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At a Special Term, Part 1 of the Supreme Court of the State of New York, held in and for the County of Albany at the County Courthouse thereof, on the day of ~~May~~ *March*, 1985.

PRESENT:

HONORABLE JOSEPH P. TORRACA
Justice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY: SPECIAL TERM PART 1

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NORTH STAR CONTRACTING CORP. :

Petitioner, :

For Judgment Pursuant To CPLR Article 78 : Index No. 1295/85

- against - :

DEPARTMENT OF PUBLIC SERVICE OF THE STATE OF NEW YORK; the PUBLIC SERVICE COMMISSION; PAUL L. GIOIA, as Chairman of the Public Service Commission; and WILLIAM F. BARNES, as Deputy Secretary of the Public Service Commission, :

Respondents. :

ORDER AND JUDGMENT

ALBANY COUNTY OFFICE OF CLERK
ALBANY, N.Y.
MAY 31 11 58 AM '85

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Upon reading the Notice of Petition and Petition, dated January 18, 1985, the Memorandum of Law, the Reply Memorandum of Law, and the Supplemental Memorandum of Law of Petitioner, North Star Contracting Corp., and upon reading the Verified Answer, dated February 6, 1985, the Memorandum of Law, and the Reply Memorandum of Law of Respondent, Public Service Commission, and upon reading the Notice of Motion to Intervene and Affidavit in Support thereof, dated February 8, 1985, the Affidavit in Opposition of Richard

Giglio, dated February 8, 1985, the Memorandum of Law, the Sur-Reply Affidavit of Bernard C. Barsotti, dated February 22, 1985, and the Sur-Reply Memorandum of Law of Intervenor-Respondent, Consolidated Edison Company of New York, Inc., and after due deliberation having been had, and the Court having rendered its decision on April 24, 1985, it is

ORDERED, that the motion to intervene of Consolidated Edison Company of New York, Inc. is granted and further

ADJUDGED, that the petition of North Star Contracting Corp. for a judgment pursuant to Article 78 of the CPLR is denied.

Judgment signed and entered this *24th* day of May, 1985.
at Kingston, NY

Joseph P. Terraca
JOSEPH P. TERRACA, J.S.C.

St. Guy T. Quinn, CB
5-31-85

OFFICE OF
ALBANY COUNTY CLERK
ALBANY, NY
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

OFFICE OF THE CLERK
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Application of

NORTH STAR CONTRACTING CORP.,

Petitioner,

For judgment pursuant to
CPLR Article 78

-against-

DEPARTMENT OF PUBLIC SERVICE OF THE
STATE OF NEW YORK, the PUBLIC SERVICE
COMMISSION, PAUL L. GIOIA, as
Chairman of the Public Service
Commission, and WILLIAM F. BARNES,
as Deputy Secretary of the Public
Service Commission,

Respondents.

Albany County Special Term, March 1, 1985, Motion No. 10 & 23

(JUSTICE JOSEPH P. TORRACA, PRESIDING)

APPEARANCES:

Hart & Hume, Esqs., Attorneys for Petitioner,
10 East 40th Street, New York, New York 10016

David E. Blabey, Esq., Attorney for the
Respondents, The Public Service Commission,
Three Empire State Plaza, Albany, New York
12223 (Lawrence G. Malone, Esq., of counsel)

Charles E. McTiernan, Jr., Esq., Attorney for
Intervenor - Consolidated Edison Company,
4 Irving Place, Room 1815S, New York, New
York 10003

TORRACA, J.:

Petitioner, North Star Contracting Corp. (North Star),
and Consolidated Edison Company of New York, Inc. (Con Ed),
entered into an agreement in or about August of 1980 whereby

petitioner was to, and thereafter did, perform certain services for Con Ed with respect to reinforcing and reconductoring a steel transmission line. Litigation subsequently arose between the parties which stemmed from the aforesaid work and, in particular, from alleged defects in certain tower cross arms.

Subsequently and on or about September 29, 1983, Con Ed sent a letter to the Department of Public Works of the State of New York (Department) enclosing certain reports which letter was in response to an inquiry by the Department. Thereafter, North Star requested a copy of the aforesaid letter and documents sent to the Department by Con Ed under the Freedom of Information Act. That request was denied, as was the appeal by North Star from such determination.

Petitioner now brings this proceeding pursuant to CPLR Article 78 requesting a judgment vacating and prohibiting the enforcement of the determination of the Public Service Commission which denied petitioner's request and further directing the respondents to give to petitioner copies of the said documents.

Con Ed has requested permission to intervene. That request is not opposed and is, therefore, granted.

After having examined all of the documents submitted by the parties hereto for their respective positions and, in addition, after having examined, in camera, the letter and reports which are the subject of this proceeding, the court has determined the documents which petitioner seeks to examine

were prepared for litigation and, as such, are privileged. In addition, the exemption accorded such privileged documents was not waived by Con Ed when it responded to the direction of the Public Service Commission that it submit its comments and copies of any technical analysis it may have conducted with respect to the report submitted to such Commission by the petitioner. This is true particularly in light of the fact that Con Ed had specifically reserved its privilege when it submitted such documents pursuant to a directive of the Commission.

In view of the foregoing, the petition is denied.

Submit judgment.

Dated: April 24, 1985
Kingston, New York

(Order to be submitted by Charles E. McTiernan, Jr., Esq.).