UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Marshall E. Miller, Chairman
Dr. Richard F. Cole
Dr. Dixon Callihan

In the Matter of

COMMONWEALTH EDISON COMPANY

(Byron Nuclear Power Station, Units 1 and 2)

Docket Nos. 50-454
50-455

December 19, 1980

MEMORANDUM AND ORDER
(Admissibility of Revised Contentions of Intervenor League of Women Voters)

I. PROCEDURAL HISTORY

Notice of the application of the Commonwealth Edison Company (Applicant) for an operating license for the Byron Nuclear Power Reactor was published in the Federal Register on December 15, 1978 (43 Fed. Reg. 58659). A timely petition for leave to intervene was filed by the Rockford League of Women Voters (League) as well as other Intervenors in this proceeding. A special prehearing conference was held by the Board in Rockford, Illinois on August 21-22, 1979. The Board ruled that the Intervenors had demonstrated the requisite interest in the subject matter of the proceeding to establish standing to intervene and they were admitted as intervening parties (Tr. 103).

The Board further ruled that the Intervenors, including the League, had stated one or more valid and viable contentions. The parties were therefore directed to meet and conduct negotiations in an effort to refine and phrase proper contentions for the further

conduct of the proceeding (Tr. 104-10). It is our understanding that representatives of the parties met on several occasions to discuss contentions.

On March 10, 1980, the League filed its Revised Contentions consisting of 146 numbered contentions. The Applicant filed its Answer to these contentions on April 18, 1980. The Staff filed its Answer to the revised contentions of the League on April 25, 1980.

I. LEGAL PRINCIPLES REGARDING CONTENTIONS

Intervenors are required by 10 CFR 2.714(b) to 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." This contention requirement and procedure is for the purpose of framing the issues which will be the subject of subsequent discovery and proof in an evidentiary hearing. Such NRC contention practice is analogous to the pleadings traditionally employed by courts in judicial proceedings and trial practice.

The Appeal Board has construed the function of contentions as follows:

> "Section 2.714 should not be read and construed as establishing secretive and complex technicalities such as in some other areas of the law are associated with special pleading requirements for which some practitioners have an almost superstitious reverence. On the other hand, we cannot construe the section in a vacuum. Neither of these approaches provides an acceptable substitute for a construction which takes into account relevant statutory requirements, precedent, and common sense. The degree of specificity with which the basis for a contention must be alleged

> initially involves the exercise of judgment on a case-by-case basis. We have repeatedly emphasized that in passing upon the question of whether an intervention petition should be granted, it is not the function of a licensing board to reach the merits of any contention contained therein. Moreover, Section 2.714 does not require the petition to detail the evidence which will be offered in support of each contention."[1]

The purpose of and limitations upon the scope of cognizable contentions were thus further described:

> "A purpose of the basis-for-contention requirement in Section 2.714 is to help assure at the pleading stage that the hearing process is not improperly invoked. For example, a licensing proceeding before this agency is plainly not the proper forum for an attack on applicable statutory requirements or for challenges to the basic structure of the Commission's regulatory process. Another purpose is to help assure that other parties are sufficiently put on notice so that they will know at least generally what they will have to defend against or oppose. Still another purpose is to assure that the proposed issues are proper for adjudication in the particular proceeding."[2]

It has been recognized that the imposition of reasonable limitations upon the scope of trial-type hearings in administrative proceedings is essential. 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."[3]

---

[1] Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974).

[2] Ibid. at 20-21.

