1/12/79

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF	)	
	)	
COMMONWEALTH EDISON COMPANY	)	Docket Nos. 50-237
	)	50-249
Quad Cities Units 1 and 2	)	50-254
and Dresden Units 2 and 3	)	50-265
	)	
Amendments to Facility	)	
Operating License Nos.	)	
DPR-19, DPR-25, DPR-29 and	)	
DPR-30.	)	

ANSWER AND MOTION TO STRIKE
OF APPLICANT, COMMONWEALTH EDISON COMPANY
IN RESPECT OF CONTENTIONS FILED BY
PETITIONERS, NATURAL RESOURCES DEFENSE
COUNCIL, CITIZENS FOR A BETTER
ENVIRONMENT, AND ILLINOIS ATTORNEY GENERAL

I. Introduction

On December 6, 1978, Petitioners Natural Resources Defense Council ("NRDC") and Citizens for a Better Environment ("CBE") filed their final contentions in this matter, and on December 29, 1978, the Illinois Attorney General filed his final contentions.

Applicant hereby moves to strike all or portions of NRDC and CBE Contentions 4b, 5b, and 6, as specified below, which were incorporated by reference by the Attorney General in its statement of contentions. In addition, Applicant moves to strike the Attorney General's Contentions 10, 11, 12, 13, 14, 15, 16, and 17. For the reasons stated in Part

II of this brief, these contentions fail to state claims for which relief may be granted in this proceeding. Applicant believes that there are no material facts in dispute which would preclude the Board from ruling on these motions to strike at the special prehearing conference on February 1.

By not moving to strike Petitioners' other contentions, Applicant does not concede that all of them are legally relevant to this proceeding. We believe, however, that some of these remaining contentions must be addressed by the Staff and others may present mixed issues of law and fact which are more easily addressed in the context of motions for summary disposition. For the convenience of the Board and the other litigants, we include in Part III an answer in which we state briefly Applicant's position with respect to the merits each of Petitioners' contentions other than those subject to our motion to strike.

II. Memorandum in Support of Applicant's Motion to Strike

The relevant standards which this Board must apply in determining the legal admissibility of contentions are easily stated. First, an intervenor's contentions and the basis for each contention must be set forth with reasonable specificity. 10 CFR §2.714. In Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20, 21 (1974), the Appeal Board identified

three purposes for this requirement: (1) to assure at the pleading stage that the hearing process is not improperly invoked; (2) to assure that other parties are sufficiently put on notice so that they will know at least generally what they will have to defend against or oppose; and (3) to assure that the proposed issues are proper for adjudication in the particular proceeding. See also, BPI v. Atomic Energy Commission, 502 F.2d 425 (D.C. Cir. 1974).

In this case many of the contentions filed by the Attorney General are not fit for adjudication in that they fail to meet the basis and specificity requirements. For example, Contentions 10, 11 and 12 merely seek information with respect to Applicant's "intentions and abilities" to conform with various federal and state laws and regulations. The regulations cited comprise thousands of pages. Where specific statutory provisions are cited, as shown below, the requirements seem to be misstated. Such sweeping, unfocused citations utterly fail to put Applicant on notice as to what we will have to defend against or oppose and makes this Board's determination of the contested issues impossible. Contentions of this sort, which sound more like discovery requests, are particularly improper when Applicant has been cooperative in discovery for same time.[1] The Attorney General's

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1 For example, the Attorney General took deposition of Applicant's Assistant Vice President, Mr. Reed.

contentions which broadly request that Applicant supply additional information or perform additional analyses, give Applicant no clue as to what specific issues the Attorney General wishes to pursue in this proceeding. Further, many of these contentions attempt to impose obligations upon Applicant which have no basis in law or policy.

