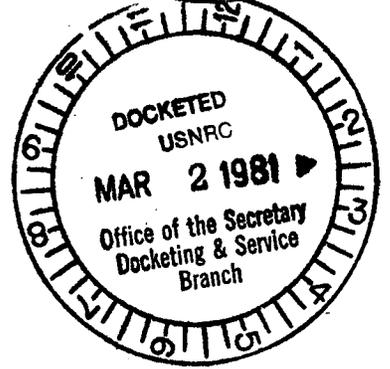


BEFORE THE COMMISSION

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



COMMISSIONERS:

John F. Ahearne, Chairman
Victor Gilinsky
Joseph M. Hendrie
Peter A. Bradford

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In the Matter of

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. (Indian Point, Unit No. 2)

Docket Nos. 50-247
50-286

POWER AUTHORITY OF THE STATE OF NEW YORK (Indian Point No. 3 Nuclear Power Plant)

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LICENSEES' MOTION FOR AN ORDER DELETING LICENSE PROVISIONS

The Consolidated Edison Company of New York, Inc. and the Power Authority of the State of New York, licensees of Indian Point Units 2 and 3, respectively, move the Commission for the reasons stated below for an order deleting from their operating licenses the requirement for termination of operation of the units with once-through cooling. The order requested will complete all Commission actions relating to resolution and determination of the cooling system issues for Indian Point Units 2 and 3 which have been pending since the units' licensing.

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The licensees seek this order to permit implementation of a Settlement Agreement concerning Indian Point cooling system issues recently concluded among the licensees, U.S. Environmental Protection Agency (EPA), the New York State Department of Environmental Conservation (New York DEC), the New York Attorney General, and various other parties. The licensees are also contemporaneously filing an application with the Office of Nuclear Reactor Regulation to delete non-radiological environmental requirements from the licenses (Environmental Technical Specification Requirements, Appendix B to the operating licenses), to allow compliance with requirements imposed pursuant to the Clean Water Act.*

* There are at present discrete sections of the Environmental Technical Specification Requirements (Appendix B to the operating licenses) of Indian Point Units 1, 2 and 3 which should continue in force, and which are accordingly not sought to be deleted in the licensees' contemporaneous application to the Staff. Such sections relate to meteorological and radiological surveillance. The sections of present Appendix B for each unit which would not be deleted pursuant to the licensees' application are Sections 2.4 and 3.4 (entitled "Radioactive Discharges"), Section 4.1.1.b ("Meteorological Monitoring"), Section 4.2 ("Radiological Surveillance"), and the definitions of Section 1 and the administrative controls of Section 5 applicable to the foregoing sections. Excepting these sections, Appendix B may be deleted from each license, inasmuch as any required environmental monitoring will be provided for in the SPDES permits issued pursuant to the Settlement Agreement. In keeping with current Commission practice, the licensees' application also seeks inclusion of an Environmental Protection Plan consistent with the Settlement Agreement in the Appendix B for each unit.

Background

On November 15, 1978, the Commission solicited comments from the licensees and other interested parties on the extent to which the Commission's license conditions "should be modified to take proper account of EPA's authority" on once-through cooling matters. The Commission's order stated that:

"Our decisions in the Seabrook proceeding have emphasized that EPA has the primary voice in determining the type of cooling system to be used in nuclear power plants.... We ask the participants to address, with particular reference to the role of EPA:

- (1) the implication of the Seabrook decision with respect to closed-cycle cooling at Indian Point Unit No. 2; and the existing termination date of May 1, 1982 for operating Indian Point Unit No. 2 with once-through cooling; and
- (2) to what extent the license conditions 2.E(1)(a-d) should be modified to take proper account of EPA's authority.

We invite the comments of EPA and the Power Authority of the State of New York (PASNY). 3/" (other footnotes omitted)

"3/We expect that PASNY, licensee for Indian Point Unit 3 shares our concern with these matters because its operating license contains similar provisions requiring a change-over to closed-cycle cooling by September 15, 1982. 43 Fed. Reg. 49082, n.1 (October 20, 1973)."

