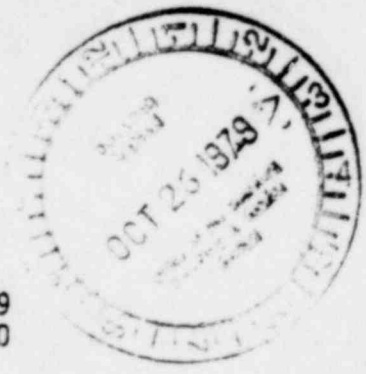

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of Commonwealth Edison Company Interstate Power Company Iowa-Illinois Gas and Electric Company Carroll County Site	)	Docket Nos. S-599 S-600

October 22, 1979

BRIEF OF IOWA PIRG, ET. AL., RESPONDING TO
MEMORANDUM OF SPECIAL PRE-HEARING CONFERENCE
AND ORDER OF THE ATOMIC SAFETY AND LICENSING BOARD

1. While it is true that the Applicants have not requested any specific findings of fact related to transmission lines which would emanate from the Carroll County units, it is not true that the rights-of-way remain, at this point, an unknown quantity. Section 3.9.1 of the CCS-SS-ER provide adequate details concerning the location and description of rights-of-way for the needed transmission lines to allow any of the intervenors to narrow the scope of such routes to within a few hundred yards on either side of its likely final path. The only major question, really, is the nature and exact location, of lines crossing the Mississippi River.

The intervenors herein are duly concerned, that before purchase of further land or easements take place by the Applicants for the purpose of the proposed transmission lines, property owners should be aware of the likely environmental effects and health effects from such structures. This can only be achieved through hearings that fully explore the issue, before and not after such purchases take place. Property owners who determine, from the evidence, that continuing adverse health and environmental impacts can be expected,

a not unlikely outcome, may decide that a single payment is an inadequate form of compensation. As the intervenors representing the local property owners of Carroll County, we cannot accept the argument that the Applicants should be allowed to define the rules of the game in one fashion, while playing it by another set of rules entirely. Enough is known, or presentable in the way of evidence, to substantially define the major effects attributable to the transmission lines as now planned. Property owners in the affected areas should be exposed to such evidence at the earliest opportunity.

On this basis, Iowa PIRG, et al., request the prompt reinstatement of their contention 3(a), and the clause, "and the transmission lines," in contention 3 (c). Alternatively, the intervenors demand advance notification of any planned negotiations for property rights by the Applicants along any of the rights-of-way described in Section 3.9.1 of the CCS-SS-ER.

2. The intervenors believe that the licensing board may have misinterpreted the purpose of their contention no. 4, which may well have been better stated as a separate motion, rather than a contention. Our purpose was not to raise the mining and milling of uranium as an evidentiary issue at this time, but rather to protect our own proprietary interests intact until the construction permit is considered.

Therefore, intervenors now move that the licensing board issue a prohibition against the Applicants from proceeding to negotiate or sign any contracts for the mining, milling, or processing of uranium fuel, either prior to, or on the basis of, any findings of the licensing board during the early site review of the Carroll County units.

The intervenors incorporate by reference both the Ecology Action of Oswego, and Kepford suits versus the NRC, cited in their "Supplement to Petition for Leave to Intervene," as pending cases involving substantial issues dispositive of the precise pre-emptive damage to a proper cost-benefit analysis, which the intervenors herein seek to avoid.

That public interest intervenors have a right to expect the NRC, including licensing boards, to take proper steps to insure such equity is clearly established in the law. Coalition for Safe Nuclear Power v. AEC, 463 F. 2d 954, 956 (D. C. Cir., 1971); Calvert Cliffs Coordinating Committee v. AEC, 449 F. 2d 1109 (D. C. Cir., 1971); Arlington Coalition v. Volpe, 458 F. 2d 1323, 1332 (4th Cir., 1972) cert den. sub nom; Fugate v. Arlington Coalition, 406 U. S. 1000 (1972); EDF v. TVA, 468 F. 2d 1164, 1183-84 (6th Cir., 1972); Essex County Preservation Association v. Campbell, 536 F. 2d 956 (1st Cir., 1976).

