

UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
COMMONWEALTH EDISON COMPANY)	Docket No. 50-454-OL
)	50-455-OL
(Byron Station, Units 1 and 2))	

APPLICATION FOR SUBPOENA

Pursuant to 10 C.F.R. § 2.720 (h)(2)(i), Commonwealth Edison Company ("Applicant") hereby applies to the Atomic Safety and Licensing Board to issue the attached subpoena to the NRC Executive Director of Operations, commanding him or his designee(s) to appear to give testimony on deposition at the time and place indicated in the attached subpoena. In support of this Application, Licensee states:

1. The testimony of the Executive Director of Operations or his designee(s) are sought in connection with the Rockford League of Women Voters' Contentions 63, 53, 54 and 77. Each of these contentions refers to the term "important to safety" as an NRC safety classification of reactor structures, systems, and components. For example, Contention 63 asserts that "[a]ll systems and components which can either cause or aggravate an accident or can be called upon to mitigate an accident must be identified and classified as components important to safety and required to meet all safety-grade design criteria." (emphasis added).

2. On November 20, 1981, Mr. Harold R. Denton, Director, Office of Nuclear Reactor Regulation issued a memorandum to his staff (copy attached as Exhibit A) which appears to plow new ground on the use of the term "important to safety" as compared to the terms "safety related" and "non-safety related". This memorandum and its implications have been the subject of at least two licensing proceedings, namely, the hearings involving the restart of TMI, Unit 1 and the operating license hearings involving the Shoreham case.^{1/} In each case, the NRC Staff advanced a position, based on the Denton memorandum, different from the utilities' understanding of the term "important to safety." Likewise, in the instant case, Applicant fails to understand the Staff's interpretation and use of that term as it may be applied to the Byron case. Moreover, the Rockford League of Women Voters have made it clear that they intend to inquire into this matter.^{2/} For these reasons, it is essential that discovery by deposition be had of the NRC Staff in order to enable Applicant to address Contentions 63, 53, 54 and 77.

^{1/} See rebuttal testimony of NRC Staff witness, James H. Conran, Sr., filed in Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322 (OL).

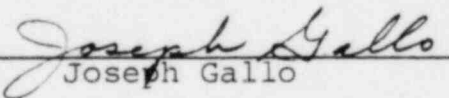
^{2/} See Interrogatory No. 2(a) of the "League of Women Voters of Rockford, Illinois' First Interrogatories to, and Accompanying Request for Documents From, Commonwealth Edison Co.," dated October 16, 1982; and Answers of Rockford League of Women Voters To First Round of Interrogatories of Commonwealth Edison Company, dated July 6, 1982, specifically the answer concerning Contentions 28 and 63.

3. This Application For Subpoena leaves to the Executive Director of Operations the discretion to identify the witness or witnesses to be proffered. However, it seems obvious that Messrs. Denton and Conran have direct personal knowledge of the matters sought to be discovered. Applicant has confidence that the Executive Director will select his witnesses wisely; nevertheless, Applicant reserves the right, should it be necessary, to file for further subpoenas to take testimony on deposition of "particular named NRC employees." 10 C.F.R. § 2.720 (h) (2).

4. This Application For Subpoena has been discussed with counsel for the NRC Staff; and although he has taken no position with respect to the Application, he has requested that it be made in lieu of any informal vehicle, such as a Notice of Deposition.

Based on the foregoing, Applicant has established the relevance of the Staff's testimony to issues admitted in this proceeding; and Applicant respectfully requests that its "Application for Subpoena" be granted and that the Licensing Board issue the attached subpoena.

Respectfully submitted,


Joseph Gallo

One of the attorneys for
Commonwealth Edison Company

Isham, Lincoln & Beale
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 833-9730

Dated: November 15, 1982

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

NOV 20 1981

MEMORANDUM FOR: All NRR Personnel

FROM: Harold R. Denton, Director
Office of Nuclear Reactor Regulation

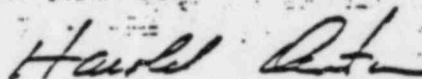
SUBJECT: STANDARD DEFINITIONS FOR COMMONLY-USED SAFETY CLASSIFICATION TERMS

Litigation of one of the principal issues in the TMI-1 Restart Hearing brought to light the fact that there is not complete consistency among all elements of the NRR staff in the application of safety classification terms used frequently in the conduct of NRR's safety review and licensing activities. More specifically, it appears that terms "important to safety," "safety grade," and "safety-related" have been used at times interchangeably, or in ways not completely consistent with the definitions and usage of such terms in the regulations, and which do not fully reflect the intent of the regulations or current licensing practice.

Efforts have been underway for some months now to develop guidance for the consistent usage of these terms. These efforts have included: (a) review of a large number of Reg Guides and SRP's, in conjunction with parts of the regulations upon which they are based, for consistency in the application of safety classification terminology, (2) extensive discussions among cognizant NRR, RES (Stds. Devel.) and ELD representatives regarding proper interpretation and application of such terms, including consideration of alternative "standard" definitions and (3) consultation with the cognizant ACRS Subcommittee regarding these matters, and consideration by the full ACRS as well.

