November 13, 1981

Quad-Cities Alliance for Safe
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In the Matter of
Commonwealth Edison Company
(Quad Cities Station, Units 1 and 2)
Docket Nos. 50-254-SP and 50-265-SP
(Spent Fuel Pool Modification)

Gentlemen:

The enclosed Commission Order in the Waste Confidence Rulemaking is forwarded for your information.

Sincerely,

Richard J. Goddard
Counsel for NRC Staff

Enclosure: As Stated

cc: (w/enclosure)
Mr. Nicholas J. Chrissotimos

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

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Victor Gilinsky
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John F. Ahearne
Thomas M. Roberts

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In the Matter of PROPOSED RULEMAKING ON THE STORAGE AND DISPOSAL OF NUCLEAR WASTE (Waste Confidence Rulemaking)	PR-50, 51	(44FR61372)

SECOND PREHEARING MEMORANDUM AND ORDER

I. Background

On May 23, 1979 the U.S. Court of Appeals for the District of Columbia Circuit remanded two nuclear plant licensing amendment actions to the Commission, to consider whether an off-site storage or disposal solution for nuclear wastes will be available by the expiration dates of the nuclear plant licenses in question. If not, the Commission was to consider whether spent fuel can be safely stored at those sites past those expiration dates and until an off-site solution is available (State of Minnesota v. NRC, 602 F.2d 412). A generic rulemaking proceeding was initiated on October 25, 1979 by the Commission, both in response to that judicial decision and also as a continuation of previous proceedings conducted by it in this area (44 Fed. Reg. 61372).

In its Notice of Proposed Rulemaking the Commission stated that the "purpose of this proceeding is solely to assess generically the degree of assurance now available that radioactive waste can

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be safely disposed of, to determine when such disposal or off-site storage will be available, and to determine whether radioactive wastes can be safely stored on-site past the expiration of existing facility licenses until off-site disposal or storage is available." 44 Fed. Reg. at 61373.

In undertaking the above generic reconsideration the Commission chose "to employ hybrid rulemaking procedures" (Id.). Members of the public were permitted to file notices of intent to participate as a "full participant" in this proceeding. Such notices of intent were filed by 56 persons and organizations. Statements of position were to be filed by full participants as their "principal contribution to the waste confidence proceeding" (Id.). Such statements of position were filed by 32 participants before June 9, 1980, after the Department of Energy (DOE) as the lead agency on waste management filed its statement of position on April 15, 1980. In accordance with the schedule established by the First Prehearing Conference Order, cross-statements of position discussing the statements filed by other participants were filed by 21 participants on August 11, 1980.

The Presiding Officer by a May 29 order offered all participants an opportunity to file before October 6, 1980 their suggestions as to further proceedings, additional areas of inquiry or further

data or studies. Twenty-three participants in fifteen submittals availed themselves of this opportunity.

By its Memorandum and Order dated January 16, 1981, the Commission observed that with the filing of the participants' statements and cross-statements the opening stage of the proceeding as envisioned in the original notice of proposed rulemaking has been completed. However, it noted that the Working Group was preparing a summary of the record so far compiled, and felt that the content of the record would be a major consideration affecting the choice of further proceedings. Accordingly, the Commission decided that a firm decision on further proceedings should follow rather than precede the Commission's opportunity to review the Working Group's summary of the record and identification of issues. The Working Group filed its report on January 29, 1981. The participants were allowed to submit comments regarding the accuracy of the Working Group's summary of the record and its identification and description of the issues. Such comments were made by 20 participants by March 5, 1981.

II. NRDC's Motion for Judgment

On August 28, 1981 the Natural Resources Defense Council (NRDC) filed a motion requesting a prompt ruling that, on the basis of the present record, there is not reasonable assurance that off-site

storage or disposal will be available by the year 2007-2009. In support of this motion NRDC asserted that the Administration has changed its policy with respect to reprocessing of spent fuel. NRDC contended that, based upon a policy shift by the Administration favoring reprocessing, NRDC was entitled to a ruling now of no reasonable assurance in the availability of off-site spent fuel storage by 2007 because the schedules and timetables analyzed in the DOE position statement were based on storage and disposal of spent fuel, not reprocessed waste.

