

50-286

August 29, 1969

NOTE TO MR. SHAPAR

POSSIBLE EXCEPTIONS IN INDIAN POINT 3

I have examined the board's initial decision in Indian Point 3 and have concluded there is nothing therein which would justify our filing exceptions to the board's initial decision, even if only for the purpose of assisting the Commission in its review. I have discussed the decision with Dan Muller, Joe Murphy, Irwin Spickler and Gordon Burley and they agree that there is no technical matter on which we should file an exception. The possible grounds we considered for exception are discussed below.

STAFF PROPOSED FINDINGS

The decision partially rejected five staff proposed findings and completely rejected one other.

The finding totally rejected was No. 17 which stated that

"Differences in design from Unit 3 and other similar reactors were thoroughly explored by the board and are not considered to be of safety significance. (S.E. 12)"

The board did not believe that this finding was supported by the evidence. Since the board did grant the construction permit in this case, it is academic whether the board's decision was correct, inasmuch as we are in no way prejudiced. It is, of course, arguable that the board did study differences in design between Unit 3 and similar facilities on the basis of the extended questioning on the record.

One sentence in Finding 6 was rejected. It stated that the board has no authority to consider modifications to Commission regulations. This question has already been disposed of by the Commission's decision in Baltimore Gas and Electric.

Finding 12 related to the adequacy of plant design with respect to hydrological conditions, hurricanes, floods, and earthquakes. Finding 13 discussed the adequacy of the applicant's environmental

sampling program. The board rejected only those portions of the finding relating to the adequacy of the applicant's proposals. Although the board did not accept our findings entirely, it nevertheless found that sufficient information had been presented to justify issuance of the permit. For this reason I do not believe the points are sufficiently significant to justify exceptions.

Finding 21 involves the iodine question. The board stated that it was "accepted to the extent shown in the decision." The principle difference, of course, relates to the discussion of the need for additional research and development on the iodine removal factors. For the reasons set forth below I do not believe we should seek an exception on this point.

#### CONDITIONING DECISION UPON FURTHER RESEARCH AND DEVELOPMENT CONCERNING IODINE REMOVAL

At first impression, this appeared to be a problem which might require Commission review. However, Buck's dissent and Sam's reaction to it in effect eliminates any problem.

In the majority decision Sam continued his campaign on iodine. Essentially, he focuses upon the question of the iodine removal efficiency necessary to assure that Part 100 limits are not exceeded and, in turn, upon questions of spray removal and plate-out efficiency. (Tr. 29) The majority opinion concludes that

" . . . Construction should be allowed to proceed but that this issue should be resolved in accordance with § 50.35 (b) of the Regulations . . . so as to establish proper performance objectives for the construction and research and development program. Additional data of the kind described herein should be presented to the Commission so that they (sic) may determine the adequate margins of safety of the proposed filter-spray iodine removal system in advance of the consideration of an operating license for Indian Point 3." (I.D. 25)

Subparagraph 50.35 (b) is the one which provides for the incorporation of tech specs into construction permits, which was attempted to be used on only one occasion (Indian Point 1). Apparently Sam was referring to the final sentence of (b) which authorizes the Commission to incorporate in a pcP provisions requiring the applicant to furnish periodic reports on its R & D program. It is not clear whether Sam initially intended this language as a recommendation to the Commission or as something else. He did not, in any event, attempt to condition the construction permit, as he could consider himself authorized to do under the Commission's Omaha decision.

Although Tom Pigford's concurring decision discusses the iodine question at length, it does not shed any particular light on the reference to the 50.35 (b) language in Sam's opinion. (The essence of the concurring opinion is that Pigford does not agree with the staff that sufficient evidence on plateout is available to justify the staff's assumptions, which are those set forth in TID-14844. He does, however, consider that these issues can and will be resolved. (I.D. 76))

If the records were left in this state, it might be necessary to take our position to the Commission to argue that it was fully justified, and that the Commission need not condition the construction permit because of the board's misgivings. 1/

However. Buck's dissenting opinion and Jensch's reaction to it have the effect of clarifying the matter so as to eliminate any problem. Buck concludes that the staff's assumptions and conclusions are quite conservative and that there is no disagreement by the applicant and staff that the public will be protected from the improbable design basis accident even under our pessimistic assumptions. He opposed granting the construction permit only under the condition that the applicant and staff present further evidence under 50.35 concerning the dba. He concludes that the time spent in preparing such a report would be better spent to "ensure that basic design and construction quality are such that the design basis accident will not occur." (I.D. 43-46)

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1/ The technical people state, however, that we do not have very much ammunition to argue that experiments support the 25% plateout assumptions in TID-14844.

Mr. Shapar

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Sam responded to the dissent with a footnote (No. 20) to the majority opinion. He says that the board does not characterize the process contemplated as requiring the supplying of additional data under § 50.35 (b) as a condition. 2/ I believe the matter is put to bed by Sam's final statement in the footnote that, in any event, in its R & D program the applicant "will develop and substantiate an adequate margin for uncertainty on the spray system, which will be reviewed by the regulatory bodies." (I.D. 26)

In sum, the board comes out as saying that any uncertainty concerning iodine removal will be resolved through the R&D program and that no condition is involved. On this basis I do not believe we have any ground for an exception.

#### METEOROLOGICAL

On p. 14 of the initial decision Sam refers to the quantity of radioactivity which could be released from the Indian Point 1 facility. As I advised you, I thought that the 16 million curies per year figure was excessive and would be greatly reduced by the technical specifications. The technical people advised me, however, that this was not correct and that the old Indian Point 1 tech specs were written so that this release would be theoretically possible.

One other error appears on this page in which Sam refers to 10 CFR 100 "limits" rather than 10 CFR 20 "limits".

  
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Troy B. Conner

cc: Dan Muller  
Pat Howe

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2/ Apparently some language was omitted in this footnote because the second sentence does not seem complete.