

3/29/73

BEFORE THE UNITED STATES
ATOMIC ENERGY COMMISSION

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

APPLICANT'S ANSWER TO AMENDED
PETITION OF CORTLANDT CONSERVATION
ASSOCIATION FOR LEAVE TO INTERVENE

On March 20, 1973, Cortlandt Conservation Association, Inc. ("CCA") served by mail its "Amended Petition for Leave to Intervene in Response to the Order of the Special Atomic Safety and Licensing Board Dated Feb. 28, 1973". The amended petition is unsworn and should therefore be summarily rejected. Nevertheless, in accordance with 10 C.F.R. § 2.714(c) (1972), Consolidated Edison Company of New York, Inc. ("Applicant") submits the following answer in opposition to the amended petition. In submitting this answer, Applicant in no way concedes the correctness of the Special Board's Order allowing CCA to file an amended petition.

CCA "representation" No. 1. This sentence does not meet the requirements set by the Special Board's

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Memorandum and Order (p. 2) or Section 2.714(a) of the Commission's Rules of Practice, 10 C.F.R. § 2.714(a) (1972). Even if this language states a specific aspect of the subject matter of the proceeding as to which petitioner desires to intervene, it emphatically does not provide a specific contention or the particular factual basis therefor. Memorandum and Order, at 2. The Intervention Board required that both these standards be met, but CCA has failed completely to provide the necessary "particularity" of contention.

CCA "representation" No. 2. This statement is more in the nature of legal argument, or an attack on Parts 2 and 50 of the Commission's regulations, 10 C.F.R. Parts 2, 50 (1972), than a contention relating to this proceeding. As an implicit attack on the regulations, it must be denied under Section 2.758 of the Rules of Practice. 10 C.F.R. § 2.758 (1972).

CCA "representation" No. 3. This allegation is completely indefinite in that it fails to identify which documents CCA claims are not to be found at the local public document room. Applicant notes that it has received no communications from CCA regarding any materials

alleged to be missing. The contention--if it is one-- should be denied for failure to particularize.

CCA "representation" No. 4. This statement is irrelevant to the instant proceeding, or the question of whether the amended petition should be granted. If anything, it stands as an admission that the new CCA pleading is inadequate under the Rules of Practice. Although Applicant does not believe that the indigency of a corporate petitioner for intervention bears on the duty of the organization to abide by the agency's regulations, we note that this allegation is completely unsupported by any information regarding the budget, dues, or solvency of CCA, or the solvency of CCA's 300 members. See S.O.U.P., Inc. v. FTC, 449 F.2d 1142 (D.C. Cir. 1971), mandamus and cert. denied sub nom. Students Opposing Unfair Practices, Inc. v. Bazelon, 92 S. Ct. 1790 (1972).

CCA "representation" No. 5. This statement is mere argument, and cannot form the basis for a contention cognizable by the Atomic Safety and Licensing Board. To the extent that this proposition is an attack on the Rules of Practice, it falls short of the mark set in Section 2.758 of those Rules. 10 C.F.R. § 2.758 (1972).

CCA "representation" No. 6. Applicant is, of course, legally unable to disburse corporate funds to provide CCA with counsel, nor is there any reason in law or policy for it to do so. In addition, Applicant submits that the Commission is without power to appoint or pay for counsel for CCA. See Metropolitan Edison Co. (Three Mile Island 1), Dkt. No. 50-289, Commission Memorandum and Order (Feb. 20, 1973), at 3; Philadelphia Electric Co. (Peach Bottom 283), Dkt. Nos. 50-277, 50-278, Commission Memorandum and Order (Feb. 20, 1973), at 3.

CCA "representation" No. 7. This language is purely argumentative and raises no factual issue for consideration. CCA's baseless "conspiracy" allegation is scandalous within the meaning of Fed. R. Civ. P. 12(f) and should be stricken.

CCA "representation" No. 8. This statement merely asserts in conclusory terms the statement of CCA's interest as previously pleaded, and is unresponsive to the two pleading flaws pointed out in the Special Board's Memorandum and Order.

CCA "representation" No. 9. This assertion seeks to expand the instant proceeding to include a generic decision

to suspend all operating license proceedings pending disposition of the "ECCS" and "As Low as Practicable" rule making proceedings. As such, it is presented to the wrong forum, as only the Commission has power to enter such an order, which in any event could be made only on notice to the dozens of affected parties. Further, the Commission has already determined that the "ECCS" rule making proceeding should not have the effect of suspending other proceedings. For similar reasons, the pending of the "As Low as Practicable" rule making should not bring this or any other licensing proceeding to a halt.

CCA "representation" No. 10. This claim cannot be considered as a "contention" since it raises no issue concerning the safety or licensability of the plant as proposed by Applicant. The claim is also false; neither page 5.33 nor any other page in the Draft Environmental Statement in Docket No. RM 50-3 supports the assertion that a requirement for cooling towers would make it impossible for the plant to meet applicable limits for the discharge of radioactivity.

CCA's amended petition adds nothing specific to cure the deficiencies that led the Special Board to deny its original petition. The Special Board should now make that denial final.

WHEREFORE, Applicant prays that the amended petition for leave to intervene be denied.

Respectfully submitted,

LeBOEUF, LAMB, LEIBY & MacRAE

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March 29, 1973

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CERTIFICATE OF SERVICE

I hereby certify that I have served copies of the foregoing document entitled "Applicant's Answer to Amended Petition of Cortlandt Conservation Association for Leave to Intervene" by mailing copies thereof first class and postage prepaid, to each of the following persons this 29th day of March, 1973.

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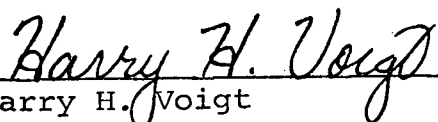
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