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UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

09/07/73

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
METROPOLITAN EDISON COMPANY, <u>Et Al.</u>)	Docket No. 50-289
)	
(Three Mile Island Nuclear Station,)	
Unit 1))	

COMMENTS BY THE AEC REGULATORY STAFF
REGARDING REVISED CONTENTIONS OF INTERVENOR

1. On August 28, 1973, Citizens for a Safe Environment and the Environmental Coalition on Nuclear Power ("Intervenors") submitted Revised Contentions for consideration at the Prehearing Conference held on the same date in the above captioned proceeding.

2. During the Conference, Mr. Gallo, appearing on behalf of the AEC Regulatory Staff as a substitute for the regularly assigned Staff Counsel, requested an opportunity for the regularly assigned Staff Counsel to file additional comments with the Atomic Safety and Licensing Board ("Board") as necessary to more fully relate the Staff position on certain revised contentions. (Tr. 136; 199-200). By order dated August 30, 1973, the Board granted an opportunity to file comments on or before September 7, 1973. Other parties were permitted to respond to these comments on or before September 14, 1973.

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3. Referring to Contention 3, the Board requested information as to whether it is appropriate to consider issues involving the transportation of fuel and waste to and from the facility in view of an ongoing rulemaking proceeding which is in part related to this matter (Tr. 150). The Atomic Safety and Licensing Appeal Board has held, prior to the noticing of the rulemaking proceeding that a Board may consider the environmental effects of transportation of fuel and waste from a facility in an individual licensing proceeding. In the Matter of Vermont Yankee Nuclear Power Station, Memorandum and Order, Page 6, 1972 ASLAB, Issuance through June 1972, p. 398-399. On February 5, 1973, the Commission noticed a rulemaking proceeding relating to this area (38 F.R. 3334) which stated in relevant part that "Nothing ... shall be construed as affecting the validity of the holding by the Appeal Board in the Vermont Yankee proceeding." (38 F.R. 3336)

In addition, although this rulemaking proceeding does not explicitly refer to the transportation of fuel to a facility, it is implicitly clear the Vermont Yankee decision considered transportation issues of this nature to be relevant for consideration in an individual licensing proceeding. The Regulatory Staff concludes that Contention 3 is appropriate in its entirety and should be accepted by the Board.

4. It is the understanding of the Regulatory Staff that Revised Contention 10 reads as follows and our discussion is based on this understanding:

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It is contended that the NEPA review concerning cost/benefit analysis and alternatives is not complete in that the costs of administration and regulation by governmental agencies and the insurance costs have not been fully analyzed or included, the costs of water consumption has not been dealt with, capacity factors are incorrect, the cost of the containment repouring has not been established or included in the cost analysis, the health costs from low level radiation has not been included, the adverse economic costs resulting from limitations, reasonably directly related, in development in the area of the facility has not [been] included, the cost of this facility as opposed to alternate facilities to rate payers has not been fully considered.

The Staff has difficulty with two aspects of this contention, specifically, the costs of administration and regulation by governmental agencies and the costs of insurance, and the adverse economic costs resulting from limitations . . . in development in the area of the facility. To the extent that the phrase "costs of administration and regulation by governmental agencies" relates to the licensing fees payable by the Applicant to the Atomic Energy Commission in connection with this facility, Staff has no objection. If, however, this phrase is interpreted to encompass other costs, we believe these costs are too remote to be considered in this proceeding for reasons set forth infra.^{1/} We further believe that the costs of insurance, including annual insurance premiums and indemnity fees payable in accordance with the Price Anderson Act, are legitimate areas of contention in this proceeding. Any costs

^{1/} We note that Intervenors have stated that this contention is not intended to relate to costs incurred through government nuclear reserach and experimentation (Tr. 185).

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which may be theorized beyond these premium costs, however, are too remote for consideration by the Board.

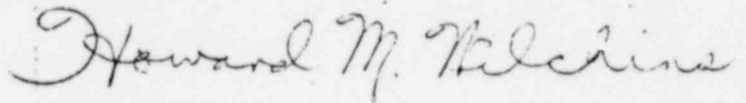
Referring to the effects the facility may have on development in the area, we likewise consider these costs to be too remote for consideration. As the District of Columbia Circuit noted in Natural Resources Defense Council, Inc. v. Morton, 458 F. 2d 827 (D.C. Cir., 1972) the directness or remoteness of an issue cannot be determined in a mechanistic manner. Rather, it stated that "A rule of reason applies" (at 837). The Atomic Safety and Licensing Appeal Board supported this position in the recent Point Beach decision where it stated, "Broad social questions ... cannot be productively considered in a licensing proceeding involving an individual facility." Wisconsin Electric Power Company, et. al (Point Beach Nuclear Plant, Unit 2) ALAB-137, RAI-73-7 at p. 498. We believe that an application of the rule of reason in the manner suggested by the Appeal Board would dictate striking the aforementioned aspects of contention 10 from consideration in this proceeding.

The Regulatory Staff believes that all other aspects of this contention are appropriate for consideration by the Board.

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5. Based on the above analysis, the Regulatory Staff believes that the revised contentions in question should be admitted by the Board with the exception of the parts of contention 10 to which we have objected.

Respectfully submitted,



Howard M. Wilchins
Douglas K. Olson

Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland
this 7th day of September, 1973.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Comments by the AEC Regulatory Staff Regarding Revised Contentions of Intervenor," dated September 7, 1973, in the captioned matter, have been served on the following by deposit in the United States mail, first class or air mail, this 7th day of September, 1973:

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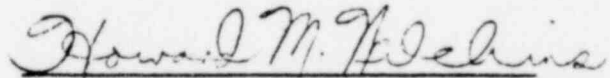
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