

December 8, 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 DAARE/SAFE MOTION  
TO DIRECT NRC STAFF TO COMMENCE SPECIAL INSPECTION

I. INTRODUCTION

On November 18, 1982, DAARE/SAFE filed a motion to require the commencement and prompt completion of the NRC Region III special investigation into QA/QC allegations contained in several affidavits which accompanied DAARE/SAFE's September 23, 1982 motion to reconsider summary disposition. The Staff announced plans to initiate the subject investigation in its October 12, 1982 response to the reconsideration motion. That investigation is in progress and its status is described in the attached affidavit of D. W. Hayes, NRC Region III. In any event, the Licensing Board lacks the authority to supervise the conduct of the regional investigation or to dictate its pace, and DAARE/SAFE's motion should be denied.

II. DISCUSSION

A licensing board has only the jurisdiction and power delegated to it by the Commission such as, in the instant matter, in the notice of hearing for a particular licensing proceeding. Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2 and 3), ALAB-577,

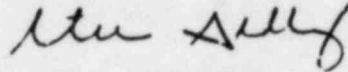
11 NRC 18, 25 (1980), modified in part, CLI-80-12, 11 NRC 514, 516-17 (1980); Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167 (1976). A licensing board for an operating license proceeding is limited to resolving the contentions placed in issue by the parties or by the board sua sponte. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-674, 15 NRC 1101, 1103 (1982).

Pursuant to that mandate, a licensing board in an operating license proceeding can grant or deny the subject license application. It does not, however, have general jurisdiction over matters related to the authorized ongoing construction of the plant, such as alleged construction QA/QC noncompliances. Id. Such matters lie within the sole province of the Staff in furtherance of its statutory responsibility to oversee permittee or licensee compliance with regulatory requirements. Id.; Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-513, 8 NRC 694, 696 (1978); Duquense Light Co. (Beaver Valley Power Station, Unit 1), ALAB-408, 5 NRC 1383, 1386 and n. 6 (1977); New England Power Co. (NEP, Units 1 and 2), LBP-79, 7 NRC 271, 279-80 (1978). Accordingly, the Board does not have jurisdiction to grant the relief requested in the present motion. In any event, the NRC Region III investigation is proceeding at a reasonable pace, as the attached affidavit attests, and will be completed in the near future. The investigation report will be supplied to the Board and parties as soon as it becomes available.

III. CONCLUSION

In light of the foregoing, DAARE/SAFE's motion to direct the Staff to commence a special inspection should be denied.

Respectfully submitted,



Steven C. Goldberg  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 8th day of December, 1982