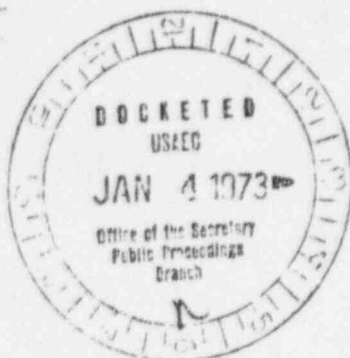


R

J. Lester Yoder, Jr.
A. Professional Corporation
Counselor at Law

J. Lester Yoder, Jr.
Robert R. Ellis



50-219
Class I
Shea / Kaufman / Massar
Reply due by Jan. 15
206 Horner Street
Toms River, New Jersey 08753

TELEPHONE (201) 341-0800
December 15, 1972

#3096: Oyster Creek Marina

United States
Atomic Energy Commission
Washington, D.C. 20545

Gentlemen:

Enclosed herewith Petition of Sands Point Marina, Inc., Oyster Creek Marina and Briarwood Yacht Basin to intervene in the matter of the application by Jersey Central Power & Light Company for permanent operating license, Oyster Creek Nuclear Power Plant, Unit 1.

Very truly yours,

J. Lester Yoder, Jr.
J. LESTER YODER, JR.

JLY, JR./pb
enc.

Received in Office of the General Counsel

12-29-72 at 11:10 am

E/32

In the Matter of the Application of
JERSEY CENTRAL POWER & LIGHT
COMPANY RE. OYSTER CREEK NUCLEAR
POWER PLANT, UNIT NO. 1, LACEY
TOWNSHIP, OCEAN COUNTY, NEW JERSEY.

PETITION FOR LEAVE TO INTERVENE

The Petitioners, SANDS POINT MARINA, INC., a New Jersey corporation, HENRY J. KURTZ and MARY A. KURTZ, d/b/a Oyster Creek Marina, and CHARLES B. MALLIE and JOSEPH P. DiPAOLO, d/b/a Briarwood Yacht Basin, all doing business in the Village of Waretown, Township of Ocean, County of Ocean and State of New Jersey, do hereby petition the U. S. ATOMIC ENERGY COMMISSION for leave to intervene in the within captioned matter for the following reasons:

1. The design of the aforementioned plant and the manner in which it has been operating has changed the salinity of the water in Oyster Creek upon which lands owned by these petitioners adjoin. The petitioners own and operate marinas. As the result of the change in the salinity of the water and the increase in temperature, Oyster Creek has become infested with shipworms resulting in damage to the piling and bulkheading in the petitioners' marinas, and damage to the boats owned by the petitioners' customers.

2. Petitioners further say that since the plant was built and operated there has been extensive silting in Oyster Creek reducing the depth of navigable water in the petitioners' marinas.

The statements contained herein are confirmed by extensive investigations undertaken by Dr. Ruth D. Turner of the Museum of Comparative Zoology, Harvard University, Cambridge, Massachusetts, made at the request and expense of these petitioners.

STATE OF NEW JERSEY

COUNTY OF OCEAN

ss.

HENRY J. KURTZ, of full age, being duly sworn according to law, upon his oath deposes and says:

He is one of the Petitioners in the within captioned matter. He has read the statements contained in the within Petition and to the best of his knowledge and belief the same are true and correct.

Sworn to and subscribed before

me this 15th day of December,
1972.

Henry J. Kurtz
HENRY J. KURTZ

Carol A. Camburn


CAROL A. CAMBURN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 15, 1977

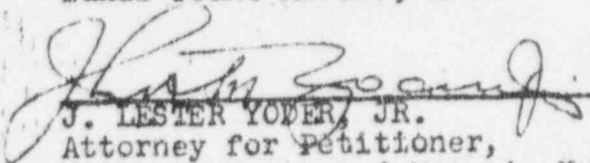
Petitioners have instituted an action in the Superior Court of New Jersey, Law Division, against Jersey Central Power & Light Company, a copy of which complaint is attached to this Petition. The allegations contained therein are made a part of the within petition by reference thereto.


