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Office of the Sec  
Army, DA & S  
Branch  
t No. 50-454  
50-455

In the Matter of  
COMMONWEALTH EDISON COMPANY  
(Byron Station, Units 1 and 2)

Docket No. 50-454  
50-455

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(1) Timeliness

\*/ The Staff pleading was received by Intervenor on July 20, 1983.

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position as established in Exhibit B, only became known to Intervenor within a week of filing their motion.

(2) Significant Safety Issue

Commonwealth Edison characteristically takes a very narrow view of Intervenor's Motion, emphasizing the specific violations at issue. Edison does not, however, concern itself with import of the Region III language in Exhibit B. Edison has pointed to its "extensive nuclear power plant commitments, comprising four operating nuclear power plants and two under construction" (Edison Memorandum at p.1). This fact, of course, undercuts Edison's theory that the violations are insignificant, for given its extensive nuclear plant operating experience it should not have a staff at Byron that is "inadequately prepared" and that is engaging in "inadequate conduct of preoperational testing" (Exhibit B (Summary) at p.2).

Edison and the Staff attempt to equate the severity levels contained in 10 CFR Part 2 Appendix C with the safety significance factor relevant to the Board's determination here. While violation severity levels may have some bearing on the Staff's view of the nature of a specific violation, they cannot in any sense be said to be dispositive of whether an issue meets the level of safety significance of the evidence. To hold otherwise would allow the Staff to determine what is and is not sufficient to reopen a closed record, a result clearly not contemplated by the Commission.

While Intervenor agrees that the severity levels in the two inspection reports, Exhibits A and C, are Severity Level IV, that

does not end the matter. Exhibit B memorializes and summarizes an enforcement conference concerning "Deficiencies Identified in the Preoperational Test Program for Byron Station, Unit 1" (summary at p.1). Ten CFR App. C, §III B describes when an enforcement conference is called:

"Enforcement conferences are normally conducted for all Severity Level I, II, and III violations and for Severity Level IV violations that are considered symptomatic of program deficiencies, rather than isolated concerns."  
(emphasis supplied).

Therefore, Region III has obviously concluded that the specific violations noted in Exhibits A and C are indicative of larger problems.

With respect to Intervenor's having pointed out the Staff change of position, the Staff submits the affidavit of Mr. Forney which simply states that the Region III conclusion as expressed in the hearing is unchanged. Region III's refusal to change its hearing position before this Board does not mean that it has not made contrary statements elsewhere in public documents.

Mr. Forney's assertion that Region III does not "view" its statement as an admission is unhelpful, for this is a legal conclusion for the Board, not for the Staff. The Staff's inconsistencies in its statements before the Board, and its statement in these documents cannot be explained so easily away by mere conclusory and self-serving assertions.

Mr. Forney's attempt to cast Region III statements in the documents "as related to overemphasis on schedule and production by the operating staff...and not whether the QA organization had sufficient independence from production" is unpersuasive, for an overemphasis on schedule and production not only results in

violations, but underscores Edison's unwillingness and inability to construct this plant within the requirements of the NRC, as Intervenor's state in Contention IA.

In sum, the very fact that Exhibit B was issued, and the statements by Region III concerning the adequacy of Edison's program, support Intervenor's claim that a significant safety issue is raised.

### (3) Potential to Affect the Outcome

Potential to affect the outcome does not mean that Intervenor's must prove that the license will not issue if this evidence is admitted; rather, Intervenor's submit this evidence as proof of a change of position by the Staff or a possible misstatement of the Staff position in its prefiled testimony as well as additional, newly-developed evidence pertaining to Edison's QA/QC program.<sup>\*/</sup> To the extent the Board may find, without this evidence, that Edison's preoperational test program is illustrative of its QA program, that finding must certainly be affected by this evidence.

### (4) Commonwealth Edison's Remaining Arguments

Edison attempts to keep this matter from the purview of the Board in part on the justification that it declined to put in

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<sup>\*/</sup> The characterization of Vermont Yankee Nuclear Power-Corp. (Vermont Yankee Station), ALAB-138, 6 AEC 520 (1973), in the Board's May 12, 1983 ruling (at p.6) is unhelpful here. This is not a situation where a triable issue of fact or summary judgment analogy is helpful, for short of the statements by Region III officials in the Region III letter, Intervenor's, of course, can submit no evidence such as counter-affidavits, but can only argue from the record.



evidence on the issue of preoperational testing in its case in chief. It is not for Intervenor's to decide how Commonwealth Edison will attempt to carry its burden in this proceeding. The scope of the contention is not defined by Edison, but by the contention itself. It is instructive to note that the Staff makes no such argument; indeed, it proffered direct testimony on preoperational testing, and therefore is in apparent agreement that this evidence is within the scope of the contention. Moreover, preoperational testing cannot be neatly separated from QA/QC, for QA/QC concerns arise in the entire gamut of Region III inspections, from excavating the foundation through continuing surveillance of plant operations, as is illustrated by the direct evidence of Edison and the Staff concerning fines imposed upon Commonwealth Edison at its operating plants.

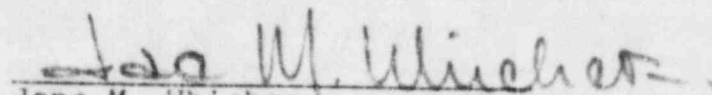
Edison's chief complaint appears to be that, if the Board allows this evidence into the evidentiary record, Intervenor's will be encouraged to submit every I&E report which comes across counsel's desk. Intervenor's submit that this series of reports was carefully selected and brought to the Board's attention precisely because of the significance of the matters raised. More importantly, however, is the fact that Edison continues to be found in violation of NRC regulatory requirements. The mere fortuitous timing of the evidentiary hearing and Region III inspections should not work to preclude this Board from hearing all the available evidence on matters within the scope of the QA/QC contention.

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For the reasons stated, Intervenor's Motion should be granted.

Dated: July 21, 1983

Respectfully submitted,



Jane M. Whicher  
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the Rockford League of  
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