

2-5-74

BEFORE THE UNITED STATES
ATOMIC ENERGY COMMISSION

In the Matter of)
)
CONSOLIDATED EDISON COMPANY)
OF NEW YORK, INC.) Docket No. 50-286

(Indian Point Station, Unit No. 3)

ANSWER TO APPLICANT'S MOTION
TO STRIKE INTERROGATORIES OF
THE NEW YORK STATE ATTORNEY
GENERAL

Consolidated Edison Company of New York, Inc., has objected to the interrogatories of the Attorney General of the State of New York which were prepared pursuant to the Commission's Rules (10 C.F.R. § 2.740), the Board's bench ruling of November 27, 1973 (Tr. 127-128), and the stipulation of the parties. The applicant's motion to strike is wholly without merit and shows a lack of good faith on its part. For the following reasons, the applicant's motion to strike should be denied.

1. The applicant's main contention for a protective order is that the interrogatories were served after the December 31, 1973 date set by stipulation. It asserts that since there was a delay of seven days, the Attorney General should be ruled in default for all discovery before the hearings. Yet the applicant did not even assert the slightest prejudice or inconvenience because of the delay.

2. The Attorney General had good cause for the delay. The Governor of the State of New York, Malcolm Wilson, declared successive four-day holiday weekends for State employees. This loss of working time made it impossible for the Attorney General to serve interrogatories on the 31st of December, since that was not a working day. Also, the holidays created a log-jam of work for our clerical staff. In fact, interrogatories were served only 4 working days late, surely not a severe hardship upon the applicant.

3. The applicant, by counsel, agreed by oral stipulation over the telephone to accept the late filing of the interrogatories. When contacted at his office, on January 2, 1974, Mr. Edward Sack, counsel for applicant, raised no objection to the delayed filing. [See appended affidavit]

4. The applicant, by waiting until January 23, 1974 to object to the interrogatories, was itself guilty of laches and waived its right to object. Surely, they could not have waited until February 15, when responses are due, to object. Also, if applicant's objection was to lateness, it would not take a thorough review of the interrogatories to determine whether a protective order was necessary. This motion to strike is merely a dilatory delay, and should be denied.

5. The applicant has been responsible for more than its share of delays in these hearings. It filed its Comments on the Draft Environmental Statement late, and recently asked the Board to extend the completion date for construction of Indian Point No. 3 for one year. In light of these circumstances, applicant's objections are frivolous and contradicted by its own actions.

6. The applicant suggests that the interrogatories of the Attorney General are unnecessary because other intervenors, namely the Hudson River Fishermans' Association and Save Our Stripers, have submitted interrogatories. However, the interrogatories of the Attorney General are different from those of other parties, and are essential in preparation for the

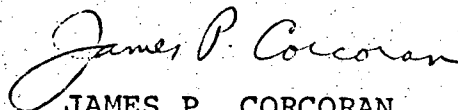
hearings. A striking of the interrogatories of the Attorney General, would deny their benefit, not only to the Attorney General, but to all other parties as well. The interrogatories raise critical questions which must be answered sooner or later by the applicant. To defer its answers until the hearings are already under way would result in considerable chaos and would undoubtedly delay the proceedings even further. Perhaps this is what applicant wants.

6. The applicant claims that certain of the interrogatories are "of exceedingly tenuous connection with the subject matter of the proceeding." The applicant offers no reasons for this judgment, only the conclusion. It is obvious that this objection is merely perfunctory, since the applicant did not request relief from specific questions, but in toto. In fact, the noted interrogatories [II(A), (B), (C), (G)] are relevant to the cost-benefit analysis involved in these proceedings.

WHEREFORE, the Attorney General requests that the applicant's motion to strike be denied and that applicant be directed to answer the interrogatories.

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

By



JAMES P. CORCORAN
Assistant Attorney General