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June 28, 1988

Mr. James Lieberman, Director
Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Document Control Desk

Subject: Dresden Station Unit 3
Answer to Notice of Violation
Report Nos. 50-
237/86013; 50-249/86015
NRC Docket No. 50-249

Reference (a): April 29, 1988 A.B. Davis
Letter to J.J. O'Connor

(b): June 28, 1988 L.O. Del George
Letter to J. Lieberman

Dear Mr. Lieberman:

This answer is submitted on behalf of our client, Commonwealth Edison Company, ("CECo" or "the Company") in response to the NRC staff's letter dated April 29, 1988, including a Notice of Violation and proposing imposition of a civil penalty in the amount of \$150,000. The proposed civil penalty relates to CECo's use of unqualified AMP nylon-insulated butt splices in General Electric FO1 containment penetration enclosures in Dresden Unit 3. See Reference (a).

This potential enforcement issue is one of several identified in the May, 1986 NRC environmental qualification inspection of Dresden Station and documented in Inspection Report 50-237/86013; 50-249/86015 dated September 8, 1986. It is our understanding, based on the NRC's announced policy of aggregating significant EQ violations for assessment of a civil penalty (Modified Enforcement Policy for EQ Requirements dated April 7, 1988 at pp. 2-3), that no additional civil penalty will be proposed for any of the other potential

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enforcement/unresolved items identified in this NRC inspection report. If our understanding is incorrect, please notify us. In that event, this response will be withdrawn pending CECO's review of the NRC staff's complete notice of violation and entire proposed civil penalty.

Commonwealth Edison's qualified admission of the alleged violation is contained in Reference (b).

However, Commonwealth Edison believes that the imposition of the proposed civil penalty in this case is not consistent with the NRC's Modified Enforcement Policy, principally because the NRC staff's finding that Commonwealth Edison "clearly should have known" that the AMP splices were not qualified is largely based on impermissible hindsight. In the alternative, the amount of the proposed civil penalty should be reduced. This is because the analysis in the NRC staff's April 29, 1988 letter of the four mitigation/escalation factors set forth in the Modified Enforcement Policy is flawed by the improper use of hindsight, by a factual error relating to the length of time Dresden Unit 3 operated with AMP splices, and by failure to give any credit to CECO for taking the initiative in testing the AMP splices.

We believe the hindsight point deserves initial emphasis: the purpose of the "clearly should have known" formulation is, at least in part, to avoid relying on hindsight in environmental qualification ("EQ") enforcement decisions. While the April 29, 1988 letter purports to base the proposed civil penalty on events occurring prior to December 1986, we believe that this is to a large extent rationalization of a decision unwittingly based on impermissible hindsight. As the staff reconsiders the proposed civil penalty in light of the information provided in this Answer, we ask you to keep in mind two fundamental questions:

- (1) Did the NRC staff expect the AMP splices to fail the December 1986 tests?
- (2) If the AMP slices had passed the tests, would the NRC staff now be proposing imposition of a \$150,000 civil penalty?

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A. Application of the "Clearly Should Have Known" Test

Enclosed with this Answer are four affidavits. The first affidavit is submitted jointly by Vincent S. Noonan and Robert G. LaGrange of NUS Corporation. Mr. Noonan is a former Chief of the Equipment Qualification Branch, Division of Engineering, Office of Nuclear Reactor Regulation ("NRR") U.S. Nuclear Regulatory Commission. Mr. LaGrange is a former Section Leader of the Environmental Qualification Branch of NRR. Their affidavit describes their understanding of the purpose of the "clearly should have known" test as set forth in the Modified Enforcement Policy, and their reasons for disagreeing with the NRC's finding that CECO "clearly should have known" that the AMP splices were not environmentally qualified. Mr. Noonan's and Mr. LaGrange's affidavit purposely focuses on the information available in CECO's files as of November 30, 1985, which was the NRC's EQ deadline and the relevant date for purposes of the "clearly should have known" test.

