

high to warrant consideration by the Board in making findings concerning the common defense and security and public health and safety with respect to the issuance of provisional construction permits in this proceeding." (3 AEC at 197).

The Commission responded in the negative with respect to acts of war and destructive acts by enemy agents, but with respect to "industrial" sabotage the Commission went on to indicate that:

"While the Board's question is not explicit, it appears to address itself not only to enemy directed sabotage but to so-called 'industrial' sabotage as well. In accordance with Commission practice, protection against possible industrial sabotage is a matter to be dealt with at the operating license stage rather than in the construction permit proceeding. At such later stage we would expect the staff, in accordance with its practice, to assure that appropriate industrial security measures are provided for by the applicant." (3 AEC 173 at 174).

Basically, in evaluating security measures, the staff must bear in mind "the adequacy of those security measures, their effectiveness in preventing any credible hazards to the public should be examined, as should be the inherent and engineered safety characteristics of the facility which bear on the matter" (ALAB-003, Trustees of Columbia University, May 26, 1970, WASH-1218, 15 at 24; Also, ALAB-026, Trustees of Columbia University, June 1, 1971, WASH-1218, 141 at 149). Such an evaluation was made by the staff in this case. Prior to November 6, 1973, physical security against industrial sabotage was not directly addressed in 10 CFR Part 50, but plans for such matters were included in information concerning organization and conduct of operations required to be submitted by an applicant pursuant

to 10 CFR 50.34(b)(6). Guidance as to the contents of such plans was provided by Safety Guide 17. The foregoing are the standards which the instant Atomic Safety and Licensing Board (ASLB) applied in its initial decision.

In this proceeding, the applicant's physical security program was discussed at length (in-camera sessions covering several hundred pages of testimony). ^{1/} The staff testified that the applicant's security program was adequate, provided the following implementing steps were completed. (in-camera session, December 14, 1971 - Tr-6)

Prior to Initial Criticality of Unit 2

1. Installation of complete perimeter fencing;
2. Implementation of the program for assuring the integrity of the second barriers, i.e., installation of:
 - (a) locks on designated doors and windows, and
 - (b) mesh barriers and/or Lexan where designated.
3. Implementation of the key control program;
4. Implementation of the augmented guard force;
5. Installation of the security alarm system between the guard shack and the control room; and
6. Implementation of the visitor control program.

^{1/} July 15, 1971 (Tr-4-60); July 21, 1971 (Tr-1673-1728); November 11, 1971 (Tr-2-59); December 14, 1971 (Tr-5-39); January 11, 1972 (Tr-1-50)

Prior to Completion of Power Ascension Test Program

1. Installation of the lighting system for the perimeter fence;
2. Installation of the door monitoring alarm system; and
3. Installation of the "hot line" telephone to the Peekskill police department.

Implementation of the above items has been completed by the applicant, with the approval of the staff. Within one year of initial criticality the applicant was to select, install and place in operation an augmented electronic surveillance system for intrusions alarms. This has not been completed.

The Board in its Initial Decision (TID-26300, page 53) found that the applicant had taken appropriate industrial security measures for the facility subject to the implementation by the applicant of those parts of the program which were not presently in effect. The ASLB therefore authorized the issuance of an operating license for Indian Point No. 2 with the condition that the outstanding security measures described above be implemented in accordance with the staff's schedule.

- b) The relevance of those requirements to the security issues raised by CCPE in its exceptions -- i.e., how does satisfaction of those requirements affect the security issues now before us for decision.

Response

In its Exceptions 18-21 to the Initial Decision, the intervenor (CCPE) contends that the ASLB made certain errors in finding that the plant security provided adequate protection to health and safety of public; in that (i) there was no protection against an armed band of saboteurs, (ii) it did not meet certain preconditions for plant security imposed by Board, and (iii) it did not meet Safety Guide 17 with respect to searching of visitors and vehicles.

In responses to these exceptions both the applicant and the regulatory staff indicated that the record of the proceeding amply demonstrated that the adequacy of the Indian Point security plan to meet the requirements of the Commission's regulations and to protect the public from any credible hazard is well supported by the record (See Staff Response Brief dated December 3, 1973, pages 31-33 and Applicant's Response Brief dated November 20, 1973, pages 30-33).

