



UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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

Docket No. 50-247

(Suppl)

*10-14-66
circulated as
AEC-R 135/4*

APPEAL FROM INITIAL DECISION,
EXCEPTIONS AND BRIEF IN SUPPORT
THEREOF.

NOTICE OF APPEAL

Petitioner Conservation Center, Inc., hereby appeals from the initial decision issued in this proceeding by the Atomic Safety and Licensing Board (hereinafter referred to as "ASLB"), on October 3, 1966, granting a provisional construction permit to Consolidated Edison Company of New York, Inc. for the construction of a pressurized water reactor designed to operate at 2,758 MWT, located at Indian Point, Westchester County, New York and petitioner further appeals from the ruling and order of the ASLB denying petitioner's application for leave to intervene.

APPELLANT'S SPECIFICATIONS
ON APPEAL.

Appellant herein specifically takes exception to the following portions of the initial decision of the ASLB:

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1. To the denial of appellant's petition for intervention (I. D. p. 4).

2. The finding that the petition to intervene did not comply with the Rules of Practice of the Commission (I. D. p. 4).

3. The finding that the petition to intervene did not set forth the interest of the petitioner in this proceeding; that it did not show its interest which may be affected by Commission action and that it did not state petitioner's objections (I. D. p. 4).

4. The assumption by ASLB that the report of the Advisory Committee on Reactor Safeguards (hereinafter referred to as "ACRS") concluded, that there is reasonable assurance that the proposed facility can be constructed and operated without undue risk to health and safety of the public (I. D. p. 10).

5. The assumption by ASLB, that ACRS concluded, that architectural and engineering details can be developed during construction, so as to provide assurance (when and if the facility is ultimately authorized for operation), that it can be done without undue risk to health and safety of the public (I. D. p. 14).

6. The finding that Con Ed has supplied sufficient information to warrant the issuance of a provisional construction permit (I. D. p. 17).

7. The finding by ASLB that there is reasonable assurance that the proposed facility can be constructed and operated without undue risk to the health and safety of the public and its direction that a provisional construction permit issue pursuant to Section 104 b of the Act (I. D. p. 15, 17-19).

ARGUMENT IN SUPPORT OF
EXCEPTIONS 1 TO 3.

Petitioner herein filed an affidavit with the ASLB alleging that it was a non-profit Delaware corporation, organized to help and protect the health, welfare and safety of the public in the Hudson River Valley Basin and other areas of the United States, where blight and pollution are present dangers; that Commission action in this proceeding permitting the construction and operation of the atomic reactor proposed affects its interest. Said affidavit did not in greater detail disclose that petitioner's members reside in the immediate area of the proposed site. Petitioner therefore appends hereto an affidavit of its director, identifying its members who reside in the area of the proposed construction site, which would be directly affected by Commission grant of the application to construct and operate said facility and begs leave that the appended affidavit be made a part of the record of this proceeding.

Denial of intervention is stated by ASLB to be because of the failure to comply with the Rules of Practice, without specifying which Rules were not complied with.

We assume that untimeliness in the presentation of the petition was not a basis for denial since the decision makes no reference thereto. The initial decision does point to the contentions of the participants, that there was no showing of petitioner's interest, how that interest was affected by Commission action and the failure to state the contentions of the petitioner.

PETITIONER'S INTEREST IN THE
PROCEEDING WHICH MAY BE AFFECTED
BY COMMISSION ACTION IS ADEQUATELY
DEMONSTRATED.

The Atomic Energy Act USCA Title 42 Section 2239 provides:

"In any proceeding, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding and shall admit any such person as a party to such proceeding."

Part 2 of the Rules of Practice of the U. S. Atomic Energy Commission Section 2.714 provides:

"(a) Any person whose interest may be affected by a proceeding and who desires to participate as a party shall file a written petition * * *. The petition shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by Commission action, and the contentions of the petitioner."
(underscoring ours)

The petition, the oral contentions advanced by counsel and the supplemental affidavit appended hereto, disclose adequate factual basis for a finding of existing interest.

