

March 7, 2001

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UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSIONOFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)

CONSOLIDATED EDISON COMPANY)
OF NEW YORK, and)ENTERGY NUCLEAR INDIAN POINT 2, LLC,)
and ENTERGY NUCLEAR OPERATIONS, INC.)Docket Nos. 50-003-LT
and 50-247-LT
(consolidated)(Indian Point Nuclear Generating)
Units Nos. 1 and 2))License Nos. DPR-5
And DPR-26**TOWN OF CORTLANDT AND HENDRICK HUDSON CENTRAL SCHOOL
DISTRICT'S REPLY TO APPLICANTS' ANSWER OPPOSING HEARING AND
INTERVENTION REQUEST, AND PETITION FOR A WAIVER OF
REGULATORY REQUIREMENT PURSUANT TO 10 CFR 2.1329.**

By Petition dated February 20, 2001, the Town of Cortlandt, New York and the Hendrick Hudson Central School District ("Petitioners") requested leave to intervene in the above referenced proceeding and requested that the Commission conduct a hearing with respect to the proposed transfer of the licenses for Indian Point No. 1 and Indian Point No. 2. This Reply is submitted in response to the March 2, 2001 Answer ("March 2 Answer") of Consolidated Edison Company of New York, Entergy Nuclear Indian Point 2, LLC, and Entergy Nuclear Operations, Inc. ("the Applicants"). In accordance with the requirements of 10 CFR 2.1308, this Reply is submitted within five days of the Answer.

Petitioners also hereby petition pursuant to 10 CFR 2.1329 for a waiver of the regulatory requirement contained in 10 CFR 50.75(e) that states that prepayment of the

minimum decommission fund level pursuant to 10 CFR 50.75(e)(1) is sufficient to provide reasonable assurance of a licensee's ability to decommission a facility. Petitioners maintain that, as a result of special circumstances, compliance with this criteria is insufficient to provide the necessary assurance to the public.

EXTENSION OF TIME AND NEW ISSUES

The Commission ruled on March 6, 2001, to grant Petitioners access to an unredacted version of the application, and to grant an extension of time to raise issues based upon a review of that application. As a result, Petitioners anticipate that they will submit revised, or even entirely new, proposed issues for adjudication.

Nevertheless, Petitioners respectfully maintain that they have identified several issues for adjudication in their initial February 20, 2001 filing ("February 20 Petition"). Therefore, Petitioners take this opportunity to respond to the objections to their issues listed in Applicants' March 2 Answer, and to explain why the proffered issues, even as stated in the initial filing based on the limited information available, are properly admissible.

SPECIFICITY OF PROPOSED FINANCIAL QUALIFICATION ISSUE

Even though the Applicants have redacted the specific cost and revenue data necessary for a meaningful discussion of their financial qualifications, the Applicants criticize Petitioners for failing to provide a detailed attack of the redacted material. The Applicants state "in the absence of plausible and adequately supported claims that such

projections are inaccurate or otherwise do not provide an adequate assurance of financial qualifications, challenges to the five-year cost and revenue projections are held to be inadequate. Therefore Cortlandt's general attack on the projections does not meet the NRC's pleading requirements and should be rejected." (March 2 Answer, p. 17)

Although Petitioners have not seen the Applicants' financial projections, Petitioners nevertheless raised serious questions regarding the financial ability of the Applicants to adequately fund the project. This challenge was based upon revenue projections derived from the power purchase contract, the historical record of operating cost for the Indian Point facilities, and based upon liabilities that can reasonably be expected to occur in the immediately future. Based upon these figures, and the analysis, set forth in full in the initial petition to intervene, Petitioners maintain that there are serious questions with respect to the financial qualifications of the proposed transferee, and that the issue, as stated in the February 20 Petition, is properly admissible for a hearing.

Significantly, the Applicants do not provide any basis to discount the validity of the Petitioners' critique. The Applicants do not respond or deny the revenue estimates contained on pages 15 and 16 of the February 20 Petition, nor do they challenge Petitioners' citation of the historical operating costs and expenses of the Indian Point 2 facility. Based upon these figures, Petitioners concluded that the estimated total expenses and taxes would exceed the anticipated revenues for the first three years of operations. (February 20 Petition, p. 16). In addition, Petitioners pointed out that there were likely to be significant additional expenses, relating to unresolved environmental

problems for the cost of handling spent fuel after the existing capacity is exhausted and other issues. Petitioners also submitted evidence, in the form of a letter from our expert, George Sansoucy, that the 85 percent plant capacity factor upon which the revenue estimates were based, was significantly overstated.

