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NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:

COMMONWEALTH EDISON:  
Byron Station Units 1 & 2

PREHEARING

POOR ORIGINAL

Place - Rockford, Illinois

Date - Wednesday, August 22, 1979

Pages 79 - 131

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## UNITED STATES OF AMERICA

## NUCLEAR REGULATORY COMMISSION

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In the Matter of:

COMMONWEALTH EDISON:

Byron Station Units 1 &amp; 2

PREHEARING

-----X

Docket No. 50-454, 455

Industrial Commission Ctrm.  
 4th Floor  
 Winnebago County Courthouse  
 400 W. State Street  
 Rockford, Illinois

Wednesday, August 22, 1979

Prehearing in the above-entitled matter was reconvened,  
 pursuant to notice, at 8:40 a.m.

## BEFORE:

CHAIRMAN MILLER  
 DR. RICHARD F. COLE, Member  
 DR. A. DIXON CALLIHAN, Member

## APPEARANCES:

For the Nuclear Regulatory Commission:

MYRON KARMAN  
 RICHARD J. GODDARD

For the Applicant, Commonwealth Edison:

MICHAEL I. MILLER, ESQ.  
 ALAN BIELCUSKI, ESQ.  
 Isham, Lincoln & Beale  
 One First National Plaza  
 Chicago, Illinois

1135 027

1 APPEARANCES (continued):

2 For the Intervenors, DAARE and SAFE:

3 BRUCE VON ZELLEN  
4 JULIANNE MAHLER  
5 Northern Illinois University  
6 DeKalb, Illinois

7 For the League of Women Voters:

8 BETTY JOHNSON  
9 MARY ANN NIELSEN  
10 CONNIE WARE  
11 League of Women Voters  
12 Rockford, Illinois

13 ALSO PRESENT:

14 JIM NORGAARD  
15 KATHERINE QUIGG  
16 MILDRED BERRY  
17 ROBERT KERRY  
18 JEFF HENDERSHOTT  
19 CECILE MEYER  
20 DOUG NIMTZ  
21 SUSAN GOULD  
22 MR. HENNING  
23 MR. CAMPRELL  
24 JOHN D. SPENCE  
25 JAMES BEEM

1135 028

C O N T E N T SSTATEMENT OF:PAGE

JAMES GITZ,  
An Illinois State Senator,  
The 35th Legislative District

81

JOHN D. SPENCE

88

CONNIE WARE

96

JOHN HENNING

97

STANLEY CAMPBELL

100

JAMES BEEM

101

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## P R O C E E D I N G

CHAIRMAN MILLER: We will resume our special prehearing conference.

First we would like to recognize Senator James Gitz, who has several matters he would like to present and which he would like to be made a matter of record. The Senator is invited to make the presentation. There will be no time limitation.

STATEMENT OF JAMES GITZ, AN ILLINOIS STATE  
SENATOR FROM THE 35th LEGISLATIVE DISTRICT

SENATOR GITZ: I think you will find this brief. First of all, I would like to thank the Chairman and members of the Committee for the opportunity to submit testimony for your record.

My name is James Gitz. I reside at 1605 S. Locust, Freeport, Illinois. I hold the elective office of State Senator. My legislative district includes the City of Byron, Illinois, the site of the Byron nuclear facility.

I would like to make it clear that I come here neither to praise or condemn nuclear power. There are, however, three issues which I believe are germane to the operating license under discussion. My testimony is offered in support of contentions 3 and 5 of the SAFE Statement of Contentions, and contention 5 of the LWV Statement of Contentions.

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Specifically, these issues are as follows:

One, the existence of substantial excess reserve generating capacity of Commonwealth Edison even without the Byron nuclear facility at a substantial burden to the ratepaying public.

Two, the lack of a state-wide emergency evacuation plan, which would meet the NRC approval, not to mention the lack of interstate planning with our neighboring states in case of an emergency.

Three, the existence of serious allegations of quality assurance problems on the construction site of Byron by a now terminated quality assurance inspector. This testimony was offered before a hearing officer of the Illinois Commerce Commission on July 19, 1979, in Byron, Illinois, at a public hearing on the plant construction program of Commonwealth Edison.

I would like first to turn to the issue of excess generating capacity. Power companies generally build plants to meet the demand for electricity. The greatest electrical demand usually takes place during the summer. If there is not enough power to meet this demand, Commonwealth Edison must either buy power elsewhere, or suffer brownouts. If the company overbuilds, particularly with expensive nuclear facilities, it is the ratepayer who bears the brunt of this decision, not the company.

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1 I suggest that this is not an idle issue, since  
2 Commonwealth Edison has petitioned the Illinois Commerce  
3 Commission for an 18 percent rate hike, 75 percent of which,  
4 according to the Company's Chairman, is directly related to  
5 its nuclear program. Controversy has surrounded this  
6 increase -- to a point where the Illinois Commerce  
7 Commission has launched a full investigation into the plant  
8 construction program of Commonwealth Edison and publicly  
9 acknowledged they are actively considering delaying the  
10 construction of the Byron nuclear plant due to excess power  
11 generating capacity.

12 Now most regulatory bodies and utilities seem to  
13 argue that 15 percent is an appropriate reserve margin.  
14 That is, 15 percent over projected demand for the year.  
15 Yet, in 1978 Commonwealth Edison's reserve margin was 26.7  
16 percent.

17 Now, one year would hardly stir one's soul. Yet  
18 it is most interesting to look at the difference in recent  
19 years between the company's forecast and the actual demand  
20 for electricity. In point of fact, Commonwealth Edison has  
21 been overbuilt since 1972. In 1973 their five-year forecast  
22 projected a 47.7 percent increase in electrical demand  
23 according to their amended financial review. Actual growth  
24 was far from 47.7 percent. It was not even half that or 24  
25 percent, nor even a third of 47.7 percent. The actual

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1 growth in demand was 10.1 percent — about 2 percent per  
2 year — 1.94 percent to be exact.

3 Now, Commonwealth Edison has projected the growth  
4 in demand for electricity at 9.8 percent in 1979 and 4.5  
5 percent every year thereafter. Using their own figures,  
6 this still leads to a reserve margin of 28.2 percent in  
7 1984, when both Byron units are on line, according to the  
8 company's load capacity statement.

9 If the actual annual growth of 1.94 percent  
10 continues in the future, the actual reserve capacity by 1984  
11 could approach 56.7 percent. That cost will be a special  
12 a batross borne by the ratepayers. Moreover, I would  
13 suggest to you that as electrical rates climb, more  
14 efficient appliances are utilized, and the country becomes  
15 more energy conscious — if for no other reason than from  
16 pocketbook necessity — these will all have a dampening  
17 effect on the company's rate projections, projections which  
18 acknowledge excess reserve capacity even at their figures.

19 Clearly, the company is not impaired from  
20 providing reliable electric service if the Byron plant  
21 undergoes further scrutiny and delay.

22 Returning to the second issue raised, I would like  
23 to point out to the Committee that at present Illinois does  
24 not have a state emergency plan which meets the basic  
25 criteria set forth by the NRC. In testimony before the

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"mte 1 special Illinois Senate Committee on Nuclear Safety, of  
2 which I am a member, a spokesman for the Illinois Emergency  
3 Services and Disaster Agency disclosed last May that the  
4 state had no plan and was at that time relying on local  
5 plans which are by and large untested and questionable as to  
6 their workability.

7 I find this an incredible situation in a state  
8 which leads the nation in reliance on nuclear power.  
9 Moreover, only after the Three Mile Island and Congressional  
10 attention to this situation have the wheels of the state  
11 government begun to grind ever so slowly towards meeting NRC  
12 criteria. That the construction and licensing of nuclear  
13 power plants in the proximity of major metropolitan areas  
14 could proceed at the state and national levels without  
15 detailed and tested plans is incredible.

