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UNITED STATES OF AMERICA ⁸⁴ APR -6 A10:21
NUCLEAR REGULATORY COMMISSION

OF SECRETARY
DOCKETING & SERVICE
BRANCH

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
METROPOLITAN EDISON COMPANY, <u>ET AL.</u>)	
)	Docket No. 50-289-OLA
(Three Mile Island Nuclear)	ASLBP 83-491-04-OLA
Station, Unit No. 1))	(Steam Generator Repair)
)	

LICENSEE'S MOTION FOR LEAVE TO FILE REPLY TO
JOINT INTERVENORS' RESPONSE TO LICENSEE'S
MOTION FOR SUMMARY DISPOSITION

Licensee hereby moves the Atomic Safety and Licensing Board, pursuant to 10 C.F.R. § 2.730, for leave to file the accompanying Reply to Joint Intervenor's March 20, 1984 Response to Licensee's Motion for Summary Disposition.^{1/} As we explain in greater detail below, Licensee should be permitted to file such a reply because Joint Intervenor's have wrongfully and unfairly predicated their opposition on new facts and allegations which should have been, but were not, provided to Licensee in response to discovery requests. Joint Intervenor's have also

^{1/} Licensee's reply has been combined with its Answer to Joint Intervenor's March 20, 1984 Motion to Stay the Hearing.

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failed to comply with the requirements of 10 C.F.R. § 2.749, raised issues which are outside the scope of the contentions and of the hearing, and mischaracterized Licensee's amendment application and summary disposition motion.

During the discovery period, Licensee propounded two sets of interrogatories and document production requests to Joint Intervenors in order to ascertain the full scope and specific nature of their allegations. Joint Intervenors' answers to the discovery requests articulated a number of allegations as the bases for their contentions. Armed with this understanding of Joint Intervenors' concerns, Licensee moved for summary disposition of their contentions on February 24, 1984. Licensee addressed each contention in depth, and in particular, addressed each of the facts and allegations which had been identified in the intervenors' discovery responses. In so doing, Licensee demonstrated that these facts and assertions raise no genuine issue as to any fact material to Joint Intervenors' contentions.

Joint Intervenors' March 20, 1984, response to Licensee's summary disposition motion necessitates a reply because Joint Intervenors there raise a completely different set of allegations which were never alluded to, much less explained, in their responses to Licensee's discovery requests. This is so

notwithstanding that Licensee's discovery requests unquestionably sought identification of the allegations Joint Intervenor now make,2/ and of the documents upon which they now rely.3/

2/ For example, Joint Intervenor now assert for the first time that copper may function akin to a synergist. See Joint Intervenor's Response, at 3. Yet in Licensee's first discovery request, Interrogatory 1(5)-14 (December 15, 1983) requested that Joint Intervenor identify "each and every synergistic effect which you allege was not, but should have been, considered and explain the cause of the chemical agents involved in each such effect." In Licensee's second discovery request, Interrogatory II-1(5)-12(a) (January 24, 1984) further requested that Joint Intervenor identify "each and every synergist which is likely to have an effect on the oxidation and reduction processes, and/or the synergistic effect which is likely to occur during reactor operation. . . ." Licensee's discovery requests also addressed all of the other issues raised by Joint Intervenor in their contentions and during the prehearing conference, including the effects of morphological changes, and potential stress cracking agents other than sulfur.

3/ Licensee's discovery requests instructed Joint Intervenor to identify each and every document which (1) they claim supports their answers and allegations, (2) which they plan to use as an exhibit, and (3) which they planned to use for purposes of cross-examination. See, e.g., Licensee's Interrogatories 1(3)-5(December 15, 1983); II-1(3)-10, II-1(3)-11 (January 24, 1984). However, Joint Intervenor failed to identify during the course of discovery the documents upon which they now rely ("Examination of Tube Samples 21-46 and 28-45 from the Ginna Nuclear Power Plant for Intergranular Attack," EPRI NP-2877, (February 1983); "Evaluation of Steam Generator Tubes R7C45 and R21C46 from the Ginna Nuclear Power Plant," EPRI NP-3070-LD, (May 1983); "Stress Corrosion Cracking of Alloy 600," EPRI NP-2114-SR, (November 1981); J.V. Monter and G.J. Theus, "TMI-1 OTSG Corrosion Test Program-Final Report," B&W Report, (May 9, 1983); J.C. Griess and J.H. DeVan, "Behavior of Inconel 600 in Sulfur-Contaminated Boric Acid Solutions," ORNL/TM-8544, (March 1983)). All of these documents were sent to Joint Intervenor as part of Licensee's response to Joint Intervenor's discovery requests on January 31, 1984. Thus, Joint Intervenor had these documents in their possession for nearly a month before

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Fundamental fairness requires that Licensee be permitted an opportunity to respond to the new allegations prior to the Board's determination of Licensee's summary disposition motion. This result is required as well to safeguard the integrity of the Commission's rules, which contemplate the use of the summary disposition procedures as an efficacious means of avoiding unnecessary hearings. As Licensee's accompanying reply demonstrates, despite their reliance on new information, Joint Intervenors have raised no genuine issue as to any material fact. Licensee should be permitted to demonstrate this conclusion at this time, rather than unnecessarily having to do so in a lengthy evidentiary hearing.

Additional irregularities in Joint Intervenors' response equally demand a reply. Foremost among these, Joint Intervenors seek to thwart summary disposition by raising issues which are outside the scope of the admitted contentions, and indeed, are outside the scope of the hearing. They also have "supported" their opposition only with quotations from various reports taken out of context, or mischaracterizations of

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responding to Licensee's supplemental interrogatories on February 27, 1984, yet did not identify these documents until they filed their response to Licensee's motion for summary disposition on March 20, 1984.

Licensee's prior pleadings, and thus have failed to satisfy 10 C.F.R. § 2.749's requirement that they support their opposition with a statement of facts and affidavits or similar admissible evidence. Id. at § 2.749(a), (b). The regulations make clear that unless a properly supported opposition is filed, summary disposition "shall be rendered." Id. at § 2.749(b). Licensee ought to have the opportunity to demonstrate this is the case as well.

WHEREFORE, Licensee respectfully requests that its motion be granted and that Licensee be permitted to reply to Joint Intervenors' Response to Licensee's Motion for Summary Disposition.

Respectfully submitted,

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Dated: April 4, 1984

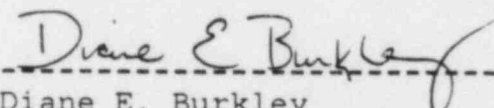
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(Three Mile Island Nuclear Station,)	(Steam Generator Repair)
Unit No. 1))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Motion for Leave to File Reply to Joint Intervenor's Response to Licensee's Motion for Summary Disposition", dated April 4, 1984, were served upon those persons on the attached Service List, by deposit in the United States mail, postage prepaid, this 4th day of April, 1984.



Diane E. Burkley

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Station, Unit No. 1) (Steam Generator Repair)

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