



DOCKET NUMBER
PROD. & UTIL. EAC. 50-286

March 31, 1969

Secretary
United States Atomic Energy Commission
Washington, D. C. 20545

Attention: Samuel W. Jensch, Esq.

Re: Hearing on Application for
Provisional Construction Permit -
Consolidated Edison Company of
New York, Inc. - Indian Point

Gentlemen:-

At the request of the hearing board in amplification of the joint statement of the Citizens Committees of the Hudson River and Valley, made March 25, 1969, the following additional legal material is submitted in opposition to the licensing of a third reactor by Consolidated Edison Company at Indian Point, on the Hudson River.

In the joint statement of the Hudson citizen committees, inter alia, the following points were made:-

"(3) The granting of the permit would contravene the will of Congress, as expressed in the Hudson River Compact Act.

"(4) It would constitute an impairment of the natural, scenic, historic and recreational resources of the Hudson River and its shoreline.

"(5) The application and notice of hearing fail to consider reasonable alternatives that would eliminate impairment of the Hudson Riverway and the adverse effect upon residents of the River communities."

By the Act of Congress dated September 26, 1966, the Hudson River Basin Compact Act (Public Law 89-605, 80 Stat. 847), the Congress directed the Secretary of Interior to cooperate with the States of New York and New Jersey on a program to develop, preserve, and restore the resources of the Hudson River and its shores and to authorize certain necessary steps to be taken to protect those resources from adverse

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Federal actions until the States and Congress shall have had an opportunity to act on that program. In particular, the Congress declared as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby finds and declares that the Hudson River Basin contains resources of immense economic, natural, scenic, historic, and recreation value to all the citizens of the United States; that the States of New York and New Jersey (hereinafter referred to as the 'States') are now working toward a joint program to develop, preserve, and restore the resources of the Hudson River and have requested the aid and participation of the Federal Government; that it is in the best interests of the citizens of the United States that the Federal Government lend aid and assistance to the States, their political subdivisions, and agencies in developing a compact to assure the development, preservation, and restoration of the natural, scenic, historic, and recreational resources of the Hudson River Basin; and that it is the sense of the Congress that Federal departments and agencies should, insofar as possible, consider the effect of projects or actions upon achievement of the objectives of this Act until the compact has been acted upon by the States and the Federal Government.

"SEC. 2. As used in this Act, the term--

"(a) 'The Hudson River' means the Hudson River and its tributaries from their source to the mouth of the Lower Bay.

"(b) 'The Hudson River Basin' means the Hudson River and those parts of the States of New York, New Jersey, Vermont, Massachusetts, and Connecticut within and from which water naturally drains into the Hudson River.

"(c) 'The Hudson Riverway' means the Hudson River and related land."

* * *

In Section 4 of the Act, the Congress has established the standards to govern negotiation of the compact, and in Section 5 applies these standards, summarized in terms of "natural, scenic, historic, or recreational" values, to prevent action by Federal agencies which could unfavorably affect or alter any resource of the Hudson Riverway having substantial values of this nature. In particular, with reference to these Federal standards for the Hudson Riverway, the Congress has provided, in part, as follows:

"SEC. 4. In the negotiation of the compact consideration shall be given to:

"(a) the need to encourage all beneficial uses of

the lands and waters of the Hudson Riverway including, but not limited to, commercial, industrial, and other economic development consistent with the preservation and rehabilitation of the natural, scenic, historical, and recreational resources of the Hudson Riverway;

"(b) the need to encourage and support local and State autonomy and initiative in planning and action to develop, preserve, and restore the land and waters of the Hudson Riverway, insofar as such planning and action is consistent with comprehensive development, preservation, and restoration of the natural, scenic, historic, and recreation resources of the Hudson Riverway;

"(c) the need to abate water pollution, protect clean water, and develop the water resources of the Hudson Riverway for beneficial use;

"(d) the need to preserve, enhance, and rehabilitate the scenic beauty of the Hudson Riverway;

"(e) the need to preserve, enhance, and develop archeological and historic sites, shrines, or structures along the Hudson Riverway; and

"(f) the need to protect and enhance the fish and wildlife and other natural resources of the Hudson Riverway.

"SEC. 5. In order to avoid, insofar as possible, decisions or actions by any department, agency, or instrumentality of the United States which could unfavorably affect or alter any resource of the Hudson Riverway having substantial natural, scenic, historic, or recreational value until such time as the States and the United States shall have had an opportunity to negotiate a compact, all departments, agencies, and instrumentalities of the United States shall consult with the Secretary concerning any plans, programs, projects, and grants under their jurisdiction within or affecting the Hudson Riverway. Any Federal department, agency, or instrumentality before which there is pending an application for a license for an activity which may affect the resources of the Hudson Riverway shall notify the Secretary and, before taking final action on such application, shall allow the Secretary ninety days to present his views on the matter." * * *

From the foregoing, upon the advice of counsel, it is our conclusion with reference to the instant application:-

(1) The Hudson River Basin Compact Act (Public Law 89-605, 80 Stat. 847) must be considered in pari materia with the statutes establishing and defining the powers of the Atomic Energy Commission, to the extent that its decisions or actions may unfavorably affect or

alter any resource of the Hudson Riverway as above set forth.

(2) The proposed installation by Consolidated Edison Company is within the Hudson Riverway as defined by statute; it was not pending on July 1, 1966.

(3) The standards imposed by the Congress on Federal agencies dealing with the Hudson Riverway are applicable and, to this extent, are superimposed on those of the Atomic Energy Commission for the purposes of the instant application.

(4) The views of the Secretary of Interior are required to be considered before the Atomic Energy Commission may act on the matter, in accordance with statute.

(5) Although the views of the Secretary of Interior are not binding on the Atomic Energy Commission, the Congressional standards for the Hudson are and, as such, are reviewable in the courts.

(6) The Atomic Energy Commission can take notice that no compact has as yet been negotiated between the States of New York and New Jersey, among others, and the United States. The statute by its terms expires on September 26, 1969; until that time, if no compact is negotiated, it remains in full force and effect and any action by the Atomic Energy Commission with reference to the instant application is subject to its terms.

Respectfully submitted,


ALAN GUSSOW

For and on behalf of the

CITIZENS COMMITTEE FOR THE HUDSON RIVER

CITIZENS COMMITTEE FOR THE HUDSON VALLEY

Congers, New York

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U.S. ATOMIC ENERGY COM.
MAIL & RECORDS SECTION

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.
(Indian Point Nuclear Generating Unit 3)

Docket No. 50-236

CERTIFICATE OF SERVICE

I hereby certify that copies of a letter dated March 31, 1969 (postmarked April 30, 1969) from Alan Gussow, Citizens Committees of the Hudson River and Valley, ^{10/12} has been served on the following by deposit in the United States Mail, first class or air mail, this first day of May, 1969:

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