

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

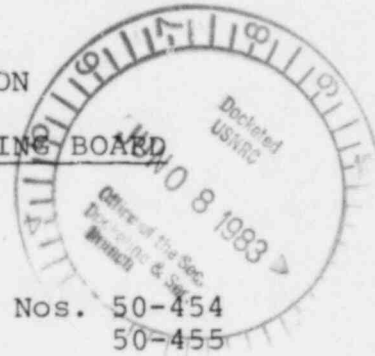
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF)

COMMONWEALTH EDISON COMPANY)

(Byron Station, Units 1
and 2))

Docket Nos. 50-454
50-455



APPLICANT'S SUPPLEMENTARY MEMORANDUM IN
OPPOSITION TO INTERVENORS' MOTION TO
REOPEN RECORD

On May 26 the Atomic Safety and Licensing Board (the "Board") heard the oral deposition testimony of John Hughes and received stipulations executed by the Applicant, Intervenor, and Nuclear Regulatory Commission Staff pertaining to the testimony of Irvin Souders and Junius Ogsbury. This evidence represented the Intervenor's response to the facts set forth by the Applicant and the NRC Staff in their responses to Intervenor's motion to reopen the record on Quality Assurance and Quality Control. The evidence was presented to the Board pursuant to the Board's May 12, 1983, Memorandum and Order Setting Special Deposition Session.

As it considers whether to reopen the record on QA/QC the Board has before it an evidentiary record comprised of the April 25, 1983, handwritten statement of John Hughes; Mr. Hughes' oral deposition testimony, the stipulated testimony of Irvin Souders and Junius Ogsbury, the affidavit testimony of Commonwealth Edison Company employee Richard P. Tuetken,

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and the affidavit testimony of NRC Region III Staff members D. W. Hayes and Kevin A. Connaughton. Review of this record demonstrates that there is neither a triable issue nor a significant safety issue within the meaning of the Vermont Yankee decision (Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), 6 AEC 520 (1973)) with regard to the allegations of Mr. Hughes, and therefore the Intervenor has not met their burden of demonstrating that the record on QA/QC should be reopened.

As recognized by the Board in its May 12, 1983, Memorandum and Order Setting Special Deposition Session, Vermont Yankee established a two-step analysis for determining whether a movant has met its burden of justifying reopening of an evidentiary record. First, the movant must demonstrate that its motion is timely and involves issues with safety significance. Second, if the movant meets this threshold burden it must then show that the issues involve a triable issue of fact and that the movant's evidence would withstand a motion for summary disposition. As set forth in Vermont Yankee, reopening of the evidentiary record is not warranted "if the undisputed facts establish that the apparently significant safety issue does not exist, has been resolved, or for some other reason will have no effect upon the outcome of the licensing proceeding." Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), 6 AEC 520, 523 (1973). Although the Board initially determined

that the issues raised by Mr. Hughes had safety significance because of the implications of his written statement, subsequent development of the evidentiary record has demonstrated that the issues do not have safety significance. In addition, the record shows that there are no triable issues of fact, and that the undisputed facts establish that the safety significant issues either do not exist or have been resolved.

This memorandum will review the evidence elicited with regard to each of the allegations raised by Mr. Hughes in his written statement:^{1/}

First, Mr. Hughes alleged in his statement that he was asked to sign off on inspections that he did not actually perform. Hughes Written Statement, April 25, 1983, p. 1 (hereafter "Hughes Statement"). This allegation pertains to Mr. Hughes' responsibilities in connection with Hatfield Electric Company Form HP-9A-1, which was entered into evidence as Applicant's Exhibit 35. Mr. Hughes believes that he should not have been required to sign off on the line "Inspection Completed By," because his job as a Level

^{1/} Mr. Hughes alleged in his statement that he had been retested on a certification examination one-half hour after he had failed the same test. Hughes Written Statement, April 25, 1983, p. 1. At Mr. Hughes' deposition hearing, on May 26, 1983, the Board orally ruled that Intervenor's had failed to persuade the Board that the record should be reopened on this issue. Hughes Deposition, Tr. 7211-13. Therefore, this memorandum does not address the retesting issue.

