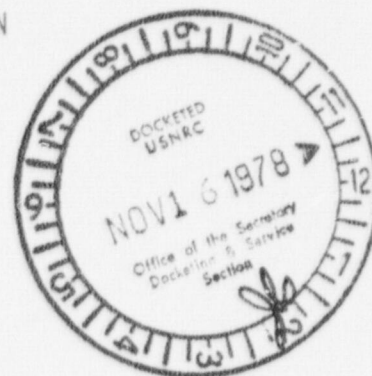


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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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
OL No. DPR-26
(Determination of Preferred
Alternative Closed-Cycle
Cooling System)

MEMORANDUM AND ORDER

On July 25, 1978, the Appeal Board issued ALAB-487, which summarily affirmed the Licensing Board's Order of June 14, 1978. That Order held that the issuance by the Village of Buchanan Zoning Board of Appeals of a zoning variance constituted the final governmental approval needed by Consolidated Edison to build a cooling tower at Indian Point Unit No. 2. As a result, the Licensing Board found that Consolidated Edison could proceed with the construction of the cooling tower, and it modified license condition 2.E.(1)(b) to read as follows:

The Commission has determined that the licensee has acted with due diligence and that all governmental approvals required to proceed with construction of the closed-cycle cooling system have been received. The Commission has also determined that the reasonable date for termination of once-through cooling is now May 1, 1982.

*/ Commissioner Bradford would not review the Appeal Board decision in ALAB-487 because he believes that no concrete controversy is presented.

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We note that Region II of the Environmental Protection Agency (EPA) is currently conducting an adjudicatory proceeding to determine the type of cooling system which will be required for a number of Hudson River power plants, one of which is Indian Point unit No. 2. At this time, EPA is reconsidering its decision under the Federal Water Pollution Control Act Amendments (FWPCA) to impose a thermal effluent limitation on the Indian Point facility.

Our decisions in the Seabrook^{1/} proceeding have emphasized that EPA has the primary voice in determining the type of cooling system to be used in nuclear power plants, and have stressed as well the desirability of avoiding duplicative or inconsistent proceedings by this agency and EPA. Accordingly, we exercise our authority to review, on our own motion, the decision of the Appeal Board in ALAB-487. We ask the participants to address, with particular reference to the role of EPA:

- (1) the implication of the Seabrook decision with respect to closed-cycle cooling at Indian Point Unit No. 2; and the existing termination date of May 1, 1982 for operating Indian Point Unit No. 2 with once-through cooling;^{2/} and

^{1/} Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 508 (1977); CLI-78-1, 7 NRC 1, 25-26 (1978).


^{2/} We note that nothing in this order affects the Commission's current intention to require termination of once-through cooling by this date.

(2) to what extent the license conditions 2.E.(1)(a-d) should be modified to take proper account of EPA's authority.

We invite the comments of EPA and the Power Authority of the State of New York (PASNY).^{3/} Initial briefs shall be received by the Commission by December 1, 1978. Any reply briefs shall be received by the Commission by December 15, 1978. If we determine to have oral argument, it will be scheduled in a future order.

It is so ORDERED.

For the Commission



SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, D.C.

this 15th day of November 1978.

^{3/} We expect that PASNY, licensee for Indian Point Unit 3, shares our concern with these matters because its operating license contains similar provisions requiring a change-over to closed-cycle cooling by September 15, 1982. 43 Fed. Reg. 49082, n.1 (October 20, 1978).