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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

ANSWER OF COMMONWEALTH EDISON COMPANY TO THE REVISED CONTENTIONS OF INTERVENOR ROCKFORD LEAGUE OF WOMEN VOTERS

Submitted on Behalf of Applicant
Commonwealth Edison Company

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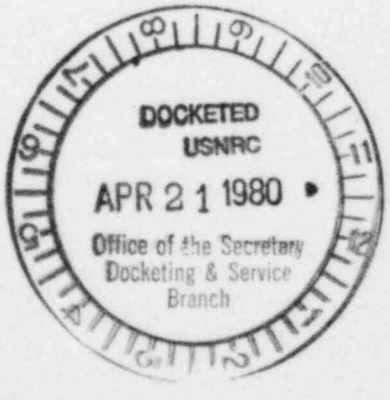

DATED: April 18, 1980

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NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
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TO THE REVISED CONTENTIONS OF INTERVENOR
ROCKFORD LEAGUE OF WOMEN VOTERS

Pursuant to 10 CFR §2.714 and the Board's "Order Setting Time To Respond To Revised Contentions," dated March 26, 1980, Commonwealth Edison Company ("Edison" or "Applicant") submits its response to the Rockford League of Women Voters (the "League" or "Intervenor") Revised Contentions filed March 10, 1980. For the reasons more fully set forth below, Applicant submits that all of the League's Contentions, with the exception of Contentions 50 85, 104, 112(d) and 119(a) and (b), fail to set forth issues with specificity and basis required pursuant to 10 CFR §2.714 which are appropriate for adjudication in this proceeding. Contentions 2, 5, 10, 88, 89, 90 and 116, relating to Applicant's quality assurance program, raise a single issue appropriate for adjudication, and we propose an alternate contention raising that issue herein. The League should be permitted to submit a contention within the scope of Contentions 102 and 103 at some future time. With the exceptions noted, all of the League's Revised Contentions should be dismissed for the reasons set forth herein.

I. RESPONSE TO INTERVENOR'S ADDITIONAL MATTERS AND RESERVATIONS

Intervenor's preamble to its Revised Contentions is comprised of a number of statements of intent, reservations and "directions" regarding the manner in which the Contentions ought to be interpreted. Applicant believes that it would be premature to comment with respect to Intervenor's statements of intent. If and when Intervenor affirmatively acts pursuant to its stated intent, Applicant will respond in due course.

With respect to Intervenor's reservation of "rights," Applicant submits that such rights either exist or they do not. Clearly, Intervenor cannot create rights by merely stating that they are reserved, and Intervenor's attempt to do so should be disregarded.

Finally, Intervenor's statements regarding the manner in which the Revised Contentions should be interpreted by the Board are entirely improper. Paragraph 4 constitutes an attempt to avoid the specificity requirement for admissible contentions. To the extent Intervenor relies upon references to statutes, regulations, regulatory guides or design criteria as the basis or support for its Contention, the reference must be specifically set forth in the Contention. Accordingly, Intervenor's attempt to avoid this pleading requirement by making a generalized and totally non-specific statement that the Contention is to be inter-

preted as including an implicit reference to all applicable statutes, regulations, etc., should be stricken.

Similarly, Intervenor's statements in paragraph 6(f) fails to meet the requirements set forth in 10 CFR §2.758 regarding the procedures to be used by a party attempting to attack a Commission regulation. Section 2.758 requires that the party seeking a waiver or an exception from the regulation submit an affidavit that "identifies the specific aspect or aspects of the subject matter of the proceeding as to which applications of the rule or regulation (or provision thereof) would not serve the purposes for which the rule or regulation was adopted, and shall set forth with particularity the special circumstances alleged to justify the waiver or exception requested." As such, Intervenor's request that, in the event it is determined that one or more of its Contentions constitute challenges to Commission regulations, it should be treated as requesting a waiver pursuant to §2.758, must be denied for failure to meet the requirements of §2.758.

II. LEGAL STANDARDS TO BE USED IN EVALUATING THE SUFFICIENCY OF INTERVENOR'S CONTENTIONS

The Commission's Rules of Practice provide that a petitioner shall file "a list of the contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity." 10 CFR §2.714(b). The Commission has stated,

'definition of the matters in controversy is widely recognized as the keystone to the efficient progress of a contested proceeding." 37 Fed. Reg. 15128. In setting issues of interest or concern to it, the petitioner "'must be specific as to the focus of the desired hearing' . . . [a]nd contentions . . . serve the purpose of defining the 'concrete issues which are appropriate for adjudication in the proceeding.' Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-106, 6 AEC 188, 191, affirmed CLI-73-12, 6 AEC 241 (1973), affirmed sub nom., BPI v. Atomic Energy Commission, [502 F.2d 424, 425 (D.C. Cir. 1974)]." Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 768-69 (1977). The primary purpose for requiring that the issues be set forth with adequate specificity and particularity is to provide the Applicant and the Staff with a fair opportunity to know precisely what the issues are, exactly what proof, evidence or testimony is required to meet the issue and exactly what support Intervenor intends to adduce for its allegations. River Bend, supra at p. 771.

Not only must an intervenor raise specific and focused issues in its contentions, such issues must be appropriate for adjudication in the particular proceeding. As the Atomic Safety and Licensing Appeal Board has stated:

> The imposition of reasonable limitations on the scope of full trial-type hearings in administrative proceedings is essential. The need for limitations in such hearings is a general one which is not limited to

> hearings which concern the licensing of nuclear power plants. These limitations do not mean that interested members of the public may not express their concern before other forums which are appropriate. If facts pertaining to the licensing of a particular nuclear power plant are at issue, an adjudicatory proceeding is the right forum. But if someone wants to advance generalizations regarding his particular views of what applicable policies ought to be, a role other than as a party to a trial-type hearing should be chosen. It is a mistake to conclude that limitations essential for the conduct of trial-type hearings are a part of an overall strategy to limit across-the-board inquiry into health and safety matters. And if the purpose and limitations of the adjudicating process are not understood, there is the subtle danger that some credibility might be given to the mistaken impression which can breed further misunderstandings by interested citizens.

Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-128, 6 AEC 399, 401 (1973) (emphasis supplied).

10 CFR §2.714(b) specifically requires that an intervenor set forth the bases for his or her contention with reasonable specificity. It is only through the examination of the asserted bases for a contention that a Licensing Board can determine "if facts pertaining to the licensing of a particular nuclear power plant are at issue." Quite obviously, the mere identification of a matter that is generically applicable to all power reactors or a large class of reactors is insufficient to raise a valid contention. River Bend, supra p. 773. An intervenor must not only assert that a matter is generally applicable to the particular facility, but he must show (or at least allege) that

the fashion in which an application deals with the matter is in some fashion unsatisfactory.

In this connection, Applicant believes the Board should seriously question the requisite bases for the League's Revised Contentions. Of the 146 Contentions filed, 45 of them are virtually identical copies of contentions filed by Mary Sinclair in the Consumers Power Company Midland operating license proceeding.* The similarities between these two sets of contentions goes far beyond a general description of broad issues, but extends to factual allegations purportedly specific to Applicant. For instance, Contention 10 alleges a "history of inadequate and slipshod quality control and quality assurance practices," and "Region III Compliance determination that C.E. consistently attempts to evade or be excused from compliance with NRC requirements." These identical allegations appear in Mary Sinclair's Contention 14, which was disallowed in the Midland proceeding for lack of specificity. Similarly, a quote attributed to Commonwealth Edison Company in League Contention 13 was attributed to Consumers Power Company in Mary Sinclair's Contention 18. In the same two Contentions, both Edison's largest customers and Consumers Power's largest customers are alleged to have gone on record with identical statements regarding commit-

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* As Appendix A to this brief, we present a table showing the League's Revised Contention number and the parallel Midland contention. We also supply a copy of Mary Sinclair's contentions for convenient reference by the Board.

ments for energy conservation. In Contention 13, the League asserts that (in the same language used by Mary Sinclair in Contention 18) Edison fails to take into account energy conservation, price elasticity, Federally-required improvements in the efficiency of home appliances, changes in the size and number of new homes and a decreasing birthrate. Applicant is not in a position to comment on Consumers Power Company's load forecasting methodology and sees no reason to do so. However, many of the allegations made in League Contention 13 are flatly contradicted by the discussion contained at pages 1.1-1 through 1.1-12 of the Byron Station Environmental Report.

We believe that the only reasonable inference to be drawn from the obvious similarities to the two sets of contentions is that the League has reproduced the vast majority of contentions filed in the Midland proceeding (changing only the name of the Applicant and the facility) without regard to the accuracy of the factual allegations or the nexus of the general issues to this proceeding. We urge the Board to summarily reject all of the Contentions cribbed from the Midland proceeding as being presumptively without bases.*

The vast majority of the other Contentions similarly lack specific reference to the Byron Station. In spite of the fact that the League's Revised Contentions were

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* These Contentions are deficient, in any event, as we point out later in this Answer.

filed approximately one year after Applicant provided the League a complete copy of the application for the Byron Station operating license, virtually none of the League's Revised Contentions cite to deficiencies in that application or in any way discuss the specifics of Applicant's proposal. Rather, the League's Contentions appear to be a compendium of generalizations derived from various sources, not including the Byron application.

