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NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:

COMMONWEALTH EDISON  
Byron Station Units 1 & 2

PREHEARING

Docket No. 50-454, 455

POOR ORIGINAL

Place - Rockford, Illinois

Date - Tuesday, August 21, 1979

Pages 1 - 78

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 In the Matter of: :  
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 COMMONWEALTH EDISON: : Docket No. 50-454, 455  
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 Byron Station Units 1 & 2 :  
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 PREHEARING :  
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Industrial Commission Courtroom  
 4th Floor  
 Winnebago County Courthouse  
 400 W. State Street  
 Rockford, Illinois

Tuesday, August 21, 1979

Prehearing in the above-entitled matter was convened,  
 pursuant to notice, at 1:00 p.m.

BEFORE:

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

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APPEARANCES:

For the Nuclear Regulatory Commission:

MYRON KARMAN  
 RICHARD J. GODDARD

For the Applicant, Commonwealth Edison:

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

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APPEARANCES (continued):

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For the Intervenors, DAARE and SAFE:

BRUCE VON ZELLEN  
JULIANNE MAHLER  
Northern Illinois University  
DeKalb, Illinois

For the League of Women Voters:

BETTY JOHNSON  
MARY ANN NIELSEN  
CONNIE WARE  
League of Women Voters  
Rockford, Illinois

ALSO PRESENT:

JIM NORGAARD  
KATHERINE QUIGG  
MILDRED BERRY  
ROBERT KERRY  
JEFF HENDERSHOTT  
CECILE MEYER  
DOUG NIMTZ  
SUSAN GOULD

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CHAIRMAN MILLER: Come to order, please, ladies and gentlemen.

As you know, this is a special prehearing conference on the Byron Station Units 1 and 2, held pursuant to notice that was given to all parties and duly published in the Federal Register. We are pleased to see so many of you.

I want to apologize for the board being late. Our rented car broke down a mile out and we came in by cab and found we were here instead of somewhere else.

We will have to adjourn to the county board room on the eighth floor. It is somewhat larger. I don't know if I can guarantee you more seats, but we will be more comfortable than we are now.

(Recess.)

CHAIRMAN MILLER: The special prehearing conference will come to order, please.

As you know, this is a special prehearing conference which is being held pursuant to notice duly published in the Federal Register and given by press and mail to all parties and counsel.

The purpose of this special prehearing conference is to establish the issues and the schedule and the like. I will explain briefly that a special prehearing conference

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1 differs from a regular prehearing conference in that its  
2 function is to determine whether or not there should be an  
3 evidentiary hearing in this proceeding.

4 This proceeding is upon application for an  
5 operating license, and the Intervention Board or Petitions  
6 Board, which is what this board is, must pass upon the  
7 sufficiency of the petitions, both to show interest and  
8 standing, and then further at the prehearing conference to  
9 establish whether or not there is one or more viable  
10 contentions. If so, then a notice of hearing would be  
11 published and a licensing board would then be established.  
12 I mention this so there won't be any confusion as to the  
13 nature and function of this special prehearing conference.

14 I am Marshall E. Miller, lawyer, an attorney  
15 chairman assigned to the licensing board. I have been in  
16 private practice for a number of years in Washington, D.C.,  
17 and for a time in the State of Illinois.

18 The other members of the board are Dr. Richard  
19 F. Cole, seated to my left. Dr. Cole is an environmental  
20 science specialist who was on the University of North  
21 Carolina staff.

22 To my right is A. Dixon Callihan, who is a  
23 nuclear physicist, and who is a member of a number of  
24 scientific conferences, publications, and the like.

25 I will ask counsel and parties to identify

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1 themselves for the record, giving their own names and those  
2 of their associates present at this prehearing. We will  
3 start with the staff.

4 MR. KARMAN: Mr. Chairman, members of the board,  
5 my name is Myron Karman. I am counsel for the Nuclear  
6 Regulatory Commission staff. With me is my colleague,  
7 Mr. Richard Goddard. Our office is Washington, D.C. 20555.  
8 We are the attorneys who will be representing the Nuclear  
9 Regulatory Commission in this proceeding.

10 To my left is Mr. Calvin Moone, the licensing  
11 project manager for the Byron Station.

12 CHAIRMAN MILLER: Thank you. Who is next here?  
13 We will take the licensee next.

14 MR. MILLER: Thank you very much. My name is  
15 Michael I. Miller, law firm of Isham, Lincoln & Beale, Suite  
16 4200, One First National Plaza, Chicago, Illinois, appearing  
17 for the Applicant, Commonwealth Edison Company.

18 With me is Alan E. Bielcuski from my firm.  
19 Seated to my right are Cordell Reid and James Westenmeier of  
20 the Commonwealth Edison Company.

21 CHAIRMAN MILLER: On behalf of the Intervenors,  
22 who wishes to state his or her appearance?

23 MR. VON ZELLEN: I am Bruce Von Zellen. My  
24 address is the Department of Biological Sciences, Northern  
25 Illinois University, DeKalb, Illinois. I am the

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1 spokesperson for DeKalb Alliance for Responsible Energy and  
2 the Sinnissippi Alliance.

3 MS. JOHNSON: I am Betty Johnson, and I represent  
4 Intervenor, League of Women Voters, Rockford, Illinois. My  
5 address is 1907 Stratford Lane, Rockford, Illinois.

6 With me are two other members of my committee,  
7 Connie Ware and Mary Ann Nielsen.

8 MR. SPENCE: My name is John D. Spence, 67  
9 Chandelwood Crest Parkway, Rockford, Illinois. I am  
10 appearing as an interested citizen. I represent no group.

11 CHAIRMAN MILLER: Thank you. I appreciate that.  
12 I will have to ask interested persons to please hold their  
13 recognition for the record. First of all I must get all of  
14 the parties, whether represented by counsel or not, on the  
15 record. I appreciate that, sir, but I am not ready for that  
16 yet.

17 MR. GITZ: I am James Gitz. I hold the position  
18 of state senator, 35th Legislative District, Freeport,  
19 Illinois.

20 CHAIRMAN MILLER: Any other intervening parties  
21 who have not identified themselves?

22 MR. VON ZELLEN: I failed to introduce my  
23 colleague, Julianne Mahler of the Department of Political  
24 Science of Northern Illinois University, and Professor  
25 Aielmeier, Department of Physics, Northern Illinois

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1 University.

2 CHAIRMAN MILLER: Anyone else?

3 MR. SPENCE: Excuse me, sir. Can't I intervene  
4 as an interested citizen, or do I have to represent a group?  
5 I don't understand.

6 CHAIRMAN MILLER: Let me explain. Prior to this  
7 special hearing, there was notice and publication and so  
8 forth of opportunity for hearing, giving those persons,  
9 whether as individuals or as representatives of a group, or  
10 both, the opportunity to intervene, which is done under the  
11 rules and was publicized by the filing of a petition for  
12 leave to intervene, setting up standing and interest and so  
13 forth. Those petitions have been ruled upon by the previous  
14 chairman of the Intervention or Petitions Board, and  
15 intervention has been granted in this proceeding.

16 Let me read to you the order, if I can find it  
17 here.

18 Petitions to intervene were filed prior to March  
19 23, 1979, at any rate, by the DeKalb Alliance for  
20 Responsible Energy and Sinnissippi Alliance for the  
21 Environment, SAFE, by the League of Women Voters of  
22 Rockford, Illinois, and by Marty Weschan.