In response to the Commission's order, the Commission's Staff, as well as Con Edison, the Power Authority, EPA and the

Hudson River Fishermen's Association, filed memoranda and reply memoranda in December 1978 and January 1979. All of these parties are also parties to the recent Indian Point cooling tower Settlement Agreement. The Con Edison memorandum requested an order from the Commission either deleting condition 2.E from License DPR-26, or in the alternative, amending condition 2.E to provide that the condenser cooling system should be that required to meet the effluent limitations and intake structure requirements finally established under the Clean Water Act ("Act"). Similar relief was sought by the Power Authority respecting License DPR-64. The Commission has not yet acted upon the memoranda filed in response to its order.

The Commission's November 15, 1978 order acknowledged that proceedings were then ongoing before the EPA to determine whether closed-cycle cooling would be required at Indian Point. The order observed that:

"Region II of the Environmental Protection Agency (EPA) is currently conducting an adjudicatory proceeding to determine the type of cooling system which will be required for a number of Hudson River power plants, one of which is Indian Point Unit No. 2. At this time, EPA is reconsidering its decision under the Federal Water Pollution Control Act Amendments (FWPCA) to impose a thermal effluent limitation on the Indian Point facility."

That proceeding has been continuing since the Commission's 1978 order before an EPA Administrative Law Judge. In the

course of that proceeding, over 20,000 pages of testimony were taken and thousands of pages of exhibits received into evidence.

Settlement Agreement

On December 19, 1980 a settlement was reached among Con Edison, the Power Authority, EPA, New York DEC and other parties to the EPA cooling system proceeding providing that, in lieu of closed-cycle cooling, the Indian Point units will be equipped with new circulating water pumps and angled screens in accordance with Section 4.A of the Settlement Agreement. In the settlement, the licensees have agreed also to periodic, seasonal plant outages during biologically important periods. A copy of the Settlement Agreement is submitted herewith as Attachment A.

The Settlement Agreement becomes effective as set forth in Section 4.M. When it becomes effective, the settlement will determine the licensees' obligations under the Clean Water Act regarding thermal effluent limitations and intake design at the Indian Point units for the ten-year term of the agreement. The settlement will be made a part of new SPDES discharge permits issued under the Act by New York DEC.

The agreement represents the resolution of a protracted environmental dispute. It embodies a compromise of sharply contested issues by the litigants and the regulatory agencies charged with administering the Act, viz., EPA and New York DEC. The settlement is a landmark settlement which may form the basis

for similar agreements elsewhere.*

Condition 2.E of licenses DPR-26 and DPR-64, respectively, preclude the implementation of the settlement and should be deleted by the Commission. Condition 2.E requires the termination of operation with once-through cooling; in contrast, the parties to the settlement, including EPA and New York DEC, have agreed that no such termination is necessary. The only way to avoid frustrating the settlement of the EPA litigation is to delete condition 2.E.

The Commission should also direct the completion of all other action required under the Atomic Energy Act to make the licenses consistent with the Settlement Agreement relative to the condenser cooling systems for Indian Point Units 2 and 3. All non-radiological monitoring necessary to meet the Atomic Energy Act's requirements will be included in the SPDES permits issued by New York DEC. This approach has been followed by the NRC in connection with at least two other licensed plants, North Anna Unit 2 (Docket No. 50-339) and Sequoyah Unit 1 (Docket No. 50-327), where in promulgating non-radiological license requirements

* See e.g., The New York Times, December 20, 1980 at p. 1.

the NRC has relied upon NPDES permit limitations to insure adequate environmental protection.

The applicable Environmental Technical Specification Requirements for the North Anna plant state that:

"None required.*

*In consideration of the provisions of the Clean Water Act (33 USC §1251, et seq.) and in the interest of avoiding duplication of effort, the conditions and monitoring requirements related to water quality and aquatic biota are specified in the National Pollution Discharge Elimination System (NPDES) Permit No. VA0052451 issued by the Commonwealth of Virginia to the Virginia Electric and Power Company (VEPCO). This permit authorizes VEPCO to discharge controlled waste water from the North Anna Power Station into waters of Virginia.

The Nuclear Regulatory Commission will be relying on the NPDES permit limitations for protection of the aquatic environment from non-radiological effluents."

