

November 15, 1999

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

|                              |   |                        |
|------------------------------|---|------------------------|
| In the Matter of             | ) |                        |
|                              | ) |                        |
| COMMONWEALTH EDISON COMPANY  | ) | Docket Nos. 50-295/304 |
|                              | ) |                        |
| (Zion Nuclear Power Station, | ) |                        |
| Units 1 and 2)               | ) |                        |

NRC STAFF'S RESPONSE TO PETITION TO INTERVENE ON  
EXEMPTION FROM PHYSICAL PROTECTION REGULATIONS  
FILED BY RANDY D. ROBARGE AND EDWIN D. DIENETHAL

INTRODUCTION

On October 27, 1999, Messrs. Randy D. Robarge and Edwin D. Dienethal filed a petition for leave to intervene ("Petition"), in a Commission proceeding concerning an application for exemption from certain physical protection regulations at the Zion Nuclear Power Station, Units 1 and 2 ("Zion Station"), filed by Commonwealth Edison Co. ("ComEd" or "Licensee"). For the reasons set forth below, the NRC Staff ("Staff") opposes the Petition and recommends that it be denied.

BACKGROUND

In their Petition, Messrs. Robarge and Dienethal describe their request as relating to the Licensee's "application to amend its operating license [for Zion Station] to modify security requirements, to eliminate certain equipment, to modify certain procedures and to reduce the number of armed responders." Petition at 2. The Petition states that a notice of this "license amendment application" was published in the *Federal Register*, a copy of which is attached to the Petition.

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As indicated in the Notice attached to and referenced in the Petition,<sup>1</sup> the action in question here is not a license amendment, but a request for exemption from certain NRC physical protection regulations, filed by ComEd on July 30, 1999. The Notice indicates that the proposed exemption "would modify security requirements to eliminate certain equipment, to relocate certain equipment, to modify certain procedures, and reduce the number of armed responders, due to the permanently shutdown and defueled status of the Zion Nuclear Power Station," thereby exempting Zion station from certain requirements of 10 C.F.R. § 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage."<sup>2</sup> The Notice indicates that the Commission "is considering issuance" of the proposed exemption; provides an Environmental Assessment relating thereto; states that the Commission has made a "Finding of No Significant Impact," based on its conclusion "that there are no significant environmental impacts associated with the proposed action"; and states that the Commission has determined not to prepare an environmental impact statement with respect to the proposed action. 64 Fed. Reg. at 53423.<sup>3</sup>

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<sup>1</sup> "Commonwealth Edison Co.; Zion Nuclear Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact," 64 Fed. Reg. 53423 (Oct. 1, 1999).

<sup>2</sup> As stated in the Notice, Zion station was shut down permanently in February 1997, and ComEd has certified that all fuel has been removed from the reactor vessels. Accordingly, in accordance with 10 C.F.R. § 50.82(a)(2), the operating licenses no longer authorize ComEd to operate the reactors or to load fuel into the reactor vessels. The proposed exemption (from 10 C.F.R. §§ 73.55(a), (c)(6), (e)(1), (f)(4) and (h)(3)) would allow the Licensee to implement a revised defueled physical security plan that reflects the reduced risk posed by the facility in its permanently shutdown and defueled condition.

<sup>3</sup> On October 18, 1999, following publication of the EA and the notice of consideration, the Commission granted the exemption. See "Commonwealth Edison Co. (Zion Nuclear Power Station Units 1 and 2); Exemption," 64 Fed. Reg. 57155 (Oct. 22, 1999) (copy attached hereto).

DISCUSSION

A. The Petitioners Are Not Entitled to A Hearing on The Exemption Request.

Pursuant to Section 189a of the Atomic Energy Act of 1954, as amended (the "Act"), 42 U.S.C. § 2239(a), a hearing may be requested in the following circumstances:

In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license. . . , the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.

*Id.* Significantly, while the Act affords an opportunity for hearing in connection with a proceeding for "the granting, suspending, revoking, or amending of any license," the Act does not provide an explicit right to hearing on an exemption request. The Staff respectfully submits that no such statutory right to hearing exists in connection with a request for exemption.

