UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	:	
COMMONWEALTH EDISON CO., et al.	:	Docket Nos. 50-237
	:	50-249
(Amendments to Operating Licenses)	:	50-254
		50-265

NATURAL RESOURCES DEFENSE COUNCIL RESPONSE
TO APPLICANT'S MOTION FOR RECONSIDERATION OR
IN THE ALTERNATIVE FOR CLARIFICATION AND REFERRAL

Bereft of all rhetoric and bombast, Applicant's argument is that:

1. There appears to be an important question about the adequacy of safeguards for spent fuel shipments as disclosed by the Sandia document and the Staff proposals to explicitly extend safeguards protections to such shipments.

2. Approval for the shipment of spent fuel by Applicant should be given by this Board without addressing the safeguards issue and without awaiting Commission resolution of the Staff proposal.

The Applicant's position is ludicrous and dangerous.

In its Prehearing Conference Order, this Board correctly perceived that although Part 73 exempts spent fuel shipments from the precise requirements of that Part, it does not exempt spent fuel shipments from protective measures required to provide adequate assurance of the protection of the public health and safety. Nothing Applicant presents is a rebuttal to that conclusion. The Board merely found that its duty to

explore all relevant safety issues properly requires it to read any exemption narrowly and that the literal reading of §73.6(b) is that the Part 73 requirements are not applicable to spent fuel. There is no effort to use 1978 data to discover a 1969 intent but rather to use 1978 concerns to warrant exploring safety issues not previously addressed explicitly by the Commission.

It is difficult to see the relevance of Applicant's extended discussion of the Staff safeguards proposal on spent fuel and the information alerting value of the use of § 2.758. The Staff proposal underscores the relevance of safeguards considerations for spent fuel shipments and of course fulfills the task of alerting the Commission. If the Board felt further alerting was necessary, it could write a letter rather than use the cumbersome process of § 2.758 which is reserved for cases where a regulations is being challenged.

Applicant then argues that this Board should determine for the Commission that the safeguards issue presented here should be addressed generically and not in individual cases. Of course, until the Commission directs this Board to ignore the safeguards issue, it has no choice but to address the issue in individual cases.[1] Moreover, Applicant's implicit argument that

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1/ Similarly the Applicant's assertion that the safeguards issue inherently involves legislative facts and not adjudicatory facts is an issue for the Commission to decide in addressing the Staff proposals. Certainly the NRC has considered that in the absence of a Commission policy the extent of safeguards needed and the size of a threat which need to be considered are appropriate for individual adjudicatory proceedings. See, e.g., Consolidated Edison Company (Indian Point 2), ALAB-202, 7 AEC 825, affirmed CLI-74-23, 7 AEC 147.

individual proceedings would not await the conclusion of the generic proceedings is at best a controversial, if not a clearly illegal, proposal which has been sharply limited by the courts. Natural Resources Defense Council v. Nuclear Regulatory Commission, 547 F.2d 633 (D.C. Cir. 1976), reversed and remanded on other grounds, sub nom. Vermont Yankee Nuclear Power Corporation v. Natural Resources Defense Council, 98 S.Ct. 1197 (1978); Natural Resources Defense Council v. Nuclear Regulatory Commission, 539 F.2d 824 (2d Cir. 1976), judgment vacated and remanded for consideration of mootness, sub nom. Allied General Nuclear Services v. Natural Resources Defense Council, 46 U.S.L.W. 3447 (Jan. 17, 1978). But see, Union of Concerned Scientists v. Atomic Energy Commission, 499 F.2d 1069 (D.C. Cir. 1974).

Applicant's request for a Board clarification of its Order is unwarranted. There is not basis at this stage of the proceeding to limit NRDC's right to present evidence that whatever security measures Applicant proposes may be insufficient. First, we must know what the Applicant proposes. In addition, higher threat levels, as postulated in Contention 6(a) and (b), do not necessarily mean that the safeguards required to prevent a malevolent act will be inconsistent with requirements of Part 73. At first glance, the proposals included in the Staff draft regulations to the Commission as reported in the trade press appear to be adequate to substantially reduce the threat.[2] Certainly those proposals, although different from, are not inconsistent with Part 73.

2/ See Statement of Thomas B. Cochran, Ph.D., filed herewith.

Finally, Applicant's request for referral reads like any applicant's request following admission of an intervenor contention. All contentions once admitted present potential for delay and every time an intervenor prevails over an Applicant and Staff objection it is a landmark decision. It is obvious here that the Board has done nothing extraordinary as evidenced by a virtually identical ruling in Duke Power Company, Dkt. No. 70-2623, Order Regarding Contentions of Natural Resources Defense Council, March 16, 1979. The Applicant's argument with respect to delay rings particularly hollow inasmuch as the record here does not disclose an imminent spent fuel storage crisis and does disclose on-site expansion efforts for which sabotage during transportation is not an issue. Applicant can merely proceed to press its on-site storage proposals and thereby avoid any delay problem.

For the reasons stated above, Applicant's motion should be denied.

Respectfully submitted,

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