BOSTON EDISON

Pilgrim Nuclear Power Station
Rocky Hill Road
Plymouth, Massachusetts 02360

Ralph G. Bird
Senior Vice President — Nuclear

July 20, 1989
BECo Ltr. 89-105

Mr. James T. Wiggins
Chief, Branch I
Division of Reactor Projects
U.S. Nuclear Regulatory Commission
475 Allendale Rd.
King of Prussia, PA 19406

Docket No. 50-293
License No. DPR-35

Subject: Clarification of Nuclear Power Plant Staff Working Hours
(Generic Letter No. 82-12)

Dear Sir:

Boston Edison Company requests the Nuclear Regulatory Commission (NRC) to provide written confirmation of the obligations imposed upon it as a licensee of a nuclear operating plant by Generic Letter No. 82-12, as clarified for the company by NRC inspection personnel during their inspections and reviews of Pilgrim Station's overtime policies in 1987 and 1988. These reviews are documented in Inspection Report 50-293/88-07.

During the inspections and reviews of BECo's overtime controls, Generic Letter No. 82-12 was interpreted by NRC inspection personnel as requiring the staff at licensed plants who perform safety-related functions to be subject to the overtime restrictions set forth in the Generic Letter, and that these restrictions apply both when the Plant is operating and when it has been shutdown for refueling, maintenance, plant modifications or for other reasons.

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The applicability of Generic Letter No. 82-12 regarding safety-related personnel during periods of plant shutdown was litigated in a labor arbitration proceeding between BECo and Local Union No. 369 of the Utility Workers Union of America, AFL-CIO (Reference attached arbitration transcript). The arbitrator held that Generic Letter No. 82-12 was inapplicable to the period of time when Pilgrim Station was inoperative during its extensive overhaul and that BECo violated the collective bargaining agreement by restricting the overtime opportunity of plant personnel who performed safety-related functions during that period of time.

BECo views the arbitrator's award to be in direct conflict with its obligations as a nuclear plant licensee and the requirements of Generic Letter No. 82-12. In the absence of additional documentation that will confirm the proper interpretation of Generic Letter No. 82-12, pending litigation may result in further decisions imposing obligations on BECo which are inconsistent with its obligations under Generic Letter No. 82-12.

Your earliest review of this request is appreciated.

R. G. Bird

RLC/bal

cc: Mr. William T. Russell
Regional Administrator, Region I
U.S. Nuclear Regulatory Commission
475 Allendale Rd.
King of Prussia, PA 19406

Sr. NRC Resident Inspector - Pilgrim Station

VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of the Arbitration between

Utility Workers Union of America, Local No. 369

-and-

Boston Edison Company, Inc.

CASE NUMBER: 1130-2553-86

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR(S), having been designated in accordance with the arbitration agreement entered into by the above-named Parties, and dated and having been duly sworn and having duly heard the proofs and allegations of the Parties, AWARDS as follows:

P & M Grievance No. 3251 is disposed of per the Findings and Opinion appended hereto. The grievance is remanded to the Local and the Company to attempt to reach a mutually acceptable remedy to the grievance in accordance with the Findings and Opinion. This Board will retain jurisdiction over this grievance for a period of ninety (90) days from the date hereof (May 1, 1988) in the event the Local and the Company are unable to negotiate an acceptable remedy.

Robert M. O'Brien, Neutral Arbitrator
May 1, 1988

Donald E. Wightman, Union Arbitrator

William A. O'Shea, Company Arbitrator

STATE OF
COUNTY OF

On this day of , 19 , before me personally came and appeared

to me known and known to me to be the individual(s) described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

FORM L16-AAA

AMERICAN ARBITRATION ASSOCIATION

In the matter of arbitration between:

Local No. 369, Utility Workers Union of America, AFL-CIO

-and-

Boston Edison Company

AAA Case No. 1130-2553-86
Grievance: P & M Grievance #3251
Restriction on hours of work at Pilgrim Station to no more than 72 hours in any seven (7) day period

BOARD OF ARBITRATION

Robert M. O'Brien - Neutral Arbitrator
William A. O'Shea - Company Arbitrator
Donald E. Weightman - Union Arbitrator

APPEARANCES

For Local No. 369, Utility Workers Union of America:

Joanne F. Goldstein - Attorney

For Boston Edison Company:

Robert G. Hennemuth - Attorney

STATEMENT OF THE ISSUE

As stipulated by the parties, the question to be resolved in this proceeding is as follows:

What shall be the disposition of P & M grievance #3251 ?

