

12/19/72

BEFORE THE UNITED STATES
ATOMIC ENERGY COMMISSION

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

Reply of Petitioners
Hudson River Fishermen's
Association
and Save Our Stripers

Pursuant to 10 C.F.R. 2.706, Petitioners Hudson River Fishermen's Association ("HRFA") and Save Our Stripers ("SOS") make the following reply to the Answer of the Consolidated Edison Company of New York ("Applicant"):

1. By motion of December 4, 1972 Applicant sought an extension of time to December 11, 1972 in order to answer petitions to intervene including those of HRFA and SOS; Petitioners HRFA and SOS, through counsel, informed Applicant by telephone that they had no objection to the extension of time. In its reply of December 13, 1972, The AEC Regulatory Staff stated that it had no objection to applicant's request for an extension of time.

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2. On December 9, 1972 Applicant served its consolidated answer as to both HRFA and SOS on their counsel in New York by U.S. mail posted from Washington, D.C. These answers were received on December 18, 1973.

3. Pursuant to 10 C.F.R. 2.710, the time within which Petitioners may reply to Applicant's answer under 10 C.F.R. 2.706 and 8.03, is computed to permit timely reply by December 21, 1972. Since Applicant filed a consolidated answer, HRFA and SOS now file a consolidated reply.

4. Petitioners HRFA and SOS note that Applicant does not oppose their intervention.

5. Petitioners HRFA and SOS contest Applicant's contentions in paragraph 2 of its answer to the effect that (a) the contentions and facts are "not clearly distinguished" from the statement of interests, or (b) that the facts supporting the contentions are not distinguished from the contentions themselves, or (c) that nearly all the factual assertions are inaccurate, misleading, or unsubstantiated. A fair reading of the petitions from HRFA and SOS offers no support for Applicant's contentions.

6. Instead of confronting and answering the three categories of fact asserted [(a) resources vital to petitioners, (b) dangers in Applicant's application, and (c) importance of

Indian Point No. 3 cooling system], Applicant has singled out 6 facts to deny, alleging that the balance are too vague to admit or deny. Petitioners contend Applicant has not met its obligations under 10 C.F.R. 2.705(a)(2) as to all facts but the six denied. Applicant's claim that Petitioners state a single self-contradictory fact on page 8 is simply incorrect. Petitioner there states that:

"The total adverse impact on the fishery of the Hudson from the discharge of heated water is unknown, but the heated plumes from Indian Point and Lovett will interfere with the migratory and seasonal movements of fish in the Hudson to and from their spawning grounds."
(emphasis added).

There is nothing contradictory about this statement of fact. Moreover, Petitioners' facts are stated with specificity and can not be deemed too vague to admit or deny. Many deal with issues raised in Applicant's Indian Point No. 2 proceeding, In re Consolidated Edison (Indian Point No. 2), A.E.C. Docket No. 50-247, and many are treated in Applicant's Environmental Report for Indian Point Unit No. 3; all could be answered. Since Petitioners' facts are alleged (as the Applicant itself observed at page 3 of its answer) as a bases for their matters in controversy at pages 10-12 of their respective petitions,

under 10 C.F.R. 2.705(b) they must be answered. Applicant has not stated that it lacks knowledge or information sufficient to form a belief on any of these facts. If Applicant needed more time to adequately research and frame answers, Petitioners were prepared to consent to such a reasonable extension of time to answer as might be warranted.

7. Accordingly, under 10 C.F.R. 2.705(b), petitioners contend that all material allegations not denied must be deemed to be admitted. The regulation states that those not denied "shall" be deemed admitted. The regulations require specification of issues controverted or not controverted, and Applicant cannot escape this burden by alleging that specific statements of fact are "vague". Petitioners note that Applicant's denial of Petitioners' major contention (that only a closed cycle cooling system can adequately protect aquatic life in the third paragraph of its answer) is a statement of its position under 10 CFR 2.705(a). Petitioners note the Applicant further urges that a determination of Petitioners' contention "should await the completion of studies" and that aquatic life will not suffer irreversible adverse effects" while the studies are underway and completed. Applicant offers no support for its position. The failure to deny petitioners' facts necessarily results in an answer with facts admitted which contradict Applicant's very position.

9. Petitioners reallege the facts in their respective petitions, controvert Applicant's denial of the 6 facts which it denies on page two of its answer, and controvert the position asserted by Applicant at pages three and four of its answer.

WHEREFORE, Applicant having raised no opposition to the intervention of HRFA and SOS in the above captioned proceeding, and Applicant having failed to deny most of Petitions' material allegations of fact, Petitioners should (a) be granted leave to intervene and (b) all material allegations of fact in Applicant's answer which were not denied should be deemed admitted.

Dated: New York, New York

December 19, 1972

Respectfully submitted,



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12/20/72

BEFORE THE UNITED STATES
ATOMIC ENERGY COMMISSION

In the Matter of

Consolidated Edison Company
of New York, Inc.
(Indian Point Unit No. 3)

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Docket No. 50-286

CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of December, 1972, served copies of documents entitled Reply of Petitioners Hudson River Fisherman's Association and Save Our Stripers dated December 19, 1972, in the above captioned matter, by mailing copies thereof first class, postage prepaid and properly addressed to the following persons:

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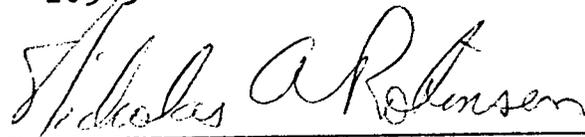
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