

for a hearing in the above-captioned matter and consenting to an operating license conditioned, inter alia, upon the requirement that the Applicant, Consolidated Edison Company of New York ("Applicant"), and any successor-in-interest to the Applicant, must construct a closed-cycle cooling system for use at Indian Point Nuclear Generating Station, Unit No. 3 ("I.P. 3") and upon the further requirement that interim operation shall only be permitted to the extent that Applicant and any successor-in-interest satisfies all license provisions to protect the aquatic biota of the Hudson River from any significant adverse impacts and that any necessary mitigating measures will be taken promptly during said interim operation. An undated copy of said stipulation appears in Volume I, pp. xvi-xxxi, of the U.S. Nuclear Regulatory Commission's FINAL ENVIRONMENTAL STATEMENT, February 1975 (NUREG - 75/002), in the above-captioned matter.

In response to the Board's request, HRFA and SOS state as follows:

1. By separate verified petitions dated November 22, 1972, HRFA and SOS each sought leave to intervene and requested a hearing in the above-captioned matter. Joint

appearances as attorneys for both HRFA and SOS were entered by Angus Macbeth and Nicholas Adams Robinson by Notice also dated November 22, 1972.

2. The decision to intervene was duly made by the respective Boards of Directors of HRFA and SOS prior to retaining counsel and authorizing intervention.

3. In the Fall of 1974, counsel for Applicant requested a meeting with counsel for HRFA and SOS. There followed a series of meetings between counsel for all the parties on a settlement of disputes regarding protection of the aquatic resources of the Hudson River from adverse impact by I.P. 3. At all times the officers and Boards of both HRFA and SOS were kept informed of these negotiations by counsel and instructed counsel as to the terms for any settlement.

4. The terms requested by each party, HRFA and SOS, included an insistence that Applicant would undertake to construct a closed-cycle cooling system for I.P. 3 and that any operation prior to completion of the closed-cycle cooling system would be conducted in such a way as to minimize any significant adverse impacts on the aquatic resources of the Hudson River. HRFA and SOS jointly also insisted that all successors-in-interest to Applicant, and in particular

the Power Authority of the State of New York, be bound by any settlement terms agreed to.

5. In return for Applicant's consent to the terms set forth in paragraph 4, the HRFA and SOS agreed to a timetable for construction of a closed-cycle cooling system and to interim operation under appropriate safeguards. HRFA and SOS agreed that Applicant could collect empirical data during interim operation in its hope to support its contention that a closed-cycle cooling system might not be needed. HRFA and SOS have concluded that any data collected will only serve further to demonstrate the need for a closed-cycle cooling system to protect the biota of the Hudson. Accordingly, HRFA and SOS both insisted on a cut-off date beyond which Applicant could not continue to collect data and beyond which no further adjournment in completing a closed-cycle cooling system would be allowed. Such a cut-off date is provided for in the stipulation dated January 13, 1975.

6. As a further condition to the settlement, also insisted upon by HRFA and SOS, the Applicant agreed to report regularly to HRFA and SOS on its activities pursuant to the settlement and to proceed with due diligence to make arrangements for a closed-cycle cooling system and to apply for all necessary governmental approvals of such system.

7. Finally, neither HRFA nor SOS would agree to a settlement unless the Power Authority of the State of New York agreed to bind itself to the terms of the settlement should PASNY acquire either I.P. 3 or any interest in I.P. 3. Prior to signing the stipulation, PASNY through its General Counsel, Scott B. Lilly, Esq., agreed to provide a letter to HRFA and SOS agreeing to be bound by the settlement stipulation. By letter dated January 14, 1975, postmarked January 15, 1975, and received by Nicholas Adams Robinson as counsel for HRFA and SOS on January 16, 1975, the General Counsel for PASNY acknowledged that representatives of PASNY participated in the settlement negotiations and that PASNY "will be bound" by the settlement stipulation dated January 13, 1975. The original of this letter and envelop are attached hereto, and made a part of this statement of authorization.

