

# STORM KING MOUNTAIN: PUBLIC INTEREST ENVIRONMENTAL LAW



# About the Issue

- ▣ Dec 29, 1965- Circuit Judge Hays overturns order granting Consolidated Edison Inc. (Con Ed) permit to build hydroelectric plant on Storm King Mt
  - Con Ed was hoping to build hydroelectric pump storage facility
  - Wanted a “storage battery” of hydroelectric power to alleviate demand of power from New York City
    - ▣ Demand for power was causing brownouts and black outs due to increased growth and development

# CON EDISON'S PROPOSED HYDROELECTRIC PROJECT, CORNWALL, NEW YORK



This rendering shows how Con Edison's proposed pumped storage hydroelectric project will look upon completion in 1967.

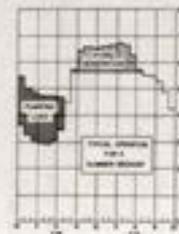
At times when power needs are high, water will flow from the reservoir down through a 40-foot diameter, 4-mile long tunnel to the plant where it will drive turbines attached to generators having a maximum capacity of 2,000,000 kilowatts. The electricity will be transmitted at 345,000 volts by submarine cables under the Hudson River and then by overhead lines into the system. During the low load periods the procedure will be reversed and water will be pumped from the river up through the tunnel into the reservoir.

The turbine-generators are of the reversible type and during pumping periods the generators will operate as motors, the turbines as pumps. Power for pumping will be supplied from the Company's steam generating units in New York City and Westchester County.

The nature of Con Edison's growing electric load makes the economics of a pumped storage hydroelectric plant

highly favorable. The greatest demands for electricity occur during the daytime hours on weekdays. Demands during nights and weekends drop to less than one-half, with the result that much of the new efficient steam generating capacity is not being anywhere near fully utilized. When the pumped storage project is completed, however, low cost electricity from these units will be sent northward over the lines to pump water at night and on weekends so as to make available substantial added capacity to meet weekday daytime loads. Thus the reservoir functions as a kind of huge storage battery.

The chart illustrates how the Cornwall station might be operated during a typical 24-hour period on a summer weekday. From 8 A.M. to 7 P.M. the station would be in operation supplying electric power to the system. Around midnight, as electric power from the efficient steam-generating units on the system became available for pumping, the process of refilling the reservoir would start, to continue until 7 A.M. the next morning.



# Proposed Operation

- ▣ Water from the base of the Storm King Mt would be taken in during off-peak hours
- ▣ Water would be pumped uphill to storage reservoir behind Storm King
- ▣ When demand was an issue, water would be released from reservoir and sent downhill
- ▣ A pump generator at the base of the mountain would use intake pumps and hydroelectric outlet generators to produce the necessary power

# The Beginning

- ▣ 1962-Con Ed announces plan
- ▣ 1963-Applies for permit from **Federal Power Commission (FPC)**
- ▣ Local residents were opposed to plan because it would destroy natural beauty of the area
  - Storage reservoir would eliminate Cornwall's water supply and destroy a portion of the Black Rock Forest



**When Con Edison starts dynamiting Storm King Mountain, keep your fingers crossed. 40% of your water supply may go down the drain.**

# Citizens United

- ❑ Concerned over the development, citizens began meeting in their living rooms to address the impact of the power plant
- Called themselves the Scenic Hudson Preservation Conference

## Electrical Storm Rages at Storm King

From Scenic Hudson Preservation Conference, Box 319, 205 East 42nd St., New York, N.Y. 10017

New York World Telegram  
ALAN BRILL



Storm On the Hudson

**PARADE THIS** time explorers first sailed up the Hudson on their voyages of discovery men have sensed that here God's handiwork approached perfection. In a short stretch of 50 or 60 miles one can see the world's most magnificent harbor, the awe-inspiring beauty of the Palisades and the gorges of the Hudson Highlands.

The thing is beautiful the way the Thames, the Delaware and the Columbia Other rivers are broken or under or more important commercially, but none is more majestic than our Hudson. None more important, as the Indians call it the very doorway of a vast continent where dwell 20 million people.

The magnitude is being fading its own vast, ancient structures that are ugly structures, including factories for housing developments and cities through rural countryside for industrial highways. Much of this is inconceivable. It is part of the process of finding ways to live with a growing nation.