II inspector was to review the data generated by Level I field inspectors rather than to perform the actual inspections himself. Hughes Deposition, Tr. 7067 (hereafter "Tr.").

The evidentiary record on this issue indicates that the issue involves nothing more than Mr. Hughes' discomfort at the terminology utilized on the Hatfield form. Although Mr. Hughes testified that he had 'suspicions' concerning whether the Level I inspectors were actually performing the inspections he was reviewing, and he occasionally went to the field in order to check the work being performed by the inspectors, he did not recall finding any instances in which inspectors failed to perform inspections. Moreover, Mr. Hughes stated that his concerns in regard to the Hatfield form would have been alleviated by a simple change in the wording of the form to "results evaluated by." Tr. 7175, 7177. Irvin Souders, if he had appeared before the Board, would have testified that the language of Form HP-9A-1 did not affect the quality of the inspections actually performed. Mr. Souders would have testified that he occasionally went to the field to ensure that the inspections were being performed, and he generally was satisfied with what he found. Stipulation of Irvin Souders Testimony, p. 2 (hereafter "Souders Stipulation").

In addition, the NRC Staff received the same allegation from another individual several months before Mr. Hughes raised it. The Staff examined the issue and concluded

that the inspection procedures reflected in the Hatfield form, by which a Level II inspector reviews and accepts data gathered by Level I inspectors, is permissible. NRC Staff Inspection Reports 50-454/82-17 and 50-455/82-12, paragraph 3.1(3), page 16 as quoted in the affidavit of D. W. Hayes and Kevin A. Connaughton, page 6, which is appended to the NRC Staff Response to Joint Intervenors' Motion to Reopen Record (hereafter "Hayes-Connaughton Affidavit"). Messrs. Hayes and Connaughton characterized Mr. Hughes' allegation as a question of "semantics," and determined that this issue has no safety significance. Hayes-Connaughton Affidavit, pp. 6-7.

In sum, this allegation involves only the wording of Hatfield Form HP-9A-1, and the record includes no evidence that Level I inspectors failed to properly perform their duties. Therefore this allegation does not have safety significance and the evidence pertaining to it does not present a triable issue of fact.

The next allegation set forth in Mr. Hughes' written statement involved the welding of a brace to a pressure pipe. Hughes Statement, p. 2. In his deposition testimony Mr. Hughes was unable to provide the location of this weld. He reported the instance to the lead weld inspector, Mr. Ogsbury. Tr. 7074. Mr. Ogsbury, however, would have testified that he does not presently recall the instance. Stipulation of Junius Ogsbury Testimony, p. 3 (hereafter "Ogsbury Stipulation"). On examination by counsel

for Applicant Mr. Hughes acknowledged that he did not know whether the pipe was safety-related and on examination by counsel for the NRC Staff Mr. Hughes stated that his assumption that the pipe was a pressure pipe simply was based on the fact that "most pipes of a nuclear plant are pressurized pipes." Tr. 7147, 7219.

Mr. Souders would have testified that he observed the instance referred to by Mr. Hughes. He would have testified that the weld was in the Turbine Building, and that he did not believe that the piping was safety-related.^{2/} Rather, Mr. Souders believes that the piping was part of the flush system, and might well have been temporary piping. In fact, Mr. Souders would have testified that the brace might not have even been welded to the pipe, but rather the two components perhaps appeared to be welded because of their proximity. Mr. Souders does not know whether the purported weld had been inspected at the time he observed it, and he is not aware of its present status. Souders Stipulation, pp. 2-3.

Both Messrs. Hayes and Connaughton, on behalf of the NRC, and Mr. Tuetken, on behalf of the Applicant, responded to this allegation by pointing out that welding of a brace to pressure piping is not per se prohibited; to the contrary, such welding may be necessitated by design or other requirements.

^{2/} Mr. Hughes testified that, to his knowledge, none of the Turbine Building piping is safety-related. Tr. 7148.

