

STENOGRAPHIC TRANSCRIPT OF PROCEEDINGS

BEFORE THE

Illinois Commerce Commission

DOCKET NO. 80-0760

IN THE MATTER OF:

ROCKFORD LEAGUE OF WOMEN VOTERS

VS.

COMMONWEALTH EDISON COMPANY

PLACE: Chicago, Illinois

DATE: July 22, 1981

PAGES: 46-66

SULLIVAN REPORTING COMPANY

OFFICIAL REPORTERS

ONE NORTH LA SALLE STREET

CHICAGO, ILLINOIS 60602

782-4705

8111130227 811106
PDR ADOCK 05000454
G PDR

SPRINGFIELD, ILLINOIS

217-528-6964

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:

ROCKFORD LEAGUE OF WOMEN VOTERS)	
)	
vs.)	
)	No. 80-0760
COMMONWEALTH EDISON COMPANY)	
)	
Application to halt construction)	
of Byron Nuclear Power Station.)	

Chicago, Illinois

July 22, 1981

Met, pursuant to adjournment, at 10:30 a.m.

BEFORE:

MS. WANDA KAMPHUIS

APPEARANCES:

✓ MESSRS. ISHAM, LINCOLN & BEALE, by
MR. PAUL M. MURPHY and
MR. ALAN P. BIELAWSKI
One First National Plaza
Chicago, Illinois 60603
appearing for the respondent

MR. KENNETH F. LEVIN
30 North LaSalle Suite 2700
Chicago, Illinois 60602
appearing for Cherry & Flynn
for the petitioner

MR. ANDREW J. MANTELOS
160 North LaSalle
Chicago, Illinois
appearing for the Illinois Commerce
Commission - Accounts and Finance

SULLIVAN REPORTING COMPANY, by
Sharon D. Novak

I N D E X

Witnesses:

Direct Cross Redirect Recross Exmr.

NONE

EXHIBITS

NONE

EXAMINER KAMPHUIS: Pursuant to the direction of the Illinois Commerce Commission, I call Docket No. 80-0760 regarding the application of the Rockford League of Women Voters to halt construction of the Byron Nuclear Power Station.

Will the parties enter their appearances for the record, please.

MR. LEVIN: Kenneth F. Levin. With your permission I would be appearing today on behalf of Cherry & Flynn who are the attorneys for the Rockford League of Women Voters. Both Messrs. Cherry & Flynn are engaged in Aurora, Illinois, on a court order mandated discovery schedule up there.

So, I am not entering a formal appearance on my behalf for them, but would seek to represent them at these proceedings this morning.

EXAMINER KAMPHUIS: You will be allowed to do so.

MR. MURPHY: Paul M. Murphy and Alan P. Bielawski on behalf of the respondent Commonwealth Edison Company.

MR. MANTELOS: Andrew J. Mantelos, appearing on

behalf of the Accounts and Finance Department, Public Utilities Division, Illinois Commerce Commission, 160 North LaSalle, Chicago, 60601.

EXAMINER KAMPHUIS: Let the record show there are no further appearances.

This matter was set over for today to wait to see what the Commission did with the motion to dismiss filed by Commonwealth Edison Company.

The motion to dismiss was discussed by the Commission at its last agenda hearing in Chicago, and I just would like to summarize what their discussion was and really with regards as to additional information that can be presented.

I am going to divide the issues presented into different items. The first would be the capital cost estimates regarding the Byron Station and whether they make the station uneconomical. And the second would be the operating cost cited by the League regarding operating efficiency and waste disposal cost.

These items were covered in Docket No. 78-0646 and certain assumptions were used in

developing the studies in that docket on which the Commission made its decision.

It is the opinion of the Commission that the petitioner should be allowed to bring forward material or evidence if it wants to argue that there are substantial changes in those items that have occurred since the entry of its order in Docket No. 78-0646.

MR. MURPHY: Could you go over this a little slower, please.

EXAMINER KAMPHUIS: Do you want me to repeat that last thing?

In Docket 78-0646, certain assumptions were made about the capital cost of the Byron Plant or capital costs of the Braidwood Plant, which would argumentatively be relevant to the Byron Plant since Braidwood is further off in time in construction and completion than Byron and certain assumptions are made regarding the cost of waste disposal and efficiency at which those plants would operate at.

In order to determine whether or not it was economical to continue construction on schedule

or delay construction, the Commission is of the opinion that petitioner should be given an opportunity to bring forward evidence that would show a substantial change in those items since the entry of that order that petition would change the outcome of that order.

Is that understandable on those particular items, the capital cost, waste disposal and load factor?

MR. MURPHY: "Load factor" or "capacity factor?" I believe the reference in the affidavit was to "capacity factor."

EXAMINER KAMPHUIS: Excuse me. "Capacity factor."

If there are no questions regarding those particular items, then I can move on to the other items. And I characterize the issue of the petition in the responding memorandums this way: Whether the proceedings before the N.R.C. regarding licensing of the Byron Station may result in costly modifications to the station such that the station will become uneconomical. And the second issue would be whether it makes any sense or is possible to consider

this matter prior to actual determination by the N.R.C. regarding necessary modifications of the Byron station.

MR. MURPHY: Whether it can be considered or whether it should be considered?

EXAMINER KAMPHUIS: Whether it makes any sense or is in any practical sense possible to consider that prior to N.R.C. making its decisions.

The Commission is of the opinion to make a judgment on these issues, it needs additional information. It needs the information along the following lines: How far along construction of Byron station is, and that would be referenced in various ways. I understand that Edison maintains that it is 90 percent structurally complete. How that relates to in terms of an operating plant, I'm not sure. So, that would have to be clarified.

A status report on N.R.C. proceedings considering safety issues raised by the League that are relevant to Byron, and estimates of when such proceedings will be completed.

A status report on ongoing or future N.R.C. proceedings that relate solely to the Byron station, and estimates of when such proceedings will conclude.

That would obviously have to cover the substance of those proceedings as it relates to safety modifications over and above what's specified in the plans now.

Estimates of costs of modifications that the parties believe will be required at the Byron Plant and any difference in such cost that will result from such modification being made after completion is complete.

MR. LEVIN: I'm sorry. I didn't hear that.

EXAMINER KAMPHUIS: Estimates of the cost of modification the parties believe will be required at the Byron station and how those estimates will change if those modifications are made after the plant is completed, after plant construction is done as opposed to making those modifications before the plant is completed.

To the extent that this material can

be presented in affidavit form, I would request that.

Any questions on that?

MR. MURPHY: Are these in the nature, except for number 2 and 3 seem to ask for basically the same information, from either party? That is, status on N.R.C.? I'm not sure if there are 3 items or 4. I believe you want the status report on all N.R.C. proceedings.

EXAMINER KAMPHUIS: Mr. Cherry or that petition sets forth the generic safety issues list and argues that if they are ever resolved, they may be resolved in such a way that they require modification of Byron. I direct those to generic issues that may related to Byron as opposed to actual issues being raised by Byron proceedings before the N.R.C.

Does that clarify that?

MR. MURPHY: I'm not sure. You want us to report on when the N.R.C. plans on completing some internal research that it's doing?

EXAMINER KAMPHUIS: That would tell -- even telling me that status of that tells me something about is it being researched internally at the

N.R.C. or are they actually having a generic going on; do they have a rule making going on?

I mean take too degradation of Westinghouse plants. What is the current status of that in terms of N.R.C. in and to the extent that it's known.

MR. MURPHY: Who is to file that?

EXAMINER KAMPHUIS: I would say either could respond to that. To the extent that you have knowledge about it, I would assume that you would want to file that with the Commission.

MR. MURPHY: May I suggest that Mr. Cherry be given the burden on that particular one? He is the one that raised the issue. If we disagree with his report, we would certainly bring it to the Commission's attention.

But as I think we made clear in our response, we don't believe that the generic resolution of these matters is relevant to the Byron station as the N.R.C. will insist on resolution of all safety matters at the Byron station, whether or not a solution has been developed that would be

generically applicable.

EXAMINER KAMPHUIS: As far as I am concerned, petitioner does have a great degree of burden to establish that there is some reason to continue an investigation into the Byron station. So, certainly, the petition has to go forward with some evidence on that issue.

MR. MURPHY: Now, the first item you mentioned was how far along is Byron construction. I would assume that's a request for information from Commonwealth Edison Company, and we will certainly respond to that.

As to the last item, the estimate of the cost of modifications, any changes to the estimated cost in the event that the modifications were required after the construction of the plant has been completed, could I also request that the League as petitioner come forward initially with somewhat of a more detailed estimate of what those costs may be?

Again, I think our filings to date have indicated that by and large Commonwealth Edison

Company does not at the moment estimate the need for any significant safety modifications as a result of N.R.C.'s review of the plant design and construction.

EXAMINER KAMPHUIS: To the extent that it is put into issue by petitioner, they would have the burden to put some evidence in on that issue.

MR. LEVIN: May I inquire as to whether -- I am at present -- I don't know for how much longer -- counsel in the Byron proceedings -- with regard to some of this information, it would appear to me that the raw information is almost singularly within the province of the respondent, and there has been some discovery initiated in the Byron proceeding for the N.R.C.

Is there anything which would permit or prohibit specific information requests being made for purposes of eliciting information from respondent for presentation to your Honor?

EXAMINER KAMPHUIS: This clearly is meant to cover a discovery period. You have a right for discovery on respondent for those.

MR. MURPHY: It would follow that we also would

have the right to initiate discovery against the petitioner.

In particular, I would like to ask counsel for the League this morning whether the League is willing to make available for the purposes of taking the depositions of Messrs. Minor and Hubbard.

This proceeding was initiated based on an affidavit prepared by those 2 gentlemen. We would like an opportunity to inquire in somewhat more depth than what they have covered in this affidavit and some of the allegations made.

I believe that this is contemplated under paragraph 66 of the Public Utilities Act. The Commission does have the authority to require these gentlemen to be made available.

We would like to get a voluntary -- we would like to be able to take their depositions without need to seek subpoena if the League is willing to do so. If not, we would be asking the Commission to issue a subpoena.

MR. LEVIN: I think that's correct that it should be directed to counsel for the petitioner

which I am not.

It seems to me, though, that the answer to that question may depend in part upon what the substance of their presentation was before the Commission, which I am not fully familiar with.

When you are dealing with a generic proceeding, going over the 1 or 2 persons who provided an affidavit is not going to deal with the specifics of the generic information that is presented. It's not comparable. It seems to me a situation where one person is giving eye witness testimony about a particular train accident or something along those lines.

My understanding is that there is some expertise involved here, and I'm not really -- not competent to respond particularly to the request, and I suggest it be made of Mr. Cherry of Cherry & Flynn.

I am sure that counsel would be able to work that out, and if they are not, I am sure they know how to bring that before the Commission for resolution.

EXAMINER KAMPHUIS: Would you direct that to Mr. Cherry and Mr. Flynn?

MR. MURPHY: Am I correct that such discovery is contemplated?

