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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of)

Philadelphia Electric Company)

(Limerick Generating Station,
Units 1 and 2))

) Docket Nos. 50-352
) 50-353 OL

LICENSEE'S PETITION FOR REVIEW OF ALAB-819

Summary of the Decision Below

Licensee Philadelphia Electric Company ("Licensee") petitions the Commission to exercise its authority under 10 C.F.R. §2.786 to review an important issue of law and Commission policy arising from ALAB-819, wherein the Atomic Safety and Licensing Appeal Board ("Appeal Board") has, without any direction from the Commission and in the absence of any demonstrated necessity, interpreted 10 C.F.R. §50.47(b)(12) to create a wholly new requirement for backup medical support.^{1/}

1/ Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC (October 22, 1985). In ALAB-819, the Appeal Board decided all issues (except one) arising from the Atomic Safety and Licensing Board's ("Licensing Board") Second Partial Initial Decision in favor of the Licensee (then Applicant). See Limerick, supra, LBP-84-31, 20 NRC 446 (1984). The sole exception was the adequacy of backup medical support for onsite plant workers who might be contaminated and injured in an accident. Despite its finding of error, the Appeal Board in ALAB-819 did not suspend operation of the Limerick Generating Station ("Limerick") because "the deficiency in PECO's emergency plan identified here is not so significant as to warrant license suspension." ALAB-819 at 50.

The crux of the issue which Licensee requests the Commission to consider is whether additional requirements may be imposed under 10 C.F.R. Part 50 and Appendix E regarding the proximity of the backup hospital to a nuclear plant, i.e., the travel time from the plant to the hospital in the event of an emergency. Specifically, in this instance the Commission should decide whether the Appeal Board exceeded its authority in ruling that the Hospital of the University of Pennsylvania ("HUP"), located in Philadelphia about a 45-minute drive from Limerick, "is too distant to serve as an adequate backup hospital" for the treatment of contaminated injured onsite workers.^{2/}

The Appeal Board's novel interpretation requires that arrangements be made to obtain a second backup hospital for the treatment of contaminated injured workers at Limerick, which should be located "beyond the area subject to potential evacuation, but . . . otherwise . . . as close as possible to Limerick."^{3/} Nothing in the Federal Emergency Management Agency's or the Commission's regulations, policy statements and precedents on the adequacy of supporting medical facilities suggests that the proximity of HUP to Limerick is inadequate. Moreover, in numerous licensing actions, the Commission has uniformly approved arrangements with backup hospitals at the same or greater distance and with greater travel times from the plant.

^{2/} ALAB-819 at 44.

^{3/} Id. at 49.

Legal Error Assigned

In ruling as a matter of law that a backup hospital located 45 minutes driving time from a nuclear facility is inadequate, the Appeal Board usurped the Commission's rulemaking powers to set generic emergency planning standards. It must be emphasized that the Appeal Board made no finding, factual or legal, which would distinguish medical needs or arrangements for Limerick onsite workers from those at any other nuclear facility.^{4/} Because no reason for making a special case out of Limerick was demonstrated or even attempted, the Appeal Board's ruling necessarily has generic application to every plant in the country, including many facilities licensed by the Commission with a backup hospital more distant or less accessible than HUP is to Limerick, i.e., 45 minutes driving time.

If the NRC Staff had imposed the same requirement under 10 C.F.R. §50.47(b) (12), its interpretation clearly would have required a complete backfitting analysis to show, inter alia, "that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from the backfit and that the direct and indirect costs of implementation for that facility are justified in view of this increased protection."^{5/} Although

^{4/} The Appeal Board apparently reached a different conclusion for Limerick because Licensee had not "explore[d] the entire range of reasonable options" regarding other hospitals. ALAB-819 at 49 n.47. Thus, the basis for its decision was the possible availability of other options rather than any requirement inherent in the rule.