C. SPECIFIC CONTENTIONS

Contentions 1, 3, 6, 17, 18, 40, 78, 87, 100, 122, 123, 124, 125, 131, 145 and 146

The League received notice of opportunity for hearing in this matter on December 15, 1978, and filed a "Petition for Leave to Intervene" on January 13, 1979. A copy of Applicant's FSAR and ER were provided to the League in March of 1979. On July 28, 1979, the League filed its original list of contentions. During the course of the prehearing conference, the Board granted the parties additional time to negotiate in an effort to refine contentions that had been filed by the League for the purpose of eliminating duplications and arriving at more discretely defined issues (Tr. p. 104). Clearly, the granting of the Board's ruling must not be construed as permitting the submission of "refined" contentions which have no relation to the issues which were raised in Intervenor's original submission.

On March 10, 1980, at least seven months past the date for filing contentions in this proceeding, Intervenor

submitted its Revised Contentions. These Revised Contentions not only failed to refine and focus the issues raised in the original contentions,* but also significantly expanded upon these issues. Moreover, a number of Revised Contentions raise issues which are totally beyond the scope of the issues previously submitted by Intervenor. Revised Contentions 1, 3, 6, 17, 18, 40, 78, 87, 100, 122, 12[illegible] 124, 125, 131, 145 and 146 have no counterpart in the League's original filing. Section 2.714(a)(3) provides, in pertinent part, that following the 15th day prior to the holding of a special prehearing conference, a petition may be amended only with approval of the presiding officer, based upon the balancing of the factors specified in paragraph (a)(1) of §2.714. Since the League has not sought approval to raise entirely new matters, nor does the pleading provide any information from which the Board can reach a conclusion on the balance of those factors, the Contentions listed above should be dismissed. Moreover, virtually without exception, the new matters raised are entirely without merit.

Contentions 1 and 3

These Contentions attempt to question the NRC Staff's ability to properly carry out the regulatory respon-

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* In fact, the list of Revised Contentions contains substantially all of the contentions originally filed by Intervenor almost without change. Compare original contentions 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 with Revised Contentions 107, 106, 108, 109, 110, (111-113), 114, 115, 116, 117, (118-119), respectively.

sibilities which have been delegated to it pursuant to the Atomic Energy Act and the Commission's regulations. (See 42 USC §§5841, 5843, 5844 and 10 CFR Part 1.) Clearly, these Contentions are not appropriate for resolution in an evidentiary hearing involving the licensing of individual power reactors. Moreover, the Contentions do not raise any issues specifically relating to the licensing of the Byron Units. As such, there is no justification for converting this licensing proceeding into a generalized investigation of the NRC Staff's ability to effectively regulate the nuclear industry. The Contentions must, accordingly, be dismissed.

Contentions 2, 5, 10, 88, 89, 90 and 116

Each of these Contentions alludes to Applicant's past performance with respect to achieving compliance with NRC regulatory requirements and goes on to question Applicant's ability and/or willingness to comply with the Commission's requirements regarding quality assurance programs and procedures. As worded, the Contentions are totally non-specific with respect to Applicant's alleged compliance difficulties. However, in previous negotiations with the League, Applicant has indicated a willingness to litigate the question of Applicant's ability to comply with the Commission's quality assurance requirements. (See letter

attached as "Exhibit A," pp. 9-10, to Applicant's "Motion For A Ruling On The Admissibility Of Contentions Of The League Of Women Voters Of Rockford," dated February 13, 1980.) As such, Applicant would propose Contentions 2, 5, 10, 88, 89, 90 and 116 be consolidated into one contention along the lines of Applicant's earlier proposal.* Applicant submits that its proposed contention raises the issue sought to be raised in Intervenor's Contentions 2, 5, 10 and 116 without the unnecessary and unsupportable rhetoric. The contention proposed by Applicant does not address issues regarding Applicant's ability to complete construction of the Byron Units on the grounds that such issues are not appropriately before this Board.

Contentions 7, 118, 127, 133

These Contentions essentially assert that the Byron Station cannot be justified economically and, therefore, cannot survive the cost/benefit analysis required by 10 CFR §§51.20(b) and 51.21.** They do not raise viable issues as

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* Applicant's proposed contention reads as follows:

> Intervenor contends that Commonwealth Edison Company does not have the ability and/or willingness to comply with 10 CFR Part 50, Appendix B, as evidenced by its past history of noncompliance. In addition, Commonwealth Edison's quality assurance program does not require complete independence of the quality assurance functions from other departments within the Company.

** Section 51.20(b) applies to the cost/benefit analysis at the construction permit stage and is, therefore, inapplicable here.

the matter of the cost efficiency of the Byron Units remains within the exclusive province of the utility and its supervising State regulatory commission.

> [N]either NEPA nor any other statute gives us the authority to reject an applicant's proposal because an alternative might prove less costly financially. Monetary considerations come into play in only the opposite fashion -- i.e., if an alternative to the applicant's proposal is environmentally preferable, then we must determine whether the environmental benefits conferred by that alternative are worthwhile enough to outweigh any additional cost needed to achieve them.

Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 163 fn. 25 (1978); see also, Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 805 fn. 128 (1979). Moreover, at the operating license stage, the costs which must be factored into the cost/benefit analysis are the environmental costs of operating, and not the economic costs of constructing, the facility under review. As such, the Contentions 7, 118, 127 and 133 do not present issues within the scope of this proceeding.

Contentions 8 and 62

These Contentions assert that Applicant's application is defective for failure to consider the consequences of Class 9 accidents. The Commission has recently announced its intent to commence a rulemaking proceeding designed to re-evaluate the current policy of not considering the consequences of Class 9 accidents in individual licensing pro-

ceedings. Offshore Power Systems (Floating Nuclear Power Plants), CLI-79-9, 10 NRC 257, 262-263 (1979). Further, the Commission instructed the Staff to bring to its attention any individual cases in which it believes the environmental consequences of Class 9 accidents should be considered. Offshore Power, supra, 10 NRC at p. 263. The Offshore Power decision was recently clarified by the Commission.

> Because the existing policy on Class 9 accidents was not displaced in Offshore Power and would not be displaced pending generic consideration of Class 9 accident situations in policy development and rulemaking, the Commission envisioned that the Staff would bring an individual case to the Commission for decision only when the Staff believed that such consideration was necessary or appropriate prior to policy development. The Commission did not expect that such discretion was to be exercised without reference to existing staff guidance on the type of exceptional case that might warrant additional consideration: higher population density, proximity to man-made or natural hazard, unusual site configuration, unusual design features, etc., i.e., circumstances where environmental risk from such an accident, if one occurred, would be substantially greater than that for an average plant. [footnote omitted] The broad issue of consideration of Class 9 accidents at land-based reactors are not before the Commission in Offshore Power and we did not believe that the NRC's generic policy on consideration of Class 9 accidents would properly be developed ruling on a case-by-case basis. Such piecemeal consideration is not appropriate to such an important policy area, and we decline to adopt such an approach now.

Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), CLI-80-8, Slip Op. at pp. 3-4 (March 21, 1980) (emphasis in original).

Inasmuch as the Staff has not recommended that the consequences of Class 9 accidents be considered in this proceeding, and given the fact that the Commission has not ordered such consideration in this case, the Commission's Offshore Power and Black Fox decisions are clearly dispositive, and the Contentions must, appropriately, be dismissed.*

Contentions 9 and 119

These Contentions seek to raise issues concerning Applicant's financial ability to complete and operate the Byron Units. Once again, at this stage in the proceeding the issue of whether Applicant has the financial ability to complete construction of the facility bears no relation to the subject matter of this proceeding. The Board clearly does not have the jurisdiction to reconsider the findings made at the construction permit proceeding regarding Applicant's ability to finance the construction of the Byron Station.

Although Applicant strongly disagrees that the factual bases identified in Contention 119 cast any doubt upon Applicant's ability to operate the Byron Units, we believe that these issues can more properly be resolved in

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* Intervenor's argument in Contention 8, to the effect that the Lewis Committee criticism of the Rasmussen Report mandates consideration of Class 9 accidents, is clearly without merit. The Class 9 policy is based upon the guidance announced in the "Annex" to Appendix D to 10 CFR Part 50, published in 1971, well before the Rasmussen Report was completed and, thus, could not have been based on the Report.

motions for summary disposition. Accordingly, we do not oppose at this juncture the admission of a contention raising the issue of whether the Board will be in a position to make a finding of reasonable assurance of financial qualifications to operate the facility. We would, however, urge that Contention 9 be dismissed in its entirety for insufficient specificity and because of the totally unsupported innuendos regarding the allegation that Applicant places higher priority on economic than safety considerations. We would also request that subpart (c) of Contention 119, concerning the likelihood of serious accidents at any of Applicant's nuclear units, be stricken as totally without foundation.

