

1/2/73

BEFORE THE UNITED STATES
ATOMIC ENERGY COMMISSION

In the Matter of)	
)	
)	
Consolidated Edison Company)	Docket No. 50-286
of New York, Inc.)	
(Indian Point Unit No. 3))	

MEMORANDUM IN SUPPORT OF
MOTION TO CONSOLIDATE

In the course of the past year the Commission has promulgated a number of changes in its rules of practice, the most prominent and important being those of last July, 37 FR 15127 (July 28, 1972). The clear purpose of these changes was to make the AEC's hearing process more orderly, focussed

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and streamlined and to avoid unnecessary delay.

There has developed a widely shared concern as to the ability of the Commission's licensing process, as presently structured, to cope with the demands being placed upon it. Thus, at a time when there is sharply increasing demand for more electrical power, and when nuclear facilities are being called upon to meet a constantly mounting share of the demand, there are increasing delays in completing the decisional process with respect to the construction and operation of those facilities. The Commission is concerned not only with its obligation to the segment of the public participating in licensing proceedings but also its responsibility to the general public -- a responsibility to arrive at sound decisions, whether favorable or unfavorable to any particular party, in a timely fashion. The Commission expressly recognizes the positive necessity for expediting the decision-making process and avoiding undue delays. 37 FR 15127.

The present motion to consolidate the Indian Point 2 and Indian Point 3 proceedings, at least on all environmental and power issues which affect the fishery and aquatic biota of the Hudson River and the Atlantic coastal waters, seeks to achieve the same goal.

Indian Point Units No. 2 and 3 are sister plants at the same site with Indian Point No. 3 being a slightly larger plant. Both plants are designed to use a once-through cooling system. The effects of that system on the fishery and aquatic biota of the Hudson River and the Atlantic coastal

waters has been at the heart of the controversy which has pitted Con Edison against the recommendations of the AEC Regulatory Staff and Intervenor Hudson River Fishermen's Association. Apparently, Con Edison intends to take the same position at Indian Point 3, this must inevitably force the company to oppose the position of the Petitioners HRFA and Save Our Stripers, who take substantially the same position as that espoused by HRFA at Indian Point 2, and in all probability, it will force Con Edison to oppose the Regulatory Staff's position as well, assuming that that is not radically altered from what it was at Indian Point 2.

The consideration of the environmental issues began at Indian Point 2 with the Calvert Cliffs decision eighteen months ago. There have been a variety of motions for limited operation of the plant, none of which has yet succeeded in actually obtaining a license to operate but which nevertheless succeeded in producing a massive volume of testimony for the record. In September the Regulatory Staff issued its Final Environmental Statement, a lengthy document in two volumes. Con Edison and HRFA filed further testimony at the end of October which totalled approximately 500 pages. Hearings began again on December 4, 1972 and are estimated to run a total of 20-25 days. At most hearing sessions the Staff has had approximately ten persons, including attorneys and witnesses, in attendance. Con Edison has had at least an equal number and frequently more. The Indian Point 2 hearing board

has taken extensive testimony and has seen the demeanor of the various witnesses presented.

Simply put, the Indian Point 2 hearing will be a full and exhaustive one in which all of the parties will have an opportunity to present their factual and legal contentions in reasonable depth. The ASLB will make factual rulings in the Indian Point 2 proceeding which, on the face of it, must apply to the Indian Point 3 situation.

In these circumstances, the time, funds and effort of all the parties and the Commission will be saved if the Indian Point 2 and Indian Point 3 proceedings are consolidated before the ASLB presently sitting for the Indian Point 2 proceeding. There will be no need to rehearse again in the Indian Point 3 proceeding the lengthy development of the facts which has taken place in the Indian Point 2 proceeding.

The consolidation should in no way impede or delay the resolution of the Indian Point 2 proceeding. That hearing should continue on its present course without interruption. A pre-hearing conference and discovery in the Indian Point 3 proceeding should go forward. 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 and the hearing on Indian Point 3 should be limited to those issues which have not already been sufficiently

covered in the Indian Point 2 proceeding. So too, the draft and final environmental statements on Indian Point 3 can be limited to those issues which distinguish the two plants or on which the Staff has new evidence or analysis to present.

Moreover, consolidation, by fostering the efficient and speedy resolution of the issues at Indian Point 3, will allow Con Edison to have the plant prepared for environmentally responsible operation at the earliest possible date.

Thus the ends of justice will be served by providing that new issues at Indian Point 3 will be fully heard, but confusion and repetition will be avoided by not going over again the ground covered at Indian Point 2.

The practical details of meshing the two proceedings are properly left to the ASLB which is fully familiar with the details and complexities of the hearing process in general and the Indian Point hearing in particular, but there can be no doubt that, in the broad view, consolidation will produce a more focussed, efficient and speedy hearing at Indian Point 3 which will result in a saving of time, effort and money to all the parties, the Commission and the public.

CONCLUSION

For the reasons given above and to aid the proper dispatch of the Commission's business and the ends of

justice, the motion of HRFA and SOS should be granted in full.

Respectfully submitted,

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