^{5/} 10 C.F.R. §50.109(a) (3). See 50 Fed. Reg. 38097, 38112 (September 20, 1985).

inapplicable per se to its adjudicatory boards,^{6/} the new backfitting rule nonetheless articulates the Commission's serious concern that new, unwarranted requirements are being ratcheted upon existing standards in a never-ending "quest for a risk-free plant, an unobtainable objective as recognized by Congress in establishing the standard of no undue risk in the Atomic Energy Act."^{7/} Thus, the Appeal Board exceeded its authority and violated the presumption, expressed by the Commission, "that the current body of NRC safety regulations provides adequate protection."^{8/}

The Appeal Board cited no textual or other objective basis for its conclusion that HUP cannot provide adequate backup medical support for Limerick onsite workers.^{9/} It correctly observed that the Commission's

^{6/} The proposed rule would have included actions by the Licensing and Appeal Boards. See 49 Fed. Reg. 47034, 47040 (November 30, 1984) (additional views of Commissioner Asselstine). The Commission adopted a definition of "backfitting" in the final rule, however, which was limited to a new staff interpretation of the rules. See 10 C.F.R. §50.109(a). The discussion in the Statements of Consideration published with the adopted rule on this provision did not comment upon the change excluding adjudicatory board decisions. 50 Fed. Reg. at 38102. The Licensee agrees with the Commission that "it is of little consequence how a backfit is imposed." Id. at 38101.

^{7/} 50 Fed. Reg. at 38103. As further stated in the backfitting rulemaking, "the Commission would not ordinarily expect that safety improvements would be required as backfits which result in an insignificant or small benefit to public health and safety or the common defense and security, regardless of the implementation costs." Id. at 38102.

^{8/} 50 Fed. Reg. at 38101.

^{9/} The basic purpose of the backup hospital is to provide patient evaluation and long-term care in cases of severe radiation exposure. Such evaluation and treatment is normally beyond the
(Footnote Continued)

emergency planning regulations simply require that "[a]rrangements are made for medical services for contaminated injured individuals,"^{10/} which the planning guidance defines as "local and backup hospital and medical services having the capability for evaluation of radiation exposure and uptake, including assurance that persons providing these services are adequately prepared to handle contaminated individuals."^{11/} Accordingly, no requirement that a backup hospital be closer than 45 minutes driving time is contained in the Commission's regulations or planning guidance. Except for its newly created requirement of closer proximity, the Appeal Board found no inadequacy in the capability of HUP to perform its designated backup role.^{12/}

(Footnote Continued)

immediate capacity of the local hospital. See, e.g., Limerick, supra, LBP-84-31, 20 NRC 446, 531-32 (1984); Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-84-2, 19 NRC 36, 266 (1984).

- ^{10/} 10 C.F.R. §50.47(b)(12). Further detail is provided in 10 C.F.R. Part 50, Appendix E, Sections IV.E.6 and 7, which require that "[a]dequate provisions shall be made . . . for . . . [a]rrangements for transportation of contaminated injured individuals from the site to specifically identified treatment facilities outside the site boundary" and for "treatment of individuals injured in support of licensed activities on the site at treatment facilities outside the site boundary."
- ^{11/} Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants, NUREG-0654, Criterion L.1 (Rev. 1, November 1980) ("NUREG-0654").
- ^{12/} Thus, the Board found no deficiency in the existence of agreements with the primary and backup hospitals for receipt of contaminated injured onsite workers, nor any inadequacy with arrangements at the primary hospital designated in the Licensee's emergency plan, the Pottstown Memorial Medical Center ("Pottstown Memorial"), located about two miles from Limerick.

There are no unique medical support needs for Limerick which justify making it a special case apart from every other licensed plant in the United States.^{13/} Several licensees in the South use the Oak Ridge National Laboratory Hospital for their backup facility. In the case of Turkey Point, this hospital is approximately 800 miles away.^{14/}

Conversely, the Commission has approved many plans with primary hospital facilities which are within the EPZ. The hospitals approved for the Pilgrim plant present an almost identical situation to those for Limerick. Pilgrim's primary hospital is two miles from the site and the backup facility is 35 miles away.

In short, there is no regulatory basis for requiring more than one backup hospital or for requiring that the hospital be closer than a 45-minute drive from the facility.

