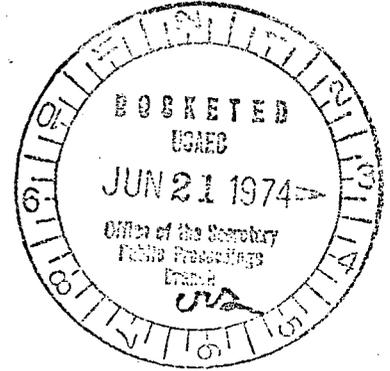


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UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

COMMISSIONERS:

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In the Matter of

CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.

(Indian Point Station, Unit No. 2)

Docket No. 50-247

MEMORANDUM AND ORDER

On April 4 and April 25, 1974, the Atomic Safety and Licensing Appeal Board issued decisions (ALAB-188, RAI-74-4, p. 323, ALAB-197R, RAI-74-4, p. 473) affirming, with certain modifications, an initial decision authorizing issuance of a full-power operating license for Unit No. 2 of the Indian Point facility.^{1/} We review two aspects of those decisions pursuant to 10 CFR 2.786.

I. Adequacy of the Security Plan

The Commission's facility safeguards program -- designed to deter and prevent sabotage of and theft from nuclear reactors -- deals with an area of

^{1/} Because ALAB-197R discussed pertinent details of the Indian Point security plan, distribution of the decision was restricted to the parties themselves. See 10 CFR 2.790(d). In ALAB-202 (RAI-74-5 _____), the Appeal Board released for publication an edited version of ALAB-197R; omitting the specifics of the Indian Point security plan.

serious concern to the public and to this agency. New regulations in this area were recently adopted. Operators of nuclear reactors must adopt and follow AEC-approved security plans. 10 CFR 50.34(c), 73.40. To guide license applicants and licensees in the development of an adequate security program, the Commission has issued Regulatory Guide 1.17, "Protection of Nuclear Power Plants Against Industrial Sabotage." The Guide endorses American National Standards Institute Standard N18.17, which includes recommendations on control of access to plant sites, selection and training of personnel, monitoring of security equipment, and design of plant features. The Guide goes beyond the ANSI Standard in providing for on-site armed guards, continuously manned alarm stations, specifications for intrusion alarms, equipment testing, and protection of vital equipment through automatic indication of inoperability and other design features.

The safeguards program is under continuous review for possible improvement not only by the Commission itself, but also in conjunction with other governmental agencies, industrial organizations, university researchers, private research establishments, and scientific organizations. The Commission has underway a number of studies for the development of new technology and improved techniques for safeguarding special nuclear material. These studies are concerned with, among other things, effectiveness of current safeguards, determination of threats to be protected against, and methods for improving the safeguards program. We review the safeguards aspects of the Appeal Board's decision in this case from this perspective.

The adequacy of the applicant's security plan has been a contested

^{2/} issue throughout this proceeding. The plan was the subject of extended in camera hearings. The Licensing Board found that the applicant was taking "appropriate industrial security measures for the facility." The Board did, however, "find reason for some of the questions and concerns" of the intervenor Citizens Committee for the Protection of the Environment (CCPE), specifically referring to selection and training of security guards and testing the capabilities of local police forces to respond to emergency situations. Issuance of a license authorizing interim testing was conditioned on the applicant's completing its plan to the satisfaction of the staff. Initial Decision dated July 14, 1972, TID-26300, at 53.

Subsequent to the hearings and initial decision in this case, we adopted new regulations concerning plant security. 10 CFR 50.34(c) (effective December 6, 1973) and 73.40 (effective March 6, 1974). In light of these developments and the fact that the Licensing Board's disposition of plant security issues contemplated further development and implementation of the applicant's security plan, the Appeal Board before which the matter was then pending called for additional information from the applicant and the regulatory staff. Copies of submissions from the applicant and the regulatory staff were directed to be served on CCPE, and CCPE was given an opportunity to and did comment on those submissions. ALAB-177, RAI-74-2,

^{2/} CCPE raised four separate exceptions pertaining to plant security. Our primary concern is with exception 18, which generally questions the adequacy of the Indian Point plan. Exception 21 is subsumed under exception 18, as we deal with it here. We find no error in the Appeal Board's disposition of exceptions 19 and 20.

p. 153.