We call attention of this Commission to the case of International Union of Electrical Radio and Machine Workers, AFL-CIO, etc. v. Atomic Energy Commission, et al, wherein this Commission granted the labor union leave to intervene, upon a showing that some of its members lived in the area of the proposed site for the construction of an atomic reactor. The proceedings that followed thereafter culminated in the decision of the United States Supreme Court (Power Reactor etc. v. International Union of E & W, 81 Supreme Court, 1529; 367 U. S. 396).

Petitioner herein, seeking intervention on its own behalf and on behalf of its members who live in the area of the proposed site for construction, are in the position similarly situated to those of the members of the International Union of Electrical Workers.

In any event, it is submitted that the Congressional intent, as expressed in the Development and Control Act of Atomic Energy (USCA Title 42 Section 2239), is to permit any person whose interest may be affected to become a party

to this proceeding. If denial of intervention is because the members of Conservation Center, Inc. have not personally and individually petitioned for intervention, then it would seem to be inconsistent with well established principles of statutory and common law, that members of a class too numerous to be made parties to a litigation may sue or appear by one or several of the class, and represent and bind the class.

It is respectfully submitted that the denial of the petition for intervention here is not supportable under the provisions of the Atomic Energy Act and the Rules of this Commission; that it is contra to decision law applicable.

Substantial justice requires that petitioner, representing a group of residents and property owners in the area affected, be heard on the question of undue risk to their health and safety.

ARGUMENT IN SUPPORT
OF EXCEPTIONS 4 TO 7.

The findings, that there is reasonable assurance that the facility can be constructed without undue risk to health and safety, is not supported by the record.

The initial decision finds that the site proposed is in the most densely populated area of the United States; that it is adjacent to an operating atomic nuclear facility; that

it fronts on the Hudson River into which polluted liquid will be discharged from said facility as well as the existing generating plant. It is recognized that in the event of a serious accident, radioactive material could be transported upstream as far as the New York City Chelsea Water Pumping Station and beyond. The proposed pressurized water reactor is designed to operate at 2,758 MWT. It is materially different in design construction and capacity from any other nuclear plant so far designed and constructed for peaceful use. There is a lack of experience in the construction and operation of such a reactor. The report of ACRS and the findings of ASLB disclose the following innovations of the proposed reactor:

"Most of these items are within the range of established technology and engineering practice. The others will be the subject of a development program proposed by Con-Ed. The development of the final design of the containment and the accident mitigating components will be carefully followed by the AEC Staff as recommended by the ACRS."

The initial decision quotes and adopts the report of ACRS relative to the safety injection systems for flooding the core in the event of a pipe rupture in the primary system, noting that an increase in the flow capacity is a necessity; that changes and improvements of design and construction in other areas of the facility are called for and that the

regulatory staff of AEC and ACRS would require review of final proposed changes prior to irrevocable commitment on construction. Both ACRS and ASLB recognize that it is required to further reduce the probability of rupture of the primary system and that applicant should engage in studies of new design and fabrication of the entire primary system to provide for maximum protection against accidents; all of which are to be reviewed by ACRS and the AEC staff.

The gravity of the foregoing proposals for changes and improvements is reflected in the following statement of the initial decision:

"These requests by ACRS that further data, particularly in reference to emergency core cooling systems and pertinent structural members within the pressure vessel, be made available for its review '...prior to irrevocable commitments relative to construction of these items.', reflect a concern not heretofore expressed in ACRS reports."
(underscoring ours) (I. D. p. 12)

Notwithstanding the foregoing, ASLB concludes that applicant will in the normal course report as to its progress in developing new design and technology; that it is the duty of ASLB only to consider the technical design presented; that the recommended changes relating to safety standards were not under the Rules of the Commission relevant in the determination of the issue presented to ASLB.

In making the ultimate finding that the proposed facility can be constructed and operated without undue risk to health and safety of the public, ASLB completely ignored its findings and the report of ACRS, to the effect that architectural and design criteria involving construction of emergency core cooling systems, provision for an increase in the flow system and the safeguard of pertinent structural members within the pressure vessel, the need for providing new design and fabrication techniques for the entire primary system to reduce the possibility of primary system rupture; the need to design and to provide for in-service inspection methods to detect incipient trouble in the entire primary system during reactor operation and to detect leakage and to otherwise provide for maximum protection against serious accidents, subject to review of all of these vital matters by AEC and ACRS.