PERTINENT CONTRACTUAL PROVISIONS

Article IV
Mutual Obligations

1. The Company recognises an obligation to promote good employee relations by maintaining rates of pay, wages, hours of employment and other conditions of employment that are equitable, reasonable and fair....

Article V
Management Rights

1. The Union and the Local recognise the right and power of the Company ... to assign, supervise, or direct all working forces ... and generally to control and supervise the Company's operations and to exercise the other customary functions of Management in carrying out its business without hinderance or interference by the Union, the Local or by employees.... If the Local claims that the Company has exercised any of the other foregoing rights in a capricious or arbitrary manner, such claims shall be submitted to the Grievance Procedure in Article XXXII and Arbitration under Article XXXIII.

Article IX
Conformation of Laws, Regulations and Orders

1. It is understood and agreed that all agreements herein are subject to all applicable laws now or hereafter in effect and to the lawful regulations, rulings and orders of regulatory commissions having jurisdiction. If any said laws, regulations, rulings or orders shall conflict with any provisions of this Agreement, the parties shall confer in an effort to negotiate a lawful substitution or modification; but, if as a result of such conference no substitution or modification is agreed upon, the disagreement shall not affect the remaining provisions of this Agreement and shall not constitute a question subject to the Grievance Procedure in Article XXXII or Arbitration under Article XXXIII.

Article XIII
Overtime and Premium Pay

1. Overtime compensation and premium rates shall be paid employees subject to this Agreement in accordance with the following rules:

. . .

(d) So far as practical, overtime work shall be distributed equitably among those employees engaged in the grade of work for which overtime assignments are required... Any demonstrated inequity in the distribution of overtime shall be corrected by the Company by future assignments of overtime work. . . .

BACKGROUND

The Boston Edison Company (hereinafter referred to as the Company) operates the Pilgrim Nuclear Power Station (hereinafter referred to as the Pilgrim Station) which is located in Plymouth, Massachusetts. The production and maintenance employees who are assigned to the Pilgrim Station are represented by Local No. 369 of the Utility Workers Union of America, AFL-CIO (hereinafter referred to as the Local). As a nuclear power plant, Pilgrim Station is regulated by the Nuclear Regulatory Commission (hereinafter referred to as the the NRC).

On June 15, 1982, the Nuclear Regulatory Commission issued Generic Letter No. 82-12, entitled Nuclear Power Plant Staff Working Hours. The Company's compliance with that generic letter has precipitated the dispute now before this Board of Arbitration (hereinafter referred to as the Board). In Generic Letter No. 82-12, the NRC declared, in pertinent part, that plant staff who performed safety-related functions should not be permitted to work more than seventy-two (72) hours in any seven (7) day period. The NRC allowed for limited deviations from this 72-hour restriction in very unusual circumstances, provided that these deviations are documented and made available for NRC review.

Sometime in 1985, the Company began restricting employees who performed safety-related functions at the Pilgrim Station to no more than 72 hours of work in a 7 day period in accordance with Generic Letter No. 82-12. Before

this, there was no restriction on the hours that employees were allowed to work at the Pilgrim Station. According to the Local, employees at the Pilgrim Station frequently worked in excess of 72 hours weekly until the ban was imposed. Naturally, the 72-hour restriction limited the potential overtime that bargaining unit employees were allowed to work. A few months after this stricture was imposed on employees who performed safety-related functions, the Company expanded it to all employees at the Pilgrim Station whether or not they worked on safety-related equipment. [It should be noted that the Company subsequently reduced the maximum hours that employees at the Pilgrim Station were allowed to work from 72 to 60 hours in a 7 day period. The Local grieved that action which grievance is currently pending.]

Prior to the imposition of the 72-hour limitation, overtime at the Pilgrim Station, like overtime in other departments of the Company, was distributed equitably among those bargaining unit employees who were engaged in the grade of work for which overtime assignments were required. Such fair and equitable distribution of overtime is mandated by Article XIII 1. (d) of the parties' collective bargaining Agreement dated April 8, 1987. Under this provision, the practice has been to offer the employee with the lowest overtime hours in the grade of work for which overtime was required first opportunity to work the overtime. If that employee refused, the overtime was offered to the employee in the grade of work with the next lowest overtime hours, and so

forth until someone accepted it. If every employee in the grade of work refused the overtime, the employee with the least overtime was drafted to perform it.

