

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

APPLICANT'S OBJECTION TO DAARE/SAFE'S
MOTION TO SUPPLEMENT AND MOTION TO
STRIKE THE AFFIDAVIT OF DR. E. J. STERNGLASS

On July 30, 1982, Intervenor DAARE/SAFE filed a motion to supplement its answer to Commonwealth Edison Company's ("Edison") and the NRC Staff's motions for summary disposition of DAARE/SAFE's contentions 2 and 2a. Attached to DAARE/SAFE's motion is a four-page affidavit of a Dr. Ernest J. Sternglass, and a ten-page article published in 1980. For the reasons stated below, Edison objects to this motion to supplement, and moves that the affidavit of Dr. Sternglass be stricken.

Edison and the Staff filed their respective motions for summary disposition of contentions 2 and 2a on July 15, 1982, as required by the Board's "Revised Schedule" of September 9, 1981. Under the "Revised Schedule", DAARE/SAFE's

response to these motions was due June 28, 1982. To accomodate DAARE/SAFE, this date was extended to July 15, 1982.^{*/} DAARE/SAFE filed its answer to the pending summary disposition matters on that date.

Now, approximately two weeks after the date on which its answer was due, DAARE/SAFE seeks to supplement its earlier response. DAARE/SAFE asserts that its tardiness should be excused on the grounds that the information offered was previously unavailable to DAARE/SAFE, and has only recently become available to the scientific community.

It is manifestly clear, on the face of the motion to supplement, that the information in question is not new. The article attached to his affidavit was published in 1980. Dr. Sternglass also refers to an article written by an M.A. Chacon and a J.A. Tildon, published in The Journal of Pediatrics in November, 1981. This article is now nine months old. Quite obviously, the information presented in Dr. Sternglass' affidavit was available long before the date by which DAARE/SAFE was required to answer the pending motions for summary disposition. The fact that DAARE/SAFE may not have taken adequate steps to gather the information and submit it in a timely manner should not be deemed good cause for its late filing.

^{*/} See "Order", dated May 26, 1982 at p.4.

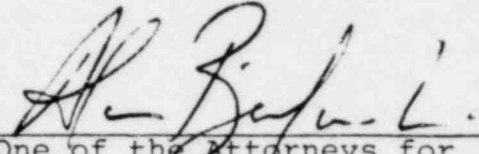
Moreover, as a matter of fairness, DAARE/SAFE's motion should be denied. Earlier in the proceedings, DAARE/SAFE had been requested to identify its potential witnesses and the subject matter on which the witnesses were expected to testify.^{*/} In respect to this request, DAARE/SAFE eventually identified Dr. K.Z. Morgan as its witness on health effects of radiation matters. Dr. Morgan was deposed and Edison formulated its motion for summary disposition with respect to health effects contentions based in part upon the statements made by Dr. Morgan during the course of his deposition. Dr. Sternglass had never been identified as a potential witness during the course of discovery. Indeed, Edison became aware of DAARE/SAFE's intent to sponsor Dr. Sternglass as an expert witness in this proceeding for the first time upon receipt of DAARE/SAFE's motion to supplement. As a result, Edison has been precluded from inquiring into the bases underlying Dr. Sternglass' assertions, and from responding to these assertions in the context of summary disposition motions. In short, it is simply unfair to surprise Edison with a new witness and new material at this late date.

WHEREFORE, Commonwealth Edison Company respectfully requests that DAARE/SAFE motion to supplement be denied, and

^{*/} See "Commonwealth Edison Company's First Round of Interrogatories To Be Answered by DAARE and SAFE", dated July 8, 1981.

that the Affidavit of Dr. Sternglass be stricken.

Respectfully submitted,



One of the Attorneys for
Commonwealth Edison Company

DATED: August 10, 1982

Michael I. Miller
Alan P. Bielawski
ISHAM, LINCOLN & BEALE
Three First National Plaza
Chicago, IL 60602
(312) 558-7500

Joseph Gallo
ISHAM, LINCOLN & BEALE
1120 Connecticut Ave., N.W.
Suite 840
Washington, D.C. 20036
(202) 833-9730

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Commonwealth Edison Company, certifies that on this date he filed two copies (plus the original) of the attached pleading with the Secretary of the Nuclear Regulatory Commission and served a copy of the same on each of the persons at the addresses shown on the attached service list in the manner indicated.

Date: August 10, 1982


Alan R. Bielawski

SERVICE LIST

COMMONWEALTH EDISON COMPANY -- Byron Station
Docket Nos. 50-454 and 50-455

- **Morton B. Margulies, Esq.
Administrative Judge and Chairman
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
- **Dr. Richard F. Cole
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
- ***Myron M. Cherry, Esq.
Cherry & Flynn
Three First National Plaza
Suite 3700
Chicago, Illinois 60602
- *Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
- *Chief Hearing Counsel
Office of the Executive
Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
- *Dr. A Dixon Callihan
Union Carbide Corporation
P.O. Box Y
Oak Ridge, Tennessee 37830
- **Mr. Steven C. Goldberg
Ms. Mitzi A. Young
Office of the Executive Legal
Director
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
- *Secretary
Attn: Chief, Docketing and
Service Section
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
- *Ms. Betty Johnson
1907 Stratford Lane
Rockford, Illinois 61107
- **Ms. Diane Chavez
SAFE
608 Rome Ave.
Rockford, Illinois 61107
- *Dr. Bruce von Zellen
Department of Biological Sciences
Northern Illinois University
DeKalb, Illinois 60115
- *Joseph Gallo, Esq.
Isham, Lincoln & Beale
Suite 840
1120 Connecticut Ave., N.W.
Washington, D.C. 20036
- ***Douglass W. Cassel, Jr.
Jane Whicher
BPI
Suite 1300
109 N. Dearborn
Chicago, IL 60602

* Via U.S. Mail

** Via Express Mail

*** Via Messenger