

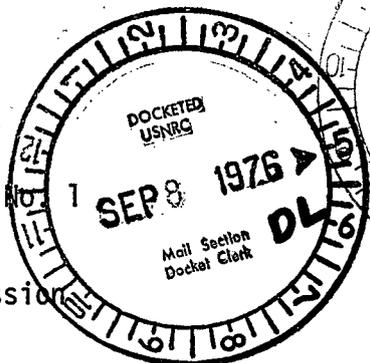


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10007

2 SEP 1976

Mr. George W. Knighton, Chief
Environmental Projects Branch
Division of Site Safety and
Environmental Analysis
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555



50-247

Dear Mr. Knighton:

We have reviewed the draft environmental impact statement (EIS) on the Facility License Amendment for the Extension of Operation with Once-Through Cooling for Indian Point Unit No. 2. We believe the proposed amendment to be unwarranted and in conflict with EPA's decisionmaking authority. This belief is based on a careful evaluation of the proposed action in the context of the present situation, that is, actions taken to date by the applicant, Con Edison, and EPA's authority and responsibilities under the Federal Water Pollution Control Act Amendments of 1972 (FWPCA) and the National Pollutant Discharge Elimination System (NPDES).

The NPDES permit for Indian Point Units 1 and 2 was issued on February 8, 1975. It requires that Con Edison cease once-through cooling for Unit 2 by May 1, 1979 based upon Section 316(b) of the FWPCA, which requires that the intake system reflect the "best technology available for minimizing adverse environmental impact." The requirement that a closed-cycle cooling system be installed is based upon Section 316(b) and upon the "Steam Electric Power Generating Point Source Category Effluent Guidelines and Standards" (Federal Register, October 8, 1974). Con Edison has requested an adjudicatory hearing on both the closed-cycle cooling requirement and the related compliance schedule; this has resulted in a stay of these permit conditions. Con Edison has also applied to EPA for an exemption from the thermal standards pursuant to Section 316(a) of the FWPCA.

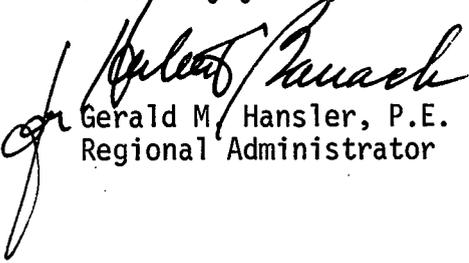
As NRC acknowledges in the draft EIS, EPA action on Con Edison's Section 316(a) and adjudicatory hearing requests "will constitute the final decision regarding closed cycle cooling at Unit No. 2" (p. 4-1). We believe that any action by NRC should await EPA's final decision, according to the regular procedures established for resolving such matters. By taking the proposed action, NRC would contradict EPA's

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permit requirements, conflict with EPA's decisionmaking responsibility, and perhaps even prejudice the adjudicatory hearing on the closed-cycle cooling system and compliance schedule. In our judgment, the proposed action will serve no practical purpose and may even interfere with the expeditious resolution through normal channels of the questions concerning closed-cycle cooling at Unit 2.

Our detailed comments on the proposed action are enclosed. We are available to discuss these comments with you or members of your staff. Please contact the Environmental Impacts Branch at (212) 264-8556.

Sincerely yours,



Gerald M. Hansler, P.E.
Regional Administrator

9-2-76

Detailed Evaluation of the Proposed Action

Con Edison has requested that NRC amend the facility operating license for Indian Point Unit 2 such that operation with once-through cooling would be allowed to continue for two years beyond the scheduled termination date of May 1, 1979. This date was made contingent upon Con Edison's obtaining all of the necessary government approvals by December 1, 1975. Since Con Edison has not yet obtained all of the necessary approvals, the termination date for once-through cooling is automatically postponed. Thus, the proposed amendment is not needed to compensate for inflexibility in the existing termination schedule.

The proposed amendment is itself inflexible in that it does not provide for automatic advancement or postponement of the termination date based on the date when all government approvals have been obtained. It assumes that all approvals will have been obtained by December 1, 1977. We question the rationale for not providing for earlier or later termination based on approvals because under the proposed amendment, once-through cooling could continue for two additional years even though NRC estimates that the "total delay [in obtaining approvals] will probably approximate nine months" (p. 4-1). This appears to be a good approximation since only the approvals from NRC and the Village of Buchanan have not yet been obtained. With respect to the latter, the New York State Supreme Court, Westchester County has ruled that a permit from the village is not required. However, this ruling is under appeal.

