

6-30-75

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)	
)	
CONSOLIDATED EDISON COMPANY)	
OF NEW YORK, INC.)	Docket No. 50-286
)	
(Indian Point Station,)	
Unit No. 3))	

MEMORANDUM OF THE
NEW YORK STATE ATOMIC ENERGY COUNCIL
RESPONDING TO THE QUESTIONS POSED IN
APPEAL BOARD ORDER DATED JUNE 20, 1975 (ALAB-278)

BACKGROUND

As this Board is aware, concerns regarding Indian Point Unit 3's compliance with Part 100 of the Commission's Regulations were raised by the New York State Atomic Energy Council (Council) before the Licensing Board at a public hearing held at Montrose, New York, on April 1 and 2, 1975. Subsequent to raising the issues in that forum, the Council determined that the issues therein raised could be more fruitfully addressed and more appropriately considered by a Board empowered to make determinations with respect to Indian Point Units 1, 2 and 3 and accordingly, in a pleading filed with the Nuclear Regulatory Commission on Monday, April 21, 1975, requested that the Commission order such a hearing. In support of that request, the Council submitted affidavits of Dr. James F. Davis, New York State Geologist and relied to some extent upon testimony given by staff's seismologist and geologist in the April 1 and 2 hearing.

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On June 12, 1975 the Atomic Safety Licensing Board in this proceeding issued a "Memorandum and Order Approving Stipulation for Settlement Proposed by Parties and Decision Respecting Concerns Related to the Authorization of a Full-Term, Full-Power Operating License" (Memorandum and Order) which order authorized, among other things that "the Director of Nuclear Reactor Regulation, after determining that the Indian Point Nuclear Generating Unit No. 3 has been completed in accordance with the application and regulations of the Commission, and subject to the approval of the Appeal Board of the stipulation presented by the parties, and further subject to the determination by the Commission respecting the pending seismic contentions... to make appropriate findings in accordance with the regulations of the Commission and for the protection of the environment, and to issue a license for a full-term and full-power operations sought by the application, as amended."

On June 20, 1975, this Appeals Board issued an order directing each party to respond to certain questions and scheduling oral argument thereon for July 9, 1975. Underlying this Board's questions is the assumption that the language in the decision heretofore quoted, imposed as a condition precedent to the issuance of a full-term license, final resolution of the seismic questions.

On June 23, 1975, the Applicant filed with the Licensing Board a motion for clarification of the Licensing Board's June 12, 1975 Memorandum and Order asking the Board to clarify whether it had in fact attached a seismic condition precedent to the issuance of a full-term license or whether as the applicant believed, its intention was to express in haec verbia a recognition of potential imposition of

condition subsequent on the operating license. By letter dated June 25, 1975, the Chairman of the Licensing Board informed Applicant:

"The Board agrees in general with the discussion in Applicant's motion, with the addition that as the time sequence for the low-power testing license and the full-term full-power license indicates, the Licensing Board recognized that the testing license would be of brief duration which would permit immediate fuel loading, but would be followed by a license which latter would be embrative of all factors. The testing license would necessarily be modified by the issuance of any further license. The reservation respecting seismic matters recognized the primary jurisdiction of the Commission and that the seismic questions concern all the reactors at the site".

I

With this background the Council replies to the Board's questions as follows:

1. Question: Considering the seismic condition imposed by the Licensing Board on the authorization for a full power license, what is the difference in the risk to the public health and safety between operation at 91% full power, and operation at full power?

Answer: We are unable to assess the detailed difference in risk to the public health and safety between operation at 91% of full power and operation at full power.

2. Question: If there is no significant difference in the risk to the public health and safety between operation at 91% of full power and at 100% of full power, should not authorizations for operation at these levels be consistent?

Answer: Notwithstanding the fact we are unable to assess or quantify the difference in risk to public health and safety as between operation at 91% of full power and at 100% of full power, we feel authorization for operation at these levels should be consistent; however, the practical consequence of a short term authorization vis a vis a full term license are relevant and should be separately considered.

3. Question: If there is a significant difference, then is it significant enough to justify the authorization permitting operation at 91% of full power without any seismic condition? If not, what condition(s) should be imposed?

Answer: Whatever seismic conditions are ultimately imposed at full power operation should also be imposed at 91% of full power operation.

II

Section II of this Board's June 20 Order called attention to footnote 19 on pg. 21 of the Licensing Board's Memorandum and Order wherein that footnote mentions a letter from Counsel for the Hudson River Fishermen's Association to the Chairman of the Licensing Board, which letter raises certain HFRA concerns with respect to a paragraph found in the New York State Federal Water Pollution Control Act, Section 401 certification for this facility. This Board perceived certain inconsistency in the Licensing Board stated objective of requiring further opportunity for a hearing once additional information was obtained on the environmental impacts of closed cycle cooling towers.

We do not perceive any such inconsistency.

We understand the Licensing Board's comments dealing with environmental review of closed cycle cooling systems on pg. 11 and 12 of the Memorandum and Order to be related solely to the choice of a particular type of closed cooling system for Indian Point Unit No. 3. We are of the opinion that the issue of whether there will be a closed cycle cooling system has been finally litigated in the Indian Point No. 2 proceeding and settled by stipulation in the Indian Point No. 3 proceeding. The Applicant's environmental report on operation of a closed cycle system is directed at choosing the optimal closed cycle system from an environmental standpoint, and any hearings subsequent to issuance of a final environmental statement would deal with choosing a preferred type of closed cycle system. The only way a hearing could be had on whether the requirement on a

closed cycle system should be lifted, would be by Consolidated Edison's application to the staff for a license modification pursuant to the provisions of the stipulation.

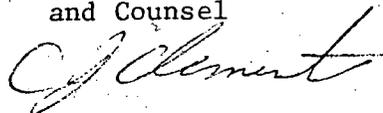
III

The Licensing Board in its Memorandum and Order permitted any party to file exceptions to its decision with brief in support of such exception within 20 days after service.

We are still reviewing the overall impact of the decision below and nothing herein should be deemed to waive or restrict our right to subject said decision to review pursuant to Section 2.762 of the Commission's Rules of Practice.

Respectfully submitted,

J. Bruce MacDonald
Deputy Commissioner
and Counsel



Of Counsel: C.J. Clemente
Assistant Counsel

DATED: June 30, 1975
Albany, New York

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NUCLEAR REGULATORY COMMISSION

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CONSOLIDATED EDISON COMPANY)
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(Indian Point, Unit No. 3))

Docket No. 50-286

CERTIFICATE OF SERVICE

I hereby certify that copies of "Memorandum of the New York State Atomic Energy Council Responding to the Questions Posed in ALAB-278" dated June 30, 1975, in the above captioned matter, have been served on the following by deposit in the United States mail, first class or air mail, this 30th day of June, 1975:

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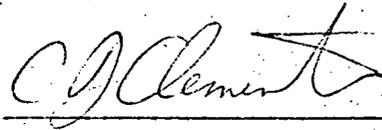
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