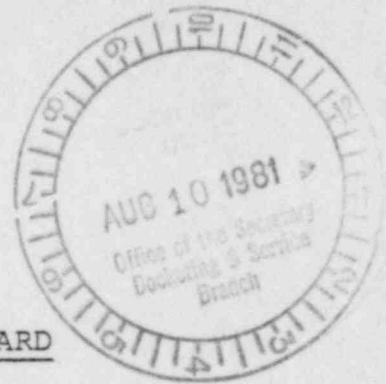


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

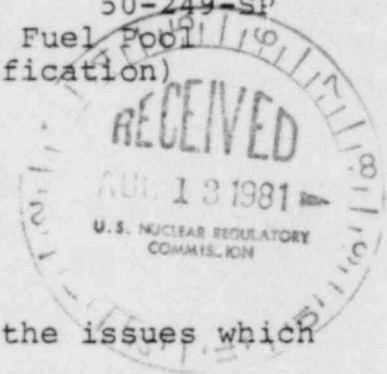
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of )  
COMMONWEALTH EDISON COMPANY )  
(Dresden Stations, Units 2&3) )

Docket No. 50-237-SP  
50-249-SP  
(Spent Fuel Pool  
Modification)

INTERVENOR'S RESPONSE TO  
APPLICANT'S MOTION FOR A  
PARTIAL INITIAL DECISION



Although the Board has reached a decision on the issues which have been litigated so far in this case, the issue of the sliding and tilting of the proposed spent fuel racks during seismic events has not yet been resolved. The Staff estimates that it may take four weeks or more to complete their review (assuming the Applicant promptly provides the information requested by the Staff), but Applicant believes that the Staff's estimate is optimistic and it may take two months or more to resolve this issue.

The Board has invited comments and suggestions as to what should be done in this proceeding.

As of the date this Response was filed, Intervenor had only received the summary by Paul O'Connor of the June 30, 1981 meeting in Bethesda Maryland and the attached list of additional information requested by the NRC. Thus, Intervenor does not have adequate knowledge of the relevant facts so as to be able to comment at this time on the sliding and tipping issue.

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Intervenor objects to Applicants Motion for a partial Initial Decision in this proceeding. There is no specific provision in NRC Rules and Regulations for this type of a decision, and it certainly has not been the practice of Atomic Safety and Licensing Boards to issue partial decisions.

In Federal Courts, Applicant's Motion would be analagous to a Motion for Summary Judgment or a Motion for Partial Summary Judgment. (See Rule 56 c, Federal Rules of Civil Procedure). In either case, on the facts in this instance, such a motion would be denied, because for summary judgment to be granted, there must be "no genuine issue as to any material fact." (Emphasis supplied). That is clearly not the case in this proceeding; although as stated above, Intervenor has no specific knowledge of what the sliding and tipping issues are, there clearly are issues which have yet to be reviewed and resolved. 1/

Intervenor proposes that after

- 1) the Staff issues a supplemental safety evaluation;
- 2) Intervenor comments on that evaluation; and
- 3) the Board makes its determination whether this is a matter of "major significance to plant safety" requiring further hearings,

the Board's Initial Decision should be issued. This procedure would be proper, and would not prejudice any party.

Intervenor appreciates Applicant's desire to know the results and contents of the Initial Decision as soon as possible, but the detriments of taking such a novel, unprecedented and unacceptable shortcut far outweigh the benefits of knowing what the Board has decided so far.

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1/ See Applicant's Motion for Partial Initial Decision, p. 2.

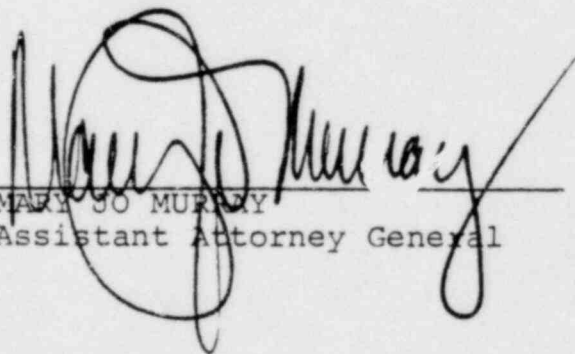
Finally, Intervenor would again point out that as of the date of the first hearing, November 19, 1980, it was assumed that Applicant would be ready to proceed with the entire hearing and have ready for submittal all necessary documents associated therewith. It is clear that Applicant was in no such position, and even as of this date, does not have all proper analyses completed. Applicant obviously was not ready to proceed with the hearing on the proposed spent fuel pool modification in November, and is still completing the steps necessary to be granted a license. Until all the evidence is submitted, the Board should not issue any type of Initial Decision.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

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BY:

  
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DATED: August 6, 1981

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In The Matter Of )

COMMONWEALTH EDISON COMPANY )

(Dresden Stations, Units 2 & 3) }

Docket Nos. 50-237-SP

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(Spent Fuel Pool  
Modification)

CERTIFICATE OF SERVICE

I hereby certify that copies of Intervenor's Response To Applicant's Motion For A Partial Initial Decision in the above-captioned proceeding have been served on the following by depositing in the United States mail, first class, postage pre-paid:

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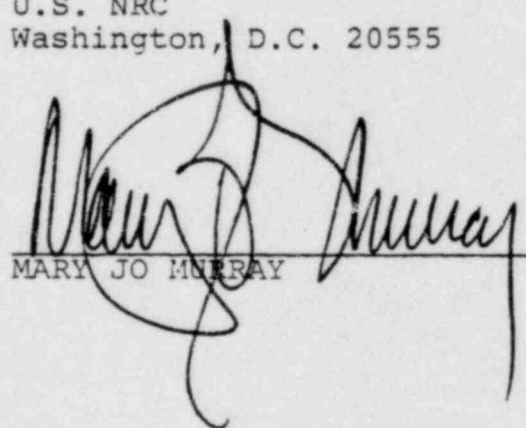
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DATED: August 6, 1981