

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

NRC PUBLIC DOCUMENT ROOM



In the Matter of)

COMMONWEALTH EDISON COMPANY)

(Braidwood Nuclear Power Station,
Units 1 and 2))

Docket Nos. 50-456
50-457

APPLICANT'S MOTION REQUESTING THAT
THE BOARD ESTABLISH A SCHEDULE
FOR THE FILING OF CONTENTIONS

Commonwealth Edison Company ("Applicant") hereby moves the Board to exercise its authority pursuant to 10 CFR §2.711 and require that final contentions in these proceedings be filed on or before July 2, 1979, and that responses, if any, thereto be filed on or before July 20, 1979, or establish its own reasonable schedule for the filing of final contentions. The grounds for this motion are as follows.

ARGUMENT

On April 18, 1979, Applicant requested that the Board establish a date for a special prehearing conference.¹ This motion was supported by the NRC Staff.² The Board has

1/ "Motion Requesting That The Board Schedule a Prehearing Conference," dated April 18, 1979.

2/ "NRC Staff Response to Applicant's Motion Requesting That The Board Schedule a Special Prehearing Conference," dated May 4, 1979.

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not, as of this time, established such a date which may well be due to scheduling conflicts of Board Members.

A notice of hearing in this proceeding was published in the Federal Register on December 15, 1978. (43 F.R. 58659). Various timely petitions to intervene were filed, and on March 22, 1979, this Board entered an order granting leave to intervene to the Petitioners. Thus, Petitioners have had actual notice of the hearing for at least six months, and notice of their status as participants in these proceedings for approximately two months. However, Petitioners have not filed any amended contentions or stated their intention to stand on their previously filed contentions. In all probability, any amended contentions will not be forthcoming until a deadline is set by the Board. As a result, preparation for these proceedings by the non-intervening parties has come to a standstill. Therefore, if it is impossible for the Board to schedule a special prehearing conference, the Board should adopt the alternate mechanism proposed in the present motion.

Some of the possible benefits which would flow from an order such as the one proposed by Applicant are as follows:

(1) Informal discovery on contentions as to which no objections are posed could commence immediately upon the filing of Petitioner's contentions.

(2) Negotiations regarding the contentions as to which objections are posed might well result in agreements

with respect to the acceptability of certain modifications to these contentions or possibly voluntary withdrawal of contentions. Stipulated contentions would focus upon the specific matters which are truly contraverted, thereby significantly limiting and clarifying the legal and factual issues which the Board will eventually have to rule on at the special prehearing conference.

(3) If Applicant determines that certain contentions are meritorious, Applicant could modify its plans and thereby alleviate some, if not all, of Petitioners' concerns.

(4) As the Appeal Board has recognized, the provisions of 10 CFR §2.714(b) may not permit sufficient time to formulate adequate contentions. Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 2 CCH Nucl. Reg. Rptr. at 28, 942 fn. 16 (April 4, 1979). An order such as the one proposed herein would avoid any such possibility of procedural unfairness.

(5) The proposed schedule would give Applicants and the Staff a realistic opportunity to examine and respond to the final contentions.

As Applicant has previously indicated, Petitioners have had more than ample time to formulate their final contentions. "[A] petitioner can and should use the period following the filing of his petition to gather the material and do the analysis necessary to prepare adequate

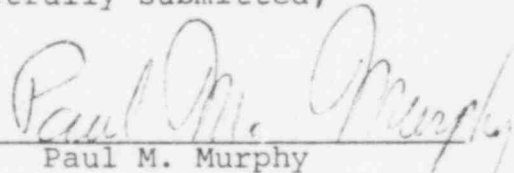
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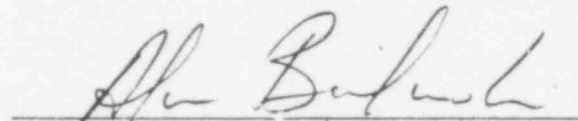
contentions." Allens Creek, ALAB-535, supra, at 28, 942 fn. 16. Therefore, the establishment of time limits for the filing of contentions would not abrogate any of Petitioners' substantive or procedural rights, and may even serve to rectify what has been characterized as an "obvious gap" in the rules. Ibid.

WHEREFORE, Applicant respectfully moves the Board to exercise its authority pursuant to 10 CFR §2.711 and require that final contentions be filed on or before July 2, 1979, and responses be filed on or before July 20, 1979, or, in the alternative, establish a date for the special pre-hearing conference as previously requested.

DATED: June 7, 1979

Respectfully submitted,


Paul M. Murphy


Alan P. Bielawski
Attorneys for
Commonwealth Edison Company

ISHAM, LINCOLN & BEALE
One First National Plaza
Suite 4200
Chicago, Illinois 60603
(312)558-7500

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CERTIFICATE OF SERVICE

I, Alan P. Bielawski, one of the attorneys for Commonwealth Edison Company, certify that copies of "Applicant's Motion Requesting That The Board Schedule A Special Prehearing Conference" have been served in the above-captioned matter on the following by United States mail, postage prepaid, this 7th day of June, 1979:

Edward Luton, Esq., Chairman
Atomic Safety and Licensing Board Panel
United States Nuclear Regulatory Commission
Washington, D.C. 20555

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

Dr. Franklin C. Daiber
College of Marine Studies
University of Delaware
Newark, Delaware 19711

Myron Karman, Esq.
Office of the Executive Legal Director
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Richard J. Goddard, Esq.
Office of the Executive Legal Director
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing Board Panel
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing Appeal Board Panel
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing and Service Section
Office of the Secretary of the Commission
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Chief Hearing Counsel
Office of the Executive Legal Director
United States Nuclear Regulatory Commission
Washington, D.C. 20555

C. Allen Bock, Esq.
P.O. Box 342
Urbana, Illinois 61801

Thomas J. Gordon, Esq.
Waller, Evans & Gordon
2503 South Neil
Champaign, Illinois 61820

Ms. Bridget Little Rorem
117 North Linden Street
Essex, Illinois 60935

DATED: June 7, 1979



Alan P. Bielawski