

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

HUDSON RIVER FISHERMEN'S ASSOCIATION  
BRIEF IN OPPOSITION TO APPLICANT'S EXCEPTION NO. 5

On December 27, 1976, the Atomic Safety and Licensing Board ("The Licensing Board") issued a Supplemental Partial Initial Decision Concerning Issues of Date for Termination of Closed-Cycle Cooling and of Bird Monitoring ("Supplemental Partial Initial Decision"). On January 5, 1977, the Consolidated Edison Company of New York, Inc. ("Con Edison"), Applicant in the above-captioned proceeding, filed an exception to the Supplemental Partial Initial Decision and a brief in support thereof. The Hudson River Fishermen's Association ("HRFA"), an intervenor in the above-captioned proceeding, opposes Con Edison's exception and submits this brief in opposition to Con Edison's exception.

The Licensing Board Was Correct in Finding That the Reasonable Termination Date for Once-Through Cooling at Indian Point No. 2 Should be Postponed From May 1, 1979 to May 1, 1980.

Con Edison takes exception to the Licensing Board's finding and order that the reasonable termination date for closed-cycle cooling at Indian Point 2 should be postponed from May 1, 1979 to May 1, 1980. (Con Edison brief at page 2; Supplemental Decision at page 4 and Order at page 5). Con Edison's exception is based solely on the argument that the termination date should not be firmly set, but should be expressed conditionally: "if" all necessary governmental approvals have been obtained by January 1, 1977 then May 1, 1980 is the reasonable termination date for once-through cooling at Indian Point 2. (Con Edison brief at page 2). Con Edison's argument is spurious and the exception should be denied.

The Licensing Board specifically found that with the Licensing Board's approval of the recommended preferred closed-cycle system and the issuance of the requested license amendment "all necessary governmental approvals will have been received." (Partial Initial Decision issued November 30, 1976 at page 13). The Licensing Board's approval was contained in its November 30, 1976 decision and the issuance of the amendment occurred on December 1, 1976. Thus, pursuant to the Licensing Board's decision, all necessary governmental approvals required to proceed with construction of the preferred closed-cycle cooling system were received as of December 1, 1976.

Con Edison has admitted that if all necessary approvals were received by January 1, 1977, then the appropriate date for termination of once-through cooling at Indian Point 2 would be

May 1, 1980. Counsel for Con Edison specifically stated at the December 8, 1976 hearing:

Mr. Sack: I would agree that if the starting point, that is receipt of all regulatory approvals is either December 1, 1976 or January 1, 1977, then the appropriate date for termination of operation of once-through cooling is May 1, 1980. But these on Con Edison's position are still "if's".

Tr. 326

The Licensing Board, having determined in its Partial Initial Decision that all necessary governmental approvals required to proceed with construction had been received prior to January 1, 1977, properly concluded that the reasonable termination date for once-through cooling is May 1, 1980. It would not have been proper for the Licensing Board to condition that May 1, 1980 date on the receipt of all necessary governmental approvals when the Board has already determined that that condition has been met.

CONCLUSION

Con Edison's exception is frivolous and should be denied.

Respectfully submitted,



Sarah Chasis  
Ross Sandler

(Natural Resources Defense  
Council, Inc.)  
15 West 44th Street  
New York, New York 10036

Attorneys for Hudson River  
Fishermen's Association

Dated: January 18, 1977