Contentions 11, 12, 13, 118, 129, 128, 130 and 139

Each of these Contentions attempts to raise issues concerning whether there is a need for the power to be generated by the Byron Station, and most assert that in light of the fact that there is no need for such power, the Byron Station cannot withstand the cost/benefit analysis mandated by NEPA. These Contentions demonstrate a serious misunderstanding on the part of the League as to the scope of an operating license proceeding. At this stage of review the ultimate issue presented to the Board is whether the Byron Station should be turned on, not whether it should be constructed. Accordingly, the environmental costs which must be compared to the benefits of the proposed action, i.e., permitting the operation of these reactors, are the

environmental costs associated with operation. During the course of the Byron Station construction permit proceedings, the Licensing Board found that the environmental benefits which would result from the Byron Station outweighed the environmental costs associated with the construction and operation of this facility. It goes without saying that this Board does not sit in review of the construction permit Board and, thus, must accept their findings with respect to this issue. The great majority of the environmental costs identified during the construction permit review were those associated with the construction of Byron Station, and for purposes of this proceeding, these costs have been incurred. The major Federal action at issue in this proceeding is the grant of a license to operate the Byron Station, and in no way can environmental effects of construction be considered a cost associated with that determination.

When viewed in the proper light, it is apparent that the League's need for power contentions raise no issues cognizable under NEPA. Electric energy is produced only as it is consumed. The environmental costs of operation, primarily aquatic impacts from the Station's cooling needs, minor radioactive effluents and the generation of spent fuel (all of which were fully explored at the construction permit stage), are virtually proportional to the amount of electricity generated. If, as the League asserts, less energy is required from Byron than projected by Applicant, the environmental impacts of operation will be proportionally reduced.

To the extent that electric energy can be produced from other sources, such as Applicant's sister utilities, that generation will entail similar or greater environmental impacts. NEPA does not require consideration of alternatives, the environmental impacts of which are similar or worse than the prc osed action. NRDC v. Morton, 458 F.2d 827, 836 (D.C. Cir., 1972).

Most important is the simple fact that in all of the League's need for power contentions there is not the slightest suggestion that the environmental impacts will differ in the least based on the timing of the commencement of operation at the Station. Nor, of course, could there be any rational basis for such a suggestion. Even at the construction permit stage of licensing, the precise timing of the need for a new facility is largely irrelevant. See Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), CLI-79-5, 9 NRC 607 (1979). Niagara-Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347 (1975). At the operating licensing stage, no purpose can be served by rehashing demand forecasting methodology when that exercise is irrelevant to any significant environmental concerns.

Contentions 14 and 15

These Contentions attempt to raise issues concerning impacts upon the environment resulting from the uranium fuel cycle and, on their face, challenge the validity of §51.20, Table S-3. To the extent Intervenor attempts to

address the issue of impacts on the environment of the uranium fuel cycle, the Contentions are totally deficient in that they fail to identify or specify any impacts whatever. To the extent Intervenor is challenging the validity of the Table S-3 rulemaking proceedings on either substantive or procedural grounds, such a challenge is precluded by 10 CFR §2.758.

Finally, Contention 15 is susceptible of being interpreted as challenging Applicant's application for failing to establish that it will be able to permanently dispose of the wastes produced as a result of the operation of Byron Station. The Commission has announced its intent to commence a generic proceeding regarding the likelihood that nuclear waste can be disposed safely and when that, or some other off-site storage solution, can be accomplished. 44 Fed. Reg. 45362 (1979). The Appeal Board in Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 83-85 (1974), discussed the Commission's policy regarding the simultaneous consideration of generic issues in rulemaking proceedings and individual licensing hearings and concluded that:

> Our consideration in adjudicatory proceedings of issues to be taken up by the Commission in rulemaking would be, to say the least, a wasteful duplication of effort.

> In short, . . . licensing boards should not accept in individual licensing proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission. Id., at p. 85.

Contention 15 appears to fall squarely within this category.

Thus, for the reasons stated above, Contentions 14 and 15 must be dismissed.

Contention 17

To the extent that this Contention asserts that Applicant's Environmental Report is, for unspecified reasons, inadequate, it must be rejected as non-specific. Intervenor does assert that Applicant has not yet responded to all of the Staff questions. This situation is normal at this stage of the proceeding and does not constitute an issue for adjudication.

Contention 18

Contention 18 asserts that Applicant is building the Byron Station primarily for the sale of electricity to users and utilities outside of its service territory. There is absolutely no basis stated for this assertion. Even if the statement were true, it is wholly irrelevant to this proceeding.

Intervenor attempts to relate this groundless assertion to its charge that since the utilities which will purportedly purchase power generated from the Byron Units are not parties to this proceeding, the Board cannot make

the finding that Applicant is technically and financially qualified to engage in the activities authorized by the operating license or that the facility will operate in conformity with the application, the provisions of the Atomic Energy Act and the rules and regulations of the Commission. Such an assertion is clearly frivolous. Not once in the hundreds of licensing proceedings presided over by the NRC has it ever been suggested that some or all of an Applicant's customers must be parties to the application or the hearings. For the above stated reasons, the Contention must be rejected.

Contentions 19, 78, 108 and 146

These Contentions pertain to the issue of emergency planning. The thrust of these Contentions is that Applicant's emergency planning basis is inadequate, as is the existing NRC policy with respect to emergency planning. On December 19, 1979, the Commission issued a notice of proposed rule which was developed as a result of the on-going rulemaking proceeding pertaining to the Commission's formal reconsideration of the role of emergency planning in assuring the continued protection of the public health and safety in areas around nuclear power facilities. 44 Fed. Reg. 75167. Thus, since the issues sought to be litigated by any of these Contentions are currently being considered in a rulemaking proceeding, the Contentions must be dismissed. Douglas Point, ALAB-218, supra.

Generic Safety Issues - Contentions 20 through 48, 61, 69, 73, 74, 75, 77 and 80

A large number of the League's Contentions assert that, because certain identified generic matters have not been resolved generically, the findings required under 10 CFR §50.57 cannot be made. These Contentions raise matters discussed in "NRC Program For The Resolution Of Generic Issues Related To Nuclear Power Reactors," NUREG-0410 (January 1978), the testimony of NRC Staff witnesses Aycock, Crocker and Thomas in the Black Fox proceeding, "Identification Of Unresolved Safety Issues Relating To Nuclear Power Plants," NUREG-0510 (January 1979) and "Generic Task Problem Descriptions, Category B, C, and D Tasks," NUREG-0471.* In each instance, the League has provided a brief description of one or more of the NRC Staff Task Action Plans ("TAPs"), has asserted that the TAPs are relevant to pressurized water reactors generally, including the Byron Station, and concludes that therefore the finding required by 10 CFR §50.57(a)(3)(i) and (a)(6), cannot be made. These Contentions fail to meet the pleadings requirements of 10 CFR §2.714 as interpreted in the unequivocal and well-reasoned decision in Gulf States Utilities Company (River Bend Station, Units 1 and 2),

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* NUREG-0410 was a report prepared by the NRC Staff and submitted to Congress in 1978 in response to Section 210 of the Energy Reorganization Act, which requires that the NRC develop plans to resolve "unresolved safety matters" and report to Congress annually. The Black Fox testimony cited by the League contains a May 1978 revision of the description of Class A Task Action Plans. NUREG-0510 is the 1979 report to Congress. NUREG-0471 describes the Class B, C and D Tasks.

ALAB-444, 6 NRC 760 (1977), and are, therefore, not proper or admissible contentions.

In River Bend, the Appeal Board held that "[t]he mere identification of a generic technical matter which is under study by the staff (such as a TSAR item or Task Action Plan) does not fulfill" a party's obligation to be specific as to the focus of the required hearing and to define concrete issues which are appropriate for adjudication in the proceeding. River Bend at pp. 773, 768-69. In the opinion of the Appeal Board, this result flows directly from the nature of the generic safety matters and the multi-faceted obligations of the Commission in the area of public health and safety, as well as the need to provide parties a fair opportunity to know precisely what the limited issues are, exactly what proof, evidence or testimony is required to meet that issue and exactly what support the intervenor intends to adduce in support of its allegations. The Appeal Board stated:

> We are in general agreement with the Licensing Board's assessment of the adequacy of the State's statement of issues. It seems clear to us that, in order to introduce a new issue into a proceeding, a party -- and likewise an interested state -- must do more than present what amounts to a check list of items contained in the TSAR or in regulatory guides. The very nature of the TSAR and of regulatory guides supports this conclusion.
>
> As previously indicated, the TSAR is a compendium of some of the research activities which (as of the date of its issuance) the staff either had undertaken or proposed to undertake -- with a view toward achieving

> such goals as improving the licensing process or the method by which particular safety questions are considered, or defining more precisely the margins of safety inherent in various component parts of a reactor. That changes could eventuate in some of the areas covered by the TSAR (or its successor, the Task Action Plans) is expected. And application of at least some of these potential modifications to existing reactors or procedures is highly likely. But it does not follow that a safety threat would be presented by the licensing of a plant prior to completion of a particular study which is relevant to that type of plant. Indeed, some of the studies concern potential problems of such character that in no event would they arise in the early years of a reactor's operation. Other studies are aimed at the question whether there might be a mitigation of some requirements currently imposed. Still further, the TSAR spotlights areas in which, although a generic solution to a particular problem may not have been achieved, a satisfactory resolution for one or more reactors has been obtained. River Bend, p. 772.