It is also the law that Intervenor's contentions must be within the scope of this proceeding. See, e.g., Kleppe v. Sierra Club, 427 U.S. 390 (1976); Public Service Company of New Hampshire, et al., (Seabrook Station Units 1 and 2) CLI-77-8, 5 NRC 503, 541-2 (1977). Many of the Attorney General's contentions focus on aspects of the proposed transshipment of spent fuel between Dresden and Quad Cities which are not within the scope of this proceeding, but instead relate to the licensing of shipping casks. In particular, Applicant already has a general license under Part 71 to ship spent fuel in a licensed cask. Only the storage of fuels from one plant at another necessitates the amendments which are the subject of this request.

The reasons why Contentions 4b, 5b, 6, 10, 11, 12, 13, 14, 15, 16 and 17 are inadmissable and should be struck in whole or in part set forth in more detail below.

Contention 4(b)

Contention 4 states:

> The proposed action increases the exposure to radiation of workers and the general public beyond what is ALARA.

a. ALARA can be achieved by on-site expansion of spent fuel pool storage capacity at each plant site, including building another spent fuel pool.

b. The residual health risks which remain even if the present NRC regulations on exposures to workers are met are major costs of the proposed action which tip the balance against the proposed action. The health hazards include increased genetic mutations which affect the entire population directly and increased somatic effects which affect the workers directly and the general population indirectly as lost productivity, higher health costs and the loss of family or friends. Recent evidence by Drs. Mancuso and Bross indicates that the dangers from low levels of radiation are greater than originally assumed by the BEIR Committee. The NRC regulations set levels for workers 10 times higher than acceptable even if the BEIR Committee calculation of health effects is used. See Natural Resources Defense Counsil Petition to Amend 10 DFR 20.101 Exposure of Individuals to Radiation in Restricted Areas, October 29, 1975, and Supplement to Petition and Request for Hearings, November 4, 1977.

The underlined sentences of Contention 4b can only be interpreted as a direct challenge to the radiation exposure limits set forth in 10 CFR Part 20. Such a challenge to the Commission's regulations in an adjudicatory proceeding is generally precluded by 10 CFR §2.758(a). Only where it is shown by affidavit that "special circumstances with respect to the subject matter of the particular proceeding are such that application of the rule or regulation (or provision thereof) would not serve the purposes for which the rule or regulation was adopted" will a challenge to the regulation be permitted. 10 CFR §2.758(b). In as much as Petitioners have failed to make such a showing, the sentences

referred to above are improper, and should be stricken from the Contention.

Contention 5(b)

Contention 5 states:

> Applicant overstates the need for action at this time by using the one-core discharge capacity reserve standdard as if it were a requirement where in fact it is not a requirement of NRC regulations.
>
> a. Either applicant should be bound to comply with the one-core discharge capacity standard or it should have to demonstrate on a NEPA cost/benefit basis that holding that capability is more valuable than the costs of shipment off-site of one core of spent fuel.
>
> b. Numerous utilities now are in violation of this standard. See ERDA 77-25, p. 7; Spent Fuel Storage Study (1976-1986) prepared by AIF (April, 1977), p. 11.

There is no need to litigate in this proceeding whether "numerous utilities" are now maintaining one-core reserve discharge capability. If the statement in 5(b) is true, it may have some tangential relevance to the NEPA cost/benefit question which may be raised by 5(a). In and of itself, however, Contention 5(b) does not present an independent issue which is within the scope of this proceeding.

Contention 6

Contention 6 states:

> Applicant has failed to disclose any information sufficient to determine whether shipment of spent fuel between the plant sites

will be vulnerable to sabotage, hijacking or other malevolent acts and whether this represents a serious risk to public health and safety.

a. A credible threat of an attack against such a shipment would be 3 insiders and 15 outsiders, the latter armed with sophisticated rapid fire automatic weapons, explosives, large shell mortars and armored vehicles.

b. There is no known basis for assuring detection of a threat of this size until it has materialized.

c. Unless applicant is taking safety precautions far beyond those routinely used in the nuclear industry, it will be unable to prevent a malevolent act involving spent fuel in transit.

d. A successful malevolent act directed against a spent fuel shipment could expose thousands of persons to fatal levels of radiation, could severely pollute water supplies and land areas, force long-term evacuation of major areas and create a threat of all these events unless certain unacceptable political and/or other demands are met.