The licensees submit that the order sought herein is necessary under Section 511(c) of the Act, 33 U.S.C. § 1371(c)(2), as it has been previously applied by the Commission. Section 511(c) provides in pertinent part that:

- "(2) Nothing in [NEPA] shall be deemed to--
- "(A) authorize any Federal agency authorized to license or permit the conduct of any activity which may result in the discharge of a pollutant into the navigable waters to review any effluent limitation or other requirement established pursuant to this Act...; or

"(B) authorize any such agency to impose, as a condition precedent to the issuance of any license or permit, any effluent limitation other than any such limitation established pursuant to this Act."

Numerous Commission decisions establish that the Commission agrees that it should defer to EPA on the question of plant cooling systems. The Commission stated in Seabrook,* the decision referred to in the Commission's November 15, 1978 order herein, that "EPA determines what cooling system a nuclear power facility may use...." Id. at 26.

Seabrook has been followed and applied in Yellow Creek** and Robinson***, both decisions which support the present motion. In Yellow Creek, a decision which was specifically concerned with Environmental Technical Specification monitoring requirements, the Appeal Board stated that:

"This Commission may not incorporate in licenses to build nuclear power plants conditions which, in actuality, call for a 'review' of the adequacy of water quality requirements previously established by EPA." 8 NRC at 713.

* Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1 (1978).

** Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702 (1978).

*** Carolina Power and Light Company (H.B. Robinson, Unit No. 2), ALAB-569, 10 NRC 557 (1979).

In implementing Section 511, the Commission has consistently deferred to EPA and other federal and state permitting authorities on matters relating to power plant cooling systems. For the Indian Point units, all issues concerning this cooling system and its impact on the Hudson River have now been laid to rest for the term of the December 1980 settlement, and will be made part of the SPDES permits. However, present license provisions, namely condition 2.E in each unit's license, will until deleted prevent implementation of the settlement. Consistent with Section 511 and the prior Commission rulings set forth above, an order deleting these license provisions as of the effective date of the settlement should be approved by the Commission.

In addition to deleting condition 2.E from the operating licenses of each Indian Point unit, the Commission order sought by the instant motion should direct that a stipulation entered into on January 13, 1975 in connection with certain contested matters in the Indian Point Unit 3 licensing proceeding* be superseded and have no further effect. This stipulation contemplates the cessation of

* The stipulation is set forth in the Final Environmental Statement for Indian Point Unit No. 3 (NUREG-75/002) at pp. xvi to xxxi. A copy of this stipulation is submitted herewith as Attachment B.

once-through cooling at Indian Point Unit 3, but provides that the licensee may seek other relief from the Commission,* such as that sought in the instant motion.

Of the signatories to the January 13, 1975 stipulation, the licensee, the Attorney General of the State of New York, and the Hudson River Fishermen's Association have consented to the superseding of this stipulation in the December 19, 1980 settlement,** and the consent of the remaining signatories is anticipated either expressly or in the form of non-opposition to this motion.***

All signatories to the December 19, 1980 settlement support the resolution of the Indian Point cooling system controversy as embodied in the Settlement Agreement, and also licensees' present motion to modify the license provisions accordingly. The December 19, 1980 settlement provides (at Section 4(M)(4)) that:

"The parties recognize that the NRC's current licenses for Indian Point 2 and 3 require closed-cycle cooling at those plants. This Agreement represents and constitutes the agreement of all the parties hereto that the

* See paragraph 2(c) of Attachment B.

** See Section 4(M)(1)(b) of Attachment A.

*** A copy of this motion is being served on each signatory to the January 1975 stipulation.

provisions of the Agreement applicable to Indian Point 2 and 3 should be substituted in lieu of the closed-cycle cooling requirements at Indian Point 2 and 3, and each party agrees to support applications by Con Edison and PASNY to the NRC to modify its requirements accordingly."

WHEREFORE, for the foregoing reasons, the Commission should enter an order, to become effective upon the Effective Date of the settlement as set forth in Section 4.M.1 of the Settlement Agreement, as follows:

- (1) deleting condition 2.E from license DPR-26;
- (2) deleting condition 2.E from license DPR-64;
- (3) directing that a stipulation entered into on January 13, 1975 in the Indian Point Unit 3 licensing proceeding be superseded and have no further effect; and
- (4) directing the completion of all action required under the Atomic Energy Act relative to the condenser cooling systems for Indian Point Units 2 and 3.

Respectfully submitted,

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Dated: New York, New York
February 27, 1981

ATTACHMENT A