

December 2, 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)

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Docket Nos. 50-454
50-455

NRC STAFF RESPONSE TO LEAGUE MOTION TO
REQUIRE INTERROGATORY ANSWERS

I. INTRODUCTION

On November 12, 1982, the League filed a motion seeking to require the Staff to answer all of the League's October 22, 1982 informal interrogatories to the Staff. By letters, dated November 2 and 5, 1982, the Staff agreed to answer virtually all of the 125 League interrogatories on a voluntary basis. On November 22, 1982, the Staff filed its answers to all but eight of the proposed interrogatories.^{1/} For the convenience of the Board, these proposed interrogatories are attached to this pleading.

Pursuant to 10 CFR § 2.720 (h)(2)(ii), the Staff may be required to answer party interrogatories only upon a finding of the Board that answers to the interrogatories are "necessary to a proper decision in the proceeding" and "are not reasonably obtainable from any other source." The Staff declined to volunteer answers to the eight interrogatories in question on the grounds that answers thereto are unnecessary to a proper decision in this proceeding and, hence,

1/ Interrogatories 4(c); 5(e); 7(g); 9(a); 10(a); 11(b), 14(c) and 17.

that answers need not be provided. The present League motion contends, without explanation or differentiation between the interrogatories in question, that responses to the interrogatories are necessary for a proper decision. The Staff opposes the present motion.

II. DISCUSSION

Discovery upon the Staff stands on a "different footing" than discovery upon other parties. Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 323 (1980). By regulation, most Staff documents that are relevant to licensing proceedings are routinely made available in the NRC Public Document Room. 10 CFR § 2.790; Susquehanna, supra. As the Appeal Board, citing 10 CFR Part 2, Appendix A, has observed: "[t]he contemplation is that these 'should reasonably disclose the basis for the staff's position' thereby reducing any need for formal discovery." Susquehanna, supra. In furtherance of this policy, the Commission's discovery rules require the licensing board's advance permission to require the Staff to answer interrogatories and only then upon the showing that Staff responses are necessary to a proper decision and that information sought in the interrogatories is not obtainable from another source. Id. The eight interrogatories which the Staff declined to answer are unnecessary to a proper decision in the case and the League has failed to demonstrate otherwise.^{2/}

Interrogatory 4 concerns contention 22 regarding steam generators. Unanswered interrogatory 4(c) asks for a Staff opinion on the

^{2/} It is well established that the moving party has the burden of proving that its motion should be granted. Consolidated Edison Co. (Indian Point Station, Units 1, 2 and 3), CLI-77-2, 5 NRC 13, 14 (1977).

correctness of the NRC Director of Nuclear Reactor Regulation's May 7, 1981, 10 CFR § 2.206 Decision (DD-81-5) regarding Byron in light of a subsequent incident at the Ginna facility and unidentified "statements" made by an apparent Applicant employee. The answer to this interrogatory is wholly unnecessary to a proper decision in this proceeding and constitutes an impermissible attempt to collaterally attack DD-81-5. That decision has already been judicially upheld. Rockford League of Women Voters v. NRC, 697 F. 2d 1218 (7th Cir. 1982). The merits of contention 22 are at issue in this proceeding, not the validity of DD-81-5.

Interrogatory 5 concerns contention 28 regarding class 9 accidents and a probabilistic risk assessment (PRA). Unanswered interrogatory 5(e) asks whether the Staff or others have responded to certain unspecified concerns purportedly raised in a 1977 document from Dr. S. Hanauer, NRC, to E. G. Case, NRC. The interrogatory states that the "concerns" in question are quoted in section 3.1.3 of a November 12, 1980 affidavit of Richard Hubbard and Gregory Minor. The Staff review of that affidavit section discloses no such reference. Nor has the League in any way demonstrated the necessity of a response to this interrogatory to a proper litigation of the contention at bar.

Interrogatory 7 concerns contention 39 regarding hydrology. Unanswered interrogatory 7(g) asks for a great deal of detailed information for each of the "accident scenarios postulated as applicable to Zion" which would also be applicable to Byron. The interrogatory does not specify what "postulated accident scenarios" it refers to or what significance their applicability has relative to Byron hydrology. Thus, the scope and import of the interrogatory is unclear and a comparison between Zion accident consequences and Byron accidents is unnecessary to a proper decision on Byron hydrology.

Interrogatory 9 concerns contention 61 regarding the level of environmental qualification of equipment at Byron. Unanswered interrogatory 9(a) asks the Staff to detail the differences between current environmental qualification methodology and that employed prior to the TMI accident. The environmental qualification requirements prior to the TMI accident are immaterial to an evaluation of the acceptability of the current requirements applied to Byron and the requested answer is unnecessary to a proper decision on the merits of the subject contention.

Interrogatory 10 concerns contention 62 regarding the need to provide design protection against Class 9 accidents at Byron. Unanswered interrogatory 10(a) questions whether the Staff agrees that multiple independent or common mode failures of systems and equipment are possible at Byron.