Contention 6 can only be interpreted as a direct challenge to the provisions of 10 CFR Part 73 in violation of 10 CFR §2.758. 10 CFR §73.6 states:

> A licensee is exempt from the requirements of §§73.30 through 73.36 ["Physical Protection of Special Nuclear Material in Transit"] and of §§73.60, 73.70 and 73.72 of this part, with respect to the following special nuclear material:
>
> * * *

(b) Special Nucleal Material which is not readily separable from other radioactive material and which has a total external dose rate in excess of 100 rems per hour at a distance of 3 feet from any accessible surface without intervening shielding; and

* * *

The reason for this exemption is made clear in the "Final Environmental Statement on the Transportation of Radioactive Materials by Air and Other Modes", NUREG-0170 at p. 7-2, which concludes that "[s]pent fuel is considered to be neither an attractive nor a practical target for theft or sabotage."

Thus, in Contention 6 Petitioner has challenged the Commission's policy decision reflected in 10 CFR §73.6. As Applicant has indicated in its discussion of Contention 4b, a challenge to the Commission's regulation is precluded except through certain procedures and under "special circumstances." Petitioner has ignored those procedures and totally failed to establish that such special circumstances exist with respect to this particular proceeding.

Further, the Contention does not allege any facts which might indicate that Applicant will not comply with any regulations with which compliance might be required, and thus, there is no basis whatever for the Contention as required by 10 CFR §2.714. These two factors mandate the dismissal of this Contention.

Contention 10

Contention 10 states:

> 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 curies 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 CFR 1500), the Department of Transportation, (49 CFR Parts 171-189), or the Nuclear Regulatory Commission (10 CFR Part 71), to make it possible to properly assess safety and environmental effects of the proposed transshipment.

Prior to discussing the specific subparts of this Contention, Applicant feels compelled to point out a deficiency common to most of the Attorney General's Contentions, which is typified most vividly in Contention 10. Although the word "contention" is not specifically defined in the Commission's Rules of Practice, it is well recognized that, at a minimum, an admissible contention should permit the Board and other parties to conclude that a genuine issue is in fact raised by the contention. Peach Bottom, supra at 21.

For the most part, the Attorney General's Contentions utterly fail to achieve this purpose. They appear to be

nothing more than sweeping requests for information which is, at best, marginally relevant to Applicant's proposed amendment. The Attorney General filed its Notice of Intervention of September 20, 1978, and thus had ample opportunity to avail itself of discovery and thereafter resubmit particularized, factually supported contentions. Its failure to do so, should not be used as an excuse for filing contentions, which are, in effect, ill-timed requests for discovery.

Subparts (1), (2), (3), (4), (5), (6) and (7) of Contention 10 attack Applicant's amendment request based upon its failure to include the referenced information. There is, however, no requirement that such information be included as part of this amendment application. Thus, in this Contention, the Attorney General is essentially asserting the existence of legal requirements where none exist. Moreover, to the extent that these subparts raise questions relating the the need for an environmental impact statement covered under NEPA or matters which would be covered in such a statement, they are covered by Contention 2 so that Contention 10 is redundant.

The information being requested in subpart (8) of Contention 10 is identical in every respect to the information requested in Contention 7B. Therefore, Contention 10(8) should be dismissed as redundant.

Contention 10(9) requests information with respect to Applicant's security plans. In as much as 10 CFR §73.6

specifically exempts the transfer of spent fuel from the requirement of a security plan, this Contention must be dismissed as an improper challenge to the policies underlying the Commission's regulations. (See discussion relating to Contention 6, infra).

