



DOCKET NUMBER
EROD. & UTIL. EAC. 50-247

BEFORE THE
UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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

12-10-71

Docket No. 50-247

BRIEF OF NEW YORK STATE ATOMIC ENERGY
COUNCIL IN OPPOSITION TO REQUEST THAT
OFFICIAL NOTICE BE TAKEN OF PORTIONS
OF VERMONT YANKEE TRANSCRIPT

The New York State Atomic Energy Council opposes the request of the Citizens Committee for the Protection of the Environment that the Board take official notice of evacuation and emergency plans for Vermont and for the Towns of Guilford and Vernon and of statements of Vermont officials describing details of emergency plans, as contained in the transcript of proceedings of October 15, 1971, in the matter of Vermont Yankee Power Station, docket number 50-271.

The general rules of admissibility require that evidence must be relevant and material (10 CFR, Part 2, Section 2.743[c]). All evidence must satisfy these requirements. It is submitted that the proposed evidence of Vermont's evacuation and emergency plans and the statements of Vermont officials describing details of those plans are neither relevant nor material.

Under 10 CFR, Part 50, Section 50.34(a), applicant is required to include in its final safety analysis report plans for coping with emergencies. Appendix E of 10 CFR, Part 50, establishes minimum requirements for emergency plans. Part III of Appendix E states that the details of the plans and

8111040505 711210
PDR ADOCK 05000247
G PDR

hearing

their implementation need not be included, but requires a description of specified elements to an extent sufficient to demonstrate that the plans provide reasonable assurance that appropriate measures can and will be taken in the event of an emergency to protect public health and safety and prevent damage to property. Part IV of Appendix E specifies the elements to be described in the plan. The applicant and the State of New York have placed in evidence emergency plans for protecting persons and property in the area of the plant for which applicant seeks an operating license. The material issue to which those plans are relevant is whether the applicant has complied with the requirements set out in Appendix E by developing plans for coping with emergencies at the site of the proposed facility which contain the required elements, described to an extent sufficient to provide the required assurance.

Whether the applicant in the Vermont Yankee proceedings has developed plans for coping with emergencies at that site that comply with the same requirements is not a material issue in this proceeding; nor are the plans by which that applicant and the State of Vermont attempt to comply with those requirements relevant to the material issue of compliance with Appendix E in this proceeding. The standard against which the applicant's and New York's emergency plan must be measured is Appendix E, not what plans a different applicant and some other state have developed for emergencies at another site. It is submitted that even if the Vermont plans and testimony were offered as real evidence and sworn testimony in this proceeding, they would be inadmissible because of their lack of relevancy and materiality.

Even if we assume that evidence of the Vermont plans need not be relevant and material, official notice cannot properly be taken of the record of the Vermont Yankee proceeding.

The Citizens Committee seeks official notice of the facts regarding the Vermont plans on the ground that they are contained in a transcript of a Commission proceeding which is a Commission record. In support of this, they cite as authority, Davis, Administrative Law Treatise, Section 1506, and cases cited there, particularly United States v. Pink, 315 U.S. 203 (1942). In Pink, the court took notice of the record of another case involving an identical issue, the effect of a single Russian decree of nationalization. The other cases cited in Davis each disclose a close interrelationship between the proceedings, interrelationships involving identities of factual issues, witnesses or parties to be bound by the evidence.

The portion of the Vermont Yankee transcript of which Citizens Committee seeks official notice discloses no such interrelationships. The only interrelationship, besides being both ASLB hearings, is that in each case the material issue was whether the emergency plan developed for the particular site complied with Appendix E. of 10 CFR, Part 50, an issue requiring different proof for each of the two different locations. Unlike Pink, there is not a single issue in which the proof in one proceeding is of equal probative value in the other so that no other proof is required. Here no such interrelationship exists. The request

for official notice should be denied.

Respectfully submitted,

J. Bruce MacDonald, Deputy
Commissioner & Counsel
New York State Atomic Energy
Council

By _____

Bruce L. Martin, Assistant
Counsel
New York State Atomic Energy
Council

DATED: December 10, 1971

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC. (Indian Point,
Unit No. 2)

Docket No. 50-247

I hereby certify that copies of "Brief of New York State Atomic Energy Council in Opposition to Request that Official Notice be Taken of Portions of Vermont Yankee Transcript" have been served upon the following by deposit in the United States mail, first class, on December 10, 1971.

Samuel W. Jensch, Esq.
Chairman
Atomic Safety & Licensing
U.S. Atomic Energy Commission
Washington, D.C. 20545

J.D. Bond, Esq.
Alternate Chairman
Atomic Safety & Licensing
18700 Woodway Drive
Derwood, Maryland 20752

Dr. John C. Geyer, Chairman
Department of Geography and
Environmental Engineering
The Johns Hopkins University
Baltimore, Maryland 21218

Arvin E. Upton, Esq.
Leonard M. Trosten, Esq.
Lex K. Larson, Esq.
LeBoeuf, Lamb, Leiby & MacRae
1821 Jefferson Place, N.W.
Washington, D.C. 20036

Edward J. Sack
Consolidated Edison Company of
New York, Inc.
4 Irving Place
New York, New York 10003

Mr. R.B. Briggs
Molten Salt Reactor Program
Oak Ridge National Laboratory
P.O. Box Y
Oak Ridge, Tennessee 37830

Honorable Louis J. Lefkowitz
Attorney General of New York
80 Centre Street
New York, New York
Attention: Paul S. Shemin, Esq.

Angus McBeth, Esq.
Natural Resources Defense Council
36 W. 44th Street
New York, New York

Mr. Stanley T. Robinson, Jr.
Chief, Public Proceedings Branch
Office of the Secretary
U.S. Atomic Energy Commission
Washington, D.C. 20545

Myron Karman, Esq.
Office of the General Counsel
U.S. Atomic Energy Commission
Washington, D.C. 20545
Mail Station: P 506 A

Anthony Z. Roisman, Esq.
Berlin, Roisman, Kessler
1910 N. Street, N.W.
Washington, D.C. 20036

J. Bruce MacDonald