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

It is clear that a contention need not plead evidence to provide the basis for an allegation, and that the merits of an issue are not to be considered at the pleading stage. For example, in the leading Grand Gulf case,[4] a contention merely asserted that the alternatives of utilizing other methods of producing energy had not been adequately considered. At a prehearing conference, counsel stated that he intended to introduce evidence that there were geothermal sources that could be utilized. The Appeal Board stated:

> "Applicant points to the fact that its environmental report represents that there are 'no known potential geothermal sites in the MSU service area' and that a like representation is to be found in the Staff's draft environmental statement. The regulatory staff... makes a somewhat similar point in its brief: that petitioner has neither buttressed its allegation that there are geothermal sources in the area nor indicated that the alleged sources would or could provide a feasible alternative to the Grand Gulf facility. But, at the risk of undue repetition, we stress again that, in passing upon the question as to whether an intervention petition should be granted, it is not the function of a licensing board to reach the merits of any contention contained therein. Moreover, Section 2.714 does not require the petition to detail the evidence which will be offered in support of each contention."[5]

These principles continue to be applied by the Appeal Board. In the recent Allens Creek case,[6] an intervenor alleged that a marine biomass farm should be substituted for the nuclear facility, claiming

---

[4] Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423 (1973).

[5] Ibid. at 426.

[6] Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542 (1980).

that it would be environmentally preferable. The licensing board rejected the biomass contention, holding in effect that the petitioner was required not merely to allege that this alternative would be environmentally preferable but also to explain why that is so. This holding was overruled as contrary to the Grand Gulf decision and reasoning, because it was sufficient for the petitioner at the pleading stage merely to state his reasons (i.e., the basis) for his belief that the suggested alternative warranted further consideration because biomass sources were available and environmentally preferable.[7] There is no room to doubt that Grand Gulf has been adhered to over the years, and that an intervenor is not required in its pleadings to "establish that its assertion is well-founded in fact."[8]

It is incumbent upon intervenors to frame their contentions with sufficient preciseness to show that the issues raised are within the scope of cognizable issues to be considered in an adjudicatory proceeding. To this end, a hearing participant "must be specific as to the focus of the desired hearing,"[9] and contentions must serve the purpose of defining the "concrete issues which are appropriate for adjudication in the proceeding."[10] Properly framed contentions

---

[7] Ibid. at 548-49.

[8] Ibid. at 549, fn. 10. See also Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979); Duke Power Company (Transportation of Spent Fuel from Oconee to McGuire), ALAB-528, 9 NRC 146, 151 (1979).

[9] BPI v. Atomic Energy Commission, 502 F.2d 424, 429 (D.C. Cir. 1974).

[10] Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 769 (1977).

will further reasonably inform the other parties what issues they will be required to defend against or oppose to develop a complete record in an evidentiary hearing.

II. CONTENTIONS

Three broad objections by the Staff and the Applicant to the League's revised contentions will be dealt with as threshold matters. First, it is alleged that approximately 22[11/] or 45[12/] of the 146 contentions are almost word-for-word copies of contentions filed by another intervenor in another NRC proceeding. From this the Staff concludes that the "Board must look askance at verbatim transpositions of contentions from one case to another" while determining the specificity of the Byron contentions.[13/] The Applicant "urge[s] the Board to summarily reject all of the contentions cribbed from the Midland proceeding as being presumptively without bases."[14/]

We decline the invitation to penalize the alleged lack of originality in framing contentions. As the cases cited supra illustrate, contentions are a form of pleading. Lawyers have for many years copied the pleadings of others, and annotated form books in many volumes are prepared and sold by law book publishers to the profession. Originality is not a pleading requirement. If fatal

---

11/ Staff's Answer, dated April 25, 1980, p. 4.

12/ Applicant's Answer, dated April 18, 1980, p. 6.

13/ Staff's Answer, p. 4.

14/ Applicant's Answer, p. 7.

defects result from this alleged method of pleading contentions, they can be addressed in specific objections to discrete contentions.

The second broad objection raised by the Applicant relates to the League's so-called Additional Matters and Reservations contained in a preamble to its revised contentions. This preamble contains a number of reservations of rights, directions as to the interpretation and intended scope of references, statements of intention, and requests that any contentions deemed to be an attack on regulations shall be considered as a petition pursuant to 10 CFR §2.758. The Applicant's objections to this preamble are well taken, and such statements and directions will be disregarded as contrary to the Commission's Rules of Practice (10 CFR §§2.714, 2.758) and the cases cited in Section I, pp. 3, 5, supra.

