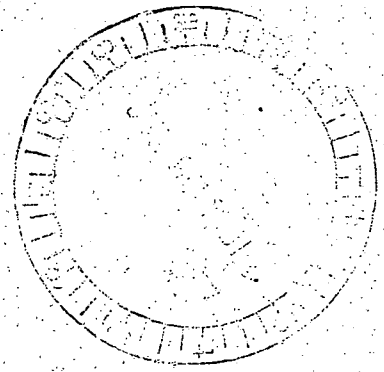


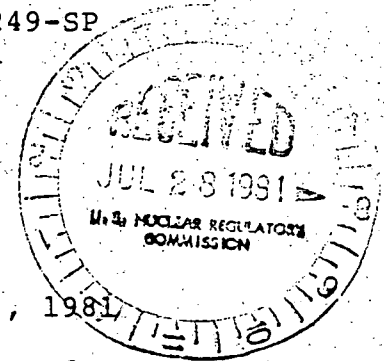
7/24/81

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
) 50-249-SP
) (Spent Fuel Pool
(Dresden Station, Units 2 & 3)) Modification)



APPLICANT'S MOTION FOR A
PARTIAL INITIAL DECISION

In a telephone conference call on July 24, 1981 the Licensing Board informed the parties that the Board has reached a decision on all issues which have been litigated in this case. In response to the Board's inquiry, the Staff stated that its concern relating to sliding and tilting of the proposed spent fuel racks during seismic events, which was the subject of a Board Notification dated May 20, 1981 from Gus C. Lainas of the NRC Staff, has not yet been resolved. The Staff estimated that it might take a minimum of four weeks to complete their review, assuming the Applicant promptly provides the information requested by the Staff. Applicant stated that it believes the Staff's estimate is optimistic; it may take two months or more to resolve this issue.

The Board then invited comments and suggestions as to what should be done in this proceeding.

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Applicant requests that the Board issue a partial initial decision in this proceeding, resolving all litigated issues, but expressly withholding authorization to install any of the proposed new racks. The Staff's independent review of the sliding and tipping issue would continue. Assuming the Staff ultimately is satisfied with the Applicant's responses, the Staff would prepare and forward to the Board and all parties a brief supplemental safety evaluation which would state the reasons for its conclusion. Intervenor would have an opportunity to comment on that supplemental safety evaluation. The Board would then determine whether this is a matter of "major significance to plant safety" which requires reopening the record for further evidentiary hearings. See Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB 124, 6 AEC 358, 364-5 (1973); Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB 138, 6 AEC 520 (1973); Carolina Power & Light Company (Shearon Harris Nuclear Power Plan, Units 1, 2, 3 and 4), LBP-78-2, 7 NRC 83 (1978). If not, a brief order from the Board would be all that would be necessary to end this case, since of course the mere fact that the Staff pursuant to its independent responsibilities has reviewed an issue does not necessarily require a Licensing Board in an operating license amendment proceeding to hold hearings or make findings on the same subject.

Since the Partial Initial Decision would not authorize installation of the new racks, no party would be prejudiced by the issuance of such a decision. A partial initial decision would be useful to Applicant since it would minimize uncertainty concerning the acceptability of its proposal. If the Board's decision on the litigated issues is unfavorable, for example, it is obviously important for Applicant to know that as soon as possible, so that it may begin considering alternative arrangements for managing spent fuel. If the decision contains additional requirements or restrictions, Dresden Station personnel would like to know as soon as possible so that they can prepare to implement these requirements. Even from Intervenor's standpoint a Partial Initial Decision which was favorable to Applicant, but not immediately effective, would appear to allow more time for appeal or a motion to stay, assuming an appeal or a motion to stay is contemplated.

There clearly is no legal problem with issuing a partial initial decision with respect to those issues which the Board has in fact considered and decided. See 10 CFR §2.718(e); 10 CFR Part 2 Appendix A par. I(c); Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-277, 1 NRC 539 (1975).

There is one further possibility which Applicant wishes to bring to the attention of the Licensing Board. The above request contemplates that the Staff, after a month or

several months, would issue a supplemental safety evaluation approving use of all the proposed racks. It may be however that within a week or two the Staff may be able to submit a partial safety evaluation justifying installation of only five racks, based on its review of Applicant's responses to date. Such prompt partial approval would be important to Applicant since it would avoid the need to transfer spent fuel between the Dresden pools to re-establish full core discharge capability needed for the forthcoming refueling outage for Dresden Unit 3 this fall. Applicant is not asking the Board for approval of this five-rack plan at this time; we are merely advising the Board that the Staff and Applicant may in the near future submit a partial supplemental safety evaluation and a request for permission to install five racks in the Dresden pools. Because it is unclear how long it will take for Applicant and Staff to agree, even with respect to five racks, Applicant requests that the Board issue a partial initial decision now, without waiting for final resolution or even partial resolution of the matters discussed in the May 20, 1981 Board Notification. Applicant wishes to emphasize that issuing the partial initial decision as requested would not, without further Board action, authorize the installation of any proposed racks.

I am authorized to state that the NRC Staff have no objection to the issuance of a partial initial decision as outlined in this motion.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Philip S. Taylor", is written over a horizontal line.

One of the Attorneys
for Commonwealth Edison Company

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CERTIFICATE OF SERVICE

I, Philip P. Steptoe, one of the attorneys for Commonwealth Edison Company, certify that copies of Applicant's Motion For a Partial Decision in the above-captioned case were served on the following by depositing the same in the United States mail, first class postage prepaid, this 24th day of July, 1981:

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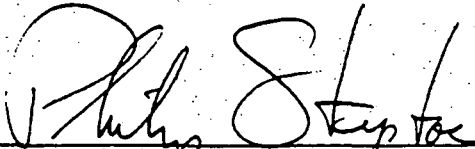
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