Under the 72-hour restriction, if the employee in the grade of work with the fewest hours of overtime has already worked 72 hours in any seven day period, that employee is passed over in favor of the employee with the next lowest overtime, and so on until an employee with less than the maximum allowed working hours accepts the overtime. According to the Local, in many cases this procedure deprives the employee with the least overtime the opportunity to perform overtime work which, of course, is compensated at a premium rate of pay. Pilgrim Station, it should be noted, is the only facility of the Company where there is a restriction on the amount of overtime that an employee is allowed to work. In other areas of the Company, such as the underground, overhead and production departments, it is not uncommon for employees to work in excess of 72 hours in a week, particularly during overhauls and storms.

It should be observed that safety-related equipment is defined as that equipment which is required to safely shut down the nuclear plant; to maintain the shutdown; and to protect the health and welfare of the public. At the Pilgrim Station, utility workers, nuclear plant attendants and chemical workers perform no work on safety-related equipment. It should also be noted that since April, 1986, the Pilgrim Station has been idle due to an overhaul which is expected to continue for a considerable period of time.

On March 6, 1986, the Local filed P & M Grievance #3251 protesting the Company's decision to adhere to the NRC guidelines on overtime. A satisfactory adjustment of that grievance could not be reached and it was therefore appealed to this Board in accordance with the provisions of Article XXXIII of the parties' Agreement. A hearing was held before the Board on July 30, 1987. Both parties appeared at the hearing and proffered extensive evidence in support of their respective positions. Both parties also filed post-hearing Briefs. Based on the evidence and the arguments advanced by the Local and by the Company, this Board renders the following decision on P & M Grievance #3251.

LOCAL'S POSITION

In the Local's opinion, the Company's unilateral imposition of a 72-hour restriction on the hours employees are allowed to work violated several provisions of the current Agreement. Initially, the Local contends that the Company violated Article IX of the Agreement since it never offered to negotiate this significant change in the overtime policy with it. Indeed, the Local maintains that the Company never even notified it of the limit it unilaterally placed on overtime. The Local also asserts that the Company violated Article XIII 1. (d) of the Agreement when it placed a restriction on the hours employees are allowed to work since overtime at the Pilgrim Station in many instances is now not being distributed fairly and equitably as Article XIII 1. (d) requires.

The Local further asserts that the Company violated Article V of the Agreement since its decision was arbitrary and capricious. In the Local's view, the Company has singled out its employees at the Pilgrim Station for special treatment without justification by placing a limit on the overtime which they are allowed to work. The Local stresses that overtime at every other department of the Company is unlimited. In the Local's opinion, the Company also acted arbitrarily when it expanded the overtime restriction to those employees at the Pilgrim Station who perform no work on safety-related equipment.

The Local insists that, contrary to the Company's claim, its adoption of the 72-hour restriction was not justified by any action of the NRC since the Company has failed to prove that it was "ordered" by the NRC to impose this restriction on employees at the Pilgrim Station. According to the Local, nothing in Generic Letter No. 82-12 indicates that the Company was under orders from the NRC to implement this restriction. In the Local's opinion, the uncontroverted evidence clearly demonstrates that a generic letter is merely a request from the NRC to a licensee, not an order. The Local maintains that it is aware of other utilities that have refused to impose this restriction on their employees.

For all the above reasons, the Local urges this Board to sustain the grievance and to order the Company to cease and desist from imposing a 72-hour limit on overtime and to make

employees whole for the time that they were denied overtime while contract employees performed service at the Pilgrim Station.

COMPANY'S POSITION

It is the Company's position that the NRC ordered it to impose a 72-hour limit on those employees at the Pilgrim Station who perform safety-related functions. The Company submits that compliance with this order was part of its licensing requirement and that it was obligated to follow this order to maintain the right to operate the Pilgrim Nuclear Power Station. The Company stresses that it never voluntarily agreed to this limitation as claimed by the Local. Therefore, the Company contends that the NRC order is not arbitrable due to the parties' express agreement in Article IX not to arbitrate grievances arising out of a conflict between the provisions of the agreement and an order of a regulatory commission such as the NRC.