Seven other participants have filed answers arguing that this motion for judgment should be denied. The American Nuclear Society, Niagara Mohawk et al, the Atomic Industrial Forum, the Tennessee Valley Authority, the Department of Energy, Utility Nuclear Waste Management Group - Edison Electric Institute (UNWMG-EEI), and Consumers Power Company have filed responses. DOE contends that the policy shift toward reprocessing should not affect the Commission's ultimate decision in this proceeding since a purpose of the proceeding is to determine that there is at least one safe means of disposal and much of DOE's program is not dependent upon the waste form. Niagara Mohawk and others stress that the record already compiled in this proceeding adequately demonstrates that reprocessed wastes as well as spent fuel can be safely stored and disposed of. On October 5, NRDC submitted a Request to File Consolidated

Reply to Responses to NRDC Motion for Judgment and Reply to Motion to Strike. In this filing they reiterated their central point stated above and continued to urge a decision now of no confidence that safe waste disposal will be achieved by 2007-2009. On October 8, 1981, the UNWMG-EEI filed a response in opposition to the NRDC Request to File Consolidated Reply.

Because this is a rulemaking proceeding, the Commission may consider information from many sources. The Commission notes that the August 28 NRDC motion was directed to the Presiding Officer of the Waste Confidence proceeding. The October 5 NRDC reply was addressed to the Presiding Officer, but urged the Commission to find no confidence in the event that the Presiding Officer did not have the authority to grant their August 28 filing. The Presiding Officer does not have the authority to make such a judgment in this proceeding. Determinations of confidence are to be made by the Commissioners themselves.

The Commission believes that the issue raised in the August 28 NRDC motion is one of several recent developments which may bear on the Commission's ultimate decision. Accordingly, the Commission accepts and will consider the NRDC filings and the responsive

filings by other participants as a part of the record in the Waste Confidence proceeding and will seek participants' views concerning the applicability of recent developments to its decision in this proceeding.

III. Next Phase of the Proceedings

While most participants indicated in their recommendations for further proceedings that they believe the record is adequate for a decision, the Commission believes that limited further proceedings will be useful to allow the participants to state their basic positions directly to the Commissioners and to enable the Commissioners to discuss with the participants some specific issues including those described later in this order and others based on participants' positions or statements. Therefore, the following procedures are hereby adopted.

The next phase of this proceeding will provide for oral presentations to the Commissioners addressing first the issues already raised in this proceeding, or other significant information which participants believe should be brought to the Commission's attention. Second, presentations should address how the recent developments enumerated below may bear on a Commission decision in this proceeding.

To conduct oral presentations on a manageable basis, it is necessary to have a consolidation of participants holding similar views.

Consequently, for purposes of this order, participants are consolidated into the following groups. The statements already submitted by the participants suggest that the groups listed below constitute a reasonably representative consolidation. The consolidation and sequence of presentations is as follows:

1. Department of Energy

2. Arms Control and Disarmament Agency, Council on Environmental Quality, Office of Science and Technology Policy, and United States Geological Survey.

3. California Department of Conservation, California Energy Commission, Delaware, Illinois, Massachusetts, Minnesota, Missouri, New York, Ocean County and Lower Alloways Creek Township (New Jersey), Ohio, South Carolina, Vermont, and Wisconsin.

4. American Institute of Chemical Engineers, American Nuclear Society, Association of Engineering Geologists, Atomic Industrial Forum, Bechtel Corp., Consumers Power Co., General Electric, Neighbors for a Safe Environment, Scientists and Engineers for

Secure Energy, Tennessee Valley Authority, Utilities Group (Niagara Mohawk, Omaha Public Power Dist., Public Service Co. of Indiana), and Utilities Nuclear Waste Management Group--EEI.

5. Environmental Coalition on Nuclear Power, Marvin Lewis, Mississippians Against Disposal, Natural Resources Defense Council, New England Coalition on Nuclear Pollution, Safe Haven, Ltd., Sensible Maine Power, William Lochstet.

Each consolidated grouping may file a single written statement prior to the oral presentations within 45 days of the date of this order. These written statements should succinctly outline the grouping's arguments and views on the merits of major issues that have been identified in the proceeding, with particular reference to those key points to be addressed orally. Page citations to source documents in the record must be included. These statements may also include suggestions of key questions for the Commission in its discretion to ask of other participants. In any case statements should not exceed 20 pages in length. In addition, each grouping should designate to the Presiding Officer its spokesperson to make the oral presentation on behalf of the grouping. Groups may wish to have technical experts available to answer questions or offer supporting statements. DOE should plan for a presentation of no

more than one hour. Each of the other proposed groupings should plan for a presentation of their views on the issues before the Commission not to exceed thirty minutes. However, additional time will be provided as necessary to answer questions posed by the Commission in the course of the presentations. At the conclusion of the oral presentations, the Commission will allow a brief period for rebuttal.

