

UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
CONSOLIDATED EDISON COMPANY	)	Docket No. 50-286
OF NEW YORK, INC.	)	
(Indian Point Station,	)	
Unit No. 3)	)	

STIPULATION

WHEREAS the Atomic Energy Commission has recognized that the public interest may be served through the fair and reasonable settlement of contested licensing proceedings;

WHEREAS the Hudson River Fishermen's Association ("HRFA"), Save Our Stripers ("SOS"), the Atomic Energy Council of the State of New York, the Attorney General of the State of New York, the Regulatory Staff of the Atomic Energy Commission ("the Regulatory Staff"), and the Consolidated Edison Company of New York, Inc. ("Applicant"), wish to settle all matters in controversy among them relating to the cooling system of Indian Point Unit No. 3 ("the Plant") and the protection of the aquatic biota of the Hudson River; and

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WHEREAS the Atomic Safety and Licensing Appeal Board has ruled on related licensing conditions in Consolidated Edison Company of New York, Inc. (Indian Point Station, Unit No. 2), ALAB-188, RAI-74-4 323 (Apr. 4, 1974);

IT IS HEREBY STIPULATED by and among the attorneys for the parties to the above-captioned proceeding that:

1. The requests for a hearing in this proceeding are withdrawn.

2. HRFA, SOS, the Atomic Energy Council of the State of New York, the Attorney General of the State of New York, and Applicant agree that the Director of Regulation may issue to Applicant or its successor in interest an operating license for a term of 40 years for operation of the Plant at steady-state power levels not to exceed 3,025 megawatts thermal ("rated power"), provided that such license and any other operating license that may be issued earlier (for such purposes as fuel-loading, testing and limited power operation) shall contain the following condition:

Operation of Indian Point Unit No. 3 ("the Plant") with the once-through cooling system will be permitted during an interim period, the termination date for which will be September 15, 1980 ("the September 15 date"). Thereafter, except as hereinafter provided or as ordered by the Atomic Energy Commission, the Plant shall be operated with an approved closed-cycle cooling system. Such interim operation is subject to the following conditions, none of which shall be interpreted to limit or to affect in any way such other conditions as are imposed by the Atomic Energy Commission or any other governmental body (including, but not limited to, the State of New York) in accord with applicable law:

(a) Interim operation shall only be permitted to the extent that the requirements of this license (including such technical specifications as may be imposed by the Director of Regulation) to protect the aquatic biota of the Hudson River from any significant adverse impacts are satisfied; any necessary mitigating measure shall be promptly taken; such measures to include any authorized remedy deemed to be appropriate by the Atomic Energy

Commission, including an acceleration of the September 15 date to an earlier date which is deemed reasonable and warranted by the circumstances.

(b) The September 15 date is subject to acceleration or extension depending upon whether the Licensee, acting with due diligence, obtains all governmental approvals required to proceed with the construction of the closed-cycle cooling system by the end of the twelfth month following submission of the evaluation required by subparagraph (g) ("the twelve-month deadline"). In the event all such government approvals are obtained a month or more prior to the twelve-month deadline, then the September 15 date shall be accelerated accordingly. In the event the Licensee has acted with due diligence in seeking all such governmental approvals, but has not obtained such approvals by the twelve-month deadline, then the September 15 date shall be extended accordingly. If this license is issued before May 1, 1975, the twelve-month deadline shall be June 1, 1976.

(c) If the Licensee believes that the empirical data collected during this interim operation justify

an extension of the interim operation period, or other relief, it may make an application to the Atomic Energy Commission. The filing of such application in and of itself shall not warrant an extension of the interim operation period.

(d) After the commencement of construction of a closed-cycle cooling system, a request for an extension of the interim operation period will be considered by the Atomic Energy Commission on the basis of a showing of good cause by the Licensee which also includes a showing that the aquatic biota of the Hudson River will continue to be protected from any significant adverse impacts as a result of operation of the Plant during the period for which an extension is sought. The filing of such application in and of itself shall not warrant an extension of the interim operation period.

(e) The September 15 date is subject to extension if the empirical data referred to in subparagraph (c) are insufficient solely because the Plant has not operated at at least 40% of rated power for 45 or more full days (8:00 a.m. to 7:59 a.m.) during the period

from May 15 to July 31 in each calendar year, commencing January 1, 1975. The September 15 date will be extended one year for each calendar year in which such operation is not achieved. However, no such extension shall be granted after the Plant has achieved such operation in two calendar years, and no more than two such extensions shall be granted. This subparagraph shall not bar an application for an extension under subparagraph (c) because of lack of operation. As long as an extension of the September 15 date is possible pursuant to this subparagraph, whenever the Plant operates at less than 20% of rated power for more than 12 consecutive hours during the May 15 to July 31 period, no more than three circulating water pumps shall be used.

