

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'83 OCT 19 A11:43

Before Administrative Judges:

Ivan W. Smith, Chairman

Dr. A. Dixon Callihan

Dr. Richard F. Cole

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of

COMMONWEALTH EDISON COMPANY

(Byron Nuclear Power Station,
Units 1 and 2)

) Docket Nos. STN 50-454 OL
) STN 50-455 OL
)
)
)
)

JOINT INTERVENORS' REPLY TO SUPPLEMENTAL
FINDINGS OF FACT AND CONCLUSIONS OF
LAW ON QUALITY ASSURANCE/QUALITY CONTROL

I. INTRODUCTION

In ruling on these fact issues, Intervenor urge the Board to keep in mind the following:

First, notwithstanding the fact that this phase of the QA/QC hearings was initiated by the unexpected availability of John Hollis Hughes' testimony, the burden throughout this operating license proceeding remains on Commonwealth Edison. It was because of Mr. Hughes' willingness to testify before the Board concerning his observations and experiences at the Byron plant that the evidentiary proceeding was reopened. All burdens placed on intervenors related to "reopening" the QA/QC phase of the hearings dissolved with the issuance of the Board's orders reopening the evidentiary proceeding.

The 82-05-19 reinspection program and the allegations against Hatfield Electric Company were briefly touched upon, in a very superficial way, by testimony of witnesses for Commonwealth

DS03

Edison and the NRC staff during the spring phase of the hearing. Because of Edison's lack of thoroughness in presenting a complete evidentiary picture on these issues to the Board in the first instance, as well as the failure of the staff to be forthcoming in presenting the details of allegations against Hatfield Electric and the 82-04-19 reinspection program, the record in that phase of the hearing was incomplete. In other words, Edison had simply not met its burden on Intervenor's Contention 1A.

Intervenor's submit that Edison has similarly failed to carry that burden when given this second opportunity to do so. A simple review of Edison's prefiled testimony of Messrs. Koca, Stanish, and Teutken shows that that testimony is cast in vague, nonspecific terms, and deals with the issues only on the shallowest of levels. This shortcoming is further amplified when Edison's evidence is compared with the facts developed on cross-examination of Edison and staff witnesses by counsel for Intervenor's, as well as with the testimony of John Hughes, and the stipulated testimony of Irvin Souders and Junius Ogsbury.

Second, both Edison and the staff rely extensively, in their proposed findings, on staff substantiation or failure to substantiate "allegations" received from plant workers. Board reliance on such staff findings is inappropriate for two reasons. To rely on the staff to find facts would result in improper and unlawful delegation of the Board's authority to the staff, as the Board has previously recognized. Additionally, the Board must look at what the staff has done so far in its investigation.

While staff investigations may be accorded some weight, because of its flawed investigatory techniques, staff findings are entitled to no weight in this circumstance and should therefore be disregarded. If the Board chooses to rely to any extent on staff investigations, it cannot at this time make findings on any allegations which are open, e.g., supplied test answers. Such findings must await the completion of all inspections and investigations, and Intervenor's opportunity to explore the substance of those investigations and inspections.

Third, upon review of Edison and staff findings from the August phase of the hearings, it is apparent that the same flaws contained in the written direct testimony are repeated here, for the proposed findings and conclusions exhibit a superficiality and convenient ignorance of most facts developed on cross-examination, which facts are fully discussed in Intervenor's initial findings submitted on September 30. Therefore, Intervenor's stand principally on that document, and herein discuss only certain misstatements submitted by opposing parties.

For the reasons stated in Joint Intervenor's initial findings and conclusions and in this document, no operating license may issue on this state of the record.

II. TESTIMONY OF JOHN HUGHES

Mr. Hughes' recounting of his testing experience (see Edison findings 771-74) remains essentially rebutted. Mr. Koca has absolutely no recollection of the incident, and, Mr. Souders

confirms the fact that Mr. Hughes was retested immediately. In addition, the allegation is still under investigation by the Office of Investigation. Contrary to the staff's assertion (see NRC staff proposed finding H-344) there is no necessity that the Board "find conclusively that the improper testing practice took place", for there is no requirement that findings be made only if they can be made "conclusively".

With respect to the discrepancy in the dates of the two tests, (see Edison finding 770), that evidence is unhelpful. No evidence was introduced by any witness as to how those dates came to appear on the documents. Also, because OI chose not to release the document until after Mr. Hughes had testified, he was given no opportunity to testify concerning the dates. Finally, both Mr. Souders and Mr. Hughes unequivocally testified that retesting occurred within 45 minutes. Therefore, the discrepancy in the documents means nothing and should be disregarded. Most important, is the lack of any testimony rebutting the fact that Mr. Hughes had the test and answers available to him upon retesting.

As may be expected, both Edison and the staff rely extensively on documentation in an attempt to disprove Mr. Hughes' testimony regarding the perfunctory nature of his classroom training. (See Edison finding 752.) Each, however, conveniently ignores the undisputed evidence that Hatfield documentation system is simply not to be trusted, as Intervenors have shown throughout their proposed findings.