The Appeal Board correctly stated that the Commission's standard is "prudent" planning,^{15/} but overlooked the Commission's statement in San

^{13/} The staff expert testified that the Commission has routinely licensed plants on the basis of a primary hospital near the plant and a backup hospital at a greater distance from the plant (Sears, Tr. 9929). In reported cases, the Diablo Canyon plant relies upon backup medical support at St. Francis Memorial Hospital in San Francisco, about 200 miles from the facility. See Pacific Gas and Electric Company (Diablo Canyon Nuclear Plant, Units 1 and 2), LBP-81-21, 14 NRC 107, 134 (1981). The backup hospital for Byron is the Northwestern Memorial Hospital, which is located in Chicago, likewise 50 miles away from the plant. Byron, supra, LBP-84-2, 19 NRC 36, 266 (1984).

^{14/} Attachment A contains a comparative listing of the approximate distances from representative reactor sites to their primary and backup hospital facilities.

^{15/} See Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-83-10, 17 NRC 528, 533 (Footnote Continued)

Onofre that it was aware of "the general practice for licensees or offsite authorities to make special arrangements for emergency treatment of contaminated injured onsite personnel and emergency workers."^{16/} That observation at least implicitly approved the adequacy of existing arrangements for operating plants, which are no different than for Limerick. If the Commission wishes to change onsite planning requirements, it would obviously do so in the context of its current rulemaking on remand from GUARD v. NRC, supra, inasmuch as the Commission has held that medical arrangements already in place for onsite workers and emergency workers provide "core services" for the general public as well.^{17/}

The Appeal Board's judgment that HUP is "too distant" to function as a backup is rooted in a major unfounded premise. It seriously erred in its implicit assumption that other hospitals more distant from Limerick but closer than HUP would be unavailable or incapable of providing emergency medical care for contaminated injured individuals. That assumption flies in the face of the Commission's holding in San Onofre that prudent planning for medical services "does not require dedication of resources to handle every possible accident that can be

(Footnote Continued)

(1983), rev'd on other grounds, GUARD v. NRC, 753 F.2d 1144 (D.C. Cir. 1985).

^{16/} Id. at 535.

^{17/} Id.

imagined," but can be satisfied by "core planning with sufficient planning flexibility to develop a reasonable ad hoc response"18/

Moreover, the uncontradicted testimony from both the Licensee's medical expert and the staff's planning expert, both uniquely qualified by training and experience, was that the probability of a total hospital evacuation in the event of any radiological emergency, as distinct from the general population, is "vanishingly small."^{19/} Even the Licensing

18/ Id. at 533. There are a number of hospitals in the area of the Limerick plant, including Phoenixville, Reading and Norristown, which are approximately eight to ten miles from the site (Linnemann, Tr. 9906, 9911; Boyer, Tr. 9911). Licensee's medical expert testified that no hospital would decline to accept a patient because the patient was radioactively contaminated. Even assuming high level contamination and a severe injury requiring immediate surgery, "it would be almost virtually an impossible situation" that contamination would preclude acceptance of the patient and, therefore, there is no possibility "that contamination is going to interfere with life-saving measures" (Linnemann, Tr. 9922), the sole justification for the Appeal Board's requirement of a second backup hospital.

19/ Limerick, supra, LBP-84-31, 20 NRC 446, 534 (1984). The staff's witness was John R. Sears, a Senior Reactor Engineer with the Emergency Preparedness Branch, Division of Emergency Preparedness and Engineering Response, Office of Inspection and Enforcement. Since 1976, Mr. Sears has served as the reviewer responsible for emergency planning for operating reactors in the United States. See ff. Tr. 9776, Professional Qualifications of John R. Sears at 2. Licensee's principal witness on medical services was Dr. Roger E. Linnemann, who specializes in the areas of radiobiology, radiology and nuclear medicine. See ff. Tr. 9772, Professional Qualifications, Roger E. Linnemann, M.D. Several licensing boards have relied upon Dr. Linnemann's testimony on this subject in other proceedings such as San Onofre and Byron.

