

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In The Matter of)	
)	
COMMONWEALTH EDISON COMPANY)	Docket Nos. 50-454 0L
)	50-455 0L
(Byron Nuclear Power Station,)	
Units 1 & 2))	

COMMONWEALTH EDISON'S RESPONSE TO
DAARE/SAFE'S MOTION FOR
ADMISSION OF LATE FILED CONTENTIONS

On April 15, 1982 DAARE/SAFE filed its "Revised Contentions" in this proceeding. By Motion dated April 23, 1982, Commonwealth Edison Company ("Edison") submitted a response to DAARE/SAFE's contentions, pointing out that, for the most part, DAARE/SAFE had failed to demonstrate that its revised contentions were based on new information which was not available at the time DAARE/SAFE's original contentions were due. Edison also pointed out that to the extent the revised contentions were based upon ongoing investigations and reviews, the ongoing nature of these investigations did not of itself raise safety issues. Therefore, Edison submitted that DAARE/SAFE should be permitted to file contentions related to these investigations only if the investigations revealed new information, not previously available, which related to the safe operation of the Byron facility.

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On May 9, 1982 DAARE/SAFE filed a motion in support of the admissibility of its revised contentions. In its motion, DAARE/SAFE points to certain "new" information, which, it asserts supports the admission of its revised contentions. As we show below, the information identified does not provide an adequate basis for the admission of the contentions submitted.

ARGUMENT

Contention 10

DAARE/SAFE's contention is a broad based attack on Edison's occupational exposure program. It challenges inter alia Edison's dose assessment methodology, Edison's procedures regarding the use of certain types of personnel at its nuclear facilities, and Edison's monitoring instrumentation. The "new" information on which DAARE/SAFE bases its contention includes certain reports regarding exposures resulting from steam generator maintenance performed at other nuclear facilities and Edison's alleged failure to consider midlife chemical decontamination as a source of occupational exposures. The "new" information cited by DAARE/SAFE cannot reasonably be viewed as raising the issues identified in the contention. It is apparent that DAARE/SAFE is simply attempting to provide an after-the-fact justification for introducing issues, at this stage in the proceedings, which could have been raised at the time its original contentions were

due.^{*/} In essence, DAARE/SAFE is attempting to circumvent the requirement imposed by the Commission's Rules of Practice that contentions be submitted in a timely manner.

DAARE/SAFE also argues that its contention should be admitted because of its asserted reliance on the fact that the Rockford League of Women Voters had originally submitted an occupational exposure contention, and that DAARE/SAFE "had no desire to duplicate the League's efforts on more limited resources." It is well established in NPC practice that an intervenor may not excuse its failure to raise issues in a timely manner on the theory that it expected another party to pursue and litigate such issues. See, Gulf States Utilities Co. (River Bend Station, Units 1 and 2). ALAB-444, 6 NRC 760, 796-98 (1977). Thus, the excuse proffered by DAARE/SAFE does not provide adequate justification for admission of its contention. For these reasons, the contention should appropriately be dismissed.

Contention 11

Contention 11 attempts to raise matters regarding the placement and orientation of the turbines installed at Byron. The placement and orientation of the turbines at Byron was set forth in the FSAR, which was available to DAARE/SAFE at the time its original contentions were due. Nevertheless, DAARE/SAFE argues that this contention should

^{*/} Indeed, DAARE/SAFE's original contentions raise matters related to midlife chemical decontamination and steam generator integrity. (See Contentions 8, 9(c) and 9(e)).

be admitted due to the fact that Edison is in the process of conducting a turbine missile analysis. As Edison stated in its earlier response to DAARE/SAFE's contention, the mere fact that Edison is performing such an analysis does not of itself constitute "new" information on which to base an admissible contention. Of course, DAARE/SAFE may attempt to submit an appropriately framed late-filed contention relating to these matters, if it can demonstrate that Edison's turbine missile analysis reveals new information which raises a concern regarding the safe operation of Byron. At this time, however, there is simply no basis for admitting the contention submitted.

Contention 12

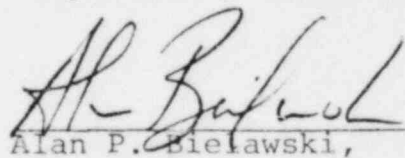
Contention 12 raises matters concerning possible loss of off-site and AC power. Specifically, DAARE/SAFE attempts to introduce issues pertaining to the adequacy of DC power supply and the diesel generator coolant pumps. DAARE/SAFE relies upon an ongoing investigation of the manufacturer of certain pumps installed at the Byron facility which, according to the article cited by DAARE/SAFE, are used to supply cooling water to a diesel engine on a back-up electrical power generator. Again, the simple fact that an investigation is being conducted does not create grounds for the admission of a new contention.

Moreover, as the attached affidavit of Leslie A. Bowen makes clear, the pumps manufactured by Hayward-Tyler

which are installed at Byron, are pumps used to provide cooling water to the diesel drives on the auxiliary feedwater pumps. They are not used to provide cooling water to the diesel generators which are designed to provide emergency on-site power. Thus, even if the investigation were to reveal new information which called into question the reliability of the Hayward-Tyler pumps, an admissible contention based on this information should appropriately be confined to the limited issue of the capability of auxiliary feedwater pumps to perform their intended function. It clearly would not warrant the admission of a broad contention, such as Contention 12, covering matters related to the likelihood of loss of power events and the overall reliability of the on-site emergency power systems.

WHEREFORE, Commonwealth Edison Company respectfully requests that DAARE/SAFE's motion for admission of its late-filed contentions be denied.

Respectfully submitted,



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