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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

* * *

APPLICANT'S SUPPLEMENTAL MEMORANDUM

* * *

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April 27, 1984

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APPLICANT'S SUPPLEMENTAL MEMORANDUM

During oral argument on April 19, 1984, the Appeal Board requested Commonwealth Edison Company ("CECo" or "Applicant") to address in writing two questions. First, the Appeal Board asked whether the recent issuance of the Court of Appeals' mandate in New England Coalition on Nuclear Pollution v. NRC, No. 82-1581 (D.C. Cir. Feb. 7, 1984) requires the litigation of Intervenors' financial qualifications contentions in this operating license proceeding. Second, in light of Applicant's request that if this case is remanded, it be remanded to a new licensing board, the Appeal Board requested the Applicant to discuss whether the judicial standards for disqualification of judges are met. (App. Tr. 9, 39, 131)

I. FINANCIAL QUALIFICATIONS

CECo has been informed that on April 26, 1984 the NRC met and approved a new Policy Statement which apparently indicates that otherwise appropriate financial qualifications contentions be accepted for litigation in operating license proceedings,

pending the outcome of its current rulemaking. However, the Policy Statement is not yet available so CECo has not been able to confirm this.

Absent clear directions from the Commission requiring litigation of financial qualifications contentions in this proceeding, Applicant believes they should continue to be excluded pending the outcome of the current rulemaking. The proposed rule which was published for comment on April 2, 1984, 49 Fed. Reg. 13044, shows the Commission's preliminary conclusion, subject to its consideration of public comments, is that litigation of such issues in operating license proceedings serves no safety purpose and is a waste of time and resources. Under such circumstances, the Appeal Board should follow its precedent in Potomac Electric Power Co. (Douglas Point Station, Units 1 and 2) ALAB-218, 8 AEC 79, 85 (1974) that "licensing boards should not accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission." See also Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station) ALAB-655, 14 NRC 799, 816

(1981).[1/]

Even if the Commission directs that otherwise timely and appropriate financial qualifications contentions should be litigated pending completion of the current rule-making, it matters very much which of Intervenors' financial qualification contentions are admitted in any reopened Byron proceeding. As the Commission has observed: "definition of the matters in controversy is widely recognized as the key-stone to the efficient progress of a contested proceeding." 37 Fed. Reg. 15128. This is crucial if, as seems likely, reopened evidentiary hearings last beyond the completion of construction, causing the costs of licensing delays to become significant.

1/ At oral argument on April 19, 1984, Chairman Rosenthal seemed to suggest that an early start on discovery on financial qualification issues might minimize any potential delays if the Commission were ultimately to conclude that litigation of finanical qualifications contentions in this proceeding is appropriate. (App. Tr. 82-83) However BPI, which represents Intervenors in this case, is an intervenor in the 1983 CECo rate case presently pending before the Illinois Commerce Commission, and it was also an intervenor in the 1982 rate case (Ill. C.C. Docket No. 82-0026). In these proceedings, BPI has conducted truly exhaustive discovery against CECo, and extensive cross-examination of CECo witnesses, on matters related to the issues raised in Intervenors' finanical qualifications contention. CECo believes the need for additional discovery would be minimal if the NRC were to direct litigation of these issues in this proceeding.

There are three sets of finanical qualifications contentions which at one time or other have been proposed by Intervenors or accepted for litigation by the Licensing Board below. As described below, there are independent grounds, properly raised and preserved by Applicant and the Staff below, which preclude litigation of all but one such contention in any reopened proceeding, notwithstanding the issuance of the Court of Appeals' mandate.

DAARE/SAFE Contention 1(i) (Attachment A)

DAARE/SAFE Contention 1(i), submitted on May 9, 1980, was accepted by the Licensing Board on December 19, 1980 and dismissed by the Licensing Board on April 15, 1982 on the basis of the Commission's newly issued financial qualifications rule. If the Appeal Board concludes that the Court of Appeals' mandate requires restoring the status quo ante promulgation of the rule, readmission of DAARE/SAFE Contention 1(i) would be appropriate.