But when commercial expediency runs rampant we and our kids suffer serious damage. Just in November, an example of this is Con Ed's proposal to erect a great big dam on the face of Storm King Mountain for the building of a hydroelectric power station. If ever there was a glove fitting to the face of heavy-hammer America, this is it.

In historic terms, the 500-foot dam to gorge an area 1200 feet by 160 feet out of the bank of the river, that flows the river. In this hole it would even the third largest station of its type on earth, behind the crest of the hill it would build the reservoir. In the distance, during periods of peak flow, water would run down from the lake through a tunnel into the plant and generate power. At night, using unneeded power from other plants in the city, water from the Hudson would be pumped uphill for storage.

If this plan were executed in a commercial area there could be little objection, but it is proposed for the western shore of the most beautiful section of the Hudson Gorge. It would be a dam on the face of the mountain, one of the most beautiful of river scenery in the world.

THE EVENING NEWS Sat., Nov. 7, 1964 Newburgh, N.Y.

### Yorktown Tells FPC: We'll Fight Transmission Lines!

By WILLIAM A. LARSEN  
WASHINGTON (UPI)—The town of Yorktown, N.Y., today told the Federal Power Commission that it would fight a hydroelectric power plant and transmission lines near the mouth of the Hudson River. The town's action is the first in a series of moves to block the project, which is being planned by the Con Edison Co. of New York.

THE EVENING NEWS Sat., Nov. 21, 1964 Newburgh, N.Y.

### Dam Expert Says New Con Ed Plant Lacks Safeguards

By WILLIAM A. LARSEN  
WASHINGTON (UPI)—A dam expert today said that the Con Edison Co. of New York's plan to build a hydroelectric power plant and transmission lines near the mouth of the Hudson River lacks safeguards.

THE EVENING NEWS Sat., Nov. 21, 1964 Newburgh, N.Y.

### U.S. URGED TO BLOCK CON ED POWER PLANT

WASHINGTON, Oct. 8 (AP)—The Federal Power Commission was urged today to block a plan for the construction of a 1,100-acre hydroelectric plant on the Hudson River near the town of Yorktown, N.Y.

THE EVENING NEWS Sat., Nov. 21, 1964 Newburgh, N.Y.

### River Control Proposal Due to Hit Legislature

By WILLIAM A. LARSEN  
WASHINGTON (UPI)—A bill to control the Hudson River and its tributaries is expected to be introduced in the U.S. House of Representatives next week.

THE EVENING NEWS Sat., Nov. 21, 1964 Newburgh, N.Y.

### Con Ed Plan Involved: River Control Proposal Due to Hit Legislature

WASHINGTON, Oct. 8 (AP)—The Federal Power Commission was urged today to block a plan for the construction of a 1,100-acre hydroelectric plant on the Hudson River near the town of Yorktown, N.Y.

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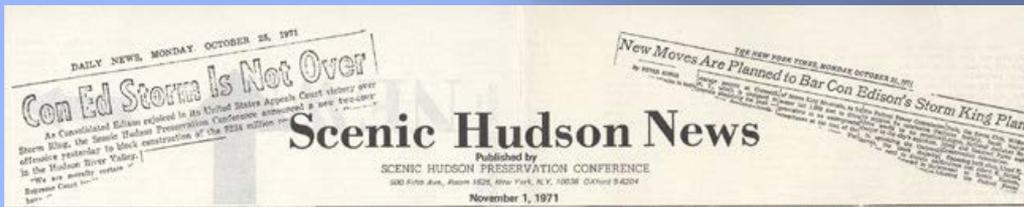
### Putnam Towns Fighting New Con Ed Line

By WILLIAM A. LARSEN  
WASHINGTON (UPI)—People in western Putnam County and northern Westchester County are excited about what one local official calls "the most important legislative act" the state has passed in years.

