

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

COMMONWEALTH EDISON COMPANY

(Byron Nuclear Power Station,  
Units 1 and 2)

Docket Nos. 50-454 OL  
50-455 OL

MOTION OF THE ROCKFORD LEAGUE OF  
WOMEN VOTERS TO ENFORCE DISCOVERY

The Rockford League of Women Voters ("League"), by its counsel, pursuant to the Rules of Practice of the Nuclear Regulatory Commission, hereby moves the Licensing Board for sanctions against Commonwealth Edison Co., in addition to a request to enforce answers to Interrogatories, and state as follows:

1. After receipt of ALAB-678, and an analysis thereof, the League served Interrogatories on Commonwealth Edison. These Interrogatories were reserved and had been originally served on Commonwealth Edison in March of 1980.

2. The Interrogatories called for answers within 14 days, or by July 8, 1982.<sup>1</sup>

3. We have just been advised in a letter dated June 25, 1982 (attached hereto as Exhibit A) that Commonwealth Edison refuses to answer the Interrogatories.

4. Because of this prospective breach, we ask the Board to rule now. We do not read ALAB-678 as prohibiting discovery by the League (indeed, the

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1. These Interrogatories were served on the Applicant on June 24, 1982, and a copy was on that date mailed to the Licensing Board.

contrary is true see In the Matter of Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), Docket Nos. 50-454, 50-455, Slip Op. June 17, 1982 (ALAB-678), p. 42, n. 37 ¶ 2).

5. Given the substance of this case and the Appeal Board's decision that matters must move with dispatch for the benefit of Commonwealth Edison, this tactic of Commonwealth Edison must be viewed in the extreme by the Licensing Board, and we believe that the strongest sanctions available — including dismissal of the Applicant's application — are in order. Whatever value ALAB-678 has, it certainly is a statement that a party may not wilfully refuse to respond to discovery.

WHEREFORE, the Rockford League of Women Voters respectfully requests that sanctions be imposed on Commonwealth Edison (including sanctions denying their license application), that costs and attorneys fees in preparing this Motion be awarded, as well as an Order demanding that the Interrogatories be answered.<sup>2</sup>

Myron M. Cherry, p.c.  
Peter Flynn, p.c.  
CHERRY & FLYNN  
Three First National Plaza  
Suite 3700  
Chicago, Illinois 60602  
(312) 372-2100

Respectfully submitted,

ROCKFORD LEAGUE OF WOMEN VOTERS

By:

One of Its Attorneys

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2. We earlier informed the Licensing Board, prior to our abrupt dismissal, that Commonwealth Edison and its counsel were unfair and in breach of agreements, although the Licensing Board (and the Appeal Board) chose, without hearing, to believe the Applicant and its lawyers. Perhaps this conduct of the Applicant's counsel as set forth in Exhibit A will serve to have the Licensing Board rethink just who has been acting unfairly.

ISHAM, LINCOLN & BEALE  
COUNSELORS AT LAW

THREE FIRST NATIONAL PLAZA  
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EDWARD S. ISHAM, 1872-1902  
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202 833-9730

June 25, 1982

Myron M. Cherry, Esq.  
Cherry & Flynn  
Suite 3700  
Three First National Plaza  
Chicago, Illinois 60602

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

Dear Mike:

I have reviewed your June 23, 1982 letter and have received the League's first interrogatories to Commonwealth Edison. The position set forth in your letter is wholly inconsistent with the Appeal Board's June 17, 1982 Order. There are presently 114 League contentions outstanding. The Licensing Board has set the date of August 18, 1982 for the commencement of the evidentiary hearing. We have no present position as to whether that date should be extended pending receipt of your answers to interrogatories on July 6 and the ranking of the League's contentions as contemplated by the Appeal Board Order. We regard that step as a necessary prerequisite to any further proceedings with respect to the League's contentions and anticipate that ranking will take place no later than July 6, 1982, the date on which answers to the interrogatories are due. It may assist you in preparing answers to interrogatories to know that Commonwealth Edison's position is that 114 contentions can not, by any stretch of the imagination, be "comfortably litigated" to accommodate a late 1983 fuel load date for Byron Unit 1 even if evidentiary hearings begin tomorrow. Therefore, I strongly suggest that the League restrict itself to the 10 or so contentions contemplated by the Appeal Board's Order. If you do so, answering our second set of interrogatories by July 6 should pose no problem. In fact, depending on the 10 contentions you choose to litigate, answers to the second set of interrogatories may not be necessary at all.

