



Law Department
Consolidated Edison Company of New York, Inc.
4 Irving Place, New York, N Y 10003

60-247

October 1, 1976

Samuel W. Jensch, Esq., Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Franklin C. Daiber
College of Marine Studies
University of Delaware
Newark, Delaware 19711

Mr. R. Beecher Briggs
110 Evans Lane
Oak Ridge, Tennessee 37830

Re: Indian Point 2 - Determination of Preferred
Alternative Closed-Cycle Cooling System

Gentlemen:

In accordance with the request of the Board at the prehearing conference held on September 22, 1976, I enclose a copy of a proposed Partial Initial Decision Designating a Preferred Alternative Closed-Cycle Cooling System and Con Edison's Memorandum in Response to the Board's Request for a Draft Partial Initial Decision.

Very truly yours,

Edward J. Sack

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BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

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

PARTIAL INITIAL DECISION
DESIGNATING A PREFERRED ALTERNATIVE
CLOSED-CYCLE COOLING SYSTEM

On December 2, 1974, Consolidated Edison Company of New York, Inc. ("Con Edison"), as holder of Facility Operating License No. DPR-26 ("the License") for the Indian Point Station, Unit No. 2 facility ("Indian Point 2"), applied to the Atomic Energy Commission (now the Nuclear Regulatory Commission)* for an amendment of that license. Under ¶ 2.E.(2) of the License, as modified by the decision of the Atomic Safety and Licensing Appeal Board dated January 29, 1974, 7 AEC 323 (1974), Con Edison was required to submit to the Commission an evaluation of the economic and environmental impacts of an alternative closed-cycle cooling system for Indian Point 2 in order to determine the preferred system for installation in lieu of the present once-through cooling

*The Nuclear Regulatory Commission ("Commission") is the nuclear power licensing and regulatory organization successor to the Atomic Energy Commission by virtue of legislation enacted by the Congress. Energy Reorganization Act of 1974, Pub. L. No. 93-438, 88 Stat. 1233, 42 U.S.C. §§ 5801 et seq. (Supp. V, 1975).

system. The required report ("Economic and Environmental Impacts of Alternative Closed-Cycle Cooling Systems for Indian Point Unit No. 2," hereinafter referred to as "the Cooling Tower Report") was submitted by Con Edison on December 2, 1974 with its application for a license amendment.

Con Edison's application stated that on the basis of the information set forth in the Cooling Tower Report, Con Edison has determined that "a natural draft, closed-cycle, wet cooling tower system would be the preferred system for installation at Indian Point 2 if an alternative closed-cycle system is required."* That application requested that the License be amended as follows:

"(5) Subject to all of the foregoing provisions of this Paragraph 2.E., the [Nuclear Regulatory] Commission has determined, following review of the document entitled "Economic and Environmental Impacts of Alternative Closed-Cycle cooling Systems for Indian Point Unit No. 2" dated December 1, 1974, that a closed-cycle natural draft, wet cooling tower system is the preferred alternative closed-cycle cooling system for installation at Indian Point Unit No. 2."

Notice of the availability of Con Edison's Cooling

*Con Edison filed an application on June 6, 1975 to extend the period of operation with once-through cooling from May 1, 1979 to May 1, 1981. Con Edison urged that this extension be granted to allow time for completion and governmental evaluation of Con Edison's ecological study program before irretrievable commitment must be made for the construction of a closed-cycle cooling system at Indian Point 2. In July 1976 the Regulatory Staff of the Commission issued a Draft Environmental Statement (NUREG-0080) recommending such an extension.

Tower Report was published in the Federal Register on March 3, 1975. 40 Fed. Reg. 8855 (1975). On July 23, 1975, the Commission published in the Federal Register a Notice of Proposed Issuance of Amendment to Facility Operating License and of Opportunity for Hearing. 40 Fed. Reg. 30882 (1975). Notice of the availability of the Draft Environmental Statement prepared by the Commission's Regulatory Staff was published in the Federal Register on February 23, 1976, 41 Fed. Reg. 8000 (1976), and notice of the issuance of the Final Environmental Statement was similarly published on August 12, 1976. 41 Fed. Reg. 34120 (1976).

In addition to Con Edison and the Regulatory Staff, the New York State Atomic Energy Council and the Hudson River Fishermen's Association, Inc. ("HRFA") are parties to this proceeding.

At a prehearing conference held by the Atomic Safety and Licensing Board ("the Board") at the Westchester County Courthouse, White Plains, New York, on September 22, 1976, 41 Fed. Reg. 38830 (1976), the Board was advised that all parties to the proceeding were in agreement that a natural draft wet cooling tower would be the best type of closed-cycle cooling system for installation at Indian Point 2, in light of the economic and environmental benefits and costs. This was the

alternative proposed by Con Edison in the application for a license amendment, and concurred in by the Regulatory Staff in the Draft and Final Environmental Statements. The other parties expressed agreement at the prehearing conference, and a stipulation to this effect has been submitted to the Board. A copy of this stipulation is attached hereto as Appendix A.

The Board has reviewed the stipulation of the parties, together with the Cooling Tower Report submitted by Con Edison, the Final Environmental Statement, and the evidence adduced in an evidentiary session conducted by the Board on October 6, 1976 for the purpose, among others, of evaluating the sufficiency of the latter Statement within the meaning of the National Environmental Policy Act of 1969. 42 U.S.C. §§ 4321 et seq. (1970).

