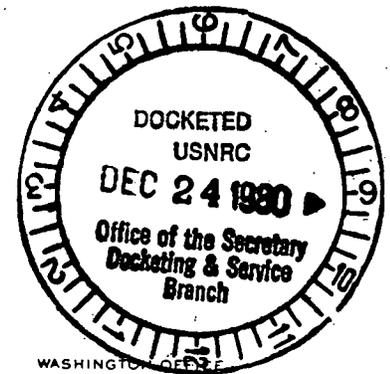


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December 22, 1980

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
COMMONWEALTH EDISON COMPANY )  
(Dresden Station, Units 2 & 3))

Docket Nos 50-237-9  
50-249-8  
(Spent Fuel Pool  
Modification)

US NRC  
DISTRIBUTION SERVICES  
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DISTRIBUTION SERVICES UNIT

Dear Administrative Judges:

Pursuant to the Board's permission granted in our telephone conference call on December 18, 1980, enclosed are Applicant's Proposed Findings of Fact. They are incomplete in the following respects. Introductory paragraphs 7 and 13 and subsection IIH are not supplied, since all have to do with the fuel channel bowing matter which is to be the subject of further evidentiary presentation. Paragraph 94 on page 51, dealing with the adequacy of Applicant's corrosion surveillance plan and Intervenor's Contention 7C, is also incomplete since Applicant's commitment to conduct periodic dummy fuel assembly tests was deferred pending analysis of the fuel channel bowing matter. Tr. 378-379. Footnote 155 on page 46 is incomplete because it requires a reference to Applicant's Licensing Report (Rev. 5) which will be submitted shortly in accordance with the Board's wishes. Tr. 466-467, 497. Finally, proposed Conclusions of Law and a proposed Order have not been submitted.

Respectfully submitted,

Philip P. Steptoe  
One of the Attorney for  
Commonwealth Edison Company

PPS/kb  
CC: Service List

Enclosure # 8012310289 See Hearing Reports

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

12/19/80

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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NRC  
DIVISION

NRC STAFF'S REPLY TO APPLICANT'S  
MOTION TO STRIKE CROSS EXAMINATION  
BY INTERVENOR STATE OF ILLINOIS

I. INTRODUCTION

During the evidentiary hearing in the captioned proceeding, Applicant Commonwealth Edison Company moved to strike the cross examination by the State of Illinois (Intervenor) of Staff Witness Wohl (Tr. 674-684). This motion to strike the testimony, which was made at the hearing, is now renewed by Applicant and supported by their Brief in Support of Motion to Strike, dated December 1, 1980. Intervenor opposes the motion. For the reasons set forth below, NRC Staff supports the motion of Applicant.

II. DISCUSSION

Intervenor's Contention 6 reads as follows:

6. The application inadequately addresses the increased consequences of accidents considered in the FSAR, SER, and FES associated with the operating license review of Dresden Units 2 and 3 due to the increased number of spent fuel assemblies and additional amounts of defective fuel to be stored in the spent fuel pool as a result of the modification.

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NRC Staff and Applicant each submitted prepared testimony on this contention, and presented witnesses to support such testimony. Intervenor submitted no testimony of its own, seeking to establish its case through cross-examination. In its opening statement, Intervenor attacked the accident analyses in the SER and then the pre-filed testimony of NRC Staff and Applicant for inadequacy, in that they were based upon the single failure criterion test for accident credibility. Intervenor argued that multiple failure accidents must be considered for Dresden 2 and 3, notwithstanding the single failure criterion of the Commission's regulations. (Tr. 87, 659-62.)

Counsel for Intervenor proceeded to inquire into the consequences of system interactions, and subsequently argued to the Licensing Board that, in relation to Contention 6, there should have been a reference to systems interaction in the accident analysis and in Contention 6. (Tr. 682, 684-85.)

Intervenor relies upon the cases of Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760 (1977) and Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2), ALAB-491, 8 NRC 245 (1978), insofar as they deal with the applicability of Staff analysis of generic unresolved safety issues in safety evaluation reports at the construction permit and operating license stages, respectively. It is the position of NRC Staff that the role of the Atomic Safety and Licensing Board in a license amendment proceeding such as the one in question, a spent fuel pool modification, is quite limited by the scope of contentions placed in issue by the parties. Indeed, the North Anna case, relied upon by Intervenor, recognizes the distinction between the limited scope of the Licensing

Board's inquiries in operating license proceedings, as distinguished from construction permit proceedings, where uncontested matters are concerned. 8 NRC at 247. Indeed, subsequent to both the River Bend and North Anna decisions, upon which Intervenor apparently relies as a basis for demanding consideration of generic items within the scope of the captioned proceeding, the Atomic Safety and Licensing Boards and Atomic Safety and Licensing Appeal Boards have had numerous occasions to deal with the issues presented by proposals to modify spent fuel pools to provide more dense fuel storage. In none of these cases have generic items been examined in a "wholesale", or across-the-board manner. Rather, due to the limited scope of such proceedings, it is incumbent upon intervenors to show the relevance of a particular generic unresolved safety issue or task action plan to the proposed modification under adjudication.

