

UNITED STATES OF AMERICA

ATOMIC ENERGY COMMISSION

COMMISSIONERS:

Glenn T. Seaborg, Chairman  
John G. Palfrey  
James T. Ramey  
Mary I. Bunting

In the Matter of  
JERSEY CENTRAL POWER AND  
LIGHT COMPANY OYSTER CREEK  
NUCLEAR POWER PLANT UNIT NO. 1

DOCKET NO. 50-219

OPINION AND ORDER

An initial decision of an atomic safety and licensing board has granted to Jersey Central Power and Light Company a provisional construction permit authorizing the construction of a power reactor at Oyster Creek, Lacey County, New Jersey. The board refused to make a definitive finding, requested by the applicant, that the reactor could be constructed to operate at the proposed power level of 1600 thermal megawatts, until there had been further analysis of features of the design which are not yet available. As conditions of the permit, the board required that within 60 days after the effective date of the initial decision the applicant submit in camera the portions of Jersey Central's contract with General Electric Company, the designer of the reactor, which relate to their respective responsibilities

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for safety and design, and that within 180 days Jersey Central submit additional design information concerning the thermal design of the core, the absorption pool cooling system, the containment, and a number of other features of the design.

The applicant has filed no petition for review by the Commission of the initial decision, under our regulation which authorizes such a petition by a party claiming to be aggrieved by the decision (10 CFR § 2.762(b)). The regulatory staff has filed a petition for review of the initial decision on the ground that review is required in the public interest (10 CFR § 2.762(b)), requesting that the Commission review so much of the initial decision as declines to grant approval of the power level of 1600 thermal megawatts and requires the submission of further technical information to the board. The applicant has filed a response supporting the petition. General Electric Company has submitted a statement of position (cf. 10 CFR § 2.715(a)), which we now accept, requesting that the petition for review be granted and that the limiting conditions imposed by the board be removed, and that General Electric be permitted to file a further statement of position.

The staff's petition for review asserts in substance that the limitations and requirements imposed by the board are beyond its authority, citing 10 CFR § 2.717(a), and that they should not have been imposed in the proper exercise of the board's discretion.

From our review of § 2.717(a) in the light of the legislative history of Section 191 of the Atomic Energy Act and past Commission interpretations,

it is our view that the board has authority to impose the limitations and conditions prescribed by its decision. Matter of Hamlin Testing Laboratories, Inc., decision of July 8, 1964, 2 AEC --; Atomic Energy Act of 1954, Sec. 191, 42 U.S.C. 2241; Sen. Rept. No. 1677, 87th Cong., 1st Sess., p. 5; Improving the AEC Regulatory Process, Joint Committee on Atomic Energy, 87th Cong., 1st Sess., p. 72; Matter of National Bureau of Standards, initial decision of January 26, 1962, 2 AEC --; 10 CFR § 2.718(1). We accordingly deny the staff's petition for review to the extent that it would seek to open the question of the board's authority to do what it has done in this case. Clarification or modification of § 2.717(a) is a matter which we will take under consideration apart from this proceeding.

The other major question presented by the staff's petition for review is whether the board's reservation of certain safety questions and the requirement that additional evidence be presented were improper as a matter of policy, constituting abuse of the discretion committed to the board. This is a "substantial and important" question of "policy or discretion" which we should review under the criteria of our regulations. 10 CFR § 2.762(d)(3).

We note that the current form of notice of hearing for a construction permit in a reactor licensing proceeding specifies more stringently than formerly the information which must be furnished at the construction permit stage. The form of notice of hearing now used conforms to 10 CFR § 50.35(a), which prescribes conditions for the issuance of a construction permit including the findings that, among other things,

" . . . (1) the applicant has described the proposed design of the facility, including, but not limited to, the principal architectural and engineering criteria for the design . . . and that (4) on the basis of the foregoing, there is reasonable assurance that . . . the proposed facility can be constructed and operated at the proposed location without undue risk to the health and safety of the public." (27 F.R. 12915, Dec. 29, 1962)

The present form of § 50.35(a) differs from its earlier form, which simply required reasonable assurance that "a facility of the general type proposed" can be constructed and operated at the proposed location without undue risk. The briefs of the parties should discuss the board's decision in the light of the requirements of § 50.35(a) and the notice of hearing issued under it, as contrasted with the previous form of that section and earlier notices of hearing.

It is therefore ORDERED:

1. The petition of the regulatory staff to review the decision of the atomic safety and licensing board issued on December 4, 1964, is granted with respect to the following issue only, and is otherwise denied:


Whether the provisions of the initial decision refusing to make a definitive finding as to the power level of the proposed reactor, and requiring that within 180 days after the effective date of the decision the applicant submit certain additional technical evidence, constituted abuse of the discretion of the atomic safety and licensing board.

2. The application of General Electric Company for leave to file a statement of position is granted.

3. Exceptions and briefs shall be filed in accordance with 10 CFR §§ 2.762(f) and (g).

By the Commission. Commissioner Tsape did not participate in the decision.

February 18, 1965

  
W. B. McCool  
Secretary

UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

In the matter of

JERSEY CENTRAL POWER AND LIGHT CO. )

Docket No. 50-219

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CERTIFICATE OF SERVICE

I hereby certify that copies of the OPINION AND ORDER issued by the Commission on February 8, 1965, in the above captioned matter, have been served on the following by deposit in the United States mail as first class or air mail this 18<sup>th</sup> day of February, 1965:

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