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'82 NOV 19 P1:48

November 16, 1982

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Dr. Richard F. Cole
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Mr. A. Dixon Callihan
Administrative Judge
Atomic Safety and Licensing Board
c/o Union Carbide Corporation
P.O. Box Y
Oak Ridge, TN 37830

RE: In the Matter of Commonwealth Edison Company
(Byron Nuclear Power Station, Units 1 and 2)
Docket Nos. 50-454 and 50-455

Gentlemen:

I am enclosing a copy of a letter, dated November 15, 1982, from Richard J. Rawson, Counsel for the NRC Staff. Mr. Rawson's letter indicates that the Staff will voluntarily produce an appropriate witness or witnesses and any pertinent documents with respect to the question of Staff's interpretation of the term "important to safety" as that subject is more extensively explained in Commonwealth Edison Company's Application for Subpoena filed with the Licensing Board yesterday. Accordingly, I hereby withdraw my November 15 request for subpoenas in view of the representation made by Mr. Rawson. I, of course, reserve the right to renew the application for subpoena should a disagreement arise with respect to the Staff's selection of deposition witnesses.

Sincerely,

Joseph Gallo
Joseph Gallo

One of the attorneys for
Commonwealth Edison Company

Encl.: As stated.
cc: Service List
JG/spa

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

November 15, 1982

Joseph Gallo, Esq.
Isham, Lincoln & Beale
1120 Connecticut Avenue, NW
Suite 870
Washington, DC 20036

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

Dear Mr. Gallo:

I am in receipt of a copy of your application to the Licensing Board for the issuance of a subpoena to the Executive Director for Operations or his designee(s) regarding the Staff's use of the term "important to safety." As I told you in our telephone conversation this afternoon, it appears to me that you and I misunderstood one another in our conversation this morning, with the result that you have requested action by the Licensing Board which is not authorized by the Commission's Rules of Practice.

You asked this morning whether the Staff was willing voluntarily to produce for deposition a witness on the subject of safety classification terminology and the November 20, 1981 memorandum from Harold Denton to all NRR personnel on standard definitions for commonly-used safety classification terms. I told you that the Staff preferred that a formal request be made for such a deposition in accordance with the Commission's rules. I did not mention subpoenas and it was not my intention to suggest to you that a subpoena would be necessary or appropriate. Under 10 CFR § 2.720(h)(1), it appears issuance of a subpoena to obtain the testimony of NRC personnel is not appropriate. Rather, the regulations provide that "the NRC Staff will make available one or more witnesses designated by the Executive Director for Operations, for oral examination . . . regarding any matter, not privileged, which is relevant to the issues in the proceeding."

We agreed this afternoon that you would withdraw your application in order to save the Board and the parties the trouble of formal response and disposition of the application. We will construe your application for subpoenas as a formal request for depositions under 10 CFR § 2.720(h)(2)(i) and make an appropriate witness (or witnesses) and documents available. I will be in touch with you later this week as to the identity of such a witness or witnesses and to discuss a mutually convenient schedule and location for the document production and deposition.

Sincerely,

A handwritten signature in cursive script, which appears to read "Richard J. Rawson", is written above the typed name.

Richard J. Rawson
Counsel for NRC Staff