Subpart 10, as it refers to "any other information required under NEPA (42 U.S.C.§4321 et seq.) or by the Council on Environmental Quality (40 CFR 1500)" obviously fails to comply with the specificity requirements of §2.714. Furthermore, the issues which the Attorney General has apparently attempted to raise by way of this Contention are identical to those raised in Contention 2. Therefore, based on the lack of specificity and the repetitive nature of the Contention, it must be dismissed.

In so far as the Contention, in particular subpart 10, relates to the Department of Transportation regulations in 49 CFR Parts 171-189, it lacks adequate basis and specificity as is also subject to the objection stated in more detail with respect to Contention 11. In so far as the Contention relates to 10 CFR Part 71, it lacks adequate basis and specificity and furthermore is subject to the objections stated in more detail with respect to Contention 13.

Contention 11

Contention 11 states:

> 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 CFR 171-189).

The Attorney General's Contention 11 is inadmissable for several reasons. First, it fails to state a claim upon which relief can be granted because there is no requirement that the application contains such information. Second, it does not satisfy the basis and specificity requirements of 10 CFR §2.714. The admission of this Contention in these proceedings would impose an impossible burden on Applicant. In essence, the Contention requests that Applicant demonstrate its intention and ability to comply with regulations which exceed 1,000 pages in length, where, on their face, a substantial number of those regulations are totally inapplicable to radioactive wastes and the amendment application which this Board is being requested to consider. The Attorney General has not alleged any facts indicating that Applicant might not comply with any of the referenced regulations which are applicable to its amendment application. If the Attorney General believes that Applicant will violate certain laws and regulations, it must, at a minimum, identify the particular regulation in question and specifically set forth why it believes the Applicant's proposed activities will cause a violation thereof. Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants),

LBP-77-48, 6 NRC 249, 254 (1977). In the absence of such a showing, there is no basis for the admission of this contention in these proceedings, and it should therefore be dismissed.

Contention 12

Contention 12 states:

> The Application and supporting documents do not supply information to assure the State that the Applicant and its agencies 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 Petition 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.

As with Contention 11, discussed above, Contention 12 fails to meet the basis and specificity requirements of 10 CFR §2.714. Again, the Attorney General has failed to allege any specific failures to comply or facts which would indicate that compliance may not be achieved.

Second, the Attorney General has misstated the requirements which must be met under Ill. Rev. Stat. ch. 127 §1251 et seq., Ill. Rev. Stat. ch. 95 1/2 §700-1 et seq.[1], and regulations promulgated thereunder.[2] First Contention 12A implies that the Illinois Hazardous Material Transportation Act provides for notification to appropriate state agencies of the transportation of radioactive materials. There is, however, no such requirement. See 2 Illinois Register 218. As a result, the Contention improperly requests that Applicant be required to demonstrate compliance with nonexistent regulatory provisions. To the extent that the Attorney General is challenging the adequacy of Illinois statutes and regulations, it is obviously in the wrong forum to advance such a claim.

Likewise, Contention 12A implies that motorists are required to be warned of the transportation of radioactive materials. The only such requirement in the statute or proposed regulations involves placarding. 2 Illinois

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1 Although the Attorney General has failed to cite Ill. Rev. Stat. 95 1/2 §700-1 et seq. ("Illinois Hazardous Materials Transportation Act"), Applicant will treat this failure as an inadvertent omission and will discuss this Act as though referenced by the Attorney General.

2 The regulations promulgated under these Acts were proposed on May 12, 1978 (2, Illinois Register 218) and are due to become effective on January 29, 1979.

Register 218. Again, the Attorney General has not established a basis for the contention by failing to allege any facts which would indicate that the carrier does not have the ability or intention to comply with these regulations. If, on the other hand, the Attorney General is implying that some other system of warning motorists is mandated by Illinois law, he is simply mistaken.

With respect to notification of transportation accidents, §171.15 of the proposed Illinois regulations requires that the carrier notify the Illinois Emergency Services and Disaster Agency of such accidents. 2 Illinois Register 245. Again, the Attorney General has not alleged any facts which would indicate that the carrier will not comply with this requirement, and thus there is no factual basis for the Contention.'