In addition, the EIS states that Con Edison may apply to NRC for a further extension of operation with once-through cooling if Con Edison thinks that the empirical data collected during this first interim period justify an extension or such other relief as may be appropriate. In sum, this means that once-through cooling at Indian Point Unit 2 may be allowed to continue beyond 1981. This would contradict the existing NPDES permit for the plant, which requires cessation of once-through cooling by May 1, 1979 based on Section 316(b). It would also confuse the issues currently under consideration by EPA: Con Edison's 316(a) request that Indian Point Unit 2 be exempted from the thermal standards and Con Edison's adjudicatory hearing request related to Section 316(b), in which Con Edison takes the position that once-through cooling is the "best technology available" for Indian Point Unit 2. Finally, it is quite possible that the amendment and any further extension granted by NRC would be rendered meaningless because, as noted on page 4-1 of the EIS, EPA action on Con Edison's 316(a) and 316(b) requests "will constitute the final decision regarding closed cycle cooling at Unit 2."

Despite all of this, the NRC staff sees several benefits in granting Con Edison's request for the amendment. The staff considers the first year of the two-year delay justified for two reasons: it will keep all options open as to the type of closed-cycle cooling system that will be constructed, and it will allow time for an improved biological evaluation of the impact of the plant's operation, particularly its

impact on striped bass. Considering the importance that NRC attaches to these additional biological studies, the EIS should have presented a clearer and more detailed description of Con Edison's monitoring program, particularly as it relates to impingement and entrainment.

Moreover, the flow chart on page 3-9 indicates that all but one of the studies and final reports were completed as of June 1, 1976. The exception is the report on cumulative plant impacts. Since NRC apparently considers this report crucial to its analysis, a detailed discussion of its expected contents should have been presented in the EIS. As it stands, it is difficult to reconcile NRC's emphasis on the benefits of further biological evaluation with its statement on page 3-7 of the EIS:

The staff emphasizes, however, that the 1974 data do not provide and the 1975 data will not provide the basis for a quantum jump in the ability to forecast the impact of plant operation on the Hudson River ecosystem or fish populations.

or with its statement on page 6-1 of the EIS:

The extension would provide an opportunity for the review of all available information. [However,] the probability is low that such evaluation would reveal that closed cycle cooling is not required....

We are in full agreement with this assessment. It is highly unlikely that the additional data would result in a change in EPA's position on the closed-cycle cooling requirement. Since this is so and since the one report yet to be submitted will contain only refined analyses of data available in previously published reports, we find the extension of the termination date for the purpose of gathering additional data to be unwarranted.

The NRC staff considers the second year of the two-year delay justified because it will provide time for EPA to act on Con Edison's 316(a) and 316(b) requests. An exact date has not yet been set for the adjudicatory hearing requested by Con Edison on the closed-cycle cooling requirement and the related compliance schedule (although the hearing is expected to take place during the spring of 1977). To base the proposed amendment on an as yet unspecified date for the hearing is both unsound and premature. Extending the termination date for the purpose of awaiting EPA's decision on Con Edison's requests is not only unwarranted but also contradictory to the NPDES permit requirements and in conflict with EPA's decisionmaking authority. Any revision of the present compliance date will be made as a result of EPA's adjudicatory hearing.

Besides the question of whether the proposed amendment is necessary and valid, there is the question of its environmental effects. The NRC staff believes that no irreversible harm to the Hudson River ecosystem,

in particular the striped bass and other fish populations, will be caused by a two-year extension of operation with once-through cooling. We question the NRC's criterion of irreversibility; Section 316(b) of the FWPCA states that intake structures must reflect the best technology available to minimize adverse environmental impact. To say that the damage will not be irreversible is not the same as to say that it will be minimal. In fact, substantial damage could result from the two-year extension of operation with once-through cooling.

Finally, we wish to point out that NRC's reference on page 3-6 to operation of Indian Point Unit 3 with once-through cooling until 1983 contradicts the compliance date specified in the NPDES permit for Unit 3 (September 15, 1980). A 1983 compliance date also contradicts the National EPA Effluent Guidelines requirement of closed-cycle cooling by July 1, 1981.