However, the last clause of DAARE/SAFE Contention 1(i) should be stricken. It alleges that "the Illinois Commerce Commission is presently re-evaluating Applicant's entire construction program (including Byron) to determine if funds by way of rates will be allowed. " When written in 1980, this referred to the Illinois Commerce Commission's proceeding in Docket No. 78-0646, which was then on-going. On October 15, 1980 the Illinois Commerce Commission issued an Order

in Docket No. 78-0646 which found that "Edison has a duty to its ratepayers to complete Byron and Braidwood in as timely and economic manner as possible." Two years later, in Ill. C.C. Docket 82-0026 (the 1982 CECo rate case)[2/] the Illinois Commerce Commission re-examined the question in great depth and concluded that

> [I]t is in the public interest to complete the LaSalle, Byron and Braidwood Stations in as timely and economic a manner as good management practice permits and [the Commission] hereby directs Edison to complete its present construction accordingly.

(December 1, 1982 Order at 64). The Commission also expressly found that "Edison's ability to finance the current construction program is not an obstacle to completion of that program." (December 1, 1982 Order at 63-64). At that time, the Commission granted CECo a total rate increase of $660,730,000. Accordingly, the issue raised in the last clause of DAARE/SAFE contention 1(i) has now been resolved.[3/]

2/ A certified copy of the Commission's December 1, 1982 Order in Ill. C.C. Docket No. 82-0026 was enclosed with CECo's Responsive Brief with the Appeal Board on March 30, 1984.

3/ On April 23, 1984 the Illinois Commerce Commission granted a motion by BPI (counsel for Intervenors in this NRC proceeding), United Mine Workers of America and Citizens for a Better Environment to expand a "conservation alternatives" docket (Ill. C.C. Docket 82-0855) to permit BPI to try to show that cancellation of one or more of CECo's four Byron and Braidwood units is in the public interest. The Commission has not indicated that the Commission itself will undertake still a third examination of a question already twice decided in favor of completing construction.

DAARE/SAFE'S JULY 30, 1982 FINANCIAL QUALIFICATIONS CONTENTION (Attachment B)

On July 30, 1982 DAARE/SAFE filed a new financial qualifications contention in conjunction with its 10 CFR §2.758 financial qualifications petition. This new contention was substantially broader than DAARE/SAFE Contention 1(i), and DAARE/SAFE expressly disassociated its new contention from the old one. (DAARE/SAFE FQ Petition at 2, first note). The new DAARE/SAFE contention was filed over two years late and no attempt was made to address the five factors for late filed contentions listed in 10 CFR §2.714(a). The requirements of 10 CFR §2.714(a) were not met for the reasons stated by the NRC Staff in its responsive pleading dated August 18, 1982 (at pp. 9-13)[4/] In applying the five factors in 10 CFR §2.714(a)(1) to DAARE/SAFE's July 30, 1982 contention, the Appeal Board should take administrative notice of the Illinois Commerce Commission's December 1, 1982 Order in the 1982 CECo rate case. (Ill. C.C. Docket No. 82-0026) There is no longer any significance to the "new evidence" relied upon by DAARE/SAFE in 1982: it consisted virtually entirely of testimony filed in the 1982 CECo rate case before the Illinois Commerce Commission, and the factual situation to which it was addressed was rendered moot by the Commission's December 1, 1982 Order. The Appeal Board also should take into account the present procedural posture of this case and the construction status

4/ In oral argument on April 19, 1984, Mr. Miller incorrectly stated in response to a question from Chairman Rosenthal that neither Applicant nor the Staff had made a timeliness objection to DAARE/SAFE;s July 30, 1982 financial qualifications contention. (App. Tr. 7-8) We apologize for this error.

of the plant in weighing the cost of delay 10 CFR § 2.714(a)(1)(v).

In addition, those portions of DAARE/SAFE's July 30, 1982 financial qualification contention which attempt to raise the issue of CECo's financial ability to complete construction of Byron are inadmissible because that question is not relevant in operating license proceedings.[5/] The Licensing Board below recognized this principle in ruling on the League's financial qualification contentions. See Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2) LBP-80-30, 12 NRC 683, 692. See also Houston Lighting & Power Company (South Texas Project, Units 1 and 2) LBP-83-37, 18 NRC 52, 54 (1983); NRC Proposed Rule on Financial Qualifications, 49 Fed. Reg. 13044, 13045.

