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AUG 8 1974

Docket No. 50-286

Daniel R. Muller, Assistant Director of Environmental Projects, L
 THRU: G. W. Knighton, Chief, Environmental Projects Branch No. 1, L

PLANNING OF MANAGEMENT MEETING WITH CONSOLIDATED EDISON COMPANY,
 HUDSON RIVER FISHERMEN'S ASSOCIATION AND OTHER INTERESTED PARTIES
 TO BE HELD AT ORNL ON JULY 30-31, 1974

On July 19, 1974, a working meeting was held with T. Row, Project Manager, and W. Fulkerson, Head, Environmental Projects Department, at ORNL to plan for the management meeting for briefing the parties in the Indian Point proceeding to be held on July 30-31, 1974. The July 30-31 meeting was originally proposed by A. Giambusso, Deputy Director for Reactor Projects, at the July 9, 1974 session at PASNY's office to reach a settlement agreement in the Indian Point case. The purpose was to report on the status of the staff's work on the preparation of the FES for Indian Point Unit No. 3, and to assure the parties that the staff is taking a "fresh look" as to its position in the FES as required by the Appeal Board's Decision (ALAB - 188) in the Unit No. 2 hearing and that the staff is not biased in its assessment of environmental impacts as accused by Con Ed in its letter of transmittal of comments on the DES for Unit No. 3, dated December 24, 1973. T. Row expressed his concern that he felt the July 30-31 meeting was premature since the staff has yet to complete its FES for Unit No. 3. D. Muller responded by stating that the purpose is to communicate to management that we are not "dug in" regarding pre-conceived conditions to the OL for Unit No. 3.

Knighton reported who would be attending the July 30-31 meeting. They include representatives from Con Ed, PASNY, NYS Atomic Energy Council, Attorney General's Office, the HRFA and SOS as well as TR.

Two agendas were proposed, one by AEC, and the other by ORNL. Plans were made to accommodate the fact that J. Clark, HRFA witness, would not be available until Wednesday. It was decided to delay detailed discussions of the more important areas of concern (the young-of-the-year model and adult fish model) until Wednesday. The first day would include discussion of the contribution of the Hudson River fishery to the Mid-Atlantic stock, the fish hatchery work and other mitigating measures, thermal effects and a summary of the staff's work on the y-o-y and adult models. To start off the meeting, F. Culler, ORNL, and A. Giambusso would provide introductory remarks and A. Giambusso a summary of the staff's approach to the preparation

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Daniel R. Muller

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of the FES for Unit No. 3. After extensive discussions on the details of each item, the enclosed agenda was agreed upon between ORNL and AEC. It was hoped that a good exchange of ideas and comments would be made by Con Ed, HRFA, and the other parties present. It was further agreed that the session would not be recorded. The intent was to provide an effective and objective presentation of where we stand and where we are going in terms of preparation of the FES for Unit No. 3 and getting ready for a hearing.

Row and Fulkerson also reported that a letter was being sent to A. Giambusso to delay the issuance of the ORNL lab draft for the FES for Unit No. 3 until October 15, 1974.

Fulkerson also provided a copy of a memo to the AEC regarding ORNL concerns on certain remarks about C. P. Goodyear which appear in the Appeal Board Decision on Indian Point Unit No. 2. See Attachment 2.

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Mary Jane Oestmann, Project Manager
Environmental Projects Branch No. 1
Directorate of Licensing

Enclosures:

1. Proposed agenda
2. ORNL Intra-Laboratory Correspondence

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| SURNAME | MJOestmann:mh | G. W. Knighton | | | | |
| DATE | 8/7/74 | 8/8/74 | | | | |

INDIAN POINT BRIEFING
Oak Ridge National Laboratory

AGENDA

Tuesday, July 30, 1974

- 1:00 PM - F. L. Culler, Welcome to all Parties
- 1:10 - A. Giambusso - Executive Summary of Staff Approach
for Indian Point # 3
- Highlights of Meeting Subjects
- 1:25 - R. M. Rush - Introduction of Speakers
- 1:30 - Striped Bass Fishery Supported by Hudson River Stock
- 2:00 - Entrainment and Impingement of Striped Bass -
Young-of-Year Model
- 3:00 - Thermal Questions
- 3:30 - Coffee
- 4:00 - Adult Population Model
- 4:45 - Species other than Striped Bass
- 5:15 - Hatchery Stocking and other Mitigation Techniques
- 6:00 - Adjourn

Wednesday, July 31, 1974

- 8:00 AM - R. M. Rush - Introduction of Speakers
- 8:10 - Adult Population Model - Detailed Discussion
- 9:45 - Coffee
- 10:15 - Young-of-Year Model - Detailed Discussion
- 12:30 - Lunch
- 1:30 PM - Interaction Between Experimental Research and Modeling
- 2:30 - Criteria for Decision Making
- 3:30 - A. Giambusso - Summation Statement

July 17, 1974

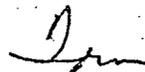
To: Distribution

From: W. Fulkerson
T. H. Row

Subject: Draft Letter Concerning C. P. Goodyear and the ASLAB
Indian Point Unit No. 2 Decision

The attached draft letter reflects the concern of the Environmental Statements Project staff concerning certain remarks about C. P. Goodyear which appeared in the Atomic Safety and Licensing Appeal Board Decision on Indian Point No. 2 ALAB-188. We hope that the sentiments and suggestions expressed in this draft will be transmitted to appropriate people in the AEC. We would appreciate your comments on the draft.