# Let the Hearings Begin

- ▣ Feb 1964- FPC started holding public hearings
  - These were mandated by the Federal Power Act of 1920 so that reasonable opposition and alternatives could be addressed before licenses were issued
- ▣ Bias- Both public utilities and the FPC felt their first responsibility was to supply the public with electricity
- ▣ Con Ed was granted a license from the FPC

# Petition

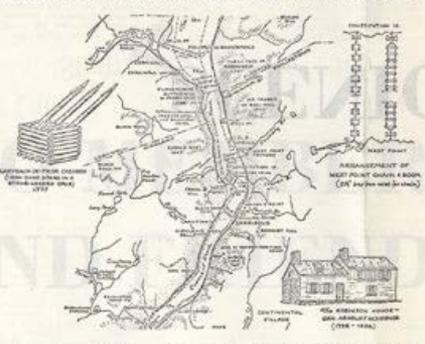


## Scenic Hudson Seeks Reversal Of 2-1 Decision In U.S. Court ; Also State Water Certification

### Varied Power Alternatives

Scenic Hudson has urged from the outset, not reduction of power availability but adoption of alternate methods of meeting peak and emergency needs. New industrial technology is offering a widening range of alternatives to pumped storage in scenic mountain regions. It remains only for utility companies to finance new loads. It is now seem feasible to bring pumped storage down from the mountains and put it underground at places where its power is generated and its output is needed. This would mean vast savings in transmission, heated energy and environmental harm. Such underground pumped storage of water or of compressed air would be secure in the hard "basement rock" which underlies the northeastern United States seaboard. Already adopted by utilities is the gas turbine generator as a source of peaking power. Now a rush is growing for "combined cycle" power; gas turbines creating second stage steam generation from their hot exhausts. These units can be running in 15 minutes from time of order instead of the seven years needed for pumped storage, manufacturers say. But the field of choices for utilities is larger than that. If they put more money into research and development on current applications instead of concentrating on processes for 20

### HUDSON RIVER GORGE RICH IN HISTORY



Despite "findings" of the Federal Power Commission that Storm King and Cornwall are without historic sites, any scholar knows they are in the middle of one of the most hallowed areas in American history. Scenic Hudson continues to believe that the installation of a member pumped storage system there will clash with historic as well as scenic and recreational aspects of the region. (Map courtesy of Hudson River Ship Restoration, Inc.)

**Reservoir Leaks Ring Of Gas Turbines Guard City Growing Problem From Summer Electric Breakdowns**

### We're Here To Stay

"Scenic Hudson has pioneered new environmental awareness across the nation for almost a decade. It is going to pursue the fight to save Storm King and its Hudson River setting in the ultimate resolution. "We've been here from the start, and we are here to stay," declared its Chairman, Alexander Stenders. Scenic Hudson needs the help of every one of its supporters now, to get the job completed.

### SHPC Target: Finish River Beautification

"While pursuing legal efforts to save Storm King Mountain from industrialization, Scenic Hudson Preservation Conference is also pushing ahead in its campaign for scenic cleanup of the Hudson River Gorge. This majestic sweep of mountain and river scenery, engrained on the Earth by the last ice age, must be kept in its wild splendor as the heritage of future generations in the middle of America's densest population area. Since the Conference was formed nine years ago to combat efforts to gorge Storm King Mountain for water storage and

### Storm King Campaign Redoubled In Effort

Scenic Hudson Preservation Conference is mounting an all legal front, seeking reversal of Federal Power Commission licensing of the proposed Storm King pumped storage system, and opening a new case against water quality certification of Storm King by New York State.

### Judge Oakes' Strong Dissent Backs Petition

The dissenting opinion handed down by Judge James L. Oakes Oct. 22 when U.S. Circuit Court of Appeals ruled in favor of Federal Power Commission licensing of the proposed Con Edison pumped storage project at Storm King contained many important observations. The FPC's argument that Storm King would "swallow" aesthetic damage of pumped storage "burders on the eye" was rejected. Judge Oakes declared: "This argument 'can be used in justly every situation on nature from strip mining to ocean oil spills. Two scenic views do not necessarily make a right," he continued. "On the basis of the con-

- ▣ July 1965- Scenic Hudson Preservation Conference and various townships petition second Circuit of the Court of Appeals
- ▣ Dec- Court of Appeals reversed and remanded FPC rulings
- ▣ Issue at hand: the pre-licensing proceedings

# Legal Issues

- Legal issues were the main problem
- The FPC had not looked at all factors and had not given thorough attention to possible alternatives for the project
- Dec 29, 1965 Court of Appeals decision was in favor of private citizens
  - Major win and landmark moment
  - Challenge from the minority overcame “public-at-large-interest”

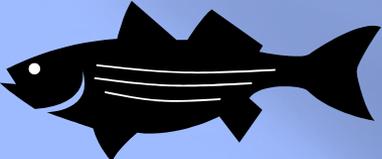




# Politics

- ❑ July 23, 1981- Con Ed was officially defeated by the public's interest in preserving natural resources and ecosystems
- ❑ Solution was a political achievement
  - National support for environmental concerns led to the creation of the **Environmental Protection Agency** by Congress in 1970