These statements, especially in the absence of any response, are sufficiently specific to raise an issue for adjudication. However, the specific cost and projections which were submitted to the NRC need to be reviewed, and additional specificity may be possible after this information is reviewed.

DECOMMISSIONING FUND

In Indian Point No. 3, the Commission declined to admit issues pertaining to the cost estimate methodology specifically authorized by 10 CFR 50.75. In the instant case, the Applicants argue that Petitioners have failed to raise an admissible issue because Applicants claim to have demonstrated that they will "prepay" the minimum funding requirements as authorized by §50.75(e)(1)(i). The Applicants argue that any question as to whether such a prepayment method provides adequate assurances of their financial ability to decommission the facility is a challenge to the Commission's cost estimation methodology, and is therefore inadmissible.

Petitioners respectfully request that the Commission waive the effect of §50.75(e)(1)(i), with respect to the license transfer application, pursuant to 10 CFR 2.1329, to the extent that compliance with the minimum funding requirement of this regulation is deemed sufficient to provide adequate assurance of a licensee's ability to

decommission a facility. Petitioners believe that such a waiver is a necessary and appropriate response to the unique factual circumstances of the instant application.

The purpose of the regulatory requirements of §50.75 is to ensure that an applicant for a license to operate a nuclear facility provides reasonable assurance that it will have adequate funding for the decommissioning process. The regulation contemplates that compliance with any of the criteria set forth in §50.75(e)(1) will be deemed to be sufficient to provide such an assurance, to avoid disputes as to whether such an amount of money is or is not actually adequate.

In the instant case, Petitioners and the Commission are confronted with a set of facts which are apparently unprecedented; the present licensee, Con Edison, has performed a study, which has concluded that the amount of money which is set forth as the minimum requirement under the NRC requirements is inadequate. Specifically, the \$430 million to be placed into the trust, at the estimated 2 percent real rate of return, is expected to grow to \$558 million. The amount needed to comply with the regulatory criteria. However, a study prepared by ScienTech NES, Inc. for Con Edison estimates the cost for decommissioning IP1 and IP2 as \$578 million, \$20 million more than the amount presently required.¹ (February 20 Petition, p. 22).

The existence of a study, prepared by one of the Applicants, documenting the inadequacy of the minimum funding level established by relevant regulatory criteria,

¹ The Commission ruled, in the context of Indian Point 3, that the licensee would not be required to have adequate funding to restore the site to greenfield conditions. Nevertheless, it should be noted that the study estimated that an additional \$47 million, in addition to the \$578 million, would be required to restore the IP1 and IP2 sites to greenfield conditions, thus indicating the total shortfall in the decommission funding is \$67 million.

constitutes a "special circumstance", warranting a conclusion that the "application of [the] rule or regulation would not serve the purposes for which it was adopted" of ensuring that there is an adequate minimum funding level for decommissioning. Accordingly, Petitioners respectfully request that the Commission waive the provisions of §50.75(e)(1) that compliance with the minimum prepayment amount is sufficient to satisfy the proposed licensee's responsibilities for decommissioning, and admit the issue of the adequacy of the funding level for a hearing.

CAPACITY FOR SPENT NUCLEAR FUEL STORAGE

There is no specific provision of the regulations pertaining to the ability of a proposed licensee to handle spent nuclear fuels. However, in this case, the Commission is confronted with an application to transfer two nuclear facilities that, as of 2004, three years after the transfer, will not have any storage capacity for such spent nuclear fuel. It appears to be the position of the Applicants that the Commission should uncritically assume that the Applicants will handle this problem in accordance with NRC regulations. Therefore, the Applicants claim that they do not need to make any showing of what specific measures they will take to comply with the regulations. In contrast, Petitioners maintain that the Applicants, as part of their overall showing of the viability of their plan, and of their financial and technical qualifications to operate the facility, must demonstrate how they will comply with the regulations pertaining to spent nuclear fuel storage.

