

DOCKETED
USNRC

BEFORE THE
ILLINOIS COMMERCE COMMISSION '81 NOV 24 P3:46

IN THE MATTER OF:)

ROCKFORD LEAGUE OF WOMEN VOTERS)

vs.)

COMMONWEALTH EDISON COMPANY)

Application to halt construction)
of Byron Nuclear Power Station.)OFFICE OF SECRETARY
HEARING & SERVICE
BRANCH

No. 80-0760

ROCKFORD LEAGUE OF WOMEN VOTERS' RESPONSE
TO COMMONWEALTH EDISON COMPANY'S MOTION TO
TERMINATE PROCEEDING

The Rockford League of Women Voters ("the League") hereby responds in opposition to Commonwealth Edison Company's ("Edison") November 5, 1981 Motion which should not be granted for at least the following reasons:

1. Edison argues that the Commission should not have a hearing on the League's important and sworn to contentions because parallel issues will be raised before the Nuclear Regulatory Commission. This is the identical argument which Edison made and lost in its Motion to Dismiss our original application which was already ruled upon by the Hearing Examiner at Tr. 50-52. Edison's Motion offers nothing new and for the same reasons as before it should be dismissed out of hand.

2. Edison argues that the Nuclear Regulatory Commission will shortly obviate the need to "speculate" on Byron safety.

First of all the League wishes to put in sworn proof, not "speculation." Secondly, Edison has misled this Commission. While it is true that a SER may be issued on March 30, 1982 (although we point out that the Nuclear Regulatory Staff is notorious for late filings), the Nuclear Regulatory Commission Staff's position is just the position of one party to that proceeding. What Edison has failed to tell the Commission is that hearings on the safety matters are not even tentatively scheduled to begin until late 1982 and will surely run into 1983. There is thus no way the SER will settle matters.

3. The second point Edison cites is experience with similarly designed reactors. Edison misstates the facts of those reactors which were not contested by the League, which involved totally different proof and cannot be relied upon by this Commission. In fact, the issues raised in this proceeding were expressly not raised in the proceedings Edison cites.

4. Edison, after having breached discovery agreements (see our pending Motion to Compel Discovery), now argues that its dilatory conduct should be a basis for delay in these proceedings. That argument is facetious on its face and we ask the Hearing Examiner promptly to rule on our pending Motion to Compel.¹

-
1. As we have advised the Hearing Examiner, league counsel for the League will be on a honeymoon through the first week of December. We ask that the Hearing Examiner set a status conference some time subsequent to December 7, 1981, to resolve the discovery disputes and get this important hearing back on track. In the meantime, perhaps Edison will reexamine its intransigence and comply with discovery requests. WE HAVE ALREADY COMPLIED FULLY WITH ALL OF EDISON'S DISCOVERY REQUESTS AND AGREED TO THEIR DEPOSITIONS WHICH EDISON VACATED BECAUSE THEY REFUSED TO PAY THE EXPENSES AND FEES OF THE EXPERT WITNESSES.

Moreover, the SER argument which Edison makes at pp. 7 and 8 of its Motion is again false because it is the resolution of the issues posed by the SER, not its issuance, which as noted above will not take place until sometime in 1983 at the earliest.

5. Finally, Edison itself has asked for delays in discovery in this proceeding and as a result thereof, the delays in this proceeding and the resetting of filing dates were not only agreed to by Edison, but Edison's counsel so informed the Hearing Examiner.

CONCLUSION

For all of the above reasons the League respectfully requests that Commonwealth Edison's Motion be denied and the Hearing Examiner promptly set an appropriate date for a hearing on our outstanding Motion to Compel and reset the filing and hearing dates accordingly.

Respectfully submitted,

ROCKFORD LEAGUE OF WOMEN VOTERS

By: 

One of Their Attorneys

Myron M. Cherry
Peter Flynn
CHERRY & FLYNN, p.c.
One IBM Plaza, Suite 4501
Chicago, IL 60611
(312) 565-1177

PROOF OF SERVICE

The undersigned, one of the attorneys for the Rockford League of Women Voters, hereby certifies that a copy of the foregoing Response was served by messenger upon counsel for Commonwealth Edison Company, Paul M. Murphy, Esq., Isham, Lincoln & Beale, Suite 4200, One First National Plaza, Chicago, Illinois 60603, and upon Ms. Wanda Kamphuis, Hearing Examiner, Illinois Commerce Commission, 150 North La Salle St., Chicago, Illinois 60601, this 12th day of November, 1981.