EXAMINER KAMPHUIS: As long as it's within the issues that I have discussed, discovery by both parties is certainly substantial.

Any other matters other than setting some timetable for this?

Okay. Then let's go off and discuss the timetable for discovery in which to file additional information that has been requested.

(Discussion off the record.)

EXAMINER KAMPHUIS: First of all, an extensive discussion has been held off the record. One of the first matters discussed was the fact that there is over in the circuit court 2 appeals pending in both 79-0646 and in the last Edison rate case regarding matters filed by petitioner. And that the judge has withheld ruling on that matter or going forward with the appeal because it has been represented to the judge that if an investigation was held in this

docket, petitioner would voluntarily withdraw those appeals.

The Commission has discussed the motion to dismiss filed by Commonwealth Edison Company in this proceeding, and is of the opinion that it cannot rule on that motion to dismiss until it has further information as has been laid out in this record today.

So, it therefore desires this information and then after it receives it will likely reconsider that motion to dismiss.

We have set a timetable by which discovery should be completed, and by which the information should be filed. These are outside dates, and any of these items or materials can be filed prior to these dates.

The dates are as follows. First of all, a separate schedule has been set for depositions. It's my understanding that the Commonwealth Edison Company will today file on petitioner a request to depose Messrs. Hubbard and Minor. The petitioner has 5 days by which to respond to that request, either whether it objects to it or whether it agrees with it.

5 days thereafter, if it does not object -- I'm sorry. Strike that.

If there is no objection and petitioner agrees to the deposition, then I would request the parties attempt to schedule that or those depositions within 30 days after those 5 days, so that there is in total 35 days after the delivery of the request.

If it was objected to, it should be brought before me in the normal course of business.

MR. LEVIN: 2 points of clarification which I believe were agreed to. The first being that those were -- all the notices for deposition were to be hand delivered and served, and that the 5 days runs from the date of receipt of that hand-delivered notice.

EXAMINER KAMPHUIS: That's correct.

Now, regarding the regular discovery schedule, the discovery can be filed up to and including August 28. Any objections to requests for discovery should be filed within 14 days of the filing date of the request. The filing date would be the date mailed or the date delivered,

hand delivered.

If no objection is made to particular requests, then responses to the requests are to be filed 28 days after the filing of the requests. That puts us into late September.

The date by which respondent and petitioner are to file the actual responses to the requests made by the Commission this morning is October 16. That is an outside date. That means that all responses should be made no later than the 16th of October.

I'm going to give 2 weeks for the parties to file responses to materials filed by the opposing parties. That date is October 30. That means all responses to the other party's filings are to be in by October 30.

I will set a status hearing in this matter of November 5 at 1:30.

MR. MURPHY: Madam Examiner, I have a question. I believe during the off-the-record discussion there was a clarification on the nature of the status report on N.R.C. proceedings and when they might be

proceeding either ongoing or future, and these were proceedings of the N.R.C. to resolve what has been generally characterized as generic safety issues. And this did not relate directly to the progress of hearings on the operating license for the Byron Station; is that correct?

EXAMINER KAMPHUIS: Correct. That was a separate category as opposed to actual Byron-related proceedings.

MR. MURPHY: Are we to respond to when the Byron-related proceedings will be completed, also?

EXAMINER KAMPHUIS: Yes.

MR. MURPHY: Similar information?

EXAMINER KAMPHUIS: Yes.

Okay. Then that concludes the matters for the day?

MR. MURPHY: As to the generic proceedings, those proceedings which may or may not be pending or whatever action the N.R.C. is taking to resolve generically the generic safety issues, it was my understanding that the League was being required to submit that information. As to that particular information, Commonwealth Edison Company had no responsibility other than any response

we might come forward with; is that correct?

EXAMINER KAMPHUIS: I think that is an acceptable position on the generic safety issue list since the ongoing proceedings at the N.R.C. are not Edison's specific proceedings. And so that information could be equally in the domain of the petitioner or at least the petitioner's witness as it is in the domain of Edison. And since they have raised that, they should bring something forward on that.

Okay. Then let's show that the matter is continued to the 5th of November at 1:30.

(Whereupon, the proceedings in the above matter were continued until November 5, 1981, at 1:30 p.m.)

CERTIFICATE OF REPORTER

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

CASE NO. 80-0760

TITLE: ROCKFORD LEAGUE OF WOMEN VOTERS vs. COMMONWEALTH
 EDISON COMPANY

I, Sharon D. Novak, do
hereby certify that I am a court reporter employed by
SULLIVAN REPORTING COMPANY, of Chicago, Illinois; that
I reported in shorthand the evidence taken and the
proceedings had on the hearing on the above-entitled
case on the 22nd -day of July
A.D. 1981; that the foregoing 21 pages are a
true and correct transcript of my shorthand notes so
taken as aforesaid, and contains all of the proceedings
directed by the Commission or other person authorized
by it to conduct the said hearing to be stenographically
reported.

Dated at Chicago, Illinois, this 27th day
of July A.D. 1981.

Sharon D. Novak
reporter.

ISHAM, LINCOLN & BEALE
COUNSELORS AT LAW

ONE FIRST NATIONAL PLAZA FORTY-SECOND FLOOR
CHICAGO, ILLINOIS 60603

TELEPHONE 312-558-7500 TELEX: 2-5288

September 4, 1981

WASHINGTON OFFICE
1120 CONNECTICUT AVENUE, N.W.
SUITE 325
WASHINGTON, D.C. 20036
202-833-9730

BY MESSENGER

Peter Flynn, Esq.
Cherry & Flynn
One IBM Plaza
Suite 4501
Chicago, Illinois 60611

Re: In the matter of Commonwealth Edison Company
(Byron Station, Units 1 and 2), Docket Nos.
STN 50-454-OL, STN 50-455-OL.

Dear Mr. Flynn:

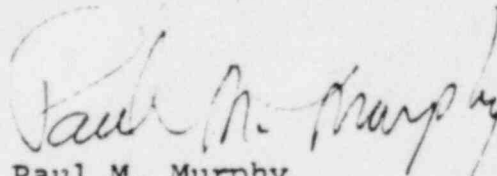
On August 25, we spoke briefly with regard to the Licensing Board's order of August 18 requesting that the parties discuss the League's response to Commonwealth Edison Company's interrogatories. At the time, you indicated that you were reviewing the League's contentions for purposes of determining in what time period you expected to be in a position to answer the interrogatories. You also stated you would advise me before the end of the week, that is, before August 28, as to an expected date for your responses. At the time, I suggested the possibility of some consolidation of contentions, inasmuch as the contentions now admitted by the Board contain a significant level of duplication and overlap. Yesterday, we spoke again to discuss discovery. You indicated that your review of the contentions still continues and you are not yet in a position to state when answers to interrogatories can be expected. You also indicated that you agreed with me that some consolidation of issues might be possible. Inasmuch as we are meeting on Thursday, September 10, to resolve discovery differences in a parallel case now pending before the Illinois Commerce Commission, it was agreed we would raise the question of responses to discovery in the NRC licensing case at the same time.

I would hope that by the September 10 meeting you will have made some progress toward responding to our interrogatories, as you have now had them since July 8, 1981. I enclose

Peter Flynn, Esq.
Page Two
September 4, 1981

herewith a proposed method of consolidating contentions. I would ask that you review these to the extent that time permits and be prepared, if possible, to discuss the enclosed proposal at our meeting on September 10.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul M. Murphy".

Paul M. Murphy
One of the Attorneys for
Commonwealth Edison Company

PMM/js
Enclosure

cc: Steven C. Goldberg, Esq.

COMMONWEALTH EDISON'S
PROPOSAL ON CONSOLIDATED CONTENTIONS

As should be clear from various pleadings filed by Commonwealth Edison, the Company does not believe that, with respect to a significant number of the contentions admitted the contentions are factually supportable or are otherwise appropriate for adjudication in the Byron Operating License Proceeding. However, given that the contentions have been admitted, at least provisionally, by the licensing board, Edison believes that it would be useful to eliminate unnecessary duplication and clarify the issues raised by the contentions. To this end, Edison has prepared contentions which have been restated and consolidated.

The consolidated contentions were derived as follows. First, we have attempted to group identical issues raised in various contentions into one consolidated contention. Thus, for example, League contentions 111B (4), 113, 141(b) and DAARE and SAFE contention 2, each relate to the question of possible cumulative radiation exposures which may result from the Byron facility as well as other nuclear facilities in Northern Illinois. Our proposed contention 54A consolidates these contentions into one revised contention which raises the same issue raised in the original contentions.

Second, where various contentions raise sub-issues relating to one general issue, we have combined the original contentions into one contention. For example, proposed contention 36A represents a grouping of various contentions, and subparts of contentions, all relating to the environmental effects of radioactive releases, into one general contention, the subparts reflecting the issues raised in the original contentions.

Third, since the licensing board dismissed certain aspects of contentions to the extent these aspects were not proper subjects for litigation in this proceeding, and otherwise limited the ambit of contentions, our revised contentions are worded in a manner consistent with our interpretation of the Board's ruling. Thus, for example, the licensing board admitted the League's "class 9" contentions due to the existence of a Statement of Policy regarding treatment by the staff of accident considerations under NEPA. Proposed contention 2A accordingly limits the League's class 9 contentions to this issue. Another example relates to the League's financial qualifications contentions. The board held that the question of financial qualifications to construct the facility was not germane to this operating license

proceeding. Therefore, our proposed contention 4A deletes the reference in the League's original contention 9 regarding Edison's financial ability to complete the construction of Byron.

Fourth, our proposed contentions reflect word changes which we believe help focus upon the issues which are raised in the original contentions. They also delete certain language in the original contentions which does not help define the issue sought to be litigated, and delete certain boiler plate references to various statutes and regulations which are inappropriate in the context of certain individual contentions. Thus, revised contention 53A deletes the reference to Westinghouse, Sargent and Lundy, and NEPA because, in our view, questions relating to efforts by the NSSS vendor or the architect engineer are not relevant to Edison's obligation to demonstrate post tension wire integrity, nor does the contention raise environmental matters which must be considered pursuant to NEPA.

Finally, a number of our revised contentions would require the League or DAARE and SAFE to supplement the contentions to raise specific issues related to the general subject matter addressed in the contention. We have used this method where we are unable to determine the precise question sought to be raised in the contention (e.g. revised contention 46A) or where new regulatory requirements have been promulgated (e.g. revised contention 3A).

Class 9 Accidents--Contentions 8 and 62 (League)

Contentions 8 and 62 were admitted as contentions which allege failure to assess the consequences of Class 9 accidents. We would propose that the contentions be consolidated and restated to raise the issue identified by the Board in its Prehearing Conference Order; i.e. Staff compliance with the Nuclear Regulatory Commission's Statement of Policy regarding accident considerations under NEPA. Our proposed contention is as follows:

- 2A. The Nuclear Regulatory Commission's Statement of Policy, "Nuclear Power Plant Accident Considerations Under the National Environmental Policy Act of 1969," June 13, 1980, 45 Fed. Reg. 40101, requires that environmental impact statements prepared by the NRC Staff include certain information regarding accident considerations associated with nuclear power plant operation. The Staff should be required to comply with this directive.

