

In the Matter of Consolidated Edison Company of New York, Inc. v.
Walter Hoffman et al.,

-2-

ORDERED that the judgment appealed from is hereby modified, on the law, by (1) deleting the second decretal paragraph thereof and (2) deleting so much of the third decretal paragraph thereof as follows the words "be and they hereby are", and substituting therefor the following: "directed to issue the variance to petitioner for the construction of a tower as part of a closed-

cycle cooling system, and respondents may regulate local and incidental conditions relative to the construction of the proposed facility."; and, as so modified, the judgment insofar as appealed from is unanimously affirmed, without costs or disbursements.

Enter:

Irving N. Selkin

Clerk of the Appellate Division.

RECORDED

INDEXED

MEMORANDUM OPINION OF THE APPELLATE DIVISION

HON. JAMES D. HOPKINS, Acting P.J.
HON. M. HENRY MARTUSCELLO, J.
HON. CHARLES MARGETT, J.
HON. SAMUEL RABIN, J.
HON. JOSEPH F. HAWKINS, J.

MATTER OF CONSOLIDATED EDISON CO. OF NEW YORK, INC.,
pet-res (Hoffman, ap) - In a proceeding pursuant to CPLR
article 78 to review appellants' determination, dated June
17, 1975 and made after a hearing, which denied petitioner's
application for a variance from the Zoning Ordinance of the
Village of Buchanan in order to permit the construction of a
tower for a natural-draft, closed-cycle cooling system, the
appeal, as limited by appellants' brief, is from so much of
a judgment of the Supreme Court, Westchester County, dated
Dec. 9, 1975, as (1) adjudged the actions of appellants
illegal and void insofar as they had (a) required petitioner
to seek a building permit and (b) attempted to regulate or
prohibit construction of the proposed closed-cycle cooling
system and (2) granted the petition to the extent of en-
joining appellants "from enforcing or attempting to enforce
the provisions of the Buchanan Zoning Code as against con-
struction" of such closed-cycle cooling system.

Judgment modified, on the law, by (1) deleting the second
decretal paragraph thereof and (2) deleting to much of the
third decretal paragraph thereof as follows the words "be and
they hereby are," and substituting therefor the following:
"directed to issue the variance to petitioner for the con-
struction of a tower as part of a closed-cycle cooling system,
and respondents may regulate local and incidental conditions
relative to the construction of the proposed facility." As so
modified, judgment affirmed insofar as appealed from, without
costs or disbursements.

We agree with Special Term that appellants' action in
denying petitioner the variance sought by it contravened Federal

Law, as noted in its decision, and conclude also that such action contravened State Law (see Public Service Law, sec. 65, subdiv. 1; Transportation Corporation Law, sec. 11). Accordingly, the variance sought should issue, with the proper village authorities being permitted limited regulation of local and incidental conditions with respect to the proposed facilities, in accordance with the Zoning Ordinance, so long as such regulation is reasonable and is not inconsistent with the construction of the proposed facility.