

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
METROPOLITAN EDISON COMPANY, ET AL.) Docket 50-289
(Three Mile Island Nuclear Station,)
Unit 1))

ORDER

(October 16, 1973)*



In its order of September 13, 1973 the Board accepted nine issues for trial in the above entitled proceeding, subject to possible further modification of contention No. 3 in the light of comments by the Regulatory Staff and other parties. The Board also stated that it would rule on the issues of Paragraph 10 of Intervenors' contentions in light of similar comments from the parties.

*The Board's decision on the matters contained in this order was conveyed orally by the Chairman to Mr. Sager Counsel for the Intervenors, and to Mr. Trowbridge, Counsel for the Applicants on October 9, 1973; and to Messrs. Murray and Kinsey, Counsel for the Regulatory Staff, on October 10, 1973.

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Comments from the Regulatory Staff were duly filed on September 7, 1973. A response by the Applicants was filed on September 14, 1973. No other responses were received.

As to contention No. 3, the Board at the Prehearing Conference raised a question as to whether it was appropriate for a Board to consider, in a licensing proceeding, the transportation of fuel and waste to and from a facility in light of certain ongoing rulemaking proceedings. At issue would be (a) the transportation of fuel to the facility; (b) the transportation away for reprocessing of spent fuel from the facility; and (c) the transportation of waste away from the facility. The Regulatory Staff, citing the Vermont Yankee decision,^{1/} concludes that contention No. 3 is appropriate in its entirety.

The Board believes that Items (b) and (c) above are appropriate for hearing. As to Item (a), the Board reserves decision on the legal question as to whether

^{1/} In the Matter of Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), June 6, 1972, Memorandum and Order, 1972 ASLAB Issuances through June 1972, 395, 400.

transportation to the facility is a proper issue for a licensing board to consider. However, the Board is willing to take evidence on Item (a) within reasonable limits.

Paragraph No. 10 of Intervenors' contentions contains a pot pourri of issues having to do with the completeness of the cost/benefit analysis.

The Regulatory Staff has difficulty with the possible breadth of the "costs of administration and regulation by governmental agencies" and the "insurance costs"; the Staff further has difficulty with the issue denominated "the adverse economic costs resulting from limitations, reasonably directly related, in development in the area of the facility" and believes that such costs are too remote for consideration.^{2/}

^{2/} Comments by the AEC Regulatory Staff Regarding Revised Contentions of Intervenor, September 7, 1973.

The Applicants, in turn, oppose so much of Paragraph No. 10 as seeks to include as an issue "the health costs from low level radiation." They apparently interpret the contention as a requirement that, in an individual licensing proceeding, the documents, in addition to describing in detail the estimated doses directly related to the licensing action, "should describe estimates of the somatic and genetics effects (and possibly assign a dollar value to such effects) which may result from the estimated doses and, thereafter, factor such dose effects into the cost/benefit balance."^{3/}

The Board is of opinion that the objections of the Regulatory Staff and of the Applicants are well taken. Their argumentation is fully set forth in their pleadings and will not be further rehearsed here. Suffice it to say

^{3/} Applicants' Response to Comments by the AEC Regulatory Staff Regarding Revised Contentions of Intervenors, September 14, 1973.

that those issues objected to by the Regulatory Staff and by the Applicants will be disallowed on the grounds that it is not possible to quantify such costs, that any attempt to do so would be conjectural in the extreme and so speculative as to be of no practical use.^{4/} As the early conveyancers long ago were wont to state, in a context not unanalogous to the instant circumstances, the law will never intend "a possibility upon a possibility."^{5/}

Accordingly, the Board reframes Intervenor's Paragraph 10 to embrace the following issues.^{6/}

10. The extent to which the NEPA review concerning cost/benefit analysis and alternatives may not be complete in that the following points have not been fully analyzed or included:

^{4/} See Consumers Power Co. (Midland Plant, Units 1 and 2), Initial Decision para 45 (December 14, 1972); aff'd in ALAB-123, RAI-73-5, at pp. 350-51 (May 18, 1973).

^{5/} Co. Lit. 184a; Y. B. Liber Ass. 12 Edw. III. 34, pl. 5. See also Cholmley's Case, 2 Co. 50a, 51a. Cf. Gray, The Rule Against Perpetuities, 4th ed. (1942) §125.

^{6/} The Board is also disallowing the contention "capacity factors are incorrect" on the grounds that the meaning of that sentence in the instant context is not understood.

- (a) Costs of administration and regulation by governmental agencies (limited to the matter of license fees payable by Applicants to the Atomic Energy Commission in connection with this facility)
- (b) Insurance costs (limited to annual insurance premiums and indemnity fees payable in accordance with the Price Anderson Act)
- (c) The costs of water consumption
- (d) The cost of the containment repouring
- (e) The cost of this facility as opposed to alternate facilities to rate payers.

"Revised Contention 7," which was allowed as an issue in this proceeding by the Board in its order of September 13, 1973, will be modified as hereinafter described. By letter of September 18, 1973 Intervenorors have requested that Contention 7 be modified by the deletion of two issues; the retention of one existing issue; and the addition of one new consideration. By letter of September 21, 1973 Applicants have advised the Board that they do not object

to the proposed modifications; and by letter of September 26, 1973 the Regulatory Staff likewise advises of its lack of objection. Accordingly "Revised Contention 7" will be modified in the following four respects:

- Issue: "Cryogenic Radioactive Waste [Gas] Treatment System" - is withdrawn
- Issue: "Higher Stack for Release of Radioactive Gases" - is withdrawn
- Issue: "Treatment by charcoal filter of the main condenser air ejector discharge" - is retained
- Issue: "Treatment of the reactor building containment atmosphere by a charcoal filter kidney system" - is added.

In all other respects the issues as recited in the Board's order of September 13, 1973 remain unchanged.

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For convenience of reference, the issues in the case will henceforth be referred to as Contentions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10(a), 10(b), 10(c), 10(d) and 10(e).

It is so ordered.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD:

Charles A. Haskins
Charles A. Haskins, Chairman

Issued at Washington, D.C.

this 16th day of October, 1973.

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UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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(Three Mile Island Nuclear Station,)
Unit 1))

Docket Nos. 50-289

CERTIFICATE OF SERVICE

I hereby certify that copies of ORDER dated October 16, 1973 in the captioned matter have been served upon those on the attached Service List by deposit in the United States mail, first class or air mail, this 16th day of October 1973.

Peggy A. Downing
Office of the Secretary of the Commission

Attachment: Service List

cc: Mr. Haskins
Mr. Gello
ASLBP
E. Goulbourne
S. Sheppard
✓ Reg. files
ASLAB

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UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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Docket No. 50-289

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