Emergency Plans--Contentions 19, 78, 108, and 146 (League), Contention 3 (DAARE and SAFE)

These contentions relate generally to emergency planning questions. As the Board stated in its Prehearing Conference Order, the Commission has recently promulgated new final regulations concerning emergency planning requirements. Therefore we would propose that these contentions be consolidated and the issue stated in terms of the existence of specific deficiencies with Edison's emergency plans which the League and DAARE and SAFE believe exist in light of the new emergency planning requirements. The following proposed

contention would have to be supplemented by the League and DAARE and SAFE, to identify specific deficiencies with Edison's emergency plans.

- 3A. Intervenors contend that Applicant's emergency plan does not conform with the Commission's regulations governing emergency planning, contained in 10 CFR §50.47 and Appendix E to 10 CFR Part 50, in that:

[identification of specific deficiencies in terms of the Commission's regulations governing emergency planning noted above to be supplied by Intervenors.]

Financial Qualifications--Contentions 9, 114, 119, 125, and 126 (League), Contention 1, in part, (DAARE and SAFE)

Although the League contentions were admitted as financial qualifications contentions, it is clear that only three of these contentions, Contentions 9, 119, and 126, raise financial qualifications questions. In addition, a portion of DAARE and SAFE Contention 1 raises financial qualifications issues. We would propose that these contentions be consolidated and restated in the following form:

- 4A. Applicant has not demonstrated that it will have the financial ability to operate the Byron facility, in that in recent times Applicant has experienced lowering of ratings on its securities and bonds. Applicant may, consequently, not be in a position to secure needed capital to operate the Byron Station in a safe manner.

Contention 125 does not pertain to financial qualifications matters, but rather questions whether it is appropriate to limit Edison's liability, as provided by the Price Anderson Act, in the event of a nuclear accident. Given that the Supreme Court has expressly upheld the validity

of the limitation of liability provisions of the Act, we would suggest that the Contention be withdrawn.

Contention 114 was also admitted as a financial qualifications contention. However, the contention relates to environmental impacts and safety concerns of possible midlife chemical decontamination. This contention is addressed infra, at pages 24-26.

Occupational Exposure--Contentions 42 and 112 (League)

We would propose that these contentions be consolidated and reworded as follows:

- 5A. Intervenor contends that Applicant will not maintain occupational exposures as low as is reasonably achievable, as required by 10 CFR Part 20, for the following reasons:
- a. Applicant's program regarding occupational radiation exposure does not provide for the recording of cumulative exposures which workers may receive at Byron and at other nuclear facilities;
 - b. Applicant's program regarding occupational radiation exposures relies in significant measure upon the use of transient and temporary workers to meet limitations on allowable radiation exposures to individual workers;
 - c. Applicant's program regarding occupational radiation exposure does not limit exposures to high levels of radiation solely to volunteers and/or workers who are either beyond childbearing ages or incapable of biological reproduction;
 - d. Applicant's plant design does not take into account new evidence regarding the dangers of exposure to low levels of radiation; and

- e. Applicant should be required to train plant workers in methods to maintain radiation exposures as low as is reasonably achievable.

Generic Safety Items--Contentions 40 through 49, 68, 69, 73, 74, 75, 77, 80, 85, 99, and 106 (League) and Contentions 4(2), 4(4), 4(5), 4(6), 4(7), and 9(a)-9(d) (DAARE and SAFE)

These contentions all pertain to generic safety items and associated Task Action Plans. In our proposed revised contentions set forth below, we have identified the specific Task Action Plan related to the various contentions, and, pursuant to our interpretation of the Preliminary Conference Order and Order denying Edison's Motion for Reconsideration, we have limited the scope of the contentions to raise issues which may become apparent after the filing of the Staff SER. It is our view that the only issue that could not have been raised prior to the issuance of the SER must relate to a disagreement of the Staff, expressed for the first time in the SER, regarding Edison's treatment of a generic issue.

- 6A. Contention 20 (League) and Contention 9a (DAARE and SAFE)

Task Action Plan A-1 identifies a potential safety problem which may result from water hammer phenomena. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

- 7A. Contentions 11 and 68 (League) and Contention 9b (DAARE and SAFE)

Task Action Plan A-2 identifies a potential safety problem which may result from asymmetric LOCA loading on the reactor vessel. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

- 8A. Contention 22 (League) and Contention 9c (DAARE and SAFE)

Task Action Plan A-3 identifies a potential safety problem which may result from degradation of steam generator tubes. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

- 9A. Contentions 23 and 85 (League) 4(2), 4(4), 4(5), 4(6), and 4(7) (DAARE and SAFE)

Task Action Plan A-9 identifies a potential safety problem which may result from anticipated transients where the reactor fails to scram. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

- 10A. Contentions 24, 27, and 80 (League)

Task Action Plans A-11 and A-14 identify potential safety problems regarding reactor vessel integrity during the expected life of nuclear power plants. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address these issues. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

11A. Contention 25 (League) and Contention 9d (DAARE and SAFE)

Task Action Plan A-12 identifies a potential safety problem relating to the fracture toughness of steam generator and reactor coolant pump supports. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to issuance of an operating license for Byron.

12A. Contention 26 (League)

Task Action Plan A-13 identifies a potential safety problem pertaining to the use of snubbers as component supports. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

13A. Contentions 28 and 69 (League)

Task Action Plan A-17 identifies a potential safety problem pertaining to analyses of the manner in which various nuclear plant systems interact. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

14A. Contention 29 (League)

Task Action Plan A-18 identifies a potential safety problem relating to the design criteria for postulated pipe breaks. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

15A. Contention 30 (League)

Task Action Plan A-21 identifies a potential safety problem related to the capability of equipment to survive certain main steamline breaks. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

16A. Contention 31 (League)

Task Action Plan A-23 identifies a potential safety problem relating to the criteria used for leak testing of containments. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

17A. Contentions 32, 61, 70, and 77 (League)

Task Action Plan A-24 identifies a potential safety problem relating to the criteria used to qualify equipment which may be exposed to adverse environmental conditions. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

18A. Contention 33 (League)

Task Action Plan A-25 identifies a potential safety problem related to the connection of nonsafety loads to safety-related power sources. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

19A. Contention 34 (League)

Task Action Plan A-26 identifies a potential safety problem related to reactor vessel overpressure protection. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

20A. Contention 35 (League)

Task Action Plan A-29 identifies potential alternative reactor designs to prevent damaging industrial sabotage at nuclear power plants. In the Byron SER, staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to issuance of an operating license for Byron.

21A. Contentions 36 and 73 (League)

Task Action Plan A-30 identifies a potential safety problem related to possible failure of the D.C. power supplies. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

22A. Contention 37

Task Action Plan A-35 identifies a potential safety problem related to off-site power reliability. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

23A. Contention 38 (League)

Task Action Plan A-36 identifies a potential safety problem pertaining to the movement of heavy loads in the spent fuel pool vicinity. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

24A. Contention 39 (League)

Task Action Plan B-28 identifies a potential problem relating to the adequacy of radionuclide/sediment transport models. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

25A. Contention 40 (League)

Task Action Plan B-30 identifies a potential safety problem regarding design basis flood analyses. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

26A. Contention 41 (League)

Task Action Plan B-32 identifies a potential safety problem relating to the effect of ice build-up on safety-related water supplies. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

27A. Contention 43 (League)

Task Action Plan B-52 identifies a potential safety problem regarding the behavior of fuel assemblies during accident conditions. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

28A. Contention 44 (League)

Task Action Plan B-56 identifies a potential safety problem relating to diesel generator reliability. In the Byron SER, Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

29A. Contention 45 (League)

Task Action Plan B-64 identifies a potential safety problem relating to replacement and decommissioning of contaminated equipment. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

30A. Contention 46 (League)

Task Action Plan A-37 identifies a potential safety problem relating to turbine missiles. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

31A. Contentions 47 and 71 (League)

Task Action Plans A-40 and B-24 identify potential safety problems relating to

seismic design of nuclear power plants. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

32A. Contention 48 (League)

Task Action Plan B-57 identifies a potential safety problem relating to the possible loss of A.C. power. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

33A. Contention 74 (League)

Task Action Plan A-34 identifies a potential safety problem relating to post-accident monitoring. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

34A. Contentions 75 and 86 (League)

Task Action Plan B-58 identifies a potential safety problem related to the use of the single failure criterion in respect of passive components. In the Byron SER, the Staff has identified specific deficiencies regarding the manner in which Edison intends to address this issue. Intervenor contends that Edison must be required to resolve these deficiencies prior to the issuance of an operating license for Byron.

League Contentions 49 and 99 simply assert that in light of the unresolved generic safety items, none of which

are specified, the Byron station should not be licensed. Given the fact that the proposed contentions set forth above address the specific generic safety items, we would request that Contentions 49 and 99 be withdrawn.

Contention 106 raises matters regarding seismology of the Byron locality, and does not raise matters concerning Staff Task Action Plans associated with seismic design criteria. We would propose the following revised contention to be substituted for Contention 106:

- 35A. The Sandwich and Plum River Faults should be considered capable faults as that term is used in 10 CFR, Part 100. If these faults were deemed capable faults, the Byron Station would have to be designed to withstand a greater maximum ground acceleration than that used in the current seismic design for Byron. Accordingly, Applicant should be required to redesign its facility to meet these predicted ground acceleration values prior to receiving an operating license for Byron Station.

Environmental Effects of Radioactive Releases--Contentions 14, 16, 109 (except subsections G and H), 110, 111b(1), 111b(2), 111b(5), 134, 136, 137, 141(a), 142, and 144 (League)

The contentions, or subparts of contentions, relate generally to environmental impacts which will allegedly result from radioactive emissions from operation of the Byron Station. The following proposed contention consolidates the issues raised in these contentions, and deletes matters which constitute challenges to NRC regulations consistent with the Licensing Board's Prehearing Conference Order. We would propose that it be substituted for the original contentions.

- 36A. Intervenor contends that the environmental effects related to operation of the Byron facility have been understated or misrepresented by Applicant, and if these effects were properly considered, the environmental impacts of operating Byron would outweigh any benefits derived therefrom.

Specifically, Applicant has misrepresented or understated the environmental impacts of operating Byron because:

1. Low-level radioactive wastes which will be generated by the operation of the Byron facility have not been independently quantified in terms of specific radionuclides;
2. Transport to humans of radionuclides through biocumulation and bioconcentration and through seepage of radionuclides into the ground water has not been considered;
3. Applicant has failed to consider new information which shows that the health effects of exposure to low levels of radiation and internal radiation doses are much more severe than was originally thought;
4. Applicant has failed to consider the impact of background levels of radiation in assessing the impacts related to radiation emanating from the Byron facility;
5. Applicant has failed to assess the impacts relating to the existence of transient populations in the Byron vicinity.