23 Upon the date that I have mentioned, namely,  
24 March 23, 1979, the DAARE and SAFE petition was approved as  
25 setting forth sufficient interest or standing. It was noted

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1 that in order for there to be an evidentiary hearing, it  
2 would be necessary for those and other intervenors to amend  
3 their petition not later than 15 days prior to the date of  
4 holding of this special prehearing conference.

5 Under our rules, Section 2.714(b), the petition  
6 to intervene must include a list of those contentions, which  
7 the petitioners who were granted leave to intervene seek to  
8 have litigated, and the basis for each contention must be  
9 set forth with reasonable specificity.

10 This has been done by the organizations that I  
11 mentioned. The intervention petition of Mr. Weschan failed  
12 to satisfy the interest requirement and was denied.  
13 Subsequent to that time and notice of the special prehearing  
14 conference, which triggered the 15-day period in which  
15 contentions, issues, pleadings were to be filed, to be heard  
16 today, those were filed by the parties I mentioned.

17 I think all parties now granted leave to  
18 intervene have identified themselves. That is where the  
19 situation stands.

20 Subsequently, if there is to be a hearing, which  
21 we won't know until we pass upon the pleadings which have  
22 been filed or are to be heard today — if there is a  
23 hearing there would be opportunity for yourself and other  
24 interested citizens to make limited appearance statements,  
25 either oral or in writing, and appropriate time would be set

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1       aside. We will probably set aside a day or two rather than  
2       an hour or so at a time so everyone can be heard. This is  
3       not that occasion. We don't know whether there will be an  
4       evidentiary hearing.

5               MR. SPENCE: Some citizens are so busy that they  
6       don't have time to rack around in the legal notices in the  
7       paper.

8               (Applause.)

9               CHAIRMAN MILLER: Let's have some order.

10              MR. SPENCE: The first printed notifications of  
11       this hearing that I had was in an article on page B-1 of the  
12       Rockford Morning Star this morning. I believe this would  
13       appear to be an attempt to give an unfair advantage to  
14       people who spend much time and have the time to get into  
15       these areas. I'm sorry to create a problem, but I would  
16       like to officially protest this procedure.

17              CHAIRMAN MILLER: Your protest is noted. May I  
18       point out when the original notice of opportunity for  
19       hearing was published -- what was the date of that, Counsel?  
20       There are subsequent opportunities if you didn't see it.  
21       You may file a late petition for leave to intervene.

22              MR. KARMAN: December 15.

23              CHAIRMAN MILLER: Friday, December 15, 1978, is  
24       the date it appeared in the Federal Register. The notice  
25       itself, I believe, was dated December 5, 1978. That was  
26       when the first notices came. Any person who desires to

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1 intervene can file an untimely petition. You have to set  
2 forth good cause. There are five factors you must comply  
3 with.

4 If you still wish to file a petition for leave to  
5 intervene, you have the opportunity and responsibility to do  
6 so. That is not for this afternoon. That's another  
7 matter. You will have the opportunity. The notices and  
8 rules on file give the five factors which must be  
9 addressed. Any citizen or group which wishes to file an  
10 untimely petition may have that considered. No one will be  
11 shut out. You do have to comply with the rules.  
12 Unfortunately, I am here to hold a special prehearing  
13 conference on pleadings. I will give notice to all of you,  
14 but this is not the time except for discussion on  
15 pleadings. If we don't get those ruled upon, there won't be  
16 any hearing.

17 MR. SPENCE: Where would I file that?

18 MR. KARMAN: Under the Commission's rules, they  
19 are published in a volume called the Code of Federal  
20 Regulations. The section dealing with petitions for leave  
21 to intervene is Section 2.714 of those rules.

22 I would like to add also that in addition to  
23 publication of this notice of opportunity for hearing which  
24 was, as the chairman indicated, published in December of  
25 1978, our Public Information Office made available to the

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1 media in the vicinity of the Byron Station, which would be  
2 the Rockford area and other areas surrounding for  
3 publication in the newspaper as well. There were items,  
4 news releases, with respect to that notice of opportunity  
5 for hearing. So this is not just put in the Federal  
6 Register, which we know is not the best seller in Rockford,  
7 or in Washington for that matter. But there was notice of  
8 that request for intervention petitions.

9 But as I indicated, Section 2.714 clearly  
10 indicates the requirements and prerequisites for filing a  
11 petition for leave to intervene, for filing a late petition  
12 for leave to intervene, and what factors have to be  
13 addressed if you do file a late petition.

14 CHAIRMAN MILLER: I have just been handed a copy  
15 of a notice which apparently was utilized by the young lady  
16 from one of the newspapers, I believe, which showed the  
17 notice of NRC prehearing conference, August 21, in Rockford,  
18 Illinois, on the Byron nuclear plant, which was the subject  
19 of a news announcement by Jan Stransma from the Office of  
20 Public Affairs, Region 3, and wound up with the following  
21 paragraph:

22 "The conference is open to the public. Members  
23 of the public who wish to state their views concerning the  
24 operating license by way of limited appearance will be  
25 permitted to do so, although there may be time limitations

cs/ck 1 with respect to oral presentations."

2 It doesn't talk about cameras, but that is not  
3 the subject of controversy at the moment.

4 First, this is not a hearing board, and hearing  
5 boards hear limited appearances.

6 Secondly, our time schedule is such that we don't  
7 have time because we have another prehearing in Braidwood.

8 However, inasmuch as such notice was carried, I  
9 will honor to the extent possible as the notice appeared,  
10 and I take it the press picked it up accurately. Those who  
11 wish to make limited appearances will be permitted to do so,  
12 although there may be a time limitation. Time will have to  
13 follow our consideration of the petitions for leave to  
14 intervene and the contentions. If we don't hear those,  
15 there will be no hearing and you might as well talk to each  
16 other, because there would be nothing this board could  
17 hear.

18 Within those time constraints, we will endeavor  
19 to set aside, say, an hour following the conclusion of our  
20 hearing from counsel and parties with reference to whether  
21 or not there are any issues that require the holding an  
22 evidentiary hearing. And I will point out that unless a  
23 matter is contested, which means not only are there  
24 intervening parties but there is one or more viable  
25 contentions that would then be contested, there would be no

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1 evidentiary hearing before the board, but it would be  
 2 handled by the staff and it would be an entirely different  
 3 procedure.

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1 We will give you an hour this afternoon and we  
2 will give you two hours in the morning. We do then have to  
3 leave with our automobile. You may have one hour today at  
4 the conclusion of the hearing.

5 If it appears there is one or more viable issues,  
6 there would be an order established by the board  
7 establishing an evidentiary hearing. We will then give you  
8 one hour today, or short of that, until we are thrown out of  
9 the room, and two hours tomorrow, assuming we can get a room  
10 there that is convenient for all of us. It is about the  
11 best thing we can do.

12 I suggest next time, if there is noise, I wish  
13 the press would check — I don't blame the press for this —  
14 but the notice came out when I was in another trial.

15 MR. KARMAN: In all fairness to the public  
16 relations order, they picked this up from a previous order  
17 of this board setting a special prehearing conference.