Finally, it is urged that some of the revised contentions are beyond the scope of the issues previously submitted by the League, and should be treated as untimely amendments requiring a balancing of the five factors set forth in 10 CFR §2.714(a)(1). We do not regard these revised contentions as nontimely within the meaning of our rules. At the special prehearing conference held in Rockford, Illinois on August 21-22, 1979, none of the Intervenors was represented by counsel. The Intervention Board requested all parties to confer and negotiate regarding contentions, after it held that each Intervenor had shown standing and set forth at least one viable contention in its petition. It was not intended to analyze each contention, nor to limit the lay parties to the narrow scope of the proferred

contentions. It appears that the parties did in fact hold several meetings and informal discussions of proposed contentions. A notice of appearance of the League's counsel was filed at the same time the revised contentions were filed. It would be time consuming and unproductive for the Board to go through the exercise of sorting through 146 contentions to determine which were within the ambit of an original petition. It would also be unfair to the Intervenors because the Board never intended nor indicated to them that they were rigidly bound to the scope of unreviewed contentions in developing or negotiating a set of contentions reflecting their concerns. These objections are denied.

Contentions 1, 3 and 4

These contentions question the ability of the Staff to carry out properly the regulatory responsibilities which have been delegated to it. They constitute a general attack upon the methods used by the Staff to insure compliance with regulations. Such contentions are not appropriate for resolution in a particular licensing proceeding, and they fail to raise any issues specifically related to this operating license proceeding. We decline to convert this proceeding into a generalized investigation of the Staff's ability to regulate effectively the nuclear industry. Accordingly, proferred Contentions 1, 3 and 4 are denied.

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

These contentions relate to quality assurance and quality control, which are subjects that could form a viable contention and litigable issue. However, as drafted these contentions are too broad and diffuse to put in issue properly the question of the Applicant's ability and willingness to comply with the Commission's quality assurance requirements. These contentions are therefore consolidated as Revised Contention 1A, and redrafted by the Board to read as follows:

> Revised Contention 1A. Intervenor contends that the Applicant does not have the ability or the willingness to comply with 10 CFR Part 50, Appendix B, to maintain a quality assurance and quality control program, as evidenced by its past history of noncompliance. In addition, Applicant's quality assurance program does not require complete independence of the quality assurance functions from other departments within the company.

As thus revised, Contention 1A is admitted.

Contentions 6, 82 and 121

These contentions are objected to by the Staff because they are new issues not revised from earlier contentions, and the bases for late filing were not provided. That objection is overruled for the reasons set forth in Section II, pp. 7-8, supra. However, these

contentions do constitute a recitation of generalities regarding all ACRS letters, and all generic issues mentioned in various ACRS letters and testimony before Congress. They are too vague and generalized to constitute specified issues, and accordingly these contentions are denied.

Contentions 7, 11, 12, 13, 79, 118, 127, 128, 130, 131, 132, 133, 139 and 140

These contentions attempt to deal with the economic costs of constructing this nuclear facility, and the question of whether the power from Byron Station is needed at this time. They do not purport to deal with the direct environmental costs of operation as compared with nonoperation of the Byron nuclear facility. Some of these contentions attempt to reanalyze the Applicant's original power demand forecasting. However, the general rule applicable to cases involving differences or changes in demand forecasts has been stated to be "not whether Niagara Mohawk will need additional generating capacity but when."[15/] The instant proceeding is an operating license proceeding, not a construction permit hearing. The original demand forecasting is irrelevant since the precise timing of the need for a constructed facility is immaterial to the ultimate issue of whether to operate at such time as the plant is

15/ Niagara Mohawk Power Corporation (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 357 (1975). See also Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), CLI-79-5, 9 NRC 607, 609 (1979).