8. Once Applicant and PASNY had agreed that they and any other successor-in-interest would be bound to installation of a closed-cycle cooling system for I.P. 3, and following consultation with counsel, the respective Boards of Directors of HRFA and SOS agreed to accept the settlement stipulation dated January 13, 1975, and authorized Angus Macbeth and Nicholas Adams Robinson to sign it on behalf of HRFA and SOS respectively.

9. HRFA and SOS each is a not-for-profit conservation and fishermen's membership corporation organized and existing under the laws of the State of New York, with statutory authority to sue and to settle suits as juridical beings. The aforesaid proceedings were undertaken in full conformity with the governing by-laws and rules of HRFA and SOS respectively.

Dated: New York, New York
March 25, 1975

David M. Simpson
A Member of the Board, HRFA

Robert J. Parca
A Member of the Board, SOS

POWER AUTHORITY OF THE STATE OF NEW YORK

10 COLUMBUS CIRCLE NEW YORK, N. Y. 10019

(212) 265-6510

TRUSTEES

JAMES A. FITZPATRICK
CHAIRMAN

GEORGE L. INGALLS
VICE CHAIRMAN

WILLIAM J. RONAN

RAYMOND J. LEE

DANIEL J. REIDY



January 14, 1975

GEORGE T. HERRY
GENERAL MANAGER
AND CHIEF ENGINEER

SCOTT B. LILLY
GENERAL COUNSEL

WILBUR L. GRONBERG
ASSISTANT GENERAL
MANAGER - ENGINEERING

JOHN W. BOSTON
DIRECTOR OF
POWER OPERATIONS

THOMAS F. MCCRANN, JR.
CONTROLLER

Nicholas A. Robinson, Esq.
Marshall, Bratter, Greene, Allison & Tucker
430 Park Avenue
New York, New York 10022

Re: Consolidated Edison Company of New York, Inc.
(Indian Point Unit No. 3), Docket No. 50-286

Dear Mr. Robinson:

This letter will confirm that:

1. The Power Authority of the State of New York has participated in the negotiations leading to a stipulation dated January 13, 1975 settling the matters in controversy in the above-entitled proceeding before the United States Atomic Energy Commission.
2. The Power Authority is aware of the provisions of paragraph 2(j)(2) and paragraph 10 of said stipulation.
3. Power Authority understands that if it seeks and receives authority from the Commission to become a party to or a licensee under any construction permit or operating license issued in the above-entitled proceeding it will be bound by said stipulation and the other parties to said stipulation and their successors will continue to be bound as if the Power Authority had been the original applicant in such proceeding and an original party to said stipulation.

Very truly yours,

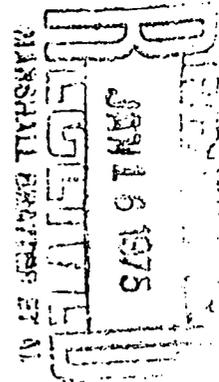
Scott B. Lilly
General Counsel

POWER AUTHORITY OF THE STATE OF NEW YORK
THE COLISEUM TOWER - 10 COLUMBUS CIRCLE
NEW YORK, N. Y. 10019



Nicholas A. Robinson, Esq.
Marshall, Bratter, Greene, Allison & Tucker
430 Park Avenue
New York, New York 10022

RECEIVED BY MAIL



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before The Atomic Safety And
Licensing Board

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

AFFIDAVIT VERIFYING AUTHORIZATION

STATE OF NEW YORK)
) : s.s.
COUNTY OF WESTCHESTER)

DAVID M. SEYMOUR, being duly sworn, deposes and
says:

1. I am President of the Hudson River Fishermen's
Association, Inc. ("HRFA"), and am duly authorized by the
officers and board of directors to make this verification on
behalf of HRFA.

