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UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

BEFORE THE COMMISSION

2/5/73

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

ANSWER OF AEC REGULATORY STAFF  
TO MOTION TO CONSOLIDATE

On January 2, 1973, Hudson River Fishermen's Association (HRFA) and Save Our Stripers (SOS), petitioners for leave to intervene in the above-captioned proceeding (petitioners), filed a motion and supporting memorandum requesting the Commission, under 10 CFR §2.716, to "consolidate the applications in Docket Nos. 50-247 and 50-286." Alleging that many of the facts and issues relevant to the applicant of the Consolidated Edison Company of New York, Inc. (applicant) for a license to operate its Indian Point Unit No. 3 (Docket No. 50-286) have already been presented in the operating license hearing for Indian Point Unit No. 2 (Docket No. 50-247), and alleging that many of the parties and petitioners to intervene in the Indian Point 3 proceeding have also participated in the Indian Point 2 proceeding, petitioners claimed that unnecessary delay and expense to all parties in the Indian Point 3 proceeding could be avoided through such a consolidation. Elaborating on their motion, petitioners included the following comments in their January 2 submittal:

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1. Through consolidation of Docket Nos. 50-247 and 50-286, the Atomic Safety and Licensing Board which has become familiar with the Indian Point site, the Indian Point 2 record, and the demeanor of witnesses in the Indian Point 2 proceeding could apply its knowledge to many considerations common to Indian Point 2 and Indian Point 3. "Considerable economies of time and expense" could thereby be obtained. (Petitioners' Motion, at 5.)

2. To avoid a second consideration in the Indian Point 3 hearing of issues raised and findings of fact made in the Indian Point 2 proceeding, "any findings of fact made in Unit 2 will stand as collateral estoppel on the same issues of fact raised in the application for Unit 3." (Motion, at 5.)

Supporting petitioners' January 2 motion was a memorandum stating that "the consolidation should in no way impede or delay the resolution of the Indian Point 2 proceeding" and that the Indian Point 2 proceeding "should continue on its present course without interruption." (Memorandum, at 4.) Regarding the Indian Point 3 proceeding, the memorandum stated that a pre-hearing conference should be held, discovery should go forward, and "at an appropriate time, the parties should have an opportunity to set out the contentions and issues which they argue distinguish Indian Point 3 from Indian Point 2...." The Indian Point 3 hearing would thereafter be limited "to those issues which have not already been sufficiently covered in the Indian Point 2 proceeding." (Memorandum, at 4.)

The memorandum also stated that the Indian Point 3 draft and final environmental statements "can be limited to those issues which distinguish the two plants or on which the staff has new evidence or analysis to present." The details of consolidation would be left to the Atomic Safety and Licensing Board sitting in these consolidated proceedings. (Memorandum, at 5.)

Responding to inquiries about their motion to consolidate, petitioners filed on January 23, 1973 a "Supplemental Memorandum in Support of Motion to Consolidate." Petitioners noted that their "contentions refer to environmental matters rather than issues of radiological health and safety" and that petitioners were indifferent to consolidation on issues of radiological health and safety. The supplemental memorandum also proposed the following:

1. The record developed in the Indian Point 2 proceeding would become part of the Indian Point 3 record. (Supplemental Memorandum, at 2.)
  
2. The Atomic Safety and Licensing Board sitting in the consolidated proceeding would determine "issues which distinguish the two plants"; on these issues the presentation of evidence, examination, and cross-examination would go forward. (Supplemental Memorandum, at 2.)
  
3. "In the Indian Point No. 3 part of the proceeding, there would not be an

opportunity to re-open issues pertaining solely to Indian Point Unit No. 2." (Supplemental Memorandum, at 2.)

Petitioners also stated that they had spoken to Mary Hays Weik and to a representative of the Cortlandt Conservation Association, both petitioning for leave to intervene in the Indian Point 3 proceeding, regarding the motion to consolidate. Petitioners stated that Mary Hays Weik "has no objection to the consolidation of the fish issues" common to Docket Nos. 50-247 and 50-286, and that the Cortlandt Conservation Association "has no objection to the consolidation of the environmental issues...which do not raise questions of radiological health and safety." (Supplemental Memorandum, at 3.) Petitioners gave no indication, however, of the position which the State of New York, another petitioner for leave to intervene in the Indian Point 3 proceeding, takes regarding the motion to consolidate.

On January 19, 1973, the applicant filed an Answer opposing the motion to consolidate. On January 29, it responded to petitioners' supplemental memorandum with an answer reiterating its opposition.

For the reasons set forth hereafter, the regulatory staff opposes the motion to consolidate as summarized above from petitioners' January 2 motion and supporting memorandum and their January 23 supplemental memorandum.