The intervenors argue that the relief sought against premature environmental damage from uranium mining, is comparable to relief from unauthorized or premature construction activity, where the environmental impact had not yet been evaluated. Not only is there a monetary commitment on the part of the Applicants, but there is also serious danger of tipping the cost-benefit balance severely against the environmental interests in the case. The seriousness is underlined by the memorandum of Dr. Walter H. Jordan, ASLBP, NRC, to James R. Yore, Chairman, ASLBP, of September 21, 1977.

In 1977, Dr. Chauncey Kepford testified in the matter of the Three Mile Island Unit 2 (Docket 50-320) Operating License hearings,

that the uranium mill tailings factor incorporated in Table S-3 of 10 CFR was seriously underestimated in calculating health effects over hazard life, because it was based on the life of the mine, rather than the active life of the tailings piles. Dr. Jordan supported that position, and averred in his memorandum that the values were too low by a factor of 100,000. Even assuming optimum management of the tailings, Dr. Jordan subsequently refined his estimate to 400 additional deaths per reactor fuel requirement per year from mill tailings.

The intervenors maintain that these are consequences severe enough to merit the relief requested, and remind the board of the difficulties that have arisen for the Three Mile Island board in the aforementioned appeal by Dr. Kepford.

3. NUREG-0180 clearly anticipates the possibility of a review of financial requirements for the Applicants in an early site review. While it clearly leaves that option to the Applicants themselves, there is an issue of equity here which supercedes the technicalities of the regulations. It is repeatedly argued by the Applicants, as well as the NRC staff, that early resolution of selected issues is in the public interest for all parties, including intervenors. Yet, while the Applicants find no company other than the NRC staff for that assertion (certainly not among any of the intervenors), the Applicants have sole discretion to determine the issues in the early site review. Issues of crucial importance to the intervenors, such as proof of financial requirements, are promptly dismissed as outside the bounds of the case. It would seem that a process designed to expedite the public interest would operate in a precisely onposite fashion. In the instance here, intervenors are concerned about the impact of the recent denial of the

Applicants' huge rate increase request before the Illinois Commerce Commission. There is a justifiable fear that failure to deal with this issue in a timely manner will leave local residents in doubt as to the likely outcome of the proceedings.

4. Once again, the intervenors herein stress their concern about the Applicants'ability to define the boundaries of the early site review at will, while matters of crucial concern to the intervenors are not only ruled irrelevant in the case of financial requirements, but are removed from the case after prior submittal by the Applicants. The only possible reason for the Applicants' motion for permission to withdraw proposed finding of fact no. 8, is the dubious nature of the need for these two units in the first place.

That circumstance underlines the uncertainties that lie ahead for local residents in the proceeding. The intervenors state that if need for power can be withdrawn as a proper issue for an early site review, it is a serious enough sign of unlikely need for the foreseeable future to justify dismissal of the early site review itself.

5. The Applicants, NRC staff and licensing board seem to have had no objection to Iowa PIRG contention no. 9. It is therefore presumed that its omission from the board's order was an inadvertent error, and a correction is requested. If this is not the case, the intervenors request the additional opportunity, upon notice, to argue for its admission.

Respectfully submitted,

James C. Schwab

James C. Schwab
State Coordinator, Iowa PIRG

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
COMMONWEALTH EDISON COMPANY, et al.	)	Docket Nos. S50-599 S50-600
	)	
(Carroll County Site)	)	

CERTIFICATE OF SERVICE

I, James C. Schwab, hereby certify that copies of "Brief . . . Responding to Memorandum . . . and Order" of Special Pre-Hearing Conference" on behalf of Iowa PIRG, et al., in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, this 24th day of October, 1979.

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