

NPDES

WATER POLLUTION

OPEN CYCLE AGREEMENT

OCT. 11, 1983

7

AGREEMENT

THE PEOPLE OF THE STATE OF ILLINOIS, represented by the Attorney General, Neil F. Hartigan (hereinafter the "State of Illinois"); THE IZAAK WALTON LEAGUE OF AMERICA; THE ILLINOIS DIVISION OF THE IZAAK WALTON LEAGUE OF AMERICA; THE IOWA DIVISION OF THE IZAAK WALTON LEAGUE OF AMERICA; THE DAVENPORT, IOWA CHAPTER OF THE IZAAK WALTON LEAGUE OF AMERICA; THE CLINTON, IOWA CHAPTER OF THE IZAAK WALTON LEAGUE OF AMERICA; THE BLACKHAWK CHAPTER OF THE IZAAK WALTON LEAGUE OF AMERICA (hereinafter collectively, the "Izaak Walton League"); THE ILLINOIS STATE COMMUNITY ACTION PROGRAM OF THE UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (hereinafter the "UAW") (all of whom, collectively, hereinafter the "Plaintiffs"); COMMONWEALTH EDISON COMPANY; and IOWA ILLINOIS GAS & ELECTRIC COMPANY (hereinafter the "Utilities") were parties to litigation in the United States District Court for the District of Columbia in 1972. That litigation was settled by Agreement among the parties on March 27, 1972, a copy of which Agreement is attached hereto and incorporated herein by reference fully and to the same effect as if set forth herein at length, as Exhibit "A".

Subsequently, on August 27, 1979, the parties entered into a new Agreement which reaffirmed and modified the 1972 Agreement. A copy of the 1979 Agreement is attached

hereto as Exhibit "B" and incorporated herein by reference fully and to the same effect as if set forth herein at length.

The Agreement among the parties dated August 27, 1979 provided that the Plaintiffs shall continue the investigations which they had already begun of the effect on the Mississippi River of the discharge of cooling water from the Quad Cities Nuclear Station. Consultants to the Attorney General of Illinois and to the Izaak Walton League of America have now completed, independently of each other, their analysis of the effect of that discharge.

Based on the Consultants' reports, Plaintiffs have concluded that, balancing the presently known impact of the Quad Cities Station against the financial burden of the Utilities, the restrictions on the operation of the cooling water systems at the Quad Cities Station imposed by the 1972 and 1979 Agreements should be modified. The Plaintiffs retain, however, a concern that research and monitoring continue at Quad Cities Station, because the full extent of the impact of the biological effects is not now known. The Plaintiffs also retain a concern that a change in the present cooling water discharge limitations at the Quad Cities Station not be regarded by others as indicating that the discharge of additional amounts of heated water to the Mississippi River is environmentally acceptable.

The parties therefore agree:

1. The limitations on the discharge of condenser cooling water from the Quad Cities Nuclear Station stated in the prior agreements among the parties are modified as set forth below. Subject to the further limitations and conditions in this Agreement, the Quad Cities Nuclear Station may be operated in an open-cycle mode.

2. The Utilities agree to continue a research and monitoring program at the Quad Cities Station. That monitoring program shall be based on the existing program, modified to account for the data already accumulated, and shall be conducted under the supervision and control of the Utilities. The precise scope of research shall be agreed upon by the Utilities and the Plaintiffs, and shall be paid for by the Utilities and conducted by an independent contractor chosen by the Utilities but approved by the Plaintiffs. The parties have separately entered into a letter agreement stating the operating structure of that program in greater detail. Plaintiffs shall have full access to the data gathered in the monitoring program.

3. If any Plaintiff concludes at any time that the evidence resulting from such studies or other evidence shows that the open-cycle operation of the Quad Cities Nuclear Station is causing actual harmful environmental effects in the Mississippi River, that Plaintiff shall

notify the Utilities of its determination. The Utilities shall thereupon have a right to confer with each of the Plaintiffs in an attempt to reach a resolution acceptable to each of them. If the Utilities are unable to reach a resolution acceptable to each and every Plaintiff within three months of the initial notification, the following dispute resolution mechanism shall take place:

- a. Plaintiff Izaak Walton League of America shall, in its sole discretion, designate an arbitrator who shall be a natural scientist with a doctoral degree. The costs and fees of such an arbitrator shall be paid through the Izaak Walton League by the Utilities as such costs are incurred.
- b. The arbitrator shall conduct a hearing on the issue as to whether the open-cycle operation of the Quad Cities Station is causing actual harmful environmental effects in the Mississippi River and the arbitrator shall reach a final determination on that issue as of that point in time.
- c. The parties shall have a full and complete opportunity for pre-hearing discovery, including full access to documents in the other party's possession, in the possession of the

other party's consultants, contractors, or agents, and an opportunity to take depositions.

- d. The decision of the arbitrator shall be conclusive and binding upon the parties as set forth below.
- e. In the proceeding before the arbitrator, the evidence shall be limited solely to the issue of actual harmful effects on the environment and biota of the Mississippi River and no evidence of cost, power demands, lack of alternative power sources or similar non-biological issues may be introduced.
- f. Plaintiffs' costs and expenses incurred in preparing for and participating in the arbitration process--including discovery costs and attorneys' and expert witness fees--shall be paid by the Utilities as these costs and expenses are incurred.
- g. In the event that the arbitrator decides the matter adversely to the Utilities (i.e., that open-cycle operation has had a harmful effect on the environment of the Mississippi River) the arbitrator shall then determine what level of closed-cycle operation (i.e., full

or partial) is necessary to insure that the adverse effect of open-cycle operation is eliminated. The arbitrator shall establish the remedial level of closed-cycle operation with a margin of safety to account for uncertainty, so as to insure that the adverse effects of open-cycle operation are eliminated.

- h. The Utilities shall thereafter operate the condenser cooling system on the basis determined by the arbitrator. In the event a closed-cycle operation is ordered by the arbitrator, the Utilities shall have a reasonable period of time as determined by the arbitrator, not to exceed four years, to complete the construction of an adequate closed-cycle cooling system.
- i. A determination by the arbitrator adverse to the Utilities shall be enforceable by any Plaintiff in any court which the Plaintiff may select. The Utilities, having consulted with legal counsel, hereby waive service of process and confess that Plaintiffs are entitled to a mandatory injunction enforcing the arbitrator's decision. The Utilities expressly waive any and all legal and equi-

table defenses or claims which they might raise against entry of such a mandatory injunction. The Utilities further expressly waive any right to contest the entry or the enforcement of such a mandatory injunction and waive any right to appeal from the entry of such an injunction. The Utilities further agree to reimburse Plaintiffs for all reasonable costs and expenses, including attorneys' fees, incurred in the course of obtaining compliance with a determination of the arbitrator. Such reimbursement shall occur as those costs are incurred.

4. The Utilities have no present plans to build any additional generating units on the Mississippi and believe it unlikely that additional capacity will be constructed on the Mississippi River at least through the year 2005. The Utilities will not site any generating unit which would discharge to the Mississippi River, unless that generating station has a closed-cycle cooling system, or unless the Utilities obtain the written consent of the Izaak Walton League of America.

5. The Izaak Walton League will not withhold its consent if the Utilities are able to convince the Izaak Walton League of America that the proposed generating sta-

tion or unit will not have a harmful effect on the environment of the Mississippi River. If the Utilities are unable to convince the Izaak Walton League, then the arbitration procedure set forth in paragraph 3 a-i shall apply to the proposal for the new unit.

6. The Utilities shall contribute to an environmental fund, to be created and administered by the Izaak Walton League of America, having as its primary purpose the development and administration of environmental education programs. One of the principal areas of emphasis of those programs will be the Upper Mississippi Valley. Beginning with the effective date of this Agreement, the Utilities shall contribute to said environmental fund the sum of \$200,000 each year for 20 years, or until the Quad Cities station is permanently retired, or until open-cycle operation is terminated pursuant to paragraph 3, whichever occurs first.

7. This Agreement shall continue until modified or terminated by further express written agreement by the parties.

8. The terms of this Agreement are mutually interdependent. If for any reason any provision of this Agreement is rendered unlawful or unenforceable or the Utilities are unable to implement open-cycle operation by decision or order of any court or governmental agency the terms of this Agreement shall have no force or effect as of the time



of such action and in such event the August 22, 1979 Agreement shall be in full force and effect without modification.

9. Any notice or information required by this Agreement shall be sent by registered mail, return receipt requested, postage prepaid, to a representative of each party as follows:

A. For the Utilities:

President  
Commonwealth Edison Company  
Post Office Box 767  
Chicago, Illinois 60690

B. For the Plaintiffs:

Hon. Neil F. Hartigan  
Attorney General of Illinois  
160 North LaSalle Street  
Chicago, Illinois 60601

Joseph V. Karaganis  
Karaganis, Gail & White Ltd.  
150 N. Wacker Drive  
Suite 2500  
Chicago, Illinois 60606

Harold A. Katz  
7 South Dearborn Street  
Chicago, Illinois 60603

Dated: October 11, 1983

COMMONWEALTH EDISON COMPANY and  
IOWA-ILLINOIS GAS & ELECTRIC COMPANY

By 

STATE OF ILLINOIS

By 

Attorney General

IZAAK WALTON LEAGUE OF AMERICA  
--ILLINOIS DIVISION OF THE IZAAK  
WALTON LEAGUE OF AMERICA  
IOWA DIVISION OF THE IZAAK  
WALTON LEAGUE OF AMERICA  
DAVENPORT, IOWA CHAPTER OF THE  
IZAAK WALTON LEAGUE OF AMERICA  
CLINTON, IOWA CHAPTER OF THE  
IZAAK WALTON LEAGUE OF AMERICA  
BLACKHAWN CHAPTER OF THE IZAAK  
WALTON LEAGUE OF AMERICA

By Joseph V. Kargman

ILLINOIS STATE COMMUNITY ACTION  
PROGRAM OF THE UNITED AUTOMO-  
BILE, AEROSPACE AND AGRICULTURAL  
IMPLEMENT WORKERS OF AMERICA

By Harold A. Katz #4