The Appeal Board held that, in order to plead a valid contention based on a TAP, the following is required:

> To establish the requisite nexus between the permit or license application and a TSAR item (or Task Action Plan), it must generally appear both (1) that the undertaken or contemplated project has safety significance insofar as the reactor under review is concerned; and (2) that the fashion in which the application deals with the matter in question is unsatisfactory, that because of the failure to consider a particular item there has been an insufficient assessment of a specified type of risk for the reactor, or that the short-term solution offered in application to a problem under staff study is inadequate River Bend, p. 773 (emphasis in original).

The League has manifestly failed to meet this burden. In River Bend, a simple checklist of items contained in "Technical Safety Activities Reports," since superseded

by the TAPs, was held not to meet a party's pleading obligation. River Bend, p. 772. The Contentions of the League which attempt to raise the generic matters for which TAPs have been prepared amount to nothing more than such a checklist. The only difference between the approach pursued by the League and the approach rejected in River Bend is that the League has provided a brief description, often inaccurate, of certain TAPs rather than providing a citation to the Staff's own description of its generic investigation, as was done in River Bend. Such a brief description of the generic TAP, however, provides no nexus to the Byron facility and constitutes no more than a thinly disguised attempt to avoid, rather than meet, the requirements of River Bend. Indeed, the League has used identical descriptions of the TAPs as was used by other intervenors in the Midland proceeding (changing only the name of the station), even though the Midland proceeding involves the licensing of two smaller reactors, manufactured by a different nuclear steam system supplier, in a plant designed by a different architect-engineer for a different utility.

By way of example, we direct the Board's attention to the League's Contentions 33, 34 and 35 and their counterparts from the Midland proceeding.* The subject matter of

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* League Contention 33 reads:

> 33. Present practice with regard to Byron permits the connection of nonsafety loads in addition to the required safety loads to Class IE power sources, with some restrictions. Those power sources are

(Cont. next page)

Contention 33 relates directly to TAP A-25 identified in NUREG-0410, NUREG-0510 and the Staff's Black Fox testimony. These documents were not cited by the League in Contention 33, unlike their practice in a number of the other TAP contentions, and, apparently, for good reason. In the Black Fox testimony, TAP A-25 was identified as relating to improving licensing efficiency and/or effectiveness, rather than relating to plant safety. Specifically, TAP A-25 is a Staff effort "to consider the relaxation of certain staff requirements that may be overly conservative" (see pp. 12-13 of the Staff's Black Fox testimony). Similarly, in NUREG-0510, TAP A-25 was not included in the list of "Unresolved Safety

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*Cont. from page 24

> part of the essential emergency power system, without which significant release of radioactive material to the environment in the event of an accident may occur. But is unknown whether the connection of nonsafety loads to these power sources significantly affects the reliability of those power sources. As a result of this serious and unresolved problem the findings required by 10 C.F.R. §§ 50.57(a)(3)(i) and 50.57(a)(6) cannot be made.

The parallel Contention 41 from the Midland proceeding reads:

> 41. Present practice with regard to the Midland facility permits the connection of nonsafety loads in addition to the required safety loads to Class IE power sources, with some restrictions. Those power sources are part of the essential emergency power system, without which significant release of radioactive material to the environment in the event of an accident may occur. But it is unknown whether the connection of nonsafety loads to these power sources significantly affects the reliability of those power sources. As a result of this serious and unresolved problem the findings required by 10 C.F.R. §§ 50.57(a)(3)(i) and 50.57(a)(6) can not be made.

Issues" (NUREG-0510, pp. 2-3). Rather, TAP A-25 was listed with the Group 4 Task numbers. Group 4 Tasks are described as "Performing studies for the purpose of quantifying safety margins provided by current requirements or determining whether or not current safety requirements can be relaxed." (NUREG-0510, Appendix B, p. B-6). Thus, not only has the League failed to in any way attempt to demonstrate that the application is unsatisfactory in regard to Class IE power sources, but the League has inaccurately identifed a Staff research plan intended to determine if overly conservative requirements can be safely relaxed as a "serious and unresolved problem."

The subject matter of Contention 34 is TAP A-26.* This TAP was identified in NUREG-0510, at page 3, as an

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* League Contention 34 reads:

> 34. Since 1972, as the Staff has noted in both NUREG-0410 and the Black Fox testimony previously cited, "there have been over 30 reported incidents of pressure transients in pressurized water reactors which have exceeded the pressure temperature limits of the reactor vessels involved." TMI involved yet another and more recent such incident. These transients have been initiated by a variety of causes including, among other things, component failure, procedural deficiencies, personnel error, and spurious valve actuation. This is a safety problem of potentially serious dimensions, applicable to Byron. Yet there is no assurance that adequate overpressure protection will be provided by Byron. As a result of this serious and unresolved problem the findings required by 10 C.F.R. §§ 50.57(a)(3)(i) and 50.57(a)(6) cannot be made.

The parallel Contention 42 from the Midland proceeding reads:

(Cont. next page)

unresolved safety issue in the generic sense. The TAP describes the NRC Staff's proposed criteria to reduce the severity and frequency of overpressurization events; generally, the installation of overpressure protection devices and the implementation of certain administrative controls. TAP A-26 further states that "Accordingly, we find that such criteria will provide reasonable assurance of no undue risk to health and safety of the public." (TASK A-26 Rev. No. 1, May 1978, p. A-26/7, attached to the Staff's Black Fox testimony.) Applicant's FSAR at Subsection 5.2.2 describes both the overpressure protection system for the Byron Station and the administrative controls which Applicant will implement to further reduce the probability and severity of overpressurization events. The League has made no effort to acknowledge the existence of the overpressurization protection provided

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*Cont. from page 26

> 42. Since 1972, as the Staff has noted in both NUREG-0410 and the Black Fox testimony previously cited, "there have been over 30 reported incidents of pressure transients in pressurized water reactors which have exceeded the pressure temperature limits of the reactor vessels involved." These transients have been initiated by a variety of causes including, among other things, component failure, procedural deficiencies, personnel error, and spurious valve actuation. This is a safety problem of potentially serious dimensions, applicable to the Midland reactors. Yet there is no assurance that adequate overpressure protection will be provided for the Midland facilities. As a result of this serious and unresolved problem the findings required by 10 C.F.R. § 50.57(a)(3)(i) and 50.57(a)(6) can not be made.

for the Byron Station, much less point to any alleged deficiencies in the system. Very clearly, the League has made no effort to meet its burden of pleading as set forth in River Bend.

The subject matter of Contention 35 is TAP A-29.*

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* League Contention 35 reads:

> 35. At the time the construction permit for Byron was issued, reduction of the vunerability of the Byron reactors to industrial (or other) sabotage was treated as a plant physical security function, and not as a plant design requirement. Thus, there is no assurance that the reactors or other critical plant systems are in fact adequately protected against sabotage, including sabotage by terrorist groups. There also does not exist any coherent basis for evaluating plant design features with regard to protection against sabotage, although the Staff has correctly identified this as a potentially serious problem having safety implications, both in NUREG-0410 and in the Black Fox testimony cited above. As a result of this serious and unresolved problem the findings required by 10 C.F.R. §§ 50.57(a)(3)(i) and 50.57(a)(6) cannot be made.

The parallel Contention 43 from the Midland proceeding reads:

> 43. At the time the construction permit for the Midland facility was issued, reduction of the vunerability of the Midland reactors to industrial (or other) sabotage was treated as a plant physical security function, and not as a plant design requirement. Thus, there is no assurance that the reactors or other critical plant systems are in fact adequately protected against sabotage, including sabotage by terrorist groups. There also does not exist any coherent basis for evaluating plant design features with regard to protection against sabotage, although the Staff has correctly identified this as a potentially serious problem having safety implications, both in NUREG-0410 and in the Black Fox testimony cited above. As a result of this serious and unresolved problem the findings required by 10 C.F.R. §§ 50.57(a)(3)(i) and 50.57(a)(6) can not be made.

We note that NUREG-0510 does not identify the subject matter of TAP A-29 as an unresolved safety issue. The description of TAP A-29 attached to the Black Fox testimony shows that its purpose is to identify design concepts that will provide an adequate level of protection against industrial sabotage without the current level of reliance on the security requirements contained in 10 CFR §73.55. However, TAP A-29 goes on to state:

> In summary, while the results of this task may identify design concepts that could be implemented to provide alternative and more effective means of achieving protection against industrial sabotage, present regulatory requirements provide an adequate basis for continued plant licensing and operation. Accordingly, we conclude that while the task is being performed, continued operation and plant licensing can proceed with high assurance of protection to the health and safety of the public. (Emphasis supplied) (TASK A-29 Rev. No. 1, May 1978, p. A-29/3, attached to the Staff's Black Fox testimony)

We cite these three examples to highlight the need for intervenors to properly state a nexus between a TAP and the particular facility under review, a requirement which, in any event, was mandated by River Bend. We do not, in any sense, argue that merely because the TAPs are generic they may be ignored in individual licensing decisions. This is not the case, as both the River Bend decision and the decision in Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245 (1978), indicate. These decisions clearly state that the Commission,

acting through its Staff and Licensing Boards, has an obligation to determine that construction or operation of a particular facility may safely proceed, even though a generic solution to a generic problem has not been found (River Bend, p. 774; North Anna, p. 248). However, as is equally clear from the River Bend decision, the mere fact that the Commission has an obligation to address certain matters and make certain findings, does not in itself entitle intervenors to demand a hearing on these matters, absent the filing of a contention meeting the requirements of 10 CFR §2.714. In the case of contentions arising out of the Staff's TAPs, River Bend is very explicit in its description of those requirements. Even though the requirements were expressly pointed out to the League in the "Answer Of Commonwealth Edison Company To The Contentions Of The League Of Women Voters Of Rockford, Illinois," at pp. 5-7 (dated August 20, 1979), the League has filed pleadings which do not differ in substance from those rejected in River Bend. The following is a list of those Contentions (and the corresponding TAP) which must be dismissed under the holding in River Bend.

