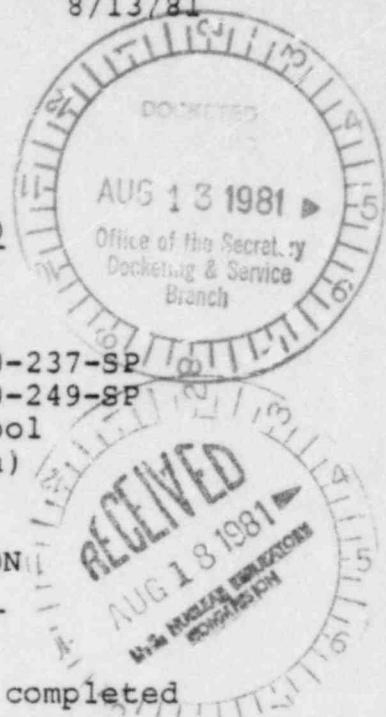


8/13/81



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 ) Docket Nos. 50-237-SP  
COMMONWEALTH EDISON COMPANY ) 50-249-SP  
 ) (Spent Fuel Pool  
(Dresden Station, Units 2 & 3)) Modification)

APPLICANT'S MOTION FOR PARTIAL  
INITIAL DECISION APPROVING INSTALLATION  
OF FIVE RACKS

Evidentiary hearings in this case were completed and the parties' proposed findings of fact had been submitted when on May 28, 1981 the NRC Staff notified the Licensing Board that during its Systematic Evaluation Program (SEP) review an issue had arisen requiring further information from Applicant relating to possible sliding and tilting of spent fuel storage racks during a postulated seismic event. On June 16, 1981 the record in this case was closed.<sup>1/</sup> The NRC Staff subsequently requested the Licensing Board not to issue a final initial decision pending completion of the Staff's review of this issue.<sup>2/</sup> A series of written questions and answers and meetings followed between the NRC Staff and Applicant.<sup>3/</sup>

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<sup>1/</sup> Memorandum and Order (Corrections in Transcript, ruling on motion, and closing the record).

<sup>2/</sup> Letter dated June 29, 1981 to Licensing Board Members from Gus C. Lainas, Assistant Director for Safety Assessments, Division of Licensing, USNRC.

<sup>3/</sup> See footnote 5, infra.

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Applicant is now informed that the NRC Staff is satisfied, based on its review of the responses provided by Applicant, that the installation of five racks at the north end of the Dresden 3 pool presents no safety problem. An affidavit attesting to that conclusion has been prepared by the NRC Staff and we are informed that it is being sent to the Board. Applicant therefore requests that a Partial Initial Decision be rendered authorizing installation of five new racks, based on the record in this case, and on the NRC Staff's affidavit which demonstrates that there is no longer any reason to withhold approval with respect to the five racks.

Presently pending before this Board is another "Motion for a Partial Initial Decision" filed by Applicant on July 24, 1981. This motion expands upon the July 24, 1981 motion in that Applicant is now requesting not only a decision on those issues addressed in the evidentiary hearings, but also on its request to install five new storage racks. Approval of installing all (33) of the proposed storage racks is not requested at this time; Applicant is informed that the Staff believes this will take five to six more weeks of reviewers' time (which, when added to the time necessary for Applicant to perform the additional nonlinear analyses requested by the Staff, means a delay of several months). Our understanding is that the Staff intends to update its Board Notification formally advising the Board

of the status of its review efforts for the remainder of the proposed racks in the near future.

The Staff has no objection to Applicant's request for a Partial Initial Decision approving installation of five racks. Intervenor however in its response dated August 6, 1981 to Applicant's July 24th Motion for a Partial Initial Decision, has raised several objections. Presumably Intervenor will be no less opposed to this Motion for a Partial Initial Decision Approving Installation of Five Racks.

Intervenor argues "There is no specific provision in NRC Rules and Regulations for [a partial initial] decision, and it certainly has not been the practice of Atomic Safety and Licensing Boards to issue partial decisions."<sup>4/</sup> This is nonsense. See 10 CFR Part 2 Appendix A par. I(c); 10 CFR §2.718; Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-277, 1 NRC 539 (1975); Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245 (1978).

