

8/13/82

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 RESPONSE (1) IN OPPOSITION TO INTERVENOR DAARE/SAFE'S
MOTION TO SUPPLEMENT ITS ANSWER TO COMMONWEALTH EDISON
COMPANY'S AND NRC STAFF'S MOTIONS FOR SUMMARY
DISPOSITION OF INTERVENOR'S CONTENTIONS 2 AND 2a AND (2) IN
SUPPORT OF APPLICANT'S OBJECTION TO DAARE/SAFE'S MOTION TO SUPPLEMENT

I. INTRODUCTION

Intervenor DAARE/SAFE has filed a motion, dated July 30, 1982, to supplement its answer in opposition to the summary disposition motions of Applicant and the Staff relating to DAARE/SAFE Contentions 2 and 2a. These contentions concern the health effects of cumulative radiological releases in the Rockford and DeKalb-Sycamore areas from the several Commonwealth Edison Company nuclear facilities in northern Illinois. DAARE/SAFE attaches to its motion an affidavit of Dr. E.J. Sternglass and argues that certain information provided therein is directly pertinent to the contentions, was not available to DAARE/SAFE on the date it filed its answer to the summary disposition motions, and consists of data "only recently available to the scientific community." On August 10, 1982, Applicant filed an objection to the DAARE/SAFE motion and moved to strike the Sternglass affidavit. For the reasons discussed below, the Staff opposes DAARE/SAFE's motion to supplement and supports Applicant's objection.

DESIGNATED ORIGINAL

Certified By DS 07 [Signature]

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PDR ADOCK 05000454
G PDR

II. DISCUSSION

DAARE/SAFE's motion to supplement its answer to the summary disposition motions of Applicant and the Staff is untimely and lacks a demonstration of good cause to support it. The Commission's regulations provide a period of 20 days within which answers to summary disposition motions may be filed. 10 CFR § 2.749(a).^{1/} The September 9, 1981 Revised Schedule in this proceeding allowed twenty-one days for such answers. At DAARE/SAFE's request, this response period was extended by the Licensing Board to nearly six weeks in this proceeding.^{2/} Thus, DAARE/SAFE was permitted to file its response on July 19, 1982 to summary disposition motions filed by the Staff and Applicant on June 4 and 7, respectively.

DAARE/SAFE now seeks leave to file a supplemental answer based solely on information which came to its attention on July 19, the date its response was submitted. See Intervenor DAARE/SAFE's Motion to Supplement . . ., at 1-2. Nothing was said about this information in the July 19 filing, DAARE/SAFE made no effort to seek an additional

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- ^{1/} The same regulation permits a party opposing summary disposition to respond within 10 days to new facts or arguments contained in any statement filed in support of a summary disposition motion. DAARE/SAFE obviously cannot rely on this section of the regulation to support its untimely filing, since no statements have been filed in support of either Applicant's or the Staff's motions with respect to Contentions 2 and 2a and, thus, no new fact or arguments have been presented. Other than such a response, 10 CFR § 2.749(a) states flatly that "No further supporting statements or responses thereto shall be entertained."
- ^{2/} Order, dated May 26, 1982 at 4. A further extension of four days was granted at DAARE/SAFE's request. See Order, dated July 15, 1982.

extension or leave to supplement at that time, and no reason is given for DAARE/SAFE's having waited nearly two weeks to file such a request. Such a delay is unreasonable and inexplicable given the fact that, at the time, DAARE/SAFE had every reason to expect that the Licensing Board would be considering and acting on the summary disposition motions on an expedited basis because of the schedule then in effect.^{3/}

DAARE/SAFE's argument that the information now submitted was "only recently available" is contradicted by DAARE/SAFE's own affidavit. Dr. Sternglass's views on the health effects of low level radiation are well-known and have been widely disseminated in books, articles and public testimony. Indeed, a 1975 paper by Dr. Sternglass on this subject was cited by DAARE/SAFE in "DAARE/SAFE Response to NRC First Request for Production of Documents," dated January 1, 1982 (at page 5). The only specific information contained in Dr. Sternglass's affidavit that might fit the description "recently available" consists of a study published in 1980 and another published in 1981. See Affidavit of Dr. E. J. Sternglass, dated July 19, 1982, at page 3. This information was obviously available in open professional literature both to Dr. Sternglass and to DAARE/SAFE at least several months before the filing of DAARE/SAFE's answer to the summary disposition motion in this proceeding. DAARE/SAFE fails to justify its failure to include such information in its July 19, 1982 response to the summary disposition motions.

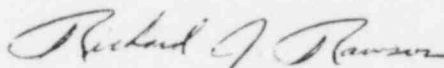
^{3/} While the hearing schedule was subsequently relaxed, the Board has indicated its intention to rule on the pending summary disposition motions on or before the start of the August 18, 1982 prehearing conference. Memorandum and Order, dated July 26, 1982, at 8. DAARE/SAFE's untimely filing could jeopardize this schedule.

Finally, DAARE/SAFE makes no attempt to relate the information provided in Dr. Sternglass's affidavit to particular statements of fact submitted either by Applicant or by the Staff which DAARE/SAFE intends to controvert.^{4/} No concise statement of material facts has been included (as required by 10 CFR § 2.749(a)) with the motion to supplement and no mention or refutation is made of the material facts stated by Applicant or the Staff. Under the Commission's regulations and the circumstances of this case, the Board and the parties are entitled to more than is provided by this attempt at an untimely deposit onto the record of unfocused factual assertions.

III. CONCLUSION

DAARE/SAFE's motion to supplement its answer to the summary disposition motions of Applicant and the Staff is untimely, lacks good cause and is based primarily on information which was available well prior to the July 19, 1982 filing date of DAARE/SAFE's initial answer. The motion to supplement should be denied.

Respectfully submitted,



Richard J. Rawson
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 15th day of August, 1982

^{4/} Applicant argues that the late addition of Dr. Sternglass as a witness for DAARE/SAFE has deprived Applicant of the opportunity to inquire into the bases underlying Dr. Sternglass's assertions. The merit of this argument is demonstrated by an examination of the Chacon and Tildon paper relied upon by Dr. Sternglass (see Sternglass affidavit, n.1), which is a study of brainstem abnormalities in victims of sudden infant death syndrome. The paper contains no mention of radiation and has no obvious connection to DAARE/SAFE contentions 2 and 2a.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE (1) IN OPPOSITION TO INTERVENOR DAARE/SAFE'S MOTION TO SUPPLEMENT ITS ANSWER TO COMMONWEALTH EDISON COMPANY'S AND NRC STAFF'S MOTIONS FOR SUMMARY DISPOSITION OF INTERVENOR'S CONTENTIONS 2 AND 2a AND (2) IN SUPPORT OF APPLICANT'S OBJECTION TO DAARE/SAFE'S MOTION TO SUPPLEMENT", 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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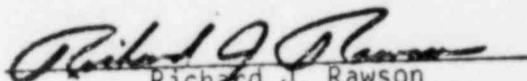
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