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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

JUN 17 1982

THE ATOMIC SAFETY AND LICENSING BOARD

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

MOTION FOR RECONSIDERATION OR CLARIFICATION  
OF NOTICE OF HEARING

On June 9, 1982, the Atomic Safety and Licensing Board ("Licensing Board") issued a "Notice of Hearing", which scheduled a hearing for July 13, 1982 in Bethesda, Maryland. Parties in this proceeding were instructed to present evidence concerning the ability of the spent fuel pool floors associated with Dresden Station, Units 2 and 3, to withstand the loads which could be imposed by the proposed high density storage racks during a seismic event. Pursuant to 10 CFR §2.730, Commonwealth Edison Company ("Applicant") hereby requests the Licensing Board to reconsider its decision to schedule a hearing, or, alternatively, requests the Licensing Board for a clarification of the issues needing to be addressed at such hearing.

In May, 1978, Commonwealth Edison applied for permission to install thirty-three new high density storage racks in the spent fuel storage pools associated with Dresden

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Station, Units 2 and 3. Following completion of the evidentiary hearings concerning this application, and after submission of parties' proposed findings of fact, the NRC Staff notified the Licensing Board that during its Systematic Evaluation Program (SEP) review an issue had arisen requiring further evaluation concerning possible sliding and tilting of the proposed spent fuel storage racks during a postulated seismic event. The NRC Staff requested the Licensing Board not to issue a final decision pending the Staff's review of this issue.<sup>1/</sup>

In August, 1981, Applicant requested the Licensing Board to render a partial initial decision authorizing installation of five new high density racks following notification that the NRC Staff was satisfied that such installation presented no safety problems. An affidavit to this effect was submitted by the NRC Staff to the Licensing Board on August 13, 1981. Subsequently, the Licensing Board rendered its "Partial Initial Decision" resolving all litigated issues and authorizing installation of five new high density racks in the spent fuel pool associated with Dresden Unit 3.<sup>2/</sup>

<sup>1/</sup> Letter dated June 29, 1981 to Licensing Board Members from Gus C. Lainas, Assistant Director for Safety Assessments. Division of Licensing, USNRC.

<sup>2/</sup> Partial Initial Decision Modifying Operating License To Permit Installation of Five High Density Storage Racks At Dresden Unit 3, dated September 24, 1981.

The NRC Staff has now completed its evaluation of the sliding and tilting issue which arose during the SEP review. On May 26, 1982, the NRC Staff issued the Supplemental Safety Evaluation Report (SSER) for Applicant's proposal to install the thirty-three high density spent fuel storage racks in the spent fuel pools associated with Dresden Station, Units 2 and 3.<sup>3/</sup> The SSER concluded that installation of the proposed racks poses no safety problems and satisfies all regulatory requirements. Accordingly, the sliding and tilting issue is not a matter of "major significance to plant safety" which requires reopening the record for further evidentiary hearings. See, Vermont Yankee Nuclear Power Corporation (Vermont Yankees Nuclear Power Station). ALAB-124, 6 AEC 358, 364-65 (1973).

The sliding and tipping issue raised in the SEP review was never admitted as a contention in this proceeding, and in fact no party even sought to have this issue admitted as a contention. Consequently Applicant believes that this matter is not an appropriate subject for further evidentiary sessions absent the Licensing Board's exercise of its sua sponte authority under 10 CFR §2.760a. Section 2.760a provides, however, that "[m]atters not put into controversy by the parties will be examined and decided by the presiding officer only where he or she determines that a serious

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<sup>3/</sup> The SSEP was transmitted to the Licensing Board by the letter of Richard Goddard, dated May 28, 1982.

safety, environmental, or common defense and security matter exists." 10 CFR §2.760a (emphasis added). The Licensing Board has not made such a finding with respect to the sliding and tilting issue, and until such a finding is made, an evidentiary session concerning this matter is improper. Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-36, 14 NRC 1111 (1981).

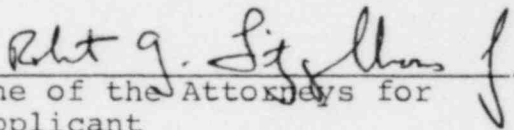
In light of the above, Applicant believes that any further evidentiary sessions are both unnecessary and improper, and requests the Licensing Board to reconsider its "Notice of Hearing", dated June 9, 1982. Instead, it is now appropriate for the Licensing Board to render its final decision in this proceeding, authorizing installation of the full complement of the proposed racks. Procedurally, this can be accomplished with a brief order which makes the Licensing Board's "Partial Initial Decision" effective as to the remaining racks.

In the alternative, Applicant requests the Licensing Board to clarify precisely what issue the Board expects Applicant to address at the hearing scheduled for July 13, 1982, and the nature of the evidentiary presentation it expects of Applicant. For example, does the Licensing Board want written testimony to be filed, or does it merely desire the presence of a witness to be examined by the Board and other parties? Perhaps a

conference call among all parties, the Licensing Board and the Staff could be held to provide the needed clarification and guidance.

WHEREFORE, Applicant respectfully requests, in the alternative, that (A) the Notice of Hearing be withdrawn and a Final Decision approving installation of all racks be entered, or (B) the Board clarify its Notice of Hearing by specifying the issue which is to be the subject of the July 13 hearing and by stating the nature of the evidentiary presentation it desires.

Respectfully submitted,

  
One of the Attorneys for  
Applicant

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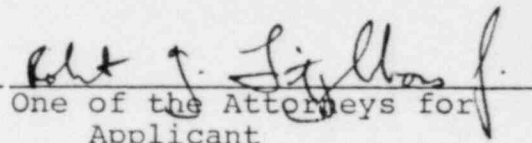
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	)	(Spent Fuel Pool
(Dresden Station, Units 2 & 3))	)	Modification)

CERTIFICATE OF SERVICE

I, hereby certify that a copy of the Motion for Reconsideration or Clarification of Notice of Hearing was served upon all persons shown in the attached service list by Federal Express, except for the name with an asterisk, in which case it was served by messenger, this 16th day of June, 1982.

  
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