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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BETHESDA, MD

In the Matter of)
)
COMMONWEALTH EDISON COMPANY) Docket Nos. 50-454 OL
) 50-455 OL
Byron Nuclear Power Station,)
(Units 1 and 2))

APPLICANT'S RESPONSE TO INTERVENORS' MOTION
TO REOPEN RECORD AND FOR ORDER IMPOSING COMMITMENTS

Introduction

Intervenors have moved the Board to reopen the record on quality assurance/quality control and for an order "formally and explicitly imposing" on Commonwealth Edison Company ("Applicant") and the Nuclear Regulatory Commission Staff various commitments made by these parties to the Board during the course of the hearings on QA/QC. In support of their motion Intervenors set forth three issues which they contend require reopening of the QA/QC record: the purported failure of Applicant and the Staff to keep the Board and the Intervenors informed of the status of the 82-05-19 reinspection program; the termination of Allen Koca; and the fact that the December 18, 1983, letter from B.J. Youngblood of the NRC Staff to Applicant does not include mention of the reinspection program.

None of these issues warrant reopening of the evidentiary record, nor does the conduct of Applicant

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and the Staff represent any failure to abide by commitments made to the Board. Review of the issues raised by the Intervenor demonstrates that further hearings will have no material bearing on the issues presented to the Board during the weeks of testimony on QA/QC. Further evidence is so unlikely to affect the outcome of the proceedings that Intervenor's motion fails to satisfy the legal standard previously articulated by this Board for reopening closed hearings.*/

Status of the 82-05-19 reinspection program

Intervenor apparently believe that reopened evidentiary proceedings are required due to the alleged failure of Applicant and the Staff to properly inform the Board and Intervenor of developments involving the reinspection program. Intervenor's concern apparently is twofold: they contend that the details of "substantial developments" involving the progress of the reinspection program have not been disclosed to the Board and Intervenor, and they claim that the fact that the program has been expanded indicates that there are "substantial deficiencies."

Neither of these contentions provides the basis for another round of hearings. Examination of the documents

*/ Intervenor urge the Board, should it not be inclined to reopen the record, to stay its ruling while allowing Intervenor to undertake discovery on the issues they raise. The discussion in this memorandum indicates, however, that the issues raised by Intervenor may be addressed by the Board without recourse to discovery.

prepared by Applicant and the Staff demonstrates that the Board and Intervenors have been duly kept informed of the progress of the reinspection program. Applicant's preliminary report on the reinspection was sent to the NRC on October 28, and was sent to the Board and parties on November 3. This report described the reinspection program and summarized the results of the program to date, providing cumulative data with regard to the contractors involved. The report clearly delineated the methodology utilized in determining whether inspections of attributes were acceptable; because reinspectors were found to be excessively conservative in reviewing the work of inspectors, third party reinspections by Sargent & Lundy, and in some situations by a Commonwealth Edison Level III reinspector, determined the ultimate acceptability of inspections. In situations in which the Commonwealth Edison Level III reinspector found that a rejection by Sargent & Lundy was unwarranted, the determination of the Edison reinspector was deemed to be conclusive.

The preliminary report presented cumulative data only; the voluminous underlying, inspector-by-inspector, data was available to the Staff at all times, both before and after preparation of the preliminary report. The Staff periodically reviewed the data, in order to enable it to evaluate the ongoing reinspection process and conduct its own inspections of the reinspection program. As set forth in the affidavit of Louis Del George, appended as Exhibit A, representatives of Applicant and the Staff reviewed the