Contention Number	Corresponding Task Action Plan
20	A-1
21 & 68	A-2
22	A-3
23	A-9
24 & 80	A-11
25	A-12

Contention Number	Corresponding Task Action Plan
26	A-13
27 & 80	A-14
28 & 69	A-17
29	A-18
30	A-21
31	A-23
32 & 70	A-24
33	A-25
34	A-26
35	A-29
36 & 73	A-30
37	A-35
38	A-36
39	B-28
40	B-30
41	B-32
42	B-34
43	B-52
44	B-56
45	B-64
46	A-37
47 & 71	A-40, B-24
48	B-57
61 & 77	A-24, B-24
74	A-34
75	B-58

In addition to those Contentions listed above which must be dismissed under the express holding of River Bend regarding contentions based on TAPs, the League has advanced a number of Contentions which raise matters that may be generally applicable to all reactors or to a certain class of reactors, but which fail to make any attempt to show any deficiency in the Byron Station. These Contentions generally are prefaced with citations or allusions to NRC Staff Regulatory Guides, General Design Criteria contained in 10 CFR Part 50, Appendix A, various ACRS letters and a number of documents prepared in the wake of the Three Mile Island Unit 2 ("TMI") accident. However, any direct nexus between the prefatory statements and the Byron Station is notably absent from the League's Contentions.

Contentions 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 63 and 74

These Contentions all purport to raise problems arising from the accident at TMI and claim to advance solutions to what the League perceives to be shortcomings in the design of the TMI station. The issue in this proceeding is not design deficiencies at TMI; the issue is the adequacy of the Byron Station.

TMI is a pressurized water reactor ("PWR") nuclear steam supply system ("NSSS") manufactured by Babcock and Wilcox. The Byron Station NSSS is a Westinghouse PWR system and contains significant design differences. The Babcock and Wilcox NSSS at TMI provided two once-through steam

generators, whereas the Westinghouse design for Byron provides for four recirculation-type steam generators. Recirculation steam generators contain a much higher water inventory and, therefore, as is widely recognized, are much less sensitive to feedwater transients than once-through steam generators. The auxiliary feedwater piping at TMI was only partially redundant, and the valves on the discharge headers did not meet the single failure criterion. At Byron, the two auxiliary feedwater loops are totally redundant; each feeds the steam generators directly, and no single valve can isolate both loops. The steam generators are located at a higher level in relationship to the reactor pressure vessel at Byron than at TMI, thus improving natural circulation for Byron. The type of PORV which stuck open at TMI was known to have had prior problems. The PORV for Byron is supplied by a different manufacturer and does not have a similar history of problems. The damage at TMI was primarily caused by a decision to turn off the ECCS based on an erroneous pressurizer level indication. Unlike the TMI station, the Byron Station design provides redundant pressurizer level indicators in the control room.

These design differences between Byron and TMI are very significant in terms of Byron's ability to withstand the events which led up to and aggravated the TMI accident. In view of these significant design differences, the Contentions which may be relevant to TMI should be dimissed absent a showing of some shortcoming in the Byron design. As

stated in River Bend, this can only be achieved by pointing to alleged deficiencies in the Byron application (i.e., the FSAR). Intervenors have not attempted to do so, and, therefore, Contentions 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 63 and 74 must be dismissed.

Contentions 58, 60, 66, 70, 72 and 74

Several of the Contentions filed by the League assert that the Byron design does not comply with certain Staff Regulatory Guides. This class of contention was specifically addressed in River Bend as follows:

> In other words, a guide sets forth one, but not necessarily the only, method which an applicant may choose to employ in order to conform to a regulatory standard. While the staff will accept such a method, an applicant is not precluded from utilizing some other method which it can demonstrate is appropriate in the particular case. Nor are other parties precluded from demonstrating that the prescribed method is inadequate in the particular circumstances of the case.
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> * * *
>
> To bring newly issued regulatory guides into play, it would have to be shown, e.g., that the means adopted by the applicant (as reflected in the application) for satisfying a regulatory requirement are either not efficacious or significantly less satisfactory than those recommended in the guide. River Bend at p. 773. (Emphasis supplied)

The above language reflects the reason for and the pleading nexus requirements adopted by the Appeal Board. To the extent that the League asserts that certain regulatory guides should be, but are not, followed by Applicant, Intervenor

must plead specific inadequacies in the application. This requirement is not at all onerous given that Appendix A to the Byron FSAR provides the status of compliance with the Regulatory Guides with appropriate cross-reference to the body of the FSAR. As the League has not attempted to identify specific deficiencies in the Byron application, its Contentions must be dismissed. Those Contentions which allege totally non-specific noncompliance with Regulatory Guides are Contentions 58, 60, 70, 72 and 74. An even more obvious example of the lack of specificity in the League's Contentions is Contention 66, which asserts that Byron must demonstrate compliance with all applicable Regulatory Guides. The River Bend decision explicitly rejects this legal theory.

Contentions 67, 70, 71, 72, 74 and 76

The League also parrots the language of a number of General Design Criteria ("GDC") from 10 CFR Part 50, Appendix A, and asserts that either the Staff or Applicant is in some non-specific fashion not in compliance. The GDC, like the TAPs and the Regulatory Guides, are broad and generally applicable to all large classes of reactors.

> General design criteria (GDC), as their name implies, are "intended to provide engineering goals rather than precise tests or methodologies by which reactor safety [can] be fully and satisfactorily gauged." Nader v. NRC, 513 F.2d 1045, 1052 (1975). They are cast in broad, general terms and constitute the minimum requirements for the principal design criteria of water-cooled nuclear power plants. There are a variety of methods for demonstrating compliance with GDC.

Petition For Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 406 (1978). Therefore, the holding in River Bend is controlling. Unless the League points to specific deficiencies in the methods proposed by Applicant to meet a particular GDC, its Contentions should be dismissed. Nor would such a requirement be particularly onerous, assuming, of course, that the League in fact had any particular deficiencies in mind when its Contentions were drafted. The FSAR specifically discusses Applicant's proposal to meet each applicable GDC, and the League was provided a copy of the FSAR about one year ago. Those Contentions which assert general noncompliance with the GDCs without alleging any specific deficiency in Applicant's proposal are Contentions 67,* 70, 71, 72,* 74 and 76. These Contentions should be dismissed.

Contentions 4, 6, 49, 64, 65, 66, 82, 91, 92, 93, 96, 97, 98, 99, 121 and 123

In addition to having raised a broad number of generic matters individually without showing any nexus to the Byron Station, the League has advanced a number of Contentions which assert wholesale noncompliance with various broad regulations, regulatory policies or various Staff documents. Contention 6 raises the contents of all ACRS letters. In Contentions 4 and 49, the League asserts that

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* With respect to Contentions 67 and 72, which purport to allege deficiencies in the Staff's requirements for the implementation of GDC 3, we note that the Commission itself has concluded otherwise. Petition For Emergency and Remedial Action, CLI-78-6, 7 NRC, 400, 406-7 (1978). In any event, the adequacy of the Staff's requirements is not an appropriate issue in this proceeding.

the very existence of generic problems identified in NUREG-0410 precludes the licensing of Byron. In Contention 64, the League raises the entire contents of NUREG-0578 (TMI Short-Term Lessons Learned). In Contention 66, the League asserts that compliance with all Regulatory Guides must be demonstrated. Contention 82 purports to raise all generic issues mentioned in various ACRS letters and testimony before Congress. Contention 91 broadly incorporates all issues mentioned in any ACRS letters, as well as all the GDCs in 10 CFR Part 50, Appendix A. Contention 92 broadly asserts that unspecified safety issues will not be resolved prior to completion of Byron. Contention 93 asserts noncompliance with 10 CFR Part 51. Contention 96 asserts that certain non-specified probabilistic analysis is insufficient to assure compliance with the requirements of the Atomic Energy Act, NEPA and the Commission's regulations. Contentions 97 and 98 purport, again, to incorporate by reference NUREG-0578. Contention 99 purports to incorporate by reference NUREG-0410. Contention 121 seems to attempt to raise all possible matters discussed in all ACRS letters and NUREG-0410. Contention 123 broadly asserts that Byron is not being constructed according to the construction permit application and that, in any event, that application is somehow outdated. While many deficiencies are alleged to exist, none are identified. The League has made no attempt whatsoever to identify with specificity the issue sought to be raised by any of these Contentions. The total lack of specificity and focus to

Contentions 4, 6, 49, 64, 65, 6[illegible] 82, 91, 92, 93, 96, 97, 98, 99, 121 and 123, as they relate, if at all, to the Byron Station, requires that they be dismissed. Moreover, most of these Contentions are based on the erroneous theory that the existence of safety matters for which generic solutions have not been found precludes the licensing of individual reactors. This theory was expressly rejected in Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760 (1979) and Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245 (1978).