18 CHAIRMAN MILLER: What was that date?

19 MR. KARMAN: March 23, or it may have been the  
20 one in June for the July prehearing conference.

21 CHAIRMAN MILLER: I was asked by public relations  
22 in Washington if there would be limited appearances here and  
23 I said no.

24 VOICE: It seems, in all fairness to the public  
25 who have come here to make limited appearances and have been

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rc EAK

1 notified they would be able to, that they would have the  
2 opportunity today, and especially in view of the NRC  
3 guidelines that say, before these hearings begin, the  
4 opportunity should be for the public to make their views  
5 known so that what they say will be taken into  
6 consideration.

7 CHAIRMAN MILLER: Those guidelines refer to the  
8 evidentiary hearings. I don't know whether there will be  
9 any. I'm trying to get through with the Intervention Board  
10 to decide if there are issues.

11 Then, at that point, the guidelines referred to  
12 would come into play. But not now before this board. The  
13 less time we take, the sooner we will know whether or not  
14 there will be an intervention hearing, at which time those  
15 guidelines will come into play.

16 Now can we try to move forward to help all of you  
17 in your desire to be heard?

18 Let me start out, first of all, which of the  
19 intervenors wish to go first on the amended petitions  
20 setting forth the contentions?

21 MR. MILLER: Mr. Chairman, one preliminary  
22 matter. I have a motion of the applicant for leave to file  
23 in stanta. It is in answer to the contentions of League of  
24 Women Voters of Rockford, Illinois.

25 As the Chairman is aware, there is a

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1 miscommunication between our office and Mrs. Johnson  
2 concerning whether or not there was going to be a meeting.

3 As a result of our belief that there was an  
4 agreement with respect to an extention of time, so that we  
5 could refine League of Women Voters' contentions, we were  
6 not able to make a timely filing of our response, which  
7 would have been due August 15.

8 Copies of the motion and of the response which is  
9 attached to it have been served on the staff and both  
10 intervenors.

11 And with the board's permission, I would like to  
12 hand up for your consideration our motion and the response.

13 CHAIRMAN MILLER: Leave is granted for the  
14 applicant to hand up the response to the contentions  
15 heretofore filed by the League of Women Voters, dated July  
16 18, 1979, and received by the board August 3, 1979.

17 So the record will be complete, let me show also  
18 that responses to the League of Women Voters' petition and  
19 statement of contentions were filed by the staff. What are  
20 the dates of the staff's filing of responses?

21 MR. KARMAN: Yesterday, Mr. Chairman, August 20.  
22 I handed copies of our filing to both of the petitioners in  
23 view of the fact that they undoubtedly have not received the  
24 ones we did mail.

25 CHAIRMAN MILLER: That is what we wanted to be

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1 sure of. The intervening parties have received copies of  
2 responses of the staff and applicant, Commonwealth Edison  
3 Company; is that right? You have received them?

4 MS. JOHNSON: Yes, I have received it today.

5 CHAIRMAN MILLER: In order to try to accomplish  
6 the purpose of this conference to determine whether there is  
7 one or more contentions stated with specificity, let's start  
8 with contention 1.

9 We will hear, first of all, from Mrs. Johnson,  
10 representing the League of Women Voters to the extent she  
11 wishes to be heard.

12 We will then hear from the applicant and the  
13 staff.

14 MS. JOHNSON: Should I read the contention?

15 CHAIRMAN MILLER: It won't be necessary. You can  
16 summarize it if you wish.

17 MS. JOHNSON: The intervenor contends that as a  
18 result of serious and unresolved generic safety problems the  
19 findings required by 10 C.F.R. s 50.57 (a)(3)(i) and  
20 50.57(a)(6) cannot be made. These problems are listed and  
21 have been identified in NUREG-0410, "NRC Program for the  
22 Resolution of General Issues Related to Nuclear Power  
23 Plants" (January, 1978).

24 Generic safety problems which are a problem at  
25 pressurized water reactors of the Byron type which should be

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1 solved to protect the health and safety of the public  
2 include, but are not limited to:

3 And then I list a group of them.

4 CHAIRMAN MILLER: You may summarize them.

5 MS. JOHNSON: There are many different ones.

6 There are several hundred generic safety problems which are  
7 not all applicable to the Byron plant, but many are.

8 CHAIRMAN MILLER: Which ones fo you and your  
9 organization contend have a connection or nexus with this  
10 plant?

11 MS. JOHNSON: Water hammer problems involving  
12 pressurized water reactors of the Byron type which may  
13 involve critical safety components.

14 Two, plant design using a nonoptimum turbine  
15 orientation which can cause damage to essential systems by  
16 turbine missiles.

17 Three, Degredation of steam generating tube  
18 integrity due to corrosion induced wastage, cracking,  
19 reductin in tube diameter, and vibration induced fatigue  
20 cracks.

21 Four, seismic qualification of safety related  
22 electrical equipment, as well as environmental and safety  
23 qualification of other safety related electrical  
24 equipment-environmental and seismic qualification of class  
25 IE electrical equipment and what represents an acceptable

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rc EAK

1 aging procedure for multi-component systems.

2 Five, serious impact force on fuel assembly  
3 spacer grids caused by asymmetric loads during blowdown,  
4 following loss of coolant accident, which raise a question  
5 of the reactor core having a coolable geometry.

6 Six, adverse interaction between nonsafety  
7 control systems and safety related protection systems in an  
8 integrated protection system.

9 Seven, fuel handling accidents inside the  
10 containment, which are an unreviewed safety question and  
11 control of heavy loads near spent fuel.

12 Eight, defects in reactor vessel fabrication  
13 materials, which give no assurance that adequate safety  
14 margins will be maintained throughout the design of the  
15 plant.

16 Nine, need to reassess the fracture toughness of  
17 steam generator and reactor coolant pump support materials  
18 for all PWR plants as a result of potential for lamellar  
19 tearing and low fracture toughness of these materials.

20 Ten, inadequate examination of methodology  
21 employed to determine necessity for using snubbers as  
22 components' supports in Byron project and inadequate  
23 consideration of actual and potential snubber malfunction.

24 Eleven, safety in current design criteria for  
25 postulation of pipe brakes and protection from them has not

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rc EAK

1 been justified due to failure to adequately examine  
2 safety-related equipment.

3 Twelve, breaks in main stem line within and  
4 without containment.

5 Thirteen, pressure transient protection and  
6 reactor pressure vessel transient over pressure protection.

7 Fourteen, adequacy of safety-related AC and DC  
8 power supplies.

9 Fifteen, adequacy of offsite power systems,  
10 instruments and process variables during accidents.

11 Sixteen, inadequate fire protection for  
12 electrical cable systems whose destruction by fire could  
13 incapacitate all safety apparatus required for a safe  
14 shutdown.

15 Seventeen, ice effects on safety-related water  
16 supplies.

17 Eighteen, design basis floods and probability.

18 Nineteen, plant design requirement to protect  
19 against sabotage is inadequate because sabotage has been  
20 treated as a plant physical security problem.

21 CHAIRMAN MILLER: You read all of them.

22 MS. JOHNSON: Consider these, and it is not  
23 limited to them.

24 I particularly feel that way because, as Harold  
25 Denton of the NRC said, due to Three Mile Island, they are

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1 sort of waiting for applicants to come forward with some  
 2 ways of solving some of the generic risk safety problems.  
 3 He feels it is not better to start up the plants and let  
 4 them come radioactive before these things are solved.

