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UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.)

(Indian Point Station Unit No. 2))

Docket No. 50-247

AEC REGULATORY STAFF ANSWER TO JOINT MOTION OF
CITIZENS COMMITTEE FOR THE PROTECTION OF THE ENVIRONMENT AND
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. FOR A RULING
ON APPLICANT'S OBJECTION TO CERTAIN QUESTIONS POSED BY
THE CITIZENS COMMITTEE FOR THE PROTECTION OF THE ENVIRONMENT

Introduction

On March 16, 1971, Citizens Committee for the Protection of the Environment (Committee), an intervenor in this matter, and Consolidated Edison Company of New York, Inc. (applicant) filed a joint motion requesting a ruling by the presiding atomic safety and licensing board (board) on applicant's objections to certain questions posed by the Committee. The questions pertain to such subjects as availability of power from Indian Point 2 to meet anticipated demand, the availability of alternatives to the operation of Indian Point 2, and estimated costs of specified modifications to Indian Point 2. These questions arose in the course of the informal discovery procedure adopted by the applicant, certain intervenors, and the regulatory staff, in an effort to expedite the hearing on applicant's application for an operating license for the Indian Point Unit 2 facility. The positions of applicant and the Committee were further elaborated in oral argument at the conference-type hearing on March 24, 1971 (Tr. 534-564).

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Discussion

In summary, we understand the position of the Committee to be that the questions asked of the applicant are relevant to the safety issues being considered by the board. The applicant, on the other hand, asserts in effect that the questions are not relevant to the issues specified in the Notice of Hearing for this proceeding.

It is understood that both the applicant and the Committee base their respective positions with respect to the propriety of these questions on the Atomic Energy Act of 1954, as amended, quite apart from the separate question of how the National Environmental Policy Act of 1969 should be applied in this proceeding, and seek a resolution of the matter in the context of the former Act.

The Atomic Energy Commission (Commission) specified the issues for consideration in this proceeding in the "Notice of Hearing on An Operating License" (35 F.R. 11769, November 17, 1970). Broadly stated, the primary issues to be tested are whether the facility was constructed in conformity with the construction permit, and whether said facility can be operated without endangering the health and safety of the public.

It is apparent that to permit broad inquiry into the matters embraced by all of the disputed questions would unduly enlarge the scope of the hearing contemplated by the Commission. Neither the Commission nor the board is charged under the Atomic Energy Act of 1954, as amended (Act),

or the Commission's regulations, with the responsibility of making broad public interest determinations,^{1/} e.g. as to whether the operation of Indian Point 2 would be best adapted to serve the public interest in the availability of reliable, efficient sources of electric power. Indeed, for steam electric plants, this fundamental decision is one which is normally made at the State level in a decision as to whether the public convenience and necessity would be served by the construction and operation of a proposed facility, be it nuclear or fossil. This reservation to the States of economic regulation is expressly recognized in the Act.^{2/}

1/

Cf. New Hampshire v. AEC, 406 F2d 170 (1969) which recognized the specialized, comparatively narrow jurisdiction of the Commission.

2/

Section 271 (42 USC 2018) which provides:

"Nothing in this Act shall be construed to affect the authority or regulations of any Federal, State, or local agency with respect to the generation, sale, or transmission of electric power produced through the use of nuclear facilities licensed by the Commission: Provided, That this section shall not be deemed to confer upon any Federal, State, or local agency any authority to regulate, control, or restrict any activities of the Commission."

See also S. Rep. No. 390, 89th Cong., 1st Sess., p. 4 (1965) on P.L. 89-135 Amending Section 271 wherein the Joint Committee on Atomic Energy referred to the

"uneasiness among the drafters of the (original 1954) legislation over the effect of the new law upon other agencies - Federal, State, and local - having jurisdiction over the generation, sale, and transmission of electric power. It was recognized by the drafters that the authority of these other agencies with respect to the generation, sale, and transmission of electric power produced through the use of nuclear facilities was not affected by this new law; and that AEC's regulatory control was limited to considerations involving the common defense and security and the protection of the health and safety of the public with respect to the special hazards associated with the operation of nuclear facilities." (emphasis supplied).

It is a familiar precept that the propriety of a line of questioning may depend on what is sought to be established through the questions. It is possible that during the course of the hearing there may arise controverted matters upon which the board may appropriately pass, which could involve consideration of the estimated costs of specified modifications. Obviously such considerations might relate to the matter of applicant's financial qualifications; however it is our understanding that none of the intervenors contest applicant's financial qualifications.

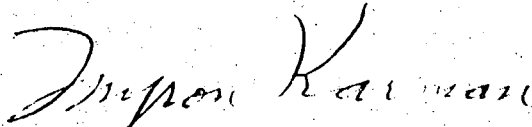
The Committee's questions appear to us to be unduly broad, not clearly related to the issues specified by the Commission for hearing in this matter, and not shown to be related to a proper inquiry on a particular matter of fact or question of cause for prompt action. To allow broad ranging inquiry into these matters would enlarge the scope of the hearing beyond that ordered by the Commission.

This proceeding does not necessarily encompass such issues as (a) how costly the safety features are, (b) whether there are other ways of producing the same power, or (c) a general inquiry into the need for power. We would urge that as to any question of the nature under discussion, the Committee be required to show relevance to a particular matter in controversy properly before the board. The board could then rule upon each such question.

Conclusion

For the reasons stated above, and on the present state of the record, we are opposed to the position stated by the Committee and support, to the extent noted, the applicant's position that a response is not required to the broad ranging questions posed.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Myron Karman". The signature is fluid and cursive, with the first name "Myron" being more prominent than the last name "Karman".

Myron Karman
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland
this 2nd day of April, 1971