I. The Motion to Consolidate is Premature

To date, the Commission has not ruled on any of the five petitions for leave to intervene which have been filed in the Indian Point 3 proceeding. The applicant has opposed two of these petitions as presently drawn, and the regulatory staff has opposed the intervention of two petitioners and recommended that the Commission limit the participation of three others to certain environmental issues. Petitioners' motion to consolidate, however, appears to assume that any petitioner permitted to intervene in the consolidated Indian Point 2-3 proceeding would be allowed to contest any environmental issue which had not been raised in the Indian Point 2 proceeding.

The regulatory staff believes that the motion to consolidate should be denied because it is premature. We believe that, initially, a determination should be made as to which petitioners should be permitted to intervene and as to the issues concerning which such intervention should be granted. Having the parties identified and the contested issues specified, the Atomic Safety and Licensing Board established to preside over the captioned proceeding could better evaluate and rule upon any motion to consolidate which was presented thereafter.

In addition, the regulatory staff opposes the motion to consolidate Docket Nos. 50-247 and 50-286 for reasons set forth in Section II through Section IV below.

II. The Consequences of Petitioners' Motion as Presently Drawn Cannot be Adequately Determined

Petitioners' motion to consolidate, as presently drafted, leaves a number of questions unanswered. By way of example:

1. To what extent, if any, could the staff's draft and final environmental statements differ from those which would be prepared in an unconsolidated Indian Point 3 proceeding and still meet the requirements of the National Environmental Policy Act?
2. Would an initial and final decision in the Indian Point 2 proceeding be effective prior to a decision on the Indian Point 3 "part of the proceeding"? Petitioners' motion states only that the Indian Point 2 proceeding "should continue on its present course without interruption."
3. What would be the rights of parties in the "Indian Point 3 part of the proceeding" on questions other than the "presentation of evidence, examination and cross-examination"? Could a party which had not been admitted to the Indian Point 2 proceeding at its outset raise issues on appeal which concern both Indian Point 2 and Indian Point 3?
4. What specific aspects of the record and findings of the Indian Point 2 proceeding would be open for reassessment in connection with the applicant's right to a hearing in the Indian Point 3 proceeding?

Not having answers to fundamental questions inherent in the motion to consolidate, the staff does not feel that it can adequately determine the consequences of the motion as presently drafted and thus cannot support it.

III. Consolidation May Entail Delays Offsetting Any Projected Savings of Time and Expense

Of fundamental concern to the efficacy of a consolidated Indian Point 2-3 proceeding are questions relating to what petitioners describe as the "details of meshing" the Indian Point 2 and Indian Point 3 proceedings. Petitioners would leave these questions to the Atomic Safety and Licensing Board sitting in the consolidated proceeding. It appears, however, that even with a Board fully conversant with the facts and issues of the two dockets, and even with most parties to the consolidated proceeding having already participated in the Indian Point 2 hearings, the Board's guidance in meshing the two proceedings could extend only so far. Many questions would remain to be answered on an instance-by-instance basis, and three examples of such questions follow:

1. Does a particular environmental issue entail radiological considerations to which the provisions of a consolidation order would not apply?
2. Was a particular issue in fact contested in the Indian Point 2 proceeding and did the Board make a finding of fact relating to it?

3. Regarding the limits of intervenors' participation, what is and is not a "fish issue" which might limit the participation of Mary Hays Weik at a particular stage of the hearing?

While not questioning that the Board could resolve these questions in most instances, the staff does question whether the savings of time and expense posited by petitioners' motion might not be lost in debates over such particularized questions and in other expenditures of time, money, and effort arising from procedural uncertainty.

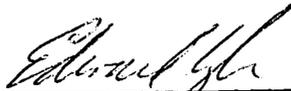
#### IV. Other Means May Exist to Obtain the Advantages of Petitioners' Motion

The regulatory staff joins with petitioners in desiring to minimize the time and expense inherent in the resolution of issues pertaining to Units 2 and 3 of the Indian Point facility. There may, however, exist other means to obtain the advantages of petitioners' motion, and the staff feels that these alternatives should be explored further.

In particular, the staff feels that two items mentioned in the applicant's answer of January 29, 1973 should receive extended consideration. Applicant mentioned, first, that it "does not oppose the appointment of the Indian Point 2 Licensing Board members to the Licensing Board in this case." (Applicant's Answer to Supplemental Memorandum, at 3.) The staff also has no objection to

the appointment of the Indian Point 2 Board to preside in the Indian Point 3 proceeding. Secondly, the applicant stated "that there is nothing to prevent a stipulation under which appropriate portions of the Indian Point 2 evidence could be incorporated by reference" into the Indian Point 3 record. (Applicant's Answer to Supplemental Memorandum, at 2.) The staff feels that arrangement of such a stipulation may provide a means to secure advantages inherent in petitioners' motion while at the same time avoiding problems which the staff has noted above.

Respectfully submitted,



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Dated at Bethesda, Maryland,  
this 5th day of February, 1973.



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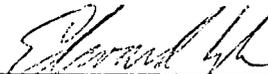
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