5 We think we should hold the record open. For  
 6 instance, there was another speech by one of the NRC men who  
 7 said that one of the things he thinks should be — I didn't  
 8 mention it here — is perhaps a redesigning of the control  
 9 room so that it will be easier for the operators.

10 There are many other things. We feel we  
 11 shouldn't grant this until we at least get the results of  
 12 the Three Mile Island. There are many problems that have  
 13 shown up there.

14 CHAIRMAN MILLER: No board can withhold a  
 15 proceeding because of another board.

16 MS. JOHNSON: I understand that.

17 CHAIRMAN MILLER: Within that limitation, we  
 18 appreciate your comments.

19 Staff wish to go next on this?

20 MR. KARMAN: Would it be better if I remain  
 21 seated, Mr. Chairman? I hopefully can keep my voice up so  
 22 it can be heard.

23 In the staff's response to the petition for the  
 24 League of Women Voters, we indicated several contentions  
 25 which we felt that the intervenors had, in some degree, the

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rc EAK 1 basis of a valid contention for this proceeding.

2 There were parts of various contentions which we  
3 had great difficulty in defining with reasonable specificity  
4 so as to allow a contention which could be litigable during  
5 the course of this proceeding.

6 This board and the staff and all of the parties  
7 to this proceeding are bound by certain precedents which the  
8 Commission, or the appeal board representing the Commission,  
9 or the licensing board, unless overruled, has stated  
10 before.

11 Contention 1 comes fairly well in line with a  
12 decision of the Atomic Safety and Licensing Appeal Board in  
13 the matter of Gulf States Utilities Company, the River Bend  
14 Station.

15 Now, this decision is known as ALAB 444. It was  
16 dated November 23, 1977. During the course of its review of  
17 contentions in that proceeding, there, too, was a list of  
18 so-called generic risk items which had been submitted by the  
19 petitioners as contentions in the proceeding.

20 Upon appeal, the appeal board took the position  
21 that there had to be a nexus between the generic risk items  
22 which were listed and the particular reactor contention.  
23 The appeal board also indicated that to be established, and  
24 I'm quoting, "To establish the requisite nexus between the  
25 permit or licensing application and a TSAR" -- or task

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1 action plan -- that plan which relates to all of the  
2 so-called unresolved generic issues -- "It must generally  
3 appear that the undertaken project has safety significance,  
4 insofar as the reactor under review is concerned, and that  
5 the fashion in dealing with the matter in question is  
6 unsatisfactory. That because of the failure to consider a  
7 particular item, there has been insufficient assessment of a  
8 type of risk for the reactor or short-term solution offered  
9 in application to a problem under staff study is  
10 inadequate."

11 MS. JOHNSON: Would you like me to go through --

12 CHAIRMAN MILLER: One at a time.

13 Mr. Karman, when you are talking about the River  
14 Bend case, the appeal board on appeal said the licensing  
15 board should have considered some of these issues and it  
16 proceeded to do so in the interest of saving time.

17 They weren't thrown out, but there was  
18 consideration at the appeal board level of some of those.

19 MR. KARMAN: I have no problem other than to  
20 state I think the appeal board was opening a door for all  
21 parties to show that requisite connection to the reactor and  
22 under those conditions, should that nexus be shown, I would  
23 not object to any such contention.

24 CHAIRMAN MILLER: In River Bend, there was  
25 cross-examination of five or six, and the rest was a laundry

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1 list thrown in, some of which the appeal board looked at.

2 MR. KARMAN: I'm saying they lacked that  
3 specificity which we require so as to show us where the  
4 nexus is. I'm not "blanketly" trying to throw out or even  
5 recommending — as you know, I can't throw anything out —  
6 but to recommend to this board. I feel the requisite nexus  
7 on the basis of that decision has not been furnished.

8 CHAIRMAN MILLER: On the basis of that decision,  
9 there was no nexus of any kind shown as to the remaining  
10 laundry list except for the five or six which were the  
11 subject of cross-examination. There were 35 more which the  
12 appeal board proceeded to do what the licensing board should  
13 have done.

14 What advice does the staff have to give to this  
15 intervention board as to the potential nexus which the  
16 staff, among others, should recognize as to any of the 16  
17 enumerated contentions before us?

18 MR. KARMAN: Now, Mr. Chairman, if you will look  
19 at the response that we filed with respect to both of these  
20 contentions, both of these petitions, the staff position was  
21 that there is no question in our mind that these intervenors  
22 have filed one or more valid contentions. There no  
23 question in our mind and we strongly recommend a hearing be  
24 held with respect to this application.

25 CHAIRMAN MILLER: Let me be sure we are on the

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1 same wavelength.

2 This intervention board has nevertheless notified  
3 the special prehearing conference which, among other things,  
4 asks for all parties to state with specificity the  
5 contentions, not for the purpose of finding one or more, but  
6 for the purpose of framing issues.

7 MR. KARMAN: I understand that, Mr. Chairman.  
8 But the commission has on occasion held a second special  
9 prehearing conference where the board has determined that  
10 continued meeting between the applicant, the staff and those  
11 petitioners will result in contentions which can be  
12 litigable during the course of a proceeding rather than  
13 going down today and forcing this board to come out with a  
14 prehearing order stating which the contentions are.

15 These intervenors, for the most part, have been  
16 cooperating, and Mr. Goddard and I have come out to Illinois  
17 on several occasions to work with them in an effort to  
18 reduce the contentions. Not reduce them in number, but  
19 reduce them to the point of clarity and specificity within  
20 the guidelines of the commission's rules and the decisions  
21 of the commission and appeal board and various licensing  
22 boards.

23 When I filed my response, I felt it would further  
24 the interests of this proceeding and possible speed up the  
25 hearing during the course of discovery if we could have and

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1 agreed to list of contentions, not necessarily agree that  
2 the contentions are good contentions for the hearing  
3 itself.

4 I felt when I filed my pleadings that that would  
5 be a better way of handling it rather than going down each  
6 and every contention today. I'm not quite certain how much  
7 would be accomplished to aid us in the course of this  
8 proceeding.

9 I understand you stated that the order called for  
10 a discussion of the contentions, but I think the primary  
11 point is are we going to have a hearing? Yes, in my  
12 opinion, there is no question we are going to have a  
13 hearing.

14 These intervenors do have contentions in some  
15 respect which are perfectly valid contentions within the  
16 commission's rules and we should not hesitate to — the  
17 board should not hesitate to indicate that a hearing will be  
18 had.

19 Whether or not these parties, including the staff  
20 and applicant and petitioners, can get together and report  
21 back to the board within a specified period of time, with a  
22 month or three or four weeks — I'm not sure time is that  
23 much of the essence — as to whether or not we could submit  
24 these contentions to the board and then the board can issue  
25 a special prehearing order, or, in the alternative, the

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board can call a special prehearing conference.

It was my opinion that that would be a proper way to handle it, Mr. Chairman.

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1 CHAIRMAN MILLER: It appears to the Board that the  
2 Staff at any rate and perhaps none of the parties is  
3 prepared to go through all of the contentions with the point  
4 of view of hearing the admissibility as contentions,  
5 pleadings at this time. You obviously decided you want to  
6 have an additional hearing and want to negotiate further.  
7 There is no sense with the Board continuing here.