completed and available. The cost efficiency of the Byron facility is left to the business judgment of the Applicant and "to the wisdom of the State regulatory agencies responsible for scrutinizing the purely economic aspects" of new generating facilities.[16/] Contention 140 deals with the potential unavailability of uranium fuel supply, and is not germane to this operating license proceeding. Contention 131 concerns alleged environmental impacts associated with the ultimate use of the electric power generated at Byron. The end uses of electricity are too speculative and remote to satisfy the rule of reason for NEPA consideration.[17/] These contentions are therefore denied.

Contentions 8 and 62

These contentions concern an alleged failure to assess the consequences of Class 9 accidents. By its Statement of Interim Policy, effective June 13, 1980, the Commission revised its policy for considering the more severe kinds of very low probability accidents, commonly referred to as Class 9 accidents. This followed the Three Mile Island (TMI) accident of March 28, 1979. The Staff's environmental impact statements pursuant to NEPA are to include a reasoned consideration of environmental risks attributable to accidents at the particular facility, and "approximately equal attention shall be

---

16/ Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 163 (1978). See also Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 805 (1979).

17/ Consumers Power Company (Midland Plant, Units 1 and 2), CLI-74-5, 7 AEC 19, 28 (1974); Id., ALAB-458, 7 NRC 155, 176 (1978).

given to the probability of occurrence of releases and to the probability of occurrence of the environmental consequences of those releases."[18] These contentions are admitted.

Contentions 9, 114, 119, 125 and 126

These contentions involve allegations regarding the Applicant's financial qualifications to complete or operate the facility. They are admitted as raising the issue of whether Applicant is financially qualified to operate the Byron facility in a safe manner.

Contentions 14, 15, 16, 83, 134, 136 and 137

These contentions attempt to raise issues concerning environmental impacts from the uranium fuel cycle. To the extent that these contentions attack the promulgation of the rule, they constitute a challenge to the validity of NRC regulations, including 10 CFR §51.20, revised Table S-3, and such portions of these contentions are therefore inadmissible under the provisions of 10 CFR §2.758. Contention 15 attempts to raise the question of permanent disposition or management of nuclear wastes. That matter is now pending before the Commission itself in proposed rulemaking on the storage and disposal of nuclear waste, and the results of that generic proceeding will be applicable to all proceedings affected thereby.[19] Contention 15 is

---

[18] Nuclear Power Plant Accident Considerations Under the National Environmental Policy Act of 1969, 45 Federal Register 40101 (June 13, 1980).

[19] PR-50, 51 (44 Fed. Reg. 61372).

therefore rejected. Contentions 14, 16, 83, 134, 136 and 137, insofar as they allege that the effects of radioactive discharges associated with the operation of Byron Station have not been adequately considered, are admitted.

Contentions 17, 120 and 143

These contentions allege that the Environmental Report is inadequate as omitting necessary information, including responses by the Applicant to many questions directed to it by the Staff. That situation may be normal at this stage of the proceeding, as the Applicant suggests.[20/] However, it is equally normal to allow an intervenor to plead the inadequacy of documents or responses which have not yet been made available to the parties.[21/] This contention is admitted, subject to later refinement and specification when the additional information has been furnished or the relevant documents have been filed.

Contention 18

This contention asserts that Applicant is building the Byron facility primarily for the sale of electricity to users and utilities outside its service area in the State of Illinois. Such an immaterial allegation does not constitute a cognizable issue, and is beyond the scope of this proceeding. The contention is denied.

[20/] Answer of Applicant to Revised Contentions, p. 19.

[21/] The Staff has recently indicated that the DES will be filed in January 1982, the FES in July 1982 and the SER in June 1982.

