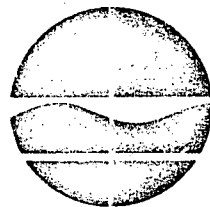


New York State Department of Environmental Conservation

50 Wolf Road, Albany, New York 12233



~~Order Entry~~

Commissioner

Peter A.A. Berle

December 2, 1976

RE: Docket No. 50-247

OL No. DPR-26

Determination of Preferred Alternative Closed-Cycle Cooling System

TO: Chairman & Members, Atomic Safety & Licensing Board

Edward J. Sack, Esq.

Stephen H. Lewis, Esq.

Sarah Chasis, Esq.

Enclosed please find the executed statement of position of the three parties other than applicant to this proceeding, entitled "Stipulation for the Settlement of Remaining Issue"

Kindly excuse the delay in providing the executed document to you due to clerical oversight.

Respectfully submitted,

Werner P. Kuhn
Associate Counsel

Enclosure: 1

cc: Docketing & Service Section (20)

Hon. George V. Begany

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PDR ADOCK 05000247
G PDR

50-247
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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
)	Alternative Closed-Cycle
(Indian Point Station, Unit No. 2))	Cooling System)

Stipulation for Settlement of Remaining Issue

WHEREAS the Nuclear Regulatory Commission ("Commission") has recognized that the public interest may be served through the fair and reasonable settlement of proceedings (10 CFR §2.759);

WHEREAS the parties to this proceeding (Hudson River Fishermen's Association, the New York State Atomic Energy Council, Consolidated Edison Company of New York, Inc. (the "Licensee") and the NRC Staff) have by a document dated September 29, 1976 stipulated that the preferred alternative closed-cycle cooling system for installation at Indian Point Station, Unit No. 2 is a natural draft, wet cooling tower and that the remaining issues in the proceeding are:

1. whether all governmental approvals required to proceed with construction of the closed-cycle cooling system have been granted, as provided in subparagraph 2.E(1)(b) of the license;

2. 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
3. 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;

WHEREAS issue 1, above, has been fully briefed by all of the parties and is, therefore, ripe for determination by the Atomic Safety and Licensing Board (the "Board") and the Licensee and the Staff (the only parties between whom there is controversy on this point) are in the process of working out an agreement on issue 3, above, (with respect to the scope of the monitoring program); and

WHEREAS the only remaining issue which has not been addressed by the parties is issue 2, above, and the parties have met among themselves to consider this issue and have reviewed particularly the construction schedules set forth in Figure 4-1 of the Final Environmental Statement for the selection of the preferred closed-cycle cooling system and in Exhibit B attached to the "Brief on Behalf of Licensee" dated October 6, 1976, and have further reviewed the evidence adduced on the construction schedule during the Unit No. 2 operating license

proceeding (see: LBP-73-33, 6 AEC 751, at 775, as modified by ALAB-188, 7 AEC 323, at 392-95).

IT IS HEREBY STIPULATED by and among the parties to this proceeding that:

1. If the Board issues an Initial Decision approving the selection of the natural draft, wet cooling tower and determining that all governmental approvals required to proceed with construction of the tower have been received, and if the Initial Decision is entered before January 1, 1977, then the Board should find that May 1, 1980 is the reasonable date for termination of operation of Unit No. 2 with once through cooling as a result of the slippage in the date for receipt of all governmental approvals from December 1, 1975 until the date of the Board's Initial Decision. This Stipulation does not imply anything with respect to the impact on the termination date of an Initial Decision entered after January 1, 1977.
2. Assuming that the Board is disposed to enter an Initial Decision as set forth in paragraph 1, above, that Decision should include the following supplemental proposed finding:

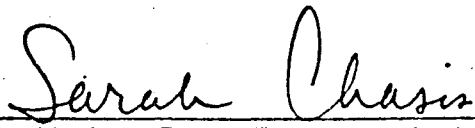
The Board has reviewed the stipulation among the parties dated _____, 1976, and hereby approves that stipulation. Having approved the

Licensee's selection of the natural draft, wet cooling tower as the preferred closed-cycle cooling system for installation at Unit No. 2 and having determined that, with the rendition of this Initial Decision, all governmental approvals required to proceed with construction of the closed-cycle cooling system have been granted, we find that the reasonable date for termination of operation of Unit No. 2 with once-through cooling is May 1, 1980.

3. This stipulation shall be binding upon

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

William P. Kuhn

For the New York State Atomic Energy
Council, on behalf of the New York
State Energy Office

Stephen H. Lewis

For the NRC Staff

Dated: November 29, 1976