8 We will proceed with the question of whether or  
9 not there is one or more valid contentions. If there is one  
10 or more, we will issue an order indicating that a licensing  
11 board should be established.

12 You have frustrated the intent of this board which  
13 was to go through the contentions and establish the issues.

14 MR. MILLER: I urge that the Board proceed with  
15 the order of business that it described at the beginning of  
16 this hearing. As far as the Applicant is concerned, it's  
17 prepared to address in whatever detail the Board wishes to  
18 hear it the adequacy of the contentions as litigable issues  
19 in the proceeding. I will state that we concede that each  
20 of the Intervenors in this proceeding has defined at least  
21 one contention --

22 CHAIRMAN MILLER: Will you stipulate to that?

23 MR. MILLER: Yes, sir, with one contention.

24 CHAIRMAN MILLER: Will you specify at least one  
25 viable contention of each of the Intervenors? Take a couple

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1 of minutes to do it.

2 We will ask for the Staff position on that.

3 Ladies and gentlemen, you may as well stick around. You  
4 will be heard shortly.

5 MR. KARMAN: We did in our pleading. Many more  
6 than one.

7 CHAIRMAN MILLER: You have listed 2, 4, 5, 10, 11,  
8 that is, of the League of Women Voters.

9 MR. KARMAN: Correct.

10 CHAIRMAN MILLER: You state others which may be  
11 admissible but are at the present time too vague and  
12 unspecific to allow proper response to. Did you do the same  
13 thing for the Applicant?

14 MR. MILLER: If I might have a minute. With  
15 respect to the League of Women Voters' intervention  
16 petition, there are portions of four contentions which may  
17 raise litigable issues. This was the basis on which we  
18 attempted to meet with Mrs. Johnson and the Staff to  
19 identify those issues prior to this prehearing conference.  
20 And we have been frustrated in that attempt as the Board  
21 knows. We are willing to proceed along the lines which Mr  
22 Karman suggests. I think there has to be a direction from  
23 this board.

24 CHAIRMAN MILLER: Don't worry, there will be  
25 directions. There will be plenty of directions from the

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1 Board.

2 MR. MILLER: We don't stipulate to all of the  
3 contentions the Staff does.

4 CHAIRMAN MILLER: Can you stipulate to one or  
5 more?

6 MR. MILLER: Yes, sir.

7 CHAIRMAN MILLER: Which one of the League of Women  
8 Voters? Rest of the parties and Staff be preparing to do  
9 the same thing with respect to the other intervention  
10 petitions, so we can make a record.

11 Mr. Miller, are you prepared to tell us which of  
12 the contentions of the League of Women Voters do, in the  
13 judgment of the Applicant, at least for present purposes,  
14 sufficiently set forth the substance of a viable  
15 contention.

16 MR. MILLER: Insofar as Contention 7 deals with  
17 the issue of whether releases of krypton 85 which are  
18 produced as a result of the operations of the station are  
19 unacceptable environmental costs, we would be prepared to  
20 stipulate that as a valid contention for litigation in this  
21 proceeding.

22 CHAIRMAN MILLER: Are there any others?

23 MR. MILLER: There are portions of others, but  
24 because of the format in which the contentions are phrased,  
25 it's exceedingly difficult to stipulate. Some of them have

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1 the germ, if I might use that term, of a litigable issue..

2 CHAIRMAN MILLER: Any more infected than just a  
3 germ?

4 MR. MILLER: I'm afraid not much, and I tell you  
5 why. The preface to all of them starts with an assertion  
6 that we do not comply with NEPA and 10 CFR Part 50. Some  
7 are clearly only environmentally related or safety related.  
8 Because of the prefatory comments, it's very confusing.

9 CHAIRMAN MILLER: That is getting technical. If  
10 you could stipulate on any of them as to NEPA only or health  
11 and safety only, that would be substantive. We don't want  
12 to quibble, none of us.

13 MR. MILLER: We would be prepared to stipulate to  
14 the admission of a portion of Contention 4 which deals with  
15 allegedly newly discovered faults and seismic activity.

16 CHAIRMAN MILLER: A portion of 4?

17 MR. MILLER: Insofar as it's newly discovered.  
18 That was gone over extensively at the construction permit  
19 state as a result of work done at the time of the limited  
20 work authorization.

21 CHAIRMAN MILLER: Matters resulting from changed  
22 circumstances they would be cognizable in an operating  
23 license proceeding. To that extent you are stating your  
24 views on 4?

25 MR. MILLER: Yes, sir. Contention 5 deals with

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1 the adequacy of the emergency response plan. Insofar as the  
2 contention can be read to assert that Commonwealth Edison  
3 does not comply with the applicable Commission regulations,  
4 we believe that that is a good contention and would be  
5 prepared to litigate it in this proceeding.

6 I believe there is one more. That is Contention  
7 11 which purports to deal with, I believe, quality assurance  
8 matters. The subpart (2) of that contention has a long list  
9 of items which are allegedly unresolved. There is, however  
10 one subpart which frankly I don't understand, and it reads  
11 as follows: "Welding procedure needs to be revised but Com  
12 Ed says it doesn't; welding of route pass noncompliance."

13 I frankly don't understand what those words mean.

14 CHAIRMAN MILLER: If you don't understand it, you  
15 will talk about it further.

16 MR. MILLER: With that exception, we are prepared  
17 to stipulate to that portion of the Contention 11 as  
18 litigable. That is it with respect to League of Women  
19 Voters. Would you like me to address the DAARE and SAFE  
20 issues?

21 CHAIRMAN MILLER: This is the joint petition and  
22 contentions of DAARE and SAFE Intervenors; is that correct?

23 MR. MILLER: Yes, sir.

24 CHAIRMAN MILLER: Then we will hear from the  
25 gentleman who represents the organization and from the  
26 Staff.

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1 MS. MAHLER: If one of our contentions is not  
2 stipulated to by the counsel for —

3 CHAIRMAN MILLER: We will cover that when we  
4 finish. You will have opportunity. When we finish the  
5 stipulated ones, you will be given ample opportunity to  
6 plead and replead. I get your point, and you will be  
7 protected.

8 Do you wish to state for the record your positions  
9 as to one or more viable contentions as to Intervenor DAARE  
10 and SAFE? If not, we will proceed to the representatives of  
11 those groups and the Staff, if you wish us to come back to  
12 you.

13 MR. MILLER: I can address the contentions of  
14 those organizations, as well, Mr. Chairman. We would  
15 stipulate to the admissibility of Contention 1, insofar as  
16 it asserts that the Applicant lacks technical qualifications  
17 to operate the Byron Station, because of the specific items  
18 that are listed in the contention and the matter to be  
19 litigated, would be whether or not the Applicant has  
20 resolved these matters which are specified in the  
21 contentions as the basis for an alleged lack of technical  
22 qualification.

23 Contention 2, which is to some extent also a  
24 contention of the League of Women Voters, insofar as it  
25 relates to cumulative exposures to the population from

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1 radioactive emissions from the Byron Station and other  
2 nuclear power plants in the vicinity, we agree it's a  
3 litigable contention.

4 Contention 3 of DAARE and SAFE is again a  
5 restatement of the emergency plan contention, which is also  
6 found in the League of Women Voters' petition, and we would  
7 be prepared to stipulate to that one as well.