In effect, the Board completely abdicated its function of passing upon the safety element of the new design and techniques to be developed by the applicant in the construction of the facility. The Board justified its position by engaging in an exercise of semantics in stating:

"The review by the Atomic Safety and Licensing Board is limited to a consideration of those criteria and technical design features which have been presented and which in the Board's opinion are adequate to provide reasonable assurance that the proposed facility can be constructed and operated without undue risk to the health and safety of the public. The Rules of the Commission permit the Board, upon making that finding, to authorize in its initial decision the issuance of a provisional construction permit." (I. D. p. 13, 14)

It is clear that ASLB's findings of serious inadequacies in the design and construction of the facility relating to safety and its recommendations for study and submission of new design and techniques to overcome the probability of serious accidents, is wholly inconsistent with its ultimate finding that:

" . . . there is reasonable assurance that the proposed facility can be constructed and operated without undue risk to health and safety of the public." (I. D. p. 15)

The Atomic Energy Act imposes an affirmative duty upon this Commission to regulate construction and operation of power reactors in a manner which will assure the health and safety of the public. The Board determined that issue improperly by misinterpreting its powers and functions. This Commission, at this stage of the proceeding, has not sufficient proof that it has reasonable assurance that the reactor may be constructed and operated at the proposed site without undue risk to health and safety of the public.

CONSTRUCTION AND OPERATION OF THE
PROPOSED REACTOR, INVOLVES UNUSUAL
HAZARD CONSIDERATIONS, FOR WHICH
NO EXPERIENCE EXISTS. THE COMMISSION
SHOULD, IN THE INTEREST OF PUBLIC
SAFETY, PERMIT INTERVENTION AND
DIRECT FURTHER HEARINGS ON ALTERNATIVE
SITES AND THE CONSTRUCTION OF THIS
REACTOR UNDERGROUND.

This facility differs from any of the other reactors in many respects. It is the largest reactor so far designed. It is experimental and the site is in a densely populated area.

Under the circumstances, public intervention in this proceeding should not be lightly denied. Unanticipated natural phenomena such as floods or other catastrophic incidents have not been considered as safety hazards. Petitioner desires an opportunity to present proof on this phase of safety hazards.

The Advisory Committee on Reactor Safeguards recommended in 1966 that sudden catastrophic failure of a pressure vessel previously classified as an incredible accident and one that need not be taken into account in reactor safety determinations, should be reclassified as a possible accident hazard and that future nuclear power station plans, design to provide against such possible consequences. Petitioner desires an opportunity to present proof on this phase of safety hazards.

In view of the large population within the area of twenty-five miles of the proposed site, exceeding ten million,

would it not be proper to consider an area with less density of population?

As stated by Dr. Edward Teller, in the Journal of Petroleum Technology, May 1965:

"A nuclear reactor could put its radioactive poison under a stable inversion layer and concentrate onto a few hundred square miles in a truly deadly fashion."

A major atomic plant accident at Indian Point 2, only twenty-five miles from the largest city in the world, would present untold loss of life and destruction of property. Evacuation of the population could not be resorted to if New York City is within the impact area.

Petitioner and others interested in the subject matter, lay and expert, point to a safety element in constructing atomic reactors underground. This alternative has not been considered or passed upon by the Board.

The 1962 AEC Report to Congress, page 114, says:

"Nuclear power could also improve our defense posture; it would not burden the transportation system during national emergencies; furthermore, the 'containment' required for safety reasons could, if desired, be achieved at little, if any, extra cost by underground installation, thus 'hardening' the plants against nuclear attack."

It is the purpose of petitioner to offer expert proof that underground construction would constitute a great safety measure in case of accident.

To be shut off from presenting this form of proof is completely inconsistent with the intent of the Congressional Act and the public needs of the situation. It seems that denial to intervene was seized upon, in order to foreclose public participation on this all important proposal, which affects the health and safety of so many people.

CONCLUSION

THE INTERESTS OF JUSTICE REQUIRE THAT
PETITIONER BE GRANTED LEAVE TO INTERVENE
AND THAT IT BE PERMITTED TO OFFER SUCH
PROOF AS IS PERTINENT TO THE ISSUE OF
WHETHER THE FACILITY CAN BE OPERATED
WITHOUT UNDUE RISK TO HEALTH AND
SAFETY OF THE PUBLIC.

Respectfully submitted,

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