

May 30, 1974 *Reg Central*

UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of )

CONSOLIDATED EDISON COMPANY OF )  
NEW YORK, INC. )

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

Docket No. 50-247

AEC REGULATORY STAFF  
RESPONSE TO CITIZENS COMMITTEE FOR  
PROTECTION OF THE ENVIRONMENT MOTION TO  
REOPEN THE RECORD

On May 14, 1974, the Citizens Committee for Protection of the Environment (CCPE), an intervenor in subject licensing proceeding, filed a motion to reopen the record on the basis of the content of a draft internal working paper developed by the regulatory staff in April 1973, dealing with population considerations in the siting of nuclear power plants.

As indicated in the CCPE motion the referenced internal working paper has not been formalized as a regulatory guide or adopted as a regulation by the Commission. At the very outset of this response it must be emphasized that the intervenor does not allege that the Indian Point facility is not in compliance with the Reactor Site Criteria established by the Commission in 10 CFR Part 100. The extensive hearing record in this proceeding indicated compliance with the reactor site criteria of Part 100.<sup>1/</sup>

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<sup>1/</sup> In the Matter of Consolidated Edison Company of New York, Inc. (Indian Point Station Unit No. 2) - Initial Decision - July 14, 1972 - TID - 26300 - Page 45; Staff Safety Evaluation, pages 7-9 (follows TR-405) - FSAR, Section 2.2.

*Hearing*

CCPE argues that the staff was under an obligation to present testimony on the contents of the internal working paper during the hearing in this proceeding. The staff urges that it is unnecessary and would be unwise to obligate the staff to bring forth in any hearing internal working papers which are in reality budding ideas which have not been put to the test of review. The internal working paper was part of a thought process, and a mechanism for exploring and formulating a possible new approach to the regulatory process. The effort involved was in the context of consideration of a generic problem and thus was in effect part of the Commission's rulemaking process.

The Vermont Yankee proceeding<sup>2/</sup> cited by CCPE in support of its position concerning the use of the internal working paper in this proceeding is not relevant. In that case the Appeal Board continued the practice of service of documents on the parties after the hearing had been terminated. The staff urges that the internal working paper which is the subject of this motion is not in the same category as the usual document intended in the Appeal Board decision. The other case cited by CCPE in this regard, namely the Shearon Harris proceeding<sup>3/</sup> which deals with the failure to

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<sup>2/</sup> In the Matter of Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station) - ALAB-179, RAI-74-2, p. 159 at 183 - February 28, 1974.

<sup>3/</sup> In the Matter of the Carolina Power & Light Company (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4) ALAB-184, RAI-74-3, p. 229 at 237 - March 18, 1974.

notify an intervenor in a construction permit hearing of the filing of an exemption application, is not pertinent to the issue at hand.

With respect to the question as to whether the record should be reopened it must be noted that the internal working paper was dated April 17, 1973. The Commission issued draft guides for public comment in December 1973. It hardly behooves counsel for CCPE to allege surprise at this time. The Vermont Yankee decisions<sup>4/</sup> established standards for remand or reopening. The basic prerequisites are timeliness and the merits of the question. The staff position is that the instant motion is not timely and that the motion does not possess the merit which would militate towards a reopened hearing.

The internal working paper and proposed guideline do not in any way attempt to define an upper limit on acceptable population distribution around a nuclear power plant site. These guidelines were intended for future applications for construction permits and the purpose is to better define those situations, such as occurred in Newbold Island (a construction permit application), in which population distribution around a proposed site becomes a factor which should be carefully

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<sup>4/</sup> In the Matter of Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station) ALAB-124, RAI-73-5, p. 358 at 363-367 - May 23, 1973 and ALAB-126, RAI 73-6, p. 393-397 - June 8, 1973.

considered in comparing the impact of reactor operation at alternative available sites. Thus, the major purpose of these siting guidelines would be to define a guideline value or values for population distribution which would necessitate a careful consideration by an applicant and the AEC regulatory staff of the availability and suitability of alternative sites having lower population densities. There is therefore a construction permit and operating license distinction in the guidelines which clearly does not apply to the Indian Point 2 proceeding. The thrust of the internal working paper is related to environmental cost-benefit considerations of alternative sites, and is not a safety related issue.

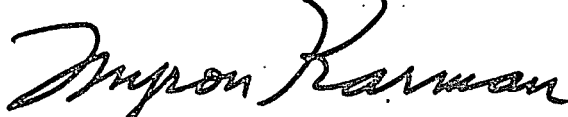
The Commission, in its Memorandum and Order in the Midland proceeding<sup>5/</sup> acting on intervenors request based on changed economic circumstances, denied a petition to reopen the proceedings and stated "It is almost inevitable that particular facts may change in complex cases like this one between the close of administrative hearings, final agency action, and judicial review. This is especially true in the case of economic costs, which always reflect the impact of inflation. If such changes were to trigger rehearings, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening".

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<sup>5/</sup> In the Matter of Consumers Power Company (Midland Plant, Units 1 and 2) CLI-74-7, RAI-74-2, p. 147-148 - February 5, 1974.

