

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket No. 50-247
)	OL No. DPR-26
CONSOLIDATED EDISON COMPANY)	(Determination of Preferred
OF NEW YORK, INC.)	Alternative Closed-Cycle
(Indian Point Station,)	Cooling System)
Unit No. 2))	

11-26

CON EDISON'S MEMORANDUM IN OPPOSITION
TO MOTION OF NRC STAFF
FOR ISSUANCE OF A PARTIAL INITIAL DECISION

By motion served by mail on November 18, 1976, the NRC Staff urges issuance of an initial decision concerning whether all necessary governmental approvals for a closed-cycle cooling system have been received in addition to an initial decision on the selection of a preferred alternative closed-cycle cooling system. Staff concedes that the proposal would not terminate the proceeding and other issues would remain to be dealt with in a supplemental initial decision.

Con Edison continues to urge the Board not to bifurcate this proceeding for the reasons stated in its Memorandum in Response to the Board's Request for a Draft Partial Initial Decision dated October 1, 1976. If, despite the arguments stated therein, the Board determines to issue a partial

initial decision, the scope of that partial initial decision is limited by the prior statements of the Board. When this matter was discussed at the September 22, 1976 prehearing conference, the Board discussed the partial initial decision in terms which limited it to the designation of the preferred closed-cycle cooling system. The Board said that the hearing which was held on October 5, 1976 would be limited to the designation of the preferred closed-cycle cooling system and that other issues would be discussed at a later date. Tr. 56-58. Accordingly, the hearing on the issues related to the schedule for construction of a closed-cycle cooling system is to be held at a later date and Staff's motion concurs with this concept.

In addition to the question of what constitutes the receipt of all necessary governmental approvals, the possible issues remaining include the "due diligence" matters raised in the Board's order dated November 9, 1976, the concept of "winter lag" identified in Con Edison's Brief dated October 6, 1976 and other issues which may be identified by the parties in accordance with the Board's request in the telephone conference of November 23, 1976. Also, the Board may wish additional

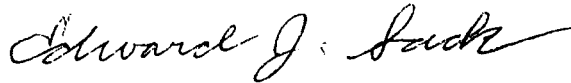
evidentiary presentations on the City of Peekskill documents referred to in the Board's letter to counsel dated November 9, 1976.

The Staff proposes to lift one issue from the hearing on scheduling matters and have it decided with the determination of the preferred alternative closed-cycle cooling system. It is manifestly unfair to Con Edison to decide only one issue on the subject of schedule and leave all the other issues unresolved. A decision on this single issue, if unfavorable to Con Edison, would place it in an untenable position with respect to the schedule for construction of a closed-cycle cooling system. Con Edison would be forced to use guesswork as to the future determination of other scheduling issues. This is the same type of dilemma previously discussed in relation to the determination of whether all necessary governmental approvals have been received in Con Edison's Brief on Behalf of Licensee dated October 6, 1976.

For the foregoing reasons, if the Board issues a partial initial decision, it should adhere to its original concept of that decision and limit it to the designation of the preferred alternative closed-cycle cooling system, leaving

the scheduling issues for subsequent determination.

Respectfully submitted,



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Dated: November 26, 1976
New York, New York

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CERTIFICATE OF SERVICE

I certify that I have, this 26th day of November, 1976, served the foregoing document entitled "Con Edison's Memorandum in Opposition to Motion of NRC Staff for Issuance of a Partial Initial Decision" by mailing copies thereof, first class mail, postage prepaid, to the following persons:

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