Based on such review, and considering the Commission's policy of encouraging the fair and reasonable settlement of contested issues where such settlements serve the public interest, 10 C.F.R. § 2.753 (1976), the Board concludes that the stipulation (the effectiveness of which is expressly conditioned upon approval by the Board) should be and hereby is approved. Although the parties appear to be in substantial dispute as to closely related matters which this Board will address in subsequent hearings and orders (e.g., whether all necessary governmental approvals have been received by Con Edison, and the extent to which the interim

operation period provided for in ¶ 2.E.(1)(b) of the License has been automatically extended), there is no dispute among them that a natural draft wet cooling tower is the preferred means of closed-cycle cooling for Indian Point 2 if an alternative cooling system is required.

Wherefore, it is ORDERED, in accordance with the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and the regulations of the Nuclear Regulatory Commission, that the Director of Nuclear Reactor Regulation is hereby authorized to make appropriate findings in accordance with the regulations of the Commission and to issue an amendment to Facility Operating License in the terms sought by the application, to wit:

"(5) Subject to all of the foregoing provisions of this Paragraph 2.E., the Nuclear Regulatory Commission has determined, following review of the document entitled "Economic and Environmental Impacts of Alternative Closed-Cycle cooling Systems for Indian Point Unit No. 2" dated December 1, 1974, that a closed-cycle natural draft, wet cooling tower system is the preferred alternative closed-cycle cooling system for installation at Indian Point Unit No. 2."

It is further ORDERED, in accordance with Sections 2.760, 2.762, 2.764, 2.785 and 2.786 of the Commission's Rules of Practice, that this Partial Initial Decision shall be effective and shall constitute final action of the Commission forty-five (45) days after the date of issuance of this decision, subject to any review pursuant to the above-cited Rules of

Practice. Exceptions to this Partial Initial Decision, and a brief in support of such exceptions, may be filed in accordance with Section 2.762 of the Rules of Practice.

THE ATOMIC SAFETY AND LICENSING BOARD

R. Beecher Briggs, Member

Franklin C. Daiber, Member

Samuel W. Jensch, Chairman

Issued:

Bethesda, Maryland

Attachment: Appendix A

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

STIPULATION FOR PARTIAL SETTLEMENT OF
PROCEEDING AND IDENTIFICATION OF REMAINING ISSUES

WHEREAS the Nuclear Regulatory Commission (Commission) has recognized that the public interest may be served through the fair and reasonable settlement of particular issues in a proceeding or the entire proceeding (10 CFR §2.759); and

WHEREAS the parties to this proceeding (Hudson River Fishermen's Association ("HRFA"), the New York State Atomic Energy Council ("NYSAEC"), Consolidated Edison Company of New York, Inc. ("the Licensee"), and the NRC Staff ("Staff")) wish to settle particular issues and to identify other issues related to this proceeding.

IT IS HEREBY STIPULATED by and among the counsel for the above-identified parties that:

1. The license amendment requested by the Licensee, which would add a new subparagraph 2.E(5) ^{1/} to Facility Operating License No. DPR-26 ("the license"), should be granted. The parties are in agreement that, on balance, the preferred alternative closed-cycle cooling system for installation at Indian Point Station, Unit No. 2 is a natural draft, wet cooling tower. This agreement is without prejudice to the right of the Licensee to assert (in other proceedings) that installation of any closed-cycle cooling system would not be justified or to seek such other relief as may be appropriate.

2. The parties are at present unable to reach agreement on the following issues, which are related to the proposed license amendment:
 - a) whether all other governmental approvals required to proceed with the construction of the closed-cycle

^{1/} "(5) Subject to all of the foregoing provisions of this Paragraph 2.E., the Nuclear Regulatory Commission has determined, following review of the document entitled "Economic and Environmental Impacts of Alternative Closed-Cycle Cooling Systems for Indian Point Unit No. 2" dated December 1, 1974, that a closed-cycle natural draft, wet cooling tower system is the preferred alternative closed-cycle cooling system for installation at Indian Point Unit No. 2".

cooling system have been granted, as provided in subparagraph 2.E(1)(b) 2/ of the license;

- b) what is the effect of the Licensee's failure to have received all of such governmental approvals by December 1, 1975 on the date for cessation of operation with once-through cooling in accordance with subparagraph 2.E(1)(b) of the license; and
- c) the necessity for and, if necessary, the scope of a monitoring program to record large episodic occurrences of bird mortalities around the cooling tower should they occur.

3. This stipulation shall be binding upon

- a) any successor-in-interest to the License or any future co-licensee who shall come to hold or have any interest whatsoever in the operating license, and

2/ "(b) The finality of the May 1, 1979 date also is grounded on a schedule under which the applicant, acting with due diligence, obtains all governmental approvals required to proceed with the construction of the closed-cycle cooling system by December 1, 1975. In the event all such governmental approvals are obtained a month or more prior to December 1, 1975, then the May 1, 1979 date shall be advanced accordingly. In the event the applicant has acted with due diligence in seeking all such governmental approvals, but has not obtained such approvals by December 1, 1975, then the May 1, 1979 date shall be postponed accordingly".

b) any successor-in-interest to any of the parties hereto as if such successor-in-interest had been an original party hereto, and shall remain in effect among the parties hereto and their successors-in-interest regardless of the addition or substitution of parties to the proceeding.

4. This stipulation shall not be final and binding upon the parties hereto until it has been approved by the presiding Atomic Safety and Licensing Board.

For Hudson River Fishermen's Association

For the New York State Atomic Energy
Council

For Consolidated Edison Company of
New York, Inc.

For the NRC Staff

Dated: , 1976