8 CHAIRMAN MILLER: The Staff, I believe, unless you  
9 are changing your position, have indicated that as to  
10 the petitions of DAARE and SAFE, that the Staff is of the  
11 view that the following contentions do adequately state  
12 viable issues. Those contentions being Contention 1,  
13 "Technical Qualifications of Applicant"; Contention 3,  
14 "Evacuation"; Contention 5, "Need for Power"; Contention 6,  
15 "Cost-Benefit Analysis"; Contention 7, "Embrittlement";  
16 Contention 8, "Hydrogen Explosion"; Contention 9,  
17 "Environmental Impacts."

18 The Staff has further indicated there are other  
19 contentions which may be admissible, but in the present  
20 framing of those contentions they are regarded by the Staff  
21 as being nonspecific to allow proper response; is that  
22 correct?

23 MR. KARMAN: That's correct.

24 CHAIRMAN MILLER: Is that the present position of  
25 the Staff?

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1 MR. KARMAN: That's correct, sir.

2 CHAIRMAN MILLER: Let us indicate now that the  
3 Board has decided, number one, that as to the Intervenors,  
4 League of Women Voters, and the Joint Intervenors, DAARE and  
5 SAFE, that not only have their intervention petitions been  
6 previously granted on the grounds of sufficient showing of  
7 standing or interest, but that the record at the present  
8 time now indicates that there is one or more or there are  
9 one or more viable contentions as pleadings sufficiently  
10 framing issues to entitle them to an evidentiary hearing.  
11 As a result, this intervention or petitions board will enter  
12 an order when the transcript is written up and will publish  
13 a notice of evidentiary hearing.

14 The composition of the board will be set forth and  
15 the like. In other words, this intervention board will  
16 cease having jurisdiction of the matter, and the matter will  
17 go over to a full-fledged licensing board.

18 In the meantime we are giving leave to all of the  
19 parties and counsel to get together and to confer on the  
20 contentions as they are framed, to discuss them, to agree if  
21 they can, on combining contentions that are overlapping,  
22 reframing them, if as a result of the comments it's  
23 indicated there could be more specificity or that they can  
24 be improved. In any event, confer.

25 We will grant a period of 30 days for that

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1 purpose. We direct further that there be a written report  
2 to the Board, a joint report, if you like, but subsequent to  
3 such 30-day period, there should be a written report by the  
4 Board to each party, to the Board, to all three members of  
5 the Board, indicating what, if any, results have been  
6 obtained; that is to say, what you can agree upon or what  
7 you cannot agree upon. Let us be clear, the effort is to  
8 get these into a sufficiently precise form that we will have  
9 issues on which there can be an excellently conducted  
10 evidentiary hearing, where we can get down to the matters,  
11 and we won't take a lot of time to fool around with  
12 peripheral, procedural or technical matters. It's not what  
13 we or you want.

14 By getting the issues framed properly, it will  
15 assist all of us in getting to the evidentiary hearing.

16 I wish to point out to the Intervenors, they are  
17 not required to stipulate to anything. It's a matter of  
18 negotiation entered with open minds, having in view the  
19 total objective, but the Board is not coercing any  
20 Intervenor to agree or not agree on the framing of any  
21 contentions. You may stand on your contentions. Do so  
22 thoughtfully and so so, however, having in mind what you  
23 wish to achieve as an issue, noting the precedents that  
24 Staff and Applicant's counsel give you.

25 At the end of this we will come up with

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1 contentions. The licensing board will then be established,  
2 and which may or may not be the same membership as this  
3 board, will then go through all contentions. We will expect  
4 the parties at that time to go through each contention, hear  
5 from all of you, insofar as there is any cost or question  
6 of the board. We will then have arrived at a statement of  
7 issues which will trigger or commence the period of  
8 discovery.

9 Discovery is very important for all parties. If  
10 you wish informally to start with discovery now, you are  
11 free to do so to save time. Don't stand on ceremony. If  
12 you want an evidentiary hearing that is meaningful, start  
13 now with your preparation. We give you leave to proceed  
14 informally. We don't have the power yet to establish a  
15 discovery schedule, but we will as soon as we have the  
16 second special prehearing conference.

17 Are there any questions by the parties, so we all  
18 understand each other?

19 MS. MAHLER: The written report after 30 days goes  
20 to the Intervention Board, that is to say, you-all.

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CHAIRMAN MILLER: Right.

MR. KARMAN: Staff has no questions with respect to the Board statement, but with respect to informal discovery, we would like to make it clear from the commencement of the petitioning process in this proceeding, the Staff has furnished the Petitioners with any and every document that they have asked for and we could send them. There has been cooperation on both parts.

CHAIRMAN MILLER: Thank you, Mr. Karman. We appreciate that and hope all of you will cooperate with each other. We are trying to get information which will eventually be in the form of sworn testimony or admissible documents. Be cooperative, because all of you will gain information which will lead to hard evidence upon which to have a record and the Board can make a decision. Don't take positions that are simply going to be an impediment to the other party simply as impediments. I don't suggest you would. Sometimes when you get to litigation, tempers flare. We want light rather than heat.

MS. JOHNSON: I have a contention which was not accepted by either one, and in there I detailed things I needed. This was a contention on the Rock River. For instance, I said I wanted the basis on which the Applicant has been allowed to emit groundwater models. They are allowed to emit groundwater models on the basis that no

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1 radiation will get into the groundwater. There is strong  
2 evidence that radiation will get into the groundwater.

3 CHAIRMAN MILLER: I understand you.

4 MS. JOHNSON: Can I ask for this?

5 CHAIRMAN MILLER: Let me explain to you. You are  
6 not being coerced in any way or pressured by this board or  
7 any board to agree or not to agree to the formulation of  
8 your contentions, removal of them or expansion of them. You  
9 are perfectly free. Sit down and talk. Take it up with the  
10 Applicant attorney, Staff counsel. State your view. If you  
11 can't agree, stand on it. The Board will stand on it  
12 ultimately. You need not agree. Agree if you can, but we  
13 are not twisting your arm.

14 MS. JOHNSON: We are to set up a meeting?

15 CHAIRMAN MILLER: That is what the 30 days is  
16 for.

17 MS. JOHNSON: You said something about starting  
18 asking —

19 CHAIRMAN MILLER: To negotiate; make appointments  
20 with each other at your mutual convenience to talk about or  
21 discuss contentions. Contentions are statements of issues  
22 that are pleadings.

23 Secondly, as far as what we are going to do  
24 today, we are giving you the opportunity to start  
25 discovery. Discovery is written interrogatories, production

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cs/eak 1 of documents, answers to precise questions that are in a  
2 form permitted by regulations or by a court of law. You can  
3 start that informally tomorrow or whenever you want. The  
4 staff already has given information and will give more you  
5 have asked. That is point two.

6 MS. JOHNSON: But I'm not to do it orally now?

7 CHAIRMAN MILLER: Three, not orally now. We  
8 don't have the time today to go through them orally.

9 Any further questions?

10 MS. MAHLER: Is 30 days the customary period, or  
11 because this is the beginning of school and everything could  
12 we have perhaps a bit more time?

