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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD  
Before Administrative Judges:  
Ivan W. Smith, Chairman  
Dr. Dixon Callihan  
Dr. Richard F. Cole

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

SERVED JUN 11 1984

In the Matter of	)	Docket Nos. STN 50-454 OL
	)	STN 50-455 OL
COMMONWEALTH EDISON COMPANY	)	[ASLBP 79-411-04 OL]
	)	
(Byron Nuclear Power Station, Units 1 and 2)	)	June 8, 1984

MEMORANDUM AND ORDER  
FOLLOWING PREHEARING CONFERENCE

The Board presided over a prehearing conference at Rockford, Illinois on May 30 and 31, 1984 to discuss with the parties the evidence to be presented and issues to be considered in the reopened proceeding directed by the Appeal Board's remand order of May 7, 1984, ALAB-770, 19 NRC \_\_\_\_\_. The evidentiary hearing on the remanded proceeding was set for July 16, 1984.

General Scope of the Remanded Proceeding

Arguments were heard concerning the issues mandated by ALAB-770 as contrasted to those issues the Licensing Board was authorized but not required to hear.

As to the mandated issues, the Appeal Board stated:

In the totality of circumstances, the appropriate course is a further hearing to permit a full exploration of the significance of the [reinspection] program in terms of whether there is currently reasonable assurance that the Byron

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facility has been properly constructed.<sup>62</sup> Stated otherwise, the focus of the inquiry should be upon whether, as formulated and executed, the reinspection program has now provided the requisite degree of confidence that the Hatfield and Hunter quality assurance inspectors were competent and, thus, can be presumed to have uncovered any construction defects of possible safety consequence. [Footnote omitted]

At minimum, the following questions must be addressed in deciding whether the methodology, implementation and results of the reinspection program were adequate to resolve the concerns about (1) the capability of the Hatfield and Hunter quality assurance inspectors, and (2) the quality of the work performed by these two contractors: . . . .

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<sup>62</sup> To avoid any possible misunderstanding, we stress that this conclusion rests entirely upon the particular circumstances of this case as discussed in the text. In sum, it seems to us that the public interest would be ill-served were final judgment to be passed on the operating license application without a full evidentiary consideration of the reinspection program and its results.

Slip opinion at 27, 28.

From the first sentence and footnote 62 in the foregoing citation Intervenors argue, with some merit, that ALAB-770 requires a litigation of the entire Byron reinspection program with respect to each contractor subject to reinspection. Applicant and Staff take the position that the mandated scope is narrowed by the balance of the cited language; that only Hatfield Electric and Hunter Corporation are required to be considered in the remanded look at the reinspection program.

Consistent with the cited modifying language of the remand order, it appears that the Appeal Board generally intended to require this Board to reconsider the reasons for denying the Byron operating license in light of new evidence on the reinspection program. We rule that

ALAB-770 requires a full evidentiary consideration of the reinspection program with respect to only Hatfield and Hunter. We must also, by specific direction, consider evidence of possible defects in the work of Systems Control Corporation. Id. at 29, 30.

In addition, the Appeal Board separately granted authority to this Board to include any other question relevant to whether, notwithstanding quality assurance deficiencies, reasonable assurance exists that the Byron facility has been properly constructed. Id. at 35, n.72. This Board sought the advice of the parties on the proper exercise of this very broad discretion, and, as we note below, grant Intervenors' motion to include Pittsburgh Testing Laboratories as one of the contractors to be considered with respect to the Byron reinspection program.

#### Applicant's Request for Guidance

Applicant reviewed the Board's Initial Decision of January 13, 1984, LBP-84-2, 19 NRC \_\_\_\_\_, in an effort to identify those issues it perceived to be of concern to the Board as to which the Board might require an evidentiary showing.<sup>1</sup> There was an extensive discussion of

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<sup>1</sup> Letter of May 8, 1984, Michael Miller to Licensing Board. Although Applicant did not advocate that any of the issues be litigated on remand, it identified the following items for the Board's discretionary consideration:

1. Staff acceptance of the reinspection program.
2. The basis for determination of inaccessible and

(Footnote Continued)

the identified issues during which the Board provided guidance to the Applicant about the Board's special concerns and requirements. As it turned out, Applicant's list was accurate and fairly complete. However the Board added the additional issue of whether Applicant's commitment to repair any defects identified during the reinspection program was satisfied and effective. Tr. 8184.