Rockford League of Women Voters Financial Qualifications Contentions (Attachment C)

On March 10, 1980, the League filed its Revised Contentions consisting of 146 numbered contentions. Revised Contentions 9, 114, 119, 125 and 126 were admitted by the Licensing Board "as raising the issue of whether Applicant

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5/ CECo properly raised this objection in its July 22, 1982 response to the League's 10 CFR § 2.758 FQ petition (at page 7 in footnote). This response was subsumed in CECo's August 17, 1982 response to DAARE/SAFE's FQ petition and accompanying contention.

is financially qualified to operate the Byron facility in a safe manner." Commonwealth Edison Company (Byron Station, Units 1 and 2) LBP-80-30, 12 NRC 683, 692.[6/] These contentions were stricken on October 27, 1981 when the League was dismissed as a party for "the League's total failure to provide responsive answers to interrogatories," LBP-81-52, 14 NRC 901, 906 (1981). The Appeal Board reinstated the League, but directed the Licensing Board to limit the number of contentions that the League would be allowed to litigate "to that number the Licensing Board concludes it can comfortably decide on the merits without unjustifiably delaying operation of the Byron facility." ALAB-678, 15 NRC 1400, 1420 (1982). On remand, at the August 18, 1982 Prehearing Conference, the League's financial qualifications contentions were disposed of on the basis of the Commission's financial qualifications rule. See Tr. 72-73. They were never subjected to the winnowing process mandated by the Appeal Board in ALAB-678.

6/ LBP-80-30 indicates that the issue of CECO's ability to complete construction of Byron was not admitted for litigation in this proceeding. 12 NRC 683, 692. However, LBP-80-30 does not directly address whether other issues raised in the League's Revised Contentions 9, 114, 119, 125 and 126 were excluded. For example, Revised Contention 114 raises questions concerning the environmental and health effects of chemical cleaning of Byron, as well as CECO's ability to pay for such cleaning. Revised Contention 125 raises questions concerning the validity of the Price-Anderson Act as well as CECO's ability to pay damages for a major accident in the event the Act is repealed or found inapplicable. We assume the Licensing Board did not intend to admit such extraneous and improper issues for litigation.

The League's financial qualifications contentions must now be subjected to the winnowing process mandated in ALAB-678 before they can be readmitted for litigation in this proceeding. Application of that test will result in their denial. Because of the advanced stage of plant construction,[7] any issues addressed in reopened hearings are likely to delay operation of the Byron facility (assuming that the NRC eventually determines issuance of an operating license is appropriate). If reopened hearings were to be prolonged even by one day because of the need to litigate the League's financial qualification contentions, which are much broader than DAARE/SAFE's contentions, this would likely result in significant and unjustified penalties to Applicant and its ratepayers.[8] It would also reward Intervenors for their dilatory and improper conduct earlier in this proceeding.[9]

7/ See Affidavit of Cordell Reed, attached to Spplicant's Motion for Expedited Consideration, dated January 24, 1984.

8/ See Affidavit of Ralph Heumann, attached to Applicant's Motion for Expedited Consideration, dated January 24, 1984.

9/ It is true that, on remand from ALAB-678, the League might have chosen to litigate its financial qualifications contentions had there been no NRC financial qualifications rule. But the League would then have had to drop certain other contentions, perhaps even the quality assurance contention, to comply with ALAB-678. In short, the Appeal Board directed that the League be given a fair amount of time (in view of its previous misconduct) to litigate issues in this proceeding. The League has used that time and is entitled to no more.

The fact is that the time wasted can never be regained, and the League, not CECo or its ratepayers, should bear the consequences.

II. APPLICABILITY OF THE JUDICIAL DISQUALIFICATION RULE

During oral argument Judge Rosenthal requested that Applicant address, in its supplemental filing, the applicability of the judicial disqualification standards to Edison's request that this matter not be remanded to the same licensing board which conducted the ex parte hearing. (App. Tr. 35, 38-39).

The approach embodied in the judicial disqualification statutes, 28 U.S.C. §§144 and 455, does not apply to this case. As discussed in NRC decisions, those statutes pertain to those situations in which a judge might reasonably be construed to be biased against a party or to have prejudged a matter because of extra-judicial contact with the parties or the subject matter of the proceedings. Thus, the statutes are applied in situations in which the source of the alleged prejudice arises outside of the proceedings themselves, and the inquiry involves the personal conduct of the decisionmaker, rather than the conduct of the tribunal as an institution. See Public Service Electric and Gas Co. (Hope Creek Generating Station, Unit 1), ALAB-759, ____ NRC ____ (January 25, 1984) Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), CLI-82-9, 15 NRC 1363 (1982).

Applicant's contention that remand to the licensing board which heard the matter below is inappropriate is

premised on the very different considerations involved in the Licensing Board having heard, ex parte, testimony regarding matters at issue in the proceeding. Applicant does not and never has questioned the personal integrity of the members of the Licensing Board; the issue of ex parte hearing of testimony does not involve notions of extrajudicial conduct or personal bias by the Licensing Board members.

