

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

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

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

PAUL S. SHEMIN, being duly sworn, deposes and says:

I am an Assistant Attorney General in the Environmental Protection Bureau of the office of LOUIS J. LEFKOWITZ, Attorney General of the State of New York, petitioner herein. This affidavit is submitted pursuant to 10 C.F.R. § 2.714(a) of the Commission's Rules of Practice in support of the petition herein and for the purpose of showing that good cause exists for the failure of petitioner to intervene in a timely manner.

The interest of the Attorney General is as stated in the petition for leave to intervene. The Attorney General has represented the interests of the people of the State of New York

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in protecting the fishery of the Hudson River from the effects of power plant operation on the Hudson in several federal proceedings and to that end has participated in hearings before this Commission concerning Con Edison's request for an operating license with once-through cooling for its Indian Point Unit No. 2 plant.

The instant application of Con Edison seeks an amendment to the company's Indian Point Unit No. 2 operating license to permit continued interim operation of the plant with once-through cooling for an additional two years beyond the period presently specified in the plant's license. The Attorney General believes that the operation of Indian Point Unit No. 2 with once-through cooling is causing continuing injury to the State's Hudson River fishery, and that Con Edison's application does not present evidence or information in support thereof sufficient to justify the requested extension.

The bases for the Attorney General's contentions as set forth in his petition are an examination of the material submitted by Con Edison, prior participation in several federal proceedings concerning the same subject matter, and an analysis of prior relevant determinations of this Board and the Atomic Safety and Licensing Appeal Board concerning the effect of Con Edison's Indian Point 2 plant on the Hudson River fishery.

In support of the Attorney General's belief that good

cause exists for his failure to intervene herein in a timely manner, the Attorney General makes the following showing:

The Attorney General has in the past participated in Commission proceedings concerning Indian Point Units 2 and 3, along with the New York State Atomic Energy Council. It was the belief of the Attorney General that his concerns in the instant proceeding could be coordinated with the Council or its successor agency, the State Energy Office, and to that end your deponent represented both the State Energy Office and the Attorney General at the pre-hearing conference herein. Since that time, however, it has been brought to the attention of your deponent that the views of the State Energy Office may not represent those of the Attorney General, and that said Office intends to appear on its own behalf in future hearings herein.

It is therefore necessary for the Attorney General, an independently elected State official, to appear on behalf of his constituents, as was done in the original Indian Point 2 operating license proceeding and in the Indian Point 3 proceeding.

There are no other means by which petitioner's interest will be protected. While a determination of the U.S. Environmental Protection Agency may be relevant to the issues herein, the NRC has independent statutory jurisdiction and action by EPA at this time must be considered speculative.

Your deponent believes that petitioner's participation will assist in developing a sound record. Having participated in other proceedings concerning the issues relevant herein, petitioner is capable of narrowing the issues and developing a record concerning the remaining matters in controversy as they relate to the instant application.

While there are other intervenors herein whose interests are similar to those of the Attorney General, the interests of said parties do not always coincide, and at this stage of the proceeding it is not clear that the Attorney General's position will be presented by others at the hearings. There is also a question as to whether the other parties, such as HRFA, will have adequate resources to make a complete presentation in support of the interests they may share with the Attorney General.

Petitioner's intervention will not broaden the issues or delay the proceeding. To the contrary, petitioner's participation will assist in refining the issues and in expeditiously examining the adequacy of Con Edison's application.

Inasmuch as the contentions of the parties in this proceeding are being set forth contemporaneously with those of petitioner herein, and given the participation of counsel for petitioner herein at the pre-hearing conference, the intervention of petitioner will be little more than a technicality which will

not delay the anticipated course of the hearings.

WHEREFORE, your deponent prays that the petition of the Attorney General of the State of New York for leave to intervene be granted.


PAUL S. SHEMIN

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


Assistant Attorney General
of the State of New York

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CERTIFICATE OF SERVICE

I hereby certify that I have, this 18th day of November, 1976, served the foregoing document entitled "Petition of the Attorney General of the State of New York for Leave to Intervene," with supporting affidavit, by mailing copies thereof, first-class mail postage prepaid, and properly addressed, to the following persons:

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