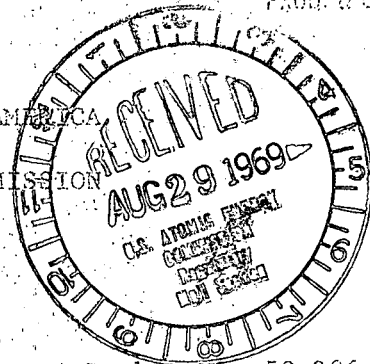
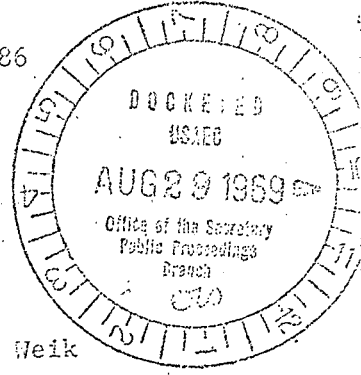


UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION



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

Docket No. 50-286



REPLY OF REGULATORY STAFF
TO LETTER OF INTERVENOR WEIK

By a letter dated April 14, 1969, Intervenor Mary Hays Weik protested the ruling of the Atomic Safety and Licensing Board (board) in not considering certain material at the hearing. In her letter Intervenor Weik refers to a special map showing the homes of certain persons whose deaths were alleged by Mrs. Weik to have been caused by the Indian Point Unit No. 1 reactor and to a page from a government report which shows the "travel pattern of an effluent plume from a power plant such as that at Indian Point."

In its initial decision the board noted that one of the intervenors appearing pro se (Mrs. Weik) had made "unsworn statements . . . (which) do not constitute evidence as defined by the Administrative Procedure Act which, except as modified by the Atomic Energy Act, as amended, governs the proceeding."

Early in Intervenor Weik's presentation, the board pointed out that she was not presenting evidence. On overruling the applicant's

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objection to Intervenor Weik's being permitted to continue her presentation on this point, the Chairman ruled "she has not been sworn and her statements in a sense are a lawyer's statement. They are not evidence." He allowed her to continue the statement on that basis.^{1/}

The board noted that Intervenor Weik had failed to make any showing of cause and effect between operation of Indian Point Unit No. 1 and the cancer deaths.^{2/}

The record of the proceeding shows that the board chairman explained to Intervenor Weik what she must do in order to have her material considered as evidence.

After questioning by the board of Intervenor Weik concerning her statement and the documents, the Chairman informed her "we cannot receive them unless they are made a part of the evidence in some manner."^{3/} Shortly thereafter, he informed her the rules required her to identify each of the documents and supply copies to the board and to each of the parties. Mrs. Weik made no identification and did not offer them to either the board or the parties.^{4/} The matter concluded with the following colloquy:

^{1/} Tr. 945.

^{2/} Tr. 957.

^{3/} Tr. 959.

^{4/} Tr. 959-960.

"CHAIRMAN JENSCH: I take it she is sponsoring them. What they are, she will have to identify. Do you want to identify each of the documents. Under the rules, of course, five should be furnished to the Board and one each to each of the parties.

"MRS. WEIK: Maybe you don't want them. It is all right with me.

"CHAIRMAN JENSCH: It isn't a question of whether we want them or not. If they are material and relevant to the proceeding and if you offer them, we will give them consideration.

"MRS. WEIK: If it is so hard to get them in, I don't care.

"CHAIRMAN JENSCH: We want to accommodate any offer of evidence you make. In order to get them in there are certain rules under which this proceeding is carried out, one of which is that you have to provide copies to the parties.

"MRS. WEIK: Don't bother. That is all right.

"CHAIRMAN JENSCH: Do you have anything further?

"MRS. WEIK: No.

"CHAIRMAN JENSCH: You conclude the presentation of evidence?

"MRS. WEIK: Yes."^{5/}

The record demonstrates Intervenor Weik was given the opportunity to make an offer of evidence and she refused.

We believe that the board's action concerning this material was correct and consistent with the Commission's "Rules of Practice" and the Administrative Procedure Act (APA).^{6/}

The Commission's "Rules of Practice" specify that "The testimony of all witnesses will be given under oath."^{7/} As with all evidence, documentary material offered under the Commission's "Rules of Practice" must be shown to be relevant, material, and reliable. It must be properly identified and provided to the board and other parties for examination.^{8/}

^{5/} Tr. 959-960.

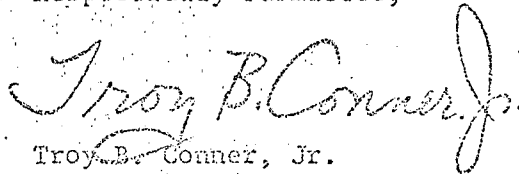
^{6/} 5 U.S.C. §§ 551 et seq.

^{7/} 10 CFR Part 2, Appendix A, III. (c)(3).

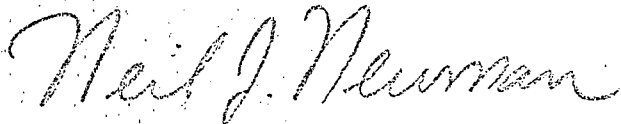
^{8/} 10 CFR Part 2, § 2.743 (c), (f); Appendix A, III. (d). 5 U.S.C. § 556 (d) (APA) requires that all evidence must be reliable and probative and that irrelevant and immaterial or unduly repetitious evidence be excluded.

For these reasons we believe Intervenor Weik's protest is
without merit.

Respectfully submitted,



Troy B. Conner, Jr.
Trial Counsel



Neil J. Newman
Counsel for
AEC Regulatory Staff

Dated at Bethesda, Maryland
this 28th day of August, 1969.