With respect to the specific allegation that the plant security program failed to comply with Safety Guide 17 because visitors and vehicles were not searched, the Board required implementation of the visitor control program.

There was sufficient evidence for the Board to find as it did that the overall security program, would upon completion of the required implementation steps, provide adequate physical security for the facility.

- c) What is the present status of the applicant's security plan as far as the regulatory staff is concerned in view of the applicable requirements?

Response

Subsequent to the Initial Decision, the Commission issued amendments to 10 CFR Parts 50, 70 and 73 to provide additional guidance covering the physical protection of nuclear plants (38 F.R. 30537 November 6, 1973). The amendments specifically require physical security plans to be provided for nuclear reactor facilities 10 CFR 50.34(c); 10 CFR 73.40. The Commission also indicates in a footnote to 10 CFR 50.34(c), that Regulatory Guide 1.17 describes physical security criteria generally acceptable for the protection of nuclear reactors against acts of individual sabotage. The guidance provided in Regulatory Guide 1.17 and ANSI-N-18.17 (recommendations of the American National Standards Institute referenced in Regulatory Guide 1.17) or an equivalent substitute acceptable to the staff are to be used in evaluating the adequacy and acceptability of a security plan.

The issuance of the revised regulations which became effective subsequent to the Initial Decision in this proceeding, prompted the regulatory staff to call the applicant's attention to such revised regulations, and requested a response indicating compliance therewith (See as attached exhibits hereto letter dated November 30, 1973, from Assistant Director for Operating Reactors to Consolidated Edison Company of New York, Inc., and response

thereto from Vice President of the applicant, dated January 7, 1974, indicating that the present Consolidated Edison security plan complies with all applicable requirements of 10 CFR Part 73.)

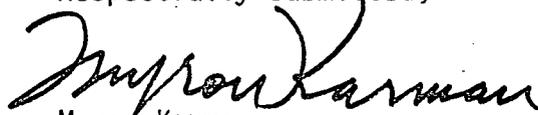
The staff, in reevaluating applicant's security plan for the Indian Point Station as a whole (including units 1, 2 and 3) in light of Regulatory Guide 1.17, has identified several items in the plan which did not fully comply with Regulatory Guide 1.17 (ANSI-N-18.17). The open items are:

<u>ANSI-N-18.17</u>	<u>Regulatory Guide 1.17</u>
3.3.1 - Authorized Parking	C 1(a) Armed Security Force
3.3.2.2 -Badging	C 1(b) Security Alarms (To be implemented together with augmented electric surveillance system)
3.3.2.3 -Inspection Searches	

There are other parts of the security plan which do not fully document compliance with procedures that are actually in effect at the Station. Despite the applicant's statement in its letter of January 7, 1974, of full compliance with 10 CFR Part 73, it is the staff's belief that the applicant has accepted its position concerning these inadequacies, and the staff and the applicant are working together to assure that any deficiencies are remedied, and that the security plan for the Indian Point Station will be upgraded to conform to the provisions of Regulatory Guide 1.17 within a reasonable time.

The applicant's security plan was determined by the ASLB in its initial decision to be adequate at the time of the hearing on the basis of the position established by the Commission's Turkey Point Memorandum and Safety Guide 17. The Commission's new criteria, representative of a continually evolving regulatory scheme, must of necessity require a reasonable time for implementation. The Commission, in its Memorandum and Order, In the Matter of Consumers Power Company (Midland Plant, Units 1 and 2), January 24, 1974, RAI-74-1, page 19 at 27, indicated that administrative agencies have broad discretion to limit or preclude retroactive application of new rules. "Among the factors to be weighed are whether the new rule represents a departure from past practice and consequent burdens imposed by retroactive application of the new rule, and the governmental interest in applying it to past cases." Viewing the circumstances of this case in their totality including the corrective actions taken and to be taken by the applicant, the initial decision of the ASLB in this proceeding should not be upset on the basis of the retroactive application of a new rule.

Respectfully submitted,



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Dated at Bethesda, Maryland,
this 15th day of March, 1974.