16 I take note of the fact that in Pennsylvania an  
17 elected official, the Governor of the State, ultimately made  
18 the initiaion decision of whether to evacuate in full,1 in  
19 part, or not at all. State involvement in any local  
20 emergency is almost a certainty.

21 A report of the Comptroller General of the United  
22 States entitled appropriatel "Areas Around Nuclear  
23 Facilities Should Be Better Prepared for Radiological  
24 Emergencies" noted:

25 "Today, 43 states have sizable fixed nuclear

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nte 1 facilities within their boundaries. These include nuclear  
2 power plants, military installations, and federal nuclear  
3 research reservations.

4 "There is only limited assurance that persons  
5 living or working near these nuclear facilities would be  
6 adequately protected in case of a serious — although  
7 unlikely — nuclear accident. Most facilities GAO visited  
8 appeared prepared to respond to radiological releases within  
9 their boundaries, but deficiencies in planning and  
10 preparedness cast some doubt on whether effective actions  
11 would be taken to protect the public should a nuclear release  
12 extend outside facility boundaries."

13 It also noted significantly that the Chairman of  
14 the Nuclear Regulatory Commission should:

15 "Allow nuclear power plants to begin operation  
16 only where state and local emergency response plans contain  
17 all the Commission's essential planning elements. In  
18 addition, the Commission should require license applicants to  
19 make agreements with state and local agencies, assuring  
20 their full participation in annual emergency drills over the  
21 life of the facility."

22 I want to make it clear that my testimony is not  
23 intended to impugn the integrity of Commonwealth or their  
24 own contingency planning. There is, however, a clear gap in  
25 the State Government's response to date to the potential of

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Kmte 1 radiological emergencies. Given the proximity of our  
2 metropolitan areas to neighboring states, this situation is,  
3 in my opinion, a proper concern of the NRC licensing board.

4 Moreover, I believe thoughtful planning should  
5 extend well beyond the immediate ten-mile area.

6 Turning to my last point, I submit to the  
7 Committee the testimony of Mr. Dennis Rice before the  
8 Illinois Commerce Commission hearing officer on July 19,  
9 1979. His allegations suggest that the contractors on the  
10 Byron plant do not have public health and safety uppermost  
11 in their minds. These are serious allegations which are  
12 disputed by Commonwealth Edison.

13 I do not know who is telling the truth, since I  
14 have a high degree of respect for the opinion of Don  
15 Lindvall of Commonwealth Edison. But I believe the  
16 integrity of the licensing process will only be preserved if  
17 all such allegations are fully and completely investigated  
18 by the NRC and the results made public. The public has no  
19 toleration for duplicity, nor should it have to have such  
20 toleration.

21 I hope the points raised herein will be addressed  
22 in your difficult work. Thank you.

23 CHAIRMAN MILLER: Thank you, Senator Gitz. Do you  
24 have extra copies of your statement? Do you have one at  
25 least for the reporter?

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1 SENATOR GITZ: Yes, I have one.

2 CHAIRMAN MILLER: If you will furnish it to the  
3 reporter, copies will be provided to the parties. That will  
4 include portions of the transcript of the Illinois Commerce  
5 Committee to which you alluded.

6 SENATOR GITZ: Yes.

7 CHAIRMAN MILLER: Thank you, sir.

8 We will proceed to limited appearance statements  
9 of those members of the public not parties who desire to  
10 make such statements. We had a number of such statements  
11 yesterday. We indicated we would entertain and receive the  
12 balance commencing at 8:30 this morning.

13 Who wishes to proceed?

14 LIMITED APPEARANCE STATEMENT OF JOHN D. SPENCE

15 MR. SPENCE: Chairman Miller, Dr. Callihan,  
16 Dr. Cole, ladies and gentlemen:

17 I am indebted for the right to be able to speak as  
18 an interested citizen. Yesterday I left at 2:30 when it  
19 seemed apparent that the hearing would be closed. I guess I  
20 should have learned the lesson many years ago, when the  
21 Pittsburgh Pirates scored 11 runs after two were out in the  
22 ninth inning: You should never leave the ballgame until  
23 it's over. It was an error in judgment.

24 I must acknowledge the great sense of favoriness  
25 reflected by Dr. Mildred Berry, who thoughtfully called me

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Kmte 1 to tell me of the extension, and his despite the fact that  
2 we have different viewpoints on this matter. All of us  
3 could profit by following her example, which assures  
4 rational conclusions.

5 I carry over 30 years of accumulated scar tissue  
6 because of serving in executive positions in industry  
7 positions and education. I'm not a scientist; I'm a  
8 generalist. My training has involved analyzing disparate  
9 sets of facts in order to arrive at logical conclusions.  
10 Emotions must be disciplined if at all possible, because  
11 this confusion can obfuscate the issues.

12 Use of minimal facts or just take a position of  
13 some party, once taken out of context, is intellectually  
14 dishonest no matter how sincere the intent. My impression  
15 is too many who take anti-nuclear stances obscure their lack  
16 of knowledge with loud voices and sometimes false  
17 repetitions.

18 I've tried to carefully sort out the facts, and  
19 let me state my position. We live about eight miles from  
20 the Byron site. I have no fear and want construction  
21 accelerated. It seems illogical to me that Art Moore,  
22 district vice president of Commonwealth Edison, who lives  
23 about 18 miles from the plant, or Don Linville, who's the  
24 utility's local voice, who lives about the same amount away,  
25 would be planting the seeds of their own demise.

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1 Similarly, I feel that the fact that 40 percent of  
2 Commonwealth Edison's product is nuclearly produced, and  
3 that makes my happy. Costs are lower as a result and our  
4 economy is sustained.

5 Lest you think me a patsy for Commonwealth Edison,  
6 let me state that I don't always agree with what's done by  
7 the company personnel and I have battled them on several  
8 occasions when I thought my position was correct. Just  
9 remember, in large companies there are many people involved  
10 and it would be difficult to have careless performance. The  
11 results have been good when taken in full context. There  
12 has been no major error.

13 Errors are measured quantitatively -- what is your  
14 own personal batting average in that area -- and  
15 qualitatively -- how serious were your errors.

16 I was little impressed with the printed material  
17 passed out yesterday. A quick glance disclosed sinister  
18 verbiage, but little specifics except for relatively minor  
19 findings in the context of the whole problem.

20 Nitpicking is also relative. How many of us, in  
21 our own lives, operate without error? Commonwealth has had  
22 no nuclear-induced injuries or deaths to date.

23 Let me present a comparison on relative safety  
24 from a column of the Wall Street Journal dated May 13,  
25 1979. It's titled "Coming to Grips with Risk." It was

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Vmte 1 written by Byron Nathaniel Rothschild, former director of  
2 the British government panel on science and technology.  
3 Table 5, headed "Estimated Range of Deaths for Specific  
4 Energy Output." Output was 10 gwy. I can tell you that "g"  
5 means "giggy," a billion watt-hours, and that's small in  
6 relation to total usage.

7 Estimated range of deaths for coal for each  
8 gigawatt power was 1500 to 1600 deaths. For oil, 2214  
9 deaths. for wind power, 230 to 700. For solar space  
10 heating, 90 to 100. For uranium, 2-1/2 to 15. And for  
11 natural gas, one to four.

12 He states that we ought to be able to compare the  
13 various risks about us before being put into a panic by some  
14 authoritative utterances. The article contains more tables  
15 of interest.

16 In my opinion, the public has been misled almost  
17 totally on Three Mile Island. All of the facts have still  
18 not been presented to the public in a coherent manner, if  
19 you will.

20 Much criticism has been directed at your  
21 Commission, at the utility, and at the company which made  
22 the reactor. The fact is that even with human and equipment  
23 failure, the safety system still worked. That is a fact.

24 Sometimes misinformed and misunderstanding and  
25 biased media and some politicians who lack intestinal

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nte 1 fortitude have compounded the distortion and in my view have  
2 hurt our country almost irreparable. The dangers of the  
3 predicted meltdown, the alleged escaping of radioactive  
4 gases, and the 19 cows who aborted, led to the syllogistic  
5 media conclusion that radiation did them in, only to be  
6 refuted back in the publications at a later date.

