



Commonwealth Edison

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DCS

July 14, 1987

Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555

Subject: Byron Station Unit 1
Civil Penalty EA 86-163
NRC Docket No. 50-454

References (a): June 11, 1987 letter from J.M. Taylor
to J. J. O'Connor

(b): December 30, 1986 letter from B.L. Thomas
to J.J. Taylor

Gentlemen:

Reference (a) transmitted an Order imposing a civil monetary penalty and the Nuclear Regulatory Commission's ("NRC") evaluations and conclusions ("Response") to Commonwealth Edison Company's ("Edison") reasons for believing the civil penalty should not be imposed (Reference (b)). Edison has carefully considered the NRC's Response and has enclosed some observations for the record.

The Response clearly indicates that the NRC has conclusively determined to exercise its discretion to consider this incident a Severity Level III event and to impose a civil penalty of \$25,000. Under these circumstances and because this exercise of discretion is not clearly outside the range of acceptability, Edison believes that its best course is to pay the civil penalty. Accordingly, a check for \$25,000 has been enclosed. On July 9, 1987, Edison was granted a one week extension on the due date for the response to the Order.

Sincerely,

L. D. Butterfield
Nuclear Licensing Manager

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Enclosures

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ENCLOSURE

OBSERVATIONS ON THE NRC'S RESPONSE

A. Minimal Safety Significance

The Response does not dispute Edison's conclusion that the event which actually occurred had minimal safety significance. Rather, the NRC considers the event significant because the failures which led to it could have resulted in a more safety-significant event. Edison recognized that such a potential was a proper cause for concern. Indeed, Edison instituted extensive procedures to preclude repetition of such an event. The scope of these corrective actions is material to the issue of whether they are sufficient to preclude the recurrence of a similar, possibly more safety significant event. However, the potential occurrence of such other events is immaterial to the issue of the safety significance of this event for which a substantial civil penalty has been imposed. Unfortunately, the analysis of safety significance confuses more general concerns about this event with the narrow inquiry into its own safety significance.

B. Separate Violations Aggregated

The Response, without explanation, implicitly rejects Edison's assertion that violations which are unavoidable consequences of another violation, in this case Violations A and C which followed unavoidably from Violation B, should not be treated independently for the purposes of aggregation to increase the Severity Level of an event. Moreover, the further aggregation of these violations with the separate event which led to Violation D, an event which the NRC acknowledged was separate, was justified as necessary to "focus attention on the need for improvement in the maintenance, control and testing area". This reasoning is troublesome. Nevertheless, the Enforcement Policy provides the NRC Staff considerable discretion to accumulate violations for evaluation in the aggregate. Because such exercises of Staff discretion have traditionally been sustained by the Commission, we have determined that the probability of successfully challenging the Staff's determination to evaluate these deficiencies collectively is too low to warrant appealing this decision.