

1/15/73

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))

BEFORE THE ATOMIC SAFETY
AND LICENSING APPEAL BOARD

APPLICANT'S ANSWER OPPOSING INTERVENOR'S
REQUEST FOR CONSOLIDATION OF HEARINGS
WITH RESPECT TO FUEL DENSIFICATION

By a document dated January 8, 1973, Citizens Committee for the Protection of the Environment ("CCPE") requested that the Indian Point 2 and the Point Beach 2 proceedings be consolidated with respect to the subject of fuel densification. In support of this request, CCPE alleges that the consolidation of fuel densification constitutes a generic issue with regard to pressurized water reactors using pre-pressurized fuel. CCPE then applies its creative logic and alleges that since both Indian Point 2 and Point Beach 2 are pressurized water

reactors supplied by Westinghouse Electric Corporation ("Westinghouse"), the hearings with respect to fuel densification for these two facilities should be consolidated.

CCPE fails to demonstrate good cause for consolidation. In addition, CCPE's characterization of the matter of fuel densification in the Indian Point 2 and Point Beach 2 proceedings is wrong. Furthermore, consolidation of these two proceedings would not "be conducive to the proper dispatch of [the Commission's] business and to the ends of justice."^{1/} Rather, consolidation would be an unwarranted inversion of the orderly processes mandated by the Commission's Rules of Practice resulting in a morass of premeditated confusion. Applicant requests that CCPE's motion for consolidation be denied for the reasons set forth below.

^{1/}

Indeed, the Commission in Section 2.785 of its Rules of Practice has not specifically delegated the power to consolidate to an Atomic Safety and Licensing Appeal Board.

I.

Intervenor's Motion Does Not
Demonstrate "Good Cause" For
Consolidation

CCPE has failed to demonstrate "good cause" for the consolidation of the Indian Point 2 and the Point Beach 2 proceedings as required by the Commission's Rules of Practice.^{2/} CCPE specifically states that "[t]he basis for granting this motion is that the November 14, 1972 Staff Report on Fuel Densification makes clear that this is a generic problem which is certainly common to all PWR's using pre-pressurized fuel."^{3/} CCPE neglects to appreciate, however, that although the matter of fuel densification may be generally applicable to pressurized water reactors, the matter for potential consideration in individual licensing proceedings is the effect of fuel densification on the operation of a particular facility. The mere presence of a matter which may generally relate to several reactors does not require consolidation. Furthermore, CCPE appears

^{2/}
10 C.F.R. § 2.716.

^{3/}
Intervenor's motion at 4.

to assert that "the essential commonality of the fuel densification issues for both plants ..."^{4/} is "good cause" for the consolidation of these proceedings. Consolidation may be appropriate when similar issues are to be considered. But this is not the situation in the two cases for which CCPE requests consolidation.

At the outset, in neither the Indian Point 2 nor the Point Beach 2 proceedings has the issue of fuel densification been delineated. On January 8, 1973 CCPE requested informal discovery from the Regulatory Staff on matters relating to fuel densification.^{5/} On the same date CCPE filed a statement setting forth radiological safety subjects which it considers "outstanding and unresolved". At no time, however, has CCPE raised specific contentions relating to the matter of fuel densification. In addition, at no time has CCPE presented an adequate basis for its presumption

^{4/}

Intervenor's motion at 4.

^{5/}

Letter from Anthony Z. Roisman to Myron Karman, Jan. 8, 1973.

that an issue is outstanding for which a hearing is required.^{6/}

In any event, "a wide-open review of the 'Ginna fuel problem'" would be improper. In Point Beach the Appeal Board has clearly stated "that the remand [to the Licensing Board] did not call for a wide-open review of the 'Ginna fuel problem', but rather involved only the ascertainment of the effect of the problem on this particular reactor"^{7/} If the phenomenon of fuel densification were considered to be a proper issue in a particular licensing proceeding, appropriate consideration would be in terms of the effect of fuel densification on the operation of a particular reactor.

Therefore, for CCPE to allege that issues in the two proceedings are similar is erroneous. Not only have the issues in the two proceedings not yet been determined, but the issues, if any, would by necessity reflect the differences

^{6/}

In fact, the record in this proceeding indicates the contrary. See Tr. 6191-99.