Two additional affidavits are submitted by Irene M. Johnson and Michael S. Turbak of CECO's Nuclear Licensing Department. First, Ms. Johnson's affidavit identifies a 1978 NRC EQ inspection in which the NRC staff found that AMP splices used in containment penetrations at CECO's Quad Cities Station were environmentally qualified, based on a review of essentially the same information the May 1986 Dresden EQ inspection team found to be inadequate. Second, Ms. Johnson and Mr. Turbak recount that on numerous occasions beginning in May 1986 NRC Region III and NRR personnel were fully informed as to the steps being taken by Commonwealth Edison's to address the environmental qualification of the AMP splices. In sharp contrast to the NRC staff's normal practice when they believe a significant safety issue is involved, neither Region III nor NRR pressed for replacement of the AMP splices or challenged the operation of the unit. Dresden Unit 3 was permitted to return to operation on August 23, 1986 after an extended shutdown without final resolution of the AMP splice issue. The NRC staff never asked for a justification for continued operation. The only corrective action sought by the NRC staff relating to this potential enforcement/unresolved item was for CECO to supplement its EQ files with an additional documentation and analyses. Based on these facts, Ms. Johnson infers that the NRC staff, like CECO, initially regarded the AMP splice issue as a documentation deficiency, and that NRC staff was as surprised as the

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Company was when the December 1986 tests failed to confirm that the AMP splices were environmentally qualified.

This information is not offered to embarrass the staff but because the best possible evidence for purposes of determining whether Commonwealth Edison "clearly should have known" that the AMP splices were not qualified is the contemporaneous actions of qualified, knowledgeable and independent-minded NRC professionals. Commonwealth Edison acknowledges, of course, that it has the sole responsibility for the safe operation of its nuclear stations. This responsibility can never be diminished by any possible lapses on the part of its regulators. But here there was no lapse by NRC staff personnel: prior to the unexpected test results in December 1986 both the Company and the NRC staff reasonably believed that the AMP splice issue was at most a curable documentation deficiency rather than a matter of unqualified or unqualifiable splices. It is only with 20-20 hindsight that the actions of either the Company or the NRC staff can be faulted.

The final affidavit is submitted by James S. Abel, the Manager of Commonwealth Edison Company's BWR Engineering Department. Mr. Abel describes the reasons why Commonwealth Edison did not repair or replace the AMP splices in the Dresden Unit 3 containment penetrations when degradation was observed in Dresden unit 2 in 1985, the basis for the company's confidence prior to December 1986 in the environmental qualification of the Dresden Unit 3 AMP splices, the reasons why the Company at its own initiative decided to test the AMP splices, and the reason why CECO promptly shut down Dresden Unit 3 (as well as Quad Cities Unit 1) to repair the splices as soon as unfavorable test results were known in early December 1986.

According to the Modified Enforcement Policy, the NRC staff will consider four questions in determining whether a licensee "clearly should have known" that its equipment was not qualified. Those questions and Commonwealth Edison's answers, are summarized below:

1. Did the licensee have vendor-supplied documentation that demonstrated that the equipment was qualified?

Yes. See the affidavits of James S. Abel, Vincent S. Noonan and Robert G. LaGrange. While the May

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1986 inspection team found a lacuna in this documentation, both the NRC staff and CECO considered this deficiency to be curable and neither the NRC staff nor CECO treated the issue as casting serious doubt on the environmental qualification of the AMP splices.

2. Did the licensee perform adequate receiving and/or field verification inspection to determine that the configuration of the installed equipment matched the configuration of the equipment that was qualified by the vendor?

Yes. The April 29, 1988 letter does not contest this point.

3. Did the licensee have prior notice that equipment qualification deficiencies might exist?

No. The only bases for the NRC staff's assessment to the contrary in the April 29, 1988 letter, apart from the minor documentation problem first identified by the NRC staff in May, 1986 (and not identified in a previous NRC EQ inspection), are (1) the observed degradation of AMP splices in Dresden Unit 2 and (2) the identification of nylon as a "suspect" material in the DOR Guidelines. As stated by Messrs. Abel, Noonan and LaGrange, the Dresden Unit 2 splices had been subjected to a high-temperature event not experienced at Dresden Unit 3, and inspection of the Dresden 3 splices did not reveal any degradation similar to that observed in the Unit 2 splices. Further, as Mr. Noonan and Mr. LaGrange testify, the identification of nylon in the DOR Guidelines as material susceptible to thermal and radiation aging does not imply that nylon may not be used. Moreover, the DOR Guidelines expressly contemplate that maintenance and surveillance programs are an appropriate means of assuring that equipment which is exhibiting age-related degradation will be identified and replaced as necessary. CECO followed such a maintenance and surveillance program in replacing the Dresden Unit 2 splices and in not replacing or repairing the Dresden Unit 3 splices when degradation was observed in one unit and not the other. In short, the company responded reasonably to the information available in 1985.

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4. Did other licensees identify similar problems and correct them before the deadline?

