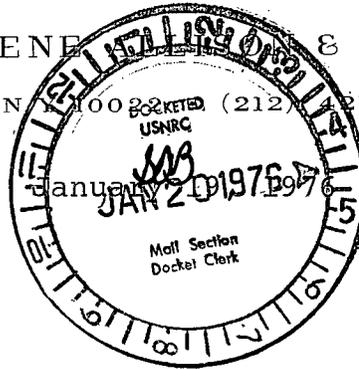


MARSHALL, BRATTER, GREENE & TUCKER

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Regulatory

File Cyl

D. B. Vassallo, Chief
Light Water Reactors
Project Branch 1-1
Division of Reactive
Licensing
United States Nuclear Regulatory
Commission
Washington, D.C. 20555



Re: Docket No. 50-286

Dear Mr. Vaassallo:

On behalf of the Hudson River Fishermen's Association ("HRFA") and Save Our Stripers ("SOS"), I acknowledge receipt of a copy of your letter of December 24, 1975 to William Cahill of Consolidated Edison Company and George Berry of the Power Authority of the State of New York with respect to the license admendment for Indian Point 3 allowing the Power Authority of the State of New York ("PASNY") to purchase and acquire title to Indian Point 3.

This letter is to put on the record the position of the HRFA and SOS that PASNY, as a matter of law, has a higher duty of care than does a private corporation for protection of the aquatic resources, especially the fish, of the Hudson River. Accordingly, the responsibility imposed by the Indian Point 3 license conditions to install cooling towers will be measured against that higher standard of care.

PASNY is a State authority and as an arm of the State of New York is endowed with the responsibilities and stewardship for natural resources which flow from state sovereignty. Geer v. Connecticut, 161 U.S. 519 (1896). The law of New York is unchanged with respect to this trusteeship role. Whatever lesser standard of care Consolidated Edison Company, as a public utility, had in contesting whether or not protection of the aquatic resources was required through cooling towers, is not the standard of care which PASNY has. The duty of the owner of Indian Point 3 to comply with all applicable law was made a part of the settlement Stipulation in Docket No. 50-286. It was stated in the first paragraph of the license condition agreed to in the Stipulation that none of the conditions of the stipulation "shall be interpreted to limit or to effect in any way such other conditions as are imposed by the Atomic Energy Commission or any other

D. B. Vassallo, Chief
January 19, 1976
Page 2

governmental body (including, but not limited to, the State of New York) in accord with applicable law." Moreover, PASNY's conduct in compliance with the State's responsibilities as trustee for the fish resources is implicit within the requirement of paragraph 8 that "all parties agree to exercise due diligence in the performance of their various responsibilities under this Stipulation."

Paragraph 11 made it clear that the Stipulation is binding upon any successor-in-interest to the applicant and any future co-applicant who shall come to hold or have any interest whatsoever in the operating license. Appended to our Statement of Authorization, which was submitted to the Licensing Board in support of the Stipulation, was the enclosed letter from PASNY agreeing to install the cooling towers as necessary.

Accordingly, it is the position of HRFA and SOS that PASNY must proceed at once to prepare for the installation of cooling towers. A copy of this letter is being sent to the Secretary of the Nuclear Regulatory Commission and to all those who received copies of your letter of December 24, 1975, as well as to the Governor of the State of New York.

Very truly yours,



Nicholas A. Robinson
Attorney for HRFA and SOS

NAR:sj
Enclosure

POWER AUTHORITY OF THE STATE OF NEW YORK

10 COLUMBUS CIRCLE NEW YORK, N. Y. 10019

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January 14, 1975

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Nicholas A. Robinson, Esq.
Marshall, Bratter, Greene, Allison & Tucker
430 Park Avenue
New York, New York 10022

Re: Consolidated Edison Company of New York, Inc.
(Indian Point Unit No. 3), Docket No. 50-286

Dear Mr. Robinson:

This letter will confirm that:

1. The Power Authority of the State of New York has participated in the negotiations leading to a stipulation dated January 13, 1975 settling the matters in controversy in the above-entitled proceeding before the United States Atomic Energy Commission.
2. The Power Authority is aware of the provisions of paragraph 2(j)(2) and paragraph 10 of said stipulation.
3. Power Authority understands that if it seeks and receives authority from the Commission to become a party to or a licensee under any construction permit or operating license issued in the above-entitled proceeding it will be bound by said stipulation and the other parties to said stipulation and their successors will continue to be bound as if the Power Authority had been the original applicant in such proceeding and an original party to said stipulation.

Very truly yours,

Scott B. Lilly
General Counsel