At the oral presentations, the participants may assume that the Commissioners are familiar with their original position and cross statements, the Working Group's summaries, the participants' comments on the summaries, and the statements filed by consolidated groupings. The Commissioners reserve the right to ask questions at any time during the oral presentations. The participants should be prepared to answer technical as well as more general questions.

In addition to the procedures outlined above for oral presentations and the associated statements to be filed by consolidated groups, individual participants may file written supplementary statements containing their views on how the recent developments outlined below may bear on a Commission decision in this proceeding. Participant supplementary statements should not exceed 20 pages in length and should be filed 45 days after the date of this order.

IV. Recent Developments

Participants are requested to address in their written statements as well as their oral presentations the significance of recent developments listed below to the Commission's decision in this proceeding.

(1) Reprocessing and other waste management program changes

On October 8, 1981, the President issued a statement outlining a policy favoring commercial reprocessing.[1] In that statement he also instructed the Secretary of Energy, working closely with industry and state governments, to proceed swiftly toward deployment of means of storing and disposing of commercial high-level radioactive waste. He said that the steps must be taken now to demonstrate to the public that the problems associated with management of nuclear waste can be resolved.

In addition, as NRDC pointed out, the Deputy Secretary of Energy testified that, "The waste management program that we are proposing differs markedly with the previous Administration's program. . . We believe that the cornerstone of the waste management program should be that the reference waste form, as it was prior to the Carter Administration and as is in concert with

[1] Presidential Nuclear Policy Statement, October 8, 1981.

the rest of the world, is reprocessed high-level waste [instead of spent]."[1]

Also, the President has proposed to dismantle the Department of Energy and place its functions in other Federal agencies.[2] Since this may bear upon the waste management program organization and management issue, participants may wish to comment on the implications of this potential development.

Recent congressional testimony[3] by DOE's Assistant Secretary for nuclear energy indicated that the Department's current plan for high-level waste disposal will emphasize development of a test and evaluation (T&E) facility for the testing of disposal concepts which could affect the schedule for repository development and construction reported in the DOE Position Statement. The Commission is also interested in participants' views on this matter.

(2) Away-from-reactor storage policy

On March 27, 1981, the Department of Energy (DOE) submitted information to the Presiding Officer concerning a change in

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[1]July 9, 1981 statement of Kenneth Davis, Deputy Secretary, U.S. Department of Energy before the Subcommittee on Energy and the Environment, Committee on Interior and Insular Affairs at 4-5.

[2]Presidential address to the Nation, "Program for Economic Recovery," September 24, 1981.

[3]October 6, 1981 statement of Shelby T. Brewer, Assistant Secretary for Nuclear Energy, U.S. Department of Energy before the Senate Committees on Energy and Natural Resources and Environment and Public Works.

the DOE program wherein they have "discontinue[d] [their] efforts to provide federal government-owned or controlled away-from-reactor (AFR) [spent fuel] storage facilities." The submittal explains that this change is a result of a "change (reduction) in DOE's projections of the quantity of spent fuel that may require interim storage" and a later time frame for need for such storage.

The submittal states that the previously planned Federal AFR storage is only one of several possible approaches to satisfying storage needs. The letter suggests that the Commission should assume any additional storage requirements will be satisfied by any one or more ways described in the letter.

The participants are asked to comment on the significance to the proceeding of issues, particularly institutional concerns, resulting from this policy change and to comment on the merits of DOE's new projection of spent fuel storage requirements and on the technical and practical feasibility of DOE's suggested alternative storage methods.

V. Schedule

The schedule below shall be followed.

(Note: Assumes order approved by the Commission on November 6.)

(1) Participants shall file any objection to the Order with the Presiding Officer. — November 20

(2) Participants may file individual or consolidated written statements prior to oral presentations. — December 21

(3) Tentative date for oral presentations to the Commission. — January 11

Following the oral presentations, the Commission will decide what additional steps, if any, are necessary and will notify the participants as appropriate.

It is so ORDERED.

For the Commission

Samuel J. Chilk
Secretary of the Commission

Dated at Washington, D.C.
this 2nd day of November 1981.