In this regard, the Court of Appeals for the First Circuit has noted that "what legislative history there exists suggests that Congress intended the provisions of the section [Section 189a] to be construed quite literally. If a particular form of Commission action does not fall within one of the eight categories set forth in the section, no hearing need be granted by the Commission." *Massachusetts v. NRC*, 878 F.2d 1516, 1522 (1st Cir. 1989) (finding that the lifting of a license suspension did not constitute a "license amendment" that gives rise to a hearing under Section 189a). Thus, the court concluded that "because reinstatement is not listed as a specific action giving rise to a hearing, no hearing right is created by § 2239(a)." *Id.*

The question of whether an exemption request gives rise to a right to hearing under Section 189a of the Act should likewise be resolved by reference to the Act's enumeration of the specific types of actions that give rise to a hearing. Inasmuch as an exemption "is not listed as a specific

action giving rise to a hearing," the Commission should conclude that "no hearing right is created by § 2239(a)." *See id.* Indeed, this was the conclusion reached by the Court of Appeals for the Sixth Circuit in *Kelley v. Selin*, 42 F.3d 1501 (6th Cir. 1995). There, in a case affirming the Commission's approval of a spent fuel storage cask in a generic rulemaking proceeding under 10 C.F.R. Part 72, the court upheld the Commission's grant of an exemption to the cask's manufacturer, to permit the manufacture (but not the loading) of a limited number of casks prior to completion of the cask certification process. The court held as follows:

[W]e note that the grant of an exemption from a generic requirement does not constitute an amendment to the reactor's license that would trigger hearing rights. *Massachusetts v. [NRC]*, 878 F.2d 1516, 1520-21 (1st Cir. 1989). *See also Duke Power Co. v. NRC*, 770 F.2d 386, 389 (4th Cir. 1985) (noting that the parties had agreed that no amendment was involved in the exemption decision).

*Id.*, 42 F.3d at 1517. Similarly, the Commission has held that there is no statutory right to a hearing on an exemption request under Section 189a of the Act, unless the exemption is granted as part of a proceeding for the granting, suspending, revoking or amending of a license or construction permit. *United States Department of Energy* (Clinch River Breeder Reactor Plant), CLI-82-23, 16 NRC 412, 421 (1982).

A similar conclusion should be reached here: Inasmuch as an exemption is not listed as a specific action that gives rise to hearing rights under Section 189a of the Act, the Commission is not required to offer an opportunity for hearing on such a request. This is consistent with established Commission practice and Section 189a of the Act -- as well as the Notice published concerning the instant exemption -- whereby the Staff publishes notice of its consideration of the issuance of an exemption without publishing a notice of opportunity for hearing, in contrast to its practice of

publishing notice of consideration of the issuance of a license amendment along with a companion notice of opportunity for hearing. *See generally*, 10 C.F.R. §§ 2.104, 2.105; *West Chicago v. NRC*, 701 F.2d 632, 638-42 (1983). Further, inasmuch as the instant exemption is not part of a proceeding for the granting, suspending, revoking or amending of a license, it does not give rise to a right to hearing.<sup>4</sup>

B. The Petitioners Have Failed to Demonstrate Their Standing to Intervene.

Even if the Commission should conclude that a right to hearing may exist in connection with the instant request for exemption from the Commission's regulatory requirements, a petitioner would be required to demonstrate that it has an interest that may be affected by the proceeding, as set forth in Section 189a of the Atomic Energy Act. As stated above, Section 189a requires that persons who request a hearing must have an "interest [that] may be affected by the proceeding." In addition, a petitioner must demonstrate that it complies with the minimum requirements of 10 C.F.R. § 2.714. *See, e.g., Yankee Atomic Electric Co. (Yankee Nuclear Power Station)*, CLI-94-3, 39 NRC 95 (1994).

