

UNITED STATES
ATOMIC ENERGY COMMISSION

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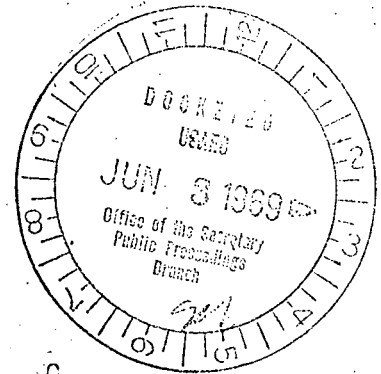
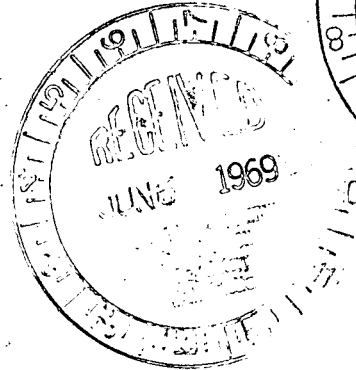
PROD. & UTIL. PAC. 50-286

May 29, 1969

Samuel W. Jensch, Esq., Chairman
Atomic Safety and Licensing Board
U. S. Atomic Energy Commission
Washington, D. C. 20545

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Waltham, Massachusetts 02154

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Los Angeles, California 90049



In the Matter of Consolidated Edison Company of New York, Inc.
Indian Point Unit No. 3
Docket No. 50-286

Gentlemen:

During the hearings in the captioned proceeding, Mr. Alan Gusow made a limited appearance representing the Citizens Committee for the Hudson River and the Citizens Committee for the Hudson Valley. He suggested that the licensing action proposed in this case might be subject to the requirements of the Hudson River Basin Compact Act (Public Law 89-605, 80 Stat. 847) with respect to thermal effects and natural, scenic, historic, and recreational resources of the Hudson River and its shoreline (Tr. 310-319).

The board invited Mr. Gusow to file a statement as to the applicability of this Act to the proposed licensing action. In response, Mr. Gusow filed a letter with the board dated March 31, 1969. At the conclusion of the hearing the board referred to this letter and suggested that the question might warrant a brief from the parties (Tr. 2244-2245).

I noted that the Commission had already determined that this statute does not enlarge the jurisdiction of the AEC to consider the matters covered by the letter, and I believed that this position had been stated by the Chairman in commenting to a Congressional Committee on the legislation when it was before Congress as a proposed bill

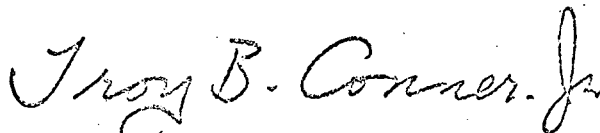
(H.R. 13508, 89th Cong.). Upon examination of the record, however, I find that the position was not expressed in a letter to a Congressional Committee but was stated on behalf of the Commission by Commissioner Tape, as Acting Chairman, in a letter dated September 16, 1966, to the Bureau of the Budget commenting on H.R. 13508 as an enrolled bill.

With respect to the Commission's regulatory program, the letter stated:

"From the standpoint of AEC's regulatory program, under new Section 5 of the bill AEC would be required to notify the Secretary of certain license applications and, before taking final action on such applications, to afford the Secretary an opportunity to present his views on the matter. However under the Atomic Energy Act of 1954, as amended, AEC regulatory authority is limited essentially to matters of radiological health and safety and the common defense and security. The Atomic Energy Act does not grant to the Commission regulatory authority to consider aesthetics, thermal effects, or other non-radiological aspects. Nor would the bill, in our view, provide such authority. Therefore, as we construe the bill, it would not prevent the issuance of an AEC permit or license on the basis of considerations other than radiological health and safety and the common defense and security. Similarly, the AEC would not be authorized to impose a requirement or condition recommended by the Secretary of the Interior based upon aesthetic or other considerations beyond the scope of our statutory authority."

The Commission has furnished to the Secretary of the Interior copies of the application in this case and has received the views of the Interior Department on matters pertinent to this proceeding. Appendix G to the staff Safety Evaluation includes the letter to the Commission from the Under Secretary of the Interior presenting its views pursuant to Public Law 89-605 and other authorizations. The letter transmits the recommendations of the Fish and Wildlife Service and of the Federal Water Pollution Control Administration of the Department of Interior. In addition, we have also received the comments of the Advisory Council on Historic Preservation, also of the Department of the Interior.

Sincerely,



Troy B. Conner, Jr.
Trial Counsel

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