As a result of these efforts, I am endorsing and prescribing for use by all NRR personnel the standard definitions set forth in the enclosure to this letter. It should be noted that in connection with long-term efforts to develop means for ranking reactor plant systems with respect to degree of importance to safety, and in connection with related efforts to develop a graded Q.A. approach in reactor licensing, the general question of safety classifications and safety classification terminologies will be reexamined; and this could result in changes to the definitions set forth in the enclosure or perhaps in development of a completely new scheme in this regard. For the time being, however, the definitions in the enclosure should be considered "standard" and should be applied consistently by all NRR personnel in all aspects of our safety review and licensing activities and should be appropriately reflected in our regulatory guidance documents.

It is expected that minor editorial revisions will have to be made to some existing Reg Guides and SRP's in order to make their wording consistent with these definitions. You should review the regulatory guidance documents within your purview in this regard and recommend the necessary changes; it is not expected that this will involve extensive revision efforts. I want to make clear that my interest here is only in establishing consistency in the language used by all cognizant groups within NRR in expressing our technical requirements. It is not my intention by this action to dictate new technical requirements, to modify existing technical requirements, or to broaden the existing scope of NRR licensing review.



Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Enclosure:
Definition of Terms

DEFINITION OF TERMS

Important to Safety

• Definition - From 10 CFR 50, Appendix A (General Design Criteria) - see first paragraph of "Introduction."

"Those structures, systems, and components that provide reasonable assurance that the facility can be operated without undue risk to the health and safety of the public."

• Encompasses the broad class of plant features, covered (not necessarily explicitly) in the General Design Criteria, that contribute in important way to safe operation and protection of the public in all phases and aspects of facility operation (i.e., normal operation and transient control as well as accident mitigation).

• Includes Safety-Grade (or Safety-Related) as a subset.

Safety-Related

• Definition - From 10 CFR 100, Appendix A - see sections III.(c), VI.a.(1), and VI.b.(3).

Those structure, systems, or components designed to remain functional for the SSE (also termed 'safety features') necessary to assure required safety functions, i.e.:

- (1) the integrity of the reactor coolant pressure boundary;
- (2) the capability to shut down the reactor and maintain it in a safe shutdown condition; or
- (3) the capability to prevent or mitigate the consequences of accidents which could result in potential off-site exposures comparable to the guideline exposures of this part.

• Subset of "Important to Safety"

• Regulatory Guide 1.29 provides an LWR-generic, function-oriented listing of "safety-related" structures, systems, and components needed to provide or perform required safety functions. Additional information (e.g., NSSS type, BOP design A-E, etc.) is needed to generate the complete listing of safety-related SSC's for any specific facility.

Note: The term "safety-related" also appears in 10 CFR 50, Appendix B (Q.A. Program Requirements); however, in that context it is framed in somewhat different language than its definition in 10 CFR 100, Appendix A. That difference in language between the two appendices has contributed to confusion and misunderstanding regarding the exact meaning of "safety-related" and its relationship to "important to safety" and "safety-grade." A revision to the language of Appendix B has been proposed to clarify this situation and remove any ambiguity in the meaning of these terms.

Safety-Grade

- Term not used explicitly in regulations but widely used/applied by staff and industry in safety review process.
- Equivalent to "Safety-Related," i.e., both terms apply to the same subset of the broad class "Important to Safety."

United States of America

NUCLEAR REGULATORY COMMISSION

In the matter of:

COMMONWEALTH EDISON COMPANY

(Byron Station, Units 1 and 2)

DOCKET NO. 50-454-OL
50-455-OL

TO The Executive Director of Operations
or his designee(s)
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

YOU ARE HEREBY COMMANDED to appear ...at the offices of Isham,.....
Lincoln & Beale, 1120 Connecticut Avenue, N.W., Suite 840.....
in the city of Washington, D.C.....
on the.....24th day of November.....1982.....at 9:30.....0'clock A. M.
to testify on behalf ofthe NRC Staff.....

in the above entitled action and bring with you the document(s) or object(s) described
in the attached schedule. The undersigned requests that said documents
be made available at the offices of the NRC for inspection and
review prior to the date of the deposition and in any event no
later than the morning of November 23, 1982.

BY ORDER OF THE ATOMIC SAFETY AND LICENSING BOARD

BY _____

ATTORNEY FOR Commonwealth
Edison Company
Joseph Gallo, Esquire
Isham, Lincoln & Beale
TELEPHONE (202) 833-9730

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10 C.F.R. 2.720 (f)

On motion made promptly, and in any event
at or before the time specified in the subpoena
for compliance by the person to whom the sub-
poena is directed, and on notice to the party at
whose instance the subpoena was issued, the

presiding officer or, if he is unavailable, the
Commission may (1) quash or modify the sub-
poena if it is unreasonable or requires evidence
not relevant to any matter in issue, or (2) con-
dition denial of the motion on just and reasonable
terms.

Schedule

1. All documents, in the custody of the NRC in either draft or final form, concerning the formulation of Mr. Harold R. Denton's November 20, 1982 memorandum to all NRR Personnel. This request includes any drafts of the November 20, 1982 memorandum which were written during the formulation of the document.

2. All documents, in the custody of the NRC in either draft or final forms, concerning the standard definitions for commonly-used safety classification terms written as a result of or in response to the direction of Mr. Harold R. Denton's November 20, 1982 memorandum to all NRR Personnel. This request includes any documents suggesting that the subject of Denton's memorandum be considered through rule-making.