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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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COMMISSIONERS:

Lando W. Zech, Jr., Chairman
Thomas M. Roberts
James K. Asselstine
Frederick M. Bernthal
Kenneth M. Carr

OFFICE
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In the Matter of
COMMONWEALTH EDISON COMPANY
(Braidwood Station, Units 1 and 2)

Docket Nos. 50-456-OL
50-457-OL

ORDER

CLI-87-07

The Licensing Board in the Braidwood proceeding has issued two partial initial decisions (PIDs)¹ which, taken together, resolve all the contested issues in that proceeding in favor of the applicant, Commonwealth Edison. In concluding the second of the decisions, the Licensing Board declared that the Director of Nuclear Reactor Regulation ("NRR") was authorized, upon making the findings required under 10 C.F.R. § 50.57(a), to issue full power operating licenses to the applicant. LBP-87-14, 25 NRC _____, slip opinion at 77-78. Only this second, and authorizing, decision has been appealed, but neither

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¹The first PID, on emergency planning, was issued on May 13, 1987. LBP-87-13, 25 NRC _____. The second, on quality assurance, was issued on May 19, 1987. LBP-87-14, 25 NRC _____.

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decision has become final under the agency's adjudicatory appellate process.² Thus, pending the completion of that process, and consistent with 10 C.F.R. § 2.764(f), the Commission has conducted a review of the Board's decisions to determine whether there are safety reasons for delaying the effectiveness of the Board's concluding PID.³ The Commission has determined that no such reasons exist, and that the Licensing Board's concluding decision should become effective.⁴

The first PID dealt with two emergency planning issues: public information programs, and evacuation of institutions such as nursing homes. In a unanimous opinion, the Board ruled in the applicant's favor on the first issue, subject to the applicant's making certain changes in the public information booklets, and the Board declared the intervenor in default on the second issue for having failed to file as directed proposed findings of fact and conclusions of law. See 10 C.F.R. § 2.754(b). No party has appealed this PID, although the Appeal Board will be reviewing it sua sponte, as is customary with licensing board decisions which are not appealed. We have

²The Appeal Board will be undertaking sua sponte review of the first PID.

³Under § 2.764(f)(2)(ii), parties are permitted to file effectiveness comments for the Commission's consideration during its review. Only the applicant filed such comments.

⁴Still before the Licensing Board is a motion to reopen the record to hear a contention that a new entity which the applicant has proposed separately to be allowed to operate the facility is not an "electric utility" under the Commission's financial qualification rule, 10 C.F.R. § 2.104(c)(4), and is not financially qualified to operate the facility. Since the new entity is not the applicant for the licenses whose issuance was authorized by the Board, we have not considered this new contention during our effectiveness review. The application to have the new entity operate the facility will be the subject of a separate proceeding.

reviewed the decision and find nothing in it which warrants delaying the effectiveness of the concluding PID.⁵

The second and concluding PID was concentrated on a single contention, which alleged that certain specified instances of harassment of quality assurance inspectors who inspected electrical system welding had taken place in the last few years at Braidwood. The Board's two technical judges, with the lawyer-chairman in dissent, concluded that although the efforts of certain managers to eliminate a large backlog⁶ of needed inspections had not been above reproach, nothing had taken place which called for "the precipitous action of license denial." Slip opinion at 74. Although the Chairman in his dissent recommends imposition of civil penalties on the applicant,⁷ he also concluded that "the weight of the evidence is that management made no attempt to discourage inspectors from documenting ordinary inspections," and that the inspectors who suffered the alleged intimidation "performed their field inspections competently and successfully resisted any attempts that may have been made by management to sacrifice quality for quantity." LBP-87-14, Dissenting Opinion at 280, 281 respectively. The Board was unanimous in concluding that there is reasonable assurance that that part of the electrical

⁵Nothing in our conclusions on either of the PIDs is to be taken to prejudice the issues before the Appeal Board in this proceeding. See 10 C.F.R. § 2.764(g).

⁶The backlog arose in part because of the applicant's decision to require the subcontractor with responsibility for the inspections to perform more of them. See LBP-87-14, Slip opinion at 14-15, 68-69 n.18.

