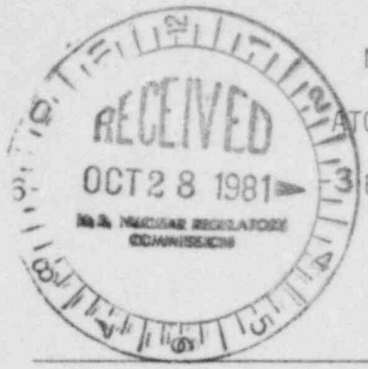

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
James L. Kelley, Chairman
Dr. Peter A. Morris
Dr. Richard F. Foster

In the Matter of

COMMONWEALTH EDISON COMPANY

(Quad Cities Station, Units 1 and 2)

Docket Nos. 50-254-OLA
50-265-OLA

(Spent Fuel Pool Modification)

October 27, 1981

ORDER
(Reflecting Actions Taken at Prehearing Conference)

A special prehearing conference pursuant to 10 CFR 2.751a was held at the Rock Island County Office Building in Rock Island, Illinois, on October 14, 1981. Representatives of the Applicant, the NRC Staff, and each of the organizations petitioning to intervene in this proceeding were present and participated. This Order reflects the major matters discussed and actions taken at the Conference.

Admission of Petitioning Organizations as Parties. Timely petitions to intervene were filed by Citizens for Safe Energy ("CSE") and Quad-City Alliance for Safe Energy and Survival ("QASES"). Subsequent discussions among the petitioners, the Applicant and the NRC Staff resolved some initial questions from the Applicant about standing, and a list of agreed-upon contentions was developed. Our independent application of the standing-plus-one-valid-contention test satisfies us that

D502
S01

the petitions for intervention of these two organizations should be granted. CSE and OASES are admitted as parties. We will refer to them collectively as "the Intervenors."

A third organization, Older Americans for Elderly Rights ("OAER"), also petitioned for leave to intervene. However, the areas of interest indicated in their petition were too vague to qualify as contentions. Although reminded in our notice of the prehearing conference of their right to file further contentions, they chose not to do so. They were represented at the prehearing conference by Mr. Jack Smith, their Director, who indicated that OAER was no longer interested in participating as a party in this case. Tr. 14. The Chairman informed Mr. Smith that, under the circumstances, he could choose to withdraw the OAER petition, or the Board would deny it. Mr. Smith indicated his preference for a Board denial. Tr. 16. The OAER petition is denied.

Admitted Contentions. The parties have stipulated that a list of nine contentions -- set forth in Appendix A to their joint "Stipulation of Issue and Contentions" of October 2, 1981 -- "should be admitted for consideration as matters in controversy." Our independent review of these proposed contentions leads us to agree that these contentions should be admitted. Their admission is, of course, without prejudice to the possibility that one or more of them may later prove to be fit candidates for summary disposition under 10 CFR 2.749.

Disputed Contentions. The Intervenors propose three additional contentions which the Applicant and the Staff oppose. Each contention and our ruling on its admissibility are set forth below.

Contention 2: The Licensees have not considered in sufficient detail the possible alternatives to the proposed expansion of spent fuel storage capacity. Specifically, Licensees have not considered preferable alternatives for managing the spent fuel during the remainder of the operating license for the Quad Cities Nuclear Station, namely, the possibilities of:

a. shutting down the Quad Cities Nuclear Station once the racks presently installed in spent fuel pools are full, or

b. reducing electrical output from the Quad Cities Nuclear Station in conjunction with either energy conservation and pricing alternatives which would reduce demand or increasing the use of underutilized fossil fuel plants to meet current demand.

Ruling. This Board is not responsible for considering broad energy alternatives in the abstract. Our job is to apply the Commission's rules and federal statutes applicable to the comparatively narrow proposition before us -- whether the Applicant should be allowed to expand the capacity of the spent fuel pool at the Quad Cities facility.

In that context, any responsibility of ours to explore the alternatives outlined in this contention must flow from the National Environmental Policy Act ("NEPA") and implementing Commission regulations (10 CFR Part 51) which do require consideration of reasonably available alternatives through the vehicle of an environmental impact statement.[1/] However, that requirement is only triggered where the action proposed will constitute a "major Commission action significantly affecting the quality of the human environment." 10 CFR 51.5(a)(11).

1/ The Atomic Energy Act contains no comparable "consideration of alternatives" requirement.

In a number of recent cases, intervenors have argued that proposed expansions of particular spent fuel pools would have a "significant effect" on the environment, thus requiring an environmental impact statement. See, e.g., Public Service Electric and Gas Co. (Salem Nuclear Generating Station), ALAB-650 (1981); Consumers Power Co. (Big Rock Point), ALAB-636 (1981), Portland General Electric Co. (Trojan Nuclear Plant), 9 NRC 263 (1979); Northern States Power Co. (Prairie Island Nuclear Generation Plant), 7 NRC 41 (1978).[2/] In none of these cases was the requisite effect on the environment shown to exist. Nevertheless, the Appeal Board made it clear in Big Rock Point that, unless and until some generic determination can be made, these determinations must be made on a case-by-case basis. ALAB-636, slip op., p. 36, note 35.