Intervenor's argument that Applicant's request is similar to a motion for summary disposition is not well taken. The sliding and tipping issue described in the Staff's May 28, 1981 Board Notification is not a contention in this proceeding. The legal standard which Intervenor must meet in opposing this motion for a Partial Initial Decision Approving Installation of Five Racks is that it must demonstrate that the

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<sup>4/</sup> "Intervenor's Response to Applicant's Motion for a Partial Initial Decision" dated August 6, 1981 at p. 2.

installation of five racks is a matter of major significance to safety which requires reopening the record for further evidentiary hearings. See Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB 138, 6 AEC 520 (1973); Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), LBP-78-2, 7 NRC 83 (1978). We note that despite receipt more than two months ago of the Board Notification, Intervenor has taken no steps at all to request that the record be reopened or to ask that the subject matter of the Board Notification be a litigated issue in this case. Indeed, despite receipt of the Board Notification, Intervenor has merely claimed that it has "no specific knowledge" of what the sliding and tipping issues are.<sup>5/</sup> Therefore, Intervenor to date has not treated the Board Notification as a matter of major significance to plant safety requiring further evidentiary hearings.

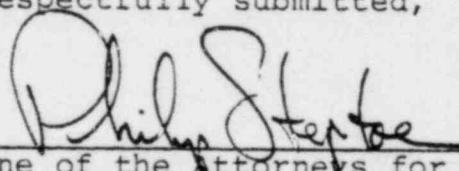
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5/ Following the Board Notification which was of course served on Intervenor, there were two meetings in Washington, D.C. between the NRC Staff and Applicant on June 30, 1981 and July 17, 1981. Intervenor was notified in advance of each meeting but chose not to attend. The NRC Staff prepared meeting notes for both meetings but apparently Intervenor had not received minutes of the second meeting as of August 6, 1981. In addition, Applicant supplied responses to NRC questions on June 12, 1981 and on August 10, 1981. Both sets of responses were served on Intervenor and on Intervenor's consultant, Richard Hubbard, although Intervenor states that it did not receive Applicant's June 12, 1981 response prior to August 6, 1981. Intervenor now has been supplied with copies of all of the above documents.

Dresden Station must begin to shift fuel in preparation for the forthcoming refueling outage no later than September 1, 1981 unless Applicant's five rack proposal is approved by that time. Accordingly, Applicant respectfully requests that Intervenor expedite service of its response to this motion. This Motion is being served on Intervenor by messenger and on its consultant by Federal Express. The NRC Staff's affidavit is being served by express mail. Accordingly, in view of the urgency of this case it seems reasonable to request Intervenor to respond as soon as possible, also by Federal Express.

Applicant will be glad to discuss this Motion in a conference call if the Board believes additional clarification is necessary.

Respectfully submitted,

  
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One of the Attorneys for  
Commonwealth Edison Company

ISHAM, LINCOLN & BEALE  
Suite 4206  
One First National Plaza  
Chicago, Illinois 60603  
312/558-7500

Dated: August 13, 1981

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

THE ATOMIC SAFETY AND LICENSING BOARD

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COMMONWEALTH EDISON COMPANY ) Docket Nos. 50-237-SP  
                               )                              50-249-SP  
                               )                              (Spent Fuel Pool  
(Dresden Station, Units 2 & 3))                              Modification)

CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Motion for Partial Initial Decision Approving Five Racks in the above-captioned proceeding have been served upon the following by deposit in the United States mail, first class, or as indicated below by personal service or Federal Express, on this 13th day of August, 1981.

John F. Wolf, Esquire  
3409 Shepherd Street  
Chevy Chase, Maryland 20015

Dr. Linda W. Little  
5000 Hermitage Drive  
Raleigh, North Carolina 27612

Dr. Forrest J. Remick (Federal Express)  
305 East Hamilton Avenue  
State College, Pennsylvania 16801

Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Docketing and Service  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Mary Jo Murray, Esquire (Personal Service)  
Assistant Attorney General  
Environmental Control Division  
188 West Randolph Street  
Suite 2315  
Chicago, Illinois 60601

Richard Goddard (Personal Service)  
Office of Executive Legal Director  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Richard Hubbard (Federal Express)  
MHB Technical Associates  
Suite K  
1723 Hamilton Avenue  
San Jose, California 95125

By

  
Philip Steptoe

ISHAM, LINCOLN & BEALE  
One First National Plaza  
Suite 4200  
Chicago, Illinois 60603  
312/55/-7500

Dated: August 13, 1981