

BEFORE THE UNITED STATES
ATOMIC ENERGY COMMISSION

In the Matter of

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

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Docket 50-286

ANSWER OF ATTORNEY GENERAL OF THE STATE OF NEW YORK
TO MOTION OF APPLICANT CON EDISON FOR FUEL-LOADING,
SUBCRITICAL AND LOW-POWER TESTING AND LIMITED
OPERATING LICENSE

On July 24, 1974, Applicant Con Edison moved the Atomic Safety and Licensing Board for an order pursuant to 10 C.F.R. § 50.57(c) and former Appendix D, section A.12, to authorize the Director of Regulation to make appropriate findings on the matters specified in 10 C.F.R. § 50.57(a), and issue to Con Edison an operating license for Indian Point Station Unit No. 3 which would authorize fuel-loading, testing and steady state operation up to 91% of full power until May 1, 1976 or until a full-term, full-power operating license shall be issued, whichever is sooner. Intervenor Hudson River Fishermen's Association ("HRFA") and Save Our Stripers

("SOS") have urged the Board to deny the motion without prejudice. We do so also for the following reasons:

(1) The AEC staff has not yet submitted its Final Environmental Impact Statement which will assess the effects of Applicant's requested operation on the ecosystem of the Hudson River. Applicant's argument in its moving papers that the fishery will not be adversely affected by such operations is an attempt to resolve in one stroke the central issue in controversy between the parties. It would be premature, as well as violative of the National Environmental Policy Act, to grant applicant's motion before the FES is submitted and before the Board and the parties have had an opportunity to evaluate its adequacy.

(2) The Applicant has not obtained a State water discharge certificate as required by § 401 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1341. Con Edison must submit proof of compliance with § 401's requirements before it can receive authority from the Board to operate its facility. This requirement is mandatory and cannot be waived.

(3) The proposed sale of the Indian Point 3 facility by Applicant to the State Power Authority ("PASNY") puts the Board in a position where it is being asked by one party to

approve plant testing and operations to be conducted by another party. There is no indication of PASNY's own position on this motion by Applicant. There has also been no position taken by PASNY on the controverted issues before this Board. And there is no indication how PASNY intends to operate the plant, for example, whether it plans any measures to mitigate adverse environmental impact on the fishery during the period up to May 1, 1976. Until such questions are satisfactorily answered, the Board should not grant Applicant's motion.

(4) As a corollary to the above, there is no guarantee that the sale of Indian Point 3 to PASNY will ever take place. If it doesn't, then the Applicant may not be sufficiently solvent to operate the facility. Therefore, unless Con Edison can supply proof of financial ability to own and operate the plant, its present motion should be denied on this ground also. Furthermore, the Staff has not completed its investigation of Applicant's financial responsibility.

We have no objection to the request by the Staff and the Applicant to extend the time for their answer and

reply, respectively, to the Applicant's motion of July 24,
1974.

Respectfully submitted,

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New York, New York
August 12, 1974

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ATOMIC ENERGY COMMISSION

In the Matter of)	
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Consolidated Edison Company of)	Docket No. 50-286
New York, Inc.)	
[Indian Point Station,)	
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CERTIFICATE OF SERVICE

I hereby certify that I have served document entitled "Answer Of Attorney General Of the State Of New York To Motion Of Applicant Con Edison For Fuel-Loading, Subcritical And Low-Power Testing And Limited Operating License" by mailing copies thereof first class and postage prepaid to each of the following persons this 12th day of August, 1974:

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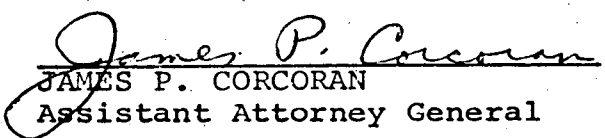
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