The Appeal Board thereafter rendered ALAB-197R, concluding that "the regulatory staff must take prompt action to assure that certain aspects of the applicant's physical security plan are augmented" and listed six areas of specific concern. The Board also took note of the staff's representation to it -- in response to ALAB-177 -- that it was "reevaluating the applicant's security plan for its Indian Point Station as a whole from the standpoint of Commission regulations, published subsequent to the . . . initial decision." The staff stated that the plan would be "upgraded to conform to the provisions of Regulatory Guide 1.17 within a reasonable time." The Appeal Board concluded by directing that corrective action be taken promptly by the applicant, in consultation with the staff, with respect to its listed areas of concern. The staff was requested to report to the Board "when these matters have been resolved to its satisfaction and in what manner," and to serve its report on CCPE and the applicant.

Thereafter, on May 1, 1974, the applicant submitted a substantially revised security plan for the Indian Point Station to the regulatory staff, and a copy was sent to CCPE.

The precise procedures to be followed subsequently in this case were left unclear by the Appeal Board. As noted previously, however, the Board requested the staff to report to it concerning modifications of the security plan, with copies to be served on CCPE and the applicant. In view of the procedure it adopted in ALAB-177, we assume that the Board intends to afford CCPE a reasonable opportunity to be heard on the staff's report and

the adequacy of the revised security plan. Such an opportunity is clearly required where, as here, the issue has been contested throughout the proceeding, the subject bears significantly upon public health and safety, and the record will presumably reflect substantial changes.^{3/}

Next we consider the current status of the plant. The Appeal Board -- two of whose members are nuclear scientists -- considered and rejected a request by CCPE that the reactor be shut down immediately because of alleged deficiencies in the security plan. We have also considered and rejected that course because we perceive no serious and immediate threat to public safety in the circumstances of this case. Compare Consumers Power Co. (Midland Plant, Units 1 and 2), RAI-74-1-7, at pp. 10-12. The Licensing Board noted that "the design and arrangement of the plant provide substantial assurance that acts of sabotage will not cause the plant to go into an unsafe condition." TID-26300, at 53. That Board also found that the "reactor protection system is designed to shut down the plant automatically and put it in a safe shutdown condition if a safety limit is exceeded." Id. Moreover, while we do not at this juncture pass judgment on the merits of the applicant's newly revised security plan (cf. Consumers Power Co. (Midland Plant, Units 1 and 2), RAI-73-12-1082,

^{3/} See Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 2), RAI-73-1-6; Consumers Power Co. (Midland Plant, Units 1 and 2), RAI-73-9-636. Such an opportunity to be heard may or may not include a remand to the Licensing Board for further evidentiary hearings. The written submissions of the parties to the Appeal Board may be adequate to resolve the issues. See Consumers Power Co., supra.

at 1084), it is apparent that the plan has been substantially upgraded in response to the Appeal Board's expressions of concern. In addition, we note that this plant is authorized to utilize only low enrichment fuel.^{4/} Furthermore, in remanding this matter to the Appeal Board for further proceedings, we are directing expeditious action. In these circumstances, a shutdown of this operating facility pending resolution of plant security questions would be unwarranted. See Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-185, RAI-74-3-240, at 241-242.

II. Resolution of the Freezer-Dryer Problem

The Licensing Board reopened the record and convened an additional evidentiary hearing to give further consideration to quality assurance matters, including the manner in which certain incidents described in inspection reports, filed after the record was originally closed, had been resolved. The Board found the applicant's quality assurance program to be satisfactory. The Board also stated that (RAI-73-9, at 756):

"The board is generally satisfied with the manner in which abnormal occurrences have been handled during the testing of Unit No. 2 but has concerns regarding the present status of the resolution of the problem with the freezer-dryer in the air supply for the control valves. Resolution of the problem involved raising the set point on the temperature control for the freezer-dryer and making design studies of a system that would automatically bypass the freezer-dryer

^{4/} Plutonium, formed during irradiation of fuel rods, exists only in combination with highly radioactive fission products, thereby minimizing the potential for diversion. Under newly adopted regulations (10 CFR 73.50), plants authorized to utilize highly enriched uranium or plutonium fuels are subject to more stringent security requirements.

in the event of another freeze-up. At present, however, the Staff inspection report indicates that a freeze-up would cause a total failure of the air system of Unit No. 2. The Board directs the Staff to be certain before a license is issued under this Initial Decision that all necessary measures have been taken to prevent another freeze-up of the freezer-dryer or to assure that such an event will not interrupt the air supply. On this basis the Board concludes that the matter is satisfactorily resolved."