These petitioners contend that the continuing operation of the applicant's plant in the manner in which it is being presently operated will constitute a continuing nuisance to these petitioners and irreparable damage.

STRYKER, TAMS & DILL

By:


Burtis W. Horner
Attorneys for Petitioner,
Sands Point Marina, Inc.


J. LESTER YODER, JR.
Attorney for Petitioner,
Henry J. Kurtz and Mary A. Kurtz
d/b/a Oyster Creek Marina


DANIEL RAPPOPORT
Attorney for Petitioner,
Charles B. Mallie and Joseph P.
DiPaolo, d/b/a Briarwood Yacht
Basin

STRYKER, TAMS & DILL

55 MAPLE AVENUE

MORRISTOWN, N. J. 07960

(201) 840-0555

ATTORNEYS FOR

Plaintiff,

Sands Point Marina, Inc.

SANDS POINT MARINA, INC., a New
Jersey corporation, HENRY J.
KURTZ and MARY A. KURTZ, d/b/a
Oyster Creek Marina, and CHARLES
B. MALLIE and JOSEPH P. DIPAOLO,
d/b/a Briarwood Yacht Basin,

Plaintiffs,

-vs-

JERSEY CENTRAL POWER & LIGHT
COMPANY, a New Jersey corporation,

Defendant.

Plaintiffs, SANDS POINT MARINA, INC., a New Jersey
corporation, HENRY J. KURTZ and MARY A. KURTZ, d/b/a Oyster
Creek Marina, and CHARLES B. MALLIE and JOSEPH P. DIPAOLO,
d/b/a Briarwood Yacht Basin, having places of business in
the State of New Jersey, Waretown, County of Ocean, complain-
ing against the defendant, say that:

FIRST COUNT

1. Plaintiffs are the owners and operators of cer-
tain marine facilities located on Oyster Creek, Waretown, New

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-OCEAN COUNTY
DOCKET NO. 1-

Civil Action

COMPLAINT AND
DEMAND FOR JURY

Jersey which are now used and have been used for many years for the purposes of storage, repair, maintenance and sale of pleasure boats.

2. Plaintiffs have enjoyed a profitable business over the years which was in large part due to the fact that Oyster Creek was a cool fresh water stream, attractive to the owners of pleasure boats because of the cleansing properties of fresh water to the motors and hulls of boats coming from the saline waters of Barnegat Bay and the Atlantic Ocean.

3. Historically, by reason of the fresh water in Oyster Creek, plaintiffs have been able to use untreated or lightly treated cedar pilings and bulkheads for the erection of boat slips, docks and piers.

4. The defendant is in the business of the generation and sale of electricity to the general public and has been so engaged for many years last past.

5. During the course of its business defendant erected and in December of 1969 commenced the commercial operation of its Oyster Creek Nuclear Electric Generating Station.

6. Said Oyster Creek Nuclear Electric Generating Station uses for cooling purposes large quantities of salt water which is pumped from Barnegat Bay into its plant and is then discharged in a heated state into an adjacent canal which empties into the upper portion of Oyster Creek.

7. The effect of the regular discharge of large quantities of heated salt water in the manner set forth in paragraph 6 hereof has been to change the nature of Oyster Creek from a fresh water to a salt water stream, has substantially elevated the temperature of such water and has greatly increased the volume of water and thereby the speed of the current.

8. As a further result of the increased salinity and higher temperature of the waters in Oyster Creek, conditions have been created which are ideal for the proliferation

of certain moving beings, including, inter alia, teredo navalis and bankia gouldi, commonly known as shipworms.

9. Said shipworms attack all forms of untreated or lightly treated wood, including boat hulls, pilings and bulkheads and cause their destruction within a short period of time.

10. Plaintiff's bulkheads, dock and boat pier pilings have been and are now being destroyed and many boat hulls have been damaged by said shipworms.

11. As a further result of the defendant's discharge of a great volume of water into Oyster Creek, erosion of the banks and bottom have taken place which, in turn, has created shoaling conditions of the bottom in and near plaintiffs' places of business.

