

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

11-18

In the Matter of)	
CONSOLIDATED EDISON COMPANY)	Docket No. 50-247
OF NEW YORK, INC.)	OL No. DPR-26
(Indian Point Station,)	Extension of Interim
Unit No. 2))	<u>Operation Period</u>

PETITION OF THE ATTORNEY
GENERAL OF THE STATE OF
NEW YORK FOR LEAVE TO
INTERVENE

Pursuant to the provisions of 10 C.F.R. § 2.714 of the Commission's Rules of Practice, the Attorney General of the State of New York hereby petitions for leave to intervene in the above-referenced proceeding concerning a request by the Consolidated Edison Company of New York, Inc. ("Con Edison") for a license amendment permitting a two year extension of the interim operation period of its Indian Point Unit No. 2 plant with once-through cooling, and in support of said petition, respectfully shows as follows:

INTEREST OF THE ATTORNEY GENERAL

The Attorney General, a trustee and guardian of the interests of the people of the State of New York in his parens patriae capacity and as the chief legal officer of the State, has had a continuing interest in protecting and enhancing the environ-

mental resources of New York, and particularly the fishery resources of the Hudson River. The Attorney General has pursued this concern on behalf of New Yorkers before State and federal administrative and judicial bodies, including this Commission, and has represented the interests of the people of New York in prior Commission proceedings concerning the environmental issues related to the operation of Indian Point Units 2 and 3 with once-through cooling.

The interest of the Attorney General would be directly affected by the two year extension request sought by Con Edison, in that the Attorney General believes that operation of the applicant's plant with once-through cooling is injurious to the Hudson River fishery.

CONTENTIONS

The applicant appears to argue that because it will not be able to complete its research program and obtain a final determination on its future request for an amendment to its Indian Point 2 license to delete the once-through cooling termination date before allegedly irrevocable commitments will have to be made, the requested extension must be granted.

The Attorney General believes that the first question that must be answered is whether the applicant could have applied for an amendment to its license seeking permanent once-through

cooling status sufficiently early so that the extension requested herein would not have been needed. We do not see the applicant's research program in immutable terms. If the delay in Con Edison's filing for an amendment deleting the closed cycle cooling requirement was caused by the applicant's decision to complete portions of a research program that were not relevant to the issues that would be controverted in such an amendment proceeding, then the predicament is of Con Edison's own making, and not deserving of relief by this Board.

The burden on this issue is on the applicant. Con Edison must demonstrate to the Board that an earlier application would have been lacking in relevant information subsequently developed by its research program. This the company has not done, and in the absence of such a showing, the application herein should be denied.

In order to examine the extent to which the latter stages of the research program included the collection and analysis of data relevant to the expected issues in controversy, it is necessary to identify those issues. Analysis of the record in the earlier Indian Point Unit No. 2 operating license hearing reveals that there are four basic issues controlling the controversy. While a comprehensive analysis of the Hudson River fishery in an initial hearing might require broader treatment, it

must be remembered that the foundation was laid in the original Indian Point Unit No. 2 hearings, and that issues not in dispute there need not be rehashed once again. With this in mind, the four issues identified by the Attorney General as relevant to the future amendment proceeding are:

- (1) "f factors";
- (2) Hudson River contribution to the Mid-Atlantic striped bass fishery;
- (3) compensation; and
- (4) stocking.

It is the Attorney General's position that based on Con Edison's submission thus far, including its submission of November 10, 1976, the Company has not demonstrated that it could not have filed its final amendment application in sufficient time to avoid an extension of the interim operating license period with once-through cooling.

Beyond this initial failing on the Company's part, it is the Attorney General's belief that the empirical data collected during the interim operation of Indian Point 2, particularly the data collected in the latter two years of the research program, add nothing to the prior data base sufficient to justify a finding different from that reached in the original licensing proceeding.

The Attorney General does not contend that the data and

analysis produced by Con Edison's research program must be examined in detail in this proceeding. Rather, it is our contention that Con Edison must (1) identify the empirical data collected during the interim operation which the applicant intends to present to the Board as the basis for a future license amendment; (2) specify when this data was collected and analyzed; and (3) explain how this empirical data will provide the Board with a qualitative improvement in the data base existing at the time of the initial operating license hearings.

The Attorney General of the State of New York seeks leave to intervene to examine Con Edison's presentation, as set forth above, and to present evidence in opposition, if necessary.

The name and address of the person on whom service may be made, and to whom it is requested that all communications and documents involving this proceeding be sent, is:

Louis J. Lefkowitz
Attorney General of the
State of New York
Attn: Paul S. Shemin
Assistant Attorney General
Two World Trade Center
New York, New York 10047
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WHEREFORE, the Attorney General of the State of New York respectfully requests leave to intervene in this proceeding

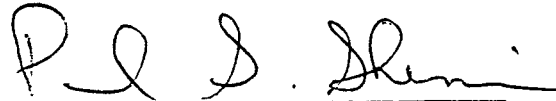
and be designated as a party thereto.

Dated: New York, New York
November 18, 1976

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York

By



PAUL S. SHEMIN
Assistant Attorney General


STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

PAUL S. SHEMIN, being duly sworn, deposes and says that he is an Assistant Attorney General in the office of LOUIS J. LEFKOWITZ, Attorney General of the State of New York, petitioner herein; that he has read the foregoing document; that the facts set forth therein are true and correct to the best of his knowledge, information and belief, and that he is authorized to file the foregoing document.



PAUL S. SHEMIN

Sworn to before me this
18th day of November, 1976


Assistant Attorney General
of the State of New York