In accordance with 10 C.F.R. § 2.714(a)(2), a petition to intervene, *inter alia*, "shall set forth with particularity the interest of the petitioner in the proceeding, [and] how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in [10 C.F.R. § 2.714(d)(1)]." *Id.*, emphasis

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<sup>4</sup> To be sure, the Commission need not resolve the question of whether an exemption request gives rise to hearing rights under Section 189a of the Act, where such a determination is not required by the facts of the proceeding. *See, e.g., Eddleman v. NRC*, 825 F.2d 46, 50 (4th Cir. 1987); *cf. Florida Power Co. (St. Lucie, Units 1 and 2)*, CLI-89-21, 30 NRC 325, 328 (1989) (declining to reach the generic question of whether an exemption triggers hearing rights under Section 189a of the Act, where a petitioner failed to demonstrate his standing to intervene).

added.<sup>5</sup> Pursuant to 10 C.F.R. § 2.714(d)(1), in ruling on a petition for leave to intervene or a request for a hearing, the presiding officer or Licensing Board is to consider:

- (i) The nature of the petitioner's right under the Act to be made a party to the proceeding.
- (ii) The nature and extent of the petitioner's property, financial or other interest in the proceeding.
- (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

In order to determine whether a petitioner has met these standards, the Commission applies contemporaneous judicial concepts of standing. *See, e.g., Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 56 (1992), review denied sub nom. Environmental & Resources Conservation Organization v. NRC, 996 F.2d 1224 (9th Cir. 1993); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983).*

To establish standing, a petitioner must show that the proposed action will cause "injury in fact" to his interest, and that the injury is arguably within the "zone of interests" protected by the statutes governing the proceeding. *E.g., Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 32 (1993); Public Service Co. of New Hampshire (Seabrook Station, Unit 1), CLI-91-14, 34 NRC 261, 266 (1991) (citing Three Mile Island, supra, 18 NRC at 332).* Further, in order to establish standing, the petitioner must establish (a) that he personally

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<sup>5</sup> Pursuant to § 2.714(a)(2), a petition for leave to intervene must also set forth "the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene." In addition, a petitioner must advance at least one admissible contention in order to be permitted to intervene in a proceeding. 10 C.F.R. § 2.714(b).

has suffered or will suffer a "distinct and palpable" harm that constitutes injury in fact; (b) that the injury can fairly be traced to the challenged action; and (c) that the injury is likely to be redressed by a favorable decision in the proceeding. *Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988); *Vogtle, supra*, 38 NRC at 32; *Babcock and Wilcox* (Apollo, PA, Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 81 (1993).

A petitioner must have a "real stake" in the outcome of the proceeding to establish injury-in-fact for standing. *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 447-48, *aff'd*, ALAB-549, 9 NRC 644 (1979). While the petitioner's stake need not be a "substantial" one, it must be "actual," "direct" or "genuine." *Id.* at 448. A mere academic interest in the outcome of a proceeding or an interest in the litigation is insufficient to confer standing; the requestor must allege some injury that will occur as a result of the action taken. *Puget Sound Power and Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-74, 16 NRC 981, 983 (1982), *citing Allied General Nuclear Services* (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976); *Id.*, LBP-82-26, 15 NRC 742, 743 (1982). Similarly, an abstract, hypothetical injury is insufficient to establish standing to intervene. *Ohio Edison Co.* (Perry Nuclear Power Plant, Unit 1), LBP-91-38, 34 NRC 229, 252 (1991), *aff'd in part on other grounds*, CLI-92-11, 36 NRC 47 (1992).

Finally, in proceedings (such as this) that do not involve the issuance of a construction permit or initial operating license, there is no presumption of standing based upon geographic proximity of a petitioner's residence to a nuclear power reactor. Rather, standing to intervene will depend upon the nexus shown between the petitioner's interests and the proposed action. Thus, standing may be denied in reactor license amendment proceedings where the requested license amendment has not

been shown to have a potentially adverse effect on the petitioner's interest. *See, e.g., Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989); *Boston Edison Co.* (Pilgrim Nuclear Power Station, LBP-85-24, 22 NRC 97, 98-99, *aff'd on other grounds*, ALAB-816, 22 NRC 461(1985); *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-98-12, 47 NRC 343, 354 (1998). *See generally, Georgia Institute of Technology* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115-16 (1995).

