

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

COMMISSIONERS:

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



IN THE MATTER OF
BALTIMORE GAS AND ELECTRIC COMPANY
(Calvert Cliffs Nuclear Power Plant,
Units 1 and 2)

Docket Nos. 50-317
50-318

MEMORANDUM

On June 30, 1969, the atomic safety and licensing board convened to preside in this proceeding, rendered an initial decision authorizing the issuance of provisional construction permits to the applicant, the Baltimore Gas and Electric Company, to build two pressurized water reactors at the applicant's site on the western shore of the Chesapeake Bay in Calvert County, Maryland. In reaching its decision, the board concluded, as had the regulatory staff and the Advisory Committee on Reactor Safeguards following their earlier reviews, that there is reasonable assurance the subject nuclear facilities can be constructed and operated at the proposed site without undue risk to the health and safety of the public. The bases for the board's safety conclusion are set forth in the initial decision.

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The application for permits was contested at the board hearing by the Chesapeake Environmental Protection Association, Inc., an intervenor in the proceeding; however, no appeal to the Commission has been taken from the board's decision, the time for filing exceptions having now expired.

In accordance with our present regulations and practice, we have informally reviewed the initial decision. Our review leads us to conclude that the board's decision is supported by the record of the proceeding and that it should be permitted to become final, as scheduled, on August 14, 1969. While, ordinarily, no Commission memorandum of review would be issued in such circumstances, because the initial decision treats with a matter of general significance for our licensing proceedings - whether a board can inquire into the validity of the standards established by Part 20 of our regulations (10 CFR Part 20) - we believe some specific comment on that matter is in order.

As reflected in the initial decision, the major contested issue at the hearing involved the discharge of radioactive materials from the plant, in particular, the liquid waste discharge containing tritium. The intervenor did not question that the proposed facilities will comply satisfactorily with the limits of Part 20 (actual releases of tritium are expected to be only a small fraction of Part 20 limits); rather, in the words of the board, "The focus of [intervenor's] attack seem[s] to be on the validity of Part 20 itself". The board concluded, correctly we believe, that although the intervenor raised questions as to the underlying assumptions of Part 20, there

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was no evidence which would warrant departure from the standards of that Part.

While reaching the above conclusion on the record of this proceeding, the board was of the further view that in cases where the evidence is such as to draw into question the validity of Part 20, the board "might not be able to rely upon [that Part] as establishing the outer limits of acceptable risk". It is to that board view, and the scope of its application, that we address our comments below.

It bears statement at the outset, and the board itself recognized, that the Commission's licensing regulations establish the standards for reactor construction permit determinations; and that the findings in proceedings such as the instant one must be made in accordance with those regulations. Further, it should be clear that our licensing regulations - which are general in their application and which are considered and adopted in public rule making proceedings wherein the Commission can draw on the views of all interested persons - are not subject to amendment by boards in individual adjudicatory proceedings.

The foregoing does not, however, foreclose a licensing proceeding challenge to the validity of a Commission regulation, on limited grounds, if the contested regulation relates to an issue in the proceeding. By limited grounds we mean, whether the regulation was within the Commission's authority; whether it was promulgated in accordance with applicable procedural requirements; and, as respects the Commission's radiological safety standards, whether the standards

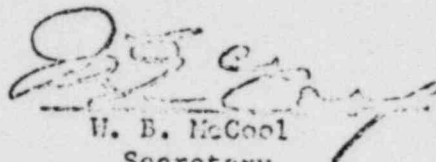
established are a reasonable exercise of the broad discretion given to the Commission by the Atomic Energy Act for implementation of the statute's radiological safety objectives. See, Power Reactor Development Co. v. Electrical Workers, 367 U. S. 396 (1961); Siegel v. Atomic Energy Commission, et al., 400 F. 2d 778 (CA DC, 1968).

We would couple the above comments with the enjoinder that, if a board believes there is a substantial question presented on the record as to the validity of a challenged regulation, the board should certify that question to the Commission for guidance prior to rendering an initial decision. In the subject proceeding, as the initial decision makes clear, the record did not present such a substantial question.