Contention 12B raises issues which are not proper for adjudication in this particular proceeding. Peach Bottom, supra. In Contention 12B, the Attorney General challenges Applicant's amendment request on the ground that Applicant has not discussed the advisability of seeking a hearing before an Illinois agency with respect to seeking exemptions from placarding. Applicant submits that the admission of this contention into these proceedings would serve no valid purpose in terms of the Attorney General's asserted interests, and would unnecessarily encumber the administrative hearing process. If the Attorney General determines that a hearing

should be conducted, there is no reason why it cannot petition the Illinois Hazardous Materials Board to conduct such a hearing. This action would be the most effective method of assuring that the Attorney General's concerns are adequately dealt with in that those concerns would be presented to the agency which is conferred with the jurisdiction, and presumably is best able to deal with such matters. The admission of this contention into these proceedings is completely unnecessary, and it should therefore be dismissed.

Contention 13

Contention 13 states:

> The Application and supporting documents do not meet the requirements of 10 CFR 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 CFR §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 fullfill the requirement of 10 CFR 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;

(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 CFR §71.33).

E. The application fails to identify the type of package and mode of transport therefore it is impossible to evaluate the effect of the transport environment on the nuclear safety of the packages (10 CFR §71.37).

F. The application fails to identify the type of package and mode of transport therefore it is impossible to asses whether the spent fuel shipments will meet the standards for hypothetical accident conditions. (10 CFR §71.36).

As in Contention 10, discussed above, Contention 13 reflects an attempt on the part the Attorney General to raise issues which are totally beyond the scope of these proceedings. To summarize what has already been stated, Applicant proposes to ship the spent fuel in a cask which is itself the subject of Commission review pursuant to 10 CFR Part 71. Pursuant to 10 CFR §71.12. Applicant already possesses a general license to ship spent fuel in this manner. This application only seeks authority to store spent fuel from one station at the other. In adopting §71.12 and in the course of licensing the cask the Commission will or has reviewed the matters raised in Contention 12. Thus, the Contention raises matters outside the scope of this

proceeding in violation Kleppe v. Sierra Club, supra, and constitutes an improper challenge to §71.12. See 10 CFR § 2.758.

Contention 14, 15 and 16

Contention 14

Contention 14 states:

> The license application and supporting documents are inadequate in that they fail to include any discussion or evaluation of the radiological effects of normal (accident free) transport.
>
> "The principal unavoidable environmental effect (of transporting radioactive material is) ... the population exposure resulting from normal transport of radioactive materials. Since the electromagnetic radiation emitted from a package cannot be reduced to zero by any finite quantity of sheilding, the transport of radioactive materials will always result in some population exposure."
>
> "Final Environmental Statement of the Transportation of Radioactive Materials By Air and other Modes" (FES) Dec. 1977, NUREG 0170, p. xxiv.
>
> It is possible to quantify radiological environmental impacts and health effects as a function of certain input data (geographical area, routes, types of packaging) with the aid of a computer model such as METRAN, used by Sandia Laboratories in their study of radioactive materials transport through urban areas "Draft, Transport of Radionuclides in Urban Environs" May 1978, Sandia 77-1927.
>
> The proposed license amendment should not be considered until the application has been supplemented with an adequate discussion of means by which Applicant plans to assess radiological effects of its transshipment. In making its report Applicant should specificy whether it based its computor program on threshold or continuous low dosage standards.

Contention 15

Contention 15 states:

The license application and supporting documents are inadequate as they fail to discuss or evaluate the probability of accidents, types of possible accidents and effects of accidents.

