

6/3/81

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)

NRC STAFF'S REPOSE TO INTERVENOR STATE OF ILLINOIS'  
MOTION FOR ATOMIC SAFETY AND LICENSING BOARD ORDER  
DIRECTING STAFF TO REVIEW UNRESOLVED GENERIC ISSUES

BACKGROUND

On January 27, 1981, the Atomic Safety and Licensing Board in the captioned proceeding, sua sponte, propounded Board Question 2, 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?

Subsequently, the Board clarified its intention in propounding this question to the parties. In a conference call on April 1, 1981, the Board identified the "unresolved safety issues" with which it was concerned as being those issues reported to the Congress of the United States pursuant to Section 210 of the Energy Reorganization Act of 1974, and which are discussed in NUREG-0606. At that time, the Board specifically disavowed its interest in other "unresolved" or "generic" items within the possible scope of Board Question 2, in response to a question posed by counsel for Intervenor.

On May 14, 1981, after all parties had submitted affidavits and other material responsive to Board Question 2, and more than six weeks

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after the conference call in which the precise scope of that Question was delineated, Intervenor moved the Board to compel Staff to address numerous generic items outside the defined scope of Board Question 2.

For the reasons set forth below, the Staff opposes the instant motion.

#### DISCUSSION

First, the Staff submits that Intervenor's motion should be denied out of hand for untimeliness. Assuming arguendo that such motion has any substance to commend it, Intervenor could clearly have filed it shortly after the conference call of April 1, 1981, prior to resumption of the evidentiary hearings, and prior to the filing of affidavits on this Question by all parties. The instant motion should be considered, in the opinion of the Staff, to be either a motion for reconsideration (of the Board's conference call explanation of the Question) or an attempt to inject additional topics into the hearing process which is akin to a late-filed contention. If the former, it is submitted that a time frame exceeding six weeks between the decision complained of by Intervenor and a motion for reconsideration of that decision is patently excessive. This is especially true where, as here, the case is in the later stages of the hearing process, where admission of such issues could easily delay the closing of the evidentiary record. If the motion is viewed as essentially an untimely contention of the Intervenor, albeit differing in format, the Staff would submit that none of the tests of 10 C.F.R. §2.714(a)(1) have been satisfied by Intervenor, nor has there been any apparent attempt to do so.

Indeed, the items which Intervenor now seeks to litigate are not newly-discovered matters. Given the fact that this intervenor is experienced in Commission proceedings, and in fact has recently litigated a similar spent fuel pool modification at Zion Station (in which such generic issues were not addressed by either the Board or Intervenor),<sup>1/</sup> the attempt to raise such issues at this time is an obvious effort to delay the outcome of the proceeding.

Second, the operating license cases cited by Intervenor are distinguishable solely upon the scope of issues involved in licensing a nuclear reactor as opposed to a specific application for a license amendment which would authorize a spent fuel pool modification. While Intervenor might desire a full and detailed analysis of every topic relating to nuclear reactors, the Board, in the sua sponte exercise of its discretion, ordered the Staff to consider each Category A generic issue for its relevance to the proposed spent fuel pool modification. Indeed, in the Yellow Creek initial decision relied upon by Intervenor, the license to operate was granted despite the Staff's lack of detailed analysis of numerous tasks beyond the Category A classification, which are those generic issues with "potentially significant public safety implication(s)". To require the Staff to analyze each of the

<sup>1/</sup> Staff counsel is not aware of any spent fuel pool modification proceeding, or other proceeding deriving from a proposed amendment to a facility operating license, wherein the safety evaluation therefor has contained a full review of unresolved safety issues, even one limited to NUREG-0636 Category A tasks.

issues Intervenor seeks to air in this proceeding would in effect require the presentation of a Task Action Plan where none presently exists. <sup>2/</sup>

Further reason to terminate additional inquiry at this time may be derived from the material submitted by Intervenor in response to Board Question 2. Intervenor's affidavit does not demonstrate the alleged relevance to the proposed modification of the generic items sought to be analyzed.<sup>3/</sup> River Bend mandates such a showing before Intervenor's generic concerns could be considered.

CONCLUSION

Given the late stages of the proceeding, the fact that the issues involved are not of recent origin, and the failure of Intervenor to address the River Bend criteria and the late-filed contention standards, the motion should be denied.

Respectfully submitted,



Richard J. Goddard  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 3rd day of June, 1981.

<sup>2/</sup> See Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2), LBP-78-39, 8 NRC 602, 633 (1978).

<sup>3/</sup> As stated by an Atomic Safety and Licensing Appeal Board in Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760 (1977), upon which Intervenor relies, "The failure of the State to have asserted the requisite nexus between, on the one hand, the River Bend facility and, on the other, the TSAR items and the newly issued regulatory guides in question is thus dispositive of the complaint respecting the Licensing Board's treatment of the attempt to raise issues on the basis of those items and guides." 6 NRC at 774.

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CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF'S RESPONSE TO INTERVENOR STATE OF ILLINOIS' MOTION FOR ATOMIC SAFETY AND LICENSING BOARD ORDER DIRECTING STAFF TO REVIEW UNRESOLVED GENERIC ISSUES 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 3rd day of June, 1981.

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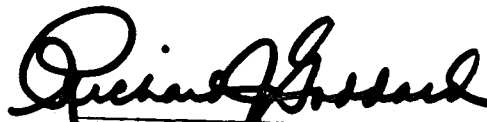
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Atomic Safety and Licensing Appeal  
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