Similarly, there is no attempt made to explain away the

gross discrepancy in the hours of documented on-the-job training and Mr. Hayes' attempt to verify the same. (see Edison finding 754.) Edison's description of the missing documents as having been "inadvertently lost or destroyed as a result of the reinspection/rework operations" is simply without foundation in the record. While in his written direct testimony, Mr. Hayes states that the loss or destruction of the records was "inadvertent", on cross-examination Mr. Hayes testified that "the original documents here had been misplaced or destroyed." At no time did he support his conclusion of inadvertance.

Further, the Board must take into account the fact that fully a fourth of the reports have simply vanished. Accordingly, any inference the Board may draw from missing documents must be drawn against the applicant.

In findings 759-761, Edison argues that, because the records so indicate, the Board ought to find that Mr. Hughes was certified as a Level II inspector on November 1, 1982. Such a conclusion is unjustified. Hatfield's documents are inherently unreliable, and both Mr. Koca's testimony and the NRC staff testimony with respect to Mr. Hughes' certification were based solely on those documents. The Board must therefore adopt Mr. Hughes' version of his testimony.

Similarly, in finding 763, Edison argues that because the staff did not substantiate on the basis of the available documentation that Mr. Hughes had not received the training he was supposed to have received, the Board should find likewise.

Again, any reliance on the staff's failure to substantiate is inappropriate.

III. OTHER ALLEGATIONS AGAINST HATFIELD

Commonwealth Edison summarily dismisses all other allegations, upon which public testimony was heard, in proposed findings 775-780. As shown above, and in Intervenor's proposed findings (see generally initial findings 115-47) Edison is simply in error.

Further, Edison asserts, at finding 779, that "the substance of the uninvestigated allegations" shows that investigation of them can be delayed, citing Forney tr. 7878. There appears at that page absolutely no authority for such an assertion. Indeed, Commonwealth Edison ought to be unaware of the substance of the uninvestigated allegations, and Mr. Forney aware only of those received by his office. Finally, as Intervenor's have shown, such an assertion as to the allegations which have been publicly disclosed is simply wrong. (Intervenor's findings, id.)

IV. THE 82-05-19 REINSPECTION PROGRAM

Edison's initial misstatements with respect to the reinspection program appear in finding 782, containing in a description of the NRC staff findings in 82-05-19. First, the "inconsistencies" in contractors' programs were in fact inadequacies. Second, with respect to Hatfield, the staff determined that six of the nine certification files reviewed were inadequate. (Panel, Exhibit A at p. 69.)

Contrary to the implication of finding 783, the staff did not attempt to identify inspectors unqualified to perform their functions, nor did it attempt to identify deficient work. Edison correctly states that the staff inspection identified inspectors improperly certified, but conveniently ignores the fact that without the demonstration of qualification which certification was supposed to have provided in the first instance, there is no assurance that inspectors are in fact qualified. Commonwealth Edison's and Hatfield Electric's failure to demonstrate such inspector qualification should result in a finding by the Board, as set forth in Intervenor's Contention 1A, that there is no reasonable assurance that the plant has been built in conformance with NRC requirements.

Edison also implies (see findings 785-786) that there was no requirement to apply ANSI Standard N45.2.6-1978 prior to the 82-05-19 inspection. The panel's testimony at the hearing (see Intervenor's finding 75) squarely contradicts this.

As intervenors show in their findings at 145-147, the post-82-05 certification testing program has not been followed (compare Edison finding 788), for Mr. Hughes' tests did not in any sense of the word contain forty questions for each area for certification. (See Intervenor's finding 145) Indeed, Mr. Hughes' own test on three areas of certification, Kosa Exhibit M, contained only 40 total questions.

Applicant also neglects to mention in finding 789 that its review of presently-employed inspectors to verify whether they

met the standards failed to uncover that four inspectors were not properly certified, and at least one of these, it has been proven by the staff, was in fact unqualified. (Two Hatfield inspectors without high school degrees had been incorrectly certified; Mr. Hughes' certification documentation was inaccurate; and the Hatfield Quality Assurance Manager was found by the staff not to be qualified.) Thus, the 100% review of contractor inspector certification packages (see Edison finding 792) has hardly been shown to be effective in uncovering Hatfield's improper certifications. Indeed, since four have so far been shown to have slipped through the cracks at Hatfield, and half of those were not caught by Edison, there is no reasonable assurance, nor can a reasonable assumption be made, that all Hatfield inspectors are qualified. Even if such an inference were justifiable on the facts, that says nothing about the reasons why Hatfield's slipshod QA program was allowed to exist in the first place, and to continue until construction was nearly complete.