With respect to their standing to intervene, the Petitioners assert that they reside in Pleasant Prairie and Kenosha, Wisconsin, within 50 miles of Zion Station; and that operations at Zion Station could affect the health and safety of their families and themselves, their financial interests and property values (arising from their ownership of property in the vicinity of the plant), and the health and safety of the community. Petition at 1-2. No further showing of standing to intervene is provided by the Petitioners, who indicate that they "are in the process of locating council [sic] for representation in this matter and reserve the right to amend this petition at a later date." *Id.* at 2.<sup>6</sup>

Significantly, no demonstration has been made by Messrs. Robarge and Dienethal as to how their interests may be affected by the requested exemption from the Commission's physical protection requirements. The Petition provides little information other than the names of the towns in which the Petitioners reside -- which are described as being within 50 miles of the Zion facility

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<sup>6</sup> While the Petitioners do not cite any authority establishing their "right" to amend their intervention petition, they may be referring to 10 C.F.R. § 2.714(a)(3), which affords petitioners an opportunity to amend their petitions without leave of the presiding officer until 15 days prior to the special prehearing conference or the first prehearing conference that is held in a proceeding. Contrary to the Petitioners' apparent belief, however, there is no right to file a petition to intervene on a licensee's exemption request and, consequently, there is no "right" to amend such a petition that could be "reserve[d]."

(Petition at 1). Such information does not establish the Petitioners' standing to intervene. The Commission has previously made it clear that where a petition for leave to intervene is based upon the petitioner's residence or activities in close proximity to a nuclear reactor, and the amendment at issue does not have an "obvious potential for offsite consequences," the petition must allege some specific "injury in fact" that will result from the action taken. *St. Lucie, supra*, 30 NRC at 329-30; *accord, Yankee Nuclear Power Station, supra*, 47 NRC at 354.

Further, while the Petitioners assert that operations at Zion Station would impact the health and safety of their families and themselves, as well as the health and safety of the community, no information was provided to substantiate this assertion or to indicate how the requested exemption could have any impact on the health and safety of the Petitioners or any person whom they may be authorized to represent in this proceeding. Similarly, they did not identify any family member or other persons whom they seek to represent in this proceeding, and did not indicate how those persons could be affected by the instant licensing action. This is clearly insufficient under established Commission case law.<sup>7</sup> In addition, while the Petitioners assert that they have "financial interests" in the proceeding that result from their ownership of property in the area, no specific information

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<sup>7</sup> In addition, it is well established that a person may obtain a hearing or intervene as of right on his own behalf but not on behalf of other persons whom he has not been authorized to represent. *See, e.g., Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989) (individual could not represent plant workers without their express authorization); *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977) (mother could not represent son attending university unless he is a minor or under legal disability); *Combustion Engineering, Inc.* (Hematite Fuel Fabrication Facility), LBP-89-23, 30 NRC 140, 145 (1989) (legislator lacks standing to intervene on behalf of his constituents). While the Petitioners express concern over the impact of the instant exemption on the interests of their families and the general public, in the absence of any indication that they are authorized to represent any person in this proceeding other than themselves and their minor children, they cannot properly represent such persons herein.

was provided as to the identity of this property, the distance from the property to the Zion site, or how they would suffer any injury in fact by issuance of the requested exemption.<sup>8</sup>

Moreover, the Petition fails to make any showing that the reduction in physical protection requirements for this shutdown and permanently defueled reactor could have any possible impact upon the Petitioners' interests. Despite the Petitioners' apparent belief that offsite impacts could result from the instant exemption, they fail to provide any credible reason to believe that such impacts could occur -- and, indeed, it is not apparent that the instant exemption could have any offsite consequence whatsoever.<sup>9</sup> Further, the Petitioners have not shown that they are aware of any information to suggest that the physical protection measures that remain in place at the facility are inadequate. The Petitioners' generalized allegations fail to establish, "with particularity," any

