

6/20/77

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE COMMISSION

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)

ANSWER OF HUDSON RIVER FISHERMEN'S ASSOCIATION
TO PETITIONS OF CON EDISON AND NRC STAFF SEEKING
COMMISSION REVIEW OF ALAB-399

The Hudson River Fishermen's Association ("HRFA"), a party in the above-captioned proceeding, hereby answers the petitions of Consolidated Edison Company of New York, Inc. ("Con Edison") and the NRC Staff ("the Staff") which seek review of the Atomic Safety and Licensing Appeal Board's Decision 399 ("ALAB-399"), pursuant to the provisions of the recently adopted 10 C.F.R. Section 2.786(b). While HRFA has also petitioned the Commission for review of ALAB-399 under this rule, it has sought review of different matters than either Con Edison or the Staff. HRFA opposes the petitions of the other parties for the reason that the challenges to ALAB-399 are without merit and have no likelihood of success on appeal to the Commission. The Appeal Board was correct in its determinations and based its rulings on a settled doctrine of federal law. The Commission should therefore deny the petitions of Con Edison and the Staff. HRFA sets forth below the basis for its opposition.

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The Appeal Board was thus interpreting the requirements of federal law, requirements which Con Edison itself agrees with.^{1/} In so doing, it was acting entirely within the scope of its authority. The Appeal Board therefore did not rest its decision on a state court determination which could be reversed on appeal, but on its own correct interpretation of federal law.

The Village had full opportunity to participate as a party in this proceeding and chose not to. The fact that the Village chose not to participate may not now be used as an argument for why the Appeal Board could not reach and decide in this proceeding the proper scope of the Village's authority under federal law.

-----The Appeal Board's conclusion not to await decision by the Court of Appeals was thus correct and Con Edison's challenge is groundless.

The Staff's grounds for seeking review are also without merit. The heart of the Staff's argument is that there can be no implied federal preemption under NEPA of conflicting state regulations and, therefore, the Appeal Board's conclusion to the contrary is wrong. (Petition, pp. 6-8). The Appeal Board's limited application of the doctrine of federal preemption to the facts of this case, however, was entirely correct. The Appeal Board properly recognized that, pursuant to NEPA's substantive mandate, the NRC conditioned the operating license for Indian

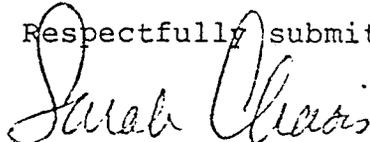
^{1/}Con Edison in its briefs to the state courts and to the Appeal Board has argued that under federal law the Village of Buchanan is preempted from blocking construction of the cooling tower.

the minimum environmental standards determined necessary by the NRC (after years of lengthy factual hearings on the issue) must not be undermined. The Appeal Board was entirely correct in so concluding.

CONCLUSION

Since those portions of ALAB-399 for which review is sought by Con Edison and the Staff are correct and the challenges to them without merit, the Commission should deny the petitions.

Respectfully submitted,



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June 20, 1977