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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



In the Matter of

COMMONWEALTH EDISON COMPANY

(Byron Nuclear Power Station,
Units 1 and 2)

Docket Nos. 50-454
50-455

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.

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 23, 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 contravered, 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.

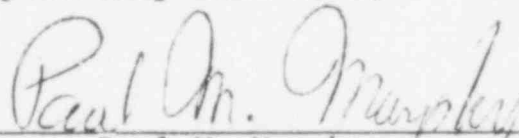
As Applicant has previously indicated, Petitioners have had more than ample time to formulate their final contentions. "[A] petitioner can and should use the period following the filing of his petition to gather the material and do the analysis necessary to prepare adequate

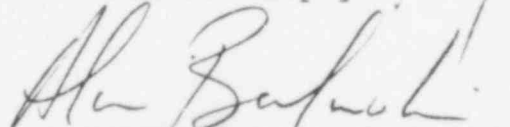
contentions." Allens Creek, ALAB-535, supra, at 28, 942 fn. 16. Therefore, the establishment of time limits for the filing of contentions would not abrogate any of Petitioners' substantive or procedural rights, and may even serve to rectify what has been characterize³ as an "obvious gap" in the rules.³ 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,


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3/ The League of Women Voters of Rockford, the only Petitioner who responded to Applicant's earlier request that this Board schedule a prehearing conference, has indicated that a prehearing conference could be scheduled for July 1, 1979. See, "Answer To Motion Requesting That The Board Schedule a Special Prehearing Conference," dated April 23, 1979. Therefore, this Petitioner was presumably prepared to file final contentions as of June 15, 1979.

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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:

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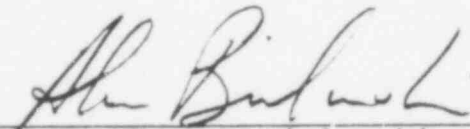
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