

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

9/16/77

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

RESPONSE BY HRFA ON ITS MOTION  
REGARDING ALL GOVERNMENTAL APPROVALS

We have received responses to our 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. The motion was based on the authorization of ALAB-399 which, over HRFA objection, gave the Village of Buchanan an additional 45 days to state what, if any, local and incidental conditions would be applied to the proposed facility. The Village failed to act in any manner. It is now nearly 120 days since ALAB-399 was decided.

ALAB-399 was especially careful to give additional time for the Village to act while at the same time making it exceedingly clear that the Zoning Board could not sit back and continue to block construction of the cooling tower by inaction. ALAB-399 explicitly held that it would be "pointless" to wait for the New York State Court of Appeals to act because that

Court could not give the Village any greater powers than it was afforded by the Appellate Division. HRFA thus asked for nothing more than a decision as expressly authorized by ALAB-399.

In response neither the NRC Staff nor Consolidated Edison suggests anything that undercuts ALAB-399. First, the NRC Staff and Consolidated Edison note that the Commission has asked for briefs on the preemption issue. Both note, however, that there is no stay of ALAB-399, but argued anyway that it would be "inappropriate" to act pending Commission decision. Such an argument misconstrues the nature of ALAB-399. The Appeal Board felt constrained to give the Village one last chance to state what, if any, local regulation it intended to impose. This one last chance was itself generous since the Village more than two years ago informed Consolidated Edison that its plans were in conformity with existing Village law, with the exception of height and use. (Exhibit A annexed hereto).

Since the Village has now defaulted, it is appropriate to make that finding now so that all further consideration on this issue proceeds on the now certain fact that there is no additional regulation to be imposed.

Respectfully submitted,



Ross Sandler  
Attorney for Hudson River  
Fishermen's Association

Dated: New York, New York  
September 16, 1977