

UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

COMMISSIONERS:

Glenn T. Seaborg, Chairman  
James T. Ramey  
Wilfrid E. Johnson  
Theos J. Thompson  
Clarence E. Larson

IN THE MATTER OF

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

(INDIAN POINT NUCLEAR GENERATING UNIT #3)

DOCKET NO. 50-286

MEMORANDUM AND ORDER

On August 13, 1969, the atomic safety and licensing board convened to preside in this proceeding rendered an initial decision ordering that a provisional construction permit be issued to the applicant, Consolidated Edison Company, to build a four-loop pressurized water reactor at the applicant's site on the Hudson River in the Village of Buchanan, Westchester County, New York.

By letter dated August 14, 1969, Mrs. Mary Hays Weik, an intervenor party to the proceeding, protested specific statements in the initial decision concerning the board's refusal to consider as evidence certain material which she states she presented at the hearing. Mrs. Weik states in her "protest" letter (which she later denominated an "exception" in her subsequent statement of service on the other parties) that she presented the following at the hearing: "a list of the deaths by cancer

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of seventeen citizens of Montrose, New York", residing in an area "directly downwind" of Indian Point Unit 1 <sup>1/</sup>; a "special map" showing the "exact location" of the residence of each of the foregoing; and a copy of a page from a Government report "which showed...the travel pattern of an effluent plume from a power plant such as that at Indian Point".

The statements in the initial decision to which Mrs. Weik directs her protest are: (1) that "unsworn statements...made by one of the intervenor parties appearing pro se [Mrs. Weik]...do not constitute evidence" (initial decision, footnote 6, p. 4); and (2) that "an intervenor [Mrs. Weik] made unsubstantiated statements relative to causal relation to cancer deaths" (initial decision, pp. 39-40). Mrs. Weik asks that the Commission correct the board's "unfair and inaccurate statements" and that it "conduct a thorough investigation of the deaths reported\*\*\*\*without delay." <sup>2/</sup> The protest letter does not otherwise challenge the board's decision.

While we have some doubt as to whether Mrs. Weik's protest letter properly constitutes an exception under our Rules of Practice, we have nevertheless decided to treat it as such in undertaking our review of the board's decision. For the reasons set forth below, our review of Mrs. Weik's contentions leads us to agree with the staff, which has filed a reply to her letter supporting the evidentiary rulings and statements of the board.

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<sup>1/</sup> Indian Point Unit 1 is a 265 MW(e) pressurized water reactor which was licensed by the Commission for construction in 1956 and for operation in 1962.

<sup>2/</sup> Intervenor Citizens Committee for the Protection of the Environment ("Committee") in the findings it proposed to the board also requested that the Commission investigate the deaths alleged by Mrs. Weik. (Mrs. Weik did not file proposed findings.) The board, in its initial decision, submitted the Committee's request for an investigation to the Commission, "without recommendation" (initial decision, p. 40).

At the hearing, the board chairman explained to Mrs. Weik the minimum steps which must be taken to have oral statements or documentary material treated as evidence, following which questions of relevance and materiality would be considered. He explained that her oral statements would be treated like a "lawyer's statement" and not as evidence since she had not been sworn as a witness. As respects documentary material, the board chairman informed Mrs. Weik that the rules required her to identify each document offered and to supply copies to the board and each of the parties. Mrs. Weik declined to satisfy these requirements or pursue further the matter of evidentiary presentation (Tr. 945, 957-960).

The board chairman's evidentiary rulings were consonant with our Rules of Practice (10 CFR Part 2, §§ 2.743(c) and (f); Appendix A, III(c) and (d)) and with the dictates of the Administrative Procedure Act (5 USC 556(d)). The disputed statements in the initial decision are thus supported by the record and Mrs. Weik's "protest" or "exception" must be denied.

