

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

VILLAGE OF BUCHANAN'S RESPONSE TO
THE H.R.F.'S MOTION FOR A FINDING
THAT ALL GOVERNMENTAL APPROVALS
REQUIRED UNDER THE LICENSE HAVE
BEEN RECEIVED AND FOR THE ESTAB-
LISHMENT OF AN APPROPRIATE TER-
MINATION DATE FOR ONCE-THROUGH
COOLING.

The VILLAGE OF BUCHANAN, NEW YORK, hereinafter referred to as the "Village", submits its response to the motion dated August 31, 1977, of the HUDSON RIVER FISHERMEN'S ASSOCIATION, to The Atomic Safety & Licensing Board, 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.

The motion should be dismissed. The Village Attorney advised the attorney for the Fishermen's Association that no action would be taken by the Zoning Board of Appeals of the Village with respect to the Appeal Board's decision allowing the Village 45 days to act on the variance until the matter had been resolved in the Court of Appeals of the State of

New York.

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The matter under consideration is a zoning matter which is now pending before the New York Court of Appeals, the highest Court of the State of New York. Consolidated Edison requested a variance to build a natural draft cooling tower from the Village. That petition was denied by the Zoning Board of Appeals and the matter was litigated in the Supreme Court of Westchester County and on December 9, 1975, the Supreme Court enjoined the Village Zoning Board from enforcing the provisions of the Village's Zoning Code as against construction by Con Edison of a closed cycle cooling tower. The Village and the Zoning Board of Appeals decided to appeal the decision to the Appellate Division of the State of New York. The decision of the Appellate Division, Second Department, of the State of New York amended the order to provide that the Village Zoning Board was directed to issue the variance to Con Edison for construction of the tower as part of the closed cycle cooling system; however, they amended the lower court's decision by allowing the Zoning Board of Appeals of the Village to regulate local and incidental conditions relative to the construction of the tower.

The Village, as well as the Zoning Board of Appeals, then directed their attorneys to appeal in toto the decision of the Appellate Division to the Court of Appeals. The attorneys for the Village applied to the Court of Appeals for leave to appeal as a matter of right. The Court of Appeals denied that application and in the early part of June of 1977, as indicated, the

Court of Appeals granted the Village's Zoning Board's motion for leave to appeal.

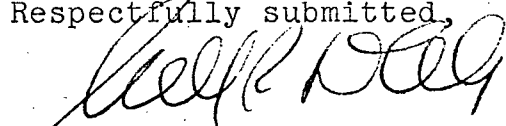
Counsels to the Village filed the briefs on July 25, 1977 and the Village's understanding is that Con Edison, as well as the Hudson River Fishermen's Association, are going to file briefs in connection therewith.

The Village feels that until the Court of Appeals has ruled on this matter that it will not take any legal action as directed by the Appeal Board with respect to the granting of any variances and/or regulating local and incidental conditions since they feel it may prejudice their case.

The Village cannot understand how the Hudson River Fishermen's Association can be prejudiced in any way, since the granting of the application of H.R.F.'s motion certainly would not advance the May 1, 1982 date for termination of operation of once-through cooling established in the related extension proceeding. Until such time as the Court of Appeals has ruled in connection with its appeal, the Village will not exercise its rights in connection with local zoning regulations.

Dated: October 6, 1977

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this 6th day of October, 1977, served the foregoing document entitled "Village of Buchanan's Response to the H.R.F.'s Motion for 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 mailing copies thereof, first class mail, postage prepaid and properly addressed to the following persons:

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