For the reasons discussed above we urge the Appeal Board to deny the motion to reopen the record.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Myron Karman". The signature is fluid and cursive, with the first name "Myron" written in a larger, more prominent script than the last name "Karman".

Myron Karman  
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland  
this 30th day of May, 1974.

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CONSOLIDATED EDISON COMPANY	)	Docket No. 50-247
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(Indian Point Nuclear Generating	)	
Station, Unit No. 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "AEC REGULATORY STAFF RESPONSE TO CITIZENS COMMITTEE FOR PROTECTION OF THE ENVIRONMENT MOTION TO REOPEN THE RECORD", dated May 30, 1974, in the captioned matter, have been served on the following by deposit in the United States mail, first class or air mail, this 30th day of May, 1974:

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I

CCPE's Motion is Impermissible Under  
the Commission's Rules of Practice

In its motion CCPE appears to request the Appeal Board to direct the Licensing Board to determine whether the record in this proceeding should be reopened. (CCPE's motion at 7-8). This request is impermissible under the Commission's Rules of Practice. The Commission's Rules specifically provide a proper remedy which CCPE has ignored.

On April 4, 1974 the Appeal Board issued a final decision in this proceeding pursuant to 10 C.F.R. Sections 2.770 and 2.785(a). CCPE did not file a petition for reconsideration of that decision within the prescribed period and is now precluded from filing with the Commission a petition or other request for Commission review.<sup>2/</sup> The jurisdiction of the presiding officer in this proceeding has been terminated.<sup>3/</sup>

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<sup>2/</sup>

10 C.F.R. § 2.786(b). The Appeal Board has extended the period for the Regulatory Staff to file a petition for reconsideration relating to particular environmental matters. Consolidated Edison Co. (Indian Point Station, Unit No. 2), ALAB-198 (Apr. 25, 1974).

<sup>3/</sup>

10 C.F.R. §§ 2.717(a), 2.785(b).



Consistent with applicable judicial decisions, the Commission's Rules assure that protracted adjudicatory administrative proceedings must come to an end.<sup>4/</sup> A request to the Director of Regulation under 10 C.F.R. Section 2.206 is the proper remedy for Atomic Energy Commission action subsequent to the issuance of the final decision in this proceeding.<sup>5/</sup>

## II

### CCPE's Motion is Untimely

Assuming arguendo that CCPE's motion is properly before the Appeal Board, the motion should be denied because CCPE is guilty of gross laches.

CCPE's allegation (CCPE's motion at 3) that the Regulatory Staff's working paper on plant siting<sup>6/</sup> is a

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<sup>4/</sup>  
See, e.g., United States v. ICC, 396 U.S. 491 (Feb. 2, 1970); see also Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-162, RAI-73-12 at 1139, (Dec. 4, 1973).

<sup>5/</sup>  
CCPE is certainly aware of this provision. CCPE Petition Pursuant to Section 2.206 for Order to Show Cause Why Operating Authority for Indian Point Nos. 1 and 2 and Construction Authority for Indian Point No. 3 Should Not Be Revoked, AEC Docket Nos. 50-3, 50-247, 50-286, May 22, 1974.

<sup>6/</sup>  
Population Distribution Around Nuclear Power Plant Sites, Apr. 17, 1973.

"newly disclosed document" is false. Although the AEC formally publicized the Staff's document on April 9, 1974<sup>7/</sup> the substance of the document was first reported in the press more than one year ago.<sup>8/</sup> Furthermore, the document has been a subject of controversial testimony presented in the reactor safety hearings held in January 1974 by the Joint Committee on Atomic Energy.<sup>9/</sup> Now, more than a year after the initial press reports of the Staff's document, more than a month after public availability of the document<sup>10/</sup> and more than a month after the Appeal Board's principal decision denying CCPE's exceptions to the September 25, 1973 initial decision of the Atomic Safety and Licensing Board, CCPE finally has decided to inquire into this subject.

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<sup>7/</sup>

AEC Release No. T-160.

<sup>8/</sup>

See, e.g., 14 Nucleonics Week, May 10, 1973 at 1. The population criteria reported in this article are similar to those set forth at page 4 of the Proposed Regulatory Guide.

<sup>9/</sup>

"Statement by Ralph Nader Before the Joint Committee on Atomic Energy," Jan. 28, 1974 at 10-12; see also 15 Nucleonics Week, Jan. 31, 1974 at 1. CCPE's attorney, incidentally, is representing Mr. Nader in a pending judicial proceeding, Nader v. AEC, No. 73-1872 (D.C. Cir.).

<sup>10/</sup>

See ALAB-138, supra note 1, at 526.

III

CCPE's Motion Fails to Present a Matter  
of Major Significance to the Safety of  
the Indian Point 2 Facility

CCPE's motion, which is not supported by any affidavit, fails to raise a matter of "major significance <sup>11/</sup> to plant safety." Instead, CCPE mischaracterizes the scope and meaning of the Staff's working paper in an attempt to mold the facts to the Vermont Yankee criteria and to reargue issues which have already been determined in this proceeding.