7 These have all added to our confusions, sadly,  
8 because we have not had coherent, responsible and objective  
9 information. Fully two-thirds of the American people,  
10 according to a poll, don't know it's impossible for a  
11 nuclear plant to undergo a nuclear explosion because its  
12 fuel is enriched only to 2-1/2 percent of U-235.

13 Peter Beckman takes Norman Cousins to task for a  
14 Saturday Review article in which Cousins alleged that coal  
15 was safer. He said Cousins should have commented on the  
16 Congressional Office of Technology 400-page assessment  
17 entitled "The Direct Use of Coal," printed three weeks  
18 before, indicating that coal combustion had been responsible  
19 for 48,000 premature deaths per year in the United States.

20 This figure is expected to rise to 56,000 in  
21 1990. Why is background radioactivity in Colorado twice the  
22 national average and cancer in Color. 30 percent below the  
23 national average?

24 Time is so limiting that I feel I have to close  
25 with these observations:

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1 One, no one at or in the neighborhood of Three  
2 Mile Island was injured or killed. The greatest dose of  
3 radiation received by anyone was fractional as compared to  
4 chest or teeth X-rays.

5 Two, government's pandering to anti-nuclear  
6 advocates will seriously hurt our future as a great nation,  
7 not only politically but ec nomically.

8 Three, the Carter Administration decision not to  
9 proceed on waste recovery should be reversed. Other nations  
10 are well along in the development of it and it can be done  
11 safely. Let's move. Isn't it almost a travesty that the  
12 very people who decry the storage problem are the very ones  
13 who prevent its solution?

14 Four, Commonwealth Edison in my lifetime have  
15 reduced rates on countless occasions. Only the compounding  
16 of governmental regulations, controls, and government-caused  
17 inflation has forced its increases, in my opinion. Their  
18 costs would be greater had they not had the courage to  
19 proceed with nuclear power.

20 I saw their planning room in Chicago about 20  
21 years ago. I haven't seen it currently. They knew what  
22 they were doing. At the time I questioned some of the  
23 conclusions they had come to, but they were right.

24 These people are not at this on a spurious basis.  
25 If they are wrong, they can cost the public and stockholders

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Kmt 1 If they are wrong, they can cost the public and stockholders  
2 a tremendous amount of money. They turned out to be quite  
3 right.

4 Five, where are the harbingers of doom with  
5 respect to earthquakes in the West and dams? There aren't  
6 backup dams as there are in a nuclear plant. The cost in  
7 lives in some places could be horrendous. We saw an example  
8 of that recently in a dam break in the South. There are  
9 other analogies. Time prevents.

10 Why don't the Commission bring in Dr. Barry  
11 Commoner, Amory Lovins, Ralph Nader, and Dr. Sternglass, and  
12 let them debate extensively Peter Beckman, Edward Teller,  
13 Allen Bradsky, to name a few? Give each plenty of time to  
14 broadcast and telecast the confrontation nationally. I will  
15 take my chances on the good judgment of the American people  
16 if they have access to real facts and perspective.

17 We still have yet to lose a life from a civilian  
18 nuclear installation, and that' on an actual current or  
19 latently inspired basis, too.

20 I want to extemporize for one more second. I  
21 think the thing that bothers me the worst of all about this  
22 situation is that there has been an implication of  
23 immorality, the lust for profit being so great on the part  
24 of Commonwealth Edison that caution is thrown to the wind,  
25 and that they will proceed to do something that will

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Kmte 1 endanger all of us.

2 Ladies and gentlemen, I have had contact with the  
3 personnel at Commonwealth Edison. I have seen them working  
4 in areas to help people, boards, community fund and so on.  
5 They're not this kind of people.

6 It's one thing to question, which I think is  
7 perfectly proper. This is essence of democracies. It's  
8 another thing to do so with veiled implications or  
9 inferences that show these people are trying to put  
10 something over on us. I submit their record over a period  
11 of years, despite the Senator's comments, has been one that  
12 has been quite smart.

13 We have yet to have a brown-out in Illinois.  
14 There has been a profusion of that in other parts of the  
15 country. Let's have faith and trust in them.

16 As far as I'm concerned, let's move quickly, as  
17 fast as we can, because, despite the Senator's comments, I'm  
18 inclined to put my money on their judgment on a long-term  
19 basis, because I suspect they have spent more time in the  
20 study of this problem than any of us.

21 Thank you very much, sir.

22 CHAIRMAN MILLER: Could we have your full name and  
23 address?

24 MR. SPENCE: John D. Spence, 6710 Woodcrest,  
25 61109, Rockford. I'm out in the boondocks toward the Byron

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1 site.

2 CHAIRMAN MILLER: Thank you, sir.

3 Who wishes to proceed next to make a limited  
4 appearance statement, whether written or oral?

5 LIMITED APPEARANCE STATEMENT OF CONNIE WARE

6 MS. WARE: Mr. Spence is a hard act to follow.

7 I'm not used to speaking in public either, so bear with me.

8 I'm Connie Ware and I live at 925 Little Road in  
9 Rockton. I'm a member of the League of Women Voters, but  
10 I'm speaking now as a private citizen.

11 Since Three Mile Island, the worry about nuclear  
12 energy is stronger. People do not fully understand the  
13 arguments pro and con, but the bottom line is they are  
14 scared. Frankly, I'm as afraid of the spread of nuclear  
15 plants as I am of the spread of nuclear weapons. Both have  
16 a lethal capability that will ultimately be difficult if not  
17 impossible to control.

18 I suggest that right now Commonwealth Edison has  
19 the potential to go from being feared and castigated to  
20 being considered conservationist heroes if they would  
21 redesign their Byron plant to use sewage and garbage as its  
22 energy source. We know it can be done. Chicago and  
23 St. Louis are doing it now on a limited basis.

24 American ingenuity and willpower can do anything  
25 with enough money. We know waste products will be our

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AKmte 1 energy source some time. Why not now?

2 As for the cost in changeover of design, if  
3 America can bail Chrysler out, why not Com Ed? I for one  
4 urge the President and Congress to do just that.

5 Thank you.

6 CHAIRMAN MILLER: Who would like to go next? Any  
7 of you ladies and gentlemen who would like to express your  
8 views who have not had opportunity to do so are invited to  
9 come forward.

10 LIMITED APPEARANCE STATEMENT OF JOHN HENNING

11 MR. HENNING: I'm John Henning. I'm from  
12 Rockford, Illinois. I would like to address the issue of  
13 mining as related to the whole procedure of nuclear power.

14 Recently, I was out in the Black Hills and was  
15 discussing with the Sioux Indians out there about the mining  
16 that will be taking place in the Black Hills. They gave me  
17 some interesting facts I would like to present for the  
18 record.

19 Three Mile Island nuclear crisis began with  
20 uranium mining. While the U.S. Government closes the study  
21 of health effects by Three Mile Island, Joseph Califano,  
22 Secretary of the Department of Health, Education and  
23 Welfare, says there will be deaths from the nuclear  
24 accident, unlike other allegations.

25 Only 10 percent of the uranium mining in the

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Kmte 1 Grants Mineralville of New Mexico has been mined. Many  
2 miners are dead from cancer. Many more are terminally ill.  
3 Livestock and wildlife have died; water permanently  
4 contaminated and land destroyed.

5 Now, the point that they have had cancer doesn't  
6 mean that officially through a court system they have been  
7 proven that radioactive mining was the cause of the cancer.  
8 That doesn't mean that the facts aren't clear. It means it  
9 hasn't happened in the courts yet.

10 The Black Hills were formed two billion years  
11 ago. They are a sacred ceremonial grounds to the native  
12 people. Two-thirds of the Black Hills has uranium on it,  
13 some of the highest-grade uranium around.

