

10/2/78

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF	)	
	)	
COMMONWEALTH EDISON COMPANY	)	Docket Nos. <u>50-237</u>
	)	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.	)	

COMMONWEALTH EDISON COMPANY'S  
ANSWER TO ILLINOIS ATTORNEY  
GENERAL'S PETITION TO INTERVENE

Applicant, Commonwealth Edison Company, by its attorneys, hereby answers the petition for leave to intervene in the above-captioned proceeding, which was filed by the Attorney General of the State of Illinois on September 20, 1978.

1. Standing

Applicant admits that the Attorney General of the State of Illinois is an appropriate party to be admitted to this proceeding and does not object to the granting of his petition to intervene in this respect. Applicant denies that the transshipment of spent fuel between Dresden and Quad Cities will be a hazard to the citizens of Illinois, that the technical information it has supplied is inadequate, and

that granting the proposed amendments would be contrary to current NRC policy or any previous NRC decision.

2. Hearings

Applicant submits that an Atomic Safety and Licensing Board should be appointed immediately to rule on petitions to intervene,\* to set a schedule for prehearing activities and to determine whether a hearing will ultimately be required. Applicant believes that prehearing procedures, including motions for summary disposition pursuant to 10 CFR § 2.749, may demonstrate that there are no genuine issues to be heard at a hearing.

3. Environmental Impact Statements

Applicant contends that the Attorney General's request that the Commission prepare an environmental impact statement should be denied. 10 CFR § 51.5(b) indicates that the Commission will determine on a case-by-case basis whether the issuance of amendments to operating licenses requires the preparation of an environmental impact statement. The proposed amendments to the Dresden and Quad Cities operating licenses will not result in any significant impact on the quality of the human environment. Accordingly, Appli-

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\* Applicant has today filed a separate answer objecting to the joint petition to intervene of Natural Resources Defense Council and Citizens for a Better Environment.

cant's position is that the Commission need only prepare a negative declaration and environmental impact appraisal.

Contentions

The Attorney General's petition does not contain specific contentions but does mention five aspects of the subject matter of this proceeding with respect to which the Attorney General wishes to intervene. The Attorney General expressly reserves the right to formulate and submit final contentions up to 15 days before the first prehearing conference scheduled in this proceeding. Since no specific contentions have been made, Applicant is unable to formulate detailed objections at this time. Applicant reserves its right to do so in the future. At the outset, however, Applicant's position is that the concerns which appear to be expressed in Items III.A, III.B, and III.D in the Attorney General's petition would fail to constitute grounds upon which relief could be granted if such concerns were submitted as final contentions. Items III.C and III.E appear to be based on misunderstandings of fact and therefore are legally irrelevant to this application.

Respectfully submitted,



Philip P. Steptoe, One of the  
Attorneys for Applicant

October 2, 1978

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(312) 786-7500

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COMMONWEALTH EDISON COMPANY'S  
ANSWER TO PETITION FOR LEAVE  
TO INTERVENE OF CITIZENS FOR  
A BETTER ENVIRONMENT AND  
NATURAL RESOURCES DEFENSE COUNCIL

Commonwealth Edison Company ("Edison"), by its attorneys, hereby answers the Petition for Leave to Intervene filed on September 20, 1978 by Citizens for a Better Environment ("CBE") and Natural Resources Defense Council ("NRDC") in the above-captioned proceeding. Edison requests that the Petition for Leave to Intervene be denied as to both organizations.

I. PETITIONERS CBE AND NRDC DO NOT  
ADEQUATELY SET FORTH THEIR INTEREST  
IN THIS PROCEEDING.

In assessing the adequacy of a petition to intervene filed pursuant to 10 CFR § 2.714,<sup>1</sup> the Atomic Safety

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1. This section, as well as other portions of the NRC's Rules of Practice, was amended effective May 26, 1978 (43 Fed. Reg. 17798). The portions of § 2.714 dealing with the petitioner's description of its interest are essentially the same in both the old and the amended rule, however.

and Licensing Board ("Licensing Board") must first determine whether the document sets forth "with particularity" the interest of the petitioner in the proceeding, including the reasons why petitioner should be permitted to intervene. That determination is to be made with particular reference to certain specified factors.<sup>2</sup> The NRC has ruled that contemporary concepts of judicial standing are to be used in deciding whether a petitioner has shown a sufficient interest to justify intervention. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976). See Sierra Club v. Morton, 405 U.S. 727 (1973) for a discussion of those concepts.

In particular, Sierra Club v. Morton stands for the proposition that while an organization whose members are injured may represent those members, "a mere interest in a problem no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient in itself [to confer standing]." 405 U.S. at 739. It is obvious, therefore, that to show their interest in this proceeding, CBE and NRDC must adequately identify its members which are or may be injured by

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2. (1) The nature of the petitioner's right under the Act to be made a party to this proceeding.

