

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

3/21/73

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

ANSWER OF AEC REGULATORY STAFF
TO APPLICANT'S MOTION FOR RECONSIDERATION

In an order dated February 9, 1973, the Chairman of the Atomic Safety and Licensing Board Panel established a special Atomic Safety and Licensing Board "to rule on petitions and/or requests for leave to intervene" in the above-captioned proceeding. The special Board thus established ("Intervention Board") issued a Memorandum and Order on February 28, 1973 which held inter alia that the petitions of the Cortlandt Conservation Association ("CCA") and Mary Hays Weik "are each fatally deficient in their failure to identify (1) specific aspects of the subject matter of the proceeding as to which petitioners desire to intervene, and (2) petitioners' specific contentions and the particular factual bases therefore." The Intervention Board's order therefore denied these petitions for leave to intervene unless amended petitions are received within 20 days "which, in the opinion of the licensing board remedy the deficiencies outlined herein and otherwise satisfy the requirements of 10 CFR § 2.714".

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In its Memorandum and Order, the Intervention Board also considered the Motion to Consolidate operating license proceedings for Indian Point Units 2 and 3 (Docket Nos. 50-247 and 50-268) which was filed in the Indian Point 3 proceeding on January 2, 1973 by the Hudson River Fishermen's Association ("HRFA") and Save Our Stripers ("SOS"). The Intervention Board held that it had no jurisdiction to consider the Motion, but invited all petitioners admitted as parties to the Indian Point 3 proceeding to respond to it.

On March 8, 1973, Consolidated Edison Company of New York, Inc. ("Applicant") filed with the Intervention Board a Motion for Reconsideration of the Board's February 28, 1973 order. The applicant urged that petitioners CCA and Mary Hays Weik should be denied an opportunity to replead within 20 days before the Atomic Safety and Licensing Board appointed on the Indian Point 3 proceeding ("Licensing Board"), and also urged the Intervention Board to withdraw its invitation to respond to the Motion to Consolidate which it extended to all petitioners admitted as parties to the Indian Point 3 proceeding. In urging the Intervention Board to reconsider these aspects of its decision, the Applicant has raised several issues which should receive careful consideration.

I. The Opportunity to Replead

Regarding the Intervention Board's granting of an opportunity for CCA and

and Mary Hays Weik to amend their intervention petitions, the applicant opposes the Board's action first on the basis that the Board was without authority to extend such an opportunity. The applicant finds nothing in either the Commission's Rules of Practice or the October 19, 1972 Notice of Hearing in the Indian Point 3 proceeding which would grant exceptions to the time limit for petitions set in that Notice. The applicant then objects to an extension of time on grounds that the Intervention Board has authorized the submission of untimely filings without the requisite "substantial showing of good cause."

The regulatory staff finds nothing in the October 19, 1972 Notice of Hearing which discusses the filing of amendments to petitions which, although themselves timely filed, have been judged not to meet the Commission's intervention requirements. As set forth in 10 CFR § 2.714(a), however, those requirements specify that "the petition and/or request shall be filed not later than the time specified in the notice of hearing, or as provided by the Commission, the presiding officer, or the atomic safety and licensing board designated to rule on the petition and/or request" Under this provision, atomic safety and licensing boards enjoy broad discretion in ruling on petitions for leave to intervene, and the staff can find no limitation such as suggested by the applicant which has been placed upon the discretion of the Intervention Board in this proceeding. The staff therefore believes

that the Intervention Board was authorized to allow CCA and Mary Hays Weik twenty days to file amended petitions, and that it acted properly in doing so.

II. Filing of Amended Petitions with Licensing Board

The applicant asserts in his Motion for Reconsideration that the February 9, 1973 order of the Chairman of the Atomic Safety and Licensing Board Panel set forth no provisions which would authorize the Intervention Board to delegate any of its functions to the Atomic Safety and Licensing Board ("Licensing Board") appointed to preside in the Indian Point 3 proceeding. (For the appointment of the Licensing Board, see Notice of Hearing on a Facility Operating License, appended to the Intervention Board's Memorandum and Order, at 2; also 38 Federal Register 6094 [March 6, 1973]). The applicant therefore urges the Intervention Board to rule on any amended petitions for leave to intervene which may be submitted by CCA or Mary Hays Weik.

Under the terms of the order issued by the Chairman of the Atomic Safety and Licensing Board Panel on February 9, 1973, the Intervention Board was created expressly "to rule on petitions and/or requests for leave to intervene." The regulatory staff feels that the Intervention Board should

properly consider not only initial petitions for leave to intervene filed in this proceeding, but also any amended petitions which may be received hereafter pursuant to the Intervention Board's order of February 28, 1973. The staff therefore joins with the applicant in urging the Intervention Board to delete from its Memorandum and Order any delegation of authority to the Licensing Board and instead to issue its own ruling on any amended petitions for leave to intervene which may be received pursuant to the Intervention Board's order of February 28, 1973.

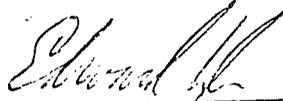
III. Responses to Motion to Consolidate

In its Motion for Reconsideration, the Applicant sets forth several bases for opposing the Intervention Board's invitation to petitioners made a party to this proceeding to respond to the HRFA-SOS Motion to Consolidate.

The regulatory staff notes, however, that the Chairman of the Atomic Safety and Licensing Board Panel has appointed in the above-captioned proceeding the same Licensing Board which has presided in the Indian Point Unit No. 2 operating license proceeding. As this Licensing Board is well-acquainted with both the issues and parties common to these two proceedings, the staff feels that any responses to the Motion to Consolidate which are filed

hereafter pursuant to the Intervention Board's order should most properly be addressed to this Licensing Board.

Respectfully submitted,



Edward Lyle
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland
this 21st day of March, 1973.

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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)
CONSOLIDATED EDISON COMPANY OF) Docket No. 50-286
NEW YORK, INC.)
)
(Indian Point Nuclear Generating Station,)
Unit No. 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of "Answer of AEC Regulatory Staff to Applicant's Motion for Reconsideration," in the above-captioned matter, have been served on the following by deposit in the United States mail, first class or air mail, this 21st day of March, 1973:

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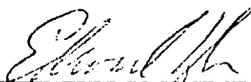
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