The Board did not provide Applicant an advisory opinion road map to success, contrary to the persistent suggestions to that effect by intervenors' counsel. Applicant did not request an advisory opinion, and recognizes that the Board cannot provide assurances that the

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(Footnote Continued)

non-recreatable inspection attributes in the reinspection program.

3. Relationship of deficiencies identified during the reinspection program to a trend analysis.
4. The number of Hatfield inspectors requiring recertification and retraining at the inception of the recertification program.
5. Hunter documentation practices regarding discrepant conditions identified during the reinspection program.
6. Further evidence regarding possible fraudulent practices by contractors in the certification of quality control and quality assurance personnel.
7. The disposition of allegations open as of August 10, 1983.
8. Commonwealth Edison Company's general control of its site contractors.
9. Supplemental evidence regarding Hunter "tabling" practices and any pattern of nonconformances by Hatfield.

Applicant will meet its burden of proof on remand simply by addressing the identified Board concerns. Tr. 8090.

Issues Proposed by Intervenors

Intervenors took the position that the quality assurance litigation cannot be "frozen in time" and that virtually all relevant information coming to light since the close of the evidentiary record may be appropriate for consideration as issues in the remanded proceeding. As noted above, Intervenors did not prevail in the arguments that the remand mandates a hearing on all of the contractors subject to the reinspection program. The Board heard from the parties concerning twelve matters listed by Intervenors as suggested issues for the hearing.<sup>2</sup> The Board considered the proposed issues in terms of:

- (1) Are they mandated under ALAB-770?
- (2) Should the Board adopt them as discretionary questions under ALAB-770, footnote 72?
- (3) Must the proposed issues meet the traditional three-part test for reopening an evidentiary record?<sup>3</sup>

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<sup>2</sup> Letter, May 18, 1984, Ms. Jane Whicher to Licensing Board.

<sup>3</sup> See, e.g., Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 (1980), where the Appeal Board again stated the factors to consider in reopening a record to consider new evidence as:

- (1) Is the motion timely? (2) Does it address significant
- (Footnote Continued)

Intervenors' Proposed Issue No. 1

The information disclosed under protective order of April 17, 1984, and the status and results of the investigations pertaining thereto.

This item refers to two allegations of potential safety significance recently under investigation by Region III inspectors of the Office of Inspection and Enforcement. One investigation has been completed but not yet reported and the other investigation is pending. It is too early to determine whether the allegations will develop into issues for the remanded proceeding.

Intervenors' Proposed Issue No. 2

Those topics within the scope of Intervenors' December 22, 1983 Motion to Reopen the Record.

This issue remained pending at the time the Board's Initial Decision of January 13, 1984. It sought to reopen the evidentiary record to inquire into the circumstances of terminating the employment of Mr. Koca, a quality assurance official employed by Hatfield Electric. The motion as such is denied and the request to make the subject matter an issue in the reopened proceeding is, for now, also denied. The parties, particularly the Applicant, must determine for themselves whether the circumstances surrounding the termination of Mr. Koca's

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(Footnote Continued)

safety (or environmental) issues? (3) Might a different result have been reached had the newly proffered material been considered initially?



employment are relevant to the reinspection program and the general issues of the reopened proceeding. The Board has insufficient information. Intervenors were granted the right to discover information concerning Mr. Koca's termination. Tr. 8156-61.

Intervenors' Proposed Issue No. 3

Preoperational testing and the results of NRC inspections thereof.

This proposed issue is rejected for lack of specificity and no apparent relevance to the remanded proceeding.

Intervenors' Proposed Issue No. 4

Enforcement actions (i.e., civil penalties) assessed at Edison plants as described in Mr. Miller's February 10, 1984 Board notification, and all enforcement actions taken since the date of that letter. [Footnote omitted]

Intervenors want the evidentiary record to reflect the fact that civil penalties have recently been assessed against Commonwealth Edison. They do not propose to litigate the details of those penalties. Tr. 8203. The Board is not persuaded to accept this issue into the reopened hearing. In our Initial Decision, we declined to accept a mere listing of civil penalties and enforcement actions as a valid indicator of management performance. E.g., D-30, D-43.

