

BEFORE THE UNITED STATES

ATOMIC ENERGY COMMISSION

In the Matter of)
)
Consolidated Edison Company) Docket No. 50-247
of New York, Inc.)
(Indian Point Station, Unit)
No. 2))

6-23-72

APPLICANT'S RESPONSE TO MOTION OF CITIZENS COMMITTEE
FOR THE PROTECTION OF THE ENVIRONMENT WITH RESPECT
TO ITS CHALLENGE TO VALIDITY OF THE ECCS INTERIM CRITERIA

On June 21, 1972, the Citizens Committee for the Protection of the Environment ("CCPE") filed a motion seeking rulings by the Board on two questions, in light of the Memorandum and Order of the Atomic Safety and Licensing Appeal Board, dated June 20, 1972, in the matter of Vermont Yankee Nuclear Power Corp. (AEC Docket No. 50-271). The purpose of CCPE's motion allegedly is "to set forth in one place the Citizens Committee for the Protection of the Environment's position on the challenge to the interim criteria and to have the Board rule on it so that the record will be clear." (Page two of CCPE motion.)

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Applicant objects to the Board's issuing a ruling addressed specifically to CCPE's motion. The Board is bound to issue an Initial Decision which will include rulings on material issues of fact and law presented on the record (10 CFR 2.760 and 50.57(c)). The Board's rulings will therefore deal with CCPE's legal and factual contentions which have not already been disposed of. In so doing, the Board will abide by rulings contained in applicable decisions of the Atomic Safety and Licensing Appeal Board, including those dealing with the interpretation, applicability and validity of the AEC's Interim Acceptance Criteria for Emergency Core Cooling Systems for Light Water Power Reactors ("ECCS Interim Criteria").^{1/} Those decisions now make it abundantly clear that the Board is not to allow an attack in this proceeding on the ECCS Interim Criteria.

^{1/} In the Matter of Consolidated Edison Co. (Indian Point Station, Unit No. 2), Dkt. No. 50-247, Memorandum, Atomic Safety and Licensing Appeal Bd., March 10, 1972; id. Memorandum and Order, April 14, 1972; In the Matter of Vermont Yankee Nuclear Power Corp., Dkt. No. 50-271, Memorandum and Order, Atomic Safety and Licensing Appeal Bd., June 20, 1972; In the Matter of Wisconsin Elec. Power Co. (Point Beach Unit 2), Dkt. No. 50-301, Memorandum and Order, Atomic Safety and Licensing Appeal Bd., May 25, 1972.

Had CCPE simply restated its previous arguments and correctly stated the facts in its most recent submission, the motion would have been merely a superfluity. However, in its anxiety about shoring up its legal position in the event of future litigation involving the ECCS Interim Criteria, CCPE has intentionally or unintentionally obfuscated the issues and facts presented herein. The record in its proceeding speaks for itself and CCPE's self-serving "summary" thereof cannot change it. Nevertheless, in order that Applicant's principal objections to CCPE's characterization of the record may be clear to the Board, they are set forth below.

1. The Board has never determined that a "substantial question" was presented by CCPE's legal and evidentiary challenge to the validity of the ECCS Interim Criteria. Instead, on December 7, 1971, the Board, after considering CCPE's legal arguments and evidentiary submissions in support of the challenge, posed two issues to the Atomic Safety and Licensing Appeal Board. One of these was a legal question concerning the immediate effectiveness of the ECCS Interim Criteria and the other was a question of

interpretation of the meaning of these Criteria. Both of these questions were answered in the ASLAB's Memorandum of March 10, 1972, and reaffirmed in the ASLAB's Memorandum and Order of April 14, 1972.

2. CCPE has, from time to time, requested that official notice be taken of various documents or portions thereof. The exact facts of which CCPE requested that official notice be taken have constantly changed and both the Board and the parties have been confronted with a veritable kaleidoscope as CCPE sought to trim its sails to catch every stray breeze emanating from the ECCS rulemaking proceeding. Applicant has consistently objected to official notice being taken in response to CCPE's various requests on the grounds that such requests were contrary to applicable law and regulations.

3. CCPE never called as its own witness in support of its challenge to the ECCS Interim Criteria an employee of the AEC or one of its contractors who authored one of the documents in question, although there was more than ample opportunity for CCPE to have done so. Instead, CCPE was content to cross-examine witnesses for Applicant and the Regulatory Staff.

4. CCPE has never identified the portions of the record of the ECCS rulemaking proceeding which it desires to have included in the record of the Indian Point 2 hearing.

5. Prior to the handing down of the ASLAB decisions referred to on page two above, CCPE was given a full opportunity by the Board to demonstrate that the ECCS Interim Criteria are invalid for the reasons contended by CCPE in its previous submissions, ^{2/} i.e., "because the procedures by which they were adopted were illegal and because their adoption by the Commission was an abuse of discretion, i.e., was arbitrary and capricious and contrary to fact." CCPE has failed to support its position by its legal arguments and the evidence presented.

6. To the extent that CCPE's contention on page three of its motion that "application of the ECCS interim criteria to this plant is illegal because . . . [i]f the regulations are applied to Indian Point No. 2, the requirements of the Atomic Energy Act of 1954 regarding

^{2/} Page 2 of motion. See also finding number 5 of CCPE's proposed findings of fact and conclusions of law, dated February 8, 1972.

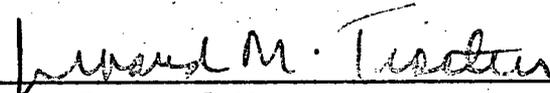
protection for the public health and safety will not be met" differs from the contention referred to in section 5 above, it is utterly untimely and may not be countenanced in this proceeding. If this contention is simply an ambiguously worded restatement of CCPE's previous argument, Applicant's position is as stated in section 5 above.

Accordingly, Applicant urges the Board to disregard CCPE's motion as redundant, moot and untimely and proceed to issue an Initial Decision in accordance with 10 CFR 2.760 and 50.57(c).

Respectfully submitted,

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By



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Dated: June 23, 1972