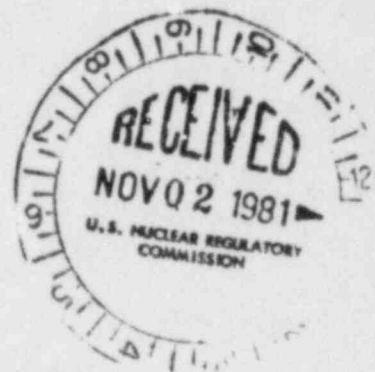


10/30/81

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of
COMMONWEALTH EDISON COMPANY
(Byron Station, Units 1 and 2)

Docket Nos. 50-454
50-455

NRC STAFF ANSWER IN OPPOSITION TO
INTERVENOR DAARE/SAFE'S MOTION FOR EXTENSION

I. INTRODUCTION

On August 18, 1981 a schedule for this proceeding was established by the Atomic Safety and Licensing Board. The Board designated November 1, 1981 as the last date for completion of discovery (with certain exceptions stated in the order). On September 9, 1981 the Board issued a Revised Schedule which made no change in the November 1, 1981 discovery cut-off. On October 20, 1981 intervenor DAARE/SAFE moved for an extension to November 15, 1981 of the time within which to complete its discovery. For the reasons discussed below, the Staff opposes DAARE/SAFE's motion.

II. DISCUSSION

Under 10 CFR §2.711(a), the time within which an act is required to be done may be extended for "good cause." In its "Statement of Policy on Conduct of Licensing Proceedings" published in the Federal Register on May 27, 1981,^{1/} the Commission advised Licensing Boards to satisfy themselves that the "good cause" standard has actually been met before granting an

^{1/} 46 Fed. Reg. 28533; CLI-81-8, 13 NRC 452 (1981).

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extension of time. The Commission also stated that requests for extensions of time "should be received by the Board well before the time specified expires."^{2/}

Intervenor DAARE/SAFE's motion fails to satisfy these Commission-established criteria. DAARE/SAFE's termination of its attorney cannot be relied upon to establish "good cause" in this proceeding for an extension of the discovery completion date. Contrary to the suggestion in DAARE/SAFE's motion that it learned only recently of the Board's schedule, DAARE/SAFE's previous co-representative Dr. Julianne Mahier appears on the service list of both the August 18 and September 9 scheduling orders. Counsel for the applicant has represented that he spoke with another DAARE/SAFE co-representative, Dr. Axel Meyer, about the August 18 order shortly after its issuance (Tel. Conf. Tr. 10/2/81 at 16). Further, the author of the present motion for DAARE/SAFE, Dr. Bruce von Zellen, was expressly advised by Staff counsel of the discovery schedule in a September 21, 1981 letter (Attachment A). Copies of the August 18 and September 9 scheduling orders were later sent by Staff counsel to Dr. von Zellen following the October 2, 1981 telephone conference.

As the Board told Dr. von Zellen, during the October 2, 1981 telephone conference, DAARE/SAFE is responsible for designating its representative and fulfilling its obligations as an intervenor (Tel. Conf. Tr. at 11-12). The Board has already served notice to Dr. von Zellen that it does not intend to permit the established schedule to slip because of the inattentiveness of any party (Tel. Conf. Tr. 10/2/81 at 20). Yet DAARE/SAFE relies on nothing more than its own inattentiveness in seeking this extension.

^{2/} 13 NRC at 454-455.

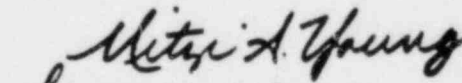
Intervenor DAARE/SAFE also fails to satisfy the standard for timeliness established by the Commission. Answers and objections to interrogatories must ordinarily be served within fourteen days after service of the interrogatories. In order for DAARE/SAFE to have completed discovery by the November 1 date, it would have been required to file its interrogatories no later than October 16, 1981. Thus, DAARE/SAFE's present motion is untimely.

Pursuant to the Licensing Board's Memorandum and Order of December 19, 1980, the period for discovery in this proceeding commenced on that date. Intervenor has failed, without good cause, to file interrogatories in the eleven months available to them. An extension of the discovery period now is unwarranted.

III. CONCLUSION

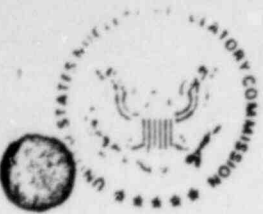
DAARE/SAFE's request for an extension of the discovery completion date should be denied as untimely and lacking "good cause". Such a denial will not unduly prejudice DAARE/SAFE because of the provision in the Board's scheduling orders for later discovery regarding the Staff's Draft Environmental Statement, Safety Evaluation Report, Final Environmental Statement and Supplemental Safety Evaluation Report.^{3/}

Respectfully submitted,


for Richard J. Rawson
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 30th day of October, 1981.

^{3/} Although discovery against the Staff is often more circumscribed than that available against other parties (See Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 323 (1980)), the schedule in this proceeding provides more than ample opportunity for discovery upon the Staff.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

Attachment A

September 21, 1981

DAARE
P. O. Box 261
DeKalb, Illinois 60015

In the Matter of
COMMONWEALTH EDISON COMPANY
(Byron Station, Units 1 and 2)
Docket Nos. 50-454, 50-455

Dear Professor Von Zellen:

I am in receipt of a letter from you to James Snell of the NRC Staff requesting certain information regarding the Byron operating license proceeding. As I indicated in my recent correspondence with you, as a member of Intervenor DAARE-SAFE, any requests for information must be pursued through the lawyer representing your organization in this matter. I am advised that prior NRC Staff counsel, Myron Karmon, conveyed similar information on an earlier occasion(s).

According to the Licensing Board's revised scheduling order, dated September 9, 1981, discovery must be completed by November 1, 1981. Your anticipated cooperation is appreciated.

Sincerely,

Steven C. Goldberg
Counsel for NRC Staff

cc: Kenneth F. Levin, Esq.
Paul M. Murphy, Esq.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

COMMONWEALTH EDISON COMPANY

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}
Docket Nos. 50-454
50-455
}

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF ANSWER IN OPPOSITION TO INTERVENOR DAARE/SAFE's MOTION FOR EXTENSION" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 30th day of October, 1981:

Marshall E. Miller, Esq., Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Dr. A. Dixon Callihan
Administrative Judge
Union Carbide Corporation
P.O. Box Y
Oak Ridge, Tennessee 37830

Dr. Richard F. Cole
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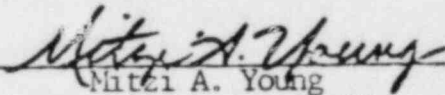
*Atomic Safety and Licensing
Board Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

*Atomic Safety and Licensing
Appeal Board Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

*Docketing and Service Section
Office of the Secretary
of the Commission
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dr. Bruce Von Zellen
c/o DAARE
P. O. Box 261
DeKalb, Illinois 60015

Region III
U. S. Nuclear Regulatory Commission
Office of Inspection & Enforcement
799 Roosevelt Road
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Mitzi A. Young
Counsel for NRC Staff