Intervenors' Proposed Issue No. 5

The topics covered in Mr. Rawson's Board notification of March 7, 1984 (a series of five I & E reports issued after the close of the record).

Intervenors offered no specific reason why the five I & E reports referred to should form issues in the reopened proceeding. Two of the reports refer to allegations against Hatfield. The Board has reviewed the allegations, and with one exception, could identify none that we would select for special evidentiary presentation. Intervenors' request for general broad authority to depose Staff officials on unspecified inspection reports was denied as unreasonable and contrary to regulations. See 10 CFR 2.720(h)(2). Therefore, except as specifically noted, no particular allegation need be addressed.

However, in considering Intervenors' proposed issue No. 5, the Board reviewed its discussion with the parties with respect to the Applicant's Identified Issue 7 relating to the disposition of allegations pending as of August 10, 1983, the close of the evidentiary record. See Tr. 8134-46. We are concerned that insufficient guidance may have been provided. We informed the parties that any allegation, old or new, comes into the hearing as an issue only after consideration in a case-by-case basis. Our guidance may have given the impression that we require no evidence whatever on worker allegations, but this may not be the case. In LBP-84-2, the Board found that the Staff relies upon the reinspection program to dispose of some of the worker allegations, particularly welding work by Hatfield. *Id.* at 287, D-406, D-407. We expect the Staff to present evidence as to whether that expectation has been realized; whether the reinspection program has been effective for that purpose. Therefore, we cannot now rule out the possibility that any particular allegation, as reflected in the



completed inspection reports, may be an appropriate basis for questioning the Staff's conclusions. Also, if the Staff or Applicant identified any particular allegation or set of allegations as having independent and important relevance to the reinspection program, that information should be reflected in the respective presentation.

The one exception referred to above pertains to the allegation of overstressing of electrical cables during pulling and the related inspection as described in Inspection Report 84-02, at 12-15 (Attachment 2 to the Board notification transmittal letter dated March 7, 1984). This is the same matter referred to in Intervenor's Proposed Issue No. 6 and reported to the Appeal Board by the Staff on March 28, 1984 and discussed in Inspection Reports 84-09, 84-07. The Board will require a full evidentiary presentation on the cause and safety significance of the overstressing episodes and their relationship to the reinspection program.

Intervenor's indicated that they do not intend to litigate the subject matter of the third Attachment to the March 7 transmittal and also referred to under Intervenor's Proposed Issue No. 5, Inspection Report 83-58 relating to preoperational testing. Tr. 8206-07.

The fourth Attachment to the transmittal letter, Report 84-05; 84-04, pertains to a January 1984 Region III inspection of the reinspection program. The subject matter of the report will necessarily be a part of the evidentiary record in the reopened hearing at least as far as it concerns Hatfield Electric, Hunter and Pittsburgh Testing.

The fifth Attachment, Report 84-06, pertains to Reliable Sheet Metal Company. Intervenors have advanced no reason why Reliable in particular should be included in the reopened hearing (Tr. 8207), nor can the Board identify a reason to request evidence concerning the report on Reliable.

Intervenors' Proposed Issue No. 6

Mr. Rawson's Board notification of March 28, 1984 concerning Hatfield Electric Company.

The issue is accepted for litigation in accordance with the respective discussion of overstressed cables under Intervenors' Proposed Issue No. 5 above.

Intervenors' Proposed Issue No. 7

Mr. Rawson's April 5, 1984 Board notification of the issuance of the final SALP report.

Intervenors will renew their request to have the SALP findings litigated based on the 1983 SALP report when it is published.

Intervenors' Proposed Issue No. 8

All I & E reports issued since the close of the record related to quality assurance at Byron, and all allegations received pertaining to quality assurance at Byron.

This proposal is impossibly broad and is therefore rejected.

Intervenors' Proposed Issue No. 9

The results of the Byron Integrated Design Inspection, the special inspection by Bechtel pertaining thereto, and the results of the Bechtel inspection.

A Board notification (84-107) centers around an inspection at Byron concerning postulated failures to high- and moderate-energy piping. It is not within the mandated scope of the reopened hearing and no basis has been advanced or identified to convince the Board to accept the issue. However, we note that the Byron Integrated Design Inspection (IDI) is an open item within the Staff. It is premature to rule that the IDI may never become an issue.

