

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

8/31/77

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

MOTION OF HRFA 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 Hudson River Fishermen's Association ("HRFA") hereby requests that the Atomic Safety and Licensing Board ("the Licensing Board") make a finding that the approval of the Village of Buchanan Zoning Board of Appeals ("the Zoning Board") is no longer a required governmental approval under Paragraph 2.E.(1)(b) of the License and that, therefore, all governmental approvals required to proceed with the construction of a closed-cycle cooling system have been received. HRFA further requests that, based upon such a finding, the Licensing Board designate an appropriate termination date for operation of the plant with the present once-through cooling system.

As set forth in the supporting affidavit, the Village of Buchanan Zoning Board of Appeals ("the Zoning Board") has failed to issue any order granting variances embodying local

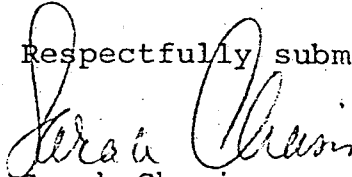
and incidental regulation consistent with the License conditions or to take any action toward the issuance of such variances, despite the ruling of the Atomic Safety and Licensing Appeal Board ("the Appeal Board") in ALAB-399 on May 20, 1977. In that ruling, the Appeal Board stated that if the Zoning Board did not issue within 45 days of the May 20, 1977 decision, an order granting variances embodying whatever local and incidental regulation of the construction of the cooling tower the Zoning Board desired, or if the Zoning Board attempted to impose regulation inconsistent with the License conditions, the Licensing Board should find, upon the request of a party, that the Zoning Board's inaction or local and incidental regulation is inconsistent and hence preempted by federal law. ALAB-399 at 30.

Since it is well past the 45 day period for action by the Zoning Board and since no action has been taken toward granting such variances, HRFA requests that the Licensing Board, pursuant to the direction contained in ALAB-399, make a finding that the Zoning Board's inaction is inconsistent with and hence preempted by federal law. If the Licensing Board makes the requested finding, then under ALAB-399, the Zoning Board's permission to build a cooling tower will no longer be a required governmental approval under Paragraph 2.E.(1)(b) of the License. ALAB-399 at 30. The Licensing Board must then proceed to determine the appropriate date for termination of operation with the present once-through cooling system. ALAB-399 at 31.

Since this Board has already extended the time for operation with open-cycle cooling until 1982 (Initial Decision Extending Time of Once-Through Cooling Until May 1, 1982, June 17, 1977) and since, under the guidelines set forth in Paragraph 2.E.(1)(b) of the License, no later termination date is necessitated by virtue of the timing of receipt of governmental approvals, the present May 1, 1982 date for termination of once-through cooling contained in the License need not be altered or extended.

For the foregoing reasons, HRFA respectfully requests the Licensing Board to find that the Village of Buchanan Zoning Board of Appeals' inaction is inconsistent with and hence preempted by federal law, that therefore the Zoning Board's permission to build a cooling tower is no longer a required governmental approval under the license and, as a consequence, all government approvals required to proceed with construction of a closed-cycle cooling system have been received, and finally, that the appropriate date for termination of plant operation with once-through cooling is May 1, 1982.

Respectfully submitted,



Sarah Chasis

Attorney for Hudson River
Fishermen's Association

Dated: New York, New York
August 31, 1977