(f) In addition to the reporting requirements otherwise imposed by this license, the Licensee is directed to file with the Commission and serve on the parties reports of its analysis of data collected during interim operation which bear on the environmental effects of once-through cooling on the aquatic biota of the Hudson River. Such reports shall be made publicly available. The first such report shall be made as soon as is feasible

after the end of the 1975 striped bass spawning season but no later than July 31, 1976, and thereafter as significant new data become available.

(g) Evaluation of the economic and environmental impact of alternative closed-cycle cooling systems shall be made by the Licensee in order to determine a preferred system for installation. This evaluation shall be submitted to the Atomic Energy Commission by one month following the receipt of the full-term, full-power operating license, for review and approval prior to construction.

(h) The September 15 date assumes that the installation of a closed-cycle cooling system for the plant will require the relocation of the natural gas pipeline owned by Algonquin Gas Pipeline Company. If the final determination as to the location of the closed-cycle cooling system does not require the relocation of the pipeline, the date for the termination of the interim period of operation with the once-through cooling system will be May 1, 1980, and all dates in this condition shall be deemed changed to reflect those circumstances by substituting "May 1, 1980 ('the May 1 date')" for "September 15, 1980 ('the September 15 date')" and "the May 1 date" for "the September 15 date" throughout this

condition and subparagraph (j) (1) of this condition shall be ineffective.

(i) No acceleration of the September 15 date shall be made pursuant to subparagraph (b) or (h) to the extent that such acceleration would result in the simultaneous excavation or outage for the construction of closed-cycle cooling systems for both Indian Point Unit Nos. 2 and 3.

(j) In construing and applying this condition, the following definitions shall govern:

(1) "governmental approvals" shall include, among others, approval by the Federal Power Commission of a certificate of public convenience and necessity, or amendment thereto, authorizing relocation of the natural gas pipeline owned by Algonquin Gas Pipeline Company and crossing the Plant site in order to permit excavation for a cooling tower adjacent to the Plant;



(2) "Licensee" shall include Applicant or any successor to its interest in the license to operate the Plant or any joint holder of the license to operate the Plant.

3. The Regulatory Staff agrees that the foregoing license condition is appropriate and that it will not require or recommend any conditions or provisions in its technical specifications or otherwise in the operating license with respect to operation of the Plant with once-through cooling inconsistent with said license condition.

4. (a) In the event that the Licensee applies for an extension of the interim operation period or other relief pursuant to subparagraph (c) or (d) of the license condition set forth in paragraph 2 of this stipulation, the Licensee shall serve such application on each party as provided in paragraph 7(a) hereof. The Regulatory Staff shall promptly review said application and shall issue a report stating the Regulatory Staff's findings and conclusions concerning said application and a recommendation that the relief requested be approved, modified,

or denied. A copy of such report shall be served on each party to this stipulation.

(b) Within 30 days following such service, any party to this stipulation may serve upon the other parties and file with the Commission a request for a hearing concerning the Regulatory Staff's recommendation. Each party, including the Regulatory Staff, hereby agrees to support any request for a hearing made by any party pursuant to this subparagraph (b). Such support for a request for hearing by any party to this stipulation shall not be construed as agreement with the substantive position of the party initiating the request for hearing. Any hearing and all subsequent proceedings held pursuant to this paragraph shall be governed by the Rules of Practice of the Atomic Energy Commission, or any successor agency, as such rules may then be in effect pursuant to the Atomic Energy Act of 1954 as now or hereafter amended, and to any other applicable laws. If no request for hearing is made, the Director of Regulation or his successor may amend the license condition as recommended by the Regulatory Staff.

5. In the event that the Regulatory Staff proposes any modification of the license condition set forth in paragraph 2 of this stipulation, pursuant to subparagraph (a) of said condition or otherwise, the Regulatory Staff shall issue a report setting forth the proposed change and the basis therefor. A copy of such report shall be served on each party to this stipulation. Following service, the procedure set forth in paragraph 4(b) of this stipulation shall govern.

6. Acceptance of this stipulation shall not be deemed a waiver by any party hereto of the right, in any future hearing or other proceeding, to advance or to oppose any contention not expressly barred by this stipulation, including but not limited to the contention that the analysis and statement required by section 102 of the National Environmental Policy Act of 1969 must include: (a) analysis of the effects on the fisheries of the Hudson River of all power plants situated on the Hudson River or whose design or construction on the Hudson River is imminent as of the time of the hearing, and (b) analysis of the need for power generated by the Plant and the availability of power from other sources.

