

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

DAARE/SAFE REPLY TO NEW MATTERS  
RAISED BY APPLICANT AND NRC STAFF  
RESPONSES TO DAARE/SAFE  
MOTION TO RECONSIDER

DAARE/SAFE, by its undersigned counsel, hereby replies to two new matters raised by Commonwealth Edison and the NRC Staff in their responses to DAARE/SAFE's Motion To Reconsider Summary Disposition of Contention 1 With Respect To Quality Assurance and Quality Control. DAARE/SAFE has not previously addressed either matter.

1. Timeliness

DAARE/SAFE's motion to reconsider is timely because the evidence on which it primarily relies - three September, 1982 affidavits and the NRC inspection report first provided to DAARE/SAFE in mid-August, 1982 - was not reasonably available to DAARE/SAFE at an earlier date. Considerable and lengthy investigative effort by DAARE/SAFE was required in order to locate and secure testimony from the three affiants - two of whom are physically out-of-state full-time or most of the time. The issues raised by their affidavits are too important to exclude merely because DAARE/SAFE's investigation did not bear fruit sooner. Nor can DAARE/SAFE be penalized for the failure

of the NRC staff and Edison to apprise DAARE/SAFE of the existence of the NRC inspection report, until long after DAARE/SAFE's response to the motions for summary disposition was filed.

Even if DAARE/SAFE's motion were untimely - and it is not - there would be no prejudice to Edison or the NRC from granting the motion to reconsider. The briefing schedule on the motions for summary disposition filed in June was set before Edison announced its most recent postponement of the Byron fuel loading date until August, 1983. A new discovery and briefing schedule has now been set, and DAARE/SAFE intends to comply with that schedule.<sup>\*/</sup> This absence of prejudice was in effect acknowledged by Edison at the August 18 prehearing conference when it stated that it "is prepared to, and will" litigate such issues (Transcript at 50); Edison cannot now be heard to claim prejudice. On the contrary, it is the public health and safety that will be prejudiced if these important issues and significant DAARE/SAFE evidence are not heard.

## 2. The NRC Special Inspection

The NRC Staff Response (p. 7) states that NRC Region III plans a special inspection into the allegations by DAARE/SAFE's affiants, and expects the results by December 1, 1982.

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<sup>\*/</sup> The pendency of the League's contentions on QA/QC argues for, not against, granting DAARE/SAFE's motion for reconsideration. If maintained, those League contentions will place the issue of QA/QC before the Board in any event, and DAARE/SAFE should be permitted to offer its witnesses, whose testimony is unique and relevant.

Incredibly, the staff suggests that this inspection is a reason to deny, rather than to grant, DAARE/SAFE's motion: "[I]f the present allegations are substantiated on inspection and otherwise prove of safety significance, DAARE/SAFE can seek their evidentiary consideration at that time" (id.).

If accepted by the Board, this staff proposal would turn summary disposition practice on its head. Summary disposition is granted only if there are no genuine issues of material fact. Where, as here, a party submits factually relevant and competent affidavits raising issues of material fact, summary disposition must be denied unless the opposing party demonstrates that the affidavits are baseless or immaterial. The NRC Staff here has not and cannot make any such showing.

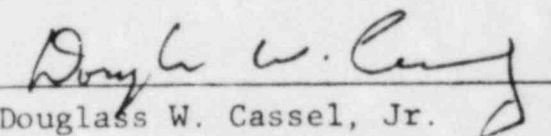
In other words, the shoe belongs on the other foot: If the NRC inspection fails to "substantiate" DAARE/SAFE's allegations, then the NRC Staff can renew its motion for summary disposition. Short of that, summary disposition is inappropriate and the Board should grant DAARE/SAFE's motion to reconsider summary disposition of Contention 1 with respect to quality assurance and quality control.

DATED: October 18, 1982

Respectfully submitted,

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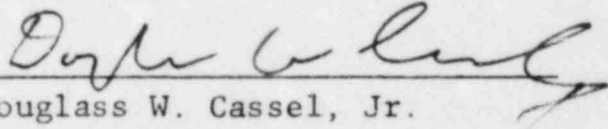
CERTIFICATE OF SERVICE

I hereby certify that I have served copies of DAARE/SAFE Motion For Leave To File Attached Reply and DAARE/SAFE Reply To New Matters Raised By Applicant And NRC Staff Responses To DAARE/SAFE Motion To Reconsider on each of the persons listed on the attached service list by causing them to be deposited in the U.S. mail, first class postage prepaid, or, in the cases of Administrative Judges Margulies, Callahan and Cole, by Federal Express mail, this 18th day of October, 1982.

DATED: October 18, 1982

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