Contentions 78 and 79

These Contentions assert that the Byron site is not suitable because it is both too close and too far from the Chicago area. The suitability of the Byron site from the standpoint of the surrounding population distribution was explicitly addressed at the construction permit stage of licensing and, absent a showing of changes circumstances, should not be relitigated now. Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI-74-12, 7 AEC 203 (1974); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1422 fn. 5 (1977). No attempt has been made to meet this requirement. Certainly the location of the site and of Chicago do not constitute changed circumstances.* Contention 79 is based on the erro-

* To the extent that Contention 78 is interpreted as an emergency planning contention, it is discussed at page 20.

neous theory that it is the function of the NRC to order Applicant to take actions, the only impact of which is economic. These are issues to be resolved by the appropriate state regulatory agency, not by the NRC. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 163 fn. 25 (1979); Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 805 fn. 128 (1979).

Contention 81

This Contention asserts that thermal shock to the reactor pressure vessel due to ECCS injection should be considered. Thermal shock to the pressure vessel is the subject of Regulatory Guide 1.2 and is explicitly discussed in Appendix A to the Byron FSAR, as well as FSAR §§3.9.1 and 5.3.2. As Intervenor has not identified any deficiencies in either the analytical techniques to assess the impacts of thermal shock, or the experimental verification thereof, this Contention must be dismissed for lack of specificity.

Contention 83

This Contention alludes vaguely to the potential for unspecified accidents during the uranium fuel cycle. Due to its total lack of specificity, it is impossible to determine what it is that the League wishes to have adjudicated. However, on its face, the Contention appears to challenge the adequacy of 10 CFR §51.20, Table S-4, which specifically addresses the environmental effects of accidents

during transportation of fuel and radioactive materials. Thus, the Contention should be dismissed, both for its lack of specificity and because it appears to constitute an attack on the Commission's regulations, which is prohibited by 10 CFR §2.758.

Contention 84

Protection of safety systems from reactor coolant pump flywheel missiles is discussed at FSAR §5.4.1.5, and integrity of the flywheel, which is the subject matter of Regulatory Guide 1.14, is discussed in Appendix A to the FSAR. The League's general allegation of insufficient missile protection lacks the required degree of specificity, and no basis is provided for the bald assertion that present precautions (not identified) would not prevent damaging missiles. The Contention must, therefore, be dismissed.

Contention 85

Applicant agrees that a combination loss of reactor pump, coupled with a failure of the reactor to scram, is not discussed in the FSAR. We, therefore, consider that this Contention is sufficiently specific to be admissible under the nexus requirement of River Bend.

Contention 86

This Contention raises the spectre of two independent "single" failures in the ECCS. This Contention constitutes a direct attack on 10 CFR §50.46 and 10 CFR Part 50,

Appendix K, Section I, D1., which requires ECCS performance evaluation assuming that "the most damaging single failure of ECCS equipment has taken place." Pursuant to 10 CFR §2.758, Contention 86 must be dismissed.

Contention 87

Although the League has described the general phenomenon called fuel densification, it has not identified any specific deficiencies in the analysis of this phenomenon as it relates to the Byron facility, as described in FSAR §4.3.2.2.5. This totally non-specific Contention should be dismissed.

Contention 89

This Contention, which asserts that "a large percentage" of the Byron Station components have been fabricated prior to the implementation of the QA program, is totally lacking in specificity and basis and must, therefore, be dismissed. Moreover, Applicant's QA program was found to be in place and adequate at the construction permit hearings, and no information which would warrant reopening the matter has been shown.

Contention 94

This Contention, which appears to seek to litigate in the Byron hearings deficiencies in the low-level waste storage program at the now-closed West Valley facility, is wholly inappropriate. Applicant does not seek authority to

reopen West Valley. Nor does this Contention raise any other factual issues suitable for adjudication in an evidentiary-type hearing. The Byron application does not seek authority to convert the Byron site into a low-level waste storage facility, and, therefore, the wholly-speculative assertions in this Contention are not an appropriate subject matter in hearings on the Byron application.

Contention 95

Unlike a BWR pressure vessel, a PWR pressure vessel is not mounted on a reactor pedestal. In this Contention the League has identified a matter specific to BWRs, which has no application whatsoever to the Byron Station. This Contention should be dismissed.

Contention 100

Contention 100 asserts that, due to the fact that the Byron containment buildings are not designed to withstand crashes of jumbo jets, which purportedly utilize the Greater Rockford Airport, the design is inadequate. The distance between this Airport and Byron, when considered in light of the number of estimated annual operations at the Airport (see §2.2.2.5 of the FSAR), are such that Applicant is not required to provide an airport hazard analysis for this Airport. See Regulatory Guide 1.70, §3.5.1.6 and FSAR §3.5.1.6. Since compliance with Regulatory Guides amounts to, at a minimum, a presumption of compliance with Commission regulatory requirements (see Petition For Emer-

gency and Remedial Action, CLI-78-6, 7 NRC 400, 406-07 (1978), and since Intervenor has not provided any basis for rebutting this presumption, the Contention must be rejected.

Contention 101

This Contention contains what can only be described as vague and cryptic accusations regarding Applicant's refusal to comply with unspecified NRC recommendations regarding the design of Byron Station. It is not at all clear from the Contention what factual issue(s) Intervenor is attempting to raise, nor does Intervenor identify any basis for its accusations. Accordingly, this Contention must be dismissed.

Contentions 102 and 103

These two Contentions relate to matters for which Applicant and Staff have not yet agreed on a final resolution. As such, the League cannot be expected to raise a specific contention alleging any deficiencies with the solution ultimately proposed. If, following the submittal of Applicant's proposed solution and acceptance thereof by the Staff, the League can identify an adequate basis for questioning the acceptability of this solution, it should be permitted at that time to file an amended contention which addresses these issues.

Contention 104

Applicant is aware of the problem with the post tension wires and believes that the issue is appropriate for litigation in this proceeding.

Contention 105

This Contention asserts that Applicant's radiation monitoring program is inadequate and references a recent letter sent to all applicants concerning a generic issue. There is no effort whatever to identify the specific inadequacies with Applicant's monitoring program which Intervenor asserts exist. Under the holding in the River Bend decision, Contention 105 should be dismissed.

Contention 106

Contention 106 attempts to rehash information which was fully explored at the construction permit hearings regarding the seismology of the Byron Station site. During the course of the Byron Station construction permit proceeding, Applicant requested the issuance of a supplement to a Limited Work Authorization ("LWA") which had previ usly been granted by the Licensing Board. During the interim period between the issuance of the original LWA and the proceedings conducted upon Applicant's request for a supplemental LWA, Applicant had discovered, as a result of site excavations, the existence of certain faults underlying the site. This development was brought to the Board's attention, and the Board extensively considered this matter during the course of the supplemental LWA hearings to determine whether there was any reason to modify its previous findings regarding the seismology of the site. Based upon the evidence presented at the hearing, the Board concluded that the faults at Byron

Station were not capable as that term is defined in Appendix A to 10 CFR Part 100. See Commonwealth Edison Company (Byron Station, Units 1 and 2, and Braidwood Station, Units 1 and 2), LBP-75-64, 2 NRC 712, 715-717 (1975).

It is well settled that a party seeking to reopen an issue laid to rest at the construction permit stage must make a showing that circumstances have changed since the prior construction and that such changed circumstances affect the prior findings. Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI-74-12, 7 AEC 203 (1974); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1422 and fn. 5 (1977). In Contention 106, Intervenor states in a conclusory manner that "recent information" exists without in any way identifying or describing the nature of such information. Consequently, given the fact that the seismic characteristics of the site were extensively considered not only once but twice during the course of the construction permit proceedings, and since Intervenor has failed to provide this Board with any information which would justify re-examining this issue in this proceeding, the Contention must be dismissed.

Contention 107

This Contention relates to Applicant's on-site spent fuel storage. Subpart (1) asserts that Applicant should be required to establish that the geometric configuration of the high density racks will be adequate to

prevent criticality in the spent fuel pool. Section 9.1.2.3 of the FSAR contains a detailed discussion of the criticality analysis and calculations performed by Applicant designed to show precisely what Intervenor asserts ought to be shown. Intervenor has not provided any fact whatsoever which casts doubt upon the accuracy or reliability of Applicant's analysis and, accordingly, has not identified a contested issue amenable to adjudication in this proceeding.

Similarly, the FSAR addresses each of the accident scenarios which Intervenor identifies in subpart (2) and sets forth the manner in which Applicant will comply with radiation emission limits. Again, no facts are alleged which call into question the adequacy of Applicant's design, procedures or its accident probability analysis, and, as such, Intervenor has failed to identify any litigable issue. Accordingly, Contention 106 must be dismissed in its entirety. Cf. River Bend, ALAB-444, supra.