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<sup>8</sup> In an earlier proceeding that was unrelated to the instant exemption request, Mr. Dienethal provided information with respect to the location of his residence and activities in the vicinity of the Zion site, and the identity of his family members. No such showing was made in this proceeding, however, and no basis exists to presume that his earlier statements continue to be correct. In addition, he has made no showing how his interests or the interests of his family members could be affected by the instant exemption from certain physical protection requirements, nor has any indication been provided that the remaining physical protection measures in place at Zion Station are inadequate. In this regard, it is well established that successful intervention in one proceeding does not establish a petitioner's right to intervene in a subsequent proceeding, since a petitioner's status can change over time and the bases for its standing to intervene in an earlier proceeding may no longer apply. *See, e.g., Texas Electric Utilities Co. (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 163 (1993).*

<sup>9</sup> Indeed, after considering the requested exemption and the proposed alternative measures for protection against radiological sabotage provided at this shutdown and defueled facility, the Commission found that the exemption "is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest." 64 Fed. Reg. at 571551.

credible reason to believe that the instant action could have any adverse impact upon their interests. Accordingly, the Petition fails to establish the Petitioners' standing to intervene. *See Georgia Tech, supra*, 42 NRC at 116-17; *Sequoyah Fuels Corp. (Gore, OK Site)*, CLI-94-12, 40 NRC 64, 72, 74 (1994) (requiring a showing of injury-in-fact that is "concrete and particularized" rather than "conjectural" or "hypothetical," or a "realistic threat" of direct injury resulting from the licensing action).

In sum, the Petition fails to demonstrate the Petitioners' standing to intervene in this proceeding, in that it does not set forth with particularity any credible means whereby their interests could be adversely affected by the proposed exemption. The Petition should therefore be denied.

#### CONCLUSION

For the reasons set forth above, the Staff submits that no right to hearing exists in connection with the instant exemption and, further, that the Petition submitted by Messrs. Robarge and Dienethal fails to establish their standing to intervene in this matter. Accordingly, the Staff opposes their petition for leave to intervene and recommends that it be denied.

Respectfully submitted,



Sherwin E. Turk  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 15th day of November 1999

**DEPARTMENT OF LABOR****Pension and Welfare Benefits Administration****108th Meeting of the Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting**

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 108th public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Wednesday, November 10, 1999.

The purpose of the open meeting, which will run from 1 p.m. to approximately 3:30 p.m. in the Secretary's Conference Room in S-2508, U.S. Department of Labor Building, Second and Constitution Avenue NW, Washington, DC 20210, is for the three 1999 working group chairs to present their committees' reports to the full body for acceptance and for the presentation of a status report on the activities of the Pension and Welfare Benefits Administration, which staffs the Advisory Council for the Secretary of Labor. In addition, the Advisory Council will bid farewell to five members who are completing their three-year terms of office. They include Barbara Uberti, current chair of the Advisory Council; Dr. Thomas J. Mackell, Jr., current vice chair of the Council; Michael Fanning, J. Kenneth Blackwell and Neil Crossman.

Working Group topics and the chairs of those working groups are:

- Benefit Implications of a Contingent Workforce, Mr. Fanning;
- Exploring the Possibility of Using Pension Surplus to Fund Retiree Health Benefits, Michael J. Gulotta, and
- The Trend in the Defined Benefit Plan Market with a Focus on Hybrid Plans, including Cash Plans, Judith F. Mazo.

Members of the public are encouraged to file a written statement pertaining to any of these topics by submitting 20 copies on or before November 1, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the full Advisory Council should forward their request to the Executive Secretary or telephone (202) 219-8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations,

should contact Sharon Morrissey by November 1, at the address indicated in this notice.

Organizations or individuals also may submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 1.

Signed at Washington, DC, this 18th day of October, 1999.

