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August 17, 1979

Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Attention: Docketing and Service Branch

Re: Comments of Commonwealth Edison Company to the Nuclear Regulatory Commission on Interim Final Rule -- 10 CFR Part 73 -- Physical Protection of Irradiated Reactor Fuel in Transit

Dear Mr. Secretary:

Commonwealth Edison Company ("Commonwealth") is a member of the Ad Hoc Nuclear Transportation Group which is submitting comments on the Commission's Interim Regulations concerning the transportation of spent nuclear fuel (the "Interim Regulations"). Commonwealth supports the comments of that Group. In addition, because of its great reliance on nuclear power, Commonwealth is submitting supplemental comments of its own.

In order to insure Commonwealth's ability to continue to supply reliable electric service to its customers, it is essential that the Interim Regulations together with the Interim Guidance (the "Guidance") issued in June by the Commission's Office of Nuclear Material Safety and Safeguards, both enhance the safety of spent fuel shipments and provide clear and workable procedures and requirements that assure that necessary spent fuel shipments can be made.

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Commonwealth's principal business is the generation and supply of electric energy to the northern one-third of Illinois. The company presently provides service to 2.8 million customers, supplying approximately 70 billion kilowatt hours a year. Fort-five percent of the electricity generated by Commonwealth during 1978 (31 billion kilowatt hours) was generated by nuclear power. Commonwealth is the nation's largest nuclear power operator, with 10 percent of the nation's nuclear capacity.

Commonwealth has seven nuclear power reactors in operation, an additional six under construction, and an additional two planned. The nuclear power reactors under construction are expected to be in operation by 1983. As a result of the current hiatus regarding the disposition of spent fuel, it may be necessary for Commonwealth to transport fuel between stations in some cases in order to maintain its ability to operate its units.

Introductory Comments

Commonwealth is not opposing the adoption of Commission rules regulating the transportation of spent fuel. The company does have substantial doubts about aspects of the draft Sandia report on which the Interim Regulations are based (including, for instance, the radiological release fractions) and about the inference which the Commission has drawn from

the Sandia draft that the threat of sabotage of spent nuclear fuel shipments is anything other than highly remote. In particular, the Sandia draft was based upon highly conservative assumptions, which Commonwealth believes overstate both the minute risk of sabotage and the harm to the public health and safety which a successful act of sabotage could be expected to cause.

However, Commonwealth does recognize that there is some, albeit exceedingly remote, risk of sabotage and that the radiological consequences of successful sabotage would be detrimental to the public health and safety. Commonwealth also recognizes that there is public concern about the threat and risk of sabotage. It is this concern which in part has encouraged state and local governments to enact or to consider enacting unconstitutional legislation prohibiting or severely inhibiting the transportation of spent fuel through their respective jurisdictions. While this concern is vastly overstated and these state and local provisions unfounded and unwarranted, the concern is present; and, proper federal regulation can assuage these overblown fears.

Thus, Commission regulation of the shipment of spent fuel can and should serve the related purposes of (1) reducing the remote risk of sabotage, (2) providing

reassurance to the public concerning the sabotage risk, and (3) preventing local restrictions on spent fuel transportation which, if left unchecked, could do much to stymie the operation of nuclear power plants in the United States.

Because it is generally recognized (even by the Sandia draft) that the risk of sabotage is remote, it is important that the Interim Regulations be reasonable and not more restrictive or expensive than required by sound public policy. It is likewise important that the Commission consider the nonsabotage health, safety and other effects of the Interim Regulations and Guidance. The Interim Regulations will be counter-productive if they increase the risk of nonsabotage accidents, if they cause publicity about the time and/or route of spent fuel shipments (thus encouraging or provoking potential saboteurs who otherwise would not act) or if they mandate unnecessary and expensive steps which do not meaningfully reduce the risk or consequences of sabotage.

Commonwealth does have one additional general comment. It is Commonwealth's view that the Commission should have promulgated the Interim Regulations through the notice and comment provisions of Section 4 of the Administrative Procedure Act and that the "emergency" exception to Section 4, on the basis of which the Commission acted without availing itself of these procedures, could not properly be invoked in these circumstances. Commonwealth notes its

view of the matter in the hope that the Commission will adhere to Section 4 in the future. And, with respect to these comments, the fact that the Interim Regulations were adopted without the usual notice and public comment suggests that the Commission should consider with special care the comments which Commonwealth and others in the public are making on the Interim Regulations.

