

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

4/15/76

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

DOCKET NO. 50-286



PETITION FOR LEAVE TO INTERVENE  
BY THE NEW YORK STATE ATOMIC  
ENERGY COUNCIL

1. The U. S. Nuclear Regulatory Commission (the Commission) caused to be published in the Federal Register on Monday, March 29, 1976, (Vol. 41, No. 61, p. 12933-12934) a document dated March 23, 1976 and entitled, "Consolidated Edison Co. of New York, Inc. And Power Authority of the State of New York-Availability of Licensees' Report".

2. The noticed proceeding, if convened, would consider the application of The Consolidated Edison Company of New York, Inc. And Power Authority of the State of New York for an amendment to Facility Operating License No. DPR-64 which would authorize the Consolidated Edison Company And Power Authority to construct, as a preferred closed-cycle cooling system, a Natural Draft, wet cooling tower for Indian Point Unit No. 3.

3. The interest of the State of New York in the health, safety and environment of its people requires in any hearing which may be held that all matters pertaining to the safety and environmental impact of the proposed nuclear power plant modification be thoroughly considered.

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4. Under Section 104 of the Commerce Law of the State of New York, entitled "General functions, powers and duties of council", the New York State Atomic Energy Council is given responsibility for coordinating regulatory programs of the State agencies and instrumentalities which affect atomic energy activities in New York, of developing a coordinated position among State agencies with respect to Federal regulatory matters and of coordinating the participation of the agencies and instrumentalities of the State in the regulatory process of the Federal Government where such Federal process affects atomic energy activities in the State.

5. Pursuant to Section 2.715(c) of the Commission's Rules of Practice and Section 274 of the Atomic Energy Act of 1954, as amended, and in accordance with the provisions of the Commission's Notice proposing the Issuance of an Amendment to Operating License and providing an Opportunity for a Hearing for Indian Point Nuclear Generating Unit 3, dated March 29, 1976, the State of New York, acting by and through its Atomic Energy Council, hereby petitions for leave to intervene in any hearing which may be held on these matters. The Atomic Energy Council through its participation in these proceedings under Section 274 of the Act asserts the full statutory right of participation by an interested state and for certain procedural purposes will consider itself a "party" as that word is used throughout Part 2 of the Rules of Practice.

6. The name and address of the person upon whom service in these proceedings may be made is:

Michael Curley, Esq.  
Deputy Commissioner and Counsel  
New York State Department of Commerce  
99 Washington Avenue  
Albany, New York 12245

Respectfully submitted,



Michael Curley  
Deputy Commissioner and Counsel  
New York State Department of  
Commerce

DATED: April 15, 1976  
Albany, New York

Sworn to before me this

15th day of April, 1976



Notary Public

JULIANA C. DeLONG  
Notary Public of New York State  
Qualified in Rensselaer County  
My Commission Expires March 16, 1978

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Petition for Leave to Intervene by the New York State Atomic Energy Council", dated April 15, 1976, in the above captioned matter, has been served on the following by deposit in the United States mail, first class or air mail, this 15th day of April, 1976:

Executive Legal Director  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Chief Hearing Counsel  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Secretary to the Commission  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555  
Attention: Docketing and Service  
Section

Arvin E. Upton, Esq.  
LeBoeuf, Lamb, Leiby & MacRae  
1757 N Street, NW  
Washington, D. C. 20036

Edward J. Sack, Esq.  
Consolidated Edison  
Company of New York, Inc.  
4 Irving Place  
New York, New York 10003

Scott B. Lilly, Esq.  
Power Authority of the  
State of New York  
10 Columbus Circle  
New York, New York 10019

*Juliana C. DeLong*

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

April 15, 1976

David S. Fleischaker, Esq.  
Roisman, Kessler & Cashdan  
1712 N Street, N.W.  
Washington, D. C. 20036



Re: Consolidated Edison Company  
(Indian Point Units 1, 2 and 3)  
Docket Nos. 50-3, 50-247, 50-286

Dear Mr. Fleischaker:

The Appeal Board assigned to the Indian Point seismic proceeding has been served with a copy of Mr. Roisman's letter of April 9, 1976 to Acting Chairman Rowden of this Commission. Although the letter was intended to voice general concern over staff procedures, certain statements made therein have raised doubts about the integrity of the seismic proceeding.