14 The Trilateral Commission, a consortium of major  
15 powers of the world, has declared the Black Hills region a  
16 national sacrifice area for the energy needs of the nation.  
17 "National sacrifice area" means that in order for us to  
18 maintain our standard of living we must sacrifice these  
19 beautiful lands, yes; but also any lands for the whole  
20 ecological system of this country, in order that we may  
21 maintain the larger need, which is what I would call greed.

22 With the mining process proposed in the Black  
23 Hills, they will be using a system with aquifers to pull the  
24 ore out of the ground. The aquifers -- because of the need  
25 for so much water, there will be a depletion in the water

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Kmte 1 table of that area, and the rainfall isn't great enough to  
2 replenish that. So the net result would be a drying of that  
3 area and another desert-like area.

4 Einstein said in 1939 that if nuclear power was  
5 ever going to become a reality in the energy field, it  
6 should never be in the hands of private corporations,  
7 because private corporations are always put in the position  
8 of sacrificing safety for costs, because cost is profit.

9 I am a stockholder of Commonwealth Edison stock.  
10 I believe that we do need electrical companies. I believe  
11 we do need electrical usage. I don't believe the procedure  
12 my company is using is the proper one.

13 Thank you.

14 CHAIRMAN MILLER: Thank you.

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LIMITED APPEARANCE STATEMENT OF STANLEY CAMPBELL

MR. CAMPBELL: I'm Stanley Campbell, 328 North Ivan Street in Rockford, Illinois. The zip code is 61103.

I would like to register my opposition to the Byron nuclear power plant. I believe that the risks aren't worth the supposed benefits of the plant. Some of the people who are in favor of nuclear power remind me of myself when I was 16 or 17. I believed in the people that were out there working for themselves and were building empires. I felt they were being opposed by certain people in government and certain people that couldn't make it on their own. Therefore, they were being impeded from the supposed utopia they were trying to build for us all.

This belief led me into serving in the Army and going to a place that I found out we were wrong, that this ideal of us as gods, almost, trying to find ourselves -- find our freedom and idealism, allowing us to build a beautiful nation and maybe turning it into a beautiful world -- was wrong. We had to question these, stop.

We have to consider all of the things that are coming out from our actions. I know some of the feelings right now is not, well, how does this relate to nuclear power. The dangers are too great, especially to Rockford. I'd hate to see anything happen for Rockford. If they want to build it anyplace else, fine and dandy. Just keep it away from Rockford.



1 CHAIRMAN MILLER: Thank you.

2 Who would like to be heard next?

3 LIMITED APPEARANCE STATEMENT OF JAMES BEEM

4 MR. BEEM: I'm James Beem.

5 You don't understand how dangerous nuclear power is,  
6 especially in the hands of mortals. It's obvious the leaders  
7 of government and the world don't understand it. They don't  
8 understand the danger to human life, animal life, continuation  
9 of life in this planet. Obviously it's going to continue,  
10 whether in this stage or a more professional stage.

11 There is no way we can defy the laws of God and no  
12 way to defy the laws of nature, which God created also. As  
13 long as we keep playing with things we don't understand and we  
14 are not meant to understand -- we can understand them and study  
15 them, but we cannot use them because we do not have the power  
16 to create perfection.

17 To try to perfect something that could destroy and  
18 create havoc and holocaust is crazy. Not only is it crazy, but  
19 it's insane. Anybody that supports the government, whether  
20 it be the United States, Soviet Union or Japan, that supports  
21 that kind of lunacy, should be more thoughtful.

22 Rockford happens to be a target on the Soviet Union's  
23 list; after the nuclear war we will not be able to deny ourselves.

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mte 3

1 Only God can annihilate us, whether it be Krishna from India  
2 or Jesus or Buddha or whoever you believe in. It's against  
3 the laws of God to create these things. To create demonic  
4 demolition is insane, to make people suffer so much more  
5 craziness.

6 Unless it changes the other way, you are going to bad  
7 places, man. Amen.

8 CHAIRMAN MILLER: Thank you.

9 Who would like to go next, please? Who would like  
10 to be heard, make a special limited appearance, written, oral,  
11 any way?

12 I take it that yesterday afternoon and today that we  
13 have concluded the opportunity which has been requested by many  
14 of you to make your views known. We appreciate that and we wish  
15 to have the expression of views. They will be included and  
16 incorporated in our transcript of proceedings, which, as you  
17 know, is on file at designated libraries and places where the  
18 public may have access.

19 We will consider that the opportunity for limited  
20 appearance statements has now been concluded. We will therefore  
21 proceed now, with the parties and counsel, to go into such  
22 matters as scheduling.

23 Before we do that, I think Mrs. Johnson had a correc-  
24 tion for the record that she desired to make.

25 MRS. JOHNSON: Thank you. For the record, the

1 League of Women Voters of Rockford, Illinois, would like to  
2 correct any impression that might have been given in the  
3 opening statement by Commonwealth Edison's attorney that the  
4 League was unwilling to meet with Commonwealth Edison prior to  
5 this prehearing conference. Although Commonwealth Edison had  
6 received the League's amended contentions on August 1, as soon  
7 as contacted by Commonwealth Edison we tried to arrange a meeting.

8 Because there was only one possible date open for  
9 a meeting before the prehearing conference when the NRC staff  
10 could attend and all League representatives could not be  
11 present on that date, we were unable to meet with them.

12 CHAIRMAN MILLER: Thank you. I'm sure that the  
13 record will reflect that that was the understanding of all of  
14 the parties involved, unless they wish to say something to the  
15 contrary.

16 MR. MILLER: There is no profit in disputing a  
17 matter that is ancient history. I trust we can conduct the  
18 negotiations on open, good-faith basis, and that is Commonwealth  
19 Edison's desire and intent.

20 CHAIRMAN MILLER: The Board encourages that position  
21 and attitude on the part of all parties, Applicant, Intervenors  
22 and staff, and anybody not included in those descriptions,  
23 including the Board.

24 The Board has now ruled that there are Intervenors  
25 who have stated one or more valid or viable contentions or

mte 5

1 issues, and therefore there will be an evidentiary hearing on  
2 the application for the issuance of an operating license on the  
3 Byron plant.

4 We would also ask the parties and counsel to get  
5 together in the sense of negotiating or at least discussing  
6 the further refinement of such contentions as have been brought  
7 forward, with the intention of eliminating duplications,  
8 perhaps having more discretely defined parameters of the issues  
9 that will be the subject of discovery during the environmental  
10 hearing.

11 We have indicated that a period of time would be  
12 allowed for that purpose, about six weeks. However, that was  
13 prior to the estimate by the staff of the filing of certain  
14 documents by the staff, such as the safety evaluation report,  
15 the SER, the draft environmental statement, DES, and the  
16 final environmental statement, about five months or so there-  
17 after, following comment by various persons, known as the FES.

18 Since we use these initials, we thought it would be  
19 well for the record to reflect what we are speaking of. It  
20 would be helpful to the Board and parties if the staff would  
21 indicate whether they have additional information which they  
22 were going to seek overnight.

23 MR. KARMAN: Yes, Mr. Chairman. We contacted our  
24 office back in Washington, and while I would not like to be  
25 condemned at any future time for giving dates now which will

mte 6

1 not be the dates on which the various staff evaluations will  
2 be issued --

3 CHAIRMAN MILLER: We will give you limited immunity.

4 MR. KARMAN: The latest information I have,  
5 Mr. Chairman, is at the present time the estimate is for the  
6 safety evaluation report to be issued in June of 1981, the  
7 draft environmental statement to be issued in September of '80,  
8 with the final environmental statement in February of '81.

9 CHAIRMAN MILLER: Now, with this information, we  
10 realize the staff is giving us their good-faith estimate as  
11 of this time.. We accept it, Mr. Karman, in that spirit. We  
12 know there are sometimes slippages. I don't recall very many  
13 accelerations, but if there have been you can call it to our  
14 attention.

