UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
COMMONWEALTH EDISON COMPANY	)	Docket Nos. 50-454 50-455
(Byron Nuclear Power Station, Units 1 and 2)	)	

OBJECTIONS TO THE ROCKFORD LEAGUE
OF WOMEN VOTERS FIRST INTERROGATORIES
AND
MOTION FOR PROTECTIVE ORDER
AND
OPPOSITION TO THE LEAGUE'S MOTION TO ENFORCE DISCOVERY

Commonwealth Edison Company ("Applicant") objects the the "League of Women Voters of Rockford, Illinois, First Interrogatories to Commonwealth Edison Company" served by messenger on June 24, 1982, in the above cause and moves the Licensing Board to enter a protective order pursuant to 10 CFR §2.740(c)(1) that discovery not be had. As grounds for this motion Applicant states that the Rockford League of Women Voters' ("League") interrogatories are untimely and, in any event, inappropriate. Applicant opposes the "Motion of the Rockford League of Women Voters to Enforce Discovery" of June 25, 1982, on the grounds given for its objections to discovery, and on the further grounds that the League's request for sanctions is clearly inappropriate as the time to respond or object to the requested discovery has not expired.

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ARGUMENT

On October 27, 1981 the Licensing Board dismissed the League from this proceeding and struck all of the League's contentions. (See LPB-81-52, 14 NRC 901 (1981)). In ALAB-678, dated June 17, 1982, the Appeal Board reversed and remanded the Licensing Board's determination to impose on the League the most severe sanction for the League's failing. However, as stated by the Appeal Board: "In ordering reinstatement, we take various steps to insure that the League does not benefit from the delay it has caused in this proceeding." (Slip opinion, p. 2.) While the Appeal Board did not specify all conditions on the League's further participation in this proceeding, the above-quoted language and the entire tenor of ALAB-678 make clear that the Appeal Board did not intend to extend to the League rights the League did not have at the time of its dismissal.

The Licensing Board set November 1, 1981 as the "Last Date for Completion of Discovery Pending Under Order Entered August 18, 1981, Including Answers to Interrogatories, Production of Documents and Depositions" in its "Revised Scheduling Order" of September 9, 1981. As of the date of its dismissal, the League had not initiated any discovery subsequent to the commencement of discovery in this proceeding. The revised schedule obviously did not permit the initiation of voluminous discovery four days before the time

at which all discovery was to have been completed. Even before the League was dismissed from this proceeding, it had clearly contemplated that discovery which the League could have initiated but for its dismissal, subsequently reversed, should still be permitted subject to stringent time limitations. (See ALAB-678, Slip opinion, p. 42, note 37.) All discovery permitted after November 1, 1981, was limited to discovery regarding the Staff documents (i.e., DES, FES, SER and SSER) or regarding new contentions admitted based on information first available in the Staff documents. The League's first interrogatories clearly do not fall in that category. They were drafted by the League and served on Applicant even prior to the date on which the League's original revised contentions were admitted as issues in controversy. If the League is permitted to acquire rights of discovery which it had waived prior to its dismissal, it will have benefited from the delay it has caused to this proceeding contrary to the intent of the Appeal Board.

Even if ALAB-678 could be interpreted as expanding the League's rights to discovery beyond those existing at the time of its dismissal, it would clearly be unreasonable to require that Applicant respond to discovery on all 114 of the League's revised contentions. The Appeal Board has instructed the Licensing Board to severely limit at an early time the contentions it will permit the League to litigate

in this proceeding and has further instructed that the League revise its broadside approach so as to concentrate on those few contentions it is best prepared to advance. (Slip opinion, p. 41-42.) In order to aid in the selection of those contentions the League is best prepared to advance, the League was instructed to rank its contentions individually. (Slip opinion, p. 42, note 37.) These provisions were designed by the Appeal Board in order that "the Applicant should not be penalized by that wrongful conduct [of the League]." (Slip opinion, p. 40.) Clearly, Applicant will be penalized if it is forced to respond to broad discovery requests regarding 114 contentions when only something on the order of ten contentions can be expected to remain in issue.

On the date on which these objections to the League's discovery were prepared, the League filed a motion of the League to enforce discovery to which it attached a letter from Michael I. Miller, attorney for Applicant, to Myron M. Cherry, attorney for the League. The request for the imposition of sanctions is patently frivolous. Applicant cannot be censured for posing valid objections to untimely discovery. Moreover, the League is now pursuing a course of action which can only serve to delay this proceeding if countenanced by the Board.

