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

82-9 01104

WCH

In the Matter of)

COMMONWEALTH EDISON COMPANY)

(Byron Nuclear Power Station,
Units 1 and 2))

Docket Nos. 50-454 OL
50-455 OL

ROCKFORD LEAGUE OF WOMEN VOTERS'
MOTION FOR PROTECTIVE ORDER

The Rockford League of Women Voters ("League"), by their attorneys, hereby requests the Licensing Board to enter a Protective Order staying enforcement of (1) "Commonwealth Edison Company's Second Round of Interrogatories and Request for Production of Documents to be Answered by the Rockford League of Women Voters" refiled under letter of June 23, 1982 and calling for responses on July 6, 1982; (2) the "NRC Staff's First Request for Production of Documents from Intervenor Rockford League of Women Voters" and "NRC Staff's First Set of Interrogatories to Intervenor Rockford League of Women Voters" served by letter dated June 30, 1982 and calling for response on July 17, 1982; and (3) other related matters.

In support of their Motion the League states:

With Respect to (1) and (2) Above:

1. The League is in the process of responding to ALAB-678 in connection with Commonwealth Edison's Interrogatories which were the subject of

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that Order (by so responding we do not waive our rights and reservations that ALAB-678 is improper, illegal and extravagantly biased). The original date by which the League was to reply was extended for an additional week (July 6) by agreement of the parties and approval of the Appeal Board in order to permit the League access to MHB Technical Associates who have been for some time involved as witnesses in the Shoreham proceeding and continue to be so involved. Access to MHB by the League has been severely limited and restricted to just a couple of days during the week of June 28, 1982 and it was not possible given the severe time constraints to deal with any other discovery.

2. The Staff and Commonwealth Edison have filed additional burdensome discovery directed at most, if not all, of the League's Contentions, and these documents are described above. Because of the limited access to MHB and the fact that they are now re-involved in the Shoreham proceeding, it is not possible for the League to respond to this discovery respectively on July 6 and July 17, 1982.

3. With respect to discovery initiated by the League, Commonwealth Edison and the Staff have objected, stating (1) that the League has no right to discovery, and (2) in any event discovery by the League must be stayed until a subsequent decision by the Licensing Board on which Contentions are at issue. We have objected to these positions of the other parties and that matter is now pending before the Board.

4. Since the Staff and Commonwealth Edison take the positions that discovery against them is barred on the League's Contentions until the Board makes rulings in the future, we herewith, in addition to our problems regarding access to MHB, ask for a Protective Order on the above-referenced documents for the same reason. If the Staff and Commonwealth Edison will not respond to

discovery on our Contentions until the Board makes decisions concerning them, we see no equitable reason why we should respond to the Staff's and Commonwealth Edison's recently filed new discovery until the same process has run its course. This Protective Order, of course, is not directed toward the League's obligations due on July 6 pursuant to ALAB-678.

5. Accordingly, we request that the above-referenced documents in discovery be stayed until such time as the Licensing Board decides which Contentions it can "comfortably litigate" without upsetting the Byron plant schedule.¹ In addition, we strongly request that the Licensing Board consider convening a prehearing conference in Chicago, Illinois to discuss discovery, the hearing schedule, and those Contentions which the Licensing Board will ultimately permit the League to litigate. We believe that this process, if one is to follow ALAB-678, cannot take place until the Board and the parties digest our July 6, 1982 filing, make whatever motions they wish concerning those Contentions, and the matter is resolved by the Licensing Board. We do not know how long that process will take, but it certainly is not a task that will be accomplished overnight.

With Respect to (3) Above:

6. Commonwealth Edison has filed a Motion for Summary Judgment against DAARE/SAFE. The Rules of Procedure conceivably could be read as requiring the League to oppose that Motion for Summary Judgment to the extent it deals with a Contention which ultimately might be litigated by the League pursuant to an as yet entered Board Order. We do not believe that until the

1. We urge the Board, when the appropriate time comes, carefully to consider any harsh application of this standard. A harsh application would not be in the interests ultimately of the parties nor of the mandates and dictates of the Atomic Energy Act, as amended.

Contentions are set forth and approved by the Board the League should be required to so participate opposing summary judgment as to another party's Contentions, and this is even more so given the time constraints and the fact that the League was just re-admitted into this proceeding.

7. In addition, we understand that certain depositions are to be taken on July 7, 1982 by DAARE/SAFE and we see no reason to require the participation of the League at those depositions until the ultimate number of Contentions that the League will be permitted to litigate are ironed out. Accordingly, we also ask for a Protective Order to prevent the League from being adversely affected in any way by Commonwealth Edison's pending Motion for Summary Judgment against DAARE/SAFE or any discovery which may be ongoing by the parties other than the League until such time the Board rules on which Contentions the League will be permitted to litigate and a discovery schedule and realistic hearing schedule is advanced.²

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8. The granting of this Motion will work no prejudice on anyone because of the flux in the Contentions which might be permitted to be litigated by the League, and simply requests the same relief which both the Staff and Commonwealth Edison have requested in filings before this Board, respectively dated July 1 and June 29, 1982.

Respectfully submitted,

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ROCKFORD LEAGUE OF WOMEN VOTERS

By: 

One of Its Attorneys

2. In connection with a prehearing conference, I advise all parties that I will be otherwise occupied and unavailable for any such conference through July 21, 1982, and on July 26 I have an out-of-town prehearing conference and I intend to attend the American Bar Association conference in San Francisco during the first portion of August, 1982.

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PROOF OF SERVICE

I certify that the foregoing Motion was served upon the Secretary of the Atomic Safety and Licensing Board, counsel for the U. S. Nuclear Regulatory Commission Staff, counsel for Commonwealth Edison Co. and the Secretary-Docketing Section of the U. S. Nuclear Regulatory Commission by mail, postage prepaid and properly addressed, this 3rd day of July, 1982.

