for construction of a closed-cycle system.

3. The NRC may not invoke its own failures as a reason for extending the date, thereby, in effect, abrogating its own decision. Rather than granting the requested delay, the NRC should designate now the preferred alternative closed-cycle systems for Indian Point Unit 2 and hold the licensee to the May 1, 1979 date.

It appears that Consolidated Edison will suffer no irreparable harm if held to the May 1, 1979 date. Consolidated Edison asserts no harm in its letter in support of its request for delay. Moreover, on the record of the case it affirmatively appears that Consolidated Edison will not suffer harm if held to its schedule.

The schedules submitted by Consolidated Edison disclose that work can be performed by Consolidated Edison as scheduled whether or not final governmental permits have been received at least until May 1, 1976. Report, "Economic and Environmental Impacts of Alternative Closed-Cycle Cooling Systems for Indian Point Unit No. 2", Volumn I, Part IV (December 1, 1974). This is not HRFA's opinion; it is Consolidated Edison's representation to the Commission.

On Figure 4.1 of the cited Report the following items are scheduled between now and May 1, 1976, a period shown as being after receipt of all governmental approvals.

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- . Finalize Site Prep. Specs. & Drawings
(12/1/75-3/1/76)
- . Obtain Bids for Site Prep. & Award P.O.
(3/1/76-5/1/76)
- . Finalize Engrg. & Incorporate Agency
Recommendation (12/1/75-3/1/76)
- . Award Contract for Cooling Towers
(3/1/76-5/1/76)
- . Continue Design of Access Equip. & Piping
(12/1/75-6/1/76)

These items constitute all work scheduled by Consolidated Edison between now and May 1, 1976.

Yet Consolidated Edison, in the same Report, submitted an alternative preferred schedule designated "The Con Edison Schedule". Figure 4.2 Under Consolidated Edison's preferred schedule each of the items listed above is to be performed not after, but prior to final governmental decision.

The conclusion to be drawn appears clear: Consolidated Edison could continue with its approved work schedule without suffering any harm at least to May 1, 1976. Delay, on the other hand, as the Commission itself has recognized, will cause significant harm. If Consolidated Edison succeeds in obtaining the six month delay it now requests, the entire 1979 spawning season will be subjected to additional predatory entrainment at Indian Point 2. This is a matter of real consequence to the Hudson River as established in the Final Environmental Impact Statement prepared by the Commission staff for Indian Point Unit 3.

License deadline dates are not to be shifted about as if the License requirement related solely to an immaterial plant structure modification. The License provision allowing postponement of the May 1, 1979 date can not be read as automatic, but must be interpreted under the strong admonitions of the License to mitigate harm to the Hudson River biota. Delay where it

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appears that Consolidated Edison will suffer no real or potential harm in continuing along the present schedule is irrational, unnecessary and at odds with the basic requirements of the License.

Delay would be particularly inappropriate in the light of the three permits cited by Consolidated Edison. Consolidated Edison cites the Village of Buchanan zoning variance and building permit. In fact the Westchester County Supreme Court has reversed the denial of the variance and permit and issued an opinion granting Consolidated Edison authority to build the cooling towers. Thus the failure to obtain Village of Buchanan approvals may not stand as an impediment. (Opinion annexed hereto).

Consolidated Edison secondly cites a permit from the New York State Department of Environmental Conservation. However, under the holding of the Westchester County Supreme Court, that permit is not a prerequisite to construction of a closed-cycle system because of federal preemption.

The third governmental approval is NRC's own approval. However, the NRC may not invoke its own failure to act as a basis for extending the deadline. Rather, the NRC staff should act immediately to designate a preferred alternative system. This action need not await further environmental analysis. There have already been two impact statements analyzing the effects of alternative closed-cycle systems, i.e., the final environmental statements related to operation of Indian Point Units 2 and 3. Recommendations concerning the preferred alternative system were made in each.

It is extremely important to note in this connection that the NRC staff stated in January, 1974, in response to questions posed by the Appeal Board, that no environmental statement would have to be prepared after the receipt of the applicant's environmental report on closed-cycle cooling, absent any significant changes in information. HRFA and Consolidated Edison both agreed to the staff's conclusion on this point:

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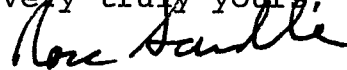
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"HRFA agrees generally with the staff position, being of the opinion that no environmental impact statement is necessary unless the demonstrated impacts are significantly greater than those considered in the FES and the hearings."

Comments of HRFA on AEC Staff Responses to Appeal Board questions 28, Jan. 29, 1974. For similar response see Applicant Comments on the Regulatory Staff at 22, February 8, 1974.

In view of the above, the NRC staff should act immediately and designate the preferred alternative system, and Consolidated Edison's application for extension of the May 1, 1979 date should be denied. Furthermore, no such extension may be granted without a full hearing on the issue.

Very truly yours,



SARAH CHASIS
ROSS SANDLER
Attorneys for Hudson River
Fisherman's Association

cc: Director of Nuclear Reactor Regulation
Att: Joseph Gallo, Esq.
Paul Shemin, Esq., Asst. Attorney General
of the State of New York
Carmine J. Clemente, Esq., New York State
Department of Commerce
Edward J. Sack, Esq., Law Department, Consolidated
Edison Co.
William J. Cahill, Jr., Vice President
Consolidated Edison Co.