5/14/73

UNITED STATES OF AMERICA

ATOMIC ENERGY COMMISSION

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

APPLICANT'S ANSWER TO 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 April 19, 1973, the Attorney General of the State of New York ("Petitioner") has sought leave to intervene in the above-captioned proceeding. Consolidated Edison Company of New York, Inc. ("Applicant") opposes the petition for the reasons set forth below, and reserves the right to move to consolidate Petitioner with the Atomic Energy Council of New York State if the petition is granted. The instant Answer is submitted to the special Atomic Safety and Licensing Board designated to rule on petitions to intervene.

There are three grounds--each of them sufficient in itself--upon which the petition should be denied. To begin with, the petition is, in legal effect, submitted in behalf of the State of New York, which is already a party to the

proceeding due to the intervention of the Atomic Energy Council of New York State. See Petition for Leave to Intervene by the State of New York dated Nov. 27, 1972; Notice of Hearing on Facility Operating License, 38 Fed. Reg. 6094 (1973). On this view, the petition should be denied on the ground that the relief sought has already been given.

A second basic reason for the Intervention Board to deny the petition is that the petition is untimely. Under the Commission's Notice of Consideration of Issuance of Facility License and Notice of Opportunity for Hearing, 37 Fed. Reg. 22816 (1972), the period for filing petitions for leave to intervene expired five months prior to the day on which the Public Proceedings Staff copy of the petition was postmarked, April 24, 1973, and five and one-half months prior to the day on which Applicant was formally served. There has been no attempt to show good cause for an untimely filing, 10 C.F.R. § 2.714(a)(1972), save for a statement that 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." Petition at 5.

This explanation does not constitute good cause. First, developments in other Atomic Energy Commission dockets are irrelevant to the requirement that such petitions be timely filed. Otherwise, any particular proceeding could serve as a log-jam holding up all licensing cases. Second,

the unavailability of the Staff's draft Environmental Statement does not excuse a late filing. The Attorney General of New York is no stranger to Atomic Energy Commission proceedings, has had access to the abundant data already available to the public, and had the opportunity to request any other proper materials under the Freedom of Information Act. 5 U.S.C. § 552 (1970). Under these circumstances, the Board has ample authority to deny the petition. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, RAI-73-3, 188, at 192 (Mar. 29, 1973).

The standards that govern the consideration of untimely petitions for leave to intervene clearly warrant denial of the instant petition. Thus, it appears that the Atomic Energy Council of New York State can both represent and protect the interest of Petitioner. 10 C.F.R. § 2.714(a) (1), (3) (1972). Although participation by Petitioner may not "broaden the issues," Applicant submits that the addition of another party--with separate rights to argue, testify, and propose findings and conclusions--cannot help but "delay the proceeding." 10 C.F.R. § 2.714(a)(4) (1972). In view of the role of the Atomic Energy Council of New York State, Applicant questions

whether Petitioner's participation will "assist in developing a sound record." 10 C.F.R. § 2.714(a)(2) (1972).

Third and last, the petition should be denied for failure to comply with the Commission's procedural regulations. The petition, which correctly names the proceeding but incorrectly uses the docket number of the Indian Point Unit 2 proceeding, was not signed. 10 C.F.R. § 2.708(a), (c) (1972). Although the "supporting affidavit" was sworn to, the petition itself was not prepared under oath or affirmation. 10 C.F.R. § 2.714(a) (1972). As filed with the Commission by mailing on April 24, 1973, it was not accompanied by proof of service on Applicant. Applicant's counsel first learned on May 9, 1973, that the petition had been submitted, when it received the Staff's answer thereto. A copy of the petition was obtained from the Public Proceedings Staff on that day. When the petition was finally served on Applicant by mailing on May 10, 1973, that service was in fact made on one of Applicant's counsel of record in the Indian Point Unit 2 proceeding who has not entered an appearance in the instant case. 10 C.F.R. § 2.712(b) (1972). To Applicant's knowledge, the petition has not yet been served on the Intervention Board.

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

Respectfully submitted,

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EUGENE R. FIDELL,

Of Counsel.

May 14, 1973

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document entitled "Applicant's Answer to 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 14th day of May, 1973.

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