

UNITED STATES OF AMERICA

ATOMIC ENERGY COMMISSION

COMMISSIONERS:

Glenn T. Seaborg, Chairman
Wilfrid E. Johnson
Samuel M. Nabrit
James T. Ramey
Gerald F. Tape

In the Matter of
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
(Indian Point Station Unit No. 2)

DOCKET NO. 50-247

MEMORANDUM AND ORDER

On October 3, 1966, an atomic safety and licensing board, by initial decision, directed the issuance of a provisional construction permit to Consolidated Edison Company of New York for Indian Point Station Unit No. 2, a pressurized water reactor facility to be located in the Town of Buchanan, Westchester County, New York. On October 21, 1966, the Commission received an "Appeal From Initial Decision, Exceptions and Brief in Support Thereof" from the Conservation Center, Inc. The Conservation Center objects to the board's denial of its petition for intervention and states certain exceptions to the substance of the board's initial decision.

The Conservation Center's petition to intervene was denied by the board for failure to comply with the Rules of Practice of the Commission. See 10 CFR § 2.714. The Center, in its appeal, "assume[s] that untine-

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liness in the presentation of the petition was not a basis for denial since the decision makes no reference thereto." We note that the Center's petition was not properly filed and served upon the parties until the second day of the hearings and that it was opposed, inter alia, on grounds of non-timeliness without adequate justification for late filing. Based on the record presented, denial for this reason was within the ambit of a board's authority under our Rules.

Even if we were to hold that the petition was timely filed, its very general statement of organizational purpose does not set forth an interest of the petitioner in the proceeding which may be affected by Commission action, as required by our Rules. Petitioner asks that we now consider in support of its interest additional matters presented for the first time in an affidavit appended to its appeal. We do not believe this would be appropriate. One seeking intervention should in the first instance set forth before the atomic safety and licensing board the matters on which he relies for a showing of interest. Maintenance of an orderly hearing process and a due regard for the rights of the parties to a proceeding point to this as the proper course. We see no compelling reason for departing from this course in the present case.

Petitioner, in its appeal, emphasizes the importance of public participation in this proceeding and seemingly concludes that this is foreclosed by denial of its petition to intervene. The high degree of importance we attach to appropriate public participation is reflected in our Rules and in our "Statement of General Policy" explaining the procedures the Commission expects to be followed by atomic safety and licensing boards in the conduct of these proceedings. (See, 31 F.R. 832, January 21, 1966; 31 F. R. 12774, September 30, 1966). In the present proceeding we note that

there was participation by representatives of cognizant State and local official bodies. The State of New York participated as a party through its Office of Atomic and Space Development and supported the application. Limited appearances in support of the application were made by the Mayor of Buchanan, the Westchester County Executive and the Council on Science and Technology of the City of New York. Several private persons and organizations also made limited appearances, either for or against the application. We think it further worth observing that when, at the hearing, the deficiencies in the Center's petition were objected to by the parties - the Commission's regulatory staff, the applicant and the State of New York - counsel for the petitioner stated that intervention was only for the purpose of asking an occasional question in the event the proceedings did not cover some of the questions that occurred to the Center's spokesman from the standpoint of representing the public. While each of the parties responded that it would have no objection to the Center's making a limited appearance (see 10 CFR § 2.715) to accommodate this stated purpose, the Center took no action in this regard.

Since the Center is not a party to this proceeding, it has no standing to file exceptions to the board's initial decision. Matter of Pacific Gas and Electric Company, 2 AEC 172, and 2 AEC 173; Matter of Elk River Power Demonstration Reactor Program Project, 2 AEC 245. We believe, in any event, that the record (which includes not only the applicant's presentation but also the review by the regulatory staff and the Advisory Committee on Reactor Safeguards) supports the board's findings and conclusions under 10 CFR Section 50.35(a). Petitioner's exceptions appear premised in large measure upon a

lack of understanding of our two-stage licensing procedure, the scope of information required for a construction permit as contrasted to an operating license, and the function of an atomic safety and licensing board at the construction permit stage. As we stated in our decision of May 6, 1965 in Matter of Jersey Central Power & Light Company, 3 AEC _____:

"* * * Section 50.35 does not require that all design details of the facility must be supplied, nor that at the construction permit stage every safety question shall actually have been satisfactorily resolved.

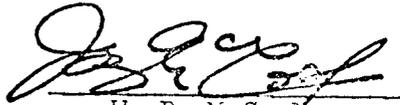
"The board considers the expert analyses, notes any safety questions that remain unresolved, evaluates the research and development program proposed to resolve them, and thereupon comes to an over-all judgment as to whether there is reasonable assurance that the safety issues will be resolved and the proposed facility can be constructed and operated safely."

The foregoing reflects the long-standing approach of the Commission's regulatory process. This approach has received favorable judicial review by the United States Supreme Court (Power Reactor Development Co. v. International Union, et al., 367 U.S. 396) and has also been carefully reviewed by the Congress through the Joint Committee on Atomic Energy. (See, Improving the AEC Regulatory Process, Joint Committee Print, 87th Congress, 1st Session, March, 1961; see also, Power Reactor Development Co. v. International Union, et al., supra, at pp. 408-409). We are satisfied from our review here that the proceedings below meet the cited standard.

It is ORDERED that the appeal be denied in all respects.

Dated: December 20, 1966

By the Commission.


W. B. McCool
Secretary