

12/13/78

BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of:)
)
CONSOLIDATED EDISON COMPANY)
OF NEW YORK, INC.)
)
(Indian Point Station,)
Unit No. 2))

Docket No. 50-247
OL No. DPR-26

MOTION OF THE UTILITY WATER
ACT GROUP, ET AL., FOR LEAVE
TO FILE BRIEF AS AMICI CURIAE

Pursuant to 10 CFR § 2.715(d), the Utility Water Act Group (UWAG), the Edison Electric Institute (EEI), and the National Rural Electric Cooperative Association (NRECA) (hereafter Electric Utilities)^{1/} respectfully move for leave to file a brief and reply brief as amici curiae in response to the Commission's November 15, 1978 Order in the above proceeding.

Counsel for all parties and for the Power Authority of the State of New York and the Staff of the U.S. Environmental Protection Agency (EPA) have advised that they will not oppose the motion.

^{1/} UWAG is an ad hoc group of 68 electric utility companies, both private and public, that own and operate over 50% of the nation's electric generating capacity. The companies are listed in Attachment A. EEI is the principal national association of investor-owned electric power companies and NRECA is the principal national association of rural electric cooperatives, whose members own and operate steam-electric generating capacity.

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In support of this motion, Electric Utilities state as follows:

1. By its November 15, 1978 Order in this proceeding, the Commission exercised its authority to review, on its own motion, the decision of the Appeal Board in ALAB-487 which established May 1, 1982, as the date by which Consolidated Edison must terminate once-through cooling at Indian Point Unit No. 2. EPA is currently conducting an adjudicatory proceeding to determine the type of cooling system for a number of Hudson River power plants, including Indian Point Unit No. 2, and may ultimately allow once-through cooling. The Commission asked participants to address (1) the implication of the Commission's Seabrook decision^{2/} on the type of cooling system at Indian Point Unit No. 2 and the May 1, 1982 termination date, and (2) the extent to which "the license conditions . . . should be modified to take proper account of EPA's authority."

2. The Electric Utilities own and operate nuclear power stations located throughout the country that are subject to the jurisdiction of the Nuclear Regulatory Commission (NRC) and the EPA. For these stations, they seek or have obtained construction permits and operating licenses from the NRC

^{2/} Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 508 (1977); CLI-78-1, 7 NRC 1, 25-26 (1978).

and National Pollutant Discharge Elimination System (NPDES) permits from the EPA or states delegated NPDES permit-issuing authority. Some of these NRC permits and licenses contain water quality related requirements that differ from or duplicate corresponding requirements in NPDES permits. Thus, Electric Utilities are directly affected by different or duplicative conditions in NRC permits and licenses and NPDES permits and by the policy of this Commission concerning the proper relationship between NRC and EPA jurisdiction, under § 511(c)(2) of the Clean Water Act (CWA), regarding such conditions.

3. If this motion is granted, the Electric Utilities would submit a brief and reply brief addressing the generic issues involved in determining the proper line of demarcation between NRC and EPA jurisdiction over water quality related regulatory matters in light of the Commission's Seabrook decision and § 511(c)(2) of the CWA.

4. If this motion is granted, Electric Utilities would file its amicus brief by December 15, 1978, and its amicus reply brief by January 12, 1979, in accordance with the Commission's November 29, 1978 Order extending the date for filing comments. Accordingly, Electric Utilities' participation as amici would not hinder or delay the proceedings.

WHEREFORE, Electric Utilities respectfully request leave to file a brief and reply brief as amici curiae in this proceeding.

Respectfully submitted,



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Dated: December 13, 1978

UWAG Members

Allegheny Power Company, for
Monongahela Power Company
Potomac Edison Company
West Penn Power Company
American Electric Power Company, for
Appalachain Power Company
Indiana & Michigan Electric Company
Kentucky Power Company
Ohio Power Company
Baltimore Gas & Electric Company
Boston Edison Company
Carolina Power & Light Company
Central Illinois Light Company
Central Illinois Public Service
Cincinnati Gas & Electric Company
Cleveland Electric Illuminating Company
Columbus & Southern Ohio Electric Company
Commonwealth Edison Company
Consolidated Edison Company
Dayton Power & Light Company
Detroit Edison Company
Duke Power Company
Edison Electric Institute
Florida Power & Light Company
Houston Lighting & Power Company
Illinois Power Company
Iowa Public Service Company
Kansas City Power & Light Company
Long Island Lighting Company
Los Angeles Department of Water & Power
Madison Gas & Electric Company
Middle South Utilities, Inc., for
Arkansas Power & Light Company
Arkansas-Missouri Light Company
Louisiana Power & Light Company
Mississippi Power & Light Company
New Orleans Public Service, Inc.
Montaup Electric Company
National Rural Electric Cooperative Association
New England Power Company
New York State Electric & Gas
Niagara Mohawk Power Corporation
Northeast Utilities, for
Holyoke Water Power Company
Connecticut Light & Power Company
Hartford Electric Light Company
Western Massachusetts Electric Company
Northern States Power Company
Ohio Edison Company

Ohio Valley Electric Corporation
Oklahoma Gas and Electric Company
Pacific Gas and Electric Company
Pennsylvania Power & Light Company
Philadelphia Electric Company
Potomac Electric Power Company
Public Service Electric & Gas Company
Public Service of New Hampshire
Public Service Indiana
San Diego Gas & Electric Company
South Carolina Electric & Gas Company
Southern California Edison Company
Southern Company Services, Inc., for
Alabama Power Company
Georgia Power Company
Gulf Power Company
Mississippi Power Company
Tampa Electric Company
Texas Utilities Services, Inc.
Toledo Edison Company
Union Electric Company
Virginia Electric and Power Company
Wisconsin Electric Power Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation