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Ivan W. Smith, Chairman  
Administrative Judge  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
4350 East/West Highway  
Bethesda, MD 20814

Dr. Richard F. Cole  
Administrative Judge  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
4350 East/West Highway  
Bethesda, MD 20814

Dr. A. Dixon Callihan  
Administrative Judge  
c/o Holiday Inn  
I-95 and Route 22  
Aberdeen, MD 21101

Re: Commonwealth Edison Company  
(Byron Nuclear Station, Units 1 and 2)  
Docket Numbers 50-454 and 50-455 *OL*

Dear Administrative Judges:

As was decided in our recent conference call, Intervenors hereby submit a list of issues for consideration in the remanded proceeding, and responses to and comment on the list submitted by Edison on May 9.

There are three problems in Edison's submittal. First, it appears that Edison seeks an advisory opinion from this Board as to what evidence would be necessary to support the required finding of reasonable assurance pertaining to the quality of the Byron plant. Intervenors are aware of no precedent that would allow a Board to describe to the Applicant the type of evidence it deems necessary for requisite findings.

Second, many of Edison's suggestions merely seek to relitigate previous findings adverse to it, or to give it Edison another chance to present evidence to the Board that it failed to submit during either the March/April or August segments of the QA hearings.

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Finally, some of Edison's suggestions concern the reinspection program and, as such, are already included in the remanded hearings by virtue of the Appeal Board's decision. In the following paragraphs, we discuss each of Edison's suggestions.

1. To the extent Edison wishes to litigate the staff's final views of the reinspection program, and how and why those views changed during the course of the program, we believe this to be appropriate as a part of litigating the reinspection program generally. The staff's initial "acceptance", vel non, has already been ruled on by the Board, and as such, need not be relitigated.

2. Intervenors agree that this should be litigated; it is, of course, a part of the issues explicitly remanded.

3. While unclear, Intervenors assume that this is an item Edison wishes to explain in greater detail than it bothered to in August. As such, it is not an appropriate topic for relitigation.

4, 5, 6 and 9. Facts pertaining to these issues have already been found by the Board. If Edison has discovered that its testimony was wrong or misleading in some way \*/, it should have so notified the Board.

7. Intervenors agree this is an appropriate topic, but (as we discuss below) it should not be limited to the "disposition" of the allegations, nor to those open as of August 10, 1983.

8. Edison apparently contemplates substantial relitigation of the entire QA issue. Any favorable evidence Edison possessed could (and should) have been presented during the prior hearings, either in its direct case or in rebuttal. It therefore appears to be still another attempt at relitigation.

In sum, Edison was under an obligation to this Board to present its best case. Intervenors assume that it did so. That it may have misjudged the strength of its case or the Board's interest in particular issues is simply beside the point. Thus, we oppose allowing Edison's attempt at relitigation of adverse findings. \*\*/ Instead, the remanded hearings should focus on what Edison has done since the close of the record to supply the proof that thus far has been absent -- e.g., reinspections.

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\*/ See, e.g., Mr. Miller's letter of March 14 to the Appeal Board concerning Systems Control Corporation.

\*\*/ Of course, to the extent that Edison is allowed to relitigate, Intervenors must be given that right as well.

In addition, evidence should be focused on what new evidence has come to light since the record was closed. This makes sense because, even as Edison reinspects and marshalls its evidence once more, additional information has been disclosed that casts an even darker cloud over the quality of the Byron plant. Relevant facts cannot simply be "frozen" in time, and Intervenor's therefore suggest the following issues should be included:

1. The information disclosed under protective order of April 17, 1984, and the status and results of the investigations pertaining thereto.

2. Those topics within the scope of Intervenor's December 22 Motion to Reopen the Record.

3. Preoperational testing and the results of NRC inspections thereof.

4. Enforcement actions (i.e., civil penalties) assessed at Edison plants as described in Mr. Miller's February 10, 1984 Board notification, and all enforcement actions taken since the date of that letter. \*/

5. The topics covered in Mr. Rawson's Board notification of March 7, 1984 (a series of five I & E reports issued after the close of the record).

6. Mr. Rawson's Board notification of March 28, 1984 concerning Hatfield Electric Company.

7. Mr. Rawson's April 5, 1984 Board notification of the issuance of the final SALP report.

8. All I & E reports issued since the close of the record related to quality assurance at Byron, and all allegations received pertaining to quality assurance at Byron.

9. The results of the Byron Integrated Design Inspection, the special inspection by Bechtel pertaining thereto, and the results of the Bechtel inspection.

10. The overstressing of numerous steel beams and corrections, the reasons overstressing occurred, and whether and what corrective action has been taken.

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\*/ E.g., on May 8, 1984, Edison was assessed a \$140,000 fine for a series of violations at its Dresden plants.

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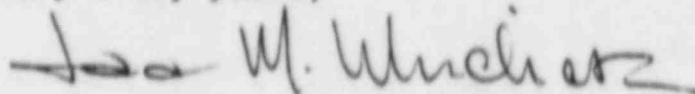
11. Why 100% reinspections were needed of Johnson Controls, Powers-Azco-Pope, and Reliable Sheet Metal, and whether these reinspections suffer from the same apparent flaws present in the alleged 100% inspection of SCC-supplied equipment performed by PTL.

12. Any evidence newly developed by Intervenors or the staff.

While Intervenors' view will predictably be labeled as "overly expansive" by Edison <sup>\*/</sup>, we believe we have as much right to litigate evidence showing no reasonable assurance as Edison has to present evidence of its view of that issue. In other words, to the extent Edison believes it has "new" evidence (e.g., in the form of the reinspection results) Intevenors also have new evidence in the form of inspection reports and other developments since the close of the record that show the contrary.

In sum, new evidence is new evidence, and to the extent new evidence is received from Edison, it must also be received from Intervenors. We expect these matters can be fully explored, and any Board inquiries made for clarification, at the May 30 pre-hearing conference. Intervenors look forward to that conference and to a complete and just airing of the scope of the matters to be litigated.

Very truly yours,



Jane M. Whitcher  
Attorneys for Intervenors

JMW/AMH

cc: Service List

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<sup>\*/</sup> Counsel for Edison, Intervenors and the staff have agreed, at the invitation of Intervenors, to meet on May 24 to attempt an informal resolution of these issues.