In the present case, however, we do not have an explicit allegation of significant impact on the environment, let alone a substantial record showing of impact. In addition, we do not yet have the Staff's environmental analysis; Staff counsel stated that an environmental impact appraisal (EIA) will be prepared, but it apparently will not be available for some months. Tr. 29. In these circumstances, Big Rock Point provides explicit direction that the Board should:

> await the preparation of the staff's environmental analysis ... It is unwise, if not improper, to decide without the record support provided by the staff's environmental review, whether a given action significantly affects the environment. Id., pp. 35-36.

2/ We ask the Staff to make copies of these decisions available to the Intervenors.

Accordingly, we are deferring our ruling on proposed Contention 2 until after the Staff's EIA is available. At that time, if the Intervenors wish to pursue this contention (or perhaps a contention revised in light of the EIA), we will hear further argument and issue any necessary rulings.

> Contention 7: The Licensees should be required to submit cost evaluations for handling, transportation and storage of the additional fuel which will be stored in the proposed racks for the remainder of the operating licenses for the Quad Cities Nuclear Station.

Ruling. This contention is disallowed. The financial qualifications of an applicant for a reactor construction permit are subject to scrutiny. See 10 CFR Part 50, Appendix C. However, no comparable requirement applies to an applicant for an amendment of the kind sought here. Consumers Power Co. (Big Rock Point Nuclear Plant) 11 NRC 117, 127 (1980).

This contention might possibly be viewed as something other than a "financial qualifications" contention. Thus, the costs of the proposed modifications might become relevant if we eventually become involved in a comparison of alternatives. However, as explained above, that would only happen upon a determination of significant environmental impact. Should such a determination be made following receipt of the Staff's EIA, contentions based upon it should be drafted on the basis of the record as then developed.

At the prehearing conference, the Intervenors sought to link this contention with "substantial hidden subsidies to the nuclear power industry" and with the availability of other storage techniques, such as a new storage pool, dry caisson storage, or air-cooled storage racks.

Tr. 35-38. In the first place, the contention as drafted would have to be stretched considerably to reach these topics. Even assuming that could be done, some health or safety relationship between these topics and the proposed modification would have to be established.

We fail to see how this could be done with respect to the "hidden subsidies" question. The costs and policy soundness of such things as the Price-Anderson Act, decommissioning, and federal energy research programs are for the Congress, the Commission and State public utility commissions, not this Licensing Board.

As to the other proposed forms of storage, their availability could become relevant in this case should it appear that the Applicant's reracking proposal is not acceptably safe. But if the requisite safety showing is made, an applicant is free to choose among acceptable alternative approaches.

> Contention 12: The proposed racks, as well as the Quad Cities Nuclear Station, are not adequately designed to withstand earthquakes be[illegible]e Safe Shutdown Earthquake (SSE) and the Operating Basi[illegible]quake (OBE) which were estabished for the Quad Cities Nuclear Station are no longer appropriate in light of new information about possible earthquakes in the Quad Cities Area. Some earthquake scientists at the St. Louis University and the Midwest Research Institute feel that the Mississippi Valley is ripe for a major earthquake.

Ruling. This contention is disallowed. The NRC rule governing contentions, 10 CFR 2.714(b), requires that a petition include "... the bases for each contention set forth with reasonable specificity." "Bases" does not mean evidentiary proof, which is produced at the hearing. But it does contemplate a clear articulation of the theory of the contention, sufficient that the Applicant can make an intellegent response.

Earthquakes do not occur just anywhere; they occur only on active faults. It would probably be sufficient, for example, if a contention stated that the previously established safe shutdown earthquake for Quad Cities was inadequate because new information would show that an earthquake of greater magnitude was now expected on a particular fault. Or a somewhat more general formulation might suffice. But this contention merely refers, without any specificity, to "new information about possible earthquakes in the Quad Cities Area." That is not sufficiently specific.

Discovery. The various discovery techniques (see 10 CFR 2.740) are now available to the parties. Discovery shall be limited at this time, as the rule provides, to those contentions that have been admitted by the Board -- i.e., the Appendix A contentions of the joint stipulation. The Board encourages the parties to engage in informal discovery, to show some restraint in the number of interrogatories, to forego hypertechnical objections to discovery, and to attempt to negotiate and resolve differences before bringing them to the Board.

Further Actions. It is not now possible to schedule any future actions. The Applicant has not completed its application and until that is done the Staff cannot complete its safety evaluation and EIA. When those documents are complete and served on the parties, it will be time to consider dates for closing discovery and beginning a hearing. In the meantime, should any party believe that some action by the Board is

necessary, they are, of course, free to file an appropriate motion. The device of a telephone conference is also available.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Peter A. Morris
Peter A. Morris
ADMINISTRATIVE JUDGE

Richard F. Foster
Richard F. Foster
ADMINISTRATIVE JUDGE

James L. Kelley
James L. Kelley, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 27th day of October, 1981