The Company further maintains that its extension of the 72-hour limitation to all employees at the Pilgrim Station was a proper exercise of the rights reserved to the Company by Article V of the Agreement which rights were not exercised in an arbitrary or capricious manner. According to the Company, this was a sound management decision since all employees at Pilgrim may be called on to perform overtime on safety-related equipment. The Company argues that it made this decision so that all personnel on site could be reassigned to work on safety-related equipment at any time

rather than be ineligible for this work because they reached the 72-hour maximum allowed in a given week. And in any event, this question is moot, the Company insists, since the restriction was subsequently reduced to sixty (60) hours. The Company stresses that since its decision was neither arbitrary nor capricious, the Board must therefore deny the grievance even if it considers this question not moot.

FINDINGS AND OPINION

The ultimate question before this Board is whether the Company violated the collective bargaining Agreement dated April 8, 1987, when it refused to allow bargaining unit employees assigned to the Pilgrim Nuclear Power Station to work more than 72 hours in any seven day period. However, before that ultimate question can be resolved, several significant questions must be addressed by this Board. For example, was the Company "ordered" by the NRC to impose this limitation on those employees who perform safety-related functions at Pilgrim or did the Company voluntarily agree to these guidelines ? And was the Company required to negotiate with the Local before imposing this restriction on overtime ? It must also be decided whether the Company violated Article XIII 1. (d) and, if so, what shall be the remedy for this violation ? We must also decide whether the Company's decision was arbitrary or capricious ? Moreover, this Board must determine whether it was permissible for the Company to extend the 72-hour limitation to employees who perform no safety-related work even if it had the right to impose this

restriction on employees who perform safety-related functions ? And finally, we must determine whether the restriction was properly applied during the shutdown of the Pilgrim Nuclear Power Station ?

(1) WAS THE COMPANY ORDERED BY THE NRC TO IMPOSE A LIMIT OF 72 HOURS ON THE TIME AN EMPLOYEE MAY WORK IN A SEVEN DAY PERIOD ?

Naturally, the Company operates the Pilgrim Nuclear Power Station under a license granted by the NRC and must comply with orders issued by the NRC to maintain its license to operate this facility. The Neutral Member of this Board must confess that he is totally unfamiliar with the policies and procedures of the NRC. However, it appears from the documentary evidence submitted by the Company that the NRC did, in fact, "order" the Company to restrict those employees at the Pilgrim Station who perform safety-related functions to work no more than 72 hours in any seven day period.

Unquestionably, the document of the NRC entitled Order Confirming Licensee Commitments On Post-TMI Related Issues constitutes an order to the Company regarding operation of the Pilgrim Nuclear Power Station. Item 1.A.1.3.1 of that document, captioned Limit Overtime, requires the Company to revise its administrative procedures to limit overtime in accordance with Generic Letter No. 82-12. As observed previously, Generic Letter No. 82-12 declares in pertinent part, that an individual should not be permitted to work more than 72 hours in any seven (7) day period except in unusual circumstances. While it does not appear from the evidence

before this Board that the Company took exception to this requirement or sought to discuss it with the NRC, nonetheless in our considered opinion, the NRC eventually issued an order requiring the Company to impose this limitation on those employees at the Pilgrim Station who work on safety-related equipment. This Board is of the opinion that the Company did not voluntarily adopted this limitation on overtime. Rather, it was ordered to do so by the NRC.

Article IX 1. of the Agreement is quite clear. Inasmuch as Generic Letter No. 82-12 constituted a lawful order of a regulatory commission having jurisdiction over the Pilgrim Station, that order must prevail over any provision of the Agreement in conflict with it. In the view of this Board, the order of the NRC conflicts with the terms of Article XIII 1. (d) since, in many instances, it precludes overtime work from being distributed equitably to bargaining unit employees at the Pilgrim Station. In our judgment, the Company violated Article IX 1. of the collective bargaining Agreement by failing to confer with the Local in an attempt to negotiate a lawful substitution or modification of the Agreement as it was expressly required to do by Article IX of the Agreement. The Company is therefore ordered to confer with the Local as required by Article IX. Of course, as explicitly provided by Article IX, if no substitution or modification is agreed upon, the Local is proscribed from submitting the dispute to the grievance and arbitration procedures of the Agreement.

