BEFORE THE
UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	No. 50-247
CONSOLIDATED EDISON COMPANY	)	
OF NEW YORK (Indian Point,	)	
Unit No. 2)	)	
	)	

THE CITIZENS COMMITTEE FOR THE PROTECTION
OF THE ENVIRONMENT MOTION WITH RESPECT
TO THE CITIZENS COMMITTEE FOR THE PROTECTION OF THE
ENVIRONMENT CHALLENGE TO VALIDITY
OF THE INTERIM CRITERIA

On June 20, 1972, the Atomic Safety & Licensing Appeal Board issued a Memorandum and Order in the Matter of Vermont Yankee Nuclear Power Corp. (Docket No. 50-271) respecting the right of an intervenor to challenge the factual validity of the interim criteria. That order is in clear violation of the applicable administrative law and makes a mockery of the Supreme Court's holding in the cases of United States v. Storer Broadcasting Co., 351 U.S. 192, 204-5 (1956) and Federal Power Commission v. Texaco, 3-7 U.S. 33 (1964). The remedy lies either with the Commission pursuant to Section 2.786 or with the Courts pursuant to Section 189a of the Atomic Energy Act of 1954.

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There is no point in rearguing the issue in this proceeding inasmuch as the same Appeal Board, infected with the same erroneous theory, will be the reviewing body. We do however wish to preserve the issue for purposes of subsequent Court appeal if that becomes necessary. The purpose of this Motion 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. A brief history of events is pertinent.

The Citizens Committee for the Protection of the Environment initially challenged the safety of the plant, including the effectiveness of the ECCS. Prior to presentation of its case on this particular issue, the AEC adopted interim criteria for ECCS for which the applicant and staff were required to submit supplemental analyses relating those criteria to this plant. CCPE then contended, pursuant to the Calvert Cliffs doctrine, that the interim criteria were invalid 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. The procedural challenge was deemed by this Board to raise a "substantial question" and the matter was certified. The Appeal Board disagreed. CCPE continued to press its contention that the interim criteria were

factually erroneous and sought to introduce data to demonstrate their factual invalidity. This attempt to introduce data included a request that official notice be taken of certain documents, alternatively that expert witnesses who are employees of the AEC and its contractors and who authored the documents be called to testify and alternatively that pertinent portions of the record of the National ECCS hearing be incorporated by reference in these proceedings which would include the testimony of the authors of the pertinent documents. No action has been taken on these requests.

CCPE now renews and reiterates its contention that it should be permitted in this 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 are applied 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.

To establish its contention CCPE seeks to include in this record certain data contained in documents and in the transcript of the National ECCS hearing. The documents have been previously identified. The pertinent portions of the National ECCS hearing, including

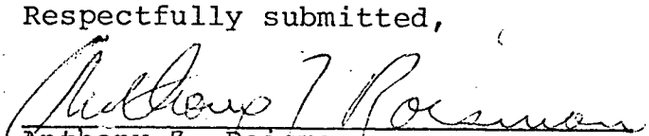
certain documentary exhibits, have not been identified pending a Board determination that evidence on the challenge will be received (which decision will now not be forthcoming in light of the Vermont Yankee order). This evidence, if received, would have established that the Commissions adoption of the interim criteria was an abuse of discretion because it failed to provide adequate assurance for the protection of the public health and safety.

We believe disposition of this motion should be made without the filing of any briefs or extensive argument by any party including CCPE and should only allow brief replies and avoid unnecessary paperwork. All that is requested is that the Board issue a clear ruling consistent with the interpretation of the law to which it is bound, indicating:

1. Whether a challenge to the validity of the Interim Criteria on the two grounds stated will be allowed?

2. Whether the request for official notice of documents and alternatively for the calling of witnesses, and alternatively for the incorporation by reference of certain data in the record of National ECCS hearing will be allowed in aid of the challenge.

Respectfully submitted,



Anthony Z. Roisman
BERLIN, ROISMAN AND KESSLER
1712 N Street, N. W.
Washington, D. C.

Counsel for the Citizens Committee
for the Protection of the Environment

June 21, 1972