In Diablo Canyon, the Commission expressly authorized licensing boards to consider the probability of postulated events in determining whether emergency planning measures are prudent and adequate. In holding that a board need not consider the contemporaneous occurrence of an earthquake and a radiological release from a nuclear plant, the Commission held "that earthquakes

(Footnote Continued)

Board dissent, upon which the Appeal Board relied, agreed with the majority that "probabilities must be kept in mind" such that plans need not account for contingencies "too remote" in reality.^{20/}

Beyond the "core services" required by Section 50.47(b)(12) and NUREG-0654 (i.e., designation of a primary and backup hospital), the Commission has stated that prudent planning even for the general public only requires identification of "local or regional medical service facilities considered capable of providing support for contaminated injured individuals."^{21/} Indeed, the Commission's recent policy statement on medical services prohibits a board from inquiring into the specific capabilities of hospitals which supplement "core services."^{22/}

(Footnote Continued)

of sufficient size to disrupt emergency response at Diablo Canyon would be so infrequent that their specific consideration is not warranted." Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-84-12, 20 NRC 249, 252 (1984) (emphasis added). As the Commission further noted, "emergency plans do have considerable flexibility to handle" even unforeseen events. Id. at 253.

^{20/} Limerick, supra, BP-84-31, 20 NRC 446, 530 (1984).

^{21/} San Onofre, supra, CLI-83-10, 17 NRC 528, 535 (1983).

^{22/} See Statement of Policy on Emergency Planning Standard 10 CFR 50.47(b)(12), 50 Fed. Reg. 20892 (May 21, 1985). In its policy statement, the Commission, in effect, reinstated the holding by the Licensing Board in San Onofre which rejected an argument that a hearing should be afforded on the capabilities of hospitals listed in the offsite plans. See San Onofre, supra, LBP-83-47, 18 NRC 228, 232-33 (1983). Thus, the Appeal Board improperly rejected the uncontradicted medical testimony that all of the hospitals in the area of Limerick have been certified by the Joint Committee on Hospital Accreditation to have adequate plans for handling contaminated injured patients. Limerick, supra, LBP-84-31, 20 NRC 446, 534 (1984).

In sum, the Appeal Board departed from the plain text of the regulations and based its holding upon a subjective belief that more planning was needed. It had no authority, however, to substitute its judgment as to what constitutes "prudent" planning for that of the Commission in its regulations and planning guidance. The Appeal Board's intuitive belief that a 45-minute driving time renders a backup hospital inadequate cannot, therefore, be justified.^{23/}

Exercising Discretion to Review

The Commission should exercise its discretion to review this important issue of Commission policy and its regulation on medical support preparedness in order to ensure that all nuclear plant applicants and licensees are subject to a uniform, nondiscriminatory standard regarding the availability of a backup hospital for contaminated injured onsite workers. There is no sound reason why any single plant should be

^{23/} By contrast, the regulations and planning guidance are quite explicit whenever they require that certain emergency responses must be capable of being performed within a given time. See, e.g., 10 C.F.R. Part 50, Appendix E, Section IV.D.3 (notification of governmental agencies within 15 minutes after declaring an emergency; initial notification of public within the EPZ in 15 minutes); NUREG-0654, Criterion B, Table B-1 (onsite augmentation capability within 30 and 60 minutes), Criterion J.5 (onsite personnel accountability within 30 minutes), Criterion J.12 (monitoring evacuees at relocation centers in 12 hours), Appendix 3 (notification within 45 minutes of EPZ population not receiving initial notification); Functional Criteria for Emergency Response Facilities, NUREG-0696 (February 1981) at 9 (location of Technical Support Center within two minutes walking time from control room and full operational readiness in 30 minutes), at 18 (location of Emergency Operations Facility within 10 to 20 miles from plant).

subjected to new and different requirements which exceed existing regulations and planning guidance.

