

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

4/27/78

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

CON EDISON REPLY TO HRFA MOTION

Consolidated Edison Company of New York, Inc. ("Con Edison") respectfully files this reply to the motion of the Hudson River Fishermen's Association ("HRFA") dated April 10, 1978, entitled "Renewal of HRFA Motion Requesting a Finding that All Governmental Approvals Required Under the License Have Been Received and for the Establishment of an Appropriate Termination Date for Once-Through Cooling." By order dated April 17, 1978, the Licensing Board extended Con Edison's time to file this reply to May 1, 1978.

Con Edison submits that HRFA's motion should be denied as moot. The basis for the motion was the alleged failure of the Zoning Board of Appeals of the Village of Buchanan to issue a variance to Con Edison to construct a natural-draft cooling tower, despite the ruling of the Court

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of Appeals of the State of New York in Con Edison v. Hoffman et al., 43 N.Y.2d 598 (1978), a copy of which was distributed to the Licensing Board and the parties on February 16, 1978. On April 13, 1978, after HRFA's motion was filed, the Buchanan Zoning Board of Appeals authorized the issuance of the variance. Annexed hereto as Exhibit A is a copy of a letter dated April 14, 1978, of Carl R. D'Alvia, Esq., advising Con Edison of the issuance of the variance, and annexed hereto as Exhibit B is a copy of the minutes of the meeting of the Buchanan Zoning Board of Appeals of April 13, 1978, as received by Con Edison.

In view of the action taken by the Buchanan Zoning Board of Appeals on April 13, 1978, the basis for HRFA's motion no longer exists. In view of the present terms of License No. DPR-26, there is no necessity for any further action by the Atomic Safety and Licensing Board at this time. Accordingly, HRFA's motion should be dismissed as moot.

Respectfully submitted,



Edward J. Sack
4 Irving Place
New York, N.Y. 10003
(212)460-4333
Attorney for Consolidated Edison
Company of New York, Inc.

Dated: New York, New York

April 27, 1978

APR 18 1978



EXHIBIT A

Mayor
GEORGE V. BEGANY

Trustees:
WILLIAM DURR
JAMES EDGAR
JACK LOEBER
WILLIAM MCNALLY

Village of Buchanan

MUNICIPAL BUILDING, BUCHANAN, N. Y. 10511

PHONE: (914) 737-1033-4

Clerk & Treasurer
FRANK R. COLACINI

Village Attorney
CARL D'ALVIA

Village Consulting Engineer
HUGH GREGORY

Building & Plumbing Inspector
CHARLES WHITE

April 14, 1978

Edward J. Sack, Esq.
Consolidated Edison Company
of New York, Inc.
4 Irving Place (18th floor)
New York, New York 10003

Re: Variance - Con Ed from
Village of Buchanan

Dear Mr. Sack:

This is to advise you that the variance with respect to the cooling towers was granted by the Board of Appeals pursuant to the order and judgment of the Court of Appeals at a meeting held by the Board of Appeals on Thursday, April 13, 1978.

Very truly yours,

CARL R. D'ALVIA

CRD:ps

ZONING BOARD OF APPEALS
VILLAGE OF BUCHANAN, NEW YORK
SPECIAL MEETING, APRIL 13, 1978

PRESENT: Walter Hoffman, Chairman
John Kobierowski
Gerald Marallo
John Moraitis
George Foster
Rosemary Martin, Secretary

Carl R. D'Alvia, Village Attorney

CALL TO ORDER

The special meeting of the Zoning Board of Appeals of the Village of Buchanan, New York was called to order at 7:00 p.m. on April 13, 1978 by Chairman Walter Hoffman for the purpose of acting on the decision by the Court of Appeals on the Closed-Cycle Cooling Tower for Indian Point Plant No. 2.

COOLING TOWER DECISION

The Zoning Board of Appeals discussed, read, and reviewed the decision by the Court of Appeals. In view of this decision whereby they have ordered the Village of Buchanan to grant a variance to Con Edison for construction of a cooling tower, the following resolution was adopted upon motion by George Foster, seconded by John Kobierowski, and unanimously approved:

WHEREAS, CONSOLIDATED EDISON has heretofore applied for a building permit on January 7, 1975 to construct a closed-cycle cooling tower for Indian Point Plant No. 2; and

WHEREAS, Charles White, Building Inspector, Village of Buchanan, denied the application for a permit on the grounds that it violated the requirements of the zoning ordinance of the Village of Buchanan, New York; and

RESOLUTION continued

WHEREAS, CONSOLIDATED EDISON applied to the Zoning Board of Appeals of the Village of Buchanan for a variance which would permit them to construct a Cooling Tower for Indian Point Plant No. 2 on their property; and

WHEREAS, a public hearing before the Zoning Board of Appeals was held on May 6, 1975; and

WHEREAS, at the hearing they heard those in favor, those opposed, the Board of Appeals, by separate decision filed in the Village of Buchanan, denied Consolidated Edison application for a variance to construct the towers; and

WHEREAS, CONSOLIDATED EDISON applied to the Courts of the State of New York and the decision of the Supreme Court of Westchester County, Appellate Division; State of New York, and the Court of Appeals has determined that the Zoning Board's action was arbitrary and capricious and the Zoning Board's decision to prohibit the variance was an abuse of discretion; and

WHEREAS, the said courts have directed the Village of Buchanan and the Buchanan Zoning Board of Appeals to grant the variance;

NOW, THEREFORE, BE IT HEREBY RESOLVED, the variance to construct a Closed-Cycle Cooling Tower for Indian Point Plant No. 2, be granted in accordance with the application on file before the Building Inspector and the Zoning Board of Appeals.

The secretary was instructed to send a copy of this meeting to Con Edison.

JOSEPH W. BILELLO - OWNER OF PROPERTY AT 207 TATE AVENUE

John Moraitis made a motion, seconded by Gerald Marallo that Mr. Bilello be permitted to convert his property from a one-family to a two-family house, providing that he meets all the requirements under Section 54-32 of the Zoning Code of the Village of Buchanan, and that a variance be granted for a front-yard-setback, providing that the house have the same front and side-yard setbacks (continuation of line of present building).

ADJOURNMENT

Upon motion by John Kobierowski, seconded by John Moraitis, the special meeting was adjourned at 9:10 p.m.

Respectfully submitted,

Rosemary Martin

Rosemary Martin, Secretary

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I hereby certify that I have this 27th day of April, 1978, served the foregoing document entitled "Con Edison Reply to HRFA Motion" by mailing copies thereof first class mail, postage prepaid and properly addressed to the following persons:

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Washington, D.C. 20555

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Honorable George V. Begany
Mayor, Village of Buchanan
Buchanan, New York 10511

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Edward J. Sack