15 With that information, the Board will request of the  
16 parties a time for discussion and to make written recommendations  
17 and reports to the Board concerning the various issues set  
18 forth by contentions. After discussing that, we will go on to  
19 other matters of scheduling, which may be dependent upon or  
20 triggered by that date.

21 Who wishes to be heard in that respect?

22 MR. VON ZELLEN: May I ask a question of the Board,  
23 please?

24 CHAIRMAN MILLER: Yes.

25 MR. VON ZELLEN: Would you clarify for me exactly

1 what we mean or what difference exists between the phrase  
2 "prehearing conferences" and "evidentiary hearing"? As I  
3 understood it earlier, yesterday, there would be two prehearing  
4 conferences. We are admitted as Intervenor for a hearing.  
5 But the next meeting we would have that you will decide now  
6 the date for would technically be another prehearing conference.

7 CHAIRMAN MILLER: Not quite. We have two different  
8 Boards, as you know: the Intervention Board, which decides  
9 whether or not, as we have explained; and then, as there will  
10 be an evidentiary hearing, there is a Licensing Board which has  
11 the full licensing powers, including the holding of an eviden-  
12 tiary hearing.

13 Let's discuss the latter. That is the point at which  
14 we now are. There undoubtedly will be prehearing conferences.  
15 It will be necessary to call another one to go into the plead-  
16 ings or contentions -- we are not sure. That would depend on  
17 the nature of the report which the parties will make to the  
18 Board following their discussion.

19 It may be that you will be able not necessarily to  
20 stipulate, but to indicate to the Board that the following  
21 contentions, while opposed by those who oppose them, neverthe-  
22 less state the issues, pleadings.

23 Then the Board could rule on the written presentation  
24 and it would not be necessary to have a special prehearing  
25 conference for that purpose. If the Board is going to have to

1 rule upon the statement of contentions and statements that the  
2 parties can't agree on, it might or might not be necessary to  
3 have a physical prehearing conference. If the issues are  
4 presented clearly enough by all of the parties pro and con, the  
5 Board may be able to rule in writing without having to have a  
6 physical prehearing conference.

7 Now that is the pleadings issue. Scheduling we are  
8 going to get into now. We may be able to project the scheduling  
9 in a sufficient enough form to carry forward for some months or  
10 whatever reasonable period into the future. After we find  
11 your issues, those then govern broadly the nature of discovery.

12 I suppose most of you are familiar with discovery.  
13 It's similar to discovery provided by the Federal Rules of  
14 Procedure. They are also set up in the regulations. Our own  
15 regulations are primarily controlling. But those are similar  
16 to the same rules.

17 Discovery consists of written interrogatories to  
18 parties, for example. It consists of requests for protection  
19 of documents that can, and at some point does consist of  
20 depositions, whether upon oral questioning, which is common or  
21 customary; or it could be upon written interrogatories by  
22 depositions, which is different from interrogatories to a party.  
23 These are the kinds of things that are generally covered by  
24 the broad term "discovery," which is the ability, within the  
25 framework of the issues and interpreted with reasonable



1     liberality, because at that state deciding what is relevant is  
2     not quite the same that rules of a court and parties and a court  
3     would use in determining relevance for the purposes of  
4     admissibility.

5             These are the kinds of things handled by discovery  
6     which is ongoing once the issues are framed, which is handled  
7     largely by the parties.

8             It's only when they get into a dispute that they are  
9     addressed by the Board. It's the opportunity of all parties  
10    to inquire into or have reasoned answers under oath by the  
11    parties who are asserting factual and other positions. This  
12    is normal, customary in any litigation and certainly in our  
13    kind of hearing.

14            There is one question that the Board does wish to  
15    hear from counsel and the parties on, and that is the extent  
16    to which it's reasonable to require discovery to proceed in the  
17    near future once the issues are framed prior to the receipt of,  
18    let's say, the draft environmental statement, which the staff  
19    estimates to be September of 1980, which itself invites comment  
20    not only from various organizations and agencies which have an  
21    interest, but parties as well. And the staff's notice will take  
22    care of that.

23            The Board would like to be advised of the position  
24    of all parties and counsel as to the utility and fruitfulness  
25    and scope of issues which could reasonably be pursued by

1 discovery prior to the completion of such studies and reports  
2 by staff.

3 Does this answer your general inquiry of the Board  
4 as to what happens next in a sense?

5 MR. VON ZELLEN: It's not exactly clear to me that  
6 we are able to make a scheduling of time until the Intervenor,  
7 the petitioners and lawyers for Commonwealth Edison have met  
8 to assess the contentions. In 30 days, you will receive from  
9 us a statement of our agreements and disagreements. And at  
10 that time it would be, it seems to me -- you would then have  
11 the evidence as to the need for another prehearing conference  
12 or a Licensing Board hearing.

13 CHAIRMAN MILLER: Licensing Board hearing is a full-  
14 fledged matter which will follow discovery. We couldn't put  
15 a date on that now. It can't be before the remote date set  
16 by the staff.

17 As far as going ahead with discovery, the Board sees  
18 no reason why we couldn't enter an appropriate order to proceed  
19 with discovery on the issues as framed by the contentions. The  
20 Board might or might not have to have a special prehearing  
21 conference to discuss issues or not. The Board is capable of  
22 ruling.

23 You make contentions. They are opposed by, say, the  
24 Applicant and staff. The Board has enough information. We  
25 have heard from you and we can read, and we can enter an order

mte 11

1 saying it's granted or denied. We don't have to come here for  
2 that purpose, although we will hear from you to see what your  
3 report is, in order to determine whether or not it's necessary.

4 Mr. Karman, you have something on that?

5 MR. KARMAN: Maybe I can resolve a misunderstanding  
6 that Dr. Von Zellen has. I don't think anybody contemplates  
7 the commencing of any discovery until the Licensing Board will  
8 rule on the contentions, which means nothing can be done until  
9 after that period of the meetings between the parties, the  
10 report to the Board, and the Board's issuance of an order  
11 stating what the contentions are. Only then can discovery  
12 start.

13 CHAIRMAN MILLER: That's correct. That itself would  
14 be a period -- I don't know whether it's two months, three  
15 months, but that's approximately the time required to accomplish  
16 these matters. It would not be earlier than that time that the  
17 Board's order would indicate that discovery is to start. That  
18 would be the triggering date for the commencement of your  
19 discovery.

20 Does that assist you in evaluating the time problem?

21 MR. VON ZELLEN: This seems contrary to what you said  
22 yesterday, when you said, since at least one contention would  
23 be accepted from each of us, that we were going to have a  
24 hearing. My understanding was we could start discovery as of  
25 yesterday.

1 CHAIRMAN MILLER: Informally. That means you don't  
2 have to wait for our order. You could ask the staff --

3 MR. VON ZELLEN: This is what was concerning me.

4 CHAIRMAN MILLER: Informally. But it's not in strict  
5 compliance with the rules that follow the order.;

6 MR. VON ZELLEN: I'm trying to anticipate what you  
7 are going to do next with the staff. That is, to get a recom-  
8 mendation from the staff as to the next meeting we will have  
9 on the contentions.

10 CHAIRMAN MILLER: You didn't do that yesterday  
11 afternoon?

12 MR. VON ZELLEN: I did not do that.

13 MR. KARMAN: As a matter of fact, we are going to  
14 commence such meeting after this session this morning. It  
15 undoubtedly will require an additional visit from the staff,  
16 but we will start right away.

17 CHAIRMAN MILLER: As soon as we adjourn, you ladies  
18 and gentlemen can start your conference immediately, and then  
19 do as much as you can. And as Mr. Karman suggests, there will  
20 be a necessity of one more physical meeting after you have  
21 sorted out the things we discussed. That will get you on your  
22 way.

23 MR. VON ZELLEN: I remind you, yesterday you indicated  
24 six weeks, possibly. Later on you said you might double  
25 that.