# Baby Fish Defeat the Plant

- ▣ EPA and the river's baby striped bass and shad brought Con Ed's plan down
  - EPA learned that existing power plants along the river were killing billions of fish larvae and eggs by sucking them through their cooling systems
- ▣ Dec 1978- Various NY State departments join the Scenic Hudson and Hudson River Fisherman's Association to petition **Federal Energy Regulatory Commission** (replaced FPC) to terminate Con Ed's Storm King license

# Baby Fish Defeat the Plant

- ❑ 1980-EPA was closing in on Con Ed
- ❑ Con Ed reached a settlement with Scenic Hudson
  - They would drop the Storm King project and fund a research program for the ecosystem of the river



# Conservation in the Beginning

- ▣ 1850-1920-first conservation movement takes place in response to use of public natural resources
- ▣ Conservation reached its peak during Theodore Roosevelt's presidency
- ▣ Main concern: to employ a utilitarian effort to use resources in a rational, planned, and orderly procedure

# Conservation in the Beginning



- ▣ Federal government placed proceeds from sale/disposal of land into a newly created special fund for the **Department of the Interior**
  - This money would be used to investigate the construction of irrigation projects for storage and diversion to reclaim arid and semiarid sections of land
  - Additional finances would come from the sale of hydroelectric power



# Preservationist Conservationists

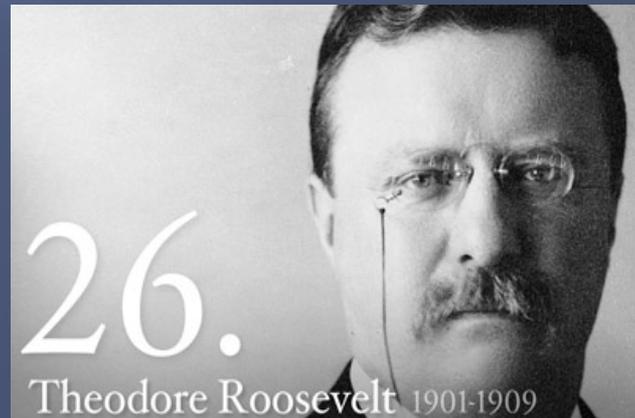
- ▣ John Muir was a well known preservationist in the late 19<sup>th</sup>-early 20<sup>th</sup> C.
  - Founded Sierra Club
  - Set aside land for public use of forests, mountains, and canyons
- ▣ Preservationists believed the beauty of nature was sacred and needed to be protected



# Theodore Roosevelt's Role

- ▣ Near the end of his second term businesses began fighting conservationist efforts
- ▣ Roosevelt sent out a warning

“The government should part with its title only to the actually home-maker, not to the profit-maker who does not care to make a home. Our prime object is to secure the rights and guard the interests of the small ranchman, this actual settler and home-maker, who in the long run is the most hurt by permitting thefts of the public land in whatever form.”



# Federal Power Commission

- ▣ June 10, 1920- Congress passed Federal Water Power Act
  - Gave Federal Power Commission the control of water and land resources



# Federal Power Commission

- ▣ 1935- Roosevelt amends and renames the act the **Federal Power Act**
  - Made the FPC an independent agency and increased authority to curb profit abuse of the public interest by utility companies
  - With the consent of the Senate, Roosevelt appointed 5 men
  - Duty: to deal with navigation improvement, water power development, use of related public lands, and regulation and licensing of electric utility companies that engaged in interstate commerce

# FDR

# 32

Franklin D. Roosevelt 1933-1945

*“I consider this legislation a positive recovery measure... under holding company domination the utility industry has long been hopelessly at war within itself and with public sentiment... The absentee management of unnecessary holding company control has lost touch with and has lost the sympathy of the communities it pretends to serve. Even more significantly, it has given the country as a whole an uneasy apprehension of over-concentrated economic power.”*

# Significance

- ▣ Scenic Hudson was a group of private citizens that was able to file a petition against the FPC without having to present a monetary value for aggravated damage
- ▣ Scenic Hudson was allowed to represent a “public interest”
  - FPC could not just dismiss the petition
- ▣ The win led to the creation of private public interest environmental law

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