In contrast, and as set forth in its Brief at pp. 74-75, Applicant contends that the receipt of evidence on an ex parte basis constituted a violation of Applicant's hearing rights under due process of law and 5 U.S.C. §§ 554 (b) and (c), 556(d) and (e), 557(c) and (d), 558 and 10 CFR § 2.780.[10/] The receipt of ex parte evidence, without Applicant having the opportunity to test the content and

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10/ The NRC's Policy Statement, 48 Fed. Reg. 36358 (August 10, 1983) purported to authorize but did not compel the ex parte procedure followed below. This Policy Statement could not of course have the legal effect of repealing or modifying the Constitution, the Administrative Procedure Act, or 10 CFR § 2.780. Moreover, by its "Motion for Protective Order and for Release of Portions of In Camera Transcript" dated April 16, 1984, the NRC Staff has in effect conceded that there is no unacceptable risk in providing the other parties in this case with such "sensitive" information under an appropriate protective order. See also ALAB-735, 18 NRC 19 (1983).

tenor of the testimony through cross examination, tainted the adjudicatory process to the prejudice of Applicant.[11/] The prejudice to Applicant would be perpetuated by a remand to the Licensing Board, since it will retain the impressions it developed while hearing evidence ex parte. Moreover, to remand to this Licensing Board for further hearings would in fact repeat and compound the legal error, since there still is information in the ex parte transcript which is being withheld from Applicant.[12/] Thus the Appeal Board should retain jurisdiction of this matter for any subsequent hearings that might be ordered. Failing that, it should order the appointment of a new licensing board pursuant to its inherent authority to fashion relief which is adequate to

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11/ Subsequent to oral argument before the Appeal Board, Applicant received a transcript of the August, 1983, ex parte proceedings which included most of the evidence proffered by the Region III witnesses. The Office of Investigation portion of the transcript remains "sanitized." The comments of the Board (particularly those quoted at pages 73 and 74 of Applicant's Brief) are even more mystifying than they appeared when the transcript was entirely "sanitized." Applicant suggests that the Board's comments and questions demonstrate that the trascript in itself cannot convey the tenor of the proceedings, and that only the participation of all interested parties could have ensured fundamental fairness.

12/ The doctrine of harmless error obviously can not be used by an appellate tribunal to sanction, prospectively, violations of a party's hearing rights. Moreover, the Staff's reliance on Withrow v. Larkin, 421 U.S. 35 (1975) is misplaced, since in that case the complaining party and his counsel were allowed to attend the in camera investigative proceeding which preceded the formal contested proceeding which he sought to enjoin. The complaining party knew all the facts presented to the Examining Board. 421 U.S. 35, 54-55.

ensure compliance with the law and the Commission's regulations.[13/]

Respectfully submitted,

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Dated: April 27, 1984

13/ The Commission's decision in Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), 15 NRC 1363 (1982) does not stand for the proposition that licensing board judges may be removed only where the judicial disqualification standards are met. (Compare App. Tr. 38) Instead, the Commission clearly indicated that it could order the recusal of a judge as an exercise of its discretionary supervisory authority over pending adjudications. 15 NRC 1363, 1367. The Chairman of the Atomic Safety and Licensing Board Panel can reassign licensing board members for administrative reasons. The Appeal Board, pursuant to 10 CFR § 2.785, can order the same result when necessary to fashion adequate relief in a case which comes before it for decision.

Contention 1

Intervenors contend that the record of noncompliance with Nuclear Regulatory Commission regulations by the Applicant in its other nuclear stations demonstrates its inability, unwillingness, or lack of technical qualifications to operate the Byron station within NRC regulations and to protect the public health and safety as required under 10 C.F.R. 50.57(a)(1) (2) (3) (4) and (6), and that therefore the Applicant should not be granted an operating license unless it demonstrates that improvements in management, operations, and procedures will ensure its willingness, ability and technical qualifications to operate within NRC rules; that these improvements will be enforced; and that the Applicant is financially capable of supporting these improvements.

As bases for this contention, intervenors cite the following facts and other facts relevant to the contention which may become apparent through the procedures authorized by 10 C.F.R. 2.740-2.744.

i. The difficult financial position of Applicant, in that its credit ratings have been lowered, it is experiencing difficulty in raising money from traditional sources, and the Illinois Commerce Commission is presently re-evaluating Applicant's entire construction program (including Byron) to determine if funds by way of rates will be allowed.