It is from these perspectives that Commonwealth has examined the Interim Regulations and Guidance. Commonwealth's comments make five principal points: First, the Interim Regulations should assure a licensee which needs to ship spent fuel that, so long as it applies for Commission route approval in a timely manner, it will be able to make the shipments necessary for it to keep its nuclear facility in operation. (Part 1, below.) Second, the Commission's procedures should both provide notice and an opportunity to consult with the Commission Staff concerning route approvals to certain state and local officials described below and should safeguard from others the confidentiality of the times and places of spent fuel shipments. (Part 2, below.) Third, there is a great need for federal action to do what the Interim Regulations presumably now do: preempt state and local legialation, ordinances and regulations which would bar or unduly restrict spent fuel shipments.

(Part 3, below.) Fourth, the regulation of rail shipments should be such that rail remains a viable alternative mode for the transportation of spent fuel and that expensive, difficult to obtain and unnecessary special trains are not required to transport spent fuel by rail. (Part 4, below.) Fifth, Commonwealth has several specific questions, clarifications and suggestions concerning the implementation of the Interim Regulations. (Part 5, below.)

1. Protecting a Licensee's Need to Be Able to Ship Spent Fuel

There have been, and are likely to continue to be, disagreements among the Commission, Commission Staff, licensees and interested members of the public concerning the extent of the health and safety risk posed by the threat of sabotage of spent fuel shipments and the safeguard measures appropriate to protecting against that risk. Questions covering particular safeguard measures are of great importance to Commonwealth, as to others; and, Commonwealth has heretofore expressed, and will continue to express, its views on what those measures should be in light of pertinent health, safety and economic considerations.

But, before examining the details of the safeguard measures set forth in the Interim Regulations and Guidance, there is a threshold issue of ultimate importance. Whatever

safeguard measures the Commission adopts, those measures must be so designed that a licensee which needs to ship spent fuel can do so in a timely manner.

The problem facing the Commission has three aspects:

a. First, as the Commission itself recognizes, even without further regulation by the Commission, the risk of a successful incident of sabotage is, at most, remote. With appropriate modifications, the Commission's Interim Regulations will further minimize these risks.

b. If licensees are prevented or substantially delayed in their efforts to transport spent fuel, the potential adverse consequences for licensees, their customers, and the areas they serve would be severe. Over the next several years, because of the federal government's delay in resolving waste storage issues, and because of space limitations at existing on-site storage facilities, it may be necessary for a number of licensees to transport spent fuel to locations away from reactor sites, in order to continue operating their facilities. The number of shipments which will be required is limited. In most instances, licensees will be able to readily identify routes which provide the required measure of safety. If licensees are prevented or substantially delayed in undertaking these shipments, however, enormous harms could result. In some instances, of course, inability to ship

spent fuel would force reactor shut-down. Depending upon the timing and duration of the delay, the location of the facility, and the nature of any available alternative sources of power supply, such a shut-down could make it necessary to increase consumption of petroleum or other scarce fuels by the equivalent of tens of millions of barrels per year. Even where delays are brief, increased costs to licensees and their customers could total in the tens of millions of dollars. Reliability would be adversely affected, and, in some instances, curtailments could become necessary. And, further, the potentially substantial increase in petroleum use would exacerbate the nation's dependence on foreign oil.

c. Further, in view of the frequency of litigation concerning Commission-regulated matters, there is every reason to expect that, regardless of the reasonableness of the Commission's route approvals, opponents of nuclear power will attempt to use the courts to block shipments along approved routes. The recent Virginia Sunshine Alliance suit (U.S. District Ct., District of Columbia, Civil Action No. 79-1989) underscores this fact.

Under these circumstances, it is critical that the Commission design its regulations in a manner which ensures that they cannot be abused to prevent licensees which have

made timely application for route approval and are adhering to required safeguards from being able to make necessary shipments.

To assure that spent fuel shipments along some route can be made, Commonwealth has four specific suggestions. We urge that the Commission (A) permit a licensee to obtain approval of several, alternate routes; (B) specify an alternate route if it rejects a route requested by a licensee; (C) provide that a route approval remains valid unless affirmatively withdrawn after reasonable notice and opportunity to object; and (D) establish a deadline by which a requested route must be approved or rejected. Assuring licensees that they can ship spent fuel along some route is essential to the continued viability of the licensee's nuclear power plants.