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1           CHAIRMAN MILLER: I was so startled at the staff's  
2 estimate of time that the six weeks was more in line with us  
3 having an immediate ongoing proceeding, which had been the  
4 Board's impression, not having information to the contrary.  
5 That is what we have opened this morning, whether or not it  
6 should be six weeks, eight weeks. We want to keep the matter  
7 moving.

8           It does appear that there is more time than we had  
9 realized would be entailed, although it's getting refined now  
10 as to dates.

11           You indicated, sir, with the commencement of college  
12 and so forth that you had a time problem with 30 days. Would  
13 eight weeks suit you better?

14           MR. VON ZELLEN: You had indicated double the time to  
15 12 weeks.

16           CHAIRMAN MILLER: Do you need the double time? These  
17 conferences will help you sharpen, if not resolve, your pleading  
18 issues. Don't you believe in eight weeks, if you could tell us  
19 what issues remained unresolved, which is all you are doing --  
20 those that are resolved would be the subject of a common report  
21 and none of us will have a problem with that.

22           MR. VON ZELLEN: We will know more later this  
23 morning. Do you have to decide now?

24           CHAIRMAN MILLER: We find we should. We must take  
25 into consideration the parties, and we could end up having



mte 2

1 four, five, six proceedings flopping in the breeze like  
2 shirttails in a laundry. We would like reasonable dates fixed.

3 The present information of the Board -- the Board is  
4 of the view that about eight weeks would be about the right  
5 time, considering both factors. And I have an inclination to  
6 give you more time because of the problem you mentioned, school.  
7 But we do feel responsibility as a Board to keep these matters  
8 moving with reasonable expedition.

9 So does anybody wish to be heard further? We are  
10 going to select a date which is about eight weeks shortly.

11 MR. MILLER: Mr. Chairman, that is agreeable to the  
12 Applicant. I would like to point out that, really, beginning  
13 now for a draft environmental statement which is tentatively  
14 scheduled for September of next year is not an excessively  
15 long time period for discovery in these matters, so that the  
16 matters can determine what the facts are that relate to the  
17 contentions that are in issue.

18 The schedule that is now proposed would be a report  
19 to the Licensing Board by all parties some time in the middle  
20 of October.

21 CHAIRMAN MILLER: About October 22.

22 MR. MILLER: We could anticipate that within 30 to 45  
23 days thereafter any disputes between the parties would be  
24 resolved. Realistically speaking, it's probably not much before  
25 the first of the year that discovery would be under way in any



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1 Board. It's possible to give you an order on contentions without  
2 another prehearing conference. If we can do so, we will com-  
3 mence discovery at that point. Probably we can do it. We have  
4 gone over the contentions.

5       Thereafter comes the discovery period we have  
6 described. It might be useful for us to describe to the  
7 parties that have not been in a hearing of this type the  
8 fact that there are in the future prehearing conferences, not  
9 special prehearing conferences on pleadings and contentions,  
10 but full-fledged prehearing conferences that go into matters  
11 such as further scheduling, refinement of issues and contentions  
12 ruling upon motions, developing those things that are necessary  
13 to get to an evidentiary hearing.

14       An evidentiary hearing is like a trial. It's as  
15 close to a trial as anything in NRC proceedings. We follow  
16 the Federal Rules of Evidence, Federal Rules of Civil Procedure.  
17 We have our own Rules of Practice which are paramount. We have  
18 subsidiary considerations of the Administrative Procedure Act.  
19 We follow the Rules of Evidence and there are good reasons.  
20 They are usually 200 or 300 years old.

21       We don't want you to be unpleasantly surprised and  
22 think we are getting technical. We will be and we are alerting  
23 you in advance of the nature of it. We want you to have  
24 full opportunity with your discovery and prehearing conferences,  
25 which are more informal, which will go into motions to be made.

1 MS. JOHNSON: Can you indicate to us what, if any,  
2 way we can rely on Nuclear Regulatory staff experts and this  
3 kind of thing for our use in this?

4 CHAIRMAN MILLER: That you should discuss with  
5 staff counsel. There is no -- you have no clear and -- clearly  
6 spelled out right to do so.

7 The staff, while it's a component of the Nuclear  
8 Regulatory Commission, as is the Licensing Board, we have  
9 independent duties. Here they appear as a party. They observe  
10 the rules. There are certain time matters and others where  
11 the rules give them the right to last response because of  
12 the nature of the work.

13 They are independent. We don't tell the staff or  
14 Mr. Miller what to do. We may tell them certain things they  
15 can't do, certain things, and they can appeal. This is an  
16 adjudicative -- I suggest you confer with staff counsel, who  
17 can tell you what the situation is and advise you.

18 He probably won't agree with some of your contentions,  
19 but nonetheless you will find that Mr. Karman and the staff  
20 will tell you what is available to you and what you can do  
21 to try to accomplish something within reasonable limits.

22 MS. JOHNSON: This would be most helpful within the  
23 limits we are allowed. Of course, both Commonwealth Edison  
24 and the staff have these experts available, and we have a  
25 limited amount of funds to get people to testify for us,

1 CHAIRMAN MILLER: We realize that. Our Commission  
2 has no power to allow counsel fees or costs or matters of that  
3 kind. We have not been given the power. Therefore, this  
4 Board can't grant somebody a divorce or lower taxes. There  
5 are a lot of things we can't do.

6 By discussing with staff or Applicant's counsel, you  
7 can find out the parameters. And this is one of the handicaps  
8 that conscientious Intervenors have. We recognize it and we  
9 do what we can, but what we can do is limited. You have the  
10 right to participate in the sense of discovery of what witnesses  
11 by name, say, and so forth on relevant matters, and cross-  
12 examination at the hearing.

13 You do have a certain access to expert testimony  
14 both in advance and at hearings by cross-examination. Admittedly  
15 that is not your own. But you see, the League of Women Voters  
16 upon its own request has been granted the right to intervene.  
17 You do the best you can, But you have chosen to go that  
18 path.

19 I'm sure we will all be cooperative. But there are  
20 places where not having a party with the finances to afford  
21 expert witnesses per se is a disadvantage. We have that in  
22 mind when we give opportunities for cross-examination.

23 MR. MILLER: That really raises a topic that I think  
24 we ought to get on the table now. We have been talking about  
25 informal discovery and discovery in accordance with the rules,

mte 7

1 which will follow the Board's order. Commonwealth Edison  
2 company is willing to participate in any informal process, and  
3 of course we will respond according to the rules. There is,  
4 as you know, volumes of printed material that relate to one or  
5 more of these issues. In the normal course of discovery, these  
6 will be made available to the Intervenor for their inspection  
7 and copying.

8 I just want to make clear that any documents that are  
9 copied will be done so at the expense of the party requesting  
10 them. They can look at them, obviously, at whatever length  
11 they want to, and reproductions will be made, but at their  
12 cost. I want to get that out on the table so that if that is  
13 a cause for problem we can discuss it now.

14 CHAIRMAN MILLER: The Applicant and you as counsel  
15 intend to be cooperative in the sense of making available  
16 rather substantial volumes of printed material, publications  
17 and the like, which are available to the Intervenor for  
18 inspection and use.

19 If they wish to have copies made of portions of this  
20 material that is voluntarily made available to them, they will  
21 be expected to pay the cost of reproduction per page of whatever  
22 they request to be reproduced; is that correct?

23 Any problem with that?

24 MS. JOHNSON No, I don't think so.

25 I did have one other question. Maybe this isn't



1 the correct time to ask this, but how would you define experts?

2 CHAIRMAN MILLER: I will give you a general defini-  
3 tion.

4 MS. JOHNSON: Is there such a thing?

5 CHAIRMAN MILLER: We do know who in a given field -  
6 look at the available materials and bibliographies, and you  
7 will get a feel for who has written in what field. You can  
8 inquire of staff and Applicant counsel to list the persons  
9 who are regarded as experts in the following areas. You will  
10 find a certain amount of cooperativeness. They technically  
11 might not have to answer those things, but they will cooperate,  
12 I'm sure.

13 There are areas of cooperation which will get you to  
14 a certain point where you will have the information. From  
15 there on you have to make your own judgment.