Radiation Monitoring--Contentions 105, 111A, and 141 (League)

These contentions all relate to asserted deficiencies with Edison's radiation monitoring program. We would propose that the following consolidated contention be substituted for these contentions.

37A. Applicant's radiation monitoring program is inadequate to properly assure that Applicant is complying with the Commission's regulations governing releases of radioactivity into the environment for the following reasons:

- a. Applicant has not installed the direct radiation monitors required by the Notification to Operating License Applicants by Steven A. Varga of the NRC on December 21, 1979;
- b. Applicant's program does not provide for a sufficient number of monitoring devices;
- c. Applicant's program does not provide for a reading of radiation monitors by independent analysts on a sufficiently frequent basis;
- d. Applicant's monitoring program does not include an automatic system that notifies local authorities by alarm when radioactive releases exceed permissible limits;
- e. Applicant's monitoring devices do not measure differences in alpha, beta, and gamma radiation levels;
- f. Applicant's monitors do not measure emissions of I-129 and plutonium;
- g. Applicant's monitoring program does not provide for biocumulative testing in the tiered system to assess the uptake of radioactivity from bottom sediments or soil to lower organisms; and
- h. Applicant's monitoring program does not provide for a pre- and postoperational monitoring program of the environmental impact of radiation upon the following:
 1. Phytoplankton;
 2. Aquatic plants and other organisms;
 3. Terrestrial plants, including agricultural crops;

4. Zooplankton;
5. Benthic organisms;
6. Agnathans;
7. Osteichthyes;
8. Amphibians;
9. Reptiles;
10. Aves; and
11. Mammals.

Environmental Qualification of Equipment--Contentions 61 and 77

These contentions relate generally to environmental qualification of equipment issues. We would propose that the contentions be consolidated and worded as follows:

- 38A. Intervenor contends that the safety-related equipment to be installed at the Byron facility has not been demonstrated to be qualified to operate under accident conditions as required by General Design Criteria No. 4. The criteria for determining environmental qualifications should be those set forth in Regulatory Guide 1.89. Until such time as Applicant establishes an adequate environmental qualification program to demonstrate that safety-related equipment to be used at Byron is qualified to withstand postulated accidents and the effects of aging and exposure to routine amounts of radiation, issuance of a license for the Byron facility would be inimical to the health and safety of the public.

Westinghouse Turbine Missiles--Contention 50 (League)

We would propose that Contention 50 be reworded as follows:

- 39A. Intervenor contends that in view of the incident which occurred at the Yankee

Rowe facility relating to the damage sustained by a turbine designed by Westinghouse, as documented in the February 15, 1980 letter from J. P. Knight to S. A. Varga, there is an unreasonable risk of turbine missile events damaging safety-related systems at Byron.

Fire Protection--Contentions 67 and 72 (League)

These contentions raise matters concerning fire protection at nuclear facilities generally. We would propose the following revised contention as a substitute for these contentions.

- 40A. Applicant's proposal to meet the requirements of General Design Criterion 3 applicable to fire protection standards by complying with the requirements of Reg. Guide 1.75 will not sufficiently protect the health and safety of the public in that the five-foot physical separation requirement contained in Reg. Guide 1.75 does not adequately assure that a fire in one cable tray will not spread to neighboring cable trays and thereby impair safe shutdown capabilities, and in addition, the proposed use of mineral wool blankets, fire retardant cable coatings, and sprinkler systems is not adequate to prevent the spread of fire.

Classification of Equipment As Safety-Related--Contentions 53, 54, and 63 (League)

These contentions relate generally to the League's claim that certain types of equipment systems, presumably not presently classified as safety related, should be so classified and meet safety grade criteria. We would propose that these contentions be consolidated and reworded as follows:

- 41A. The equipment identified below is not classified as safety-related equipment

and does not meet safety grade design criteria. Unless this equipment is so classified, the issuance of an operating license for Byron will be inimical to the health and safety of the public.

- a. Pressurizer heaters and associated controls; and
- b. All power-operated relief valves, associated block valves, and the instrumentation and controls related to these valves.

Fuel Racks--Contention 107 (League)

Contention 107 relates to the spent fuel storage system at the Byron facility. It correctly alleges that the rack design considered during the Byron construction permit proceeding is not the same as the current proposed design, in that Edison is now proposing to use higher density racks than were initially contemplated. We would propose the following contention which, we believe, raises the specific matters raised in the original contention.

42A. Intervenor contends that Applicant's spent fuel pool design and storage system is deficient for the following reasons:

- a. The geometric configuration of the spent fuel pool racks is inadequate to prevent criticality in the fuel pool;
- b. Applicant has failed to take into account the following postulated accidents in designing its spent fuel pool storage system:
 - i. Spent fuel pool cooling system malfunction;
 - ii. Drop of heavy objects into the spent fuel pool;
 - iii. Seismic events; and

- iv. Tornado and turbine missile events.

Fuel Densification--Contention 87 (League)

This contention addresses the question of possible densification and/or migration of fuel pellets within the fuel rods. We would propose that the contention be reworded as follows to raise the specific issue which appears to be addressed in the original contention.

- 43A. Intervenor contends that the present design of the fuel rods to be used at Byron will not prevent densification and/or migration of uranium pellets within the rod. Densification or migration of these pellets will cause heat distribution of heat within the rods which in turn will cause loss of cladding integrity during blowdown after postulated loss of coolant accidents. Unless this design defect is resolved, the issuance of an operating license for Byron will be inimical to the public health and safety.

Three Mile Related Contentions--Contentions 51, 56, 58, and 66 (League)

Each of these contentions relates to concerns which have arisen as a result of Three Mile Island. We would propose the following revised contention as a consolidated contention which, we believe, frames the specific issues raised in these contentions.

- 44A. The Byron design does not address certain deficiencies in the designs of nuclear power plants which have become apparent as a result of Three Mile Island and, as such, Applicant should be required to resolve these deficiencies prior to receiving a license to operate the Byron facility. The specific deficiencies are:

- a. In the event of a Three Mile Island-type accident, the use of natural cooling will be unavailable and consequently Applicant will have to rely upon the use of reactor coolant pumps to provide forced cooling to the fuel. In the event of a small pipe break loss of coolant accident, however, this method of cooling will not be feasible.
- b. As with the Three Mile Island design, Byron does not have instruments to directly measure the water level in the reactor. The absence of such instrumentation will hamper appropriate corrective action in the event of a Three Mile Island-type accident at Byron.
- c. As with the Three Mile Island design, the Byron design does not provide a method for informing reactor operators regarding the status of all safety-related valves. In order to assure that operators possess adequate information to take appropriate corrective action, instrumentation which informs operators of the open or closed position of safety-related valves must be incorporated into the Byron design.

Emergency Core Cooling Issues--Contention 57 (League)

This contention asserts that certain small, unspecified, loss of coolant accidents postulated in analyzing the emergency core cooling system performance for Byron do not cover the entire spectrum of postulated loss of coolant accidents required to be analyzed under 10 CFR §50.46. We would propose that the following contention be substituted for Contention 57.

- 45A. As a result of the Three Mile Island accident, the Staff has required that applicants for operating licenses perform additional analyses of postulated loss of

coolant accidents to provide assurance that the entire spectrum of postulated loss of coolant accidents is covered. Applicant has failed to perform such additional analyses and should therefore not receive its license to operate the Byron until such analyses are performed.

Hydrogen Control--Contention 60

We believe that this contention adequately frames a litigable issue. The contention is restated below:

- 46A. The design of the hydrogen control system at Byron is based upon the assumption that the amount of fuel cladding that could react chemically to produce hydrogen will, under all circumstances, be nominal. The accident at Three Mile Island demonstrated both that this assumption is not justified and that it is not conservative to assume anything less than the worst case. Therefore the hydrogen control system should be designed on the assumption that 100 percent of the cladding reacts to produce to hydrogen.

Accidents in Handling and Transportation of Radioactive Materials--Contention 83 (League)

Contention 83 pertains to possible accidents which may occur in the handling and transportation of radioactive materials. The contention was admitted insofar as it did not constitute a challenge to Commission regulations. Table S-4 contained in 10 CFR §51.20 identifies environmental impacts and environmental risks associated with certain types of transportation of radioactive wastes and nuclear fuel. Contention 83, as presently worded, does not identify any specific types of transportation, and we would propose that the League identify the types of transportation, other

than those covered by Table S-4, the environmental impacts of which the League believes have not been adequately considered in this proceeding. Therefore, the following proposed contention would have to be supplemented by the League, to identify the specific types of transportation which the League believes must be considered in this proceeding.

- 47A. Table S-4, 10 CFR §51.20, does not address the environmental impacts of all types of transportation of radioactive materials which may result from the operation of the Byron facility. Intervenor contend that any cost benefit analysis performed without considering these impacts associated with the following types of benefits which would necessarily be improper.

[Identification of specific types of transportation of radioactive materials, not covered by Table S-4, which Intervenor believe must be considered in by Edison and the Staff.]

Primary Coolant Pump Flywheel Missiles--Contention 84
(League)

This contention pertains to possible damage to safety systems as a result of primary coolant pump flywheel missiles. We believe that for the most part, the contention adequately defines the issue to be adjudicated in this proceeding, except to the extent that it contains an inappropriate boiler plate allusion to NEPA. The contention clearly only raises safety concerns. Accordingly, our proposed revised contention merely clarifies that that the contention is intended to raise only a safety issue.

- 48A. Applicant has not provided sufficient missile protection to safeguard engineered systems in the event of a fracture of a primary coolant pump flywheel. Present precautions would not prevent such a missile from disabling or severely crippling the emergency core cooling system and containment heat removal system. Until such precautionary measures are implemented, the issuance of an operating license for Byron would be inimical to the health and safety of the public.

Thermal Shock to Reactor Pedestal--Contention 95 (League)

This contention pertains to possible cracking of the reactor pedestal concrete as a result of thermal shock. Again, the contention is nearly suitable as presently worded. We have, however, modified the language of the contention to make it clear that it only raises safety issues.

- 49A. Applicant has not established that the structural integrity of the reactor pedestal concrete will be maintained in the event of a thermal shock following a loss of coolant accident. Until an evaluation which establishes that the integrity of the reactor pedestal concrete will not be impaired, the issuance of a license for Byron will be inimical to the public health and safety.

Airplane Crashes--Contention 100 (League)

This contention asserts that the Byron containments must be designed to withstand crashes of jumbo jets. We have modified the language of the contention to delete language which is not necessary to define the issue sought to be litigated, and also have removed the boiler plate allusion to NEPA.

- 50A. The Byron containments are being constructed near or close to the normal and emergency flight paths of the city of Rockford's airport. This airport is in the process of being expanded to permit the landing of jumbo jets such as 747s, and such jets are already landing and taking off in practice runs at the Rockford airport. The Byron containments have not been designed or constructed sufficiently strong to withstand crashes of jumbo jets expected to land at the Rockford airport. Until such design modifications are made, the issuance of a license for Byron would be inimical to the public health and safety.