According to the U.S. Department of Transportation there were 15 accidents in Illinois in 1977 involving vehicles engaged in the transport of nuclear materials. These accidents ranged from package handling errors, to radioactive packages. The Sandia report 77-1927 states:

Accidents involving vehicles moving the radioactive material can damage packaging and result in dispersal of the radionuclides and subsequent inhalation by or direct exposure to surrounding population. Vehicular accidents can also damage or totally remove radiation shielding and thereby produce higher than normal exposure by penetrating radiation (Sandia, 77-1927 p. 16).

Nonradiolocigal impacts in the form of health effects can also result since many of the materials being shipped are chemically toxic. (Sandia 77-1927, p. 15; Chapter 7 pp. 249-266).

The applicant supporting documents include a letter in which it is admitted that if shipments between stations should be undertaken "the possibility of a transportation accident will increase as a result of greater exposure." (Applicant, reference (a) G.A. Abrell letter to D.L. Zieman dated April 23, 1976), yet no transport or accident probability study has been done.

The proposed license amendment should not be considered until the application has been supplemented with an accident analysis. The analysis should include at least an assessment of the probability of accidents and a quantification of both radiological and nonradiological impacts of credible accidents. (See Sandia 77-1927, p. 81 and Appendix E for examples of analytic models).

Contention 16

Contention 16 states:

> The Application and supporting documents are inadequate in that there is no discussion of the economic impacts of transshipment and possible dispersal of radioactive materials e.g. effects on land use, decontamination costs, income loss, evacuation costs, consequences of inadequate insurance coverage.

Contentions 14, 15 and 16 question the adequacy of Applicant's amendment request because certain types of information concerning the effects of transportation were not submitted therewith. These contentions utterly fail to comply with the basis and specificy requirements of §2.714 in that they fail to identify any particular safety or environmental problems or failures to comply with applicable requirements. Moreover, no NRC regulation requires that an application relating to the storage of spent fuel contain this type of information. Furthermore, information concerning transportation is not required for the Commission's safety review of this application because of the general license to ship spent fuel in a licensed container which is provided by 10 CFR §71.12. Thus, from a safety perspective, these contentions, like Contention 13, raise issues which relate to other licensing or rule-making proceedings and which are not appropriate for consideration.

To the extent that these Contentions relate to the possibility that an environmental impact statement might be required, or to the subject matter thereof, Applicant

submits that the Contentions merely attempt to raise, in a somewhat more detailed manner, issues identical to those raised in Contention 2. Therefore, because of the redundant nature of these contentions, they should be dismissed. Offshore Power Systems, supra at 253.

Contention 17

Contention 17 states:

> 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 fuels 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 cannot be introduced. Extraction of fuel from racks which have 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.

Contention 17 represents an impermissable attempt to raise issues which are properly being considered in another proceeding to which the Attorney General is a party. (See In the Matter of Commonwealth Edison Company, Dresden Station, Units 2 and 3, Docket Nos.50-237, 50-249). It is true that Applicant has requested an amendment to the Dresden Units 2 and 3 licenses which, if granted,

would permit the installation of new spent fuel pool storage racks and increase the spent fuel storage capacity at the Dresden Station. (43 F.R. 30938). The Attorney General has petitioned to intervene in the Dresden storage capacity amendment proceedings. Several contentions submitted as part of the Attorney General's intervention petition expressly pertain to potential problems which might result from the swelling of the stainless steel rods in the Brooks and Perkins storage racks. (See State of Illinois Petition for Leave to Intervene In the Matter of Commonwealth Edison Co. Dresden Units 2 and 3: Amendment to Facility License Nos. DPR-39 and DPR-48 (Increase Spent Fuel Storage Capacity) Docket Nos. 50-237 and 50-249, September 8, 1978, Contentions 6D and 12). Thus, the issues covered by Contention 17 are being reviewed by the Commission and litigated by the Attorney elsewhere.

It is essential that the this Licensing Board not lose sight of the fact that Applicant is proposing to store spent fuel only in storage racks which have been duly licensed by the Commission. Thus the racks will have been reviewed and a determination made that they do not present a safety hazard.