W. Fulkerson



T. H. Row

WF:THR:lg

Attachment

Distribution

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Attachment 2

In a recent Decision regarding Indian Point Unit No. 2 (ALAB-188) the Atomic Safety and Licensing Appeal Board (ASLB) made certain statements which may have damaged the professional reputation of a former ORNL scientist. Examples of these statements are the following:

"The point is that Goodyear's use of the data is worthless to prove anything about the Mid-Atlantic fishery [emphasis supplied by Appeal Board]. With these obvious discrepancies and other similar ones in Goodyear's testimony, we must completely reject his thesis that he has 'proven' that the Chesapeake cannot be a major source of the Mid-Atlantic fisheries." (RAI-74-4, p. 364)

and again referring to the Mid-Atlantic fisheries issue

"His [Goodyear's] conclusion is based on data from which certain numbers were selected on no apparent basis other than to attempt to establish support for a theory."

These statements would be serious enough even if they remained buried in the Docket File. However, they have been rather widely quoted. The Evening Star of Peekskill, New York, on April 16, 1974, quotes both of the above statements apparently on the basis of a press release from Consolidated Edison. Nuclear Industry in its May issue quotes both of these statements under the heading "Good News:."

Whether or not the accusations of illegitimate use of data by Dr. Goodyear are founded or unfounded (we believe they are unfounded), there is a serious issue raised. In effect Dr. Goodyear was accused, tried and convicted by the ASLAB of misrepresenting facts. However as the appeal procedure is set up, he did not have an opportunity to defend himself or to clarify the record with respect to specific accusations made by the Appeal Board, and even now he has no apparent mechanism to vindicate himself relative to the Appeal Board's actions. Thus, the damage to his reputation has occurred without due process.

One of the difficulties in this case is that the ASLAB had to make their judgments on the basis of the voluminous and, to say the least, confusing record of the Indian Point Unit No. 2 hearings before the Atomic Safety and Licensing Board. However, much corroborative and explanatory information concerning the AEC staff position and especially that of Dr. Goodyear was never introduced into the record.

The ORNL and AEC Regulatory Staff have carefully reviewed the Indian Point Unit No. 2 record during the past several months. The conclusion of this examination is that the record is inadequate to challenge the Appeal Board conclusions not only on the Mid-Atlantic fishery issue, but also on the other substantive issues involved. This is not to say that the staff position in the Indian Point Unit No. 2 hearings was wrong on these issues but merely that the record is too incomplete with respect to documentation to support a challenge.

In our continuing evaluation of the Indian Point situation the ORNL team has independently corroborated much of what Dr. Goodyear did, especially relative to the conceptualization of entrainment models. With respect to the Mid-Atlantic fisheries the team concludes that Dr. Goodyear properly raised an important issue, but that the available data are inadequate to establish what fraction of the Mid-Atlantic striped bass fishery is due either to Chesapeake or to Hudson River spawning. In fact, the importance of the issue has been recognized by the applicant, and research sponsored by the applicant is being conducted which may provide answers about the sources of the Mid-Atlantic and New England striped bass fisheries.

In judging what happened at the Indian Point Unit No. 2 hearing it is important to remember the atmosphere in which Dr. Goodyear and others were forced to work. This hearing was an adversary proceeding, and this is an unfamiliar environment to most scientists. Opinions are required on very complex issues for which there is almost never sufficient information. In the case of the Indian Point Unit No. 2 hearing tight deadlines were placed on the preparation of testimony, and often careful peer review could not be obtained under the constraints of these deadlines.

In view of these considerations we regret and deplore the damaging statements made by the Appeal Board. We feel that the statements are grossly unfair and unwarranted. The conclusion of the Appeal Board could have been made without damaging the reputation of Dr. Goodyear. Clearly something needs to be done to protect the rights of staff scientists.

We would argue that the AEC should institute procedures which will prevent the repeat occurrence of an incident like this. For example Appeal Boards should be instructed to keep the personalities involved out of their decisions. In the case of Dr. Goodyear this could have been done easily without reducing the forcefulness of the final conclusions. The Board could have merely referred to the staff position or staff testimony rather than to Dr. Goodyear by name. For those cases where significant intervention or controversy is anticipated we recommend more involvement with the technical staff by OGC attorneys prior to the hearings. This greater involvement by OGC will improve the presentation of the AEC position by the staff. We hope that such procedures will be adopted and that unfortunate incidents such as this one can be avoided in the future.