Contention 109

This Contention attempts to raise issues concerning the impact on hydrology from operation of the Byron Station. Once again, Intervenor asserts that certain unspecified "recent events" indicate that Applicant has not complied with the commitments it made during the course of the construction permit proceedings and that unspecified new facts since the construction permit stage "call into serious question" the construction permit decisions. As will be set

forth below, each of the issues raised in this Contention was considered during the construction permit proceedings. Accordingly, Intervenor's failure to establish a specific factual basis for re-examination of these issues mandates the rejection of this Contention in its entirety. Farley, CLI-74-12, supra.

Subpart (a) relates to environmental impacts arising from contaminants in the river sediments. The impacts were specifically considered in the Construction Permit Final Environmental Statement. FES, Figure 5.2.

Similarly, the FES describes the environmental impacts which are anticipated from withdrawal of cooling water from the Rock River. Commonwealth Edison Company (Byron Station, Units 1 and 2), LBP-74-87, 8 AEC 1006, 1017-1018 (1974).

The FES identified the groundwater wells located in the vicinity of the site (FES, p. 5-5) and concluded that there is no potential for groundwater contamination as a result of the operation of Byron Station. FES §5.3.2.2; Byron, LBP-74-87, supra at pp. 1025-1026.

Subpart (d) of this Contention is unspecific, vague, and, as a result, Applicant cannot discern the issue Intervenor is attempting to raise.

Pursuant to Criteria 60 of Appendix A to 10 CFR Part 50, Applicant must provide a suitable means to control the release of liquid effluents into the environment. During the construction permit review it was determined that

the Byron Station is designed to automatically terminate effluent releases in the event radiation levels in discharge exceed a predetermined level. Safety Evaluation Report, Construction Permit Stage, p. 11-10.

With respect to alleged hydrological impacts resulting from spent fuel storage and lack of plans for decommissioning, Intervenor has not identified a credible mechanism which would cause any hydrological impact as a result of on-site waste storage or plant decommissioning. Moreover, the Commission is engaged in rulemaking on the criteria and impacts for decommissioning nuclear reactors. 43 Fed. Reg. 10370.

The effects of chemical and thermal discharges to the Rock River were also addressed and settled during the course of the construction permit proceedings. Byron, supra at p. 1020.

Contention 110

Intervenors allege by way of this Contention that Applicant will not keep radioactive emissions as low as practicable in that it is not using available technology for maintaining Krypton-85 releases as low as practicable. This Contention can only be regarded as a challenge to Appendix I to 10 CFR Part 50.

Appendix I provides that "[d]esign objectives and limiting conditions for operation conforming to the guidelines of this Appendix shall be deemed a conclusive showing of compliance with the 'as low as is reasonably achievable' requirements of 10 CFR 50.34a and 50.36a." (Emphasis supplied).

Appendix I does not set specific limits on the release of the particular radioisotope identified by the League. Radioactive effluents from the Byron Station must meet the Appendix I limits, which they do; but, beyond that, it is not required that emissions of specific isotopes be further reduced, even if the technology exists to do so. Intervenor's Contention does not challenge the fact that the design objectives and limiting conditions for operation of the Byron Station conform to the Appendix I guidelines. Accordingly, the Contention can only be construed as asserting that conforming to the Appendix I limits will not result in keeping emissions as low as practicable. Such an assertion is a direct challenge to Appendix I, prohibited by 10 CFR §2.758.

Contention 111

Contention 111 seems to assert that 10 CFR §§50.34a and 50.36a require that radioactive emissions be kept as low as is achievable. This is not the case; emissions must be kept as low as is reasonably achievable, and emissions meeting 10 CFR Part 50, Appendix I limits meet that standard. Appendix I, Section IV B, also establishes the requirements for an acceptable monitoring program. As long as Applicant meets those requirements, it is entirely irrelevant that the League feels there may be an alternate monitoring program which may or may not result in more data. The League does not allege, much less point to, any deficiencies in Appli-

cant's monitoring program to collect the data required under Appendix I. Applicant is permitted to choose an appropriate means of meeting the Commission's regulatory requirements (River Bend, supra at p. 773), and, unless Intervenor is prepared to show that Applicant's proposal will not achieve compliance with those requirements, the existence of alternative means of achieving compliance is wholly irrelevant and does not raise any factual issue appropriate for hearing.

Contention 112

Contention 112 asserts that, in light of failure of Applicant's occupational exposure programs to include certain measures, the program does not meet the as low as is reasonably achievable requirement, presumably contained in 10 CFR Part 20. Except for subsection (d), this Contention is totally lacking in specificity and should be dismissed.* Improvements are generally alleged to be possible, but no defects in the proposed program are identified, and no specific improvements are proposed by the League. However, subsection (d), which makes a specific proposal, does appear to raise a factual issue.

Contention 113

This Contention asserts that, due to the anticipated cumulative radiation emissions from the Byron Station

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* Clearly, the phrase "include but not limited to" in the preamble of the contentions is also devoid of any specificity.

and other specifically identified reactors in Northern Illinois, the emission limits set forth in 40 CFR §190 will be exceeded.* There is no merit to this Contention.

In publishing the regulations in question, EPA included a statement of considerations which addressed the relationship of the emission limits set forth in Part 190 to Appendix I to 10 CFR Part 50:

> EPA has examined Appendix I and the accompanying regulatory guides and agrees that they provide the basis for realistic implementation of these standards for single reactor units. The existence of these requirements [i.e., those imposed by Appendix I], coupled with the realization that most existing reactor licenses are for no more than one or two units on a site, makes it unnecessary, in the Agency's judgment, to reexamine the license conditions of these licensees for compatibility with [the standards imposed by 40 CFR Part 190], unless the nearest neighboring site covered by this standard is within ten miles. . . . The Agency has also concluded that, except under highly improbable circumstances, conformance to these criteria [i.e., the Appendix I criteria] should provide reasonable assurance with [the standards imposed by 40 CFR Part 190] for up to five units on a site.

See 42 Fed. Reg. 2858 (January 13, 1977). EPA has concluded that, for a two-unit reactor site, compliance with Appendix I will achieve compliance with 40 CFR §190 unless the nearest neighboring reactor site is within ten miles. Moreover, EPA has concluded that:

> The Standards [40 CFR §190] specify levels below which normal operations of the uranium fuel cycle are determined to be environmentally acceptable. 42 Fed. Reg. 2858.

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* The NRC does not set limits in terms of radi active emissions from more than one reactor site.

Since the reactors identified in Intervenor's Contention are far beyond a ten-mile radius of Byron, and since there is no question that the Byron Units comply with Appendix I, the Contention is inappropriate. Determinations made by EPA regarding matters within their exclusive jurisdiction should be given binding effect by this Board. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1 (1978).

Contention 114

This Contention attempts to introduce issues pertaining to mid-life chemical decontamination. This issue is totally beyond the scope of this proceeding. Applicant's operating license application does not include any request for authorization to undertake such decontamination, and Intervenor has not established any basis for assuming that Applicant intends to do so. In the event that Applicant does make such a request at some distant time in the future, there will be more than ample opportunity to analyze the safety and environmental impacts, if any, associated with this process.

Contention 115

Contention 115 attempts to raise issues concerning the effects of transmission lines. These issues were considered in depth during the course of the Byron Station construction permit proceeding. Byron Station, LBP-74-87, supra at pp. 1024-25. Intervenor does not identify any

changed circumstances which would justify re-evaluating the construction permit Board's conclusion that the impacts from transmission lines are acceptable, and, accordingly, this Contention must be dismissed. Farley, CLI-74-12, supra.

Contention 117

Similarly, the Byron Station construction permit Board examined the issues pertaining to the use of mechanical and natural draft cooling towers, the subject addressed in Contention 117. Byron, LBP-74-87, supra at pp. 1020-24. Again, no specific changed circumstances are set forth in Intervenor's Contention, and it must, appropriately, be rejected.

Contention 120

Intervenor, in Contention 120, asserts that the ER and the cost/benefit analysis (presumably that of the construction permit Licensing Board), were illegally and invalidly prepared to serve as an ex post facto justification for building the facility. There is no viable issue presented in this Contention. The cost/benefit analysis for constructing the Byron facility is not at issue in this proceeding. The issues before this Board, from a cost/benefit perspective, relate solely to whether the benefits associated with operation outweigh the adverse impacts, if any, therefrom. That cost/benefit analysis is not intended to justify construction. Thus, the Contention must be rejected.

Contention 124

In this Contention Intervenor asserts that the entire application should be referenced as a technical specification. In Portland General Electric Company (Trojan Nuclear Plant), ALAB-531, 9 NRC 263 (1979), the Appeal Board was faced with a similar request. That case involved the expansion of the spent-fuel pool capacity at the Trojan Plant, and an intervenor in that case argued that the applicant's entire "design report"* should be converted into technical specifications. The Appeal Board affirmed the Licensing Board's decision, which rejected intervenor's proposal, stating:

> [I]t seems quite apparent that there is neither a statutory nor a regulatory requirement that every operational detail set forth in an applicant's safety analysis report (or equivalent) be subject to a technical specification, to be included in the license as an absolute condition of operation which is legally binding upon the licensee unless and until changed with specific Commission approval. Rather, at best we can discern it, the contemplation of both the Act and the regulations is that technical specifications are to be reserved for those matters as to which the imposition of rigid conditions or limitations upon reactor operation [footnote omitted] is deemed necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety. This is not to say, of course, that no significance attaches to commitments in a licensee's safety analysis report which have not been found to possess safety implications of sufficient gravity and immediacy to warrant their translation into technical specifications. Trojan, supra at p. 273.