**Richard McGahey,**

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 99-27654 Filed 10-21-99; 8:45 am]

BILLING CODE 4510-29-M

**DEPARTMENT OF LABOR****Pension and Welfare Benefits Administration****Working Group on the Benefit Implications Due to the Growth of a Contingent Workforce Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting**

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study what the benefit implications are due to the growth of a contingent workforce will hold an open public meeting on Tuesday, November 9, 1999, in Room N3437 A-B, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, DC 20210.

The purpose of the open meeting, which will run from 1 p.m. to approximately 3:30 p.m., is for Working Group members to complete its report and recommendations for the year to present November 10 at the full Advisory Council meeting.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before November 1, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219-8753. Oral presentations will be limited to 10 minutes, but an extended statement may

be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by November 1, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 1.

Signed at Washington, DC, this 18th day of October, 1999.

**Richard McGahey,**

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 99-27655 Filed 10-21-99; 8:45 am]

BILLING CODE 4510-29-M

**NUCLEAR REGULATORY COMMISSION**

[Docket Nos. 50-295 and 50-304] s

**Commonwealth Edison Company (Zion Nuclear Power Station Units 1 and 2); Exemption****I**

Commonwealth Edison Company (ComEd or the licensee) is the holder of Facility Operating License Nos. DPR-39 and DPR-48, which authorize the licensee to possess the Zion Nuclear Power Station (ZNPS). The license states, among other things, that the facility is subject to all the rules, regulations, and orders of the US Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of two pressurized-water reactors located at the ComEd site on the west shore of Lake Michigan about 40 miles north of Chicago, Illinois, in the extreme eastern portion of the city of Zion, Illinois (Lake County). The facility is permanently shut down and defueled, and the licensee is no longer authorized to operate or place fuel in the reactor.

**II**

Section 73.55 of Title 10 of the Code of Federal Regulations, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," states that "The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and

do not constitute an unreasonable risk to the public health and safety."

By letter dated July 30, 1999, the licensee requested an exemption from certain requirements of 10 CFR 73.55. These requirements are: (1) 10 CFR 73.55(a)—the requirement that a licensed senior operator suspend safeguards measures and assigning that authority to a certified fuel handler; (2) 10 CFR 73.55(c)(6)—the requirement that the reactor control room be bullet resisting; (3) 10 CFR 73.55(e)(1)—the requirements to have a secondary alarm station, that the central alarm station be located in the protected area, that the central alarm station be classified as a vital area, and that the onsite secondary power supply system for alarm annunciator equipment and non-portable communication equipment be located in a vital area; (4) 10 CFR 73.55(f)(4)—the requirement that non-portable communication equipment located in the central alarm station remain operable from independent power sources if normal power is lost; and (5) 10 CFR 73.55(h)(3)—the requirement to have five or more guards per shift immediately available to fulfill response requirements. The proposed exemption is a preliminary step toward enabling ComEd to revise the Zion Security Plan under 10 CFR 50.54(p) to implement a defueled security plan that was developed to protect against radiological sabotage at a permanently shutdown reactor facility with all fuel stored in the spent fuel storage pool.

### III

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. Section 73.55 allows the Commission to authorize a licensee to provide alternative measures for protection against radiological sabotage, provided the licensee demonstrates that the proposed measures meet the general performance requirements of the regulation and that the overall level of system performance provides protection against radiological sabotage equivalent to that provided by the regulation.

The underlying purpose of 10 CFR 73.55 is to provide reasonable assurance that adequate security measures can be taken in the event of an act of radiological sabotage. Because of its permanently shutdown and defueled condition, the number of target sets susceptible to sabotage attacks has been

reduced. In addition, with more than 31 months of radiological and heat decay since ZNPS was shut down on February 21, 1997, the radiological hazards associated with the remaining target sets, even if subject to sabotage attack, do not pose a significant threat to the public health and safety.