preliminary report and the underlying data in a telephone conference call on November 10 (this call is referenced in the Staff's November 18 letter), and the Staff's conclusions were articulated in its November 18 letter to Applicant. Among other things, the Staff's letter rejected the use of the Commonwealth Edison Level III reinspector as the final arbiter on inspection acceptability. In the absence of reinspections by the Edison Level III reinspector the underlying data demonstrated that a small number of inspectors from Hatfield Electric Company, Pittsburgh Testing Laboratory, and Hunter Corporation did not satisfy acceptability criteria established for the reinspection program during their first three months' work, and thus additional reinspections were required to be performed. This expanded reinspection was noted in the letter of December 2 from Mitzi Young, counsel for the Staff, to the Board and parties. This reinspection is now proceeding, and final results are not yet available.*/
In sum, the documents sent to the Board and parties by Applicant and the Staff have fairly apprised the Board and parties of the status of the reinspection program, and have satisfied the commitment made by Applicant and the Staff to keep the Board and parties informed of the progress of the reinspection program.

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As set forth in Mr. Del George's affidavit, the work of seven inspectors is being reinspected, five inspectors from Pittsburgh Testing Laboratory, one from Hatfield, and one from Hunter. To date, the reinspections of all but the Hatfield inspector have been completed, and the data indicates that each of the inspectors whose work has been reinspected has met the required acceptability criteria.

Intervenors' claim that the expansion of the reinspection program mandates further evidentiary hearings likewise is unwarranted. The evidence presented to the Board in the August, 1983, hearings by both Applicant and the Staff delineated the terms of the reinspection program. The testimony of Richard Tuetken (Tuetken, Applicant's Prepared Testimony, ff. Tr. 7760) and the Staff's witnesses (NRC Staff Prepared Testimony, ff. Tr. 7801) clearly stated that if an inspector's first three months of work failed to satisfy enumerated acceptability criteria, additional reinspections would be made.*/ In accordance with the reinspection program, additional reinspections involving a small group of Hatfield, Hunter and PTL inspectors are now being conducted, and, if warranted by the results of these reinspections, further reinspections will be conducted.

Consequently, nothing has occurred which would necessitate reopened hearings. Moreover, the Staff has done nothing to indicate that it intends to permit operation of the Byron station before it is satisfied with resolution of the problems identified in the reinspection program.

Termination of Allen Koca

The circumstances of the termination of Allen Koca as Hatfield's Quality Assurance Supervisor also do not

*/ Indeed, Mr. Tuetken testified on August 11 that it appeared that as of that date one of the Hatfield inspectors would not meet the acceptable quality level for his first three months of inspections, and that his next three months of inspections were being reinspected. Tuetken, Applicant's Prepared Testimony at 9, ff. Tr. 7760.

justify reopened evidentiary hearings.*/ Although Intervenors claim that Mr. Koca's "ability and job performance" were "directly in controversy" during the August hearings, in fact Mr. Koca's testimony was circumscribed to a limited range of issues involving the training and certification of John Hughes and the testing of QA/QC trainees generally. The issues were Mr. Hughes' training and the testing of trainees, not Mr. Koca's ability to perform his work. See Koca, Applicant's Prepared Testimony, ff. Tr. 7418. Review of Mr. Koca's testimony, which was submitted to the Board in direct response to the issues raised by Mr. Hughes in his written statement and his deposition before the Board, reveals that Mr. Koca's ability to perform his job responsibilities had little if any direct relevance to the facts to which he testified.

Of course, like that of all witnesses who appeared before the Board, Mr. Koca's credibility was at issue during his appearance as a witness. In assessing his testimony, the Board must determine whether Mr. Koca was a truthful

*/ Intervenors conclude their discussion of Mr. Koca's termination by asserting that the prejudice to them on this issue is "clear." "Prejudice," however, presumably does not in itself constitute sufficient grounds for reopening a record. Although Intervenors address the legal prerequisites for reopening an evidentiary record with regard to the re-inspection program, they fail to address them with regard to Mr. Koca. Intervenors thus do not contend that the circumstances of Mr. Koca's termination have safety significance, nor do they claim that further evidentiary hearings on Mr. Koca's termination will have an effect on the outcome of the proceedings. The burden of raising and supporting such contentions was Intervenors'.

