

Applicant, by mail served on February 1, 1973, filed its "Answer to HRFA and SOS request for extension of time and for leave to file a consolidated reply" wherein it opposed Petitioner's request. By mail served February 7, 1973, the AEC Regulatory Staff also opposed the reply. Petitioners oppose such opposition both as unwise and unseemly. The right to reply is an elementary procedural one. The Commission should grant leave to reply here.

A consolidated reply serves to aid the Commission in its deliberation by clarifying the issues and does not multiply the papers treating issues of substance.

Petitioners sought leave to reply by February 9, 1973, and hereby submit such reply on condition that it be accepted. Petitioners note that the rules should be flexible in the interests of fairness and fullness, as has been the case thus far with the proceedings in the above entitled action. Petitioners have consented to applicant's request for extensions of time and note that applicant has filed its papers late without benefit of a Commission ruling. Petitioners submit that their request is reasonable and that even handedness mandates a careful consideration of this reply.

2. Timeliness of Motion:

Both the Applicant and the Regulatory Staff suggest that Petitioner's motion is premature. It is not.

HRFA is already a party to Docket No. 50-247. It could have moved under that docket and had the same effect substantially as the instant motion.

HRFA sought to raise consolidation before the Commission appointed a board, thus saving the Commission time and avoiding delay. HRFA did not wish to be met with the charge of laches by waiting until after the Commission appointed a Board.

3. Alternatives to Consolidation:

Petitions, while seeking full consolidation, are satisfied in the alternative that many of the objectives of consolidation can be met by: (a) naming the same members to the Board in Docket No. 50-286 as in Docket No. 50-247; (b) ordering that the record in Docket No. 50-247 be incorporated fully by reference into the record for Docket No. 50-286; and (c) encouraging the Applicant and Petitioners to stipulate as much additional material as possible.

The AEC regulations provide for these alternatives.

Petitioners join with the Applicant and Regulatory Staff in so far as each urges such time and expense saving alternative procedures for Docket No. 50-286.

4. Reply to Applicants Opposition:

A. Applicant suggests that the consequences of consolidation are unclear. This begs the question. The Commission in a consolidation order should spell out the

consequences. The parties are much the same. SOS and HRFA have substantially the same interests. New York State is already a party in Docket No. 50-247 and has had notice and ample opportunity to raise any issues additional to those raised already.

In short, the real parties in interest in Indian Point Units No. 2 and No. 3 are the same. Applicant should not exult form over substance. No unnecessary confusion or delay need arise by consolidation. Each such motion must be decided on its own facts and circumstances and Applicant's references to other rulings in Docket No. 50-266 or ALAB-92 are not very relevant here.

B. Petitioner's "indifference" to the radiological health and safety issues is raised only to establish that Petitioners take no position one way or the other. The Commission has discretion to structure a consolidation to account for the differences in the types of issues being consolidated.

C. Applicant suggests not all of the record in Indian Point Unit No. 2 is relevant to the issues of Indian Point Unit No. 3. Petitioners disagree. Let the Applicant point to what ought not be incorporated in the Unit No. 3 proceedings.

5. Reply to AEC Regulatory Staff:

A. The questions which the Regulatory Staff raises are

a good example of why a reply is useful. Without a reply, no views from Petitioners could be presented. To both ask questions meriting reply and then oppose such reply is inconsistent. Petitioners' reply as follows:

(1) The National Environmental Quality Act would permit a review of the impact of Indian Point Units No. 2 and No. 3 based on the same underlying evidence.

(2) A final decision on Docket No. 50-247 could be effective prior to the final ruling in Docket 50-286. The order of consolidation could be so conditioned.

(3) Substantially the same persons are parties in Docket No. 50-247 and Petitioners in Docket No. 50-286. Parties admitted to Docket No. 50-286 could be limited to issues on Indian Point Unit No. 3 as to appeals as well as presentation of evidence, examination and cross-examination.

(4) All of the record of Indian Point No. 2 would be preserved in tact in the consolidation. New material could be added, either on issues already treated or not yet considered. Petitioners, of course, limit their interest to the environmental fish and aquaculture issues.

B. No off-setting delays need be occasioned by consolidation. Petitions have difficulty in conceiving what

problems the Regulatory Staff fears. Petitioners answer the questions raised as follows:

(1) The Commission's consolidation order could give the Board a latitude of discretion in meeting environmental and radiological issues in so far as they may overlap.

(2) The Board's rulings as to what is decided in Docket No. 50-247 should govern any attempt to reopen these matters in Docket 50-286.

(3) Mary Hays Weik has expressed to Petitioners that she does not pursue environmental issues as to fish resources in her petition and if the Regulatory Staff, having opposed Weik's petition in Docket No. 50-286 (Answer, December 15, 1972), is genuinely concerned with this question they should seek clarification from Ms Weik directly. Petitioners note that she has had notice and an ample opportunity to express her views on this issue if it troubled her.

WHEREFORE, Petitioners urge consolidation, or alternatively appointment of the Board in Docket No. 50-247 as the Board also in Docket No. 50-286 and incorporation of the record from Docket No. 50-247 into that of Docket No. 50-286, and

encourage the parties to stipulate as much as possible.

Respectfully submitted,

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