

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD,

12/5/77

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

APPLICANT'S EXCEPTIONS TO ORDER GRANTING
MOTION FOR DETERMINATION THAT ALL GOVERNMENTAL
APPROVALS HAVE BEEN RECEIVED

On November 23, 1977 the Atomic Safety and Licensing Board ("the Licensing Board") issued an Order Granting Motion for Determination that All Governmental Approvals have been Received ("the Order"). Pursuant to 10 CFR Part 2, Consolidated Edison Company of New York, Inc. ("Con Edison"), applicant in the above-captioned proceeding, submits the following exceptions to the Order:

EXCEPTION NO. 1:

The Licensing Board erred in its interpretation of the Atomic Safety and Licensing Appeal Board's decision (ALAB-399) that a finding that all governmental approvals had been received is required if the Buchanan Zoning Board of Appeals does not act on the request for a zoning variance.

Portion of the Order to which Exception No. 1 is addressed:
Order at 4-7

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EXCEPTION NO. 2:

The Licensing Board erred by improvidently granting the Order while the issues of whether the issuance of a zoning variance by the Buchanan Zoning Board of Appeals is a necessary governmental approval for construction of a cooling tower within the meaning of License DPR-26 and of whether the National Environmental Policy Act preempts the Zoning Board's power to deny a zoning variance are being reviewed by the Nuclear Regulatory Commission.

Portion of the Order to which Exception No. 2 is addressed:
Order at 4

EXCEPTION NO. 3:

The Licensing Board erred by improvidently granting the Order while the issue of the legal authority of the Buchanan Zoning Board of Appeals to prohibit or regulate construction of a cooling tower is being reviewed by the Court of Appeals of the State of New York.

Portion of the Order to which Exception No. 3 is addressed:
Order at 7

EXCEPTION NO. 4:

The Licensing Board erred in its determination that the inaction of the Buchanan Zoning Board of Appeals prevents Con Edison at this time from complying with the license conditions to terminate once-through cooling by May 1, 1982.

Portion of the Order to which Exception No. 4 is addressed:
Order at 5-8

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CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of December, 1977, served the foregoing document entitled "Applicant's Exceptions to Order Granting Motion for Determination that All Governmental Approvals have been Received" by mailing copies thereof first class mail, postage prepaid and properly addressed to the following persons:

Mr. Samuel J. Chilk, Secretary
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555
Attn: Chief, Docketing and
Service Section (Orig. + 20)

Samuel W. Jensch, Esq.
Chairman, Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Mr. R. Beecher Briggs
110 Evans Lane
Oak Ridge, Tennessee 37830

Dr. Franklin C. Daiber
College of Marine Studies
University of Delaware
Newark, Delaware 19711

Jerome E. Sharfman, Esq.
Chairman, Atomic Safety and
Licensing Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. John H. Buck
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. Lawrence R. Quarles
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Sarah Chasis, Esq.
Natural Resources Defense
Council, Inc.
122 E. 42nd Street
New York, N.Y. 10017

Stephen H. Lewis, Esq.
Office of the Executive Legal
Director
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Jeffrey C. Cohen, Esq.
New York Energy Office
Swan Street Building
Core 1 - 2nd Floor
Albany, N.Y. 12223

Carl R. D'Alvia, Esq.
Attorney for Village of Buchanan
395 S. Riverside Avenue
Croton-on-Hudson, N.Y. 10520

Honorable George V. Begany
Mayor, Village of Buchanan
Buchanan, N.Y. 10511



Edward J. Sack

A Brief in support of the foregoing exceptions will be
timely filed.

Respectfully submitted,



Edward J. Sack

4 Irving Place
New York, NY 10003
(212)460-4333
Attorney for Consolidated Edison
Company of New York, Inc.

December 5, 1977