16 Mr. Karman will tell all of us what repositories  
17 are there in the area where the transcript, for example, the  
18 publication, matters to be produced in the future, will be  
19 both placed and will be reasonably available to both Intervenor  
20 and the public.

21 Would you give us that information?

22 MR. KARMAN: To the best of my knowlege, the local  
23 public document room for this area for this proceeding, is  
24 the Byron Public Library, Third and Washington Streets in  
25 Byron, Illinois. All of the printed documents with respect



1 to this proceeding should be at that library.

2 CHAIRMAN MILLER: Are there any other places --

3 MR. KARMAN: If anybody does go to the library and  
4 has difficulty in locating any of the documents, please contact  
5 me and I will see what we can do about getting them there.

6 MR. VON ZELLEN: We have objected to that library.  
7 It's not at all accessible to us. It has limited hours.  
8 They are only open certain times of the week. It's a tiny  
9 library.

10 CHAIRMAN MILLER: Open certain days of the week?

11 MR. VON ZELLEN: Yes.

12 CHAIRMAN MILLER: Which days?

13 MR. VON ZELLEN: It's open about 10 or 12 hours a  
14 week, is all. It's open two hours every day except Friday, it's  
15 open two hours in the morning and they take two or three hours  
16 for lunch and two hours in the afternoon, and then Saturday  
17 morning. It's only open two hours at a time.

18 CHAIRMAN MILLER: That doesn't sound reasonable.

19 MR. KARMAN: The establishment of these local public  
20 document rooms is not the province of staff counsel. That  
21 library was the local public document room for the proceeding  
22 during the construction permit stage. It's also my understand-  
23 ing that many documents have been sent to the library at  
24 Northern Illinois University.

25 If there is a strong feeling amongst the parties

1 to this proceeding that they would prefer to have the local  
2 public document room at Northern Illinois University, and if  
3 Northern Illinois University would accept such designation as  
4 local public document room, I would take it upon myself when  
5 I get back to Washington, to see if a transfer could be made.

6 CHAIRMAN MILLER: I would appreciate that. It's not  
7 your selection and you don't have the responsibility. But we  
8 do appreciate your willingness.

9 Let me inquire as to the suitability and availability  
10 of such alternate sites.

11 MR. VON ZELLEN: We had talked earlier with  
12 Betty Johnson some months ago. I don't know how the others  
13 in my group feel, but at that time I thought it would be more  
14 appropriate at the Rockford Public Library.

15 CHAIRMAN MILLER: Has any inquiry been made as to  
16 space availability? All libraries won't voluntarily make  
17 available space and keep them in a logical fashion. I'm not  
18 sure, but we will discuss something more suitable than a  
19 library only open 10 or 12 hours a week.

20 MR. MILLER: One other possibility is the Ogle  
21 County Courthouse in Oregon, Illinois, which is reasonably  
22 close to the site, which is a desirable attribute for a local  
23 public document room.

24 MS. JOHNSON: Rockford is 16.8 miles from the site.

25 CHAIRMAN MILLER: How close is it to the small

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1 library you have described?

2 MR. MILLER: Oregon is about 13 miles, I'm informed,  
3 Mr. Chairman.

4 CHAIRMAN MILLER: We can't have a maximum location  
5 in the sense of ready availability down the street. What is  
6 reasonably within your requirements among those that have been  
7 suggested, Mrs. Johnson?

8 MS. JOHNSON: Any of them would be suitable. I think  
9 Northern Illinois University and the Rockford Public Library,  
10 I'm sure, would be open enough hours to accommodate us. I'm  
11 not sure what arrangement could be made in Oregon. If they  
12 were open enough times so that it would be accessible, I believe  
13 that would be all right, too.

14 MR. VON ZELLEN: I know the Oregon library. It's a  
15 small, overcrowded library.

16 MR. MILLER: It was the courthouse I was suggesting.

17 CHAIRMAN MILLER: What about Northern Illinois  
18 University?

19 MS. JOHNSON: This is farther from the site, but it  
20 would be acceptable.

21 CHAIRMAN MILLER: You said no. What is the status  
22 in the state institutional system of colleges?

23 MR. VON ZELLEN: They are all free-standing  
24 universities in Illinois. It's not a branch of the  
25 University of Illinois. Wisconsin has branches, but not

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1 Illinois.

2 CHAIRMAN MILLER: The small libraries have limited  
3 facilities, attendance and availability. What are we down to?

4 MR. VON ZELLEN: The University has an expert in  
5 public documents and that could be of some assistance to the  
6 League of Women Voters.

7 MS. JOHNSON: I suspect the Rockford Library does,  
8 too, but I don't know.

9 CHAIRMAN MILLER: Can anyone speak for the  
10 University? You'll have to inquire, find out what is available,  
11 you as Intervenors and Mr. Karman. Get in touch with  
12 Mr. Karman, who will try to do something. But he must have  
13 clear directions.

14 We feel the present facilities are not adequate.  
15 Pursue this and take Mr. Karman up on his offer.

16 MR. VON ZELLEN: Mr. Chairman, I would like to  
17 complete the statement made by the attorney from Commonwealth  
18 Edison. Although I don't see a vast amount of documentation,  
19 I would put on the table as well that Commonwealth Edison would  
20 be expected to pay for any documentation we provide to them.

21 MR. MILLER: That is understood.

22 CHAIRMAN MILLER: The sword cuts both ways. We don't  
23 expect anybody to make a profit on it. Reasonable costs and  
24 charges, as are requested. If you request 100 pages of  
25 something or another, have a clear understanding that you will

1 pay, how much per page, and when. We don't like these dangling  
2 things and the Board has to end up getting involved in those  
3 matters that you should resolve among yourselves.

4 Anything further?

5 Where do we stand on scheduling, or have we carried  
6 it as far as we are able to with the imponderables at the  
7 moment?

8 MR. MILLER: I think we probably have, although we  
9 have some suggestions we would be willing to put forward on the  
10 record at this time for the Board and parties to consider.

11 As I mentioned yesterday, it would seem appropriate,  
12 based on present staff estimates, to consider the possibility  
13 of a split evidentiary hearing, with the environmental conten-  
14 tions going in advance of the safety contentions. This is a  
15 tentative schedule which we have drafted up.

16 We propose that discovery would close on environ-  
17 mental issues 30 days after the mailing of the final environ-  
18 mental statement, and that responses to discovery on those  
19 issues would be due 15 days after the final round of discovery  
20 was initiated.

21 Motions for summary disposition, if any, would be  
22 filed not later than 45 days after the final environmental  
23 statement was issued, and responses due 20 days thereafter.  
24 And that hearing would commence some 75 days after the mailing  
25 of the final environmental statement.

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1 One of the reasons for beginning discovery now is to  
2 avoid to the best of our ability any last-minute rush to  
3 discover what the facts are that underlie the contentions.  
4 And we would hope that all of the parties would be in a position  
5 to move forward expeditiously to a hearing following the close  
6 of discovery and following the motions for summary disposition.

7 And the schedule that I have just laid before you is  
8 designed to accomplish that fact.

9 CHAIRMAN MILLER: Thank you. That is helpful.

10 This suggested schedule now will appear in the  
11 transcript, so you will have a chance to study it. If anybody  
12 wishes to comment on that projected schedule, you are free to  
13 do so.

14 MS. JOHNSON: I have one comment, and I may not  
15 know enough about it, but it seems to me that some of these  
16 issues are both environmental and safety and that we might be  
17 duplicating somewhat. It might be difficult to completely  
18 divide these.

19 CHAIRMAN MILLER: The bifurcation of those issues is  
20 not uncommon. We often have the NEPA issues on the one hand  
21 and health and safety on the other. Occasionally there are  
22 areas where you have overlaps, but usually they are discussions  
23 among yourselves first, and then by and with the Board, and a  
24 general prehearing conference.