Intervenors' Proposed Issue No. 10

The overstressing of numerous steel beams and corrections, the reasons overstressing occurred, and whether and what corrective action has been taken.

Intervenors do not now advance this item as an issue. Instead they notified the Board and parties that they are developing information on the matter with the intention of moving later to reopen the record. Tr. 8239.

Intervenors' Proposed Issue No. 11

Why 100% reinspections were needed of Johnson Controls, Powers-Azco-Pope, and Reliable Sheet Metal, and whether these reinspections suffer from the same apparent flaws present in the alleged 100% inspection of SCC-supplied equipment performed by PTL.

In the Initial Decision conclusion on quality assurance we explained that, with respect to contractors such as Blount, Johnson Controls and Powers-Azco-Pope, whose reinspection programs were not litigated, leaving resolution of the matter to the Staff is not a delegation, but a recognition that the matter was not an issue before us -- it was beyond our purview. We also noted that the 100 percent reinspection of work by Powers-Azco-Pope, Johnson Controls, Reliable Sheet Metal, and Systems Control would, in any event, make a delegation to the Staff acceptable. LBP-84-02, at 304-05.

By advancing its Proposed Issue No. 11, Intervenors in effect are either filing an untimely motion for reconsideration of the Initial Decision or moving to reopen the record with respect to Powers-Azco-Pope, Johnson Controls, and Reliable Sheet Metal. They have not carried their burden on either score. The inspection of Systems Control's work is, of course, a mandated issue.

The discussion of Proposed Issue No. 11 offered the focus for a larger Board concern about Pittsburgh Testing Laboratories. In retrospect, Pittsburgh's activities should have received greater attention during the main hearing and in the Initial Decision. Its importance in connection with Systems Control highlights the relevance of Pittsburgh's work. As a matter of discretion, the Board grants Intervenors' motion to have Pittsburgh Testing Laboratories included in the reopened proceeding. As to the Board's requirements, we expect a general showing of the scope of Pittsburgh's work and a discussion of

whether the reinspection program has provided reasonable assurances that Pittsburgh's work presents no safety problems.

Intervenors, however, have indicated that they intend to discover vigorously on Pittsburgh's activities, and we authorize a broad discovery effort. However we remind Intervenors of the Board admonition during the prehearing conference -- that the nature of the evidence Applicant would be required to present on Pittsburgh Testing will depend largely on the advance notice it has received about particular concerns. E.g., Tr. 8251. Our notice is clearly general and a general response may be appropriate. The Board expects the parties to exchange freely information concerning particular aspects of Intervenors' concerns so that the evidence may be sharply responsive.

Intervenors' Proposed Issue No. 12

Any evidence newly developed by Intervenors or the Staff. This proposal is obviously too broad and is rejected.

Other Proposed Issues

On May 17, 1984 Commonwealth Edison informed Region III of a potential "50.55(e)" report with respect to electrical connector butt splices by Hatfield Electric.<sup>4</sup> Intervenors may seek to have that subject accepted as an issue and seek a special discovery order against

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<sup>4</sup> Letter May 17, '84, Farrar to Keppler.

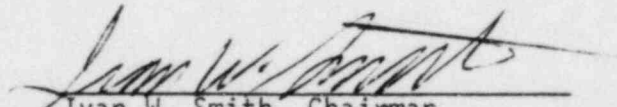
Applicant for and explanation of the circumstances. The Board recognizes that the notification to Region III is tentative. We direct that the Board and parties be kept current on developments and will discuss again with the parties the need to include the matter in the reopened hearing.<sup>5</sup>

Other Matters -- Hearing

The Appeal Board's April 17, 1984 Protective Order controlling access to protected information remains in effect and is adopted by this Board. The evidentiary hearing will commence at 2:00 p.m. on July 16, 1984 at the Magistrate's Courtroom, Federal Building, 211 South Court Street, Rockford, Illinois 61101.

Neither Judge Callihan nor Judge Cole was available to sign this Memorandum and Order. Each participated in its formulation and agrees with it.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

  
Ivan W. Smith, Chairman  
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland

June 8, 1984

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<sup>5</sup> A telephone prehearing conference call is scheduled for this date following the issuance of this order.