In any event, the Applicants, as detailed in the February 20 Petition, can be

expected to incur a cost of between \$147 million to \$362 million in association with spent fuel management. This sum is apparently in addition to the operating costs which are projected, and will therefore make it impossible for the Entergy companies that are the proposed licensees to adequately fund operations at the facility. Thus, the inadequacy of the planning for the exhaustion of on-site used fuel storage capacity is, at the very least, a financial qualifications issue that should be admitted for hearing.

In response, the Applicants cite to regulations that require a licensee to provide notification to the Commission of how it proposes to handle spent fuel, either within two years after permanent cessation of operation or five years before the expiration of the operating license. The relevance of this notification requirement to the question of what action will be needed is not clear. However, in any event, in the instant case, the Commission, Applicants, Petitioners, and public are all dealing with a situation where storage capacity will definitely be exhausted in three years, and there is nothing to indicate that the proposed licensee will even need to provide formal notification of that fact to the Commission, let alone any requirement that the licensees will be required to take any action.

Under these circumstances, Petitioners respectfully maintain that the Commission should admit, for a hearing, the question of how the Applicants intend to fulfill their responsibilities of handling on-site nuclear waste after the exhaustion of the storage capacity, and how they plan to demonstrate the financial qualifications and ability to fund such efforts.

RADIOLOGICAL EMERGENCY RESPONSE PLAN

Petitioners maintain that the application is deficient because of the failure to include a new radiological emergency response plan, as is required by 50.33(g).

Petitioners also maintain that a new plan is required because of the significant expansion of the population in the immediate vicinity of the Indian Point facilities and the possible need for new highway construction to accommodate an emergency evacuation.

Contrary to the Applicants' statement, this issue was not addressed in Indian Point No. 3. In that case, the Commission rejected the Town of Cortlandt and Hendrick Hudson Central School District proposed issues with respect to the impacts of the transfer of emergency evacuation plans from a public entity, the Power Authority of the State of New York, to Entergy. In that case, the Petitioners did not raise the issue of the need to update emergency plans because of increased development (e.g., residential and working populations, students, traffic, etc.) the specific issue that is proposed in this proceeding.

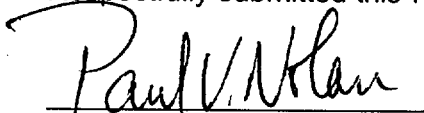
Nor did the Commission hold that issues involving emergency evacuation plans were not appropriate in license transfer proceedings. Indeed, given the clear requirement of §50.33(g) to include such plans in a license application, and given the clear requirement that compliance with the criteria of §50.33 is an issue in license transfer proceedings, the Commission could not and did not make any such holding.

CONCLUSION

For the reasons set forth above, and in the Petitioners' initial filing of February 20, 2001, the Town of Cortlandt and the Hendrick Hudson Central School District respectfully urge the Commission to grant the petition for leave to intervene, and to conduct a hearing with respect to the application to transfer the licenses of the Indian Point No. 1 and Indian Point No. 2 facilities.

Furthermore, Petitioners also respectfully request that the Commission waive the requirement that adherence to compliance with the minimum requirements of §50.75(e) is deemed sufficient to demonstrate the adequacy of decommissioning funding because of the special circumstance that the present licensee, Applicant Consolidated Edison, has prepared a study showing that the amount of money required by the regulations is not adequate to fulfill the minimum decommissioning responsibility.

Respectfully submitted this 7th day of March 2001.


Paul V. Nolan, Esq.

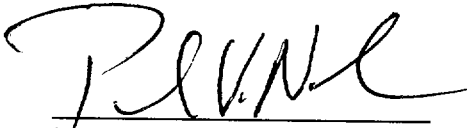

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Counsel to the Town of Cortlandt, New York and the Hendrick Hudson Central School District

CERTIFICATE OF SERVICE

I, Paul V. Nolan, Esq., Counsel to the Town of Cortlandt, New York and the Hendrick Hudson School District, hereby certify that on the 7th day of March 2001, service of the foregoing Reply; was made by first class mail and e-mail (before 4:30 PM) to the Secretary, the parties noted in January 29, 2001 public notice, and those indicated in the certificate of service attached to the Commission's March 6, 2001 order. See attached service list. Courtesy copies have also been provided as noted on the Service List.

Dated this 7th day of March 2001.

A handwritten signature in black ink, appearing to read 'P. V. Nolan', written over a horizontal line.

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