In an exception before the Appeal Board, CCPE charged the Licensing Board with "removing contested items from the hearing and leaving them to post-decision resolution," citing the Licensing Board's disposition of the freezer-dryer problem. The Appeal Board rejected CCPE's exception, stating that (RAI-74-4, at 337):

The record in this proceeding simply does not support the serious charge by CCPE that the Licensing Board removed the freezer-dryer or any other contested issue from the proceeding and left it for post-decision resolution.

Although the Appeal Board referred to the fact that the freezer-dryer problem had been the subject of testimony at the reopened hearings in which CCPE participated, it appeared to rely primarily upon a regulatory staff memorandum report filed after the initial decision.^{5/}

This brief memorandum report reflects the staff's satisfaction with resolution of the freezer-dryer problem, but it provides no supporting detail. It was not accompanied by the detailed field inspection report upon which it was apparently based. Indeed, that report was not prepared in final form until later.^{6/} CCPE had no opportunity to controvert either the memorandum or the underlying report.

^{5/} Memorandum from James P. O'Reilly to J. G. Davis dated September 28, 1973.

^{6/} RO Inspection Report No. 50-247/73-18, dated October 10, 1973.

Here, as with the plant security issue, CCPE should be afforded a reasonable opportunity to controvert the staff's post-decision submissions concerning the freezer-dryer problem. See footnote 3, supra. However, the present record, particularly the expert testimony at the quality assurance hearing,^{7/} indicates that the present status of the freezer-dryer matter poses no threat to safety. Accordingly, we decline to suspend the effectiveness of the outstanding operating license pending prompt resolution of this matter.

III. Post-Hearing Resolution of Contested Issues

Our review of the plant security and freezer-dryer issues leads us to discuss the procedure whereby licenses issue after adversary proceedings, while certain issues are left for the staff to resolve following the hearings. As a general proposition, issues should be dealt with in the hearings and not left over for later (and possibly more informal) resolution. See this Commission's decision in Wisconsin Electric Power Co. (Point Beach Unit 2), RAI-73-1, p. 6. In some instances, however, the unsolved matter is such that Boards are nevertheless able to make the findings requisite to issuance of the license.^{8/} But the mechanism of post-hearing resolution

^{7/} Transcript at 11507, 11739-42.

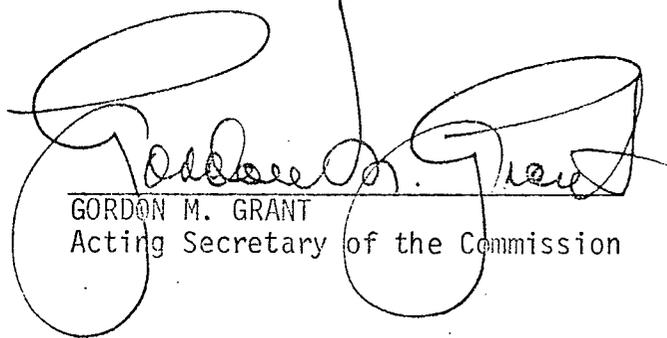
^{8/} For example, a Board might, after hearing, find an applicant's security plan adequate, except for minor procedural deficiencies. In such a case, the Board could choose to authorize issuance of a license -- with the deficiencies to be subsequently cured under the scrutiny of the Director of Regulation.

must not be employed to obviate the basic findings prerequisite to an operating license -- including a reasonable assurance that the facility can be operated without endangering the health and safety of the public. 10 CFR 50.57. In short, the "post-hearing" approach should be employed sparingly and only in clear cases. In doubtful cases, the matter should be resolved in an adversary framework prior to issuance of licenses, reopening hearings if necessary.

This case is remanded to the Appeal Board for further proceedings consistent herewith. The Board is directed to resolve expeditiously the questions we have raised.

It is so ORDERED.

By the Commission.



GORDON M. GRANT
Acting Secretary of the Commission

Dated at Washington, D.C.

this 21st day of June, 1974.

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CONSOLIDATED EDISON COMPANY OF)
NEW YORK, INC.)

(Indian Point Nuclear Generating)
Unit No. 2))

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