EXHIBIT A

Myron M. Cherry, Esq.  
June 25, 1982  
Page 2

The League's interrogatories to Edison are clearly out of time. The Licensing Board's Order of September 9, 1981, ordered that all discovery be completed by November 1, 1981. The League took no steps to initiate discovery prior to its dismissal of the proceeding, 3 days prior to the discovery cut-off date. Absent any change in the Licensing Board's Order closing discovery as of November 1, 1981, the interrogatories are untimely and will not be answered. An appropriate objection to the interrogatories will be filed with the Licensing Board.

Sincerely,

MIM:es

Michael I. Miller

LAW OFFICES

CHERRY & FLYNN

SUITE 3700

THREE FIRST NATIONAL PLAZA  
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MYRON M. CHERRY, P.C.  
PETER FLYNN, P.C.  
ROBERT F. CUSHMAN, JR.\*

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\*ADMITTED TO NEW YORK BAR ONLY

June 25, 1982

BY MESSENGER

Michael I. Miller, Esq.  
Isham, Lincoln & Beale  
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Chicago, Illinois 60602

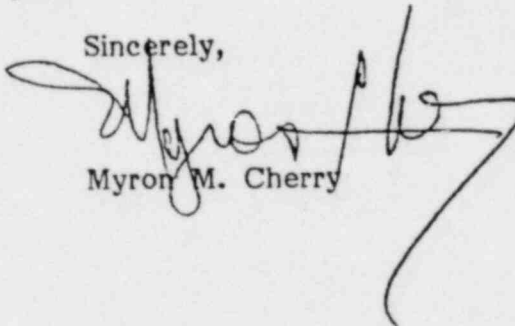
Re: Rockford League of Women Voters v.  
Commonwealth Edison Company

Dear Mr. Miller:

I have your letter of June 25, 1982 and I believe it is outrageous.

Given the fact that you have now prospectively stated you will refuse discovery, notwithstanding the circumstances, we are giving you this notice that we intend to move for sanctions and dismissal of the Applicant's license today, a copy of which will be served upon you.

Sincerely,



Myron M. Cherry

MMC/dm  
Enclosure

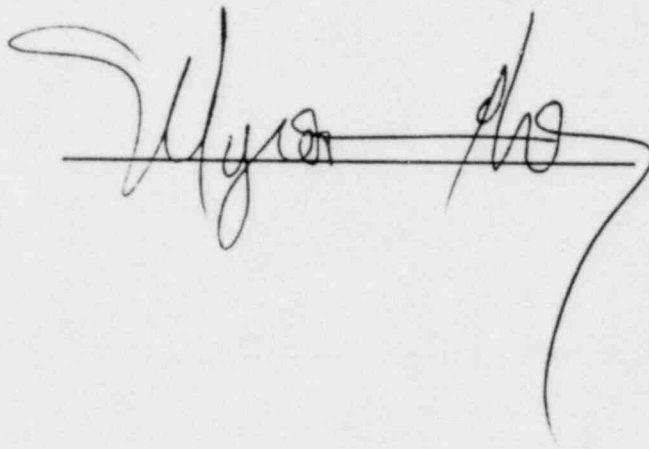
EXHIBIT B

PROOF OF SERVICE

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WSD

I certify that a copy of the foregoing Motion was served on each member of the Licensing Board by mail, postage prepaid and properly addressed, on June 25, 1982, and on the same date copies were mailed to counsel for the U. S. Nuclear Regulatory Commission Staff, and the Secretary-Docketing Section of the U. S. Nuclear Regulatory Commission. In addition, the letter which is attached to the Motion as Exhibit B was served by messenger on counsel for Commonwealth Edison Co. on June 25, 1982.

A handwritten signature in cursive script, appearing to read "Myra", is written over a horizontal line. The signature is followed by a long, sweeping flourish that extends to the right.