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* Such a report is the basic equivalent of an FSAR, but pertains solely to license amendments. Trojan, supra at p. 271 fn. 13.

Clearly, contrary to Intervenor's assertions, there is no basis in law or reason for converting the entire FSAR into technical specifications. Intervenor has not identified any specific commitments made by Applicant in the FSAR which would merit translation into technical specifications. Consequently, this Contention is devoid of specificity and should be dismissed.

Contention 125

This Contention asserts that Applicant has not established that it has the financial capability for paying damages in the event of a major accident combined with the repeal or non-applicability of the Price-Anderson Act. The Commission has established, by regulation, the level of financial protection for accidents required of applicants. (10 CFR Part 140). There is no assertion that Applicant will not comply with these provisions.*

Contention 131

This Contention alludes to the effects upon the environment of the end use of the electricity which will be produced as a result of the operation of Byron Station. Applicant, as a public utility, is under an affirmative obligation to supply the electric energy required by its

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* If Intervenor is of the opinion that the Commission's indemnification and financial protection requirements are inadequate, the appropriate remedy is to petition the Commission to amend its rules. However, the League may not advance such arguments in this proceeding. 10 CFR §2.758.

customers, whether from Byron or from other sources. The end use to which the electric energy is put will have an identical impact upon the environment regardless of the source from which that energy is supplied. Any impacts resulting from the use made of electric energy by Applicant's customers are, therefore, not impacts caused by the licensing of the Byron Station. Thus, they are not impacts which NEPA requires this Board to consider. Cf. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), 5 NRC 503, 541-42 (1977). Moreover, the Commission has explicitly stated that end use contentions are too speculative to be considered in any event. Consumers Power Co. (Midland Plant, Units 1 and 2), CLI-74-5, 7 AEC 13, 28 (1974).

Contentions 16, 134 and 136

These Contentions assert generally that there has been an inadequate consideration of the effects caused by the generation of low-level wastes from the operation of the Byron Station. Table S-3, 10 CFR §51.20, expressly addresses the effects attributable to the disposal of such wastes and concludes that they represent no significant effluent to the environment. This Board is bound by the Commission's conclusion in this regard. NEPA does not require detailed consideration of impacts established to be insignificant. Trout Unlimited v. Morton, 509 F.2d 1276, 1286 (9th Cir., 1974).

Intervenor may be implicitly arguing in Contentions 16 and 134 what it expressly asserts in Contention 136, i.e., that Table S-3 was promulgated illegally and that they

have a right to adjudicate the validity of the assumptions underlying Table S-3. They have no such right. Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 89 (1974). Clearly, this is not the appropriate forum in which to challenge the legality of the Commission's Table S-3 rulemaking proceedings. Accordingly, these Contentions must be dismissed.

Contention 135

In this Contention, Intervenor argues that the failure to consider the costs of decommissioning and the fact that there are not specific plans regarding the decommissioning of Byron renders the application inadequate. Applicant objects to this Contention because these issues are currently the subject of generic rulemaking before the Commission. 43 Fed. Reg. 10370 (1978). Such issue should not be entertained in individual licensing proceedings. Douglas Point, supra at p. 85. See also Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-179, 7 AEC 159, 178 fn. 32 (1974).

Contention 137

On its face, this Contention challenges the --radiation protection standards in 10 CFR Part 20 and the basis for the design objectives in Appendix I to 10 CFR Part 50. As such, it constitutes an impermissible challenge to the Commission's regulations, in contravention of §2.758, and must, accordingly, be dismissed. In any event, the Appendix I limits keep doses to a very small fraction of 10 CFR

Part 20 limits, and, as noted above, EPA has found Appendix I to be environmentally acceptable. 42 Fed. Reg. 2858 (January 13, 1977).

Contention 138

Contention 138 raises a political issue, not a factual issue amenable to adjudication in this proceeding. Clearly, it is not for this Board to determine this nation's national energy policies and priorities in the course of a proceeding to license a specific nuclear power plant. Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-128, 6 AEC 399, 401 (1973). See also Vermont Yankee Nuclear Power Corp. v. NRDC, 98 S.Ct. 1197, 1219 (1978).

Contention 140

At the construction permit stage, the availability of uranium may be relevant because, if uranium is not available, the proposed facility may not produce sufficient benefits in the form of electrical energy to offset the resources committed to construction and the environmental impacts of construction. However, environmental impacts of operation are proportional to the amount of electricity generated, and, if the station ran out of fuel, reduction in benefits is proportional to the reduction in environmental impacts. The League appears to recognize this fact and asserts that, due to the unavailability of uranium fuels, Applicant should not construct the Byron Station. However, the construction of the Byron Station and the environmental impacts resulting

therefrom are not within the scope of this operating license proceeding. Accordingly, this Contention must be dismissed.

Contention 142

This Contention asserts the existence of unacceptable impacts upon domestic water supplies attributable to the operation of Byron Station. The subject was treated extensively during the course of the construction permit proceedings, and, once again, Intervenor has failed to identify the existence of changed circumstances which would justify reinvestigating these issues at this time. Commonwealth Edison Co. (Byron Station, Units 1 and 2), LBP-74-87, 8 AEC 1006, 1025-26 (1974).

Contention 143

This Contention alludes to numerous areas of potential environmental concern. All of the subject areas, except subsection (h) pertaining to "TMI type psychological fear," were addressed during the construction permit proceedings and are addressed in Applicant's operating license environmental report. Intervenor asserts incorrectly that Applicant has "failed to consider . . . any information or substantial information" regarding these matters. As worded, the accusation is totally devoid of specificity or basis and is, at best, an attempt to rehash matters previously resolved.

With respect to the purported "TMI type psychological fear," Applicant submits that the existence of any such phenomenon near the Byron site is totally speculative

and need not be considered in this proceeding. Trout Unlimited v. Morton, supra, 509 F.2d at p. 1286. It is precisely this type of vague allusion to novel and highly speculative matters, without any threshold evidentiary showing or reasonably specific Contention, which was found to be insufficient to warrant further evaluation in Consumers Power Co. (Midland Plant, Units 1 and 2), CLI-74-5, 7 AEC 19 (1974), aff'd. sub nom. Vermont Yankee Nuclear Power Corp. v. NRDC, 98 S.Ct. 1197, 1216-17 (1978).

Contentions 141 and 144

As with Contentions 110 and 111, Contention 144 amounts to a direct challenge to Appendix I to 10 CFR Part 50, in that it claims that the NRC's guidelines are inadequate to protect the public health and safety and/or are based on erroneous assumptions. To the extent that Intervenor is attempting to allege that Applicant has failed to demonstrate compliance with Appendix I, or to consider certain principal exposure pathways, both Contentions lack specificity. The mere listing of matters which may enter into calculations to determine human uptake of radionuclides, when the application at ER Ch. 6 and FSAR §§11.2, 11.3, shows they were considered, does constitute a valid contention, absent some indication that the matters were not appropriately considered.

Contention 145

The purported impacts of living in a so-called "plutonium society" are raised in this Contention. Not only

is the Contention totally devoid of adequate basis and specificity, the impacts alluded to are, at best, highly speculative and remote. Accordingly, the Contention fails to comply with the requirements of 10 CFR §2.714 and fails to identify any significant environmental impact. See Trout Unlimited, supra.

CONCLUSION

Contentions 50, 85, 104, 112(d) and 119(a) and (b) should be admitted as issues in controversy. Contentions 2, 5, 10, 88, 90 and 116 should be consolidated into a single contention. The League should be permitted at some future time to submit contentions raising specifically such matters within the scope of Contentions 102 and 103 as then appear appropriate. The remaining Contentions should be dismissed for the reasons set forth above.

DATED: April 18, 1980

Respectfully submitted,

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APPENDIX A

Table Showing Contentions Filed By the League of Women Voters of Rockford in the Byron Proceeding and the Parallel Contentions Filed By Mary Sinclair In the Midland Proceeding

Byron Contention	Midland Contention
1	1
3	2
4	4
5	6
7	10
8	12
10	14
11	16
12	17
13	18
14	20
15	21
16	22
17	23
18	26
19	27
20	28
21	29
22	30
23	31
24	32
25	33

Byron Contention	Midland Contention
26	34
27	35
28	36
29	37
30	38
31	39
32	40
33	41
34	42
35	43
36	44*
37	45*
38	45*
39	46*
40	47*
41	48*
42	44*
43	45*
44	46*
45	47*
46	48*
47	49
48	50

* The Contentions filed by Mary Sinclair in the Midland proceeding assigned to different contentions the same contention number. Thus, although these contention numbers are duplicated in the table, the actual contentions referred to are not duplicates.

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Commonwealth Edison Company, certifies that on this date he filed 20 copies (plus the original) of the attached pleading with the Secretary of the Nuclear Regulatory Commission and served a copy of same on each of the persons at the addresses shown on the attached service list by United States mail, postage prepaid.

DATE: April 18, 1980

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