Adequacy of Soils--Contention 102 (League)

Contention 102 alludes to potential problems relating to the adequacy of the foundation soils underlying the Byron facility. The proposed contention set forth below deletes language which is not necessary to define the issue sought to be litigated and also deletes the inappropriate reference to NEPA.

- 51A. Intervenor contends that the foundation soils underlying the safety-related structures of Byron have not been demonstrated adequate to support such structures. Until such a demonstration is made, the issuance of an operating license for Byron would be inimical to the public health and safety.

Stresses on Nonload-Bearing Internal Walls--Contention 103 (League)

This contention appears to state that the design of the nonload-bearing internal walls of Byron is inadequate to withstand anticipated stresses. We have reworded the contention to delete the reference to NEPA. In addition, we have changed the language to focus the contention on the specific issues sought to be litigated.

- 52A. Design of nonload-bearing internal walls at Byron does not conform to applicable regulations, and deviates from commitments made made by Applicant during the construction permit proceedings. In particular, the walls are not designed to withstand stresses which are expected to be experienced. Until the design is appropriately modified, the issuance of a license for Byron would be inimical to the public health and safety.

Post Tension Wires--Contention 104 (League)

Contention 104 pertains to containment post tension wire integrity. Except to the extent that the contention inappropriately attempts to raise environmental matters, and refers to Westinghouse and Sargent and Lundy, it appears to be substantially adequate to raise the issue sought to be litigated.

- 53A. Post tension wires in the Byron containment buildings are breaking and have broken from their attachments. No steps have been taken by Applicant to evaluate this phenomena or to replace all post tension wires. Until these steps are taken, and the problem is remedied, the issuance of an operating license for Byron would be inimical to the public health and safety.

Cumulative Exposure--Contention 111B(4), 113, 141(b) (League) and Contention 2 (DAARE and SAFE)

These contentions relate to concerns arising from possible cumulative radiation exposure from the Byron Station as well as other nuclear facilities in northern Illinois. In view of the fact that the DAARE and SAFE Contention 2 raises all the concerns raised by the League, we would propose that these contentions all be consolidated, and that

the text of DAARE and SAFE Contention 2 be adopted with minor modifications as the revised consolidated contention. DAARE and SAFE Contention 2 is set forth below:

- 54A. Intervenors contend that since residents of the DeKalb-Sycamore and Rockford areas, the zones of interest of DAARE and SAFE and the League, are surrounded by 11 other nuclear generating units in operation or under construction (at Dresden, Quad Cities, LaSalle, Zion, and Braidwood) in addition to two units at Byron, that the Applicant should reevaluate the dose impacts of projected routine releases of radioactive materials (Ch. 11, FSAR) to determine the cumulative effects to residents from the addition of Byron releases to releases from the other 11 units. This reevaluation is especially critical in light of Applicant's record of incidents at other plants, since the granting of the Byron construction permit. This reevaluation should be performed to ensure that applicable NRC (10 CFR Part 20 and 10 CFR Part 50, Appendix I) and EPA (40 CFR 190) limits for radionuclide releases and exposures are not exceeded in practice for DeKalb-Sycamore and Rockford area residents due to the addition of the Byron units to other units in operation or under construction, and should focus upon both the projected and potential aggregate dose levels to these residents, and upon known and potential effects of such projected and potential cumulative dose levels.

Midlife Chemical Decontamination/Environmental--Contention 114
(League) and Contention 8 (DAARE and SAFE)

This contention addresses concerns regarding possible midlife chemical decontamination of the Byron facility. With the exception of Subpart (h) of Contention 114, the contention raises environmental concerns. Subsection (h) is discussed in the following section. DAARE and SAFE Contention 8 also relates to chemical decontamina-

tion, but is much less specific than the League's contentions. We would therefore propose that these contentions be consolidated into the following contention, which is simply a restatement of the League's Contention 114 with some minor revisions, intended to clarify the issues raised.

55A. Applicant has not addressed the possibility of cleanup of radioactive contamination buildup at Byron through the use of chelating agents that will be necessary after about 20 years of operation. Any cost benefit analysis performed without considering the environmental impacts of decontamination is necessarily flawed. The environmental concerns relating to chemical decontamination are as follows:

- a. Evidence shows that chelating agents increase mobilities of radionuclides in the environment where they are dispersed through ground water and uptake by plants including vegetables;
- b. During the evaporation step in demineralizer use, radionuclides may be released to the environment;
- c. The solvent remaining after effluent and rinse water are removed may be flushed into the Rock River where it will be absorbed by the river's sediments, become resuspended, and migrate into the ground water and the food chain;
- d. Disposal sites after solidification must be designed for careful indefinite burial. As no disposal site has been designated for the purpose, consideration must be given to indefinite storage on-site; and
- e. Temporary workers used in the decontamination process may be exposed to increased risks because of synergistic effects of solvent and radioactive materials.

Chemical Decontamination/Safety--Contention 114(h) (League)
and Contention 9(e) (DAARE and SAFE)

These contentions address possible safety concerns related to midlife chemical decontamination. We would propose that the contentions be consolidated and reworded as follows:

- 56A. Use of chemical decontaminant chelating agents for the purpose of midlife chemical decontamination may cause deterioration of the stainless steel components in the reactor and hasten future buildup of contamination which would require more frequent cleanups and repairs. This process would also cause possible degradation of the integrity of the reactor. Unless and until Applicant demonstrates that such adverse reactions would not in fact occur, or that midlife chemical decontamination will not be performed by use of chelating agents, the issuance of an operating license for Byron would be inimical to the public health and safety.

Transmission Lines--Contention 115 (League)

Contention 115 deals with the question of environmental impacts of transmission lines. The contention identifies certain impacts which the League alleges ought to be considered in the cost benefit analysis of the Byron Station. The contention also identifies certain alternatives to using power lines such as those proposed by Edison as, presumably, environmentally preferable alternatives. These allegations appear to raise factual issues for this proceeding and are addressed in our proposed revised contention set forth below.

The contention also suggests that alternative methods of generating electricity, and methods for reducing the need for the facility must also be considered. The Board has ruled that need for power issues are not appropriate issues for consideration in the present proceeding. Accordingly, our proposed revised contention deletes all matters relating to the need for power from the Byron Station.

57A. Applicant has not considered the full impact of 345 KV and 765 KV power lines proposed or planned for the Byron Station, and alternatives to their construction have not been considered. Accordingly, a valid cost benefit analysis pursuant to NEPA cannot be performed. The environmental impacts which must be considered are:

- a. All human, biological, and health effects related to nonionizing radiation, corona and its effects and shocks caused by electrostatic and electromagnetic induction; and
- b. Consideration of the need for public education awareness of hazards to minimize impacts of transmission lines.

The alternatives to Applicant's proposal which must be considered are:

- a. Routing to follow other transportation corridors; and
- b. Use of underground means of transmitting electricity.

Cooling Towers--Contention 117 (League)

Contention 117 pertains to the environmental impacts related to the use of natural draft and mechanical

draft cooling towers. We would propose the following revised contention be substituted for Contention 117.

58A. Applicant has not adequately assessed the environmental impacts of using natural draft and mechanical draft cooling towers as the cooling system for Byron, and consequently a valid cost benefit analysis cannot be performed. Applicant must be required to assess the following environmental impacts:

- a. Weather modification, including fogging and icing. Ground icing from mechanical draft towers may affect essential water supplies from wells;
- b. Contamination of land, air, and water with the contents of the plume by the following:
 - i. Salt, sulphates, and polyvinyl chloride;
 - ii. Radionuclides; and
 - iii. Pathogenic organisms;
- c. Noise levels which may exceed EPA regulations and cause adverse health effects.

Cryogenic Transmission--Contention 129 (League)

This contention asserts that Edison has not analyzed the possibility of using cryogenic transmission or storage to lessen or eliminate the need for power from the Byron Station. Inasmuch as the Board has ruled that need for power contentions are not appropriate for this proceeding, we would propose that this contention be withdrawn.

Decommissioning--Contention 135 (League)

Contention 135 addresses the question of decommissioning of the Byron facility. In general, Edison does not

object to the contention except to the extent that it inappropriately cites to 10 CFR Part 50 when radiological health and safety issues are clearly not raised by the contention. We would propose the following contention which, we believe, focuses on the issue sought to be litigated.

- 59A. Neither the NRC nor the Applicant have adequately addressed the environmental cost connected with decommissioning. Applicant has no concrete plans for decommissioning Byron and therefore does not know the consequences which will flow therefrom. Any cost benefit analysis which does not consider the impacts of decommissioning is therefore invalid.

Miscellaneous Environmental Issues--Contentions 17, 109(g), 109(h), 120, and 143 (League)

These contentions all relate in some way to the adequacy of Edison's environmental report. We have reviewed the contentions, and selected the environmental impacts specifically raised in the contentions. These impacts are set forth in the following proposed contention which we would propose be substituted for the original contentions identified above.

- 60A. Applicant has failed to consider and evaluate the following matters in performing its environmental analysis of the impacts associated with operation of Byron:
- a. Social impacts associated with the displacement of people;
 - b. Impacts associated with synergistic effects of radiation and other pollutants;
 - c. Effects on fish and other organisms resulting from operation of the intake structures;

- d. Impacts related to the operation of transmission lines regarding visual aesthetics, displacement of land, and effects on bird migration;
- e. Effects of psychological fear on individuals living in the vicinity of Byron;
- f. Effects of chemical discharges into the Rock River; and
- g. Long-term impacts of thermal plume discharge on biota into the Rock River which include effects on fish eggs and larval development, and the development of pathogenic organisms such as those which cause amebic meningoencephalitis.

Three Mile Island Lessons Learned--NUREG 0578--Contentions 97 and 98 (League)

These contentions pertain to the applicability and validity of some of the conclusions contained in NUREG 0578 entitled "TMI--2 Lessons Learned Task Force Status Report and Short-Term Recommendations". As the title of NUREG 0578 clearly infers, this document contains recommendations of a Lessons Learned Task Force identifying and evaluating safety concerns which would require prompt licensing actions for operating reactors and pending operating license applications. Since the publication of NUREG 0578, a number of other documents have been published relating to the corrective requirements induced by the Three Mile Island accident. These include the TMI--2 Action Plan--NUREG 0660, TMI--Related Requirements for New Operating Licenses--NUREG 0694, and a finalized action plan relating to TMI corrective requirements--NUREG 0737. In addition the Nuclear Regulatory Commission

has proposed to codify the requirements of NUREG 0737 as amendments to 10 CFR Part 50.

It should be clear that the applicability and guidance provided by NUREG 0578 is, in essence, no longer germane to the question of corrective actions which must be taken as a result of the Three Mile Island accident. Moreover, there are a number of contentions which we have proposed above which raise specific matters associated with Three Mile Island requirements. We would therefore propose that the contentions be withdrawn.

