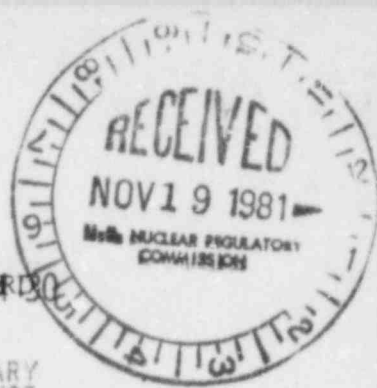


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of

COMMONWEALTH EDISON COMPANY

(Byron Nuclear Power Station,  
Units 1 and 2)

Docket Nos. 50-454  
50-455

COMMONWEALTH EDISON COMPANY'S RESPONSE TO THE ROCKFORD  
LEAGUE OF WOMEN VOTERS' MOTION TO EXTEND THE TIME WITHIN  
WHICH TO APPEAL OR IN THE ALTERNATIVE TO STAY THE TIME  
SCHEDULE FOR THE FILING OF EXCEPTIONS AND BRIEFING IN  
CONNECTION WITH AN APPEAL

By Motion dated November 6, 1981, the Rockford League of Women Voters ("the League") requested that this Board grant the League an extension of time in which to appeal from the decision entered by the Atomic Safety and Licensing Board dismissing the League from the above-captioned proceeding as a sanction for the League's failure to comply with the Licensing Board's Order. In the alternative, the League requested that the Appeal Board stay the briefing schedule provided for in 10 CFR Section 2.762. For the reasons set forth below, Commonwealth Edison Company ("Edison") respectfully requests that the League's Motion be denied and that this Board establish an expedited briefing schedule for the League's appeal.

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### PROCEDURAL HISTORY

On January 13, 1979, the League filed its initial Petition for Leave to Intervene in the Byron operating license proceeding. On March 10, 1980, following a special prehearing conference in August 1979, attempted negotiations among the League, the NRC Staff, and Edison, the League filed 146 contentions. By order dated December 19, 1980, the Licensing Board admitted 114 of the League's contentions and opened discovery upon all issues included in those contentions.

On July 8, 1981, Edison served interrogatories to be answered by the League. To date, the League has not answered those interrogatories. By order dated August 18, 1981, the Board granted a Motion to Compel the League to answer Edison's interrogatories, expressly overruling the League's objections to the same. On October 27, 1981, the Licensing Board granted Edison's Motion requesting sanctions on the League for its continuing failure to respond to Edison's interrogatories, and dismissed the League and its contentions from this proceeding. On November 6, 1981, the League petitioned the Licensing Board to reconsider the League's dismissal as a party and filed the pending Motion with the Appeal Board. In its Petition for Reconsideration, the League takes the position that the sanctions imposed by the Licensing Board were improper and that the League is justified in its refusal to respond to Edison's interrogatories in spite of a Board order that it do so.

### ARGUMENT

Although Edison believes that the Licensing Board's decision dismissing the League is entirely proper, and will eventually be upheld on appeal, we respectfully submit that the Appeal Board should rule on the League's Motion primarily in light of the potential for delay to the hearing process which could result if the League were to prevail on its appeal. Hearings in this case are due to commence in August, 1982. The discovery cut-off date on all issues, except for those raised by NRC Staff documents yet to be issued, was scheduled for November 1, 1981. While the League was a party to the licensing proceeding, no meaningful discovery whatever occurred with respect to the issues raised by the League's contentions.<sup>1/</sup> Indeed, the League was dismissed from this proceeding for its failure to respond to discovery. Assuming, as we do, that the Licensing Board's hearing schedule was reasonably established to allow for the completion of the licensing process by the time the Byron facility is ready for operation, it is obvious that if the League is reinstated as a party following the extended appellate review process apparently contemplated by the League's Motion, it is a virtual certainty that the hearing process will not be completed prior to the scheduled date for the commencement of operation of Byron.

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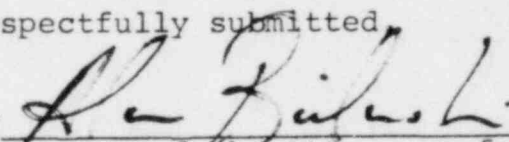
<sup>1/</sup> Prior to the Licensing Board's Order of December 19, 1980 ruling on contentions, and thus prior to the opening of discovery under 10 CFR §2.740(b)(1), the League did serve interrogatories on Edison and the NRC Staff. These interrogatories were objected to by both the Staff and Edison.

Accordingly, Edison submits that the briefing of the appeal should proceed concurrently with the Licensing Board's deliberation on the League's Petition for Reconsideration. If the Petition is denied, the appeal would be ripe for adjudication immediately upon the entry of the Licensing Board's Order. If, on the other hand, the Petition is granted, the only consequence will have been that the parties will have been inconvenienced by having to prepare briefs which, in retrospect, would not have been necessary.<sup>2/</sup>

WHEREFORE, Commonwealth Edison Company respectfully requests that the Atomic Safety and Licensing Appeal Board deny the League's Motion to extend the time for pursuing its appeal, and, instead, establish an expedited briefing schedule for this appeal.

Respectfully submitted,

By

  
One of the Attorneys for  
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Dated: November 13, 1981

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<sup>2/</sup> Indeed, the inconvenience to the League would appear to be slight in view of the fact that it has already submitted a lengthy brief to the Licensing Board, in conjunction with its Petition for Reconsideration, pertaining to the very same issues which will ultimately be presented to the Appeal Board.

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Commonwealth Edison Company, certifies that on this date he filed two copies (plus the original) of the attached pleading with the Secretary of the Nuclear Regulatory Commission and served a copy of same on each of the persons at the addresses shown on the attached service list by United States mail, postage prepaid.

DATE: November 13, 1981

  
\_\_\_\_\_  
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