12. As a further result of the higher temperature of the water in Oyster Creek, local fogging over the Creek frequently occurs and boats and contents have been subject to unusual mildew conditions.

13. The foregoing activities by defendant amount to a nuisance.

14. The end result of all of the foregoing has been increased expense to all of the plaintiffs by way of frequent replacement of untreated pilings and bulkheads with more costly treated ones, frequent dredging of areas both within and without the waters of the marina themselves and present and anticipated future loss of business by reason of the fact that many owners of pleasure boats have sought other marine facilities due to their concern over the prospect of either losing their craft or being forced to undergo substantial additional expense in order to protect the hulls from the ravages of the worms.

WHEREFORE, plaintiffs demand the following relief:

(a) Damages for all past and future injury to plaintiffs' property and business.

(b) An injunction against the continuation of defendant's continued discharge of hot salt water into Oyster Creek.

(c) A mandatory injunction requiring the defendant to restore the bottom of the Creek including the bottom within the marinas themselves to its former depth and contour.

(d) Such other and further relief as may seem appropriate under the circumstances.

SECOND COUNT

13. Plaintiffs repeat all of the allegations of paragraphs 1 through 12, inclusive.

14. Said activities by the defendant constitute a continuing trespass against the plaintiffs.

15. They repeat the allegations of paragraph 14 hereof as fully as though set forth herein.

WHEREFORE, plaintiffs demand the following relief:

(a) Damages for all past and future injury to Plaintiffs' property and business.

(b) An injunction against the continuation of defendant's continued discharge of hot salt water into Oyster Creek.

(c) A mandatory injunction requiring the defendant to restore the bottom of the Creek including the bottom within the marinas themselves to its former depth and contour.

(d) Such other and further relief as may seem appropriate under the circumstances.

THIRD COUNT

16. Plaintiffs repeat all of the allegations of paragraphs 1 through 17, inclusive, as fully as though set forth herein.

19. The conduct of the defendant in failing to make adequate and sufficient studies of the effect of the operation of its proposed plant upon the waters of Oyster Creek prior to its construction and to take adequate remedial measures was so wilful, wanton, or gross as to constitute intentional wrongdoing against the plaintiffs.

WHEREFORE, plaintiffs demand on this Count punitive damages against the defendant in such sums as will amount to punishment of the defendant and prevent repetition of such conduct.

FOURTH COUNT

20. Plaintiffs repeat all of the allegations of paragraphs 1 through 12, inclusive, hereof as fully as though set forth herein.

21. The conduct of the defendant in failing to make adequate and sufficient studies of the effect of the operation of its proposed plant on the waters of Oyster Creek prior to its construction and to take adequate remedial measures constituted negligence.

22. They repeat the allegations of paragraph 14 hereof as fully as though set forth herein.

WHEREFORE, plaintiffs demand the following relief:

(a) Damages for all past and future injury to plaintiffs' property and business.

(b) An injunction against the continuation of defendant's continued discharge of hot salt water into Oyster Creek.

(c) A mandatory injunction requiring the defendant to restore the bottom of the Creek including the bottom within the marinas themselves to its former depth and contour.

(d) Such other and further relief as may seem appropriate under the circumstances.

-4-

FIFTH COUNT

23. Plaintiffs repeat the allegations of paragraphs 1 through 12, inclusive, hereof as fully as though set forth herein.

24. Such activities and conduct of the defendant amount to an unconstitutional taking of the property of the plaintiffs without due process of law within the Fifth and Fourteenth Amendments to the Constitution of the United States and Article 1, §20 and Article 4, §6, ¶3 of the Constitution of New Jersey 1947.

25. They repeat the allegations of paragraph 14 hereof as fully as though set forth herein.

WHEREFORE, plaintiffs demand on this Count compensatory damages on account of such taking.

STRIKER, TAMS & DILL

By /s/ Curtis W. Horner
Curtis W. Horner
Attorneys for Plaintiff,
Bands Point Marina, Inc.

