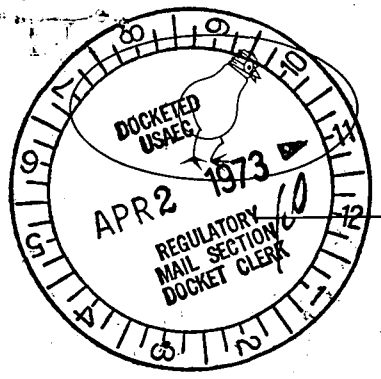

Regulatory File Cy.

Commonwealth Edison Company

ONE FIRST NATIONAL PLAZA ★ CHICAGO, ILLINOIS

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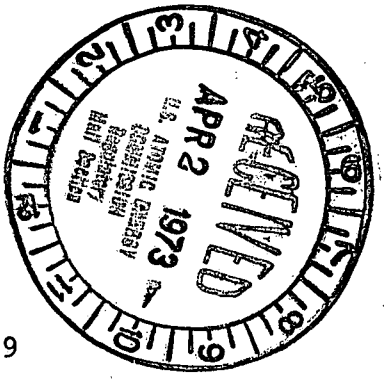

March 27, 1973

Mr. Angelo Giambusso
Deputy Director for Reactor Projects
Directorate of Licensing
United States Atomic Energy Commission
Washington, D. C. 20545

Re: Dresden Unit No. 3, Docket 50-249

Dear Mr. Giambusso:

We are in receipt of your telegram of March 23rd respecting the negative certification requirement of Section 401 of the Federal Water Pollution Control Act Amendments of 1972 as it pertains to the captioned AEC licensed facility.

The Company has requested the Illinois Environmental Protection Agency to certify, pursuant to Section 401(a), that there are no effluent limitations or other limitations established pursuant to the provisions of Sections 306 or 307 of the Act which are in effect at this time with respect to the Dresden discharge. That certification should be received by April 2, 1973. If it is not, however, we believe that the facts concerning the Company's application for that certification show that the position taken by the State of Illinois constitutes a waiver, within the meaning of Section 401(a)(1) by reason of failure to act within a reasonable time. We also believe that, as shown later in this letter, it is doubtful that any legal requirement for such a certification can apply to Dresden Unit 3.

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The Illinois Environmental Protection Agency has held in abeyance the issuance of a Section 401 certification respecting the Dresden Unit No. 3 discharge, until the Agency operating permit has been issued for the station. An application for such a permit for Dresden Unit 3 has been pending at the Agency for three months. It, in turn, has been held in abeyance because of the pendency before the Illinois Pollution Control Board of a petition for a variance for the Station as a whole. That petition was filed on August 23, 1972. A hearing on that petition was held by the Board on December 14, 1972, but the Board has yet to decide the case.

We believe nonaction by the State of Illinois on the variance and the permit, which Illinois has made a prerequisite for a certification under Section 401(a), show a failure or refusal of the State of Illinois to act on a request for a certification within a reasonable period of time as to cause "the certification requirements of this subsection [to be] waived with respect to such Federal application," [Federal Water Pollution Control Act, §401(a)(1), 86 Stat. 878].

Section 401 provides for such a waiver in any case in which the state declines to act within a reasonable period of time. Section 401 also states, parenthetically, that a reasonable period of time "shall not exceed one year." The one-year maximum for the period of time which can be regarded as a waiver cannot apply to the requirement of Section 401(a)(7), because that Section becomes operative on April 3, 1973, less than five months after

passage of the 1972 Amendments. In view of the fact that the total period of time allowed under §401(a)(7) is less than five months, the delay since August 29, 1972, some seven months, by the State of Illinois justifies a finding that the State has failed to act within a reasonable period of time.

Secondly, the Commission already has actual notice of all of the facts which it could learn if Illinois did submit the certificate required by §401--that is, that there are no effluent limitations or other limitations established pursuant to Sections 301(b) or 302 of the Federal Water Pollution Control Act Amendments of 1972 nor any standards established pursuant to the provisions of Sections 306 or 307 of the Act which are in effect at this time. The Commission's Interim Policy Statement on implementation of the 1972 Amendments [38 Fed. Reg. 2679-2681, January 29, 1973] is premised on the existence of an interim situation resulting from the fact that federal EPA has not yet issued such limitations or standards. Congress, in imposing the requirements of §401(a), could not have intended that a license issued by the Commission should terminate because a State agency does not state a fact of which the Commission can take judicial notice and has already taken official cognizance.

The Company also believes that if §401(a)(7) were construed to require termination even though a State has declined to act for a period of over seven months, that construction would deprive the Company of substantive rights under the Atomic

Energy Act of 1954 without due process of law. The Company received its license to operate Dresden Unit 3 from the Commission on January 12, 1971. On October 18, 1972, the Federal Water Quality Act was amended by Congress to require the certification requested in your telegram. The substituted certification is a mere declaration of administrative fact. Congress can not properly make the continued validity of a license depend on whether or not a State agency chooses to recite that fact, and the Commission ought not to construe Section 401(a) to so require.

Very truly yours,

COMMONWEALTH EDISON CO.

By Byron Lee, Jr.
Byron Lee, Jr.
Assistant to the President