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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION -2 011:31

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF)
COMMONWEALTH EDISON COMPANY) Docket Nos. 50-454
(Byron Station, Units 1) 50-455
and 2))

MOTION TO ALLOW TESTIMONY
OF JOHN HUGHES
AND MOTION TO SHORTEN TIME FOR RESPONSES

On Monday, April 25, 1983, Intervenors Rockford League of Women Voters and DAARE/SAFE, by their undersigned attorney, moved the Board to allow testimony of John Hughes on matters pertaining to Quality Assurance/Quality Control. As stated on the record, counsel for the staff and for Commonwealth Edison had earlier in the day been notified of the Intervenors' intention to request that Mr. Hughes be allowed to testify. Both Edison and the Staff objected to his testimony.*

Pursuant to the Board's suggestion, Mr. Hughes then prepared a handwritten statement, which is attached hereto as "Attachment A."

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PDR ADOCK 05000454
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* Although some of the attorneys for Edison were present, those attorneys involved in litigation of the QA/QC contention chose not to appear.

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The Board has indicated its intention to base its decision on factors similar to those necessary to reopen a closed record. Intervenors respectfully point out to the Board that the record on QA/QC has not been closed; indeed, further evidence was contemplated by the issuance of a subpoena to Michael Zeise,* and some evidence on other issues has been, or will be, taken out of order in this proceeding.

The factors pertinent to reopening a closed record are set forth in Kansas City Gas and Electric Company (Wolf Creek Generating Station, Unit 1) ALAB - 462, 7 NRC 320, 338 (1978). These factors are that (1) the motion be timely; (2) a significant safety issue is addressed; and (3) that the result reached would have been different had the evidence been initially submitted. Id.

The first factor, timeliness, is clearly established by Mr. Hughes' statement: it was not until the evening of Sunday, April 24 that Mr. Hughes contacted the undersigned counsel and agreed to be a witness on behalf of the Intervenors in this proceeding. Mr. Hughes had previously been asked to testify by a member of the League, but had declined, preferring to rely on an NRC investigation of his allegations made to Region III inspectors. Once he determined that he wished to make his knowledge public, he immediately contacted counsel and agreed to testify. Notification to opposing parties and the Board was made the very next day.

* A stipulation as to what Mr. Zeise would say, if called, presently is under negotiation.

The second factor, the significance of the evidence, is equally well satisfied. Mr. Hughes' statement establishes that he is experienced in inspection work. He worked at Byron for Pittsburgh Testing Laboratories inspecting work performed by Hatfield Electric Company. His observations and testimony include irregularities in certification testing, being asked to sign documents indicating he had inspected items which he had not inspected, and welds exhibiting uneven profile, excessive undercut and other welding problems.

Hatfield Electric Company was the subject extensive testimony by Edison and staff witnesses under corss-examination during the QA/QC phase of the hearing. In fact, on cross-examination about recent allegations received by the NRC, Mr. Forney, the senior resident NRC inspector at Byron, admitted that recent allegations had been made concerning Hatfield (see Transcript of April 7, 1983 at pp.3699 - 3705) and that "there are allegations that encompass welding and electrical and that type of an item (sic)." (id. at 3905). Because Mr. Hughes' allegations were under investigation by the NRC on the date of Mr. Forney's testimony, and Mr. Hughes was not, at that time, willing to appear as a witness, little definitive testimony was adduced regarding the substance of his allegations.

It cannot be seriously argued that the matters of testing, documentation and welding mentioned in Mr. Hughes' statement do not address a significant safety issue. Thus the second factor of Wolf Creek is satisfied.

The third factor, a potential change in result, does not appear to be pertinent in this situation, for until there is a decision on the QA/QC contention there simply is no result to be changed. To the extent that this factor could be interpreted, in this proceeding, as going to the potential to affect the Board's findings and conclusions on QA/QC, that potential is obvious from the discussion above.

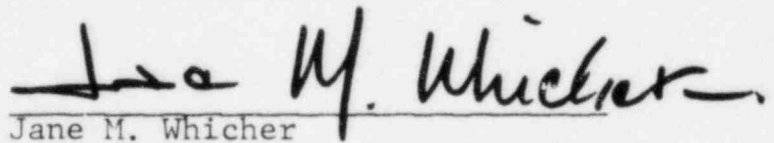
In sum, there is no reason to exclude Mr. Hughes' testimony. Indeed, the equities weigh to the contrary, for it would substantially contribute to the full development of the record.

It is further requested that this Board set a date certain for Mr. Hughes' testimony, and that that date be the earliest date on which the Board can meet to hear this testimony.

Because of the expressed desire by all parties not to prolong this hearing unduly, Intervenors move that the time for responses by Edison and the Staff be shortened, pursuant to 10 CFR §2.711(a). Intervenors suggest that each party be required to respond within five days of receipt of service of this motion.

DATED: April 27, 1983

Respectfully submitted,



Jane M. Whicher
Joel Greenbuerg
109 N. Dearborn
Chicago, IL 60602
(312) 641-5570

Jane M. Whicher
One of the attorneys for the
Rockford League of Women Voters
and DAARE/SAFE on the issue of
Quality Assurance/Quality Control