Hayes-Connaughton Affidavit, p. 8; Affidavit of Richard P. Tuetken, appended to Applicant's Response to Motion to Allow Testimony of John Hughes, p. 1 (hereafter "Tuetken Affidavit"). Messrs. Hayes and Connaughton also noted in their affidavit that Mr. Hughes was "not responsible for nor certified to perform any inspections of welding at Byron." Hayes-Connaughton Affidavit, p. 8. According to Messrs. Hayes and Connaughton, unless Mr. Hughes were able to provide specific information concerning this allegation (which he was unable to do at his deposition) the NRC would conclude that this allegation had no safety significance.

The evidentiary record on this allegation demonstrates that the allegation does not have safety significance; Mr. Hughes himself acknowledged that if the instance occurred in the Turbine Building, an undisputed fact included in the Souders Stipulation, the event would have no safety significance. Tr. 7148. Review of the evidence also demonstrates that there is no triable issue of fact which would warrant re-opening of the record; the undisputed facts establish that the piping was not safety-related.

The next issue raised by Mr. Hughes involved the welding of a cable tray support while the cable was laying in the tray. This allegation also does not have safety significance, nor does the evidentiary record indicate the existence of a triable issue of fact; Mr. Hughes himself acknowledged during examination by Applicant's counsel that

inspection of the cable revealed that there was no blistering of the insulation, and thus no indication that the cable had been damaged as a result of the welding. Tr. 7144-45. Mr. Souders would have testified that he also observed the instance discussed by Mr. Hughes. Mr. Souders would have testified that the problem of welding of cable tray supports while cable remained in the tray was not widespread or ongoing, and the problem did not recur after the instance observed by he and Mr. Hughes. Souders Stipulation, p. 3. Thus the undisputed facts establish that this issue does not have safety significance, and that, if the issue did have safety significance, the problem did not recur.

Finally, Mr. Hughes alleged that he observed problems with weld profile, weld undercut, and the peening of welds. Hughes Statement, p. 2. In his deposition testimony, Mr. Hughes was unable to provide the locations of welds which manifested the problems he raised, nor was he aware of whether the welds had already been inspected by Quality Control inspectors. Mr. Hughes was not certified as a weld inspector at Byron, but he testified that he observed the problems with welds while he was performing inspections of hangers.^{3/} Mr. Hughes testified that the sole action he

^{3/} Mr. Hughes testified that the profile and undercut problems he observed generally occurred on welds that had been fabricated off-site. Tr. 7070, 7071. Assuming

took in response to these weld problems was to inform Mr. Ogsbury, the lead weld inspector, of the problems, and he believed that Mr. Ogsbury, who was a conscientious inspector, took appropriate action. Tr. 7149-52.

Mr. Ogsbury would have testified that while he was Hatfield's lead weld inspector there were problems at Byron with regard to weld profile and undercut, and that he knew of two instances of peening of welds. However, Mr. Ogsbury also would have testified that the problems with profile and undercut had been corrected by the time he left the site, and appropriate steps had been taken with regard to the two instances of peening. Ogsbury Stipulation, pp. 1-2.

Both Mr. Tuetken and Messrs. Hayes and Connaughton noted in their affidavits that a present reinspection program encompasses Hatfield welds at Byron. As discussed by Mr. Tuetken, any problems with welds which are identified during the reinspection will be remedied. Tuetken Affidavit, pp. 2-3; Hayes-Connaughton Affidavit, pp. 10-11. Mr. Tuetken also noted that, because the design specifications for weld characteristics such as profile and undercut might be

[FOOTNOTE 3 CONTINUED FROM PAGE 8]

that Mr. Hughes was referring to welds fabricated by Systems Control Corporation, which was the vendor that provided the hangers observed by Mr. Hughes, the QA/QC record already includes extensive testimony by Applicant witnesses and NRC Staff witnesses pertaining to problems encountered with Systems Control and resolution of those problems. Therefore, insofar as Mr. Hughes' allegations encompass welds fabricated by Systems Control Corporation there is no need to reopen the QA/QC record.

