

II. DISCUSSION

The Commission's summary disposition rule authorizes a decision in the movant's favor "as to all or any part of the matters involved in the proceeding." 10 CFR § 2.749(a).^{1/} That summary disposition rule would appear to permit the dismissal not only of entire contentions, but of portions of contentions and discrete issues raised therein as to which there is no genuine issue of material fact.

In refusing to grant in full the summary disposition motions directed to contentions 9(a) and 9(c), the Licensing Board found the need for additional information only as to certain limited aspects of these contentions.^{2/} The Applicant expresses the belief, which the Staff shares, that implicit in the Board's Order on these contentions is an intention to limit the present scope of the contentions to the relevant outstanding issues identified in the Order. The Applicant requests, however, that the Board issue a clarifying order reflecting this position. The Staff supports this request in the interest of avoiding unnecessary disagreement over the proper interpretation of the Board's ruling in this regard, as well as avoiding unnecessary litigation of aspects of these contentions as to which there is no genuine issue of material fact.

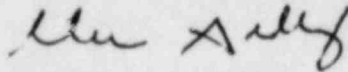
^{1/} See Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), LBP-77-46, 7 NRC 167 (1977); Toledo Edison Co. (Davis-Besse Nuclear Power Station), LBP-73-30, 6 AEC 691, 699 (1973).

^{2/} For contention 9(a), the Board identified the matter of bubble collapse water hammer events in the feedwater bypass system similar to the event which occurred at the KRSKO plant in Yugoslavia, as unresolved. For contention 9(c), the Board indicated that there is currently insufficient information on steam generator tube degradation due to flow induced vibration and on postulated tube failure concurrent with other design basis accidents.

III. CONCLUSION

For the foregoing reasons, the Staff supports Applicant's motion and urges that the Licensing Board clarify and explicitly limit the scope of contentions 9(a) and 9(c) which remain to be litigated.

Respectfully submitted,



Steven C. Goldberg
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 12th day of October, 1982

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO APPLICANT MOTION FOR CLARIFICATION", dated October 12, 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 12th day of October, 1982:

*Morton B. Margulies, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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

*Dr. Richard F. Cole
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Paul M. Murphy, Esq.
Isham, Lincoln & Beale
Three First National Plaza
Chicago, IL 60602

Myron M. Cherry, Esq.
Cherry & Flynn
Suite 3700
Three First National Plaza
Chicago, IL 60602

Region III
U.S. Nuclear Regulatory Commission
Office of Inspection & Enforcement
799 Roosevelt Road
Glen Ellyn, IL 60137

Mrs. Phillip B. Johnson
1907 Stratford Lane
Rockford, IL 61107

Ms. Diane Chavez
326 N. Avon Street
Rockford, IL 61103

Dr. Bruce von Zellen
c/o DAARE
P.O. Box 261
DeKalb, IL 60015

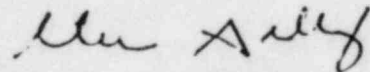
Doug Cassel, Esq.
Jane Whicher, Esq.
109 N. Dearborn Street
Chicago, IL 60602

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

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

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

Joseph Gallo, Esq.
Isham, Lincoln & Beale
Suite 840
1120 Connecticut Avenue, NW
Washington, DC 20036



Steven C. Goldberg
Counsel for NRC Staff