(2) The nature and extent of petitioner's property, financial, or other interest in the proceeding.

(3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest. 10 CFR § 2.714(d).

the proposed action. CBE and NRDC have failed to do so and therefore their petition to intervene is defective.

CBE refers to itself as "an Illinois not-for-profit corporation with its principal place of business in Chicago."<sup>3</sup> It states that it has "over 4000 members nationally of which over 3000 live in the vicinity of Chicago, Illinois."<sup>4</sup> And CBE states that it has long been concerned with the quality of the human environment and "the problem of handling, transporting and disposal of nuclear waste and other hazardous and toxic substances."<sup>5</sup> The statement that CBE is concerned with the nuclear waste problem is clearly not sufficient to confer standing in this proceeding.

Sierra Club v. Morton, supra, 405 U.S. 727, 739 (1974).

Further, the mere statement that CBE has members in "the Chicago vicinity" is insufficient to show which members are or may be injured by the proposed transfer of spent fuel from Dresden to Quad Cities. Not everyone living in Chicago or in the State of Illinois necessarily has standing merely because the Dresden and Quad Cities nuclear generating stations are located in the same state; the cases

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3. Petition, p. 1.

4. Petition, p. 2.

5. Petition, pp. 1-2.

establish narrower geographical restrictions for standing purposes. See Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 190, affirmed CLI-73-12, 6 AEC 241 (1973); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418 (1977).

The petition to intervene is somewhat less vague with respect to NRDC; it states that NRDC has 1271 members in Illinois and "approximately 40 members live within 20 miles of the two reactor sites or along the portion of Interstate Route 80 which connects Morris, Illinois and Rock Island, Illinois." The mere allegation that NRDC has members who live in Illinois is as insufficient for NRDC as it is for CBE. In view of the requirement of 10 CFR § 2.714 that an intervenor's interest be stated "with particularity," NRDC should identify by name and address the "approximately 40 people" upon whom it relies to establish standing. The recent decision of the Licensing Board in Consumers Power Company (Midland Plant, Units 1 and 2), Docket Nos. 50-329-02 and 50-330-01 (August 15, 1978), supports this view.<sup>6</sup>

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6. At some point, requiring an organization to identify very large numbers of its members, all of whom might be injured by a proposed action, could be unduly burdensome. However, this is not such a case. Presumably NRDC has already identified the "approximately 40 members" who live within 20 miles of Dresden, Quad Cities, or Interstate 80 for purposes of its petition. There seems to be no reason why NRDC should object to sharing this information.

II. THE SPECIFIC ASPECTS OF THIS PROCEEDING AS TO WHICH INTERVENTION IS SOUGHT BY CBE AND NRDC MAY BE INAPPROPRIATE.

Relying on the recent amendments to Section 2.714, CBE and NRDC do not set forth specific contentions in their petition to intervene. Obviously this makes it impossible for Edison to frame specific responses at this time. Initially, it is Edison's position that granting the proposed amendments will not result in any hazard to the general public or to Edison's employees and will not significantly affect the quality of the human environment.

The petition, together with its attachments, suggests that CBE and NRDC may be interested in litigating in this proceeding the wisdom of current NRC policy with respect to handling and storage of spent fuel. The petition states:

We believe that until the necessary studies relating to the needs of the entire nuclear industry and to the proper handling of spent fuel have been analyzed in programmatic impact statements...it would be inappropriate to make commitments to allow spent fuel to be shipped from one reactor site to another....<sup>7</sup>

It is Edison's position that this proceeding is the wrong forum in which to litigate "the needs of the entire nuclear industry" or to argue about national policy

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7. Petition, pp. 3-4.



with respect to the handling and storage of spent fuel. Current NRC policy, together with the appropriate guidelines which must govern this proceeding, are set forth in the Commission's notice of Intent to Prepare Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel (40 Fed. Reg. 42801). In that notice, the NRC stated:

The Commission has...given careful consideration to the question whether licensing actions intended to ameliorate a possible shortage of spent fuel capacity...should be deferred pending completion of the generic environmental statement. Such a deferral was requested in the letter on behalf of Natural Resources Defense Council.... The Commission has concluded that there should be no such general deferral, and that these related licensing actions may continue during the period required for preparation of the generic statement, subject to certain conditions.

40 Fed. Reg. at 42807. The Commission goes on to list five factors which must be considered in making licensing determinations such as the present one.

