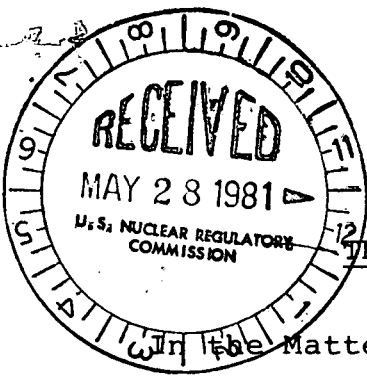


5/19/81



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 BOARD ORDER DIRECTING STAFF
TO ADDRESS ALL OF THE UNRESOLVED
GENERIC SAFETY ISSUES"



On January 27, 1981 the Board propounded Board
Question 2 in this proceeding, which states:

Based on a review and analysis of the various generic unresolved safety issues under continuing study, what relevance is there, if any, to the proposed spent fuel modification? Further, what is the potential health and safety implication of any relevant issues remaining unresolved?

After an initial round of responsive affidavits by Applicant, Intervenor and the NRC Staff, in a telephone conference call on April 1, 1981 the Board clarified Board Question 2 by stating that by "generic unresolved safety issues under continuing study" it means those issues reported to Congress as "Unresolved Safety Issues" pursuant to Section 210 of the Energy Reorganization Act of 1974, and also reported in NUREG 0606 (the "Aqua Book"). Subsequently, the parties submitted a second round of affidavits addressing the relevance and safety significance of these Unresolved Safety Issues.

G

DS03
50/1

8105290 234

On May 14, 1981, Intervenor submitted a "Motion for Board Order Directing Staff to Address All Of The Unresolved Safety Issues" by which it seeks to compel the Staff to address a large number of additional generic topics which Intervenor has selected from various sources, but which have not been identified by the Staff as Unresolved Safety Issues reportable to Congress or includable in NUREG 0606. Intervenor's motion should be denied for the following reasons:

Intervenor's May 14, 1981 motion, which in substance is a motion for reconsideration of the Board's April 1, 1981 conference call decision, was submitted six weeks after the decision complained of. This is clearly untimely. Applicant and the NRC Staff, relying on the Board's clarification of Board Question 2, have drafted and submitted extensive affidavits addressing the "Unresolved Safety Issues" listed in NUREG 0606. There is no reason why Intervenor could not have sought reconsideration more promptly. Granting Intervenor's motion at this late date would cause needless additional delay in this proceeding.^{1/}

Second, as Applicant has previously stated on a number of occasions, it is this Board, not Intervenor, which

^{1/} See, e.g., 10 CFR §2.771, which states that petitions for reconsideration of final decisions must be filed within ten days. No reason suggests itself why more time should be required for petitions for reconsideration of interlocutory rulings, such as the Board's April 1, 1981 decision.

must be satisfied with the responses to Board Question 2. The cases Intervenor cites, none of which are spent fuel pool modification cases, in which other Licensing and Appeal Boards have asked that other generic issues be addressed, in no way compel this Board to ask identical questions in this docket.^{2/}

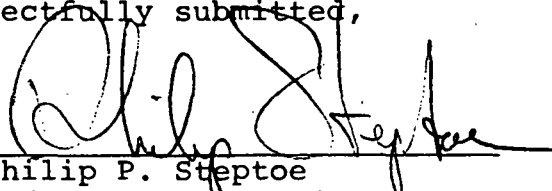
Third, as Intervenor admits, Applicant has already addressed through Mr. Janecek's March 18, 1981 affidavit all of the additional issues Intervenor now seeks to compel the Staff to address. Even if the Board, upon reconsideration concludes that these additional items must be addressed, Mr. Janecek's affidavit constitutes a sufficient basis upon which to resolve these items. Compelling the Staff to prepare more written testimony addressing these items would merely duplicate Applicant's evidence and would result in unacceptable delay of this proceeding.

Finally, if the Board is unable to resolve Board Question 2 on the basis of the affidavits submitted, or if

^{2/} We remind the Board that the Appeal Board affirmed this Board's decision in the Zion spent fuel pool modification case although there was no Board Question at all involving generic unresolved safety issues. Commonwealth Edison Company (Zion Nuclear Power Plant, Units 1 and 2) ALAB-616, 12 NRC 419 (1980). Therefore it is hardly reversible error for this Board to consider less than all of the generic questions suggested by Intervenor, especially where Intervenor has failed in its obligation to place these matters in controversy in a timely manner.

it has additional questions, Applicant requests that a hearing be held in Washington, D.C. as soon as possible to answer those concerns.

Respectfully submitted,



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

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

CERTIFICATE OF SERVICE

I, Philip P. Steptoe, one of the attorneys for Commonwealth Edison Company, certify that copies of Applicant's Response to Intervenor's "Motion for Board Order Directing Staff to Address All of the Unresolved Generic Safety Issues" has been served in the above-captioned matter on the following by depositing the same in the United States mail, first class postage prepaid, this 18th day of May, 1981:

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

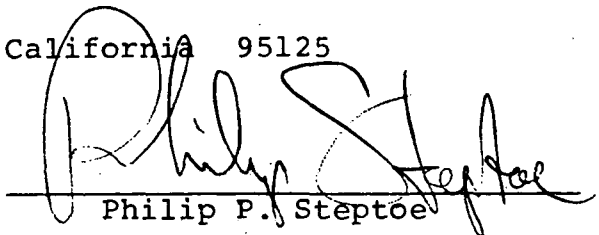
Mary Jo Murray, Esq.
Assistant Attorney General
Environmental Control Division
188 West Randolph Street
Suite 2315
Chicago, Illinois 60601

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

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

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

Richard Hubbard
MHB Technical Associates
1723 Hamilton Avenue
Suite K
San Jose, California 95125


Philip P. Steptoe