As stated in the successful Staff summary disposition motion of DAARE/SAFE multiple failures contention 4, and accompanying affidavit, the Commission's regulations do not require the explicit design consideration of multiple independent failure accidents. See June 4, 1982 Staff summary disposition motion at 20 and accompanying affidavit of Walton L. Jensen, Jr. (Jensen affidavit) at 2-3. Such accidents exceed the single failure requirement underlying the applicable general design criteria (GDC) governing nuclear reactor design in 10 CFR Part 50, Appendix A.^{3/} Id.

^{3/} As further indicated in the June 1982 Staff summary disposition motion, the Applicant must demonstrate compliance with the Commission's regulations in order to obtain a license. An Applicant need not go beyond the regulatory requirements even though a design which exceeds the requirements of the regulations may be desirable. See Public Service Co. of N.H. (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 42-43 (1977); Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003, 1006-11 (1973), aff'd, CLI-74-2, 7 AEC 2, aff'd sub nom Citizens for Safe Power v. NRC, 524 F. 2d 1291, 1299-1300 (D.C. Cir. 1975); See also Policy Statement, 45 F. R. 41738 (June 20, 1980).

The design requirements are implemented through the development of a set of design basis events described in the Standard Review Plan (SRP). Jensen affidavit at 4. A list of the design basis events required to be analyzed by the SRP by operating license applicants, and analyzed by the Byron applicant in its Final Safety Analysis Report, is provided in an attachment to the Jensen affidavit. Therefore, the response to an abstract question about the likelihood of non-design basis events, such as unanswered interrogatory 10(a), is immaterial and the requested answer is unnecessary to a proper decision on contention 62.

Interrogatory 11 concerns contention 63 regarding the safety classification of equipment. Unanswered interrogatory 11(b) questions whether any Byron specific non-design basis studies, including a PRA, have been or will be required to evaluate equipment safety classification. Since non-design basis studies are not required to meet regulatory design requirements or criteria, as stated above, their desirability is immaterial and an answer to the subject interrogatory is, hence, unnecessary to a proper decision on contention 63.

Interrogatory 14 concerns contention 109 regarding the analysis of hydrology impacts from Byron on the Rock River. Unanswered interrogatory 14(c) questions certain assumptions underlying the Class 9 "accident scenarios" and "release categories" postulated in the Zion PRA which "would also be applicable to Byron." This interrogatory is unnecessary and objectionable for the same reasons explained with regard to unanswered interrogatory 7(g) given above. Specifically, the interrogatory does not indicate what Zion "accident scenarios" it refers to or what significance or applicability the unidentified Zion "accident scenarios" have

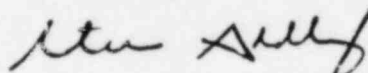
for Byron hydrology. The scope and import of the interrogatory is wholly unclear and, in any event, information on the assumptions underlying accident scenarios and release categories for the Zion PRA is not necessary for a proper decision on hydrology impacts from the Byron facility.

Unanswered interrogatory 17 questions whether the Staff agrees that each League contention is related or applicable to a "consideration" of continued Byron construction or the grant of an operating license. The matter of continued construction, duly authorized by the Byron construction permit, is beyond the scope of this licensing proceeding. Given the admission of the contentions as matters in controversy in the proceeding, a Staff opinion on their relevance or applicability to a licensing decision is immaterial at this juncture. As the discovery and testimony formulation process progresses, the Staff position on the factual or legal merit of the contentions will be articulated. This would essentially be the Staff answer to interrogatory 17 if an answer were required. As should be apparent, it is not the sort of question or answer that is necessary now to a proper decision in the case and the League has not shown otherwise.

III. CONCLUSION

In light of the foregoing, the Staff opposes the present League motion to require Staff answers to the League interrogatories enumerated above.

Respectfully submitted,



Steven C. Goldberg
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 2nd day of December, 1982

ATTACHMENT

UNANSWERED LEAGUE INTERROGATORIES

- 4(c). state whether you agree that the steam-generator-related position presented in the Director's decision concerning Byron under 10 C.F.R. Sec. 2.206 by Harold R. Denton, filed May 7, 1981, at pages 6-8 has been proved unfounded by the accident which occurred in early 1982 at the Niagara Mohawk Ginna plant despite the incorporation of suggested design and other changes, and especially in light of the statements of James Toscas of CECO (who has conceded that an accident similar to the one at Ginna could occur at Byron), and explain your answers in detail;
- 5(e). state whether the Staff has taken any steps or knows of any steps which have been taken by others to respond at Byron to the concerns addressed by Dr. S. Hanauer to E. G. Case (NRC) on August 18, 1977, quoted in paragraph 3.1.3 of the Affidavit of Richard B. Hubbard and Gregory C. Minor, November 12, 1980, and if yes, describe those actions in detail;
- 7(e). state with particularity (i) the reasons that the current amount of grouting beneath the plant site would be ineffective to prevent contamination of groundwater flow, (ii) the reasons additional grouting and well point dewatering would allow isolation of "radioactive contamination near the source" when the present grouting does not, and (iii) the reasons why additional steps are not now being required or recommended by the Staff to interdict the flow of contaminated groundwater if the current level of grouting will be ineffective for that purpose;