If CBE and NRDC intend to challenge the NRC's general policy decision of September 16, 1975 not to defer licensing actions intended to ameliorate possible shortage of spent fuel storage capacity, this licensing proceeding is the wrong place to do so. See, e.g., Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 1 and 2) ALAB-

216, 8 AEC 13, 21 and fn 33 (1974). It would also be inappropriate for CBE and NRDC to use this proceeding to rehash the issues of national scope currently being addressed in the programmatic environmental impact statements referred to in their petition to intervene. Nothing in the National Environmental Protection Act requires the same ground to be plowed twice. See, e.g., Natural Resources Defense Council v. Nuclear Regulatory Commission, 547 F.2d 633, 641 (1976), reversed on other grounds, Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 98 S.Ct. 1197 (1978); Natural Resources Defense Council v. Energy Research and Development Administration, 451 F.Supp. 1245, 1258-9 (D.C.D.C. 1978).


In short, it is Edison's position that the scope of this proceeding must be confined to the specific licensing action proposed.

### III. OTHER MATTERS

The petition to intervene filed by CBE and NRDC is not accompanied by a notice of appearance of counsel containing the information required by 10 CFR § 2.713(a); nor does it include a designation of the person upon whom service may be made as required by 10 CFR § 2.708(e). While Edison does not suggest that either irregularity is grounds for denial of the petition to intervene, we would appreciate

it if this information could be supplied to us in the near future.

Respectfully submitted,



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

October 2, 1978

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NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance on behalf of Commonwealth Edison Company in the captioned matter. In accordance with § 2.713 of the Commission's Rules of Practice, the following information is provided:

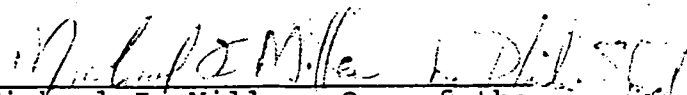
Name: Michael I. Miller

Address: Isham, Lincoln & Beale  
One First National Plaza  
Suite 4200  
Chicago, Illinois 60603

Telephone: (312) 786-7500

Admission: Supreme Court of Illinois  
District Court for the District of Columbia  
District Court for the Northern District of Illinois

October 2, 1978

  
Michael I. Miller, One of the  
Attorneys for Applicant

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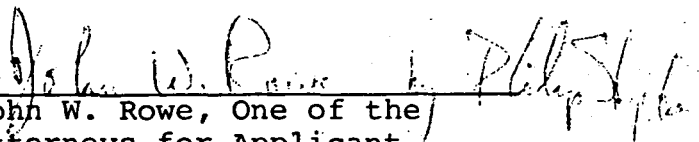
Name: John W. Rowe

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Chicago, Illinois 60603

Telephone: (312) 786-7500

Admission: Supreme Court of Illinois  
Supreme Court of Wisconsin  
United States Court of Appeals  
for the Seventh District  
United States District Court for  
the Northern District of Illinois

October 2, 1978

  
John W. Rowe, One of the  
Attorneys for Applicant

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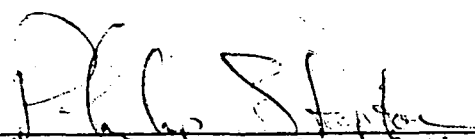
Name: Philip P. Steptoe

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Suite 4200  
Chicago, Illinois 60603

Telephone: (312) 786-7500

Admission: Supreme Court of Illinois  
Supreme Court of Virginia  
United States District Court for  
the Northern District of Illinois

October 2, 1978

  
Philip P. Steptoe, One of the  
Attorneys for Applicant

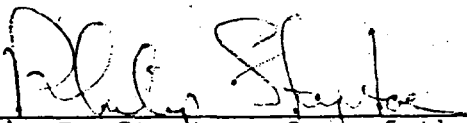
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DESIGNATION OF PERSON UPON  
WHOM SERVICE SHALL BE MADE

Commonwealth Edison Company, pursuant to 10 CFR §§ 2.708(e) and 2.712(b), designates the following person to be served on its behalf with copies of all papers to be filed in the above-captioned proceedings:

Philip P. Steptoe  
Isham, Lincoln & Beale  
One First National Plaza  
Suite 4200  
Chicago, Illinois 60603

  
Philip P. Steptoe, One of the  
Attorneys for Applicant

October 2, 1978

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Commonwealth Edison Company's Answer to Illinois Attorney General's Petition to Intervene," "Commonwealth Edison Company's Answer to Petition for Leave to Intervene of Citizens for a Better Environment and Natural Resources Defense Council," "Notice of Appearance" of Michael I. Miller, "Notice of Appearance" of John W. Rowe, "Notice of Appearance" of Philip P. Steptoe, and "Designation of Person Upon Whom Service Shall Be Made" in the above-captioned proceeding have been served upon the following by deposit in the United States mail, first class, postage prepaid, this 2nd day of October, 1978:




Secretary of the Commission  
Attention: Chief, Docketing and  
Service Section  
United States Nuclear Regulatory Commission  
Washington, D.C. 20555

Richard J. Goddard  
Office of the Executive Legal Director  
United States Nuclear Regulatory Commission  
Washington, D.C. 20555

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