2. I have read the attached statement entitled "Author-
ization of the Hudson River Fishermen's Association, Inc.,
and Save Our Stripers Inc., to Stipulation of Settlement
Requiring Closed-Cycle Cooling at I.P. 3." I have signed

this authorization on behalf of HRFA and to the best of my knowledge, information and belief I know its contents to be true.

David J. Seymour

Sworn to before me this

25th day of March, 1975.

Nicholas Adams Robinson

Notary Public
NICHOLAS ADAMS ROBINSON
Notary Public, State of New York
No. 3310375
Certified in Westchester County
My Commission Expires March 30, 1975.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before The Atomic Safety And
Licensing Board

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

AFFIDAVIT VERIFYING AUTHORIZATION

STATE OF NEW YORK))
))
 : s.s.
COUNTY OF NEW YORK))

ROBERT J. RANCE, being duly sworn, deposes and
says:

1. I am a Member of the Board of Directors of Save
Our Stripers Inc. ("SOS"), and am duly authorized by the
officers and board of directors to make this verification on
behalf of SOS.

2. I have read the attached statement entitled "Author-
ization of the Hudson River Fishermen's Association, Inc.,
and Save Our Stripers Inc., to Stipulation of Settlement
Requiring Closed-Cycle Cooling at I.P. 3." I have signed

this authorization on behalf of SOS and to the best of my knowledge, information and belief I know its contents to be true.

Robert J. Rance

Sworn to before me this
26th day of March, 1975.

Nicholas Adams Robinson
Notary Public

NICHOLAS ADAMS ROBINSON
Notary Public, State of New York
No. 3310875
Certified in Westchester County
My Commission Expires March 30, 1975

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition for Review of Nuclear Regulatory Commission Order was served upon the following parties by mailing copies of same, first-class postage prepaid this 29th day of September, 1975:

John B. Farmakides, Esq.
Chairman, Atomic Safety &
Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Carmine Clemente, Esq.
Counsel, New York State
Department of Commerce
99 Washington Avenue
Albany, New York 12210

Dr. John H. Buck, Member
Atomic Safety & Licensing Appeal
Board, U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Paul Shemin, Esq.
Assistant Attorney General
State of New York
2 World Trade Center, Rm. 4776
New York, New York 10047

Dr. Lawrence R. Quarles, Member
Atomic Safety & Licensing Appeal
Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Eugene R. Fidell, Esq.
Harry H. Voigt, Esq.
LeBoeuf, Lamb, Leiby & MacRae
1757 N Street, N.W.
Washington, D.C. 20036

Samuel W. Jensch, Esq., Chairman
Nuclear Regulatory Commission
Atomic Safety & Licensing Board
Washington, D.C. 20555

Nicholas A. Robinson, Esq.
Marshall, Bratter, Greene
Allison & Tucker
430 Park Avenue
New York, NY 10022

Dr. Franklin C. Daiber
College of Marine Studies
University of Delaware
Newark, Delaware 19711

Mr. Frank W. Karas, Chief
Public Proceedings Staff
Office of the Secretary of
the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. R.B. Briggs
110 Evans Lane
Oak Ridge, TN 37830

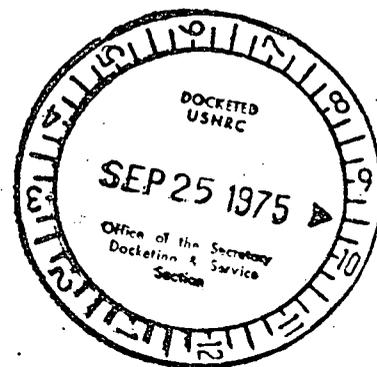
Joseph Gallo, Esq., Chief
Hearing Counsel for Regulatory
Staff
Nuclear Regulatory Commission
Washington, D.C. 20555

SARAH CHASIS

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

RELATED CORRESPONDENCE

September 24, 1975



Docketing and Service Section
Office of the Secretary
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

In the Matter of
Consolidated Edison Company of New York, Inc.
(Indian Point Station, Units 2 & 3)
Docket Nos. 50-247 & 50-286

Gentlemen:

I am serving today on all parties of interest the attached letter from our Executive Legal Director to Arvin E. Upton, Esq., dated September 23, 1975.