Contentions 19, 78, 108 and 146

These contentions involve the issue of emergency planning. The Commission has promulgated new final regulations concerning emergency planning, effective November 3, 1980,[22] which extensively amend and upgrade such requirements. This subject can constitute a litigable issue. These contentions are admitted, subject to subsequent updating, refinement and clarification.

Contentions 20-49, 68, 69, 73, 74, 75, 77, 80, 86 and 106

These contentions allege that certain identified unresolved safety issues or generic items are relevant to pressurized water reactors, including Byron, and that they have not been resolved generically. These contentions raise matters discussed in NUREG-0410, the testimony of NRC Staff witnesses in the Black Fox proceeding, NUREG-0510, and NUREG-0471.[23] Both the Staff and the Applicant object to these contentions as being merely a "laundry list" of Task Action Plans (TAPS) insufficient to raise litigable issues, citing River Bend.[24] That case must be analyzed more extensively than the

[22] 45 Fed. Reg. 55402 et seq. (August 19, 1980).

[23] 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.

[24] Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760 (1977).

"check list" criticism or the nexus requirements set forth by the Applicant in its quotations from River Bend (6 NRC at 772-73).[25] In spite of the failure of an interested state in that case to assert the requisite nexus between the facility and unresolved generic safety questions, that did not end the Licensing Board's responsibility. The Board was required to make a finding of "reasonable assurance" that "the proposed facility can be constructed and operated at the proposed location without undue risk to the health and safety of the public" (10 CFR 50.35(a)).[26] The Appeal Board further stated:

> "Of necessity, this determination will entail an inquiry into whether the staff review satisfactorily has come to grips with any unresolved generic safety problems which might have an impact upon operation of the nuclear facility under consideration. The SER is, of course, the principal document before the licensing board which reflects the content and outcome of the staff's review. The board should therefore be able to look to that document to ascertain the extent to which generic unresolved safety problems which have been previously identified in a TSAR item, a Task Action Plan, an ACRS report or elsewhere have been factored into the staff's analysis for the particular reactor -- and with what result. To this end, in our view, each SER should contain a summary description of those generic problems under continuing study which have both relevance to the facilities of the type under review and potentially significant public safety considerations. This summary description should include information of the kind now contained in most Task Action Plans. More specifically, there should be an indication of the investigative program which has been or will be undertaken with regard to the problems, the program's anticipated time-span, whether (and if so what) interim measures have been devised for dealing with the problem pending the completion of the investigation, and what alternative courses of action might be available should the program not produce the envisaged result. In short, the board (and the public as well) should be in a position to

---

[25] Applicant's Answer, pp. 22-23.

[26] 6 NRC at 774.

> ascertain from the SER itself -- without the need to resort to extrinsic documents -- the staff's perception of the nature and extent of the relationship between each significant unresolved generic safety question and the eventual operation of the reactor under scrutiny."[27]

The vital importance of the SER in analyzing the impact of unresolved generic safety problems upon the operation of Byron is clear. However, the SER has not yet been filed in this case, and the Staff does not anticipate that it will be filed before June 1982.[28]

The Appeal Board has further examined these questions in North Anna.[29] In that case it stated:

> "In our River Bend decision of last fall, we dealt at some length with the significance of the so-called, 'unresolved generic safety issues' in a construction permit proceeding. These safety issues -- identified either in the reports of the Advisory Committee on Reactor Safeguards to the Commission or in the staff's 'Task Action Plans -- are applicable to reactors in general (or at least to a large class of them) and are the subject of ongoing attempts to find a universally applicable solution.' Of course, these 'unresolved' issues cannot be disregarded in individual licensing proceedings simply because they also have generic applicability; rather, for an applicant to succeed, there must be some explanation why construction or operation can proceed even though an overall solution has not been found."[30]

Continuing, the Appeal Board discussed the differences in this regard between construction permit and operating license proceedings:

---

[27] Ibid., at 774-75.

[28] Footnote 21, page 13, supra.

[29] Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245 (1978).

[30] Ibid., at 247-48.