Contention 122 (League)

This contention asserts that Edison is being permitted to continue construction of Byron without having in place resolution of all unresolved safety and environmental problems. The contention obviously does not raise a factual issue which can be litigated in the context of the upcoming operating license proceedings. The contention only raises a legal argument, which could appropriately be made in briefs at the close of the hearing.

Contention 123 (League)

This contention asserts that Edison is not building Byron in exactly the manner and method in which it promised to do so in its construction permit application. The contention does not identify any specifics regarding construction permit commitments and alleged discrepancies in the manner the facility is being constructed. There are a number of

contentions set forth above which raise issues regarding the adequacy of the design and construction of the Byron facility. Accordingly, we would suggest that Contention 123 be withdrawn.

Technical Specifications--Contention 124 (League)

Contention 124 asserts that Edison's entire application should be converted to technical specifications. The Appeal Board decision in Portland General Electric Co.

(Trojan Nuclear Plant) ALAB-531, 9 NRC 263 (1979), indicates that there is no basis in law or reason for converting the entire FSAR into technical specifications. Inasmuch as we are uncertain as to which FSAR commitments the League believes must be the subject of technical specifications, our proposed revised contention set forth below provides that the contention be supplemented by the League, to identify the specific conditions and limitations which the League considers appropriate for technical specifications.

- 61A. Applicant has made certain commitments and agreed to certain limitations regarding the manner in which the Byron Station will operate. Not all of these commitments or limitations are to be included as technical specifications. Intervenor asserts that the following conditions and limitations must be included as technical specifications to assure that the Byron facility is operated in a safe manner:

[Specific conditions and limitations to be supplied by Intervenor].

Ability of Pressure Vessel to Withstand Thermal Shock--
Contention 81 (League)

Contention 81 raises a question regarding the ability of the reactor pressure vessel to withstand the

effects of thermal shock resulting from emergency core cooling injection. We would propose the following revised contention be substituted for Contention 81.

- 62A. Applicant has not demonstrated that the reactor pressure vessel will withstand the effects of thermal shock as the result of emergency core cooling injection. Until such a demonstration has been made, licensing of the Byron facility would be inimical to the public health and safety.

ECCS-Single Failure--Contention 86 (League)

This contention relates to the adequacy of the emergency core cooling system in terms of its ability to operate under certain conditions. We would propose the following revised contention to be substituted for Contention 86. Our revision, we believe, focuses more directly on the issues sought to be raised, and deletes inappropriate references to NEPA.

- 63A. Applicant's design of the emergency core cooling system at Byron is inadequate because the design fails to address the possibility of a single failure occurring during the ECCS injection phase followed by a single active or single passive failure during the recirculation phase. If this were to occur the ECCS would not perform adequately. Until this problem is resolved licensing of the Byron facility would be inimical to the public health and safety.

Reactor Coolant System Relief and Safety Valves--Contention 55 (League)

Contention 55 raises the question of whether adequate performance testing of the reactor coolant system relief and safety valves will take place. For the most part

the contention appears to be adequate to raise a litigation issue. We would simply propose that the last sentence of the contention be amended to state the ultimate issue in terms of the standards to be applied by the Commission in evaluating whether an operating license should be issued for the Byron facility.

- 64A. Reactor coolant pump system relief and safety valves form part of the reactor coolant system pressure boundary. Appropriate qualification testing has not been done to verify the capability of these valves to function during normal, transient and accident conditions. In the absence of such testing and verification, licensing of the Byron facility would be inimical to the public health and safety.

Technical Qualifications to Operate the Byron Facility--
Contention 1 (DAARE & SAFE)

This contention relates to Edison's ability, willingness and technical qualifications to operate the Byron station in accordance with NRC regulations. The contention contains a laundry list of incidents alleged to have occurred which DAARE & SAFE presumably believe have a bearing upon Edison's ability and willingness to operate the Byron facility consistent with regulatory requirements. Inasmuch as the contention has been admitted in this proceeding, and therefore the question of whether there exists an adequate basis for the contention is no longer at issue, we would propose that the laundry list be deleted from the contention and would otherwise accept the contention as worded. In addition we have deleted the reference to Edison's

financial qualifications, because the issue is raised in proposed consolidated Contention 4A above. DAARE & SAFE Contention 1, with the changes identified above, is set forth below:

- 65A. Intervenors contend that the record of noncompliance with the Nuclear Regulatory Commission regulations by the Applicant in its other nuclear stations demonstrates its inability, unwillingness, or lack of technical qualifications to operate the Byron Station within NRC regulations and to protect the public health and safety as required under 10 C.F.R. §50.57(a)(1)(2)(3)(4) and (6), and that therefore the Applicant should not be granted an operating license unless it demonstrates that improvements in management, operations, and procedures will ensure its willingness, ability and technical qualifications to operate within NRC rules; and that these improvements will be enforced.

Burden of Risk on Local Residence--Contention 2a (DAARE & SAFE)

Edison believes that Contention 2a adequately frames the issue sought to be litigated. Contention 2a is set forth below.

- 66A. Due to the concentration of nuclear power plants already in Northern Illinois; the Applicant's record of incidents and violations in existing plants which have emerged since the granting of a Construction License was Byron; and the credibility which must now be given to large scale accident scenario since TMI, intervenors contend that the addition of the Byron station operations places an undue and unfair burden of risk from exposure to radioactive materials from accidental releases on DeKalb-Sycamore and Rockford area residents. With the addition of two more nuclear power units in operation at Byron, the potential for cumulative dose effects from discrete accident events at

plants in Northern Illinois under unfavorable meteorological conditions poses an unreasonable level of risk to the health and safety of the DeKalb-Sycamore and Rockford area residents.

Postulated Accident Analyses--Contention 4 (DAARE & SAFE)

DAARE and SAFE Contention 4 includes a list of postulated accidents. The Contention goes on to assert that Edison must analyze the risks to the public health and safety associated with these accidents. Edison would propose that the Contention be reworded to include only the specific issue raised along with the list of accidents, and to consolidate the ATWS issues into revised contention 9A.

67A. intervenors contend that the FSAR does not analyze the risks to the public health and safety from the accidents set forth below. Until such an analysis is performed, the issuance of an operating license for Byron would be inimical to the public health and safety.

1. Rupture of a defective control rod drive mechanism (CRDM) housing which causes adjacent, similarly defective CRDM housings to rupture in a cascade manner. Such ruptures could cause the affected control rods to be ejected from the core by the reactor pressure, thereby causing a potentially catastrophic power excursion.
2. Seizure of a main coolant pump followed by a scram failure.
3. Large coolant pipe rupture followed by failure of the emergency coolant system to function.
4. Spontaneous reactor vessel explosion due to failure of defective closure bolts.

5. Errors in regulating the boron chemical concentration in the reactor coolant causing excessive over-power transients or power excursions.
6. A large pipe rupture followed by failures of additional pipes and components due to the reaction forces that occur as a result of the pipe rupture.
7. Coolant pipe rupture due to a strong pressure surge caused by a core power or under-cooling incident; or a simultaneous rupture of a set of defective control rod drive mechanism housings due to a strong coolant pressure surge, water hammer, or a coolant explosion caused by a molten fuel-water interaction in an accident in which the fuel melts.
8. Steam generator vessel rupture.
9. Improper operator actions in response to a particular accident situation which tends to worsen the accident.
10. Accidents caused by faulty gauges and instruments.

Zirconium Clad Fuel Rods--Contention 6 (DAARE and SAFE)

Edison believes that DAARE and SAFE Contention 6 adequately frames the issue sought to be litigated. Contention 6 is set forth below.

- 68A. The Intervenor contend that the FSAR provides insufficient assurance of containment of radioactive materials in light of, among other factors, the risks of use of zirconium cladding alloys resulting in a breach of the integrity of both internal and external systems. Our evidence for the acceptability of zirconium cladding includes the matter contained in a letter to the Bulletin of Atomic Scientists by former Westinghouse nuclear engineer, Earl A. Gulbransen, published on page 5 of the June, 1975 issue of that journal. Quoting Dr.

Gulbransen from that letter: "At the operating temperature of nuclear power reactors zirconium cladding alloys react with oxygen in water to form an oxide layer which partially dissolves in the metal, embrittling and weakening the metal tubing. Part of the hydrogen formed in the zirconium-water reaction dissolves in the metal and may precipitate as a hydride phase also embrittling and weakening the metal tubing." Further evidence of risk of using zirconium alloys occurs a bit later in the same letter: "At temperatures above 1100° Celsius zirconium reacts rapidly with steam with a large evolution of heat and the formation of free hydrogen, with most metals to form intermetallic compounds and with other metallic oxides to form its own oxide. Once zirconium is heated to 1100° Celsius, which could occur in loss of coolant accidents, it is difficult to prevent further reaction, failure of the tubing and of the reactor."

Thus the conclusion is reached by Dr. Gulbransen that: "The use of zirconium alloys as a cladding material for the hot uranium oxide fuel pellets is a very hazardous design concept since zirconium is one of our reactive metals chemically."

Additionally, Applicant has not demonstrated the adequacy of its internal and external safety systems as impacted by a zirconium cladding failure. In the event of a loss of integrity of zirconium cladding, radiation levels exceeding those of the design environment of the internal and external safety equipment and systems would occur. As the design basis for these systems and equipment does not include an integrity assurance in the event of a zirconium cladding failure by failing to consider such potential radiation levels in the design environment of the internal and external safety systems, Intervenor contends that the proposed use of

zirconium cladding, and the impact on the internal and external safety systems and equipment in the event of a zirconium cladding failure, require further explanation.

Hydrogen Recombiners--Contention 7 (DAARE and SAFE)

Edison believes that DAARE and SAFE Contention 7 adequately frames the issue sought to be litigated. Contention 7 is set forth below.

- 69A. The Intervenor contends that the FSAR and Applicant offer insufficient safeguards against hydrogen explosions, such as are alleged to have occurred at the Three Mile Island Reactor 2. There is no evidence that the recombiners for failing up hydrogen would be adequate if circumstances similar to those at TMI-2 should occur at Byron.

CHERRY & FLYNN

ONE IBM PLAZA

CHICAGO, ILLINOIS 60611

MYRON M. CHERRY
PETER FLYNNTELEPHONE
(312) 585-1177

September 16, 1981

By Messenger

Paul M. Murphy, Esq.
Isham, Lincoln & Beale
One First National Plaza
Forty-Second Floor
Chicago, Illinois 60603

Re: Rockford League of Women Voters v. Commonwealth
Edison Company

Dear Paul:

I am herewith summarizing our tentative agreements reached at our discovery conference and today (Wednesday) on the telephone. I am also listing the outstanding problems. If you have any difficulty with these matters, please let me know by Monday so that we can promptly get them resolved before Hearing Examiner Kamphuis.

For the convenience of the Hearing Examiner, I am sending her a copy of this letter.