The Staff submits that the rationale for dealing with the so-called unresolved generic safety issues in a construction permit proceeding or even an operating license proceeding is not translatable to a proceeding of limited scope such as a spent fuel pool modification. The so-called generic items or task action plans are applicable to nuclear reactors, or at least to a large number of them, and their routine operations, in a general way, and are the subject of ongoing attempts to find a universally applicable solution. In the event these issues are unresolved at the construction permit stage, an applicant is faced with the necessity to justify construction, while leaving the analysis of the issue to await operation. If the resolution of such an item has not occurred at the time of the operating license

proceeding, other justifications for permitting the plant to operate may exist; there may be a solution which is satisfactory in the case of the particular facility under examination, or a restriction on the level or nature of operation adequate to eliminate such problem may be imposed, or the safety issue in question may be one which does not arise until the later years of plant operation.

In the case of a spent fuel pool modification, however, the myriad of issues dealing with general reactor construction and operation has already been taken under review, and resolved, at the original licensing stage. In fact, the plant has usually demonstrated its ability to operate at length, prior to the need for spent fuel pool expansion. Accordingly, it is not unreasonable to demand a strict showing of relevance of a generic issue or task action plan to the proposed modification in question, which comprise a very small portion of the totality of actions which comprise reactor operation. Thus, the Staff submits that the nexus requirement of River Bend should be stringently enforced by a Licensing Board in the context of a proceeding of limited scope.

In the instant case, Intervenor has attempted, through cross-examination and subsequent argument, to expand its stated Contention 6 to encompass the question of systems interaction.

To the extent that Intervenor desires to examine the question of system interaction, a generic task action plan, within the context of Contention 6, no nexus between such a generic item and this proposed modification has been asserted. Indeed, Intervenor would appear to have simply selected one

of many task action plans for litigation without proposing a scenario or otherwise attempting to demonstrate its relevance to this modification.

More basic considerations, however, should be dispositive of this issue. Simply, the plain reading of Contention 6 certainly does not lend itself to such an interpretation.

A fair reading of Contention 6 would indicate that Intervenor sought to examine into potential increased consequences of those accidents considered at the operating license stage for Dresden Units 2 and 3 which might be brought about by increasing the number of spent fuel assemblies to be stored in the spent fuel pools at those facilities. Witnesses for NRC Staff and Applicant, accordingly, presented testimony directly addressing the explicit concerns of Intervenor regarding this issue, each arriving at the conclusion that the proposed modification and densification of fuel storage would not result in significantly increased consequences of the design basis accidents. Accordingly, the cross-examination of these witnesses, in an attempt to develop alleged inadequacy in their evaluations by failure to consider multiple failures or systems interaction, as might be relevant to the proposed modification, should not be heard at this time. This intervenor, the State of Illinois, and the particular counsel who conducted the challenged cross-examination and who, in fact, has participated in this proceeding since its inception, are frequent participants in nuclear licensing actions, and should be extended little leeway when seeking to modify or expand such an explicit contention at such a late stage in the proceeding. Accordingly, the NRC Staff would support Applicant's motion to strike the challenged cross-examination, and would oppose any further attempt to modify the contention, or submit a new, expanded contention, at this time.

III. CONCLUSION

For the reasons set forth above, the NRC Staff supports the Applicant's motion to strike Intervenor's cross-examination as indicated.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Richard J. Goddard".

Richard J. Goddard  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 19th day of December, 1980

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S REPLY TO APPLICANT'S MOTION TO STRIKE CROSS EXAMINATION BY INTERVENOR 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 19th day of December, 1980:

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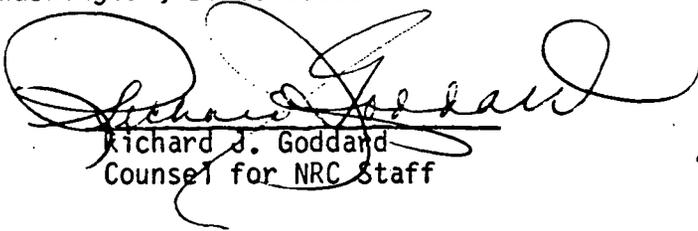
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Richard J. Goddard  
Counsel for NRC Staff