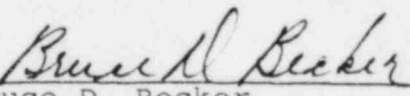
different at Byron than at the sites where Mr. Hughes was certified to perform weld inspections, in the absence of information identifying the actual welds in question he could not determine whether Mr. Hughes had observed welds which were not within design specifications. Tuetken Affidavit, p. 2.

In sum, Mr. Hughes' allegations pertaining to weld profile, undercut, and peening do not have safety significance and do not present a triable issue of fact which would warrant reopening of the record on QA/QC. Mr. Hughes reported the problems he observed to Mr. Ogsbury, who would have testified that the problems had been corrected at the time he left Byron. In any event, there is a reinspection program in progress which encompasses Hatfield welds, and any problems which are discovered will be remedied as appropriate.

For the reasons discussed above, Intervenor's have failed to meet their burden of demonstrating that the record on Quality Assurance and Quality Control should be reopened. Applicant therefore requests that Intervenor's Motion to Reopen Record be denied.

DATED: June 7, 1983

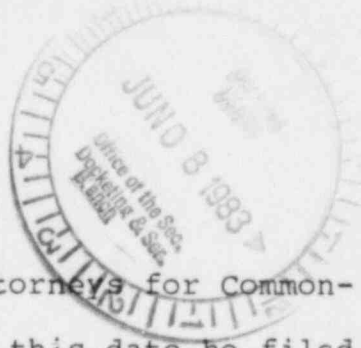
Respectfully submitted,



Bruce D. Becker
One of the Attorneys for Commonwealth
Edison Company

Michael I. Miller
Bruce D. Becker
Isham, Lincoln & Beale
Three First National Plaza
Chicago, Illinois 60602
(312) 558-7500

CERTIFICATE OF SERVICE



The undersigned, one of the attorneys for Commonwealth Edison Company, certifies that on this date he filed two copies (plus the original) of the attached pleading with the Secretary of the Nuclear Regulatory Commission and served a copy of same on each of the persons at the addresses shown on the attached service list by United States mail, Express Mail, or Federal Express as appropriate, postage prepaid.

Bruce D. Becker
Bruce D. Becker

Dated: June 7, 1983.

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SERVICE LIST

COMMONWEALTH EDISON COMPANY -- Byron Station
Docket Nos. 50-454 and 50-455

- ** Mr. Ivan W. Smith
Administrative Judge and Chairman
Atomic Safety and Licensing
Board Panel
Room 428
East West/West Towers Bldg.
4350 East West Highway
Bethesda, MD 20114
- ** Dr. Richard F. Cole
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
- * Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
- * Chief Hearing Counsel
Office of the Executive
Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
- * Dr. A Dixon Callihan
Union Carbide Corporation
P.O. Box Y
Oak Ridge, Tennessee 37830
- ** Mr. Steven C. Goldberg
Ms. Mitzi A. Young
Office of the Executive Legal
Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
- * Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
- * Secretary
Attn: Chief, Docketing and
Service Section
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
- * Ms. Betty Johnson
1907 Stratford Lane
Rockford, Illinois 61107
- ** Ms. Diane Chavez
SAFE
326 North Avon Street
Rockford, Illinois 61103
- * Dr. Bruce von Zellen
Department of Biological Sciences
Northern Illinois University
DeKalb, Illinois 60115
- * Joseph Gallo, Esq.
Isham, Lincoln & Beale
Suite 840
1120 Connecticut Ave., N.W.
Washington, D.C. 20036
- ** Douglass W. Cassel, Jr.
Jane Whicher
BPI
Suite 1300
109 N. Dearborn
Chicago, IL 60602
- * Ms. Patricia Morrison
5568 Thunderidge Drive
Rockford, Illinois 61107
- ** Mr. David Thomas
77 South Wacker
Chicago, IL 60621

* Via U.S. Mail

** Via Express Mail

*** Via Messenger