Respectfully submitted,

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November 5, 1985

APPENDIX A

List Of Representative Operating Nuclear Power Plants And Primary And Backup Hospitals For Treatment Of Contaminated Injured Onsite Workers^{1/}

<u>Name And Location of Plant</u>	<u>Name And Location Of Primary Hospital</u>	<u>Distance From Plant to Primary Hospital (Miles)</u>	<u>Name And Location Of Backup Hospital</u>	<u>Distance From Plant To Backup Hospital (Miles)</u>
Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas	St. Mary's Hospital Russellville, Arkansas	5	University of Arkansas for Medical Sciences Little Rock, Arkansas	66
			Oak Ridge REACTS Facility Oak Ridge, Tennessee	525
Brunswick Steam Electric Plant, Units 1 and 2, Brunswick, North Carolina	Dosher Memorial Hospital Southport, North Carolina	3	New Hanover Memorial Hospital Wilmington, North Carolina	20

^{1/} The distances in Appendix A, sometimes approximate, were obtained as follows: Licensees' designated location of primary and backup hospitals were taken from information in their emergency plans and the Commission's Environmental Statements and Safety Evaluation Reports. Where the hospitals were located within 100 miles of the site in cities in excess of 1,000 residents, the distances were taken from Demographic Statistics Pertaining to Nuclear Power Reactor Sites, Table 15 (October 1979) (NUREG-0348). In instances beyond 100 miles and in smaller towns, straight line map measurements on a standard atlas were used. No attempt was made to determine the relative location of the particular hospital within the city. In some instances, distances to the identified towns were taken from (NUREG-0580), Regulatory Licensing Status Summary Report (January 1984). Where more specific information is available, the data are marked by a footnote.

<u>Name And Location of Plant</u>	<u>Name And Location Of Primary Hospital</u>	<u>Distance From Plant to Primary Hospital (Miles)</u>	<u>Name And Location Of Backup Hospital</u>	<u>Distance From Plant To Backup Hospital (Miles)</u>
Byron Nuclear Power Station, Units 1 and 2, Ogle County, Illinois	Rockford Memorial Hospital and Swedish American Hospital Rockford, Illinois	16	Northwestern Memorial Hospital Chicago, Illinois	85
Callaway Plant, Units 1 and 2, Calloway County, Missouri	Callaway Community Hospital Fulton, Missouri	10	Northwestern Memorial Hospital Chicago, Illinois	350
Catawba Nuclear Power Station, Units 1 and 2, York County, South Carolina	Piedmont Medical Center Rock Hill, South Carolina	9	Oak Ridge REACTS Facility Oak Ridge, Tennessee	200
Cooper Nuclear Station, Nemaha County, Nebraska	Nemaha County Hospital Auburn, Nebraska	10	Falls City Community Hospital Falls City, Nebraska	25
Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California	French Hospital San Luis Obispo, California	10	St. Francis Memorial Hospital San Francisco, California	200

<u>Name And Location of Plant</u>	<u>Name And Location Of Primary Hospital</u>	<u>Distance From Plant to Primary Hospital (Miles)</u>	<u>Name And Location Of Backup Hospital</u>	<u>Distance From Plant To Backup Hospital (Miles)</u>
Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama	Southeast Alabama Medical Center Dothan, Alabama	16	University of Alabama at Birmingham Medical Center Birmingham, Alabama	190
			Oak Ridge REACTS Facility Oak Ridge, Tennessee	340
Fort St. Vrain Nuclear Generating Station, Weld County, Colorado	North Colorado Medical Center Greely, Colorado	16	St. Luke's Hospital Denver, Colorado	35
Haddam Neck Plant, Middlesex County, Connecticut	Middlesex Memorial Hospital Middletown, Connecticut	9	Lawrence & Memorial Hospital New London, Connecticut	22
Kawaunee Nuclear Power Plant, Kawaunee County, Wisconsin	Two Rivers Community Hospital Two Rivers, Wisconsin	22	University of Wisconsin Hospital & Clinics Madison, Wisconsin	135
Monticello Nuclear Generating Plant, Unit 1, Wright County, Minnesota	Big Lake Hospital Monticello, Minnesota	5 ^{2/}	North Memorial Medical Center Robbinsdale, Minnesota	35

2/ As stated in plan.