- 7(g). for each of the accident scenarios postulated as applicable to Zion which would also be applicable to Byron and which were assumed to lead to the release of radioactive materials to the groundwater or to the area beneath the Byron plant, or in the vicinity of the Byron plant, state with specificity by isotopes what varieties of radioactive material would be released, the range of core temperatures which have been assumed for any accident scenarios involving a core melt, and the assumed depth to which the core could sink, and the basis for these assumptions at Byron;
- 9(a). state in detail how the current environmental qualification methodology which CECO is using for Byron differs from the methodology in use prior to the events at TMI-2, and whether these modifications are acceptable to the Staff and why;
- 10(a). state whether or not you agree that multiple independent or common-cause failures of systems and equipment are possible at Byron;
- (1) if your answer is no, explain the reasons for your answer in detail;
 - (2) if your answer is yes, state with particularity (i) which Byron-specific multiple failure sequences you believe could lead to a class 9 accident, (ii) what measures the Staff is requiring or recommending to CECO to employ or will require or recommend to CECO to employ in the future to prevent or mitigate the occurrence and the effects of such Class 9 accidents, and (iii) if no Byron-specific multiple failure sequences/class 9 scenarios have been recommended or required or if none will be recommended or required to be developed, explain in detail why they have not been or will not be;

- 11(b). state whether any Byron-specific non-design basis studies, including but not limited to a PRA, have been or will be required or recommended by the Staff to be done in order to evaluate or reclassify any equipment classified as non-safety related prior to TMI-2, and if no such studies have been done or are planned or have been or will be required or recommended, explain in detail why not;
- 14(c). with reference to the Class 9 accident scenarios and release categories which have been postulated for Zion in its PRA which would also be applicable to Byron, what quantities of actinide isotopes have been assumed to be released during core melt accidents, specifically including, but not limited to, the released quantities of plutonium, neptunium, and americium;
17. Separately with respect to each of the League's Revised Contentions Nos. 1A, 8, 19, 22, 28, 32, 34, 39, 41, 42, 47, 53, 54, 61, 62, 63, 71, 77, 106, 108, 109, 111, and 112, state in specific detail:
- (i) Do you agree that each such Revised Contention is related or applicable to, in whole or in part, a consideration of continued construction and/or permission to operate each or both of the Byron Units? If your answer to this question with respect to any Revised Contention is yes, please explain your answer in detail. If your answer to this question is no with respect to any Revised Contention, please explain your answer in detail, including all factual and other reasons why you believe each such Revised Contention is unrelated or inapplicable to the Byron Units;
 - (ii) With respect to each "no" answer in (i) above, state in specific detail whether it is your position that the problem or issue raised by each such Revised Contention is totally inapplicable and unrelated to the Byron Units, in the sense that no consideration of

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any kind need be had concerning each such Revised Contention's relation or applicability to the Byron Units;

(iii) If any part of your answer to (i) or (ii) above relating to any Revised Contention is based in whole or in part upon the position that the subject matter of a Revised Contention is inapplicable (or unrelated) because (1) the subject matter has been considered at the construction phase hearing of the Byron Units; (2) the subject matter is barred from consideration at the operating hearings herein by an NRC regulation, rule, criterion, policy or convention; or (3) a Revised Contention has not specifically set forth a sufficient nexus (within the meaning of the River Bend Decision, ALAB-444, 6 N.R.C. 760 [1977]) regarding the Byron Units, then with respect to each such answer regarding each such Revised Contention, please also state in specific detail, giving reasons for your position:

- (a) Regarding (iii)(1) above, why it is your position that no facts or events have occurred subsequent to the issuance of the construction permits herein which present a sufficient ground for re-examining the subject matter of the Revised Contention at the operating stage herein;
- (b) Regarding (iii)(2) above, what NRC regulation, rule, criterion, policy or convention you believe bars consideration of the subject matter of the Revised Contention, and why you contend that there is no reason for waiving the applicability of any such regulation, rule, policy, criterion or convention to this proceeding; and
- (c) Regarding (iii)(3) above, what fact, opinion, or other analysis of which you are aware (specifically and in detail explaining such fact, opinion, or other analysis) which can form the basis for a sufficient nexus to the Byron Units; in connection with your answer to this subpart, if you state you are unaware of any facts, opinions, or analyses which can form such nexus, please also state in detail whether (and, if so, why) you believe it is impossible, as a matter of scientific or environmental application, for any nexus to be supplied whatsoever.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO LEAGUE MOTION TO REQUIRE INTERROGATORY ANSWERS" 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, by deposit in the Nuclear Regulatory Commission's internal mail system, this 2nd day of December, 1982:

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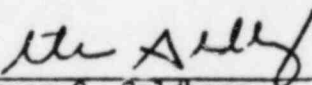
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