



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

DEC 2 1980

Myron M. Cherry, Esq.
Cherry & Flynn
1 IBM Plaza
Suite 4501
Chicago, Illinois 60611

Dear Mr. Cherry:

This letter is sent to acknowledge receipt of the Request Pursuant to 10 CFR 2.206 and 2.202, filed by you on behalf of the Rockford League of Women Voters on November 21, 1980, requesting that I take certain actions with respect to the continued construction of the Byron Nuclear Power Station of Commonwealth Edison Company.

The League's petition is being treated under 10 CFR 2.206 of the Commission's regulations and appropriate action will be taken on the petition within a reasonable time. The petition, which requests among other things an immediate halt to further construction of the Byron station, urges a decision on my part within 30 days. I have considered this request for expeditious consideration and have determined that such treatment is not warranted.

My determination is based upon an examination of the types of issues the League has raised in its Petition. The issues raised all relate to detailed design considerations. You have categorized them as follows:

- "Systems Interaction"
- "Steam Generator Tube Integrity"
- "Equipment Qualification and Deterioration"
- "Evaluation of Potential Accidents and Corrective Measures"
- "Conformance to Current Regulatory Practices", and
- "Open Generic Issues"

Detailed design features are considered at the operating license stage. The Byron facility is currently undergoing an operating license review. Meanwhile, the Byron facility is being constructed under a construction permit issued by this agency on December 31, 1975.

While the Nuclear Regulatory Commission has suspended construction activity at certain sites in the past, e.g., Marble Hill (Public Service Company of Indiana) and South Texas (Houston Lighting and Power Company), those cases each involved instances where construction was not being achieved in accordance with plant design. In contrast, the League's petition does not question the quality of construction but rather questions the adequacy of plant design.

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Detailed design of the plant is not required for the issuance of a construction permit. Detailed design features of the plant are developed after issuance of the construction permit and are evaluated and approved during the course of the staff's review of the operating license application. A licensee pursues construction work under a construction permit at its own risk pending approval of the final design of the plant. Questions concerning detailed design features of the plant thus do not normally warrant suspension of construction since such questions are resolved during the operating license review process.

With regard to the League's concern that continued construction might bias safety decisions at the operating license stage due to the difficulty and cost of implementing a change, I reiterate that the licensee proceeds at its risk and must bear any such costs. Commonwealth Edison (CECO) has been apprised of the extent of possible changes that may be required, e.g., "Clarification of TMI Action Plan Requirements," NUREG-0737, November 1980, and I know of no reason to conclude that CECO would not be prudent in adjusting schedules to effect changes with a minimum of rework and extra cost.

Furthermore, past experience indicates that many changes in the plant that may be required as a result of NRC review of the operating license application involve procedures, equipment qualification, and analyses rather than physical changes to the plant. Most of the changes that may be required involve improvements in electrical wiring or, at most, limited adjustment of mechanical equipment, e.g., valves. Experience indicates that it is highly unlikely that any major structural changes will be required. No insurmountable problems to effecting necessary changes have been encountered in plants undergoing recent operating license reviews even though construction was much further advanced than for Byron when needed modifications were identified, e.g., North Anna 2, Sequoyah Unit 1, Farley Unit 2 and Salem 2. Consequently, I have reasonable assurance that any safety changes required at the Byron facility can be implemented prior to the completion of the operating license review.

It is on these bases that I have concluded that public health and safety considerations do not require an immediate halt to construction of the Byron facility. Therefore, your request (d), "Pending full hearings and determination on these requests, immediately halt further construction of the Byron Station," is denied under 10 CFR 2.206. Pursuant to 10 CFR 2.206 (b) I am continuing to review your requests (a), (b) and (c) and within a reasonable time will either institute the requested proceeding or advise you in writing that no proceeding will be instituted in whole or in part, and the reasons therefor.

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Finally, with respect to your understanding as reflected in both your cover letter of November 21, 1980 and the Petition itself that my office will consider the League's request without the benefit of a reply from the Commonwealth Edison Company, it is the practice of this office in dealing with requests such as the League's to consider all relevant information, and, should the licensee provide us with information relevant to the issues you raise, this office will consider it.

Furthermore, should my office determine that there are certain matters which are uniquely within the purview of the licensee, for example project status, such information will be obtained from the licensee to the degree that it is needed. Consequently, your understanding that the procedures and rules which govern the staff's treatment of a petition under 2.206 bar a response from the licensee is not correct.

I enclose for your information a copy of the notice that is being filed for publication with the Office of the Federal Register.

Sincerely,

Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Enclosure:
Federal Register Notice