<u>Name And Location of Plant</u>	<u>Name And Location Of Primary Hospital</u>	<u>Distance From Plant to Primary Hospital (Miles)</u>	<u>Name And Location Of Backup Hospital</u>	<u>Distance From Plant To Backup Hospital (Miles)</u>
Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina	Oconee Memorial Hospital Seneca, South Carolina	8	Oak Ridge REACTS Facility Oak Ridge, Tennessee	120
Perry Nuclear Power Plant, Units 1 and 2, Lake County, Ohio	Lake County Memorial Hospital, Painesville, Ohio	7	Northwestern Memorial Hospital Chicago, Illinois,	350
			Hospital of the University of Pennsylvania Philadelphia, Pennsylvania	340
Pilgrim Nuclear Power Station, Plymouth, Massachusetts	Jordan Hospital Plymouth, Massachusetts	2	Shriners Burns Institute Boston, Massachusetts	38
Point Beach Nuclear Plant, Units 1 and 2, Manitowoc County, Wisconsin	Two Rivers Hospital Two Rivers, Wisconsin	8	University of Wisconsin Hospital & Clinics Madison, Wisconsin	120
Quad-Cities Nuclear Power Station, Units 1 and, Rock Island County, Illinois	Moline Public Hospital Moline, Illinois	20	Northwestern Memorial Hospital, Chicago, Illinois	140

<u>Name And Location of Plant</u>	<u>Name And Location Of Primary Hospital</u>	<u>Distance From Plant to Primary Hospital (Miles)</u>	<u>Name And Location Of Backup Hospital</u>	<u>Distance From Plant To Backup Hospital (Miles)</u>
St. Lucie Nuclear Power Plant, Unit Nos. 1 and 2, Hutchinson Island, Florida	Lawnwood Medical Center Ft. Pierce, Florida	8	Oak Ridge REACTS Facility Oak Ridge, Tennessee	700
Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee	Earlanger Medical Center Chattanooga, Tennessee	18	Oak Ridge REACTS Facility Oak Ridge, Tennessee	71
Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina	Richland Memorial Hospital Columbia, South Carolina	26	Oak Ridge REACTS Facility Oak Ridge, Tennessee	215
Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania	Berwick Hospital Berwick, Pennsylvania	5 ^{3/}	Geisinger Medical Center Danville, Pennsylvania	28 ^{3/}
			Hospital of University of Pennsylvania Philadelphia, Pennsylvania	100
Turkey Point Nuclear Generating Plant, Units 3 and 4, Dade County, Florida	Baptist Hospital of Miami Miami, Florida	25	Oak Ridge REACTS Facility Oak Ridge, Tennessee	800

^{3/} Measured on Appendix E, Pennsylvania Disaster Operations Plan, PEMA, 1981.

<u>Name And Location of Plant</u>	<u>Name And Location Of Primary Hospital</u>	<u>Distance From Plant to Primary Hospital (Miles)</u>	<u>Name And Location Of Backup Hospital</u>	<u>Distance From Plant To Backup Hospital (Miles)</u>
Wolf Creek Nuclear Generating Station, Unit No. 1, Coffey County, Kansas	Ransom Memorial Hospital Ottawa, Kansas	40 ^{4/}	University of Kansas Medical Center Kansas City, Kansas	83
Zion Station, Units 1 and 2, Lake County, Illinois	Victory Memorial Hospital Waukegan, Illinois	7	Northwestern Memorial Hospital Chicago, Illinois	40

4/ As stated in plan.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Petition for Review of ALAB-819," dated November 5, 1985 in the captioned matter have been served upon the following by deposit in the United States mail this 5th day of November, 1985:

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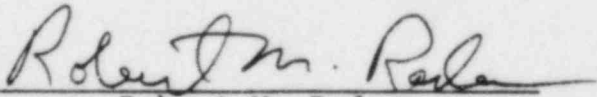
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