> "In River Bend, we said that such explanations should appear in the Safety Evaluation Report for the facility. We also described generally the type of reason which would be sufficient to let construction go on in the face of an unresolved generic question. Where operation of a facility is involved, similar analysis is necessary; but, as to certain issues, the justification for giving an applicant the green light can obviously be more difficult to come by. For example, the reason often given for allowing construction activity is that there is still time to find a solution and build it into the plant's design. At the operating license stage, that reason is not available. But there may be one or more other justifications for permitting the plant to operate. The most common are that a solution satisfactory for the particular facility has been implemented; a restriction on the level or nature of operation adequate to eliminate the problem has been imposed; or the safety issue does not arise until the later years of plant operation."31/ (Emphasis in original)

In undertaking to ascertain whether the Staff dealt appropriately with the "unresolved" issues in that operating license proceeding, the Appeal Board prophetically observed:

> "We wish to say precisely what we have and have not done. In view of the limitations imposed by regulation, and the fact that our review was necessarily unaided by any of the parties, we have not probed deeply into the substance of the reasons put forth by the staff for allowing operation to go forward. Rather, we have only looked to see whether the generic safety issues have been taken into account in a manner that is at least plausible and that, if proven to be of substance, would be adequate to justify operation. Scrutiny of the substance of particular explanations will have to await a contested proceeding."32/ (Emphasis supplied)

The League is entitled to put in issue by its pleadings the adequacy of the Staff's treatment of unresolved generic safety

---

31/ Ibid., at 248.

32/ Ibid., fn. 7, p. 248. See also Northern States Power Company (Monticello Nuclear Generating Plant, Unit 1), ALAB-620, 12 NRC __, Slip Opinion, pp. 4-6 (November 24, 1980).

issues in relation to the Byron facility. The specificity and nexus contemplated by River Bend, supra, cannot be expected until the Staff's SER has been filed. Accordingly, these contentions are admitted, subject to subsequent refinement and particularization after the SER has been filed and appropriate discovery completed. Of course, all admitted contentions are subject to motions for summary disposition after the completion of discovery, if "there is no genuine issue to be heard."[33/] That will give the Applicant an opportunity to renew its challenge of the applicability of Contentions 33, 34 and 35 to this proceeding.[34/]

Contentions 51-61 and 63

These contentions purport to describe deficiencies revealed by the accident at TMI and to relate them to the Byron facility. The Staff does not object to Contentions 52-59 and 63. The Applicant objects to all of them, in part because of asserted design differences between TMI and Byron. These contentions plead litigable issues and are admitted.

Contentions 66, 70, 72 and 105

These contentions assert that in certain described respects, the Byron design does not comply with Staff Regulatory Guides. It is true, as the Staff and Applicant assert, that regulatory guides

---

33/ 10 CFR Section 2.749; Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973).

34/ Applicant's Answer, pp. 24-32.

are not regulations per se. A regulatory guide sets forth one, but not necessarily the only, method which may be employed by an applicant in order to conform to a regulatory standard. However, at some point and probably in the SER, the Staff will analyze and discuss the reasons why it finds acceptable (or not acceptable) an alternative method which this Applicant has chosen to employ in order to conform to a regulatory standard. For the same reasons discussed regarding unresolved generic safety issues, supra, these contentions will be admitted, subject to subsequent refinement with respect to nexus and particularization requirements.

Contentions 64 and 65

These contentions relate to "all safety problems identified by the TMI accident and not affirmatively found to be inapplicable" to Byron (No. 64), and to "each unresolved safety problem" (No. 65). Such contentions are too broad and sweeping, and rely on large numbers of unidentified documents, to comply with NRC pleading requirements. There is insufficient precision in description or attempt even to allege a nexus in these contentions, and accordingly they are denied.