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	)	50-455
(Byron Station, Units 1 and 2)	)	

DAARE/SAFE FINANCIAL QUALIFICATIONS CONTENTION

Commonwealth Edison is not financially qualified to complete construction of Byron in a manner which will result in a safe plant. As a basis for this contention, DAARE/SAFE incorporates herein by reference, in their entirety, the Petition of Rockford League of Women Voters for Waiver of or Exception to Financial Qualifications Regulations, the Petition of DAARE/SAFE for Waiver of or Exception to Financial Qualifications Regulations, and all exhibits thereto. DAARE/SAFE specifically contends that:

a. Commonwealth Edison ("CE") does not possess or have reasonable assurance of obtaining the funds necessary to complete construction of Byron, to cover related fuel cycle costs, or to cover operation costs for the period of the license, plus the costs of permanently shutting down the facility and maintaining it in a safe condition. (See League Financial Qualifications Petition at 4-6 and Exhibits A, B, C, D, E, F, and G, supplemented by DAARE/SAFE Financial Qualifications Petition and exhibits thereto.)

Attachment B 8208040299

b. There is no reasonable assurance that the Illinois Commerce Commission will raise CE's rates high enough to enable CE to complete construction of a safe plant and to safely operate Byron. (See League Financial Qualifications Petition at 6-8 and Exhibits A, C, E, F; Exhibits A, B and C to League Need for Power Petition; supplemented by DAARE/SAFE Financial Qualifications Petition and Exhibits thereto.)

c. CE's cost projections for completion of construction, operation and decommissioning of Byron are understated and more reasonable projections are so high that CE does not possess or have reasonable assurance of obtaining the necessary funds. (See League Financial Qualifications Petition at 6-10; Exhibits H, I, J, K and L; supplemented by DAARE/SAFE Financial Qualifications Petition and Exhibits thereto.)

d. As a result of CE's lack of financial qualifications, completion and operation of Byron will jeopardize the public health and safety. (See League Financial Qualifications Petition at 10-12; Exhibits F, H and M thereto; supplemented by DAARE/SAFE Financial Qualifications Petition and Exhibits thereto.)

The Safety Evaluation Report (SER) issued by the NRC staff in February, 1982, and supplemented in March, 1982, analyzes in part the financial qualifications of CE. The SER must be supplemented in at least two respects:

-- the estimated costs of the Byron plant are understated and should be revised in light of new information submitted by intervenors.

-- the conclusion that CE is financially qualified safely to operate and decommission Byron is erroneous and must be changed. The SER must be supplemented to reflect that the Company is not financially qualified and that there is no reasonable assurance that it will ' able to obtain sufficient funds to complete construction of a safe plant at Byron and to cover the costs of safe operation and decommissioning.

DATED: July 30, 1982

Respectfully submitted,

Douglass W. Cassel, Jr.
Jane M. Whicher

by: _____
Douglass W. Cassel, Jr.

Attorneys for DAARE/SAFE with respect to issues of financial qualifications, need for power and alternative energy sources

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9. No finding can be made that C.E. has or will have the financial ability to complete or operate the Byron project, as required by 10 C.F.R. § 50.57(a)(4). The general financial difficulties obtaining upon all utilities and C.E. in particular has caused C.E. to cancel and halt certain power projects for lack of financing. This financial crunch will affect Byron, particularly since C.E. will, as it has at other plants, place economic necessity over required safety.

114. C.E. has not included in the Final Safety Analysis Report or the Final Environmental Impact Statement the possibility of cleanup of radioactive contamination buildup at Byron by use of chemical decontaminate chelating agents that will be necessary after about 20 years of operation (as in the ongoing decontamination project at Dresden) and therefore is not in compliance with NEPA and 10 C.F.R. Part 50. Additionally:

(a) Chemical cleanup has not been included in the cost benefit analysis.

(b) An Environmental Impact Statement has not been completed for this decontamination process.

(c) Evidence shows that chelating agents increase mobilization of radionuclides into the environment where they are dispersed through ground water and uptake by plants including vegetables.

(d) During the evaporation step and demineralizer use radionuclides may be released to the environment.

(e) The solvent remaining after effluent and rinse water are removed may be flushed into the Rock River where it will be absorbed by the river's sediment, become resuspended and migrate into the ground water and food chain.