The Licensing Board, the Appeal Board and the Commission have all rejected CCPE's argument that population density is a matter of "special safety significance" requiring additional safety measures for Indian Point 2. <sup>12/</sup> CCPE, however, now proffers the Staff's document in order to support CCPE's stale argument. CCPE's position is untenable.

The Staff's document does not present a matter of major significance to the safety of Indian Point 2. More

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<sup>11/</sup>

ALAB-124, supra note 1, at 365.

<sup>12/</sup>

Commission Memorandum and Order, CLI-72-29, TID-26300 at 20 (Oct. 26, 1972); ALAB-188 at 9-14 (Apr. 4, 1974); ALAB-71, WASH-1218 (Suppl. 1) 488 (Sept. 27, 1972); Initial Decision, LBP-73-33, RAI-73-9 at 751, 752 (Sept. 25, 1973).

stringent safety standards for the facility are neither required nor proposed in the document. Nor does the document suggest that Indian Point 2 is not in compliance with the policies or criteria of the Commission.<sup>13/</sup> To the contrary, the Proposed Policy Statement specifically directs that:

"The Commission recognizes that sites where populations are higher than the low population density areas indicated in the Guide have been approved in the past and anticipates other such sites may be approved in the future. The Guide should not be construed as suggesting that sites which do not meet the low population density values are no longer acceptable."<sup>14/</sup>

13/

In this regard, Consolidated Edison not only complies with applicable requirements of the Commission but also in a number of respects exceeds those requirements. For example, Consolidated Edison's conservative analyses of the consequences of postulated accidents and equipment failures for Indian Point 2 indicate "that the exposure to the public in the event of any of these postulated accidents would be within the guidelines set forth in Part 100 of the Commission's regulations and much less than the guideline values for most of the accidents." Consolidated Edison Co. (Indian Point Station Unit No. 2), Initial Decision, LBP-72-16, TID-26300 at 43, 46 (July 14, 1972). See Summary of Application, Nov. 12, 1970, Applicant's Exhibit No. 1C (received into evidence Tr. 377) at 15-19, 36-38, 43-47; see also Safety Evaluation By the Division of Reactor Licensing, Nov. 16, 1970 (follows Tr. 405) at 41-45, 59-63.

14/

App. A at 1-2. Of course, according to the Staff's document a large number of nuclear power plant sites in addition to Indian Point have cumulative populations greater than 30,000 within five miles or 500,000 within 20 miles or 2,000,000 within 40 miles. See Proposed Regulatory Guide, App. A at 4 and Background Information on Current Population Siting Practices, App. B at B-8, B-11.

Furthermore, the Staff's document is a draft of population density guidelines <sup>15/</sup> to be used when considering alternate sites for nuclear power plants during the construction permit environmental review. <sup>16/</sup> The guide would require a NEPA-type balancing of "environmental, economic or other factors" when population characteristics for a particular site exceed those set forth in the guide. <sup>17/</sup> To allege that the Regulatory Staff's document on plant siting is "a prima facie showing that a Motion to Reopen should be

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CCPE argues at pages 6-7 of its motion that the "Staff committed a serious error and breached its responsibility by not bringing to the attention of the Board and the parties" in this operating license proceeding a draft of a regulatory guide relating to general guidelines for the siting of nuclear power plants which, when final, will be applicable to construction permit applications docketed after January 1, 1974. This argument has no merit. Obviously, Consolidated Edison has not violated the principles recently enunciated in either ALAB-179 or ALAB-184. Even a casual reading of those decisions demonstrates that CCPE's reference to them is sheer nonsense. For a discussion of the purpose of the meeting which the AEC held with various persons concerning the working paper, see page 7 of the document (Background and Discussion) and AEC Release No. T-160.

16/

See Proposed Policy Statement, App. A at 1-2.

17/

Proposed Regulatory Guide, App. A at 4. CCPE's reference at page 5 of its motion to the Newbold Island letter supports Consolidated Edison's position. See Consolidated Edison Co. (Indian Point Station, Unit No. 2), ALAB-188 at 13-14 (Apr. 4, 1974).

entertained" (CCPE's motion at 7) is "a clear example of hyperbole which has no support in fact."<sup>18/</sup>

Of course, population density and proximity to population centers were considered in the construction permit proceeding for Indian Point 2.<sup>19/</sup> In addition to its other defects, CCPE's motion is an invalid attempt to relitigate these issues. CCPE's transparent effort to raise these issues anew in the guise of a request for consideration of "additional safeguards" should not be countenanced by the Appeal Board.

#### IV

#### Conclusion

For the reasons set forth in this Answer,

18/

Consolidated Edison Co. (Indian Point Station, Unit No. 2), ALAB-178, RAI-74-2 at 157, 158 (Feb. 26, 1974).

19/

Consolidated Edison Co. (Indian Point Station Unit No. 2), Initial Decision, LBP-73-33, RAI-73-9 at 751, 752 (Sept. 25, 1973).

Consolidated Edison respectfully requests the Appeal Board  
to deny CCPE's motion to reopen the record in this proceeding.

Respectfully submitted,

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May 30, 1974