1. I indicated to you that I want to take the deposition of James Maley. You have refused to produce him. You have requested that I serve a Notice of Deposition so that you may properly object before Mr. Kamphuis. Enclosed is a Notice of Deposition to take the deposition of James Maley on Monday, October 5.

2. We have agreed that the scientists at MHB, Messrs. Hubbard and Minor, will be deposed at your offices September 25, and that you will endeavor to take their depositions simultaneously and conclude them within one day. You are agreeable to working into the evening or on Saturday if necessary to conclude their depositions. You have agreed to pay their airfare and hotel accommodations, but you have not agreed to pay their expert witness fees even though the pertinent Federal, Illinois, and NRC precedents require that you do so. In fact your own firm, Isham, Lincoln & Beale, fought and lost this precise issue in the NRC Black Fox case with respect to the very same deponents.

EXHIBIT A

Paul M. Murphy, Esq.
September 16, 1981
Page Two

The expenses of Messrs. Hubbard and Minor will, if the deposition concludes on Friday, total \$2,200.00 in expert witness fees, two round trip air transportations from San Francisco and two nights lodging each at a hotel in Chicago. I do not understand why you object to paying the expert witness fees when you have lost exactly the same argument before as to exactly the same persons. Accordingly, unless you provide a written commitment to pay their expert witness fees as well as their expenses, we will not produce Messrs. Hubbard and Minor. I would like this confirmation by Monday.

3. I will take the deposition of Mr. John C. Bukovski at my offices beginning 10:00 A.M. September 22, 1981. Mr. Bukovski is directed to bring with him the documents which he relied upon in his Affidavit.

4. You have told me that Mr. Deress' deposition cannot be taken the week of October 19th but are changing on the week of October 5th. You have not as yet given me a date for Mr. Lee's deposition, although the week of October 5th or October 19th is agreeable to me (subject to my intervening schedule), and I would appreciate knowing by Monday.

5. You have tentatively agreed to a postponement of the present schedule for filing papers before the Illinois Commerce Commission, with a tentative schedule of November 30th (instead of October 16th) for submissions by both sides and December 15th for replies, if any. You will of course have to clear this with Ms. Kamphuis and those dates will obviously depend upon how discovery goes and whether we each get what we need in advance of that date.

6. You have also tentatively agreed to revise the discovery schedule so that the parties complete discovery by the last week in October, with the additional requirement that outstanding and unresolved discovery requests must be submitted to Ms. Kamphuis no later than the last week in October (and perhaps earlier). It is hoped that the Hearing Examiner can rule on such requests by November 2nd and the parties respond to her Orders by November 9th.

7. We agreed to produce our documents to you by September 15th. We were a day late, because we did not receive the documents until September 16th.

8. We will answer your interrogatories by Monday, September 28th, although I will endeavor to get them to you earlier.

Paul M. Murphy, Esq.
September 16, 1981
Page Three

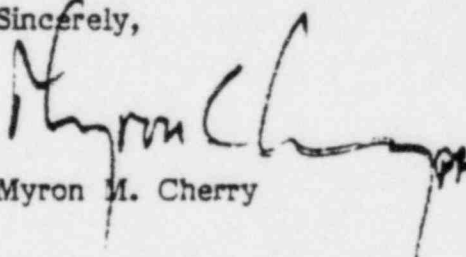
9. You have agreed to answer our interrogatories and the due date currently is September 25, 1981. I do not know whether or not you wish any additional time, although I have no objection if you file your answers on September 28th as well. You have agreed to produce all documents which we have requested by October 5th, although you have agreed to provide documents to us from time to time as they are available and as deponents are deposed. This means, among other things, that documents related to Mr. Bukovski will be available September 22nd or earlier.

10. With respect to our Interrogatories to you I have agreed, without waiving any rights, to permit you to identify documents by group as opposed to each document, and you have agreed to do so. We will see what you provide before we determine whether we will press the point. You have not objected, to my knowledge, to any interrogatory, with the exception of 12b, e, f and g, and I request that you put the objection in writing and the reasons therefor so that I can take it up before the Hearing Examiner.

11. With respect to our document request, you advised that you have no objection to any of the documents, apart from your tentative position with respect to request No. 7 concerning providing documents before 1978. Again I request that you place this in writing so that the Hearing Examiner can rule specifically.

12. You asked what the document NUREG-0705 was. It is a March 1981 USNRC publication, "Identification of New Unresolved Safety Issues Related to Nuclear Power Plants."

Sincerely,



Myron M. Cherry

MMC/kal
Enclosure

cc: Ms. Wanda Kamphuis, Hearing Examiner

PS: Please find enclosed a copy of the October 12, 1979 letter from the ACRS to the NRC referenced in note 94 of the Hubbard-Minor Affidavit, which you requested.

ISHAM, LINCOLN & BEALE
COUNSELORS AT LAW

ONE FIRST NATIONAL PLAZA FORTY-SECOND FLOOR
CHICAGO, ILLINOIS 60603
TELEPHONE 312-558-7500 TELEX: 2-52118

WASHINGTON OFFICE
1120 CONNECTICUT AVENUE, N.W.
SUITE 325
WASHINGTON, D. C. 20036
202-633-9730

September 17, 1981

Mr. Myron Cherry
Cherry & Flynn
One IBM PLaza
Suite 4501
Chicago, Illinois 60611

Re: Docket 80-0760 - Rockford League of Women Voters
v. Commonwealth Edison Company

Dear Mr. Cherry:

This letter is to summarize our conversation of September 15, 1981 as it relates to discovery in the above cause. With respect to discovery initiated by Commonwealth Edison Company you agreed to produce documents we have requested before the end of Monday, September 15. However, later in the day your office called indicating that copying problems would delay their production, but the documents were in fact produced, with some exceptions, late September 16. You also agreed to produce Messrs. Hubbard and Minor for their depositions in our offices on September 24 and 25. You agreed to file any objections to our interrogatories not later than September 18 and to provide answers to our remaining interrogatories not later than September 28.

With respect to discovery initiated by the League and directed at Edison, the following was agreed. Edison has no objection to the taking of the depositions of John Bukovski, James Deress and Byron Lee, Jr. Mr. Bukovski's deposition will be taken on September 22, 1981. The documents relied on by Mr. Bukovski in preparing his affidavit, consisting of the record (primarily the engineering economic studies performed), in Docket 78-0646 and published studies analyzing the cost of decommissioning nuclear power plants and disposal of spent nuclear fuel are available for your inspection now in my office. As was agreed with respect to all document requests initiated by the League, Edison will not take the request to produce all documents which relate to various items literally. We will, however, produce or make available for inspection the significant documents relating to the subject matter as to which we have no objection and documents

EXHIBIT B

Mr. Myron Cherry
September 17, 1981
Page Two

relied on in the preparation of affidavits or answers to interrogatories. Thus, with respect to your document requests 1 and 2, we will provide documents as indicated, and in addition, the Commission's Order in Docket No. 79-0214, Edison's 1979 Rate Case.

Mr. Byron Lee, Jr. is currently out of town and thus it is not possible now to confirm a date for his deposition. However, if he has no conflicts, we will attempt to make him available on October 5, 1981 pursuant to your request. With respect to Mr. James Deress, I have been unable to confirm a date with him. I will attempt to make him available on October 5 if Mr. Lee cannot be available on that date and if Mr. Deress has no conflicts. If he cannot be made available on the 5th, I will attempt to make him available on October 19. In any event, I will call you as soon as I have the information.

With respect to your document requests 3 through 6, this information is generally available now. If you will give me a minimum of one day notice on precisely when you intend to arrive to inspect documents, I will attempt to ensure that documents are available for your inspection. We request that you inspect the documents in the general area of their location at Commonwealth Edison Company.

With respect to your document request 7 which asks for Edison's entire construction budget as proposed and as adopted for each year 1979 through 1982 and all subsidiary documents, I indicated that we would be objecting to this request. First, the request goes far beyond anticipated construction or operating costs at Byron. Second, it goes back in time to a period before October 19, 1980. However, the documents we are prepared to produce in response to document request 6b will include Edison's current budget for the Byron Station as well as what the Company calls base line papers showing the current and prior budget by item and the reasons for the change. We can also make available the immediate prior budget for the Byron Station.

With respect to your document request 8, we are currently looking into the existence of such documents and they may not be available on the same time frame as the document requests 1 through 6. However, we anticipate that they will be available before you have had an opportunity to completely review the other documents made available.

Mr. Myron Cherry
Page Three
September 17, 1981

With respect to your document request 9, all design and budget information for Edison's steam generators at the Byron Station, which are currently fully installed, existed long before October 19, 1980 and therefore we do not believe this information is within the scope of discovery in this proceeding. However, we would point out that documentation of the design of the steam generators is contained in the Final Safety Analysis Report for the Byron Station which you now have.

With respect to your document request 10, the plans to install high density racks in the spent fuel pool at Byron were completed before October 19, 1980 and therefore we do not believe this information is within the scope of discovery in this proceeding. However, we can provide for you the estimated date at which Edison expects the capacity of the spent fuel pool to be filled and actions planned by Commonwealth Edison Company in that event.

As I mentioned during our meeting of September 15, there will have to be some restrictions with respect to your inspection and copying of documents. Unfortunately, both of us had an 11:00 meeting and were unable to discuss the details. The base line budget information for the Byron Station which we will be producing in response to your document request 6b, contains information which if made generally available would have the potential of prejudicing Edison in connection with negotiations of claims arising out of the construction of the Byron Station. On occasions where there has been a known delay to construction, Edison will budget an amount of money estimated to be the maximum exposure to Edison as a result of such delays. In addition, on occasions Edison will have budgeted an amount of money estimated to be required to settle pending claims. Therefore, we will insist on a protective agreement basically precluding you from disclosing the details of such budgeted amounts. It will not be necessary, however, to preclude you from revealing through testimony or otherwise composite amounts which could not be traced to individual contracts or purchase orders. In addition, if you desire to copy any documents which reflect this kind of information, we will insist that you sign a more detailed protective agreement, the details to depend upon the nature of the documents requested. As we did not have an opportunity to discuss this in our meeting yesterday, I would be glad to discuss this further with you if you deem it necessary. However, I will state that I am not at present authorized to permit inspection of the Byron budget documents without a protective agreement acceptable to my client.

Mr. Myron Cherry
September 17, 1981
Page Four

We have agreed to provide answers to your interrogatories by October 1, 1981 except as follows. You indicated that you did not need the degree of detail requested in your interrogatories on identification of documents. It will be sufficient to identify documents by file or group classification. Generally, we anticipate that the documents made available for your inspection pursuant to your document requests will be organized by category and will be easily identifiable to interrogatories.

We will be objecting to interrogatories 12b, e, f and g as beyond the scope of discovery in this proceeding. These interrogatories relate to Edison's overall construction budget and financial capability. We have agreed to seek a prompt ruling from the hearing examiner or the Commission, if necessary, on the question of the scope of initial discovery in this proceeding. You indicated you would prepare a statement of your views on the relevance of Edison's financial capabilities to this proceeding and we would submit it or some amended version jointly to the hearing examiner for decision. In any event, Edison will not voluntarily produce the documents requested nor voluntarily expand the proceeding in the direction you have indicated you wish to go.