One final matter warrants comment. The Commission's Part 20 standards are based on recommendations developed by the statutory Federal Radiation Council and approved by the President for the guidance of Federal agencies. The Federal Radiation Council, for its part, takes into account the advice of the best technical expertise available, including the recommendations of the National Council on Radiation Protection and Measurements and the International Commission on Radiological Protection. The Commission, prior to adopting its regulatory standards, additionally consults with other groups, such as its Advisory Committee on Biology and Medicine, and seeks public comment. The central aim of this careful and comprehensive process is to arrive at standards which provide an adequate margin of safety for exposed persons. We would only add that since Part 20 is a "living document" its

standards are continually reviewed with the objective of assuring that exposures to the public resulting from atomic energy activities remain well within the desired safety margin.

By the Commission.



W. B. McCool
Secretary

Dated August 8, 1969

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UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D. C. 20545

February 25, 1971

Anthony Z. Roisman, Esq.
Berlin, Roisman and Kessler
1910 K Street, N. W.
Washington, D. C. 20036

Dear Mr. Roisman:

This is in response to your "petition" dated February 5, 1971, on behalf of Dr. and Mrs. Irving Lyon of Bennington, Vermont.

We have considered your request that any notice of hearing on the matter of the issuance of an operating license to the Vermont Yankee Nuclear Power Corporation for the Vermont Yankee Nuclear Station at Vernon, Vermont, be delayed until the later of the following dates:

- "1) thirty days following the notice in the Federal Register of the availability of the Detailed Environmental Statement, said statement to reflect resolution of the deficiencies in Applicant's Environmental Report referred to in this petition and to be otherwise in full compliance with the Appendix B, Part 50, as issued on December 3, 1970, or
- 2) March 4, 1971."

I believe that the procedures described below will be responsive to what we take to be your immediate concerns. I am enclosing a notice of hearing which has been forwarded to the Federal Register for publication. You will note that the notice provides that any party may, in accordance with paragraph 11 of Appendix D of 10 CFR 50, raise as an issue in the proceeding whether the issuance of the license would be likely to result in any significant adverse effect on the environment. This could be the case even though we expect that the notice will be published in the Federal Register prior to the March 4 date specified in paragraph 11(a) of Appendix B to 10 CFR 50. The notice of hearing and paragraph 11 of Appendix D explain how such issues will be considered.

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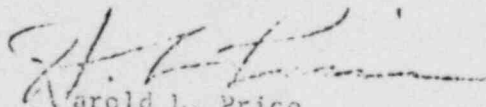
February 25, 1971

Also enclosed is a copy of the notice of availability of the AEC regulatory staff's "Draft Detailed Statement on the Environmental Considerations By the Division of Reactor Licensing, U. S. Atomic Energy Commission, Related to the Proposed Issuance of an Operating License to the Vermont Yankee Power Corporation for the Vermont Yankee Nuclear Power Station, Docket No. 50-271," which has also been forwarded to the Federal Register for publication. I am enclosing a copy of the draft detailed statement for your information.

As to the final detailed statement, the AEC regulatory staff's position on matters of schedule for the hearing before the presiding atomic safety and licensing board will be that the final detailed statement should be served on the parties to the proceeding a reasonable time in advance of the evidentiary session to allow for preparation by other parties.

Dr. Lyon's commentary on the applicant's environmental report, which was appended to the "petition," appears to us to be a matter which can be appropriately dealt with to the extent material and pertinent in the public proceeding.

Sincerely,


Harold L. Price
Director of Regulation

Enclosures:

1. Notice of Hearing
2. Notice of Availability
3. Draft Detailed Statement

cc: Honorable George D. Aiken, United States Senate
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John A. Ritner, Esq.
Mr. Lawrence B. Hunter
Honorable James A. Jeffords, Attorney General
Montpelier, Vermont
Honorable Robert H. Quinn, Attorney General
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