The reinspection of work is discussed beginning at Edison finding 795. Again, Edison ignores the fact that it was resistant to the idea of a reinspection program. In spite of its description of this program as "very extensive and comprehensive", the program in fact remains nothing more than a sampling program. Further, because the program has thus far found two inspectors whose work was inadequate, as described in Mr. Teutken's testimony (Teutken, prefiled test. at p.9) and because the program thus far has only encompassed 25% of

Hatfield's inspectors, the obvious inference is that there are indeed other unqualified inspectors whose work has not been subject to the sampling program.

In findings 802-805 and 808-809, Edison asks the Board to predict the results of its inspection. Such a prediction should not be accepted by the Board for at least three reasons. First, in the face of two demonstrably unqualified inspectors, any prediction favorable to Edison is clearly inappropriate.

Second, the staff has not accepted the 90% pass rate for subjective attributes. (panel, tr. 7997-99, 8003, 8006.) Third, Edison and the staff are unable to agree as to what constitutes a subjective, or objective, attribute. Because the faults uncovered include thus far length, cracks, fusion, porosity, and slag (all attributes as to which there is no agreement as to their subjective or objective nature (tr. 8000-05)), the appropriate passing rate cannot now be determined.

Therefore, until the program is complete and the staff and Edison disputes resolved, there can be no prediction as to the outcome of the 82-05-19 reinspection program.

Further, Edison's reliance on over-inspections performed by the independent testing laboratory, PPL, failed to uncover the faults which the reinspection program has found, (see 816) and therefore should not be relied on to enhance the acceptability of the 82-05-19 inspection program. (see Intervenor's finding 65).

In findings 812 and 813, Edison discusses Mr. Stanish's audit of the reinspection program. Edison deals in substance

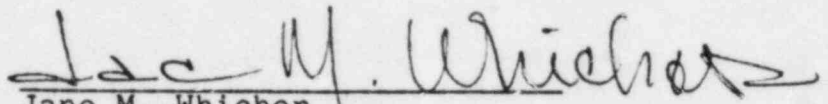
only with the fact the audit uncovered two improperly certified Hatfield inspectors. Its assertion that the other areas covered by the audit "did not involve work quality" is simply untrue. For example, the audit also found that Hatfield was not following its own QA/QC program with respect to discrepancy reports, thereby avoiding their inclusion in trending analysis. (See Intervenor's findings 61-64, 70-72.) In addition, the safety implication of Hatfield's refusal to include bolt torque inspections in the 82-05-19 program was completely ignored. (See Intervenor's findings 61-64.)

In finding 817, Edison discusses the ex parte, in camera session with Region III and OI personnel. It is suggested that the Board make several findings with respect to that session. However, any such findings at this point are inappropriate, and in fact contrary to due process principals and prejudicial to the interests of Intervenor's. Because the evidence was accepted ex parte and in camera, only one party to this proceeding, the NRC staff, was able to present evidence, examine witnesses, and argue the facts and their significance to the Board. Therefore, any substantive evidence presented to the Board ex parte in camera must not be found as fact, nor even considered by the Board as substantive evidence in this proceeding. Any use of that evidence beyond a mere scheduling decision by the Board deprives Intervenor's of their chance to even know about the information, much less cross examine witnesses or argue the merits of the issues to the Board.

Accordingly, for the reasons set forth herein and in

Intervenors' proposed findings and conclusions, no operating license may issue.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Jane M. Whicher", written over a horizontal line.

Jane M. Whicher
Attorney for Intervenors
The League and DAARE/SAFE
on all issues and matters
pertaining to quality assurance/
quality control

October 17, 1983

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

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

'83 OCT 19 AM 11:43

In the Matter of)
COMMONWEALTH EDISON COMPANY)
(Byron Station, Units 1 and 2))

Docket No. 50-454
50-455
OFFICE OF THE SECRETARY
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I hereby certify this 17th day of October, 1983, that copies of "JOINT INTERVENORS' REPLY TO SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW ON QUALITY ASSURANCE/QUALITY CONTROL" in the above-captioned proceeding were served on the following by deposit in the United States mail.

Ivan W. Smith, Chairman
Administrative Judge
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. A. Dixon Callihan
Administrative Judge
Union Carbide Corporation
P.O. Box Y
Oak Ridge, Tennessee 37830

Dr. Richard F. Cole
Administrative Judge
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

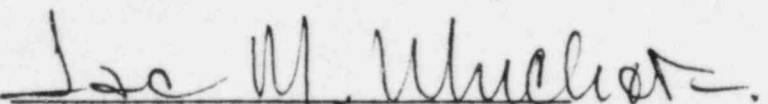
Alan P. Bielawski, Esq.
Bruce Becker, Esq.
Isham Lincoln & Beale
Three First National Plaza
Chicago, IL 60603

Steven C. Goldberg, Esq.
Office of Executive Legal
Director
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Office of the Secretary of
the Commission
Attn: Docketing & Service
Section
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

David Thomas, Esq.
77 South Wacker Drive
Chicago, IL 60621

Joseph Gallo, Esq.
Isham Lincoln & Beale
1120 Connecticut Ave., N.W.
Room 325
Washington, D.C. 20036


JANE M. WHICHER