

5/31/73

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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

Docket No. 50-286

APPLICANT'S ANSWER TO SECOND PETITION
OF ATTORNEY GENERAL OF STATE OF NEW YORK
FOR LEAVE TO INTERVENE

To: Mrs. Elizabeth S. Bowers, Chairman
John B. Farmakides, Esq.
Dr. Marvin M. Mann

By petition dated May 18, 1973, the Attorney General of the State of New York ("Petitioner") has sought leave to intervene in the above-captioned proceeding. Petitioner had sought similar relief in a petition dated April 19, 1973. Consolidated Edison Company of New York, Inc. ("Applicant") submits that the second petition should be denied on the grounds that the State of New York is already a party to the proceeding, and that there has been no substantial showing of good cause for submission of the petition nearly six months after the deadline established in the Commission's Notice of Consideration of Issuance of Facility License and Notice of Opportunity for Hearing. 37 Fed. Reg. 22816 (1972); see generally 10 C.F.R. § 2.714(a) (1973).

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hearing

The second petition has been submitted to both the Atomic Safety and Licensing Board designated to rule on petitions for leave to intervene ("the Intervention Board") and the Atomic Safety and Licensing Board designated to conduct the necessary hearings ("the Licensing Board"). Applicant's position is that the Intervention Board has continuing jurisdiction over the petition for leave to intervene, since the Atomic Safety and Licensing Board Panel Order of February 9, 1973, creating the Intervention Board has not been revoked or modified. Cf. Consumers Power Co. (Palisades Plant), ALAB-70, WASH-1218 (Suppl. 1), 478, 483 (Sept. 27, 1972). Whichever Board has jurisdiction, however, the same standards of pleading will apply. Those standards require denial of the petition.

As we indicated in our Answer to the Attorney General's initial pleading, the petition for leave to intervene makes no substantial showing of good cause to excuse the extreme lateness of the filing. Instead, the petition seeks to shift the ground of the argument from the standards of good cause set forth in the Commission's Rules of Practice, 10 C.F.R. § 2.714 (a)(1)-(4) (1973), to a test of prejudice to the Applicant. See also Tr. 12, 14. This test is without foundation in the regulations.

Applicant stands by its earlier submission that the State of New York is already represented in this proceeding. Although Applicant has no desire to become embroiled in a

dispute between two State agencies as to which is the more proper representative of the People's interests, we feel constrained to remind the Board of the Atomic Energy Council's legislative mandate, which specifically refers to coordination of the presentation of State views in Federal administrative proceedings. N.Y. Comm. Law § 104(4) (McKinney Supp. 1972). This statute was relied on in the State's November 27, 1972 petition for leave to intervene, and authorizes and directs the Council:

To develop a coordinated position with respect to regulatory programs of the federal government affecting atomic energy activities in the state, taking into account the interests of all agencies and instrumentalities of the state and its political subdivisions, and agencies of such subdivisions; to coordinate the participation of all such bodies in the regulatory processes of the federal government relating to such regulatory programs; and to coordinate the presentation of views concerning such regulatory programs of all such bodies for consideration by the federal government.

No good answer appears in the second petition to the Licensing Board's question as to why the Atomic Energy Council cannot adequately present the testimony of the State's witnesses. (Tr. 13). Since direct testimony will be distributed in written form in advance of the hearing, 10 C.F.R. § 2.743(b) & App. A, § V(d)(2) (1973), there is no reason why the Attorney General could not perform this preparatory work in conjunction with the Atomic Energy Council without becoming a party. New York law provides for such assistance to the Atomic Energy Council:

The council may request from any [State] agency [or] instrumentality . . . , and the same are authorized to provide, such assistance, services and data as may be required by the council in carrying out its functions, powers and duties. N.Y. Comm. Law § 105(2) (McKinney Supp. 1972).

Finally, petitioner has suggested elsewhere that its views and those of the Atomic Energy Council do not conflict. Reply of the Attorney General of the State of New York to the Answer of Applicant to Attorney General's Petition for Leave to Intervene, at 3. If this be the case, the Attorney General's suggestion in the same pleading of a "right to independently cross-examine the witnesses," leaves no room for doubt that the addition of the Attorney General as a party will merely expand the number of examining counsel without providing representation of any interest or viewpoint not currently represented.

WHEREFORE, Applicant respectfully prays that the second petition of the Attorney General of the State of New York for leave to intervene be denied.

Respectfully submitted,

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Of Counsel

May 31, 1973

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document entitled "Applicant's Answer to Second Petition of Attorney General of State of New York for Leave to Intervene" by mailing copies thereof first class and postage prepaid, to each of the following persons this 31st day of May, 1973.

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