A. Approving Several Routes

Commonwealth suggests that the Commission be willing to approve more than one route for a licensee's spent fuel shipments. Thus, if a licensee requests the approval of several routes, each of which is appropriate, the Commission could approve each route and permit the licensee to choose its actual shipment route from the approved alternatives.

Approval of alternate routes would give a licensee assurance that some approved route will be available when

it needs to make a shipment. For instance, if one approved route is blocked or unavailable for any reason, the licensee will have an approved alternative readily available. And, if a licensee can choose to ship along several approved routes, the risk that a potential saboteur would know where to strike is substantially reduced.

B. Requiring the Commission to Suggest an Approvable Route

Commonwealth further suggests that the Commission be required to approve some shipment route for each licensee which seeks route approval, whether the approved route is one requested by the licensee or one developed by the Commission Staff. Under Commonwealth's suggestion, if the Commission believes that it must reject each route suggested by the licensee, it would be obliged to propose and approve (after informal consultation with the licensee and other appropriate interested parties) at least one (and, as discussed in part 1-A, above, preferably more than one) alternative.

Such a provision would assure a licensee that it could make a needed shipment along some route satisfactory to the Commission. Without such a provision, a licensee whose suggested routes are rejected could find itself needing to ship spent fuel but having no approved route on which it can do so in a timely manner. In the absence of such a provision,

a licensee could quite possibly, even if acting in good faith, find itself caught in a revolving door of route request, Commission rejection, new route request, possible Commission rejection, and so forth. With the addition of such a provision to the Interim Regulations, a licensee would know that he will be able to ship (albeit not necessarily on the route he prefers).

Such a provision would have the further benefits of making clear what the Atomic Energy Act requires in the context of the Interim Regulations: that there is for each needed spent fuel shipment some lawful transportation route. The adoption of such a provision would make manifest the fact that the Interim Regulations cannot be interpreted to preclude all routes for shipment from a particular facility and thereby to prevent any shipment of spent fuel from that facility.

C. Route Approval Should Remain Valid Unless Withdrawn

Commonwealth also suggests that Part 73.37(a)(1) of the Interim Regulations make clear that any Commission approval of a route shall remain valid and effective unless and until the Commission withdraws its approval after reasonable notice and opportunity to object. As licensees must ship spent fuel from time to time, it would waste the time and

resources of the Commission and of licensees and others, and would needlessly burden the licensee's planning of shipments, to require re-approval of a route each time the licensee proposes to make a shipment. If necessary, in order to ensure that an unused route does not remain approved indefinitely simply by inertia and regardless of possibly pertinent changed circumstances, the Commission could provide for a brief, periodic review (e.g., once every five years) of each route, initiated perhaps by a short report by the licensee.

D. A Deadline for Commission Action on a Route Request

Commonwealth further suggests that the Interim Regulations be amended to establish a deadline, of perhaps six months, by which the Commission must act on a licensee's route request. The purpose of this suggestion is to make certain that the Commission, and hence a licensee needing to ship, cannot be delayed procedurally, whether administratively or judicially, from making timely ruling on a licensee's route request. To make such a provision meaningful, the rule should provide that a route request not affirmatively denied within six months after filing will be deemed approved pending further Commission action.

A six month requirement would allow the Commission and Staff adequate time to examine a route request thoroughly and

to determine how to respond to that request. And, especially when combined with the requirement for specifying some approvable route (subpart 1-B, above) establishment of a date by which the Commission must respond would make clear that some route must be timely approved -- and that the only issue is which route or routes are preferable to the Commission. This would be strong evidence to a federal judge being asked to enjoin approvals temporarily or permanently that the Commission regards any such injunction as inconsistent with the Interim Regulations. Likewise, it would discourage zealous foes of nuclear power from seeking to seize on the route approval process to try to prevent all spent fuel shipments from one or more nuclear facilities and thereby to shut those facilities down.

2. Procedures for Implementing the Interim Regulations

Quite clearly, the Commission must consider a number of important interests in its procedures for implementation of the Interim Regulations. Two potentially conflicting interests, in particular, must be carefully balanced: (1) providing adequate notice and opportunity for affected state and local governments to participate in the consideration of route requests; and (2) protecting against disclosure of route information to potential saboteurs. Balancing these interests properly suggests the notice, consultation and confidentiality procedures suggested below.

