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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges

Gary L. Milhollin, Chairman
Elizabeth B. Johnson
Quentin J. Stober

In the Matter of)	Docket Nos. 50-237
)	50-249
)	50-254
COMMONWEALTH EDISON COMPANY,)	50-265
et al.)	
)	(Transshipment of Spent Fuel)
)	
(Dresden Station, Units 2 & 3;)	
Quad Cities Station, Units)	
1 & 2))	

LICENSEE'S RESPONSE TO JULY 28, 1982 ORDER

On July 28, 1982 this Board issued an Order noting the long period of inaction in this docket which, it said, indicates that there is no longer any intention to pursue the application. The NRC Staff and the licensee were instructed to inform the Board why this proceeding should not be removed from the Board's docket. For the reasons stated below, Commonwealth Edison respectfully requests this Board to permit it to withdraw this application, without prejudice.

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As this Board is aware, in recent years due to disappointing Government progress in establishing away-from-reactor storage facilities and a nuclear waste repository, utilities such as Commonwealth Edison have had to manage increasing quantities of spent fuel at their nuclear stations. In the spring of 1978 Commonwealth Edison filed this transshipment application along with applications to install high-density storage racks to increase spent fuel storage capacity at its Zion and Dresden Nuclear Stations. The Office of the Attorney General of Illinois, on behalf of the State of Illinois, intervened and requested hearings with respect to all three applications. Natural Resources Defense Council, Inc. and Citizens for a Better Environment intervened only with respect to this transshipment application. Subsequently in 1981 Commonwealth Edison filed an application to increase spent fuel storage capacity at its Quad Cities Nuclear Station. That application was initially contested by certain other citizens groups.

As Licensee informed this Board in letters dated October 31, 1980 and May 6, 1981 (enclosing a letter from Cordell Reed to Darrell Eisenhut dated April 23, 1981), the primary reason for the inaction in this docket has been the NRC Staff's inability to review this application in parallel with Licensee's applications to install high density spent fuel storage racks at Zion, Dresden, and Quad Cities. Commonwealth

Edison was required by the NRC Staff to assign priorities to these applications. The Company determined that transshipment should have lowest priority, but it always intended to pursue this application in the event any of the spent fuel storage rack applications were denied.

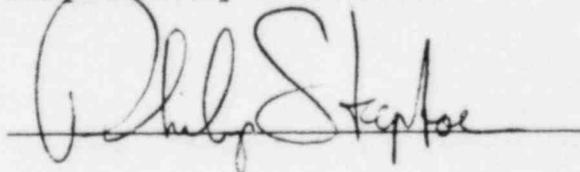
Final NRC approval for the Zion Station spent fuel racks was won in the fall of 1980. See Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-616, 12 NRC 419 (1980). The Quad Cities spent fuel rack case was settled on favorable terms in the spring of 1982. A Partial Initial Decision authorizing the installation of five Dresden storage racks was granted last fall. See Commonwealth Edison Company (Dresden Station, Units 2 and 3), LBP-81-37, 14 NRC 708 (1981). However, it was not until August 17, 1982 that the Licensing Board in that case approved installation of the majority of the high density storage racks for Dresden Station. (Licensee has not yet received a copy of that Order). For the last year Dresden has been operating without full core discharge capability in either unit's pool.

Commonwealth Edison hereby requests permission to withdraw its application, without prejudice, in this transshipment case. While the Company believes its transshipment application is technically defensible and poses no undue risk to the public health and safety, the need for this authority in the near term has been reduced. We request that this withdrawal

be without prejudice to Commonwealth Edison's ability to file a new transshipment application in the future, should the need arise.^{1/}

The Appeal Board has recently offered guidance on the subject of dismissal without prejudice. See Philadelphia Electric Company (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967 (1981). We believe dismissal without prejudice is appropriate, since there has been no lack of candor in the Company's correspondence to the Board, the Company has not been primarily responsible for the inaction in this docket, and the Company's decision not to withdraw its application prior to this time was dictated by its statutory responsibility to ensure reliable electric service to the public it serves.

Respectfully submitted,



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August 18, 1982

^{1/} There is at least one presently foreseeable circumstance which might cause Commonwealth Edison to file a new transshipment application in the near future. On May 15, 1982 the New York State Energy Research and Development Authority ("NYSERDA") filed suit against Nuclear Fuel Services, Inc., Commonwealth Edison and certain other electric utilities in the United States District Court for the Western District of New York (Civil Action File

[footnote continued on next page]

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No. Civ. 82-0426E). Insofar as it applies to Commonwealth Edison, the complaint alleges that approximately 215 spent fuel assemblies from Dresden Unit 1 have been stored at Nuclear Fuel Services' West Valley Center since about 1973, when West Valley suspended reprocessing operations, and this continued storage is claimed to be a continuing trespass and a breach of contractual agreements. The relief requested is that Commonwealth Edison take back its Dresden Unit 1 spent fuel, and pay damages to NYSERDA. Since the Dresden Unit 1 pool is full, Commonwealth Edison might wish to distribute any Dresden 1 fuel it is required to take back among the Dresden 2 and 3 and Quad Cities 1 and 2 pools. At the present time we are unable to estimate the likelihood of any such result.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	Docket No. 50-237
COMMONWEALTH EDISON COMPANY)	50-249
(Dresden Station, Unit 2 and 3,)	50-254
and Quad Cities Station, Unit 1)	50-265
and 2))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Response to July 28, 1982 Order", in the above captioned proceeding, has been served upon the following by deposit in the United States mail, first class, postage prepaid, this 18th day of August, 1982.

Secretary of the Commission
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555
Attention: Docketing and Service

Nathene Wright, Esq.
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

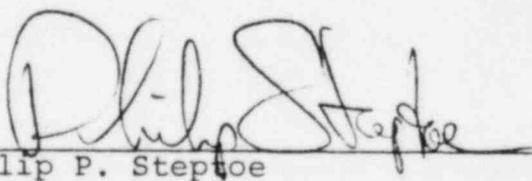
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