

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

RESPONSE OF AEC REGULATORY STAFF TO MOTION OF THE CITIZENS
COMMITTEE FOR THE PROTECTION OF THE ENVIRONMENT WITH RESPECT TO
THE CITIZENS COMMITTEE FOR THE PROTECTION OF THE ENVIRONMENT
CHALLENGE TO VALIDITY OF THE INTERIM CRITERIA

On June 21, 1972, the Citizens Committee for the Protection of the Environment ("CCPE") filed a motion requesting rulings by the presiding Atomic Safety and Licensing Board ("Board") on two questions relating to consideration of challenges to the Commission's interim acceptance criteria for emergency core cooling systems (36 F.R. 12247, June 29, 1971). The motion criticizes the rulings on such challenges contained in the Memorandum and Order issued the preceding day by the Atomic Safety and Licensing Appeal Board in the Vermont Yankee proceeding^{1/} and states that CCPE wishes "to preserve the issue for purposes of subsequent Court appeal if that becomes necessary." CCPE indicates that the purpose for its motion is "to set forth in one place the Citizens Committee for the Protection of the Environment's position

^{1/} In the Matter of Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), Docket No. 50-271, Atomic Safety and Licensing Appeal Board, Memorandum and Order, June 20, 1972.

on the challenge to the interim criteria and to have the Board rule on it so that the record will be clear."

We believe that CCPE's request for rulings is excessively ambiguous^{2/}; we also agree with applicant's response dated June 23, 1972, that CCPE's brief "summary" does not simply reiterate its previous contentions and does not accurately reflect prior dispositions of related motions. Nonetheless, we believe we understand the basic points of CCPE's challenges and our response is accordingly addressed to the merits of CCPE's request based on such understandings.

The staff would have no objection to the issuance of rulings by the Board in this proceeding on the questions posed by CCPE's motion,

^{2/} One of the requested rulings is on "whether a challenge to the validity of the Interim Criteria on the two grounds stated will be allowed?". The two grounds are said to be "stated." However, in intervenor's recitation of background, there are five differently phrased statements of grounds:

"CCPE then contended...that the interim criteria were invalid because the procedures by which they were adopted were illegal..." (p. 2);

"And because their adoption by the Commission was an abuse of discretion, i.e. was arbitrary and capricious and contrary to fact." (p. 2);

"CCPE continued to press its contention that the interim criteria were factually erroneous..." (p. 2);

"CCPE now renews and reiterates its contention that it should be permitted in the proceeding to demonstrate that application of the ECCS interim criteria to this plant is illegal because:

1. The regulations were not validly adopted
2. If the regulations were applicable to Indian Point No. 2, the requirements of the Atomic Energy Act of 1954 regarding protection for the public health and safety will not be met." (p. 3)

consistent with the governing rules of the Commission and decisions of the Commission and the Appeal Board, including the decision of the Appeal Board in the Vermont Yankee case, cited above, and the earlier decision of the Appeal Board in this proceeding on CCPE's earlier challenge to the ECCS criteria.^{3/} We would agree with CCPE that such precedent is now so clear on these basic points, that rulings on the questions posed are virtually self-evident and would require little in the way of briefing and argument. Such rulings should be in the negative.

The Memorandum dated March 10, 1972, of the Appeal Board in this proceeding on the questions certified by the Licensing Board is dispositive of CCPE's challenge to the interim criteria on the grounds that the regulations were not validly adopted because the procedures by which they were adopted were illegal (which challenge is more fully described in the Appeal Board Order and in the pleadings and briefs referred to in such Order). The Appeal Board ruled that the Commission had complied with applicable statutory requirements in issuing the challenged rule.

The June 20, 1972, Memorandum and Order of the Appeal Board in the Vermont Yankee proceeding is dispositive of CCPE's second grounds of

^{3/} In the Matter of Consolidated Edison Company of New York (Indian Point Station, Unit No. 2), Docket No. 50-247, Atomic Safety and Licensing Appeal Board, Memorandum, March 10, 1972.

challenge that, on the basis of the data contained in the record of the National ECCS hearings,^{4/} the application of the ECCS interim criteria to this plant is illegal (because the requirements of the Atomic Energy Act of 1954 regarding protection for the public health and safety will not be met). The Appeal Board there held that the Licensing Board in that case should not consider such challenges to the interim criteria.

If the ambiguity of phrasing in CCPE's request is intended to cover other new challenges, to this extent the motion should be denied for vagueness and for its untimeliness in this proceeding.

We believe that rulings along the lines outlined by the staff will not only dispose of the question of whether the challenges raised with respect to the interim criteria will be allowed, but will also enable the Board to accordingly dispose of the questions concerning official notice set forth in CCPE's June 21, 1972, request for rulings and prior requests for official notice not yet acted upon.

Respectfully submitted,

Thomas F. Engelhardt

Thomas F. Engelhardt
Chief Hearing Counsel

Dated at Bethesda, Maryland,
this 3rd day of July, 1972

^{4/} In the Matter of Rulemaking Hearing, Acceptance Criteria for Emergency Core Cooling Systems for Light-Water-Cooled Nuclear Power Reactors, Docket No. RM-50-1.

Leonard M. Trosten, Esq.
LeBoeuf, Lamb, Leiby & MacRae
1821 Jefferson Place, N.W.
Washington, D.C. 20036

Chairman, Atomic Safety and Licensing
Board Panel
U. S. Atomic Energy Commission
Washington, D.C. 20545

Chairman
Atomic Safety and Licensing Appeal
Board
U.S. Atomic Energy Commission
Washington, D.C. 20545

Mr. Frank W. Karas
Chief, Public Proceedings Branch
Office of the Secretary of the
Commission
U. S. Atomic Energy Commission
Washington, D.C. 20545

Thomas F. Engelhardt
Thomas F. Engelhardt
Chief Hearing Counsel