A. Notice to State and Local Governments

The Interim Regulations should provide that the Commission will give notice of each route approval request to the following state and local officials: the governor of each state through which a shipment is proposed to be permitted and the chief law enforcement officer of each county through which such a shipment is proposed. For reasons discussed in Part 2-C, below, notice of the specifics of any route request should be limited to those officials and should not be given to other public officials or to members of the public And, for like reasons, the notice to county law enforcement officials should be of the request for route approval and of the Commission action on the request, but not of the actual time and route of any particular shipment: if notice of actual shipment particulars is required, it should be given by the Commission only to affected governors and not to local law enforcement officials.

B. The Commission's Process of Reviewing Route Approval Requests

The Interim Regulations should provide that the Commission will consult directly and informally with representatives of all notified governors and county law enforcement officials concerning each route application and each jurisdiction's ability to respond should an emergency occur while the shipment is traversing that state or county. This consultation process, at the level of intensity appropriate to the cir-

cumstances and the wishes of affected officials, should begin soon after the licensee's route approval request is received and should include discussions among the Commission Staff, state and local officials and the licensee. However, both to expedite the process and to keep route information confidential, there should be no formal hearing and none of these discussions should be public or disclosable to the public. And, as discussed in Part 1-D, above, these consultations should not delay Commission action on the route request beyond six months after the Commission receives it.

C. Confidentiality of Each Route Request and Approval

It is imperative that each licensee route request and each Commission route approval be kept strictly confidential from all persons outside of the Commission other than the governors and county law enforcement officials (and their delegates) who, as discussed above, receive notice thereof. This confidentiality is essential if the Interim Regulations are not unwittingly to increase rather than reduce the risk of sabotage. The more people who know the specifics of spent fuel shipment routes, the greater the risk that a potential saboteur will learn those specifics and thereby be encouraged and aided in planning and conducting an attack on the

shipment. The risk that notice to the general public, or even officials with no real "need to know," will be notice to the supposed saboteurs the Regulations are designed to forestall is very real. Consequently, unless route information is very closely held and disclosed only to those few public officials who truly need to know about spent fuel routes in order to protect the interests of the citizens they represent, the Interim Regulations could increase substantially the present tiny, highly remote risk of sabotage.

The need to keep route information confidential has several specific consequences. First, those state and local officials who do receive route notice should be urged, indeed required to keep that information confidential from all but those immediate subordinates or superiors who must have it in order to carry out responsibilities in furtherance of the Interim Regulations. Second, notice of specific route requests and approvals should be limtied to these state and local officials and not be given to interested members of the public. Third, this information should be exempted from disclosure under the Freedom of Information Act and 10 CFR 2.790 on security and/or proprietary information grounds. Fourth, the Commission's procedures for passing on licensee route requests should not include any public discussion of routes or any discussion of

route particulars with anyone other than representatives of affected governors and county law enforcement officials. Fifth, the Commission should not notify anyone, other than the governors of affected states, of the precise dates and routes of actual shipments. In particular, this information should not be given to local law enforcement officials, because leaks, especially inadvertent ones, are likely at this level despite the best of intentions. Sixth, the need to keep the specifics of a shipment's actual route confidential supports the request (in Part 1-A, above) that the Commission approve alternate routes from which the licensee can select the actual route of any particular shipment.

These provisions are necessary to protect the security of spent fuel shipments. They provide, on the one hand, a means for involving the proper representatives of the public in areas through which shipments are proposed and, on the other hand, for keeping confidential as much as is feasible the disclosure of route specifics which would make the likelihood of a sabotage attack on a spent fuel shipment far likelier than it was without any rule at all.

It is important to emphasize that Commonwealth consistently recognizes the need for, and encourages, public participation in government regulatory processes. By urging substantial limitations on disclosure of information under the

Interim Regulations, Commonwealth intends no departure from that attitude. It is simply unavoidable that a regulatory program designed to protect the general public from the potential dangers of disclosing sensitive information cannot be carried out in a "fishbowl." To do so would disserve the very public that the rule is intended to protect. In the context of the Interim Regulations, it is essential that the normal rule of open disclosure to the general public be replaced by the surrogate process of disclosure to a limited number of elected and appointed officials who must be presumed trustworthy and discreet in carrying out their public protection responsibilities.

