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March 27, 1981

The Honorable Joseph Hendrie, Chairman
 U.S. Nuclear Regulatory Commission
 Washington, D.C. 20555



Dear Chairman Hendrie:

We have reviewed the monthly NRC status reports to Congressman Bevill, submitted pursuant to House Report 96-1093, reporting the status of the NRC's efforts to carry out its licensing and regulatory duties. We believe that the NRC's projections with respect to the licensing schedule of Edison's Byron Station are unrealistic and, unless substantially improved, will result in significant licensing delays. Indeed, as we explain below, the present schedule may delay the licensing of the Byron facility by as much as 16 months.

Delays in the projected in-service date for the Byron Units will have severe impacts on the Company and its ratepayers. Recently, the Illinois Commerce Commission, the state agency charged with the general regulation of public utilities in the State of Illinois, completed an extensive investigation into the Company's construction program. The Commission concluded that Edison has a duty to its ratepayers to complete the Byron and Braidwood Stations in as timely and economic a manner as possible. In quantitative terms, the costs of licensing delays for Byron Unit 1 amounts to approximately \$18 million per month. Increase to the cost of providing electric services must ultimately be borne by Edison's customers. To avoid these severe impacts the Company is fully prepared to commit the resources necessary to complete the licensing and construction of the Byron facility by its present schedule for fuel loading; April, 1983 for Unit 1 and April, 1984 for Unit 2. However, we are seriously concerned that unless significant effort is made to step up the NRC licensing review, the licensing process will not be completed until well after the completion of construction of the facility.

The Status Report submitted on January 30, 1981 projects the following schedule:



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- 1 - SER issuance - 6/82
- 2 - SSER issuance - 9/82
- 3 - DES issuance - 5/82
- 4 - Commencement of hearings - 7/82
- 5 - Licensing Board decision - 2/83
- 6 - Licensing Completed - 4/83
- 7 - Completion of Construction - 4/83

Thus, the schedule provides for one month of discovery and other preliminary activities (e.g. motions for summary disposition, preparing prefiled testimony) between the issuance of the SER and the commencement of the hearings. There is no time provided for prehearing matters between the issuance of the supplement to the SER and the commencement of hearings, since the hearings would start two months prior to the issuance of that document. In addition, the schedule provides for 8 months between the issuance of the SER and the licensing board initial decision, and only 5 months between the issuance of the SSER and the initial decision. Finally, a two month period is allowed for the Appeal Board and Commission review concerning the immediate effectiveness of the licensing board decision.

The most troublesome aspect of this schedule concerns the period of time allocated for the hearing process. The Byron proceeding is heavily contested. The licensing board recently accepted in excess of 120 contentions filed by two groups of intervenors as issues in controversy. It is almost a certainty that the period of time required to conduct an evidentiary hearing, file proposed findings, and issue an initial decision will substantially exceed the 8 months currently allotted by the NRC. Moreover, for planning purposes, it is only prudent to assume that intervenors will resist commencement of the evidentiary hearing until after ACRS consideration of the SER and issuance of the SSER. Present practice before licensing boards provides for limited discovery on issues addressed in the SSER. In short, it is totally unrealistic to put forth a schedule in which contested hearings and issuance of an SSER overlap.

The Commission itself has recognized that SSER issuance is a pacing item for commencement of the hearing process. Recent experience with the Staff licensing review for Edison's LaSalle Station indicates that until the issuance

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of the SER and SSER, items constantly remain open for additional re-evaluation due to apparent changes in position within the Staff. Accordingly, it is extremely difficult for an applicant or other parties to a licensing proceeding to anticipate the Staff position on many items prior to the issuance of the SER and SSER. Of course, since the Staff position is important in terms of the resolution of issues to be considered at a hearing, the value of commencing hearings prior to the submittal of the SSER is highly questionable.

In the January, 1981 Status Report, the Commission states that the span between the issuance of the SSER and the start of hearing date for 9 of the 11 near term operating license proceedings "should be increased from the previously assumed 1-2 months to 2-6 months." Clearly, if similar assumptions were made with respect to the Byron proceeding the projected date for completion of licensing would be extended by as much as 9 months.

In view of these matters, we believe that the current NRC projection of 8 months between the commencement of the hearings and completion of the licensing process cannot possibly be justified. A more realistic, but nonetheless optimistic, assessment should allow a minimum of 23 months between the issuance of the SSER and the completion of licensing. This projection is based upon the following time intervals:

- SSER - Start hearing - 4 months
- Start hearing - Complete hearing - 10 months
- Complete hearing - Proposed findings - 2 months
- Proposed findings - Initial decision - 4 months
- Initial decision - ASLAB and NRC review on immediate effectiveness - 3 months

Using this projection, under the current September, 1982 date for the issuance of the SSER, licensing would not be completed until August, 1984; 16 months later than the date projected in the Status Report for completion of licensing and Edison's scheduled date for the completion of construction.

Accordingly, we submit that the Byron Station should have been identified in the Status Report, as a plant which will be impacted by delays in NRC licensing. In order

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to mitigate this impact we believe the Staff SER and SSER must be completed, at the latest, by the summer of 1981. This date is attainable, but only if substantial additional NRC manpower is assigned to the Byron licensing review.

We recognize that there presently exists a shortage of qualified NRC personnel assigned to licensing functions. This shortage could be significantly reduced by allocating NRC personnel to the Byron project who are currently assigned to non-licensing functions. In particular, we are concerned that the NRC's current proposed program to implement Section 110 of Public Law 96-295, which calls for a 7-10 year program which will require several hundred manyears of NRC manpower, will unnecessarily divert substantial Staff resources at the expense of licensing. We believe that it is essential that the NRC re-evaluate this proposal, as well as other similar proposals related to low priority matters, and reallocate much needed NRC personnel to high priority licensing tasks.

It is regrettable that the present state of affairs forces us to plan for a minimum of 23 months between the issuance of the SSER and the completion of licensing. We believe that, with the adoption of certain reforms to the NRC adjudicatory process, this extended period of time could be significantly reduced without, in any way, compromising the NRC's regulatory responsibilities.

In particular, the Commission should reinstitute 10 CFR §2.764, which provides for immediate effectiveness of licensing board decisions. The suspension of this rule was clearly not warranted. In the typical case, there is no reason whatever to call into question the licensing board decision and delay its immediate effectiveness. The Commission's authority to stay initial decisions, under 10 CFR §2.788, is a more than adequate mechanism to deal with the infrequent situation where an initial decision may raise serious safety or environmental concerns.

In addition, we believe that the hearing process could be considerably shortened if licensing boards were instructed to require that contentions to be litigated in the hearing are specific, focused and raise issues which are

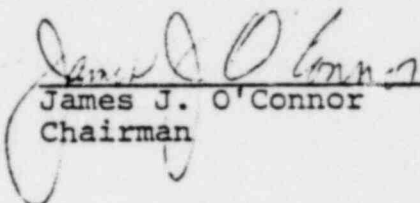
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directly related to the facility under review, as provided in the Commission's regulations. This practice has not been followed by many licensing boards, and has resulted in unnecessarily protracting the hearing process. ,

In conclusion, we urge the Commission to adopt a more realistic approach in establishing licensing schedules and evaluating the impacts of licensing delays. We also urge the Commission to take steps necessary to minimize the delays in licensing of the Byron facility which will certainly result from the NRC's current schedule. Such action is in the best interest of the customers and stockholders of Commonwealth Edison as well as the national energy program, for delays in Byron operation will be replaced, to a large extent, by energy generated by oil.

Very respectfully yours,



James J. O'Connor
Chairman

cc: Governor Thompson
Chairman Hasten