/s/ J. Lester Youn, Jr.
J. LESTER YOUNG, JR.
Attorney for Plaintiff,
Henry J. Kurts and Mary A. Kurts,
d/b/a Oyster Creek Marina

/s/ Daniel Rappoport
DANIEL RAPPOPORT
Attorney for Plaintiffs,
Charles B. Mallie and Joseph P.
DiPaolo, d/b/a Briarwood Yacht
Basin

DEMAND FOR TRIAL BY JURY
OF TWELVE

In accordance with R. 1:8-2(b), the plaintiffs
hereby demand trial by jury of twelve as to all issues.

STEYKER, TAMS & DILL

By /s/ Burtis W. Horner
Burtis W. Horner
Attorneys for Plaintiff,
Sands Point Marina, Inc.

J. Lester Yoder, Jr.
J. LESTER YODER, JR.
Attorney for Plaintiffs,
Henry J. Kurts and Mary A. Kurts,
d/b/a Oyster Creek Marina

Daniel Rappoport
DANIEL RAPPOPORT
Attorney for Plaintiffs,
Charles S. Mallie and Joseph P.
DiPaolo, d/b/a Briarwood Yacht
Basin

United States Senate

February 15, 1973

Re: Ms. Dorothy R. Horner, Township Clerk
Township of Ocean
Waretown, New Jersey 08753

Respectfully referred to
Congressional Liaison Office
Atomic Energy Commission
Washington, D.C. 20545

for such consideration as the communication
herewith submitted may warrant, and for a report
thereon, in duplicate to accompany return of
inclosure.

By direction of

Clifford P. Case

U. S. S.

CPC/ve

DR- 323

Copy sent PDR

E/33



TOWNSHIP of OCEAN
County of Ocean
WARETOWN, NEW JERSEY

08753

JAN 22 1973

Honorable Clifford P. Case, Senator
United States Senate Building
Washington, D. C. 20510

Enclosed, herewith, is a certified copy of a Resolution which was adopted by the Township Committee of the Township of Ocean on the 11th day of January, 1973 relative to the Townships' concern over the mass destruction of marine life and the fish kills in Oyster Creek.

It is the Townships' desire that the necessary steps be taken by Jersey Central Power & Light Co. to install any and all equipment necessary to eliminate the rapid changes in water temperature in Oyster Creek.

Very truly yours,

Dorothy R. Horner
Dorothy R. Horner
Township Clerk

Enc. Resolution

January 11, 1973

WHEREAS, a fish kill occurred at Oyster Creek during the latter part of December, 1972 through January 8, 1973; and

WHEREAS, a similar incident occurred approximately one year ago; and

WHEREAS, the members of this governing body are deeply concerned over this mass destruction of marine life; and

WHEREAS, immediate steps must be taken to prevent a further reoccurrence of fish kills in Oyster Creek;

NOW, THEREFORE, BE IT RESOLVED, by the TOWNSHIP COMMITTEE of the TOWNSHIP OF OCEAN, as follows:

1. The Atomic Energy Commission, Department of Environmental Protection and the Ocean County Conservation Commission are hereby requested to take the necessary steps to compel the Jersey Central Power and Light Company to install any and all equipment necessary to eliminate rapid changes in water temperature thereby eliminating the possibility of thermal shock to marine life.

2. The Jersey Central Power and Light Company is hereby requested to furnish this committee with a report as to the steps taken to implement the intent and purpose of this resolution.

3. Copies of this resolution be forwarded to the following:

- a. Atomic Energy Commission
- b. Department of Environmental Protection
- c. Ocean County Conservation Commission
- d. Jersey Central Power and Light Company
- e. Honorable Clifford Case
- f. Honorable Charles Sandman
- g. Honorable John F. Brown
- h. Honorable Franklin H. Berry, Jr.
- i. Honorable James J. Mancini

c e r t i f i c a t i o n

I, DOROTHY R. HORTER, Clerk of the Township of Ocean, County of Ocean, do hereby certify that the foregoing Resolution was passed by the Governing Body of the Township of Ocean, County of Ocean at their regular meeting held on the 11th day of January, 1973.