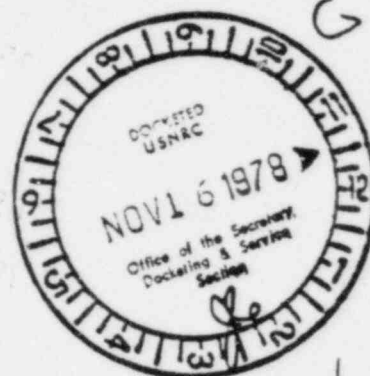


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

50-247  
G



NRC PUBLIC DOCUMENT ROOM

COMMISSIONERS:

Richard T. Kennedy  
Peter A. Bradford  
John F. Ahearne

In the Matter of  
CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC.  
  
(Indian Point Station,  
Unit No. 2)

Docket No. 50-247 G  
OL No. DPR-26

11/15/78

(Selection of Preferred  
Alternative Closed-Cycle  
System)

ORDER

On May 20, 1977, the Atomic Safety and Licensing Appeal Board issued ALAB-399.<sup>1/</sup> It held, among other things, that the licensee, Consolidated Edison was required to obtain a variance from the Village of Buchanan Zoning Board of Appeals (Zoning Board) before beginning construction of cooling towers for Indian Point Unit 2. The Appeal Board further held that if the Zoning Board failed to grant such a variance within a specified period of time, the Licensing Board could enter a finding that the Village's zoning authority was pre-empted by the National Environmental Policy Act (NEPA).

Petitions for review of ALAB-399 were filed by Consolidated Edison, Intervenor Hudson River Fishermen's Association, and the NRC staff. By order of August 26, 1977, the Commission granted the staff's petition to

<sup>1/</sup> 5 NRC 1156.

781129 0184

review the pre-emption issue and denied the other petitions.

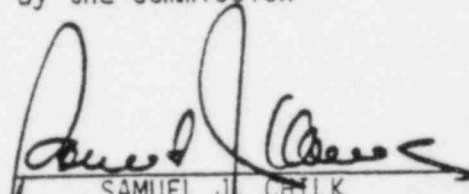
Following the decision of the Appeal Board in ALAB-453,<sup>2/</sup> which modified ALAB-399, the NRC staff filed a motion for leave to withdraw its petition for review of ALAB-399. Hudson River Fishermen's Association and Consolidated Edison filed answers to the staff motion.

All parties now agree that ALAB-453 adequately resolves the pre-emption issue raised in ALAB-399. Moreover, on February 14, 1978, the New York Court of Appeals decided, in a collateral State court proceeding that under New York State law, the Village of Buchanan must issue a variance to the facility.<sup>3/</sup> In accordance with that decision, the Zoning Board issued a variance for construction of the Indian Point Unit 2 cooling towers on April 13, 1978. For these reasons the pre-emption issue is thus rendered moot.

In view of the foregoing, the staff motion to withdraw its petition for review of ALAB-399 is granted.

It is so ORDERED.

By the Commission

  
SAMUEL J. CHILK  
Secretary of the Commission

Dated at Washington, D.C.

this 15th day of November, 1978.

<sup>2/</sup> 7 NRC 31.

<sup>3/</sup> Consolidated Edison Company of New York v. Hoffman, \_\_\_ N.Y. 2d \_\_\_ , No. 24.