(f) Disposal site after solidification must be designed for careful indefinite burial and because one is not designated, consideration must be given to storage on site.

(g) Temporary workers used in decontamination process may be exposed to increased risk because of synergistic effects of solvent and radioactive material.

(h) Use of a chemical decontaminate chelating agent may deteriorate stainless steel components of the reactor and hasten future build up of contamination requiring more frequent cleanups and repairs.

While C.E. has contended that it does not intend to use this process, it has not satisfactorily explained how it will accomplish the relevant objectives. Because C.E. is in fact using this process at Dresden it must negate the possibility of using this process and establish a safe method for the elimination of radioactive contamination buildup in Byron by other means, which themselves must be subjected to the relevant cost benefit and safety analysis. As a result the applicable findings required by the Act, NEPA, and the Regs, cannot be made herein.

119. C.E. will not have the financial ability to complete or operate Byron, as required by 10 C.F.R. § 50.57(a)(4) for at least the following reasons:

(a) In 1979 three investment rating services lowered their rating on all publicly held bond issues of C.E. This has already caused problems in raising needed capital as costs escalate and the Byron construction timetable is pushed back. C.E.'s heavy investment in nuclear plants makes it dependent on large rate increases, which consumer ratepayers are resisting and the Illinois Commerce Commission is questioning.

(b) C.E. has a poor managerial and safety record as evidenced by NRC's Office of Inspection and enforcement criticisms including in 1977 the threat to revoke C.E.'s operating licenses. These problems have continued to impact on C.E.'s financial structure.

(c) If a serious accident were to occur at one of C.E.'s plants, which seems likely with its poor managerial and safety record, because of C.E.'s off balance commitment to nuclear power, all of C.E.'s reactors might have to be shut down with devastating effects on C.E. Possibilities of difficulties in this area might be similar to those of the Pennsylvania Utility (General Public Utilities) owning the Three Mile Island Plant, which has been denied the right to pass costs of the accident on to its ratepayers, has had to buy power at higher costs, and has yet to pay costs of damages and repair to the reactor or any accident claims.

As a result the applicable findings required by the Act, NEPA, and the Regs, cannot be made herein.

125. In the event of an accident at the units, liability may be limited to $560 million by the Price-Anderson Act. The applicant has not provided a means to compensate for damages beyond the Price-Anderson liability limitation, although such damages may occur as various studies and TMI events show. C.E. has not waived Price-Anderson and accepted liability for any and all damages that might follow from an accident at the units. It is unreasonable to expose the population living in the vicinity of the units to a safety risk when the applicant will not accept the corresponding financial risk. It is plain that the basis for the Price-Anderson Act is the refusal of the nuclear industry to accept the financial risk of having to pay damages in the event of a major nuclear accident. This point is well established in the history of the Price-Anderson legislation. For example, Willis Gale, Chairman, Commonwealth Edison Company, testified before the Joint Committee on Atomic Energy as follows:

> "At this time we do not see any sound basis on which we can risk our solvency on the possibility, remote as it may be, of a major nuclear catastrophe." Quoted in Harold P. Green, "Nuclear Power: Risk, Liability, and Indemnity," Michigan Law Review, Janaury, 1973, p. 484.

Similarly, Charles H. Weaver. Vice President, Westinghouse Electric Company, noted:

> "Obviously, we cannot risk the financial stability of our company for a relatively

> small project.... [We] cannot exclude the possibility that a great enough fool, aided by a great enough conspiracy of circumstances, could bring about an accident exceeding available insurance." Ibid.

Moreover, C.E. has failed to demonstrate that they have the financial capability for paying damages in the event of a major accident in the event of repeal or non-applicability of the Price-Anderson Act. See also Contentions 9, 10, and 45, supra. As a result the applicable findings required by the Act, NEPA, and the Regs, cannot be made herein.

126. The increased cost of safety regulation has not been factored into the analysis of applicant's financial ability. There is no reserve for bad debts or reserves for increased costs for new safety regulations or in connection with resolution of issues raised herein. As a result the applicable findings required by the Act, NEPA and the Regs, cannot be made herein.

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CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Commonwealth Edison Company, certifies that he filed the original and two copies of the attached "APPLICANT'S SUPPLEMENTAL MEMORANDUM" 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, by deposit in the U.S. mail, first-class postage prepaid, this 27th day of April, 1984. Expedited means of service were used where indicated.

One of the attorneys for
Commonwealth Edison Company

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