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September 3, 1981



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
COMMONWEALTH EDISON COMPANY) Docket Nos. 50-237-SP
(Dresden Station, Units 2 & 3)) 50-249-SP
(Spent Fuel Pool
Modification)

Dear Administrative Judges:

In our telephone conference call on Monday, August 31, 1981 it was tentatively determined to hold a hearing in Bethesda on September 11, 1981 to answer certain outstanding questions the Board has concerning Applicant's "Motion for a Partial Initial Decision Approving Installation of Five Racks" dated August 13, 1981. There appeared to be some uncertainty whether, if the Board determines Applicant has met its evidentiary burden in that hearing and approves Applicant's five rack proposal, such approval must be documented in a formal written opinion.¹

- 1/ Part of this uncertainty arises because, although 10 CFR Section 2.730(e), added by the recent rule changes for expediting the NRC hearing process, allows Licensing Boards to dispose of written motions either by written order or by "ruling orally" Section 2.760(c) which was unaffected by the recent rule changes, states that "An initial decision will be in writing. . . ."

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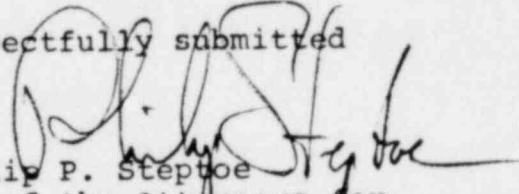
The purpose of this letter is to provide clarification about the procedures which Applicant believes should be taken in the event the evidentiary hearing on September 11 satisfactorily answers Board Questions 3 through 10 on the five-rack proposal. Although its motion was captioned as a request for Partial Initial Decision, the motion was intended to request that the Board issue a complete written initial decision on all matters in controversy (including all of Intervenor's contentions and Board Questions 1 and 2), but make that decision immediately effective only as to five racks.

Applicant believes the above procedure, whatever it is denominated, is justified by the Commission's Rules of Practice and by the present posture of this proceeding. Evidence had been taken on all matters in controversy, the record was closed, a complete initial decision was prepared, and the Staff then asked the Board not to issue the decision. The Staff, however, even agrees with the Applicant that the reason why the Staff originally requested the initial decision not be issued (the "sliding and tilting" issue) should not prevent the Board from approving the installation of five racks. Consequently, if Board Questions 3 through 10 are answered to the Board's satisfaction, the initial decision which had been prepared can be issued and the installation of five racks approved.² The initial decision need not contain any written findings concerning the "sliding and tilting" issue pursuant to 10 CFR §§2.760(c) and 2.760a since this issue is not a matter in controversy in this case.³

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- 2/ Of course, Applicant readily concedes that in the event the Board is not satisfied with the responses to Board Questions 3 through 10, approval for even the five racks would be inappropriate.
- 3/ An issue becomes a matter in controversy by being included in an intervenor's contention (which is not the case here) or by action of the Board if it determines that a serious safety, environmental, or common defense and security matter exists. 10 CFR §2.760a. As we understand it, one of the purposes of the September 11, 1981 hearing is to help the Board determine whether such a serious safety matter exists. Applicant and the Staff have already informed the Board through affidavits that they do not believe a serious safety issue exists with respect to installation of five racks.

Consequently, Applicant believes that the Board can (A) issue oral findings on Board Questions 3 through 10 at the conclusion of the hearing on September 11, 1981; (B) enter the initial decision previously prepared in this matter; (C) make the initial decision immediately effective as to five of the high-density racks and stay its effectiveness as to the remainder; and (D) retain jurisdiction over this proceeding pending final resolution of the "sliding and tilting" issue, at which time the initial decision can be (1) made effective as to the remaining racks or (2) modified to deny approval for the remaining racks. Further, Applicant hopes that (A), (B) and (C), above, could all be completed by September 15, 1981 so that Applicant would not be forced to resort to the inferior alternative of moving fuel between pools to re-establish full core discharge capacity in time for the forthcoming refueling outage.

Respectfully submitted


Philip P. Steptoe
One of the Attorneys for
Commonwealth Edison Company

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CC: Service List
(Express Mail)