

8/13/82

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
(Byron Station, Units 1 and 2))	50-455

NRC STAFF RESPONSE TO DAARE/SAFE MOTION TO RESPOND TO
APPLICANT'S ANSWER TO STAFF MOTION FOR SUMMARY
DISPOSITION OF CONTENTION 9(c)

I. INTRODUCTION

On July 30, 1982, Intervenor DAARE/SAFE filed a motion to respond (and response) to the Applicant's answer to the Staff's June 4, 1982 motion for summary disposition of contention 9(c) regarding steam generator tube integrity. Both the Applicant and DAARE/SAFE had filed written answers to the Staff motion on July 19, 1982. The Applicant supported in part and opposed in part the Staff motion for summary disposition of contention 9(c). The Intervenor opposed the Staff motion for summary disposition of contention 9(c) in its entirety. The Intervenor's current proposed response purports to address aspects of the Applicant's answer filed in support of the Staff motion.

For the reasons which follow, the Staff interposes no objection to the instant motion. The Staff submits, however, that the proposed response lacks virtually any evidentiary basis and is entitled to little, if any, weight in reaching a decision on the Staff motion for summary disposition of contention 9(c).

DESIGNATED ORIGINAL

Certified By



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G PDR

II. DISCUSSION

The Commission's summary disposition rule provides a limited right to reply to an answer filed in support of a summary disposition motion on behalf of a party opposing the same. Specifically, such a party has the opportunity to file a written response to "new facts and arguments presented in any supporting statements which were not presented in the papers of the moving party." 10 CFR § 2.749(a). The Intervenor's proposed response purports to reply to fourteen^{1/} of the twenty-one material facts pleaded in the Applicant's answer in support of the Staff summary disposition motion. These particular "facts" deal generally with the subjects of steam generator tube stress corrosion cracking,^{2/} all volatile (AVT) water chemistry treatment,^{3/} and flow induced steam generator tube vibration.^{4/} Almost without exception, the material facts pleaded by the Applicant relate to positions or statements contained in the Staff affidavit or NRC Safety Evaluation Report (SER) section incorporated therein and relied upon to support the Staff motion regarding contention 9(c). The subject of stress corrosion cracking and AVT water chemistry, for example, are addressed in paragraph 5 of the Staff affidavit and SER section C.5 (A-3) referenced therein. The subject of flow-induced tube vibration is addressed in paragraphs 8-12 of the Staff affidavit.

^{1/} These are Applicant material facts 3-6, 8-10, 13-14, 16, and 18-21. The Intervenor does not oppose the balance of the material facts pleaded by the Applicant. See Intervenor's proposed response at 1.

^{2/} See Applicant material facts 3, 4, 6, 8.

^{3/} See Applicant material facts 5, 6, 8.

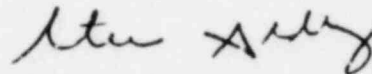
^{4/} See Applicant material facts 16, 18-21.

Therefore, in large measure, the Applicant's answer does not clearly present "new facts and arguments" not presented in the Staff summary disposition papers. The Applicant's answer does, however, expand on the facts and arguments presented in the Staff motion. In light of this, and the fact that the Applicant elected to affirmatively plead its own statement of material facts in support of the Staff motion, the Staff interposes no objection to DAARE/SAFE's motion to respond thereto.^{5/}

III. CONCLUSION

For the above reasons, the Staff does not oppose DAARE/SAFE's motion to respond to the Applicant's answer to the Staff summary disposition motion.

Respectfully submitted,



Steven C. Goldberg
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 13th day of August, 1982

^{5/} The Staff does not believe, however, that the instant DAARE/SAFE response has any probative value and it should not be accorded any weight in a Board decision on the Staff motion for summary disposition of contention 9(c). The present DAARE/SAFE response essentially consists of a recitation of isolated passages taken from various periodical articles assembled by a layman and advanced as material "facts". See accompanying affidavit at paras. 1, 4, 5. There is no expert analysis of the cited portions of the referenced articles, or foundation supplied for their eventual introduction into the record and, as such, the articles lack probative value or evidentiary character. The Commission's summary disposition rule clearly provides that affidavits filed in support of or opposition to a summary disposition motion shall "set forth such facts as would be admissible in evidence and show affirmatively that the affiant is competent to testify to the matters stated therein." 10 CFR § 2.749(b). The lay affiant whose affidavit accompanies DAARE/SAFE's proposed response fails to satisfy this central requirement even by the affiant's own admission.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO DAARE/SAFE MOTION TO RESPOND TO APPLICANT'S ANSWER TO STAFF MOTION FOR SUMMARY DISPOSITION OF CONTENTION 9(c)", dated August 13, 1982 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 through deposit in the Nuclear Regulatory Commission's internal mail system, this 13th day of August, 1982:

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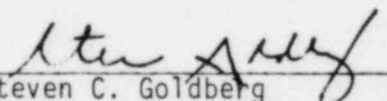
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