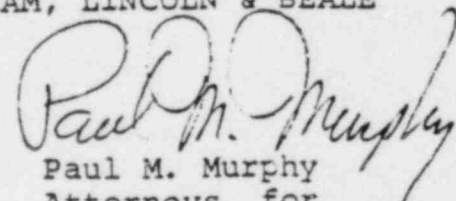
You indicated you would like to present to the hearing examiner an amended schedule for this proceeding setting October 26 as a target date for resolving all disputes as to discovery and November 30 for the filing of initial affidavits. Edison will, of course, attempt to abide by any reasonable dates acceptable to the hearing examiner.

I trust the above accurately reflects the nature of our discussions of September 15, 1981. Please advise me if your recollection differs from mine.

Sincerely,

ISHAM, LINCOLN & BEALE

BY



Paul M. Murphy
Attorneys for
Commonwealth Edison Company

PMM/msb

cc: Ms. Wanda Kamphuis

ISHAM, LINCOLN & BEALE
COUNSELORS AT LAW

ONE FIRST NATIONAL PLAZA FORTY-SECOND FLOOR
CHICAGO, ILLINOIS 60603
TELEPHONE: 312-558-7500 TELEX: 2-5288

WASHINGTON OFFICE
1120 CONNECTICUT AVENUE, N.W.
SUITE 300
WASHINGTON, D.C. 20036
202-833-9730

September 17, 1981

Mr. Myron Cherry
Cherry & Flynn
One IBM PLaza
Suite 4501
Chicago, Illinois 60611

Re: Docket 80-0760 - Rockford League of Women Voters
v. Commonwealth Edison Company

Dear Mr. Cherry:

This letter is to summarize our conversation of September 15, 1981 as it relates to discovery in the above cause. With respect to discovery initiated by Commonwealth Edison Company you agreed to produce documents we have requested before the end of Monday, September 15. However, later in the day your office called indicating that copying problems would delay their production, but the documents were in fact produced, with some exceptions, late September 16. You also agreed to produce Messrs. Hubbard and Minor for their depositions in our offices on September 24 and 25. You agreed to file any objections to our interrogatories not later than September 18 and to provide answers to our remaining interrogatories not later than September 28.

With respect to discovery initiated by the League and directed at Edison, the following was agreed. Edison has no objection to the taking of the depositions of John Bukovski, James Deress and Byron Lee, Jr. Mr. Bukovski's deposition will be taken on September 22, 1981. The documents relied on by Mr. Bukovski in preparing his affidavit, consisting of the record (primarily the engineering economic studies performed), in Docket 78-0646 and published studies analyzing the cost of decommissioning nuclear power plants and disposal of spent nuclear fuel are available for your inspection now in my office. As was agreed with respect to all document requests initiated by the League, Edison will not take the request to produce all documents which relate to various items literally. We will, however, produce or make available for inspection the significant documents relating to the subject matter as to which we have no objection and documents

EXHIBIT B

Mr. Myron Cherry
September 17, 1981
Page Two

relied on in the preparation of affidavits or answers to interrogatories. Thus, with respect to your document requests 1 and 2, we will provide documents as indicated, and in addition, the Commission's Order in Docket No. 79-0214, Edison's 1979 Rate Case.

Mr. Byron Lee, Jr. is currently out of town and thus it is not possible now to confirm a date for his deposition. However, if he has no conflicts, we will attempt to make him available on October 5, 1981 pursuant to your request. With respect to Mr. James Deress, I have been unable to confirm a date with him. I will attempt to make him available on October 5 if Mr. Lee cannot be available on that date and if Mr. Deress has no conflicts. If he cannot be made available on the 5th, I will attempt to make him available on October 19. In any event, I will call you as soon as I have the information.

With respect to your document requests 3 through 6, this information is generally available now. If you will give me a minimum of one day notice on precisely when you intend to arrive to inspect documents, I will attempt to ensure that documents are available for your inspection. We request that you inspect the documents in the general area of their location at Commonwealth Edison Company.

With respect to your document request 7 which asks for Edison's entire construction budget as proposed and as adopted for each year 1979 through 1982 and all subsidiary documents, I indicated that we would be objecting to this request. First, the request goes far beyond anticipated construction or operating costs at Byron. Second, it goes back in time to a period before October 19, 1980. However, the documents we are prepared to produce in response to document request 6b will include Edison's current budget for the Byron Station as well as what the Company calls base line papers showing the current and prior budget by item and the reasons for the change. We can also make available the immediate prior budget for the Byron Station.

With respect to your document request 8, we are currently looking into the existence of such documents and they may not be available on the same time frame as the document requests 1 through 6. However, we anticipate that they will be available before you have had an opportunity to completely review the other documents made available.

Mr. Myron Cherry
Page Three
September 17, 1981

With respect to your document request 9, all design and budget information for Edison's steam generators at the Byron Station, which are currently fully installed, existed long before October 19, 1980 and therefore we do not believe this information is within the scope of discovery in this proceeding. However, we would point out that documentation of the design of the steam generators is contained in the Final Safety Analysis Report for the Byron Station which you now have.

With respect to your document request 10, the plans to install high density racks in the spent fuel pool at Byron were completed before October 19, 1980 and therefore we do not believe this information is within the scope of discovery in this proceeding. However, we can provide for you the estimated date at which Edison expects the capacity of the spent fuel pool to be filled and actions planned by Commonwealth Edison Company in that event.

As I mentioned during our meeting of September 15, there will have to be some restrictions with respect to your inspection and copying of documents. Unfortunately, both of us had an 11:00 meeting and were unable to discuss the details. The base line budget information for the Byron Station which we will be producing in response to your document request 6b, contains information which if made generally available would have the potential of prejudicing Edison in connection with negotiations of claims arising out of the construction of the Byron Station. On occasions where there has been a known delay to construction, Edison will budget an amount of money estimated to be the maximum exposure to Edison as a result of such delays. In addition, on occasions Edison will have budgeted an amount of money estimated to be required to settle pending claims. Therefore, we will insist on a protective agreement basically precluding you from disclosing the details of such budgeted amounts. It will not be necessary, however, to preclude you from revealing through testimony or otherwise composite amounts which could not be traced to individual contracts or purchase orders. In addition, if you desire to copy any documents which reflect this kind of information, we will insist that you sign a more detailed protective agreement, the details to depend upon the nature of the documents requested. As we did not have an opportunity to discuss this in our meeting yesterday, I would be glad to discuss this further with you if you deem it necessary. However, I will state that I am not at present authorized to permit inspection of the Byron budget documents without a protective agreement acceptable to my client.

Mr. Myron Cherry
September 17, 1981
Page Four

We have agreed to provide answers to your interrogatories by October 1, 1981 except as follows. You indicated that you did not need the degree of detail requested in your interrogatories on identification of documents. It will be sufficient to identify documents by file or group classification. Generally, we anticipate that the documents made available for your inspection pursuant to your document requests will be organized by category and will be easily identifiable to interrogatories.

We will be objecting to interrogatories 12b, e, f and g as beyond the scope of discovery in this proceeding. These interrogatories relate to Edison's overall construction budget and financial capability. We have agreed to seek a prompt ruling from the hearing examiner or the Commission, if necessary, on the question of the scope of initial discovery in this proceeding. You indicated you would prepare a statement of your views on the relevance of Edison's financial capabilities to this proceeding and we would submit it or some amended version jointly to the hearing examiner for decision. In any event, Edison will not voluntarily produce the documents requested nor voluntarily expand the proceeding in the direction you have indicated you wish to go.

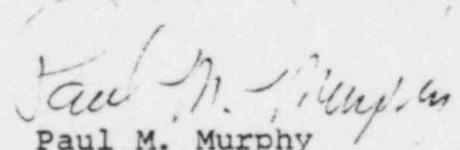
You indicated you would like to present to the hearing examiner an amended schedule for this proceeding setting October 26 as a target date for resolving all disputes as to discovery and November 30 for the filing of initial affidavits. Edison will, of course, attempt to abide by any reasonable dates acceptable to the hearing examiner.

I trust the above accurately reflects the nature of our discussions of September 15, 1981. Please advise me if your recollection differs from mine.

Sincerely,

ISHAM, LINCOLN & BEALE

BY


Paul M. Murphy
Attorneys for
Commonwealth Edison Company

LAW OFFICES

CHERRY & FLYNN

ONE IBM PLAZA

CHICAGO, ILLINOIS 60611

MYRON M. CHERRY
PETER FLYNN

TELEPHONE
(312) 565-1177

September 16, 1981

By Messenger

Paul M. Murphy, Esq.
Isham, Lincoln & Beale
One First National Plaza
Forty-Second Floor
Chicago, Illinois 60603

Re: Rockford League of Women Voters v. Commonwealth
Edison Company

Dear Mr. Murphy:

You have requested copies of documents cited in notes 30, 41, 48, 93, 94, 119, 129, 153, 180, 230, and 231 of the Hubbard-Minor Affidavit submitted to the Illinois Commerce Commission in the above case. Copies of the documents you requested are enclosed, with two exceptions. First, MHB has misplaced its copy of the ACRS letter referred to in note 94. They still continue to search for it, and have also requested a copy from the NRC. I will get that letter to you as soon as a copy of it is obtained. Second, MHB is also temporarily unable to locate its copy of the letter from DOI to the ACRS referred to in footnote 180. (Enclosed with this letter, however, is a copy of a related document which MHB advises provides substantially the same information.) As with the ACRS letter, I will furnish you with a copy of the DOI letter as soon as it is obtained.

Part of the difficulty is that Messrs. Hubbard and Minor have been away from their office for substantial periods. MHB advises me that Mr. Hubbard should be able to locate both documents in MHB's file in the immediate future.

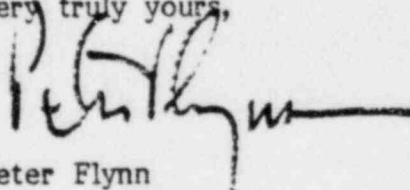
MHB advises that, in addition to documents referenced in the Hubbard-Minor Affidavit, the "Byron-specific" documents currently in MHB's possession are as follows:

Paul M. Murphy, Esq.
September 16, 1981
Page Two

1. The League's November 14, 1980 petition for rehearing before the Illinois Commerce Commission;
2. The Illinois Commerce Commission Order of October 15, 1980 in the generic docket;
3. Your memorandum of December 19, 1980 in opposition to our application in the current docket;
4. Letters from Denton to Cherry dated December 22, 1980 and from Cherry to Denton dated December 30, 1980; and
5. "Numerous Federal Register notices, NRC press releases, and daily accession lists (NRC) which contain references to Byron and/or other OL plants of a similar vintage."

The last-mentioned are, of course, all of a public nature and I assume Edison has copies of them as well.

Very truly yours,



Peter Flynn

PF/kal
Enclosures