witness. Yet Applicant's December 14 letter to the Board and parties does not adversely reflect on the credibility of the testimony Mr. Koca presented to the Board. As discussed in the letter, the concern of the Staff was that friction between Hatfield's quality control inspectors and Mr. Koca was having a deleterious effect on the operation of Hatfield's quality assurance program. The letter thus does not suggest that such friction prevented Mr. Koca from testifying truthfully on the limited issues which were before the Board during the August hearings.* /

Review of the evidentiary record as a whole on the issues to which Mr. Koca addressed his testimony demonstrates that Mr. Koca was an entirely credible witness. Much of Mr. Koca's testimony focused on the training and certification of John Hughes as a Hatfield quality control inspector. Koca, Applicant's Prepared Testimony at 3-9, ff. Tr. 3418. In this regard Mr. Koca's testimony was corroborated in its entirety by the special inspections performed by the Region III Staff to determine whether Mr. Hughes had been properly trained and certified. See NRC Staff Prepared Testimony at 13-18 and I&E Report Nos. 50-454/ 83-29 and 50-455/83-22 and I&E Report Nos. 50-454/83-21 and 50-455/83-16 appended to the Staff's Prepared Testimony as Attachments E and F re-

* / Moreover, as the December 14 letter indicates, the Staff made no "findings" against Applicant with regard to Mr. Koca. Thus Intervenors' charge, in their footnote ***, on page 5 of their motion, that the Staff made "findings" outside the normal "I&E" system is inapposite.

spectively, ff. Tr. 7801. On the issue of testing of trainees Mr. Koca testified that it was his practice to usually allow one full day to elapse before allowing a trainee to be retested, and that on those occasions in which a test was retaken on the same day on which it was initially administered the retesting occurred at the very end of the day. Koca, Applicant's Prepared Testimony at 11, ff. Tr. 7418. Although Mr. Hughes claimed that he was retested a mere thirty minutes after failing a test, the test that Mr. Hughes gave to the Staff as the one that he purportedly had failed was dated October 8, 1982, four days before he passed the same test. See Staff Exhibit 5.

Intervenors, of course, had the opportunity to cross examine Mr. Koca in order to undermine his credibility, and they examined him extensively.

In sum, Mr. Koca's termination does not provide a sufficient basis for further hearings. The scope of the August hearings was strictly circumscribed by the Board to the issues raised by the allegations of John Hughes, and Mr. Koca therefore testified to a finite group of issues; Mr. Koca's ability to perform his own job was not directly in controversy before the Board. Consequently, reopened hearings would have little effect on Mr. Koca's credibility with regard to the facts to which he testified in August.

Youngblood letter

Intervenors also claim that the December 18 letter from B.J. Youngblood to Applicant demonstrates that the

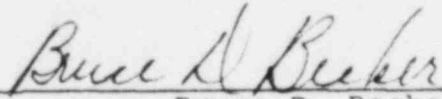
Staff has abrogated its commitment to the Board that the reinspection program will be satisfactorily resolved prior to the loading of fuel at Byron. This contention simply misses, or ignores, the purpose and context of Mr. Youngblood's letter.

The December 18 letter pertains only to several items required for the completion of review of Byron by the Office of Nuclear Reactor Regulation. The letter itself does not purport to articulate a complete list of the items which remain to be resolved prior to fuel load, nor was it required to. The letter encompasses only open Safety Evaluation Report (SER) items, and was not meant to include outstanding quality assurance issues. Although the SER required that an adequate QA/QC program be established at Byron, oversight of the implementation of the program is the responsibility of Region III. Thus, in addition to the items delineated in the letter, before it will license the plant NRR requires the Region III Staff's assurance that open QA/QC items, such as the reinspection program, have been satisfactorily resolved. The Region III Staff has done nothing to indicate that it intends to recommend that an operating license be granted to the Byron facility before resolution of the reinspection program, and therefore an

evidentiary hearing on this issue, like the issues discussed above, is unwarranted.

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Respectfully submitted,



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