

QERA



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
COMMONWEALTH EDISON COMPANY, <u>et al.</u>	)	Docket Nos. S50-599
(Carroll County Site)	)	S50-600

NRC STAFF RESPONSE TO STATE OF ILLINOIS BRIEF  
IN SUPPORT OF COMMENTS IN OPPOSITION TO EARLY SITE REVIEW

On June 15, 1979, the State of Illinois (Petitioner) filed a brief in opposition to the early site review in the above-captioned matter. <sup>\*/</sup> Petitioner contends that the early site review is "unwarranted, untimely and unnecessary" for the following reasons: (A) the need for expansion of energy generation capacity is highly questionable; (B) it would be in the public interest to delay site suitability determination until as many possible lessons to be learned from Three Mile Island may be incorporated into the decision and until NRC siting policy is more settled; (C) an early determination of site suitability will quite probably commit part of the companies' resources, future energy planning and present contracting so as to be irreversible or at least quite costly and quite burdensome to reverse; and (D) an early site review will not allow intervenors adequate time to fully explore the issues which will be considered.

With regard to reason (A), need for power is not an issue of site suitability for which early consideration is sought and is thus beyond the scope of

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\*/ The NRC Staff herewith responds to the substantive matters addressed in the Petitioner's brief, but notes that it has not made any motion or other request for specific relief.

issues cognizable at this stage of the proceeding. See 10 CFR §2.604(a); "Notice of Hearing on Application for Construction Permits and Request for Early Site Review," 44 F.R. 26229 (May 4, 1979). With regard to reason (B), Petitioner fails to indicate what possible lessons that might be learned from the Three Mile Island incident or the Staff's purported reevaluation of its "siting" policy relate to the issues of site suitability for which early consideration is sought in this proceeding. The matters underlying reason (C) are clearly beyond the scope of the site suitability issues for which early consideration is sought. 10 CFR §2.604(a); Notice of Hearing. With regard to (D), this proceeding is no different than any other NRC licensing proceeding. Admitted parties participate in the establishment of a pre-hearing and hearing schedule and may seek additional preparation time from the licensing board as necessary. Petitioner's claim of inadequate preparation time, standing alone, however, provides no basis for not processing the early site review request.

In essence, Petitioner seeks out rejection of the early site review request. There is no legal authority for such action. Under the prescribed regulatory process, the NRC Staff is entrusted with the responsibility for conducting the necessary review and evaluation of nuclear license applications. It has no statutory authority to decline review of a properly docketed application. Similarly, a licensing board may exercise only those powers which have been delegated to it by the Commission. Public Service Commission of Indiana (Marble Hill Nuclear Generating Station, ALAB-316, 3 NRC 167, 170 (1976). It has been recognized that the Commission has not delegated the authority to

supervise the Staff's review of license applications to such boards. As one licensing board succinctly noted:

Under the Commission's regulatory scheme, the Staff is given the duty of reviewing applications for licenses (Section 2.102)....The Commission has delegated to the Licensing Boards power and duties with respect only to the hearing process (2.104 and 2.718). The Staff's review and reporting function is largely completed in a setting outside the hearing process and therefore without the purview of the Licensing Board. The fact that the two areas of activity may proceed, for a time, concurrently, does not extend to the Board any supervisory authority over that part of the process that has been entrusted to the Staff.

Northeast Nuclear Energy Company, et al. (Montague Nuclear Power Station, Units 1 and 2), LBP-75-19, 1 NRC 436 (1975); accord, New England Power Co. (NEP, Units 1 and 2), LBP-78-9, 7 NRC 271, 279 (1978).

#### CONCLUSION

On the basis of the above, the Staff urges rejection of Petitioner's comments in opposition to the early site review.

Respectfully submitted,



Steven C. Goldberg  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 5th day of July, 1979.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO STATE OF ILLINOIS BRIEF IN SUPPORT OF COMMENTS IN OPPOSITION TO EARLY SITE REVIEW" 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 5th day of July, 1979.

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