Sincerely,

Joseph Gallo
Joseph Gallo
Chief Hearing Counsel

Attachment:
As stated above

cc: John B. Farmakides, Esq.
Dr. John H. Buck
Dr. Lawrence R. Quarles
Atomic Safety and Licensing
Board Panel
Atomic Safety and Licensing
Appeal Board
Harry H. Voigt, Esq.
J. Bruce MacDonald, Esq.
Sara Chasis, Esq.
Honorable Louis J. Lefkowitz
Nicholas A. Robinson, Esq.
Honorable George V. Begany
Edward J. Sack, Esq.

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

September 23, 1975

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



Dear Mr. Upton:

Your letter of July 11, 1975, addressed to the General Counsel, has been referred to me and I am pleased to respond.

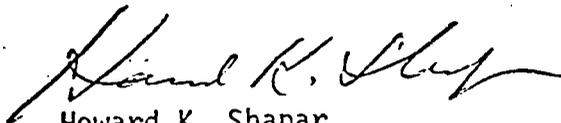
In your letter you requested on behalf of your client, Consolidated Edison Company of New York, Inc., an opinion interpreting certain provisions of paragraph 2.E. of the Commission-issued Operating License No. DPR-26 which authorizes operation of Indian Point Unit No. 2 by Consolidated Edison. Paragraph 2.E. established a requirement that Unit No. 2 be operated with a closed-cycle cooling system after May 1, 1979 subject to the subsequent right of Consolidated Edison to demonstrate, if it so desires, that either an extension of the 1979 date is warranted or closed-cycle cooling is unnecessary. Construction of the closed-cycle cooling is required by paragraph 2.E. to commence by December 1, 1975 unless that date is extended as provided in the paragraph. Although paragraph 2.E. does not prescribe the type of closed-cycle cooling system to be installed for Unit No. 2, Consolidated Edison, pursuant to subparagraph 2.E.(2), has submitted a report to the NRC Staff that recommends the construction and installation of natural draft cooling towers. In addition, the NRC Staff in its final environmental statement for Unit No. 3 stated that a balancing of generating costs and environmental costs and risks indicated that operation of Units 2 and 3 with closed-cycle cooling, i.e., based on natural draft cooling towers, is preferred over the once-through cooling system over the long term. It is against this background that the variance from the Village of Buchanan zoning ordinance was requested by your client to permit the commencement of construction of natural draft cooling towers by December 1, 1975. The Village has now denied your request for a variance, and you have requested an opinion with respect to whether the term in subparagraph 2.E.(2) "acting with due diligence" in connection with obtaining all governmental approvals extends to seeking judicial review of the denial by the Village of Buchanan's Zoning Board of your client's request for a zoning variance.

The requirement that Consolidated Edison exercise due diligence in obtaining the governmental approvals necessary for construction of a closed-cycle cooling system was inserted in the operating license for Indian Point Unit No. 2 by the Atomic Safety and Licensing Appeal Board in Consolidated Edison Company of New York, Inc. (Indian Point Station Unit No. 2) ALAB-188, 7 A.E.C. 323, 408 (April 4, 1974). The Appeal Board's decision indicated that the main purpose of this language was to prevent Consolidated Edison from being placed in a position of noncompliance with an operating license requirement because of circumstances, over which Consolidated Edison had no control, which might arise in the process of applying for the governmental approvals necessary to construction of the required closed-cycle system. Consolidated Edison, supra., at p. 389.

In my opinion, on behalf of the NRC Staff, considering the license requirements discussed above for the installation of a closed-cycle cooling system at Indian Point Unit No. 2, and the availability of judicial remedies to your client which will assist in securing or will secure the governmental approvals necessary for the construction of the closed-cycle cooling system, due diligence requires that your client pursue these judicial remedies promptly and with its best efforts. In this connection I note that your client has undertaken an appeal from the Zoning Board's decision to the Supreme Court of the State of New York.

It is too early to determine the possible effect of the Appeal Board's recent decision in ALAB-287 on the meaning of paragraph 2.E. The NRC Staff has requested the Appeal Board for an extension of time to October 24, 1975 within which to assess the impact and to determine whether a petition for reconsideration of the decision is warranted.

Sincerely,



Howard K. Shapar
Executive Legal Director

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

September 24, 1975

Ms. Elise Jerard
Independent Phi Beta Kappa Environmental
Study Group
115 Central Park West
New York, New York 10023



In the Matter of
Consolidated Edison Company of New York, Inc.
(Indian Point Nuclear Generating Station, Unit Nos. 1, 2 & 3)
Docket Nos. 50-3, 50-247 & 50-286

Dear Ms. Jerard:

This is in response to your letter of August 21, 1975 to the Nuclear Regulatory Commission requesting permission to make a limited appearance in the pending proceeding before the Atomic Safety and Licensing Appeal Board on seismic matters relating to Indian Point, Units 1, 2, and 3. Your name has been placed on a list of those desiring to make limited appearances in this proceeding and you will be notified of the time and place of hearings, when they are scheduled.

Persons desiring to make a limited appearance statement are permitted to do so at the discretion of the presiding officer. A person making a limited appearance may not only state his position, but also raise questions which he would like answered. If the questions are relevant to the proceeding the presiding officer may direct that they be answered by the parties.

In practice, the presiding officer usually inquires early on the first day of the hearing whether there are any individuals in attendance who wish to make limited appearance statements. In most cases, limited appearance statements are heard, or incorporated in the record as if read, only on the first day. However, we would note that the presiding officer has considerable discretion as to limited appearance statements, and in particular as to when such statements may be offered.

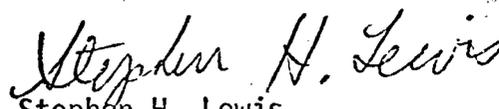
If you intend to submit a written statement it is advisable to have thirty copies for the Court Reporter.



We are furnishing copies of your letter and this reply to the presiding Atomic Safety and Licensing Appeal Board and to the parties to this proceeding so that they may be aware of your interest in making a limited appearance statement.

We welcome your participation, and please advise us, if we can be of any further assistance.

Sincerely,


Stephen H. Lewis
Counsel for NRC Staff

Enclosure:

Letter from Ms. Jerard to Commission

cc w/encl: John B. Farmakides, Esq.
Dr. John H. Buck
Dr. Lawrence R. Quarles
Anthony Z. Roisman, Esq.
J. Bruce MacDonald, Esq.
Arvin E. Upton, Esq.
Atomic Safety and Licensing Board Panel
Atomic Safety and Licensing Appeal Board
Docketing and Service Section

• INDEPENDENT PHI BETA KAPPA ENVIRONMENTAL STUDY GROUP

Elise Jerard - Chairman

115 Central Park West, N.Y., N.Y. 10023

• CITIZENS RIGHTS COMMITTEE

~~32 Charles Street, Hicksville, L.I., N.Y. 11801~~

August 21, 1975

Office of Secretary
to the Commissioner,
Nuclear Regulatory Commission
Docketing and Service Section,
Washington, D.C. 20545:

LASP
Lewis Sahenki
Gray IFF only

We are writing to request permission, if the Appeals Board hearing on seismic conditions around the Indian Point plant site is to be held within our geographical reach, to make a limited appearance -- and will appreciate your sending information about this hearing.

Sincerely,

Elise Jerard, Chairman,
Independent Phi Beta Kappa
Environmental Study Group;
Chairman, Citizens Rights Committee

EF :eh

Acknowledged by card 8-27-75, etc