25 We are generally able to sort out, rather accurately,



1 I believe. We can specify those where there might be a question  
2 and allocate those.

3 MS. JOHNSON: Is this a common thing that you do  
4 divide?

5 CHAIRMAN MILLER: Not unusual. I worry about the  
6 word "common."

7 MS. JOHNSON: Is it done frequently?

8 CHAIRMAN MILLER: Yes.

9 Any further questions or discussions about scheduling?

10 MS. VON ZELLEN: What is the advantage of separating,  
11 or disadvantage?

12 CHAIRMAN MILLER: There are several advantages. In  
13 certain aspects, they are discrete or separate subjects, with  
14 certain rules that obtain as to one and not the other. The  
15 area of overlap is much less than the areas where they are  
16 readily definable, separable, by the nature of the subject  
17 matter and parties and the like.

18 There is the timing factor. There are matters  
19 involving the environment which are not generic in nature,  
20 but which have more general applicability both ways than certain  
21 safety matters, which perhaps have to be more precisely  
22 limited.

23 We are able to proceed both sooner and more satis-  
24 factorily, generally, with environmental. It has its own  
25 rules, own subject matter, its own statute and the like.

1           What is the difference between apples and oranges?  
2       They are both fruits, but I may have one and not the other.  
3       It won't prejudice anyone.

4           Is that correct, Mr. Karman?

5       MR. KARMAN:   That's correct.

6           CHAIRMAN MILLER:  We have done this before and no one  
7       failed to agree or was deprived of any rights.  You might find  
8       at a trial it would be better to go for one week or two weeks  
9       on, let's say, environmental, and have a month or two off  
10      before you went into a different subject matter with ongoing  
11      day by day witnesses.

12           Trials can become de-energizing.  They are not  
13      picnics.  Parties and counsel find we can reasonably segment  
14      without prejudicing the continuity of the testimony and  
15      cross-examination and the like; that you will be happy to have  
16      the procedural availability of this kind of bifurcation, also.

17           These are some of the things that occur to the Board.

18           MR. VON ZELLEN:  I can't see how we can discuss  
19      some issues, say safety issues, and being precluded or kept  
20      from introducing environmental notions.  It's almost a  
21      synergism.

22           CHAIRMAN MILLER:  When you start disengaging, you  
23      will find it can be done logically.  Why don't you wait until  
24      you get into it farther, and then if you have a problem take  
25      it up with the Board.  We are basing this on experience.  The

1 two are not interdependent to the extent you can't do it.  
2 We are not suggesting something new, novel or untried. We  
3 have done it in other cases and the Appeal Board has sustained  
4 it.

5 MS. JOHNSON: We are limited in funds and maybe we  
6 have to get the same expert twice, when he could speak to both  
7 of these issues at the same time.

8 CHAIRMAN MILLER: That is doubtful. You hardly ever  
9 come across an all-purpose expert who has the requisite  
10 qualification, who can talk meaningfully on both. Wait until  
11 you get into, talk to experts and make a judgment.

12 We won't preclude you from raising the question with  
13 the Board. It's not set in concrete. We will bifurcate, but  
14 we have a strong inclination to do so under the circumstances  
15 of the case. We will continue to hear from you.

16 Anything further on scheduling or procedure?

17 We will consider we have gone as far as we can at  
18 this time. It will be subject to review as we get into the  
19 matters with greater detail.

20 What else would you like to -- I take it on  
21 October 15 we expect to have written reports, and that will  
22 determine what will happen next.

23 Anything else anyone wishes to ask or suggest? We  
24 are about ready to conclude the special prehearing conference.  
25 There will be a written order. We will cite the transcript

1 references. It will indicate there will be an evidentiary  
2 hearing and there will be published a notice of evidentiary  
3 hearing at time and place to be fixed by the Board. An  
4 evidentiary hearing will go forward, there's no question about  
5 it.

6 Anything further? Once, twice --

7 MR. VON ZELLEN: I have a question. Is there  
8 any statute or precedent that requires that members of hearing  
9 boards of the Nuclear Regulatory Commission publish statements  
10 of their own potential conflict of interests?

11 CHAIRMAN MILLER: None that I am aware of. I think  
12 any member of any board would readily indicate for the record  
13 if he felt there was a possibility of any. I know of none.

14 DR. COLE: We have to file documents annually with  
15 the general counsel of the Commission showing ownership of any  
16 stocks or bonds and things like that.

17 MR. VON ZELLEN: I had that in mind, whether or not  
18 any of you were stockholders in a utility.

19 DR. COLE: That is not permitted for any board  
20 member, I'm sure of that.

21 MR. VON ZELLEN: Or vendor.

22 DR. COLE: Or vendors, yes.

23 MR. VON ZELLEN: Other issues would be whether any  
24 of you were consultants or are consultants to vendors or  
25 utilities.

1 CHAIRMAN MILLER: This is the point where I have to  
2 intervene as Chairman. The Board does not debate, subject  
3 itself to cross-examination. However, this is not to say  
4 that the matters that you raise are not matters that you are  
5 not entitled to be interested in.

6 As Dr. Cole informed you, federal employees of  
7 certain rank, of which we are of that rank, do file annually  
8 detailed financial statements, from which it is determined if  
9 there is any potential conflict. It has to be removed or  
10 appropriate steps taken. Those have been filed by all of us  
11 each year. They are updated and are thorough and detailed.

12 If you wish to obtain information, you are perfectly  
13 free to do so. I can tell you there are no conflicts of  
14 interest among any of us with reference to the matters you go  
15 into.

16 As a procedural matter, I can't permit any hearing  
17 to get to the point where the Board is cross-examined. The  
18 information is available to you.

19 MR. VON ZELLEN: Nonetheless, you introduced  
20 Dr. Cole as an environmentalist. Environmentalists are spoken  
21 of often as being fuzzy-headed.

22 CHAIRMAN MILLER: I introduced him as an environmental  
23 scientist. I'm informed it's a term of art and is not the same  
24 as environmentalist. He is an environmental scientist.

25 DR. COLE: Really, I'm an environmental engineer.



1 CHAIRMAN MILLER: Any further information about the  
2 background of any members of the Board, we will supply that  
3 for you.

4 MR. VON ZELLEN: Well, the Nuclear Regulatory  
5 Commission is often described as a part of the revolving  
6 door, that Board members or persons of the Nuclear Regulatory  
7 Commission, when they leave their office, take positions with  
8 vendors and utilities, and likewise, personnel of the NRC  
9 often are appointed or receive their appointment after having  
10 been in a vendor --

11 CHAIRMAN MILLER: I said if you have any question or  
12 want background information among any of us, we have no  
13 reluctance to supply it. Do you desire information as to the  
14 biographies of the members of the Board?

15 MR. VON ZELLEN: Has any member of the Board been  
16 an officer or an employee of a utility or vendor?

17 DR. COLE: I have not.

18 DR. CALLIHAN: No.

19 CHAIRMAN MILLER: The answer is no.

20 I am a lawyer and have practiced law for a number of  
21 years. I have had a lot of jury trials. I have practiced in  
22 Washington for 18 years and for about 12 down in Champaign,  
23 Illinois. I guess I sued, as far as utilities were involved  
24 exclusively, a lot more often than I defended any of them.

25 DR. CALLIHAN: Would you define "vendor"?



1 MR. VON ZELLEN: One that supplies the utility with  
2 a reactor.

3 CHAIRMAN MILLER: In response to your question,  
4 insofar as the Board feels it proper to give biographical  
5 information in the manner requested, I think our answer is in  
6 the negative to your inquiries.

7 As far as any additional information is concerned,  
8 you are free to obtain it.

9 Further questions? Any questions of any kind or  
10 nature?

11 We are about to adjourn the special prehearing  
12 conference. Hearing none, we stand adjourned. Thank you for  
13 your cooperation. We are looking forward to hearing from you  
14 and seeing you some time in the future.

15 (Whereupon, at 10:10 a.m., the special prehearing  
16 conference was adjourned.)  
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