Moreover, Applicant's request is not entirely dependant upon the approval of the request for authority to install new spent fuel racks at Dresden. Applicant may

wish to ship Dresden spent fuel to Quad Cities for storage in the existing already licensed racks at that Station. Thus, Contention 17 is completely irrelvant to this aspect of the amendment request and should be dismissed.

III. Answer to Remaining Contentions

Applicant has not moved to strike Contentions 1, 2, 3, part of 4, part of 5, 7, 8 and 9. This fact should not be deemed an admission by Applicant that these Contentions present genuine issues which can only be resolved following an adjudicatory hearing. As will be pointed out in more detail below, Applicant believes that it will be necessary to engage in discovery to determine whether there are reasonable bases for some, if not all, of these Contentions. Second, the disposition of other Contentions may have to await the completion of the Staff review with respect to the matters raised in the Contentions. Finally, some of the Contentions may present mixed issues of law and fact which will, in all likelihood, be addressed in the context of motions for summary disposition.

Contention 1

Applicant believes that this Contention misstates applicable law in that no programmatic impact statement is required as a prerequisit to the issuance of the proposed amendment. While Applicant believes this Contention might be susceptible to a motion to strike, it believes that the

Staff must be heard with respect to whether the Contention is invalid on its fact or whether it cannot be considered until there has been a determination of whether an environmental impact statement is required.

Contention 2

Applicant maintains that the granting of the proposed amendment is not a major federal action which would significantly affect the quality of the human environment and therefore there is no requirement that an environmental impact statement be prepared. However, Applicant believes that it would be premature to move to dismiss this Contention prior to the completion of the Staff's environmental review.

Contention 3

This Contention is essentially demanding the analyses which would typically be included in an environmental impact statement. As with Contention 2, discussed above, Applicant does not believe that the granting of this amendment must be preceeded by the preparation of an environmental impact statement, yet will not move to dismiss the Contention until the completion of the Staff's environmental review.

Contention 4

Applicant believes the proposed amendment is entirely consistant with the law and that the Staff's environmental review will so demonstrate.

Contention 5

Applicant believes that in view of the insignificant environmental impacts of spent fuel and its storage at another site, the adoption of the one core discharge standard is an economic decision entirely within its discretion.

Contention 7

10 CFR Part 51 does not require that Applicant submit an environmental report. However, in response to a request, Applicant will be submitting certain information pertinent to the Staff's environmental review. Furthermore, it is Applicant's position that no additional emergency planning is required with respect to the proposed amendment.

Contention 8

Applicant believes that this Contention misstates applicable law in that no environmental impact statement is required as a prerequisit to the issuance of the proposed amendment. Moreover, it is Applicant's position that the utility of the proposed action is not dependant upon the construction of an away from reactor storage site.

Contention 9

The immediacy of the need for the proposed action is to some extent dependant upon the disposition of the on-going proceedings with respect to Applicant's proposal to

increase spent fuel storage capacity at the Dresden Station. Furthermore, certain of the information relied upon by Intervenor in drafting Contention 9 is out of date.

IV. Conclusion

For the reasons stated, the portions of Contentions 4b and 5b identified above and Contentions 6, 10, 11, 12, 13, 14, 15, 16, and 17 should be struck.

Respectfully submitted,

Alan P. Bielawski
One of the Attorneys
for Applicant

Dated: January 12, 1979

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CERTIFICATE OF SERVICE

I, Alan P. Bielawski, hereby certify that a copy of ANSWER AND MOTION TO STRIKE OF APPLICANT, COMMONWEALTH EDISON COMPANY, IN RESPECT OF CONTENTIONS FILED BY PETITIONERS, NATURAL RESOURCES DEFENSE COUNCIL, CITIZENS FOR A BETTER ENVIRONMENT, AND ILLINOIS ATTORNEY GENERAL has been served upon the following by deposit in the United States mail, first class, this 12th day of January, 1979;

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Mrs. Elizabeth B. Johnson
Union Carbide Corporation
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