DID THE COMPANY VIOLATE THE AGREEMENT WHEN IT EXTENDED THE 72-HOUR LIMITATION TO EMPLOYEES WHO PERFORM NO SAFETY-RELATED FUNCTIONS AT THE PILGRIM STATION?

The Company acknowledges that it was not required to impose the 72-hour restriction on those employees who do not work on safety-related equipment. However, the Company insists that it had the right to impose this restriction on overtime consistent with the rights granted it by Article V to assign, direct and supervise all working forces. It is the considered opinion of this Board that the burden rests with the Company to demonstrate why it transgressed the provisions of Article XIII 1.(d) by restricting the amount of overtime allowed those employees at the Pilgrim Station who perform no safety-related functions.

The Company explained that it extended this limitation on overtime to all employees at the Pilgrim Station so that all personnel on site would be available to work on safety-related equipment at any time rather than be ineligible for this work account having reached their maximum allowed hours (72) in a given week. In the Company's view, this will enable it to have safety-related equipment repaired immediately rather than wait for a maintenance crew to be called in to repair this vital equipment. Yet the Company recognises that this rationale does not apply to those employees who perform no safety-related work at Pilgrim, such as utility workers, nuclear plant attendants and chemical workers.

This Board agrees with the Company that it is sound management practice to be able to utilise on-duty nuclear maintenance mechanics to repair safety-related equipment in

an emergency rather than wait for mechanics to be called in to perform this service. However, this justification does not apply to those employees who perform no safety-related work. These employees are not unlike employees in other departments of the Company who are not restricted in the amount of overtime service they may perform. In this Board's opinion, the Company's decision to extend the 72-hour limitation to these employees was an arbitrary and capricious exercise of the rights reserved to it by Article V of the Agreement. The fatigue experienced by these employees at the Pilgrim Station is no different from the fatigue experienced by employees in other facilities or departments of the Company. The Company therefore violated the Agreement when it unilaterally imposed a 72-hour limit on the overtime which these employees were allowed to work.

WAS IT PERMISSIBLE FOR THE COMPANY TO LIMIT THE HOURS THAT AN EMPLOYEE MAY WORK DURING THE SHUTDOWN OF THE PILGRIM NUCLEAR POWER STATION ?

It is uncontroverted that the order of the NRC was inapplicable while Pilgrim Station was inoperative during its extensive overhaul. Based on the evidence before us, this Board must conclude that the Company's decision to impose the 72-hour restriction on employees during the overhaul was an arbitrary and capricious exercise of the rights granted it by Article V of the Agreement. We can discern no compelling justification for such a limitation while the Pilgrim Station was not operating. In our view, there was no material

distinction between those employees at the Pilgrim Station and employees in other departments of the Company during the overhaul. Fatigue affects all these employees yet there was no restriction on the overtime that employees in other departments were allowed to work. Therefore, the Company's decision to impose such a restriction solely on the bargaining unit employees assigned to Pilgrim Station during its extensive overhaul was, in our judgment, an arbitrary and capricious exercise of the managerial rights reserved to the Company by Article V of the Agreement.

This Board certainly recognizes the complexity of the decision we have rendered in the dispute currently before us. In the light of the numerous questions we were compelled to address, this Board finds it quite difficult to frame an appropriate remedy to resolve this grievance. Accordingly, we feel constrained to remand the dispute to the parties so that they may attempt to reach an appropriate remedy. This Board shall retain jurisdiction over this grievance for a period of ninety (90) days from the date hereof in the event that the Local and the Company are unable to negotiate a mutually acceptable remedy.

AWARD

P & M Grievance No. 3251 is disposed of per the foregoing Findings and Opinion. The grievance is remanded to the Local and the Company to attempt to reach a mutually acceptable remedy to the grievance in accordance with the Findings and Opinion. This Board will retain jurisdiction over this grievance for a period of ninety (90) days from the date hereof in the event the Local and the Company are unable to negotiate an acceptable remedy.

Robert M. O'Brien

Robert M. O'Brien, Neutral Arbitrator

Donald E. Wightman, Union Arbitrator

William A. O'Shea (dissenting)

William A. O'Shea, Company Arbitrator

Dated: