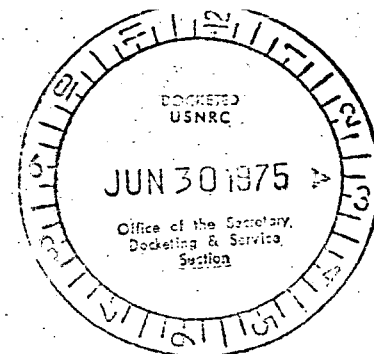


6-27-75

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

MEMORANDUM OF THE HUDSON RIVER
FISHERMEN'S ASSOCIATION AND SAVE OUR STRIPERS
IN RESPONSE TO THE QUESTIONS OF THE
APPEAL BOARD IN ITS ORDER OF JUNE 20, 1975

By order of June 20, 1975, the Atomic Safety and Licensing Appeal Board has requested a clarification of whether the June 2 letter of the Hudson River Fishermen's Association ("HRFA") and Save Our Stripers ("SOS"), stating a position on further action by the Commission, is consistent with the Licensing Board's stated objective of requiring further opportunity for a hearing once additional information is obtained on the environmental impact of the closed-cycle cooling tower(s). (Order pp. 6 & 7). The Appeal Board has also requested that the parties respond to certain questions propounded in connection with the seismic issue. (pp. 5 & 6).

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PDR ADOCK 05000286
G PDR

I

With respect to the seismic issue, HRFA and SOS take

no position. The involvement of these parties in the Indian Point Unit No. 3 proceeding has related to the issue of the effect of plant operation on Hudson River biota. Contentions, testimony and appearances have been limited to this issue. This is of necessity since the interests of HRFA and SOS relate solely to protection of the fishery and since the resources of these groups are limited. HRFA and SOS are thus not prepared to address the seismic issue.

HRFA and SOS do ask that the Appeal Board appoint special counsel to represent the Licensing Board's position on the seismic issue. The Licensing Board clearly had something in mind when it imposed the condition with respect to seismicity on the issuance of the full power license, but not on the license to permit low power testing and operation not to exceed 91% of rated power. No party asked the Licensing Board to take the action it did, and therefore, no party can be expected to defend the action taken. In such an instance, it would be unreasonable to review the decision without assuring adequate representation from the Licensing Board itself. Therefore, following the precedent set in a case presenting a similar problem, we ask that the Appeal Board appoint special counsel to represent the Licensing Board. See U.S. v. Ammidown, 497 F.2d 615 (D.C. Cir. 1973), rehearing denied, 497 F.2d 625 (1974).

II

The position of HRFA and SOS, as set out in the

letter of June 2 to the Chairman of the Licensing Board, is that pursuant to the terms of the Stipulation entered into by the parties, no further action beyond acceptance of the Stipulation and incorporation of the terms thereof in the license would be required of the Commission in order to require that the plant not operate with once-through cooling beyond the time schedule set out in the Stipulation, absent an application for an amendment to the operating license by any of the parties. The language of the Stipulation is clear:

"Operation of Indian Point Unit No. 3 ("the Plant") with the once-through cooling system will be permitted during an interim period, the termination date for which will be September 15, 1980 ("the September date")." Paragraph 2 of the Stipulation.

The schedule set in the Stipulation is intended to be final. It may be changed only by application of Con Edison or another party based on new and convincing evidence. It was with this understanding and on this condition that HRFA and SOS entered into the Stipulation. Any other interpretation of the Stipulation is unacceptable to HRFA and SOS and would flaunt the plain meaning of the agreement. HRFA and SOS are indeed willing to go to the Court of Appeals for review of the Stipulation with respect to this issue if necessary.

The Licensing Board's order appears consistent

with HRFA and SOS' position as set forth in the June 2 letter in that the order states:

"The Board emphasizes here that the Stipulation requires construction of a closed-cycle cooling system for Unit No. 3, unless the Applicant or some other party produces convincing evidence that the adverse impact of once-through cooling is not serious, or that the most acceptable alternative will have a more seriously adverse impact." Slip Opinion at 11.

Thus the Licensing Board properly reads the Stipulation to require no further action from the Commission, except approval of the Stipulation and incorporation of the terms thereof into the license, with respect to the issue of once-through versus closed-cycle cooling.

The only further action required by the Stipulation with respect to installation of a closed-cycle system is Staff review and approval of Con Edison's evaluation of the economic and environmental impact of alternative closed-cycle cooling systems to determine a preferred system for installation. (Paragraph 2(g) of the Stipulation). As the Licensing Board points out, the NRC Staff has concluded that it must prepare a Final Environmental Statement in support of this action. (Opinion, p. 12). However, the letter from the Regulatory Staff Chief Hearing Counsel to the Licensing Board, cited to in the opinion as setting forth the Staff's position on this matter, makes clear that

the purpose of the FES and the accompanying public hearing relates to the Staff's decision on the appropriate closed-cycle cooling system, not to a Staff decision on once-through versus closed-cycle cooling.

To the extent that the Licensing Board's stated objective of providing opportunity for a hearing once additional information is obtained on the impacts of alternative closed-cycle systems relates to the Staff's decision and FES on the appropriate closed-cycle cooling system, that objective is consistent with HRFA and SOS' position in the June 2 letter and the Stipulation. However, to the extent that the Licensing Board suggests that the subsequent decision of the Staff and the public hearing thereon relate to the issue of whether once-through cooling or closed-cycle cooling is preferable for Unit 3, HRFA and SOS find the Licensing Board's position to be in contravention of the plain meaning of the Stipulation and HRFA and SOS' stated position.

As the Licensing Board points out (p. 12), the Stipulation provides a mechanism which may be adjusted according to identified criteria. That mechanism requires installation of a closed-cycle system for Unit 3 according to an agreed upon schedule. The requirement and the schedule can be adjusted only if Con Edison or another party apply for a change and meet established criteria. Thus, the mechanism contemplates no further action by the Commission

beyond approval of the Stipulation and incorporation of the terms thereof in the license, in order to require that the plant cease operation with once-through cooling. If the Stipulation is to be accepted and approved for incorporation into the license as the parties intended, this principle must be fully recognized and accepted. If this principle is not accepted, then the Stipulation falls and the parties will go to hearing on the issue.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sarah Chasis".

Sarah Chasis
Nicholas A. Robinson

Attorneys for the Hudson River
Fishermen's Association and
Save Our Stripers

Dated: New York, N.Y.
June 27, 1975

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Memorandum of the Hudson River Fishermen's Association and Save Our Stripers in Response to the Questions of the Appeal Board in its Order of June 20, 1975 was served upon the following parties by mailing copies of same, first-class postage prepaid this 27th day of June, 1975:

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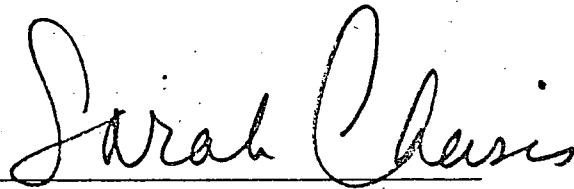
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A handwritten signature in cursive script, reading "Sarah Chasis", written over a horizontal line.

SARAH CHASIS, Esq.