3. The Need for Pre-emption

Commonwealth for some time has been urging the adoption of a scheme of federal regulation of spent fuel shipments. One reason for Commonwealth's interest in such regulation is the need for clear and unambiguous federal pre-emption of the proliferation of state and local laws, ordinances and regulations which seek to ban or unduly restrict the shipment of spent fuel. While one can understand why ill-informed localities might seek to ban spent fuel shipments (especially in those jurisdictions through which they pass which are not served by the facility from which the spent fuel is being transported), these local legislative efforts

are unnecessary, terribly damaging to the viability of neclear power facilities and unlawful. (Indeed, from the standpoint of reliability on a national scale -- e.g., during an oil embargo or coal strike -- nuclear power facilities are important to all citizens, whether or not they are normally served directly by such facilities.)

Unless checked, these state and local provisions are likely to prevent the shipment of nuclear material and/or to require re-routing that increases not only the cost but, more importantly, the safety hazard of shipments (as discussed in Part 5-A, below). While the Interim Regulations expressly deal with the sabotage risk to health and safety of such shipments, the provisions of those pervasive Regulations of course also protect the public's general interest in the shipment's health and safety. Thus, especially now that the Commission has promulgated the Interim Regulations, federal regulation of spent fuel shipments addresses comprehensively the health and safety concerns about spent fuel shipments which state and local governments and their citizens have. In these circumstances, the Atomic Energy Act and the United States Constitution together make clear that any state and local action which would prevent a shipment approved by the Commission is in conflict with the Supremacy Clause of the Constitution and is accordingly unlawful.

It is clear that the Interim Regulations are pre-emptive, and there is no need for the Commission so to state.

The only change with respect to pre-emption which Commonwealth suggests concerns the rephrasing, for clarity, of certain aspects of Section 4 of the Guidance. Part II-B of Section 4 should be revised to make clear that the local laws, ordinances and regulations described therein which could restrict spent fuel shipments are not specific bans on the shipment of spent fuel or nuclear material generally, which would be unlawful, but rather are general highway safety provisions which do not single out or specially pertain to the shipment of spent fuel or other nuclear material. In addition, the word "embargoed" in Section 4 should be stricken and that section revised to make clear that the Guidance is not intended to ban spent fuel shipments in urban areas.*/

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*/ Commonwealth will be urging the Department of Transportation not merely to defer to the NRC with respect to spent fuel shipments, but to adopt the Interim Regulations as DOT's regulation of spent fuel shipments under the Hazardous Materials Act. See 43 Fed. Reg. 36492 (August 17, 1978).

4. Shipments by Rail

Commonwealth expressly endorses the comments on rail transportation of the Ad Hoc Nuclear Transportation Group. Given the great safety of rail transit and the extreme unlikelihood of a successful sabotage attack on a rail shipment, the regulation of spent fuel train shipments clearly should not impose needless burdens that may lead to special trains (as noted in those comments, in some ways themselves less safe than conventional trains) or otherwise make rail transit a less viable mode for the transportation of spent fuel.

As the Guidance appears to recognize, further consideration of appropriate rail safeguards is required. It is crucial that the Interim Regulations be revised to take account of the substantial differences between truck and rail transport of spent fuel. For instance, since railroads generally run from city to city and frequently cannot be used unless the shipment route traverses one or more urban areas and since successful sabotage of a spent fuel rail shipment would be even more difficult than of a truck shipment, any bias against the rail transit of spent fuel through urban areas would be especially inappropriate. Considerations such as this suggest that the Commission and Staff thoroughly study

the rail aspects of spent fuel transportation and revise the Interim Regulations and Guidance with respect to rail shipments in accordance with the Ad Hoc Nuclear Transportation Group's extensive comments.

5. Specific Matters Concerning Implementation of the Interim Regulations

In addition to the comments discussed above, Commonwealth has several specific suggestions concerning implementation of the Interim Regulations.

A. The General Consideration of Safety, Economic and Environmental Factors

The Commission and Staff can wisely and effectively enforce the Interim Regulations only if they consider all of the pertinent policy factors. Unless the Commission considers not only the highly remote health and safety risk of sabotage but also other health and safety, environmental and economic factors, the effect of the Interim Regulations could actually substantially increase the overall health and safety risk of spent fuel shipments and further could hamper the public's interest in safe, reasonably priced power.

