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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

1/12/79

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
COMMONWEALTH EDISON COMPANY)	Docket Nos. 50-237
✓ Dresden Station, Units 2 and 3, and)	50-249
Quad Cities Station, Units 1 and 2))	50-254
)	50-265

NRC STAFF'S BRIEF IN OPPOSITION TO THE ADMISSION
OF CERTAIN OF THE PROPOSED CONTENTIONS OF STATE OF ILLINOIS

On December 28, 1978 attorneys for Commonwealth Edison Company (Applicant), State of Illinois' Office of the Attorney General (Intervenor), and NRC Staff met to discuss contentions in the captioned matter; on December 29, 1978, Intervenor submitted 17 proposed contentions. By agreement of all parties, written briefs urging rejection of any of these contentions were to be filed on or before January 12, 1979. ^{1/} For the reasons set forth NRC staff opposes the admission of Contentions 10 (subparts 8, 9 and 10), 11, 12B, 13A, and 17. ^{2/}

^{1/} The parties' schedule was adopted in the Board's Order of December 13, 1978.

^{2/} By briefing its opposition to certain of Illinois' contentions, to the exclusion of others, NRC Staff does not in any way concede the admissibility or validity of the unbriefed contentions. In fact, NRC Staff specifically reserves objection to all remaining contentions, by either motion to dismiss, or motion for summary disposition under 10 CFR §2.749.

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Contentions 1-9

Illinois' proposed Contentions 1-9 are identical to those of Natural Resources Defense Council/ Citizens for a Better Environment, who have petitioned to intervene in this proceeding. The Staff's position on each of these contentions is set forth in a separate pleading, to be filed concurrently with this Brief.

Contention 10

Illinois' proposed Contention 10 reads as follows:

The License application and supporting documents are fatally deficient in that they do not include any transportation studies or plans, therefore, it is not possible to properly assess consequences. There should be a detailed description of at least: (1) the types of materials to be shipped; (2) quantities of materials to be shipped; (3) numbers of casks per shipment; (4) mode(s) of transportation; (5) routing; (6) carrier, whether Commonwealth Edison or outside contractor; (7) estimated dose rates to drivers, motorists, bystanders; (8) emergency plans; (9) security plans; (10) any other information specifically required under NEPA (42 U.S.C. §4321 et seq.) or by the Council on Environmental Quality (40 C.F.R. §1500), the Department of Transportation, and environmental effects of the proposed transshipment.

NRC Staff opposes subparts (8) and (9) of Contention 10 on the basis that there is no showing that the proposed shipments would in any way affect the presently existing, approved emergency and security plans for the two facilities. The proposed license amendment would in no way change Applicants' emergency planning or security requirements for the protection of spent fuel. NRC Staff opposes subpart (10) of Contention 10 as being vague and unspecific, as the "other information" allegedly required by law and regulations is not further identified. The Staff does not oppose admission of the remaining subparts of this contention at this time, but reserves the right to move to dismiss them (or to move

for summary disposition) upon filing of supplemental information by Applicant, which Staff expects to receive as a result of discussions between the parties.

Contention 11

Illinois' proposed Contention 11 reads as follows:

Applicant's license application and supporting documents do not contain any information to show Applicant's intentions and abilities to conform with the various Department of Transportation regulations which have been designed to protect motorists or citizens living along the travel path. (See particularly 49 U.S.C. §1801; 49 C.F.R. 171-189).

NRC Staff opposes Contention 11 as being vague and unspecific. There is provided no basis for suspecting that Applicant is either unwilling or unable to comply with specified regulations governing the transportation of irradiated fuel as proposed in the license amendment application. To enable the parties to join issue here, Illinois should be held to the burden of establishing prima facie that there is reasonable apprehension of noncompliance by Applicant, or to identify specific shortcomings of Applicant which would render compliance unlikely.

Contention 12

Illinois' proposed Contention 12 reads as follows:

The Application and supporting documents do not supply sufficient information to assure the State that the Applicant and its agents will be in conformity with state laws governing transportation of hazardous materials: Ill. Rev. Stat. ch. 127 §1251 et seq.

- A. The License application fails to provide information about the proposed transport system and emergency report system to be utilized in conjunction with it as required by the Illinois Hazardous Materials Transportation Act, Ill. Rev. Stat. ch. 127, §§1251, 1253, 1255, 1256 and 1257, therefore Petitioner cannot be assured that: the appropriate state agencies will have knowledge of the radioactive materials shipment; motorists on the travel route will have appropriate warning; in case of accident the proper state and local agencies will be notified in the shortest period of time.

- B. There is no discussion in the application as to the advisability of seeking a hearing before the Hazardous Materials Advisory Board to determine whether Applicant's shipment should be exempted from placarding under Ill. Rev. Stat. ch. 127 §1253 (b) because the risk of sabotage outweighs the positive gains of placarding.

NRC Staff opposes subpart (B) of Contention 12 as raising an issue exclusively of state concern, and outside of the NRC's jurisdiction. Discussions among the parties have indicated that either the Attorney General or Applicant may apply for such a hearing, if deemed appropriate.^{3/}

Contention 13

Illinois' proposed Contention 13 reads as follows:

The Application and supporting documents do not meet the requirements of 10 C.F.R. Part 71.

