

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

VILLAGE OF BUCHANAN'S, A PARTY TO THE
PROCEEDINGS, EXCEPTION TO SUPPLEMENTAL
PARTIAL INITIAL DECISION CONCERNING
ISSUES FOR DATE OF TERMINATION OF
CLOSED-CYCLE COOLING AND BRIEF.

1-11-77

The Village of Buchanan has been in receipt of a supplemental, partial, initial decision concerning issues of date for termination of the Closed-Cycle Cooling System which was made by the Atomic Safety and Licensing Board on December 27, 1976. That partial, initial decision stated that the termination date for once-through cooling of Indiana Point No. 2 shall now be postponed from May 1, 1979 to May 1, 1980.

The Village of Buchanan takes exception to this finding since the finding and conclusion of the Board was based on the theory that all necessary governmental approvals were obtained by January 1, 1977. In the Village of Buchanan's opinion, all governmental approvals have not been obtained as yet, since the Village of Buchanan's approval in connection with the construction of these cooling towers has never been obtained.

The applicant, Con Edison, applied to the Building Inspector of the Village of Buchanan for a permit to construct the cooling towers and the Building Inspector thereafter rejected the application for a permit on the theory that it violated the Zoning Ordinance in connection with the size and magnitude of the cooling tower. Subsequently, the applicant, Con Edison, applied for a variance to the Zoning Board of Appeals of the Village of Buchanan, New York, and after an extensive hearing, the Zoning Board denied the variance.

Shortly thereafter Con Edison, in its obligation to obtain the necessary approvals with due diligence, brought an Article 78 Proceeding in the Supreme Court of Westchester County at Special Term of that Court and the Court decided that the actions of the Zoning Board in requiring Petitioner, Con Edison, to seek a Building Permit and attempting to regulate or prohibiting construction of a Closed-Cycle Cooling System, contravened the supremacy clause of the United States Constitution and was illegal and void. It further enjoined the Zoning Board from enforcing or attempting to enforce the provisions of the Zoning Ordinance.

The Village of Buchanan appealed the decision of Special Term to the Appellate Division of the State of New York, Second Department. This appeal was vigorously opposed by Con Edison and the Appellate Division unanimously agreed with the lower Court. However, they modified the judgment whereby they said

that the Respondents, the Village of Buchanan, may regulate local and incidental conditions relative to the constructions, etc., and directed that the Zoning Board of Appeals of the Village of Buchanan issue the variance to Petitioner, Con Edison, for the construction of the tower, as part of the Closed-Cycle Cooling System. The modification indicated that the Village of Buchanan could regulate local and incidental conditions relative to the construction of the proposed facility.

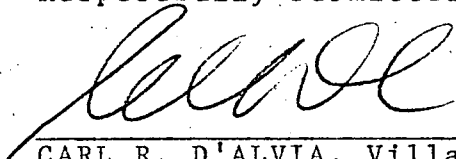
The Village, on or about December 2, 1976, filed a Notice of Appeal as of right to the Court of Appeals of the State of New York. This appeal is now pending in the Court of Appeals and since the filing of the appeal by the Village, Con Edison has moved the Court of Appeals to dismiss the appeal on various grounds. The Court of Appeals has not as yet decided this matter.

If it is decided by the Court of Appeals that the Village of Buchanan does not have an appeal as of right, then the Mayor and Board of Trustees have directed their attorneys to further pursue the appeal by making application to either the Appellate Division or the Court of Appeals for leave to appeal.

It is, therefore, the position of the Village of Buchanan that all governmental approvals have not been obtained and, therefore, the termination date for the once-through Cooling

System should be postponed further than the May 1, 1980 date.

Respectfully submitted,



CARL R. D'ALVIA, Village Attorney
Village of Buchanan, New York
395 South Riverside Avenue
Croton-on-Hudson, New York 10520
914 271-3535

Dated: January 7 , 1977

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I have this 11th day of January, 1977, served the foregoing document entitled "Village of Buchanan's, a Party to the Proceedings, Exception to Supplemental Partial Initial Decision Concerning Issues for Date of Termination of Closed-Cycle Cooling and Brief" by mailing copies thereof first class mail, postage prepaid and property addressed to the following persons:

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555
(original + 20)

Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Jerome E. Sharfman, Esq.
Chairman, Atomic Safety and
Licensing Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

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

Dr. John H. Buck
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. Lawrence R. Quarles
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

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

Stephen H. Lewis, Esq.
Office of the Executive
Legal Director
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Mr. R. B. Briggs
110 Evans Lane
Oak Ridge, Tennessee 37839

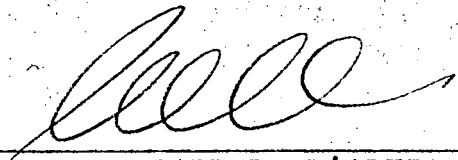
Howard K. Shapar, Esq.
Executive Legal Director
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Sarah Chasis, Esq.
Natural Resources Defense
Council, Inc.
15 West 44th Street
New York, New York 10036

Edward J. Sack, Esq.
4 Irving Place
New York, New York 10003

Richard C. King, Esq.
New York State Energy Office
Swan Street Building, Core 1
Empire State Plaza
Albany, New York 12223

Leonard M. Trosten, Esq.
Eugene R. Fidell, Esq.
Leboeuf, Lamb, Leiby & MacRae
1757 N Street, N.W.
Washington, D.C. 20036



CARL R. D'ALVIA