13 CHAIRMAN MILLER: There is no customary period  
14 because the man said we shouldn't be doing this. There is  
15 no custom. We are seeking to accommodate the present  
16 posture of things. We thought 30 days would give interested  
17 persons a chance to sit down and negotiate. It's more than  
18 we can take now. You have many, many contentions here and a  
19 lot of issues. We could spend a week with you. It's not  
20 our job. We shouldn't be doing it.

21 MS. JOHNSON: I would prefer to proceed today,  
22 but I suppose there isn't time.

23 CHAIRMAN MILLER: I will inquire: Is 30 days too  
24 little time?

25 MR. KARMAN: The Staff has a degree of

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1 flexibility. We will accommodate all of the parties. I  
2 will come out to Illinois, so it's at the convenience of the  
3 other parties.

4 MR. MILLER: I don't understand Ms. Johnson's  
5 comment. If she is saying she will not want to negotiate  
6 and stand on her contentions —

7 CHAIRMAN MILLER: She didn't say that.

8 MS. JOHNSON: No, no.

9 MR. MILLER: We are prepared to negotiate at  
10 everybody else's convenience.

11 CHAIRMAN MILLER: All of the parties, I'm sure,  
12 are willing to sit down to negotiate. Agree on those you  
13 can. Others, negotiate. If you can't, tell the Board. We  
14 will rule. We won't be bashful about ruling, but we want to  
15 be in a position to do it. Put it down in black and white.  
16 Then we'll vote. We are giving you a chance to do it  
17 because it's more satisfactory to negotiate if you can.  
18 Those you can't, don't worry about it. Put it down and  
19 we'll rule.

20 MR. VON ZELLEN: With the university opening next  
21 week, it's a very busy time for us; if we could have a bit  
22 more time.

23 CHAIRMAN MILLER: How much time do you think is  
24 necessary? You already have framed your contentions, have  
25 you not?

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MR. VON ZELLEN: Indeed.

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CHAIRMAN MILLER: A good many of them there is no dispute about them from the Staff's point of view.

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MS. MAHLER: We think we can strengthen them and clarify, and that will take a little bit of digging.

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CHAIRMAN MILLER: How much time are you talking about? We want to be fair to all. You have to give it a high priority.

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MR. VON ZELLEN: Mr. Karman suggested he had been through this before. Maybe he could help us.

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MR. KARMAN: The way I look at it, if the parties could sit down, I think this could be done in one day, spend a good part of one day. It's either going to be, "Yes, I think we can accommodate," "No, we can't," and we go on to the next one. We don't have three million contentions. We have nine, 10, 11, contentions. How much preparation is required by the Petitioners prior to that meeting? As I indicated, we are flexible.

19

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MR. VON ZELLEN: We just got the response from Commonwealth Edison today.

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MR. KARMAN: How long do you think it would take?

CHAIRMAN MILLER: Don't tell us what you can't do. Don't tell us how onerous it is. We appreciate that. We want to do the best we can, be fair but give it a high priority. You are asking us to expend more time than we

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1 would.

2 MS. MAHLER: Two weeks more. From 30 days to 45.

3 MR. VON ZELLEN: How about Tuesday, October 16?

4 MR. KARMAN: That's eight weeks. How about  
5 October 2? Next day, if possible.

6 MR. VON ZELLEN: Will this require one day of our  
7 time?

8 CHAIRMAN MILLER: Probably, yes, because you have  
9 given this a lot of thought. The order will read that the  
10 parties are given an opportunity reasonably to negotiate  
11 regarding statement or restatement of contentions,  
12 stipulations, combinations thereof, if possible. A written  
13 report will be furnished to the Board by each party or a  
14 joint report on behalf of all parties in writing to be  
15 received by the Board on or by October 3, 1979. Thereafter,  
16 depending on the nature of the communication, the Board will  
17 establish the first special prehearing conference of the  
18 licensing board, and we will take two days, if necessary,  
19 and we will go through item by item each contention where we  
20 don't have agreement, and we are just going to take the  
21 time.

22 I will say for the benefit of the audience, at  
23 that time there will not be any limited appearance  
24 statements until it is concluded because that has to be  
25 accomplished first. That covers the situation now with

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1 reference to the Byron Station, does it not?

2 MR. MILLER: With respect to contentions, yes,  
3 sir. Might we have a ruling of the Board on our motion to  
4 file in stanta?

5 CHAIRMAN MILLER: Leave is granted to file in  
6 stanta, to respond to the previously filed contentions.

7 MR. MILLER: Is it appropriate to discuss  
8 scheduling of further proceedings beyond the next special  
9 prehearing conference?

10 CHAIRMAN MILLER: It will be if we have covered  
11 all contentions by all intervenors to this proceeding. Have  
12 we covered that?

13 MR. MILLER: I believe so, yes.

14 CHAIRMAN MILLER: Scheduling for the matters that  
15 would come up subsequent to the filing of the written report  
16 to the Board by October 3 is in order.

17 MR. MILLER: I think the pacing item for  
18 further conduct of the proceedings after the initial  
19 discovery is really the staff issuance of the Safety  
20 Evaluation Report and the Draft Environmental Statement.

21 CHAIRMAN MILLER: We are going to ask the status  
22 of those two documents. So I inquire of the staff: Where  
23 do we stand on the SER and FES?

24 MR. KARMAN: Mr. Chairman, I have been advised  
25 by the project manager on this matter that the staff is in

~~1134 252~~

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cs/eak

1 the process of establishing a firm schedule for the issuance  
2 of the Safety Evaluation Report, but that an estimate,  
3 approximation for such issuance at this time is October or  
4 November of 1981.

5 CHAIRMAN MILLER: You mean two years from now?

6 MR. KARMAN: That's correct.

7 CHAIRMAN MILLER: Then what is the urgency of  
8 this phase of the hearing?

9 MR. KARMAN: That is not for me to say, sir.

10 CHAIRMAN MILLER: What about the FES and DES?

11 MR. KARMAN: DES will probably precede. I don't  
12 have the exact date, but it will precede the issuance of the  
13 Safety Evaluation.

14 CHAIRMAN MILLER: Then the FES --

15 MR. KARMAN: FES after the DES, approximately  
16 five months thereafter. I think it might be appropriate at  
17 this time -- it does seem like a rather long time in the  
18 future when we are talking about the issuance of a safety  
19 evaluation. As this board knows, and as the Applicant is  
20 well aware -- and I'm certain the parties are also -- the  
21 Commission has established many task forces which are  
22 investigating and reviewing the incident at Three Mile  
23 Island.

24 CHAIRMAN MILLER: Is this B&W?

25 MR. MILLER: : No, it's not.

2005 062

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cs/eak 1

CHAIRMAN MILLER: What kind is it?

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MR. MILLER: It's a Westinghouse reactor.

3

MR. KARMAN: We seem to have a delayed schedule

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of those task forces, and because the staff has been

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depleted to the extent that those people who normally review

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both — in the environmental phase and safety phase — some

7

of them have been placed on these task forces. And we are

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working with a diminished number of technical reviewers at

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this time. So when that 1981 date is being given to this

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board, it's being given with the idea that we have suffered

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some depletion in the staff availability on these reviews.

12

CHAIRMAN MILLER: Does the staff intend to apply

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additional capability to this matter after the Three Mile

14

Island analyses?