### IV

For the foregoing reasons, the Commission has determined that the proposed alternative measures for protection against radiological sabotage meet the same assurance objective and the general performance requirements of 10 CFR 73.55 considering the permanently shutdown conditions at the ZNPS with all of the fuel in the spent fuel pool. In addition, the staff has determined that the overall level of the proposed system's performance, as limited by this exemption, would not result in a reduction in the physical protection capabilities for the protection of special nuclear material or of the Zion Nuclear Power Station. Specifically, an exemption is being granted for five (5) specific areas in which the licensee is authorized to modify the existing security plan commitments commensurate with the security threats associated with a permanently shutdown and defueled site, as follows: (1) 10 CFR 73.55(a)—an exemption from the requirement that a licensed senior operator suspend safeguards measures and assigning that authority to a certified fuel handler; (2) 10 CFR 73.55(c)(6)—an exemption from the requirement that the reactor control room be bullet resisting; (3) 10 CFR 73.55(e)(1)—an exemption from the requirements to have a secondary alarm station, that the central alarm station be located in the protected area, that the central alarm station be classified as a vital area, and that the onsite secondary power supply system for alarm annunciator equipment and non-portable communication equipment be located in a vital area; (4) 10 CFR 73.55(f)(4)—an exemption from the requirement that non-portable communication equipment located in the central alarm station remain operable from independent power sources if normal power is lost; and (5) 10 CFR 73.55(h)(3)—an exemption from the requirement to have five or more guards per shift immediately available to fulfill response requirements.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby

grants Commonwealth Edison an exemption as described above from those requirements of 10 CFR 73.55 at the Zion Nuclear Power Station in its permanently shutdown and defueled condition.

Pursuant to 10 CFR 51.32, the Commission has determined that this exemption will not have a significant effect on the quality of the human environment (64 FR 53423).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 18th day of October 1999.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Director, Division of Licensing Project Management Office of Nuclear Reactor Regulation.*

[FR Doc. 99-27683 Filed 10-21-99; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-255]

### Consumers Energy Company, Palisades Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. DPR-20 issued to the Consumers Energy Company (the licensee) for operation of the Palisades Plant, located in Van Buren County, Michigan.

#### Environmental Assessment

##### *Identification of the Proposed Action*

The proposed amendment would replace the current Technical Specifications (CTS) in their entirety with improved TSs (ITS) based on the guidance provided in NUREG-1432, Revision 1, "Standard Technical Specifications, Combustion Engineering Plants," dated April 1995. The proposed action is in accordance with the licensee's application for amendment dated January 26, 1998, as supplemented by letters dated April 30, September 14, October 12, and November 9, 1998, and March 1, March 22, March 30, April 7, May 3, June 4, June 11, June 17, July 19, July 30, September 17, and September 30, 1999.

##### *The Need for the Proposed Action*

It has been recognized that nuclear safety in all plants would benefit from improvement and standardization of technical specifications (TSs). The

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of )  
)  
COMMONWEALTH EDISON COMPANY ) Docket Nos. 50-295/304  
)  
(Zion Nuclear Power Station, )  
Units 1 and 2) )

CERTIFICATE OF SERVICE

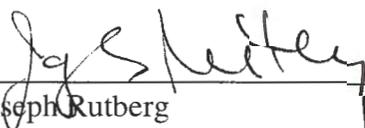
I hereby certify that copies of the "NRC STAFF'S RESPONSE TO PETITION TO INTERVENE ON EXEMPTION FROM PHYSICAL PROTECTION REGULATIONS FILED BY RANDY D. ROBARGE AND EDWIN D. DIENETHAL" in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal mail system, or by deposit in the United States mail, first class, as indicated by an asterisk, this 16th day of November 1999:

Office of the Secretary  
ATTN: Rulemakings and Adjudications  
Staff  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Edwin D. Dienethal\*  
8354 47th Court  
Kenosha, WI 53142

Randy D. Robarge  
8800 3rd Ave.  
Pleasant Prairie, WI 53158

Robert E. Helfrich, Esq.  
Law Department  
Commonwealth Edison Co.  
Executive Towers West III  
1400 Opus Place  
Downers Grove, IL 60515

  
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Joseph Rutberg  
Counsel for NRC Staff