7. The Licensee will serve on the other parties to this stipulation:

(a) any request for modification of the September 15 date, pursuant to paragraph 2(c) or 2(d) hereof;

(b) a notice of any modification of the twelve-month deadline, with the reasons therefor; and

(c) a notice that the September 15 date has been advanced or set back pursuant to paragraph 2 hereof, with the reasons therefor.

The request referred to in subparagraph (a) above shall be served at the same time it is submitted to the Atomic Energy Commission, and the notices referred to in subparagraphs (b) and (c) above shall be served as soon as possible after the circumstances giving rise to the modification have occurred. If the twelve-month deadline is extended more than eight months pursuant to subparagraph (b) of paragraph 2 of this stipulation, any further extension shall be subject to the approval of the Regulatory Staff. The Licensee shall submit any such request for a postponement and the Staff shall review such request and

issue within 30 days of receipt of such request a written determination whether due diligence has been exercised by the Licensee. A copy of said determination shall be served on each party to this stipulation. Within 30 days following such service, any party to this stipulation may serve a request for a hearing on the Secretary of the Atomic Energy Commission and all other parties. Each party, including the Regulatory Staff, hereby agrees to support any request for a hearing made by any party pursuant to this subparagraph. Such support for a request for hearing by any party to this stipulation shall not be construed as agreement with the substantive position of the party initiating the request for hearing. Any hearing and all subsequent proceedings held pursuant to this subparagraph shall be governed by the Rules of Practice of the Atomic Energy Commission, or any successor agency, as such rules may then be in effect pursuant to the Atomic Energy Act of 1954 as now or hereafter amended, and to any other applicable laws. In any hearing involving subparagraph (b) of paragraph 2 of this stipulation, the Licensee shall have the burden of proof on the issue of due diligence, and in any hearing involving subparagraph

(d) of said paragraph 2, the Licensee shall have the burden of proof on the issue of good cause. Nothing herein shall be construed to limit any party's rights to relief under the Rules of Practice or otherwise should it wish to maintain that a necessary governmental approval has been substantially granted or denied by passage of time or otherwise.

8. All parties agree to exercise due diligence in the performance of their various responsibilities under this stipulation. All parties also agree to cooperate in the expeditious processing of any applications for the various governmental approvals required under subparagraph (b) of paragraph 2 of this stipulation, and further agree not to object to the participation of any party to this stipulation in any proceeding relating to any such application.

9. Each party to this stipulation, other than the Regulatory Staff, expressly reserves the right to seek judicial review of any final order of the Atomic Energy Commission following a hearing under paragraph 4, 5, or 7 of this stipulation.

10. All parties, including the Regulatory Staff, shall serve on the other parties to this stipulation all correspondence, papers, and documents exchanged between them which relate to matters in controversy among the parties concerning the cooling system of the Plant or the protection of the aquatic biota of the Hudson River.

11. This stipulation shall be binding upon any successor-in-interest to the Applicant or any future co-applicant who shall come to hold or have any interest whatsoever in the operating license, and shall be binding upon any successor-in-interest to any of the parties hereto who has notice of the terms hereof as if such successor-in-interest had been an original party hereto, and shall remain in effect among the parties hereto and their successors-in-interest regardless of the addition or substitution of parties to the proceeding.

12. The license condition provisions of this stipulation shall not be final and binding on the parties hereto until this stipulation has been approved by the Atomic Safety and Licensing Board and the Atomic Safety and Licensing Appeal Board.

For the Applicant:

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For the Regulatory Staff:

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For the Attorney General  
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Angus Macbeth

Dated: December , 1974

For the New York State  
Atomic Energy Council:

J. Bruce Marshall

For Save our Stripers:

Nicholas A. Robinson



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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) )

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

AFFIDAVIT OF SERVICE

Michael Blatt, being duly sworn, states: That he is a Senior Engineer employed by Consolidated Edison Company of New York, Inc., and that he has served the foregoing document entitled, "Licensees Motion for an Order Deleting License Provisions," sworn to on February 27, 1981, by mailing a copy thereof, first class postage prepaid and properly addressed to the following persons:

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Hudson River Fishermen's Asso-  
ciation  
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Michael Blatt  
Michael Blatt

Sworn to before me this  
29 day of February, 1981

Thomas R. McLaughlin  
Notary Public

THOMAS R. McLAUGHLIN  
Notary Public State of New York  
No. 24-4618495  
Qualified in Kings County  
Commission Expires March 30, 1984