

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
COMMONWEALTH EDISON COMPANY ) Docket Nos. 50-237  
(Dresden Station, Units 2 and 3) ) 50-249  
) (Spent Fuel Pool Modification)

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OPERATION SERVICES

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NRC STAFF RESPONSE TO INTERVENOR'S MOTION  
FOR RECONSIDERATION OR CERTIFICATION TO THE COMMISSION

INTRODUCTION

Intervenor, State of Illinois, has moved the Licensing Board to reconsider the question of whether Applicant Commonwealth Edison Company's Motion for a Continuance of certain portions of the hearing should have been granted by the Licensing Board or, in the alternative, to certify this question to the Commission.

At the inception of the hearings, Counsel for Applicant informed the Licensing Board of a potential safety issue involving the bowing of fuel assembly channels, which could conceivably cause sticking of a bowed fuel assembly within the proposed dense fuel storage racks. This matter had been disclosed to the Staff and the Intervenor prior to the hearing. (Tr. 79-80; Intervenor's Exhibit 1). Upon Motion by the Applicant, the Licensing Board granted a continuance of the hearing as to the fuel assembly channel bowing question until further analysis had occurred and, if necessary, until a comprehensive examination of this phenomenon had been performed by the Applicant and submitted to the Staff and other parties. (Tr. 384).

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The Licensing Board did not direct when, or whether, further evidentiary hearings would be required, but requested Applicant to inform the Board and parties as to the significance of this phenomenon by conference call on or about December 18, 1980. By Motion dated November 26, 1980, Intervenor has moved for reconsideration of the Licensing Board's decision to grant a continuance and, alternatively, has moved for certification of this question to the Commission. For the reasons set forth below, Counsel for NRC Staff respectfully requests that the Board deny each of Intervenor's Motions.

#### DISCUSSION

Intervenor alleges that the Board's grant of a continuance in this case "has affected substantially the right of Intervenor to prove its case and has severely prejudiced Intervenor's case." It further asserts that the issue presents both major and novel questions of procedure and policy under 10 C.F.R. § 2.785(d). Such prejudice to Intervenor's case, however, is not the subject of further elaboration. It is clear, however, that the continuance in no way affects the right of Intervenor to prove its case, either by presentation of direct evidence or through the medium of cross-examination, as to any of the admitted contentions in this proceeding, on which the evidentiary record is complete. As to whether an issue is presented which constitutes "a major or novel question of procedure and policy," such issue to be examined herein is not the technical issue of fuel assembly channel bowing, but rather the simple procedural issue of whether or not a continuance should lie at the request of Applicant.

Initially, it is clear that an Atomic Safety and Licensing Board has the general authority to regulate the course of a Licensing proceeding, and it may schedule hearings on specific issues so as to accommodate the presentation of evidence thereon. Public Service Company of Indiana, Inc. (Marble Hill Generating Station, Units 1 and 2), ALAB-371, 5 NRC 409 (1977), motion to direct certification denied, ALAB-393, 5 NRC 767 (1977). Accord: Pennsylvania Power and Light Company, (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-563, 10 NRC 449 (1979). The matter under examination, the bowing of fuel assembly channel boxes, was brought to the knowledge of the parties and the Licensing Board shortly after Applicant became aware of the existence of this phenomenon and its possible affect upon utilization of the proposed spent fuel storage racks. See Intervenors Exhibit 1. Although this issue did not relate to any manner placed in controversy by the admitted contentions of Intervenor, as Applicant states in its reply brief at page 4, this matter was disclosed in conformance with the requirements of full disclosure articulated by the Atomic Safety and Licensing Appeal Board in Duke Power Company (William B. McGuire Station, Units 1 and 2) ALAB-143, 6 AEC 623 (1973).

At this juncture, it is not known whether or not such phenomenon could in fact constitute any threat to the public health and safety or interfere with the proposed utilization of the racks as designed. Applicant has proposed to examine this matter and present its findings to the Licensing Board and parties. Upon receipt of this information, the NRC Staff will undertake an examination of the tendered information and an evaluation of its significance. See comments

of Staff counsel, at Tr. 383. Accordingly, pending further examination of the issue, which may or may not require the preparation of affidavits or further evidentiary hearings, the Licensing Board took appropriate action in granting a continuance.

In the event one of the parties believes that the channel bowing phenomenon does have some safety significance, appropriate contentions and/or argument can be presented to the Licensing Board pursuant to 10 C.F.R. § 2.714. The Licensing Board will then be in a position to evaluate the issue and, if necessary, could properly proceed to order further evidentiary hearings. Alternatively, if the phenomenon proves to constitute no safety problem, the Licensing Board would then be free to take the appropriate steps towards findings of fact and the issuance of the Initial Decision in this cause without regard to the phenomenon of channel bowing. Such procedures are not novel nor do they prejudice the rights of any party to this proceeding.

CONCLUSION

For the reasons stated above, the NRC Staff opposes the Intervenor's Motion for Reconsideration of the Licensing Board's decision to grant a continuance or, alternatively, to certify such question to the Commission, and requests that the Licensing Board deny the Motions.

Respectfully submitted,



Richard J. Goddard  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 15th day of December, 1980.