No. Not to CECO's knowledge. The NRC staff has not informed us of any such licensees. We are aware of at least one licensee which did not identify and correct the AMP splice problem prior to the results of the CECO tests in December 1986. But for CECO's voluntary initiative in testing these splices, it is possible that other licensees would still be using unqualified AMP splices. / who

B. Consideration of Mitigation/Escalation Factors

The Modified Enforcement Policy lists four mitigation/escalation factors. These are considered in the April 29, 1988 letter in adjusting the base civil penalty. Commonwealth Edison has no quarrel with the discussions of the second factor (best efforts to complete EQ within deadline) and the fourth factor (duration of violation significantly below 100 days) which appear in that letter. However, we ask the NRC staff to reconsider its analysis of the first and third factors.

The first mitigation/escalation factor is identification and prompt reporting, if required, of the EQ violations (including opportunities to identify and correct the deficiencies.) While we agree that the NRC staff first identified the AMP splice issue and, in retrospect, CECO might have taken advantage of the identification of degrading splices in Dresden Unit 2 to repair or replace identical splices in Dresden Unit 3, we do not believe these facts merit escalation of the base civil penalty. The issue identified by the NRC inspection team in May 1986 was treated both by CECO and by the NRC staff as a comparatively minor documentation problem until testing undertaken at the initiative of Commonwealth Edison Company unexpectedly failed to confirm that the splices were qualified. No credit at all is being given to CECO for having voluntarily undertaken such testing, or for its assiduous efforts to report the results of the tests to the NRC staff and later, to the rest of the industry. Moreover, Commonwealth Edison's decision to monitor the Dresden Unit 3 splices for any evidence of aging was hardly an irresponsible or negligent decision. Indeed, as Mr. Noonan and Mr. LaGrange point out, monitoring programs for the detection of aging-related degradation are consistent

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with the DOR Guidelines. We believe that escalation of the base civil penalty ought to be reserved for situations involving more culpable licensee neglect or misconduct.

The third mitigation/escalation factor requires consideration of corrective actions to result in full compliance (including the time taken to make an operability or qualification determination, the quality of any supporting analysis, and the nature and extent of the licensee's efforts to come into compliance.) The NRC's April 29, 1988 letter finds neither mitigation nor escalation to be appropriate on the grounds that:

[W]hile the licensee did shut down the operating unit upon hearing of the test failure and repair these splices prior to putting Dresden Unit 3 back into operation, these actions were not done in a reasonable time in that the plant operated from May to December 1986 with splices for which qualification could not be demonstrated.

This is both inaccurate and unfair. It is inaccurate because Dresden Unit 3 was shutdown from October 1985 until August 23, 1986. It did not operate with unqualified splices for a period of six months as indicated in the April 29, 1988 letter. More importantly, there was no period of time during which either CECO or the NRC knew or should have known that Dresden Unit 3 was being operated with "splices for which qualification could not be demonstrated". Both Commonwealth Edison and the NRC staff clearly believed that the splices were qualifiable and expected that this would be confirmed by the testing undertaken at CECO's initiative. The Company took the corrective actions called for by the NRC staff (i.e., supplying additional documentation and analyses) on a schedule satisfactory to the NRC staff. In the August - December time frame, based on the additional documentation in its files (not yet reviewed by the NRC staff) it had every reason to believe that it had met the NRC staff's concerns and that the AMP splices were properly qualified. Nevertheless, Commonwealth Edison went beyond this required corrective action and undertook to test the splices, thereby conferring an unexpected benefit on the entire industry. If CECO had not voluntarily tested the splices, we could still be arguing today whether the splices were qualified, and more importantly, other licensees could still be operating with unqualified splices. To deny CECO any credit for going the

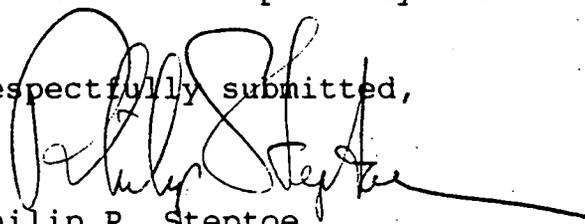
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extra mile based on today's knowledge of the test results is unfair to Commonwealth Edison and contrary to sound enforcement policy.

C. Safety Significance.

The Modified Enforcement Policy states that the NRC staff will not consider operability arguments in assessing the safety significance of a violation. Whether or not this is justifiable as a matter of economics and administrative efficiency for future enforcement cases, Commonwealth Edison has serious questions as to the fairness of such a policy when applied to cases such as this one where the licensee has already incurred the cost of performing such analyses. Were the Company at liberty to do so, it would present to the NRC staff now the same operability analyses it presented at the Enforcement Conference on June 4, 1987 in Glen Ellyn. Please consider that presentation to be an offer of proof by the Company in this matter.

Respectfully submitted,


Philip P. Steptoe

PPS/yc

cc: A. Bert Davis
Dresden Resident Inspector