Attached hereto as Exhibit A is the letter of Mr. Cherry dated June 23, 1982, referred to in the first line of the letter to Mr. Miller previously supplied by the League. In the postscript to that letter, Mr. Cherry implies strongly that the League has no intention of prioritizing its contentions or otherwise cooperating with the Licensing Board and the parties to limit the contentions as required by ALAB-678. The League should not be permitted under any circumstances to obtain discovery from any party to this proceeding with respect to issues, ninety (90%) percent of which will likely be dismissed, and at the same time be permitted to stall the efforts to appropriately define issues.

WHEREFORE, Commonwealth Edison Company objects to the Rockford League of Women Voters First Interrogatories to Commonwealth Edison Company and moves the Licensing Board to enter a protective order that the discovery not be permitted on the grounds that the discovery requested had been waived prior to the time at which it was initiated and that responses to such discovery prior to the time that the issues on which the League will be permitted to participate

have been defined poses an unreasonable burden on Applicant.

Dated: June 29, 1982.

Respectfully submitted,

Paul M. Murphy

One of the attorneys for Applicant,
Commonwealth Edison Company

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*ADMITTED TO NEW YORK BAR ONLY

June 23, 1982

Michael I. Miller
Isham, Lincoln & Beale
One First National Plaza
42nd Floor
Chicago, Illinois 60603

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

Dear Mr. Miller:

In reviewing our files and our obligations under ALAB 678, I noticed Commonwealth Edison's second set of interrogatories served upon the League of Women Voters in the nuclear case. As you know, those interrogatories demanded answers (or presumably the filing of objections) by November 1, 1981.

By that date, however, the League, pursuant to your motion, had been removed from the proceedings, and therefore the League was not in a position to answer or object to the interrogatories.

ALAB's 678 and the recent extension granted by the Appeal Board to which you made no objection require the League to answer your first round of interrogatories, but then sets up an additional mechanism whereby the Licensing Board would thereafter rule under a variety of standards whether the contentions of the League, notwithstanding answers to the first set of interrogatories, will ever be litigated.

It is our position that in view of these events your second set of interrogatories is untimely since the League at this juncture does not know which contentions will be litigated.

EXHIBIT A

Pursuant to the August, 1981 order requiring discussion prior to seeking relief from the Board, we hereby solicit your opinion on this matter so that we need not file for a protective order.

Sincerely,

Myron M. Cherry

MMC/cc

P. S. After dictating this letter, I received Mr. Murphy's letter asking if we were in a position to answer the second set by July 6. Under the current time restraints, that is impossible, particularly since NHB is available to us on a restricted basis because of their Shoreham involvement.

But another and perhaps overriding issue is the one raised by this letter - i. e. - we will not know which contentions we may press (notwithstanding our July 6 answers to the first set) until the Licensing Board "concludes [which ones] it can comfortably decide on the merits without unjustifyingly delaying operation" of Byron. ALAB-678, at p. 41.

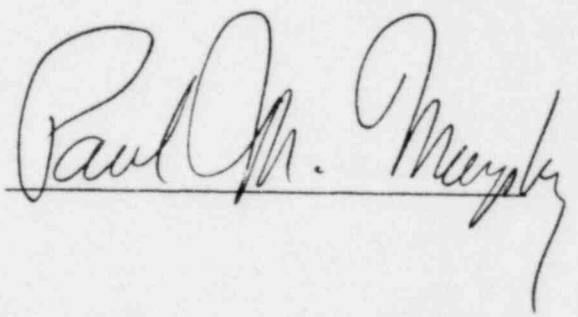
Therefore, please let me have your views, so that any impasse can be tendered (perhaps jointly) to the Board. One thought occurs. Would Commonwealth waive the benefit of the Appeal Board's "comfortably decide" standard and so move the Licensing Board? If so, the League might know much earlier which of its contentions were at issue regarding the second set of interrogatories, and then we could focus on a reasonable date for answering or objecting.

M. M. C.

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 the same on each of the persons at the addresses shown on the attached service list in the manner indicated below.

Date: June 29, 1982



By Messenger:

Morton B. Margulies, Esq.
Dr. Richard F. Cole
Mr. Steven Goldberg
Myron Cherry, Esq.

By Express Mail:

Ms. Betty Johnson
Ms. Diane Chavez
Dr. Bruce Von Zellen

All other parties were served by First Class Mail.

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Atomic Safety and Licensing
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U.S. Nuclear Regulatory Commission
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