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MR. KARMAN: To the best of my knowledge, a

16

request has been put forth to the Congress of the United

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States for the supplementation of staff for the Nuclear

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Regulatory Commission to handle both the matter related to

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Three Mile Island and the Commission's normal licensing

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matters. I cannot report any further than that.

21

CHAIRMAN MILLER: Let me inquire further as to

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the Staff's position with regard to the framing of issues by

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any of the Intervenor's insofar as the filing upon completion

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of SER, DES, and FES by the staff may well trigger other

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additional, supplemental, or even new matters not now

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cs/eak 1 reasonably within the cognizance of these Intervenors?

2 MR. KARMAN: It won't be different from any other  
3 new matter that comes up in any other licensing proceeding.  
4 If valid reason is shown or relevance is shown, we would  
5 support any additional matter coming into the proceeding.

6 CHAIRMAN MILLER: That is something we  
7 understand, but it does not answer my question. In the  
8 normal course of establishing operating license proceedings,  
9 we are not looking at two, two-and-a-half years before  
10 certain essential documents are prepared by the staff. That  
11 is a qualitative difference. Why should we require the  
12 statement of contentions at this time by any of the  
13 intervenors until those documents are under preparation and  
14 information is available to the Intervenors to make it  
15 incumbent upon them to do so.

16 MR. KARMAN: There are matters which can be  
17 gainfully taken care of during the period prior to the  
18 issuance of the safety evaluation. We can complete all  
19 kinds of discovery. When the time does come -- and  
20 conceivably that date will be moved up -- if the Staff is  
21 given additional help, those dates may be improved on.

22 CHAIRMAN MILLER: What about the NEPA inquiry  
23 which will depend on the Final and Draft Environmental  
24 Statement?

25 MR. KARMAN: That would be prior to any safety  
26 evaluation.

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cs/eak

1 evaluation.

2 CHAIRMAN MILLER: What time did you give me?

3 MR. KARMAN: I did not give you that.

4 CHAIRMAN MILLER: The DES.

5 MR. KARMAN: I wish I could give it to you,  
6 Mr. Chairman. The environmental group has been less  
7 impacted by the Three Mile Island task forces than have the  
8 safety reviewers.

9 CHAIRMAN MILLER: Don't tell me what hasn't  
10 happened but what will happen affirmatively.

11 MR. KARMAN: I do not have the date. I will  
12 advise the Board and parties when I can get it.

13 CHAIRMAN MILLER: When do you estimate that will  
14 be?

15 MR. KARMAN: As soon as I speak with my project  
16 manager in Washington.

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c-4

bwEAK

1                   CHAIRMAN MILLER: Do you have any range of times?  
2 All you told us was that October of 1981 was the projected  
3 Safety Evaluation Report. You then said the Draft  
4 Environment Statement would precede it. It could precede it  
5 by a month, a year or two years, I suppose.

6                   MR. KARMAN: I hesitate to do this without getting  
7 the information from the people who are doing the job. My  
8 guesstimate would serve nobody.

9                   MR. MILLER: Mr. Chairman, for the information of  
10 the Board and the parties, Commonwealth Edison contemplates  
11 that Byron Station Unit 1 will be ready to hold fuel in  
12 April of 1982, assuming that there was, of course, a  
13 successful environmental review, successful safety review by  
14 the Staff and that the issues that are before this board are  
15 resolved satisfactorily and in the Applicant's favor. An  
16 October or November 1981 Safety Evaluation Report leaves an  
17 impossibly short time.

18                   CHAIRMAN MILLER: You couldn't do it within that  
19 time frame, could you?

20                   MR. MILLER: I would state again for the record  
21 and for the information of the parties and the Board that it  
22 would be our wish, of course, that these matters be  
23 expedited with regard for the implications of the Three Mile  
24 Island accident and that it may be appropriate to have two  
25 sets of hearings. One dealing with environmental issues and

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bwEAK

1 one dealing with safety issues, if the two documents that  
2 trigger those types of hearings are issued not parallel, but  
3 over a rather extended sequence.

4 MR. KARMAN: We have no problem with that.

5 CHAIRMAN MILLER: That is frequently done. That  
6 doesn't answer the question which you can't speculate on  
7 which is, when do you have the Draft Environmental Statement  
8 circulated, and then five months later the Final. You are  
9 talking about a year-and-a-half or two years, probably.

10 MR. KARMAN: We will make an effort during the  
11 course of the afternoon to locate our project manager.

12 CHAIRMAN MILLER: Since we will be here in the  
13 morning for the purpose of hearing limited appearane  
14 statements, you can give us further information then. We  
15 would like to have the parties and counsel give thought to  
16 the information received by the time frame and various  
17 problems and matters that appear to be built into the  
18 situation. We will discuss it further with parties and  
19 counsel in the morning.

20 Does anybody know who has control of this room?  
21 We will try to schedule the hearing starting at 8:30 in the  
22 morning. We will try to schedule it from 8:30 until 11,  
23 because we do have ourself at the mercy of transportation to  
24 Joliet for another hearing. We intend to hear from you  
25 folks also after a short recess this afternoon.

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bwEAK

1 Is there anything further you wish to take up now,  
2 in light of the procedural aspects of the hearing, before we  
3 start hearing from the interested public, who would like  
4 to make limited appearance statements?

5 MR. MILLER: In light of the new information that  
6 the Final Environmental Statement will not be available for  
7 so long, you might care to reconsider the date on which we  
8 would meet even.

9 CHAIRMAN MILLER: What did we give you: eight  
10 weeks? What would you like: double that? We will take  
11 under advisement double that. We will take it up with you  
12 in the morning.

13 Yes, we will meet tomorrow, and you might as well  
14 meet with us. We will try to resume our hearing in the  
15 morning at 8:30, in order to accommodate as many people as  
16 we can. We do, however, have additional matters and counsel  
17 wish to discuss with us, which may include their evaluation  
18 and appraisal of the situation, in view of the information  
19 you may have received.

20 MR. VON ZELLEN: I was thinking you understood  
21 that the new EPA regulations -- that as of December 1 there  
22 will be few -- that the Environmental Protection Agency has  
23 established new maximum limits of exposure to radiation  
24 which will take effect December 1. We are talking in our  
25 contentions about exposure limitations that were build

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bwEAK

1 into the 1974 Environmental Impact Statement of Commonwealth  
2 Edison. Now if we are to meet now prior to the institution  
3 of new regulations, how then do we see this in our  
4 contentions?

5 CHAIRMAN MILLER: As to that, you could keep them  
6 open. We could give you leave at such time as there is  
7 additional relevant information to add it. We would be  
8 flexible. We would protect your rights. As additional  
9 information became available which had a real bearing —  
10 something you could not and should not have been expected to  
11 plead before, we would give you leave to amend to cover  
12 that. We want a full record. We are not trying to block  
13 you out.

14 MS. MAHLER: There is an issue that we started  
15 talking about quite a long itme ago, and we never got it  
16 resolved, so that I understood it. A number of months ago  
17 we filed a motion that this whole process be postponed until  
18 more of the evidence with regard to Three Mile Island came  
19 out.

20 CHAIRMAN MILLER: Insofar as this board has  
21 limited jurisdiction, we have to overrule that, because what  
22 other parties and agencies are doing would not prevent a  
23 licensing board from proceeding, but insofar as there was  
24 any impact, you would have the right to go into it. If it  
25 had no impact, it would have no impact. You will be

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