There are many aspects in which consideration only of the risks of sabotage, at the expense of consideration of other health and safety factors and of environmental and

economic costs, could produce spent fuel route and transportation procedures which harm the overall public interest. There is no point, for example, in requiring a route which may very slightly reduce the already tiny risk of sabotage at the expense of either increasing the prospect of an accident or requiring a licensee to bear needless excessive costs, which the public will ultimately bear. Further, the Commission must balance the reduced exposure to a successful act of sabotage or other safety benefit that may result from an action (such as a route selection) against the cost which that action may carry of increasing the likelihood that there could be a successful attack.

The Department of Energy's Deputy Assistant Secretary of Energy Technology, Roger LeGassi, addressed some of these concerns ably in his testimony before the Senate Subcommittee on Science, Technology and Space on July 19 of this year. In commenting on the Interim Regulations, Mr. LeGassie said:

> "Even assuming a risk which warrants greater protection, we believe certain provisions in the rules may be counterproductive and require further analysis. Routes away from population centers with greater shipping distances often are on secondary roads or, in the case of rail transport, over less well-maintained roadbeds, where transport conditions may be less than ideal and where notification and response to any diversion attempt would be greater. Most population centers, on the other hand, are served by excellent interstate highways and mainline railroad track that are well patrolled and easily

> accessible in case of emergency. Prior notification of shipments will also involve increased safeguards risks since routes and schedules will be established and available in advance.
>
> "The rules also will add significantly to shipping costs. NRC admits it will increase transportation costs by a factor of two but, we believe that other factors would indicate far greater possible increases."

The need to consider all risks and costs carefully is well demonstrated by considering, as Deputy Assistant Secretary LeGassie did, the transportation of spent fuel through urban areas. Some aspects of the Interim Regulations and the Guidance suggest that urban transit of spent fuel is to be avoided in most cases. (Indeed, it is the language of the Guidance which the plaintiffs in the recently filed Virginia Sunshine Alliance case have seized upon and taken out of context as saying what the Guidance does not, and should not, say -- that transit of spent fuel through urban areas is, or should be, virtually prohibited.)

However, the costs of so avoiding urban transit could be great. For example, shipments routed away from heavily populated areas may be diverted onto roads which are less safe than an urban interstate highway route. For avoiding an urban area may shift a shipment from the interstate system with its multiple lanes, center dividers, safe shoulders and controlled access and moving it instead to two lane undivided highways without shoulders and with uncontrolled access and numerous grade crossings.

Similarly, rerouting to avoid urban areas could send a shipment into less populated rural areas where law enforcement officials may be less available, less ready to respond quickly and less prepared to deal with a sabotage occurence -- thereby increasing the prospect of a successful incident. Indeed, Commonwealth understands that Chairman Hendrie's testimony before the Senate Subcommittee on July 19 included a statement that he was not certain that forcing spent fuel shipments off interstate highways in urban areas onto secondary rural roads was wise public policy.

These considerations suggest that the Commission add to the Interim Regulations and/or the Guidance a rule that no route which either requires a spent fuel shipment to abandon a multiple lane, divided control access highway for secondary roads for any substantial distance or substantially increases the total route distance should be required.

It is also important that the Commission consider the cost impact (both to licensees and to the Commission) of the implementation of the Interim Regulations. Where a number of alternatives can adequately protect public interests and safety, it is surely appropriate to take into account considerable differences in the costs of those alternatives.

B. The Extent of a Licensee's Obligations: Parts 73.37(a)(2), (a)(6) and (b)(3)

In several areas the Interim Regulations and Guidance require clarification to specify the nature of a licensee's

obligations to take action. In three cases, (i) concerning the "arrangements" with local law enforcement officials required of a licensee by Part (a)(2) of the Interim Regulations and Part 3 of the Guidance, (ii) concerning the "procedures" for coping with threats and safeguards emergencies described in Part (a)(6) of the Interim Regulations and Part 6 of the Guidance and (iii) concerning the immobilization requirements of Part (b)(3) of the Interim Regulations and Part 7.3 of the Guidance, the Interim Regulations and Guidance should be clarified to place the responsibility for decisions and actions squarely on the Commission, which is better qualified than licensees on these particular issues.