⁷Unless assigned by the Commission to hear cases under 10 CFR 2.205, Licensing Boards have no authority independently to impose civil penalties. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-82-31, 16 NRC 1236, 1238-39 (1982).

system which was installed during the period at issue under the contention could be operated without adverse impact on the public health and safety. Id. at 50; Majority Opinion at 76. As a result of our review of the concluding PID, we find in the contested issues in the proceeding no reason to stay the effectiveness of the Board's decision pending completion of the appellate process.

However, the dissent also calls into question the adequacy of the electrical system welding performed before the period of time at issue under the contention. See Dissenting Opinion at 2, 50. Though granting that the safety of the earlier welding was not at issue in the adjudication, id. at 37, 282, the dissent nonetheless argues that the weld inspection program in place before October 1983 was not adequate to assure the safety of the electrical system installed before the date, and that the principal later reinspection program which covered that period, though it found no safety-significant welding discrepancies, cannot vouch for the safety of the welding on that system. The dissent's principal reason for discounting the later reinspection program was that under that program, Sargent and Lundy, the architect/engineer for Braidwood, was the organization responsible for judging the safety significance of any welding discrepancies found during reinspection, and that as architect-engineer, Sargent and Lundy was too interested in getting the plant licensed, and too given to believing that it had designed adequate margins of safety into the electrical system, to give sound judgment in its evaluations of the discrepancies. The Board's majority disagreed.

Although the adequacy of the electrical system welding was not one of the contested issues in the proceeding, the Commission, having responsibility for public health and safety, will not ignore a safety issue discussed by the

Board merely because the issue was not properly before it.⁸ Having reviewed these, and the other less important but pertinent arguments in the majority and minority opinions on the safety of the welding on the electrical system installed before October 1983, we conclude that there is reasonable assurance of the safety of that system. As the majority points out, the architect-engineer for a project is the entity best qualified to judge whether its designs have been adequately realized in the construction, and most anxious to assure that they have been. Majority Opinion at 56. Moreover, we find that the Board majority's account of the very considerable safety margins designed into the welded structures in the electrical system is well-supported.⁹ Thus we find in the Board's discussion of the safety of the electrical system welding done before October 1983 no cause to stay the effectiveness of the concluding PID.

Accordingly, for the reasons given above, pursuant to 10 C.F.R. § 2.764(f)(2), the Commission finds that the Licensing Board's decision resolving all contested issues should become immediately effective and the

⁸The Board learned of the pre-October 1983 inspection program in the course of testimony over the results of the reinspection program, which were being offered as evidence of the efficacy of the inspection program despite whatever harassment the inspectors might have suffered.

⁹We note, moreover, that the greater part of the welding in the electrical system will remain accessible for any needed inspection or repair after full-power operation begins.

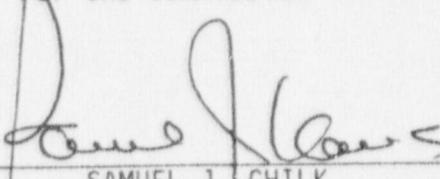
Director, NRR, is authorized, upon making the findings required under 10 CFR § 50.57(a), to issue the full power licenses for the Braidwood facility.

Commissioner Asselstine disapproved the order; his separate views are attached.

It is so ORDERED.



For the Commission


SAMUEL J. CHILK
Secretary of the Commission

Attachment: As stated

Dated at Washington, D.C.

this 30th day of June, 1987.

Separate Views of Commissioner Asselstine

The Commission decides today to permit the final Licensing Board decision to become effective and thus to permit the Director of the Office of Nuclear Reactor Regulation to issue an operating license for the Braidwood facility. In effect, the Commission finds that there is no issue that cannot await the outcome of the appellate review process. I cannot agree.

In a series of decisions in late 1985 and early 1986, the Commission prevented the Licensing Board from hearing contentions on the quality assurance program at the Braidwood facility that the Licensing Board had decided to admit for litigation. Commonwealth Edison Company (Braidwood Station, Units 1 and 2), Docket Nos. 50-456, 457 (December 5, 1985); Commonwealth Edison Company (Braidwood Station, Units 1 and 2), Docket Nos. 50-456, 457 (March 20, 1986); Commonwealth Edison Company (Braidwood Station, Units 1 and 2), CLI-86-08, 23 NRC 241 (1986). Because the Licensing Board was not permitted to hear those safety issues the intervenor sought to raise, I cannot support allowing the decision to become effective.