On page 2 of his letter, Mr. Roisman represents, inter alia, that, on October 30, 1975, the United States Geological Survey advised Mr. Edson Case, the Deputy Director of the Office of Nuclear Reactor Regulation, that "as a result of meetings with him [it] understood that the staff did not want USGS to participate in the required hearings on Indian Point 1, 2 and 3". Mr. Roisman's letter goes on to leave room for the inference that the "staff decision not to call the USGS to participate in the Indian Point proceeding" might have been influenced by the fact that the USGS held an opinion different from that of the staff on one of the principal issues which have been raised in the proceeding.

The Appeal Board finds Mr. Roisman's representation most disturbing in light of the quite contrary representations which have been made by staff counsel. In the pre-hearing conference held by the Board on September 25, 1975, staff counsel (Mr. Gallo) informed the Board that (Tr. 87-97):



We definitely feel that the Geological Survey should participate in this proceeding and give their expert views with respect to what they feel and their opinions on the issues.

Now, we have been in contact with the Survey and we have attempted to engage them once again as our consultants with respect to what the issues might be in this proceeding.

We have sent them a letter on the 20th of August asking for their views. We met with them as late as yesterday. They are not certain that their workload and priorities permit participation in this proceeding.

Really, they want to see what the issues are in connection with the proceeding before they will commit to their degree of participation, if any.

I can [not] represent that the USGS will participate. We are urging them to do so. They are a strongly independent agency and we can only attempt to persuade.

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With respect to the USGS, assuming they would agree to participate in this proceeding at our urging, I am advised that they will have a definitive position on the Cape Ann earthquake by the end of January, possibly sooner, but in my experience it is never sooner.

\*\*\*\*\*

I can say this to the Board, that the USGS advised us yesterday that as soon as the issues are identified by this Board by order that they would meet with us a short time thereafter and within a two or three week period give us a definitive answer on participation as to the time frame for how long schedules might be.

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The Staff thinks that the USGS should participate. We think that the Board should agree with that as well as all of the parties. Therefore we think it should be the Board's view and all of the parties' view that we should not go forward until the USGS is ready to proceed, should the Board decide we can't wait for the USGS the Staff is prepared to go without them.

We do not think that is the discreet thing to do. We need the paramount experts here. We need them to shed light on this. We ought to get their participation.

Further, on November 21, 1975 -- three weeks after the USGS allegedly apprised the staff of its understanding that the staff did not wish it to participate in the proceeding -- staff counsel (Mr. Gray) wrote to the counsel for the New York State Atomic Energy Council as follows:

This is to confirm our telephone conversation of November 14, 1975, regarding the availability of the United States Geological Survey (USGS) for the forthcoming evidentiary hearing in this proceeding. We have been informed by USGS that, because of the limited time available for review and preparation, their personnel will be unable to participate in the hearing.

In these circumstances, the Appeal Board must take Mr. Roisman's April 9th letter to Acting Chairman Rowden as, in effect, challenging the accuracy of explicit representations made by the staff to the Board. Since this obviously is a matter of considerable importance, the Board wishes to obtain clarification. To this end, the Board requests

that your firm, which represents a party in this proceeding and of which Mr. Roisman is a member, provide it promptly with written substantiation of the claim that USGS is not appearing in the proceeding because the staff did not desire it to appear. If such substantiation is furnished, the staff will, of course, be provided with an opportunity to respond.

Sincerely yours,

*Margaret E. Du Flo*  
Margaret E. Du Flo  
Secretary to the  
Appeal Board

cc: Harry H. Voigt  
Colleen K. Nissl  
Michael Curley  
✓ Docketing & Service Section

ROCKLAND COUNTY *Conservation* ASSOCIATION, INC.

FOUNDED IN 1930 BY MRS. HENRY VON L. MEYER

12 Oakwood Lane  
Thiells, New York 10984  
April 15, 1976

Mr. Michael Farrar, Chairman  
Atomic Safety & Licensing Appeal Board  
Nuclear Regulatory Commission  
Washington, D.C. 20555



Dear Mr. Farrar:

A representative of the Rockland County Conservation Association will be making a statement at the hearings on the Indian Point Nuclear Power Plants to be held by the NRC in Westchester County, New York, on April 21-23.

If it is necessary for the hearings to continue beyond April 23rd, we request that any future hearings also be held in an area local to the Indian Point plants. Organizations such as ours have neither the funds nor the manpower available to testify at hearings out of our local area. Since decisions on Indian Point most vitally affect those living near the plants, every effort should be made to accommodate local input and opinion.

Thank you for your assistance in this matter.

*4:23:26, era*

Very truly yours,  
*Barbara Darga*  
Barbara Darga, Corresponding Secretary