Commonwealth's concern with these three regulatory provisions is not with the advisability of some action or decision of the sort described in the Interim Regulations and Guidance, but rather with who should bear the responsibility for them. No licensee can be expected to have expertise in law enforcement matters pertaining to sabotage or to highway safety. A licensee is simply not in a good position to make "arrangements" with the local officials about their readiness to respond to a law enforcement emergency (Interim Regulation Part (a)(2)), to determine what procedures ought to be adopted to cope with an attack (Part (a)(6)), and to decide what immobilization procedures themselves "do not constitute

a safety hazard" (Guidance Part 7.3 and Interim Regulation Part (b)(3)). In each of these cases, it is the Commission Staff which has, or should be expected to develop, the necessary expertise and judgment. In addition, where the carrier has the needed expertise, these provisions require judgmental decisions for which the Commission, and not the carrier, ought to be primarily responsible.

In this regard, Commonwealth assumes that all of the Part (a)(2) "arrangements" with local law enforcement officials, with the exception of the licensee's duty to maintain an up-to-date list of LEA contact points and telephone numbers for itself and its spent fuel carrier, are the responsibility of the Commission. If this is not the Commission's intent, the Interim Regulations and Guidance should be amended (and the amendment explained) accordingly. Similarly, the Interim Regulations and Guidance require clarification to specify that the determination of the Part (a)(6) "procedures" and the decision as to what immobilization procedures are themselves not a safety hazard are the responsibility of the Commission, and not of licensees.

C. Radio Contact

Part 73.37(b)(2) of the Interim Regulations and Part 7.2 of the Guidance require a spent fuel carrier to make status calls every two hours. As the Nuclear Transportation

Group has noted in its comments, this requirement is excessive and may be impossible or highly impractical along certain routes. One suggestion is to permit call frequencies to be extended to five hours (consistent with Part 73.31(b) of the Commission's regulations) in cases where more frequent radio telephonic contact is impractical or impossible. The alternative -- requiring the shipment to be delayed while the driver makes the contact -- obviously will not enhance the public safety.

D. Consistency with Local Requirements

In considering appropriate routes, the Commission should investigate for possible conflicts between a particular route, time of-transit and similar factors and pertinent state and local traffic laws. For instance, a requirement for non-stop travel in heavily populated areas could well conflict with a state or local requirement that overweight trucks operate only from dawn to dusk. Of course, as noted in Part 3 above, if a conflicting state or local law is not a general traffic regulation but rather restricts only the transportation of spent fuel or other nuclear material, the Interim Regulations pre-empt that restriction.

F. Detours

As the Commission recognizes, unforeseen circumstances could require a carrier to detour from a planned route.

However, the discussion of detours in Parts 3 and 4 of the Guidance is in some respects impractical. While recognizing the occasional need for detours, the Guidance suggests such procedural requirements as prior notification of the detour and notification of law enforcement officials along the detour route. Where a detour can be planned before the shipment begins, this kind of requirement may at times (although not always) be feasible. However, where the need for the detour is not known until the shipment is en route, these requirements can be met only if the carrier stops the truck and delays the shipment while the notice and discussions called for by the Guidance take place.

To avoid this undesirable and unsafe result, Commonwealth suggests that the Guidance be amended to state that unexpected detours can be made without delays for notice and consultations. Of course, the Commission could continue to require that it receive prompt after-the-fact notification of any unplanned detours.

F. Two General Language Suggestions

Commonwealth has two modest suggestions for amending the language of the Summary of the Interim Regulations and the "General Requirements" provisions of Part 73.37(a) of the Interim Regulations.

(i) Amending the Summary

Since the Commission and, indeed, the draft Sandia report recognize that the possibility of a successful act

of sabotage is extremely low, Commonwealth suggests that the second sentence of the Summary (reproduced at page 34466 of the Federal Register of June 15) be amended for completeness and clarity to read as follows (the proposed language is underlined):

> "A recent study suggests that while the probability of a successful act of sabotage of spent fuel shipments is extremely low such an act has the potential of producing serious radiological consequences in areas of high population density."

(ii) Amending Part 73.37(a)

To clarify the applicability of the Interim Regulations, Commonwealth suggests that Part 73.37(a) be revised to read as follows (the proposed language is underlined and deleted language placed in brackets):

> "(a) General Requirements. Each licensee who transports or delivers to a carrier for transport irradiated reactor fuel of any quantity which has a total external radiation dose rate in excess of 100 rems per hour at a distance of 3 feet from any accessible surface without intervening shielding [in any amount that is exempt from the requirements of §§73.30 through 73.36 in

accordance with §73.6] shall make arrangements to assure that:"

Sincerely,

Cordell Reed

Cordell Reed
Assistant Vice President