

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ROCKFORD LEAGUE OF WOMEN VOTERS

v.

COMMONWEALTH EDISON COMPANY

Application to Halt Construction
of Byron Nuclear Power Station

80-0760

MOTION

The Rockford League of Women Voters, by their attorneys, move the Hearing Examiner to establish a conference not later than the close of business, November 5, 1981, to resolve outstanding discovery problems. The Rockford League of Women Voters also moves that the Examiner issue such orders as are necessary to enforce discovery agreements earlier reached by counsel and to reset this matter to accommodate the delay in hearing occasioned as a result of the unrelenting refusal of Commonwealth Edison's counsel to assist in expediting or resolving discovery or abide by earlier agreements reached pursuant to Commission direction.

In support of this Motion the League attaches Exhibit I hereto and its attached Exhibits A and B.

WHEREFORE, the Rockford League of Women Voters requests the establishing of a conference and the entry of orders as set forth above, such action to take place at a time convenient to the Hearing Examiner,

but no later than the close of business, November 5, 1981.

ROCKFORD LEAGUE OF WOMEN VOTERS.

By: 

One of Their Attorneys

Myron M. Cherry
Peter Flynn
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LAW OFFICES
CHERRY & FLYNN
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October 29, 1981

BY MESSENGER

Ms. Wanda Kamphuis
Hearing Examiner
Illinois Commerce Commission
160 North La Salle Street
Chicago, Illinois 60601

Re: Rockford League of Women Voters v. Commonwealth
Edison Company, Docket No. 80-0760

Dear Ms. Kamphuis:

Some time ago pursuant to your directions we attempted to set up a discovery schedule with Commonwealth Edison's counsel. In fact, an agreement was reached which is depicted by my letter to Mr. Murphy dated September 16, 1981 (Exhibit A hereto), and Mr. Murphy's letter to me dated September 17, 1981 (Exhibit B hereto).

For reasons which are not as yet clear to me, Isham, Lincoln & Beale simply walked away from the entire agreement. Thus they have refused to produce Messrs. Bukovski, Deress and Lee for depositions; have refused to provide ordinary and necessary expenses for an expert with respect to the depositions of Hubbard and Minor (our experts); and have provided no answers to interrogatories and essentially no document discovery.

While there is apparently disagreement among counsel as to why these agreements have not been implemented, the Commission's interest in having this matter determined should of course take precedence. Accordingly, I am asking that you set a date convenient to yourself to have a conference with counsel to resolve these differences since it is clear that so long as Isham, Lincoln & Beale refuses to cooperate this case cannot go forward. Indeed, their lack of cooperation allows Commonwealth Edison simply to take advantage of an untoward delay since, of course, the plant is being built and the Commission is presently compensating Edison.

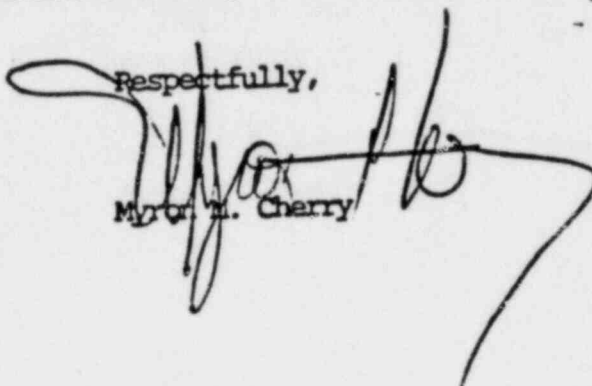
There will obviously be some delays in the hearing and we need to set some new dates. I am getting married on November 8, and I am taking

EXHIBIT I

Ms. Wanda Kamphuis
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a couple of weeks or so off after that, but I am available and deem it necessary to resolve the scheduling problem prior to November 8th. I am available for such a meeting any time beginning tomorrow, October 30, through Thursday, November 5. I will call your office later today or tomorrow to see if we can establish a meeting to resolve this deadlock.

Respectfully,



Myron L. Cherry

MVC/dn

cc: Paul M. Murphy, Esq.

CHERRY & FLYNN

ONE ISM PLAZA

CHICAGO, ILLINOIS 60611

MYRON M. CHERRY
PETER FLYNNTELEPHONE
(312) 665-1177

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 Ms. 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
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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 checking 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
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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

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202-633-8730

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
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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, #11 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
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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.

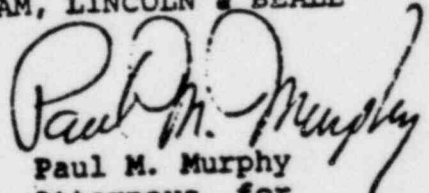
You indicated you would like to present to the hearing examiner an amended schedule for this proceeding setting October 26 as a target date for resolving all disputes as to discovery and November 30 for the filing of initial affidavits. Edison will, of course, attempt to abide by any reasonable dates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

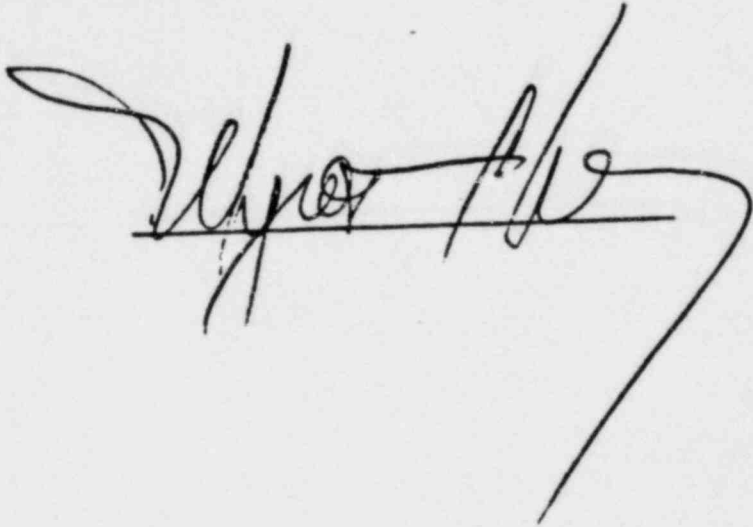

Paul M. Murphy
Attorneys for
Commonwealth Edison Company

PMM/msb

cc: Ms. Wanda Kamphuis

PROOF OF SERVICE

I certify that a copy of the above and foregoing Motion was hand-delivered to counsel for Commonwealth Edison Company, Isham, Lincoln & Beale, One First National Plaza, Suite 4200, Chicago, Illinois 60603, by messenger this 29th day of October, 1981.

A handwritten signature in dark ink, appearing to read "Isham & Beale", is written over a horizontal line. A long, sweeping flourish extends from the end of the signature down and to the right.