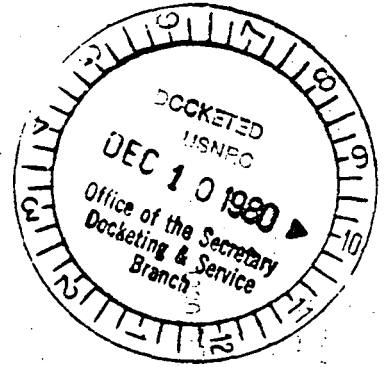


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

THE ATOMIC SAFETY AND LICENSING BOARD



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

APPLICANT'S RESPONSE TO INTERVENOR'S
MOTION FOR RECONSIDERATION OR CERTIFICATION

At the start of the hearings in this matter counsel for the Applicant, Commonwealth Edison Company, informed the Board of a potential safety issue which had already arisen involving fuel channel bowing. This matter was unrelated to any issue placed in controversy by the parties. Applicant requested a continuance of the hearings, limited to the fuel channel bowing issue, to allow further analysis of the nature and extent of fuel channel bowing and, if necessary, for the submission of testimony. The fuel channel bowing matter had previously been disclosed to and discussed with the other parties (Tr. 79-80). The State of Illinois ("Intervenor") objected to the requested continuance (Tr. 80-81). After further argument (Tr. 380-384) the Board granted Applicant's motion for a continuance. Requesting the Applicant to inform the Board as to the significance of the channel bowing phenomenon by a conference call on or about

DS03
S 11

8012290659

G

December 18, 1980, the Board reserved judgment on whether and when further evidentiary hearings would be required. On November 26, 1980, Intervenor moved for reconsideration of the Board's decision to grant a continuance, and in the alternative moved for certification to the Commission. Applicant respectfully requests that the Board deny Intervenor's motions.

The Licensing Board's decision to receive further evidence concerning fuel channel bowing is clearly in accordance with the Commission's regulations. See, e.g., 10 CFR §§2.718(e); 2.718(j); 10 CFR Part 2 Appendix A, §§V(d)(13); V(g)(1). The latter two provisions provide:

V(d)(13) The board should ordinarily not adjourn the hearing once it has begun, except as the hearing may be divided into segments to permit consideration of discrete areas, such as (i) radiological health and safety or (ii) environmental impact. To the extent practicable, legal questions should be resolved prior to the hearing. If the board believes that additional information is required in the presentation of the case, it would be expected to request the applicant or other party to supplement the presentation. If a recess should prove necessary to obtain such additional evidence, the recess should ordinarily be postponed until available evidence has been received. . . .

V(g)(1) If, at the close of the hearing, the board should have uncertainties with respect to the matters in controversy because of a need for a clearer understanding of the evidence which has already been presented, it is expected that the

board would normally invite further argument from the parties--oral or written or both--before issuing its initial decision. If the uncertainties arise from lack of sufficient information in the record, it is expected that the board would normally require further evidence to be submitted in writing with opportunity for the other parties to reply or reopen the hearing for the taking of further evidence, as appropriate. If either of such courses is followed, it is expected that the applicant would normally be afforded the opportunity to make the final submission.

(emphasis added)

Intervenor claims that the Board's action in requiring further submission of evidence has "affected substantially the right of Intervenor to prove its case and severely prejudiced Intervenor's case." (Intervenor's 11/26/80 Motion for Reconsideration, etc. at p. 1) Applicant is unable to understand the basis for this claim. The fuel channel bowing matter does not directly relate to any of Intervenor's contentions which in fact constitute Intervenor's "case" against the proposed Dresden racks. Further, the Board has not limited in anyway Intervenor's right to explore or challenge Applicant's conclusions in respect of fuel channel bowing, when the facts are available. Apparently, Intervenor wishes to see this case decided on some theory of procedural default rather than on the merits.

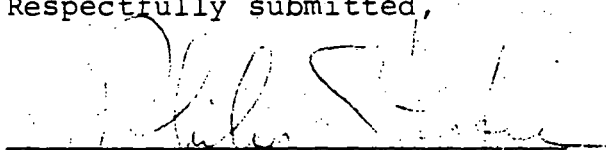
Obviously in any NRC proceeding, there is always the risk that a new potential safety issue may arise shortly

before or even during evidentiary hearings. In this case there has been no claim by Intervenor that the information concerning fuel channel bowing was concealed or deliberately withheld from it during discovery. And although fuel channel bowing does not directly relate to any matter in controversy, Applicant disclosed the matter to the Licensing Board in conformance with the requirements of full disclosure as articulated by the Appeal Board in Duke Power Company (William B. McGuire Station, Units 1 and 2) ALAB-143, 6 AEC 623, 625-26 (1973). This is simply not a situation in which judgment by default, as insisted upon by Intervenor, is appropriate.

Finally it is clear that Intervenor's Motion for Certification to Commission is not appropriate. All the Board has decided is that there will be a continuance. This does not involve "major and novel questions of procedure and policy," as Intervenor claims. The law is clear that certification should not be granted to review briefing or other scheduling matters. See, e.g., Pennsylvania Power & Light Company, et al. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-563, 10 NRC 449 (App.P.Ch. Rosenthal 1979); Public Service Company of Indiana (Marble Hill Nuclear

Generating Station, Units 1 and 2), ALAB-393, 5 NRC 767
(1977), and cases cited.

Respectfully submitted,



One of the Attorneys
for Applicant

ISHAM, LINCOLN & BEALE
Suite 4200
One First National Plaza
Chicago, Illinois 60603
312/558-7500

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that I have this 3rd day of
December, 1980, served copies of the foregoing Applicant's
Response to Intervenor's Motion for Reconsideration or
Certification by depositing the same in the U.S. Mails,
first-class, postage prepaid, to the following:

John F. Wolf, Esq.
3409 Shepherd Street
Chevy Chase, Maryland 20015

Docketing and Service
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

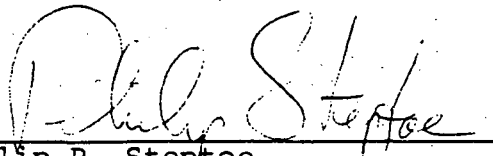
Dr. Linda W. Little
5000 Hermitage Drive
Raleigh, North Carolina 27612

Susan N. Sekuler
Assistant Attorney General
Environmental Control Division
188 West Randolph Street
Suite 2315
Chicago, Illinois 60601

Dr. Forrest J. Remick
305 East Hamilton Avenue
State College, Pennsylvania 16801

Richard Goddard
Office of Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555


Philip P. Steptoe
One of the Attorneys for
Applicant