As to Mrs. Weik's further request that the Commission investigate the deaths which she has referred to, we would note that the AEC, in cooperation with New York health authorities, did investigate the statements made by Mrs. Weik. This investigation developed no basis for the assertion of causal relationship between Indian Point 1 operation and alleged cancer deaths in the Montrose area.<sup>3/</sup>

<sup>3/</sup> A report on this investigation is contained in "Senate Hearings Before the Committee on Appropriations, Public Works for Water, Pollution Control, and Power Development and Atomic Energy Commission Appropriations", H. R. 14159, 91st Cong., 1st Sess., Part 7, pages 7145-7146.

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In the course of our informal review of other aspects of this proceeding, we have given careful consideration to the adequacy of the data in the record respecting iodine removal efficiencies in the unlikely event of a design basis accident. Differing opinions were expressed on this matter by the members of the board and we believe some comment on our part is in order because there may be a degree of uncertainty as to what additional data respecting iodine removal efficiencies is required during the construction stage and the timing for the submission of such data.

As a preliminary, it is well to note that, in authorizing issuance of the provisional construction permit after a thorough hearing, the board made favorable findings on the radiological safety issues specified by our regulations. Of basic import is the ultimate safety finding made by the board: that there is reasonable assurance that safety questions not finally resolved at the construction permit stage will be satisfactorily resolved at or before the date of completion of facility construction, and that the proposed facility can be constructed and operated at the proposed location without undue risk to the health and safety of the public. A like finding was reached by the regulatory staff and the Advisory Committee on Reactor Safeguards based upon their earlier reviews of the application.

Although all of the board members joined in making all of the requisite safety findings for the issuance of the provisional construction permit, two members did state in their decision certain reservations as to the adequacy of the record data respecting the applicant's and the

staff's estimates of the efficiencies of the proposed iodine removal system in the unlikely event of a design basis accident. They stated that their conclusion of adequate assurance of safety in this regard rested upon the belief that this matter can and will be resolved by the Commission; and they recommended that additional data be presented to the Commission, in advance of the consideration of an operating license for the facility, for a determination of adequate safety margins for the proposed filter-spray iodine removal system.

We endorse, of course, the basic premise - accepted by all - that the expected efficiencies of the facility's iodine removal mechanisms must be such as to lead to satisfaction of Part 100 guidelines. We believe, in this regard, that the matter which the board majority alluded to with respect to record data in support of the applicant's and the staff's calculations on iodine removal efficiency can be dealt with during the construction phase of Indian Point 3. This, indeed, is the view of those board members who have noted this point for further special attention. We also believe that this matter should, and can, be resolved at a sufficiently early stage of the construction process so that performance requirements can be determined in the light of its resolution. In fact, it may well be, as the board majority surmised, that suitable technical information already exists which, when added to the record of this application, would put the matter in clearer perspective.

We think it unnecessary to give detailed directions respecting the further treatment of this matter. Our step-by-step licensing process is essentially designed to accommodate resolution of matters of this type during facility construction. The initiative for proceeding on a timely basis and for effecting timely review should be left with the applicant and staff, respectively. We do desire, however, that the staff submit to us for timely consideration the calculations underlying the proposed approach to the question of removal efficiencies which it deems satisfactory. At that time, we can determine, on the basis of the amplified record data, whether any further direction on our part is necessary.

It is therefore ordered that the exception filed by intervenor Mrs. Mary Hays Weik is denied; and that further processing of this application be carried out consistent with our statements hereinabove.

By the Commission.



W. B. McCool  
Secretary

Dated: December 24, 1969

*H. Smith*

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ATOMIC ENERGY COMMISSION

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CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC.  
(Indian Point Nuclear Generating  
Unit 3)

Docket No. 50-286

CERTIFICATE OF SERVICE

I hereby certify that copies of the MEMORANDUM AND ORDER dated December 24, 1969 in the captioned matter have been served on the following by deposit in the United States mail, first class or air mail, this 24th day of December 1969:

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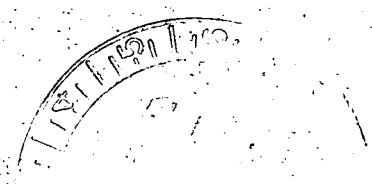
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