Contentions 67, 71 and 76

These contentions allege noncompliance with General Design Criteria from 10 CFR Part 50, Appendix A. These criteria are broad and generally applicable to all large classes of reactors. They are "intended to provide engineering goals rather than precise tests or

methodology" by which reactor safety can be gauged.[35/] Nevertheless an analysis of the methods used by Applicant in finding an acceptable solution will be made by the Staff. These contentions are therefore admitted, subject to subsequent refinement and clarification.

Contentions 50, 81, 84, 85, 87, 95, 97, 98, 99, 100, 102, 103, 104, 107, 109, 110, 111, 112, 113, 115, 117, 122, 123, 124, 129, 135, 141, 142 and 144

These contentions adequately plead issues which are within the scope of this proceeding, which are deemed to be sufficiently concrete to constitute litigable issues. They are therefore admitted as contentions of the League.

Contentions 91, 92, 93, 94, 96, 101, 138 and 145

These contentions do not adequately plead cognizable issues in this proceeding, and they are too general, broad and lacking in requisite specificity to frame litigable contentions. They are consequently rejected.

ORDER

For all the foregoing reasons and based upon a consideration of the entire record in this matter, it is, this 19th day of December 1980

ORDERED

1. That the League's Contentions 2, 5, 8, 9, 10, 14, 16, 17, 19, 20-63, 66-78, 80, 81, 83-90, 95, 97-100, 102-117, 119, 120, 122-126, 129, 134-137, 141-144 and 146 are admitted.

35/ Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 406 (1978).

2. That the League's Contentions 1, 3, 4, 6, 7, 11-13, 15, 18, 64, 65, 79, 82, 91-94, 96, 101, 118, 121, 127, 128, 130-133, 138-140 and 145 are denied.

3. That discovery shall commence forthwith upon all issues included in the admitted contentions, and

4. That responses to requests for discovery shall be regarded as continuing in nature, and shall be supplemented as reasonably necessary to renuer them current and accurate pursuant to the provisions of 10 CFR §2.740(e)(3).

THE ATOMIC SAFETY AND
LICENSING BOARD

Marshall E. Miller
ADMINISTRATIVE JUDGE

Richard F. Cole
ADMINISTRATIVE JUDGE

ADMINISTRATIVE JUDGE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
COMMONWEALTH EDISON COMPANY	)	Docket No.(s) 50-454 50-455
	)	
(Byron Station, Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s) upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D.C. this
8th day of Jan. 1980.

Eugenia M. Pleasant
Office of the Secretary of the Commission

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
COMMONWEALTH EDISON COMPANY	)	Docket No.(s) 50-454
	)	50-455
(Byron Station, Units 1 and 2)	)	
	)	
	)	

SERVICE LIST

Marshall E. Miller, Esq., Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. A. Dixon Callihan
Union Carbide Corporation
P.O. Box Y
Oak Ridge, Tennessee 37830

Dr. Richard F. Cole
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Michael I. Miller, Esq.
Paul M. Murphy, Esq.
Isham, Lincoln & Beale
One First National Plaza
Chicago, Illinois 60690

Kenneth F. Levin, Esq.
Beatty, Levin, Holland, Basofin
and Sarsany
11 South LaSalle Street, Suite 2200
Chicago, Illinois 60603

C. Allen Bock, Esq.
P.O. Box 342
Urbana, Illinois 61801

Thomas J. Gordon, Esq.
Waaler, Evans & Gordon
2503 South Neil
Champaign, Illinois 61820

Ms. Betty Johnson
Natural Resources & Energy Committees
of the LWV of Rockford, Ill.
1907 Stratford Lane
Rockford, Illinois 61107

Ms. Marilyn J. Shineflug
DAARE
1816 Judy Lane
DeKalb, Illinois 60115

Commonwealth Edison Company
ATTN: Mr. Cordell Reed
Assistant Vice President
P.O. Box 767
Chicago, Illinois 60690

Dr. Julianne Mahler
Center for Government Studies
Northern Illinois University
DeKalb, Illinois 60115