

4/20/73

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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

PETITION OF THE ATTORNEY GENERAL OF THE STATE OF
NEW YORK FOR INTERVENTION

Petitioner, the Attorney General of the State of New York, pursuant to Section 274 of the Atomic Energy Act of 1954, as amended, and in accordance with the Atomic Energy Commission's notice of hearing dated October 25, 1972, requests that it be permitted to intervene and become a party to the above entitled proceeding. In support of this request, petitioner states as follows:

1. The name and address of the petitioner is:

OFFICE OF THE ATTORNEY GENERAL
STATE OF NEW YORK
80 Centre Street
New York, New York 10013

2. As trustee and guardian of the interests of the People of New York and chief legal officer of the State, the Attorney General is uniquely responsible for protecting the health, safety and welfare of its citizens, its natural resources and the quality of its environment. This responsibility requires the Attorney General to consider with utmost seriousness questions raised by this application and to participate fully in the examination and resolution of these questions.

3. This proceeding was initiated by the Consolidated Edison Company before the Atomic Energy Commission seeking approval of an application for an operating license which would authorize the operation of the applicant's Indian Point Nuclear Generating Unit No. 3 in the Town of Buchanan in Westchester County, State of New York.

4. The National Environmental Policy Act of 1969 and the succeeding decision in Calvert Cliffs Coordinating Comm. Inc. v. A. E. C., 449 F. 2d 1109, requires consideration of environmental matters by Federal agencies whose actions may significantly affect the quality of the environment.

5. The Attorney General of the State of New York has participated in the proceedings before this Commission respecting

Indian Point No. 2 and has instituted suit in New York State Supreme Court against Con Edison in connection with Indian Point Nos. 1 and 2. That action seeks a permanent injunction restraining Con Edison from operating those plants in such a way as to destroy the natural resources of the Hudson River. The Attorney General of New York is preparing this action for trial in the fall of 1973. At the request of the State Commissioner of Environmental Conservation, the State of New York has also brought suit against Con Edison under Conservation Law § 275 (1) seeking \$1.6 million dollars in fines for its taking of fish from the river by impingement during testing of Unit II. Indian Point No. 3 will cause damage to the Hudson River estuary in the same manner as Indian Point Nos. 1 and 2.

How Action by the Atomic Energy Commission
will affect Interests of the Intervenor

Con Edison has applied to the Commission for a license to operate Indian Point No. 3 with once-through cooling. First, this cooling method will cause water to be withdrawn from the Hudson in such volume and velocity as to impinge and kill significant numbers of fish. Second, passive organisms will be entrained and killed during passage through the plant. Third, once-through cooling will cause an increase in the temperature of the Hudson River water in violation of the State's water quality criteria. By granting such

an application, the AEC would legitimize disruption of the Hudson River ecosystem and violate the interests of the State in protecting these resources.

Intervenor's Contentions

1. The Intervenor contends that Indian Point No. 3 will disrupt the abundance and mix of the biota presently in the complex Hudson River estuary. This disruption will be brought about by three outstanding factors:

1. Entrainment and killing of non-screenable passive organisms.
2. Impingement and killing of screenable organisms.
3. Behavioral modifications and increased mortality from thermal addition to the estuary.

The affidavit of Peter N. Skinner is submitted in support of the Attorney General's contentions.

2. The Attorney General of New York urges the Board to incorporate the record of the Indian Point No. 2 hearings in the hearings for Indian Point No. 3. The proximity of location together with the similarity in environmental and physical parameters between the two plants precludes the need for repetition of the various presentations and examination of witnesses.

3. The Attorney General urges the Board to view Indian Point No. 3 not as a single plant but as part of a growing array of generating facilities on the Hudson between Newburgh Bay and Haverstraw Bay. The addition of another large power plant to this already overburdened estuary will synergistically compound the disruption described in the first contention.

Nature of this Intervention

This Petition is being filed after the time limit set for intervenor's petitions. The Attorney General's office has been waiting for a draft Environmental Statement from the AEC Staff on Indian Point No. 3 and had expected a decision prior to this time with regard to Indian Point No. 2. In any event, the Attorney General's intervention will not prejudice the rights of any party to this proceeding.

The name and address of the person on whom service may be made and to whom it is requested that communications in respect to this petition and proceeding be addressed is:

Louis J. Lefkowitz
Attorney General of the
State of New York
Attention: Philip Weinberg
Assistant Attorney General
80 Centre Street
New York, NY 10013
Tel. No.: (212) 488-5123

WHEREFORE, the State of New York respectfully seeks leave to intervene in this proceeding and be designated as a party thereto.

Dated: New York, New York
May 18, 1973

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
By


JAMES P. CORCORAN
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