^{7/}

Wisconsin Elec. Power Co. (Point Beach Nuclear Plant, Unit 2) ALAB-70 (Jan. 11, 1973) at 10. See also id. at 13-14, 19.

in the design parameters of the two facilities. Among these differences are not only the fuel rod array, the number of coolant loops, the number of fuel assemblies, the number of fuel rods and control rods and even the enrichment of the fuel and power rating of the facilities, but also the initial density of the fuel pellets and the initial internal pressure.^{8/} The effects of fuel densification on power capability depend upon these design parameters. The differences demonstrate that consideration of these different parameters must include different facts and different issues.

^{8/}

Wisc. Elec. Power Co., FSAR, para. 1.4 at 1.4-1 to 1.4-10; Consolidated Edison Co. (Indian Point Station, Unit 2), Application for a Special Nuclear Material License, Table 1, Oct. 6, 1973. In its application for a special nuclear material license, Applicant requested authorization to receive, possess and store the core, as refabricated, at Indian Point 2. Refabrication of the Indian Point 2 core has resulted in some changes of the parameters for Indian Point 2 as set forth in the Point Beach 2 FSAR.

II.

Consolidation Would Not Be Conducive
to the Proper Dispatch of the
Commission's Business Nor to the
Ends of Justice

Contrary to CCPE's assertions, consolidation would result in delay and confusion.^{9/} Even a cursory review of the posture of these two proceedings illustrates the untenability of CCPE's request.

The evidentiary hearing on environmental matters for a full-term, full-power operating license for Indian Point 2 is underway. The Licensing Board has recently scheduled the presentation of redirect-rebuttal testimony

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In addition, applying the concept of consolidation as outlined by CCPE to the Indian Point 2 and the Point Beach 2 proceedings raises a myriad of additional legal questions. How can discovery, specification of issues, evidence, and cross-examination proceed in joint fashion when the issues to be considered would be quite different? What review will be available and when? Would a Consolidated Hearing Board have authority to issue a joint decision? If not, how does one avoid the problem of contradictory decisions by the individual Licensing Boards? What effect would a joint decision have in the individual proceedings?

and further sessions of the environmental hearing.^{10/} At this time CCPE has not filed contentions relating to radiological matters beyond those which were adjudicated by the Atomic Safety and Licensing Board in its order of July 14, 1972 authorizing a 20 percent testing license for Indian Point 2. Applicant's analysis has not been filed and the Regulatory Staff has not completed its review. The Appeal Board in the Point Beach proceeding, in contrast, has recently issued an order authorizing the issuance of an interim license for operation at 75 percent of full-power and confirming its expectation that the Point Beach proceeding would be complete by March 1, 1973.^{11/}

^{10/}

Tr. 8462-64. At the hearing session held on January 12, 1973 the Chairman of the Licensing Board stated that "in view of the several conflicts that seem to be existing at the moment, it appears that the first available date for a continuous session of hearings would be on March 5, 1973;"

^{11/}

ALAB-70.

To attempt to correlate the schedules for these proceedings at this time would result in utter confusion. Coupled with the inevitable weave of inapposite issues, consolidation would delay rather than advance the proceedings.

III.

Conclusion

CCPE's motion for consolidation neither follows the procedural directives nor contains the substantive requisites set forth in the Commission's Rules of Practice. CCPE has not demonstrated "good cause" for consolidation and, in fact, CCPE's argument has demonstrated that consolidation would cause delay, confusion and inconvenience. Consolidation of the Indian Point 2 and the Point Beach 2 proceedings would not be conducive to the proper dispatch of the Commission's business nor to the ends of justice.

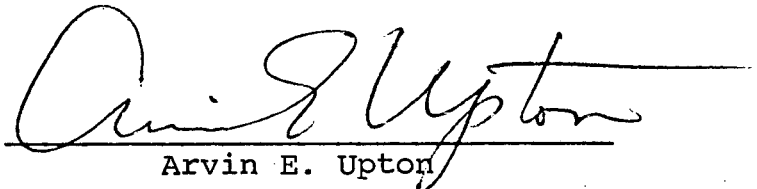
CCPE's motion for consolidation should be denied.

Respectfully submitted,

LEBOEUF, LAMB, LEIBY & MACRAE
1821 Jefferson Place, N.W.
Washington, D. C. 20036

Attorneys for Consolidated Edison
Company of New York, Inc.

By


Arvin E. Upton
Partner

Dated: January 15, 1973