- A. The license application does not specify the type of license being requested under Part 71.
- B. The application does not meet the minimum requirements of 10 C.F.R. 71.51 to provide a description of a quality assurance program for the proposed transshipment nor does the Application discuss the procedures which will be utilized to meet the standards delineated in Appendix F of Part 71.
- C. The license application does not fulfill the requirement of 10 C.F.R. Part 71, subpart B, §71.21 that applications for licenses or license amendments "shall include, for each proposed packaging design and method of transport, the following information in addition to any otherwise required:
- (a) a package description as required by §71.22;
 - (b) a package evaluation as required by §71.23;

^{3/} The issue of sabotage of irradiated fuel in shipment is discussed in WASH-1238, "Environmental Survey of Transportation of Radioactive Materials To and From Nuclear Power Plants," Dec. 1972, p. 48 and App. B.

- (c) an identification of the proposed program of quality assurance as required by §71.24;
 - (d) in the case of fissile material, an identification of the proposed fissile class.
- D. There are no computations or computer simulations to indicate that criticality will not be reached during shipment (10 C.F.R. §71.33).
- E. The application fails to identify the type of package and mode of transport so that it is impossible to evaluate the effect of the transport environment on the nuclear safety of the packages (10 C.F.R. 71.37).
- F. The application fails to identify the type of package and mode of transport therefore it is impossible to assess whether the spent fuel shipments will meet the standards for hypothetical accident conditions. (10 C.F.R. §71.36).

NRC Staff opposes Subpart A of Contention 13 as being irrelevant; the proposed license amendment request is made under 10 C.F.R. Part 50, and is not being requested under Part 71 as asserted.

Contention 17

Illinois' proposed Contention 17 reads as follows:

The application and supporting documents are in error. §4.1 of the licensing report incorrectly states that the application raises no unresolved safety problems. The application is premised on the use of the spent fuel pools at Dresden 2 and 3 as storage facilities for fuel from Dresden I and Quad Cities. The application makes no mention however of the application presently pending before the NRC to increase spent fuel storage capacity at Dresden 2 and 3 by installing Brooks and Perkins Stainless Steel Boral racks in the pools. NRC investigations have uncovered serious problems in the use of Brooks and Perkins racks at Monticello and Browns Ferry. These problems involve swelling of the racks to such a degree that fuel become swollen may also prove to be a problem. The potential installation of similar racks at Dresden prior to the institution of transshipment creates a safety problem, the solution for which is yet to be found.

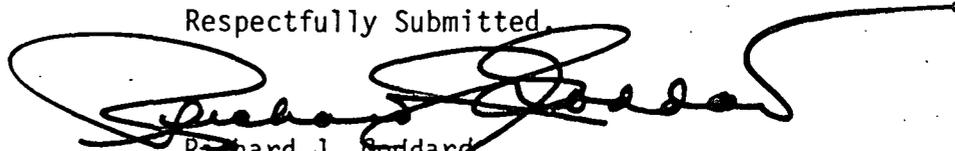
NRC Staff opposes Contention 17 as being irrelevant to the limited issue of transshipment of spent fuel before the Board in this proceeding. The

Dresden and Quad Cities spent fuel pools presently contain approved storage racks. There is presently pending before another Atomic Safety and Licensing Board an application to rerack the Dresden 2/3 pool with Brooks and Perkins Stainless Steel Racks, as alleged, and the State of Illinois has petitioned to intervene in that proceeding (without opposition from either Applicant or Staff). Such racks will not, however, be installed until such time as that Licensing Board has affirmatively found such racks to present no "unresolved safety problems." As such racks have not yet been installed, and will be installed only after being determined to be safe, in a proceeding involving the instant Intervenor, NRC Staff submits that Contention 17 in fact raises no justiciable issue here. Moreover, the transshipment option could be utilized by Applicant once authority to do so was given, even if the authority to rerack was never obtained. Consideration of the pending proposal to rerack the Dresden spent fuel pool by this Board, within the context of the instant proceeding, would constitute an unnecessary expansion of the proceeding, with no resultant benefits.

Conclusion

For the reasons set forth above, NRC Staff opposes the admission of Illinois' proposed Contentions 10 (Subparts 8, 9, and 10), 11, 12B, 13A, and 17.

Respectfully Submitted,



Richard J. Goddard
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 12th day of January, 1979

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S BRIEF IN OPPOSITION TO THE ADMISSION OF CERTAIN OF THE PROPOSED CONTENTIONS OF STATE OF ILLINOIS", in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 12th day of January, 1979:

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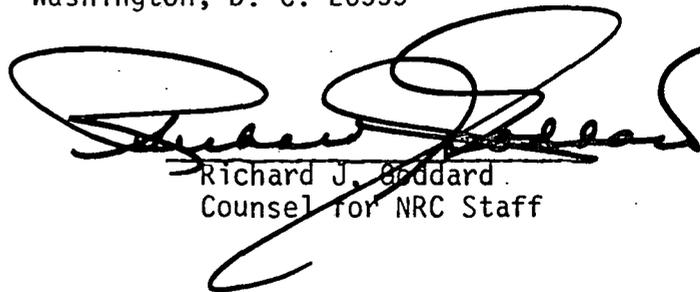
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