

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of
CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.
(Indian Point Station,
Unit No. 2)

Docket No. 50-247
OL No. DPR-26

(Proceeding for Extension
of Operation with Once-
Through Cooling)

11-19

CONTENTIONS OF THE
HUDSON RIVER FISHERMEN'S ASSOCIATION

At the request of the Applicant and pursuant to the order of the Board, made at the prehearing conference held on October 27, 1976, the Hudson River Fishermen's Association submits its contentions in this proceeding.

Contentions

1. The Environmental Statement prepared by Con Edison and submitted in support of the application for a license amendment, as supplemented by Con Edison, does not justify issuance of the requested license amendment.
2. The May 1, 1979 date for cessation of once-through cooling, as required by the present license for Indian Point 2, was finally established after years of litigation and unsuccessful attempts by Con Edison to justify a 1981 date for termination of once-through cooling. Con Edison sought the 1981 date on the same grounds argued here, namely that it should be given time to complete its research program. Con Edison's request for a termination date of 1981 was denied three times in the course of the

Indian Point 2 license proceeding.

3. Since the issue of the appropriate termination date has been fully litigated, Con Edison may not obtain the two-year extension of interim operation it now seeks unless it can show that there is:

- a. empirical data collected during interim operation that requires findings different from those made in the Indian Point 2 licensing proceeding, as well as those findings made by the NRC staff in the FES on Indian Point 3 which the full Commission found to constitute the "fresh look" required by ALAB-188; and
- b. these findings compel a different conclusion as to the appropriate date for cessation of once-through cooling.

4. Con Edison may not obtain the requested extension merely on a showing that the biological data base will be substantially improved by awaiting completion of its research program. It has made this same argument before without success. Indeed, the 1979 date set by the license for termination of once-through cooling did not give Con Edison sufficient time to complete its research program prior to the time construction of the closed-cycle system had to commence. It could have appealed this 1979 date in 1974 and it chose not to.

5. Con Edison has had ten years, since the Hudson River

Fisheries Investigation was begun in 1966, to collect data on the Hudson fishery and present proof in support of its argument that closed-cycle cooling is not required at Indian Point 2. After years of data collection and analysis, Con Edison still has been unable to make its case and should not be given additional time to do so.

6. Neither the empirical data gathered during interim operation already presented by Con Edison in support of its application, nor the empirical data it intends to present at the completion of its research program, justify elimination or alteration of the present license provision requiring termination of once-through cooling at Indian Point by May 1, 1979. Based upon the information from Con Edison's Environmental Statement, as supplemented, from the NRC staff's Environmental Statements both in this proceeding and in the licensing proceeding for Indian Point 3, and from comments received from federal and state agencies in this proceeding, HRFA contends that

- a. Much of the empirical data contained in Con Edison's Environmental Report was fully analyzed by the NRC staff in the FES on Indian Point 3 and found not to alter the basic determination that closed-cycle cooling is required for Unit 2, as well as Unit 3. This staff analysis was specifically approved by the full Commission and was found to be adequate to constitute the "fresh look" required in ALAB-188. See In re Consolidated Edison (Indian Point Unit Nuclear Generating

Station, No. 3), Docket No. 50-286 (Dec. 2, 1975).

- b. Specifically, with respect to the key issues of compensation, "f" factors, contribution of the Hudson River fishery to the Atlantic fishery, and stocking, the empirical data which has been presented does not justify a different conclusion concerning the need for closed-cycle cooling at Indian Point 2. In addition, the empirical data which Con Edison intends to present on these issues in its January, 1977 Report will not answer those questions which must be answered to justify removal or alteration of the closed-cycle cooling requirement.

6. Since Con Edison's collection of empirical data was substantially completed in mid-1975, Con Edison has had one and one half years to make its application for removal of the license requirement for closed-cycle cooling. Because it already has had adequate opportunity to make a timely application, Con Edison should not be granted additional time simply because it has chosen not to file its application until January, 1977.

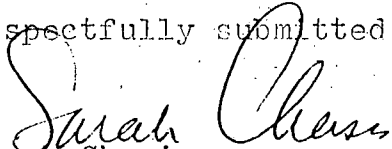
7. An extension of the termination date for once-through cooling at Indian Point 2 may well affect the date set for termination of once-through cooling at Indian Point 3 since the two dates are inextricable linked. Therefore, no extension may be granted without a determination of what impact, if any, such extension will have on interim operation of Indian Point 3.

8. The hearing date set in this proceeding is premature in that the comprehensive report which Con Edison has been directed to submit in support of its application (which is to explain how the new empirical data obtained prior to, as well as after submission of its Environment Report, will support Con Edison's position that operation with an open-cycle system would not cause undue fish mortality) will not become available until December 7, the first day of the hearing, and there will not have been sufficient time to allow HRFA and other members of the public to adequately prepare for a hearing on the material contained in the report.

Conclusion

HRFA reserves the right to revise or amend its contentions upon issuance of the staff's Final Environmental Statement or after presentation by the Applicant of its case, including the comprehensive report it will be filing on December 7, 1976.

Respectfully submitted,


Sarah Chasis
Attorney for Hudson River
Fishermen's Association

Dated: November 19, 1976
New York, New York