

OFFICE OF SECRETARY
DOCKETING & SERVICE
B-7-106

Docket Nos. 50-454
50-455

A circular 'RECEIVED' stamp from the U.S. Nuclear Regulatory Commission. The stamp features a clock-like border with numbers 1 through 12. The word 'RECEIVED' is at the top, followed by the date 'OCT 28 1981' and an arrow pointing to the 3 o'clock position. Below the date is the text 'U.S. NUCLEAR REGULATORY COMMISSION'.

DSO³
50/1

8110290304 811073
PDR ADOCK 05000454
G PDR

2. It is also unclear as to whether or not the subpoena is requiring deponents to testify on matters not relevant to issues in the proceeding. For example, Commonwealth Edison opposes and refuses to provide discovery on certain of the League's Contentions, yet it is engaging in discovery of the League's potential experts on those very issues.

3. Commonwealth Edison is also refusing to pay the reasonable expenses of the deponents for the taking of the depositions (although it has offered to pay deponents for the time of the taking of the deposition). The deponents in order to answer questions will have to prepare and review information for some days prior to the depositions, yet Commonwealth Edison is refusing to pay those expenses even though Edison's attorneys, Isham, Lincoln & Beale, fought and lost before the NRC the very same issue in connection with the very same witnesses in the Black Fox proceeding. See Order on taking of depositions of MHB Technical Associates, Black Fox proceeding.

4. In addition, the setting of the depositions is inconvenient to the witnesses and to counsel for the League for a variety of reasons:

a. The depositions require on short notice the gathering of multitudes of documents without an opportunity for the League to consult with MHB Technical Associates;

b. Commonwealth Edison did not tender (notwithstanding its statements in its application to the Chairman) the fees for the reasonable services of MHB Technical Associates as required by Commission Rules of Practice. Rather, Commonwealth Edison in defiance of its representations to the Board simply tendered a \$30.00 check to the deponents. See Letter from MHB Technical Associates to

League's Counsel dated October 12, 1981, and attached hereto as Exhibit B; see also MHB's Fee Schedule attached hereto as Exhibit C and a xerox of the checks tendered to deponents attached hereto as Exhibit D;

c. The depositions were set without consultation with the League's principal counsel who has just recently finished a trial lasting through all of August and most of September preceding which counsel was engaged in over five months of depositions. Moreover, counsel for the League is getting married November 8, plans for which have been set some time and no courtesies have been extended even on that score by Commonwealth Edison's counsel; and

d. The depositions were set in California, the most inconvenient place for the parties in this cause and under the circumstances if the depositions are to take place in California, Commonwealth Edison should be required to pay the League's expenses for their lawyer to attend (or alternatively set the depositions in Chicago so that it is overall less expensive for all the parties).

5. These series of depositions scheduled are intended solely for harassment and the product of a lawyer's knee-jerk reaction to a November 1, 1981 discovery cut-off date rather than the product of reasoned analysis in a good faith manner.

WHEREFORE, for the reasons stated herein (as well as the reasons stated in the Rockford League of Women Voters Motion for Sanctions and Response of Rockford League of Women Voters to Motion for Sanctions which are incorporated herein) Commonwealth Edison's Subpoenas directed against Richard B. Hubbard and Gregory C. Minor of MHB Technical Associates should be quashed and reset only after consultation and upon just and reasonable terms, including fair payment to MHB Technical Associates and requiring that the depositions be held in Chicago unless Commonwealth Edison pays League's counsel's expenses.¹

Respectfully,

ROCKFORD LEAGUE OF WOMEN VOTERS

By: 

One of Their Attorneys

Myron M. Cherry
Peter Flynn
CHERRY & FLYNN, p.c.
One IBM Plaza, Suite 4501
Chicago, IL 60611
(312) 565-1177

1. Despite all the rancor, the League's counsel is perfectly willing to discuss settlement of this discovery dispute including the resetting of these depositions on reasonable notice. But discovery is a two-way street and the arrogance of Commonwealth Edison and its counsel must cease or this proceeding will become a shambles. In addition, the League is filing a Motion to reset the discovery schedule for good reasons and thus there should be no reason why just discovery by Commonwealth Edison will not take place.

LAW OFFICES
CHERRY & FLYNN, p.c.
ONE IBM PLAZA
CHICAGO, ILLINOIS 60611

(312) 565-1177

October 21, 1981

BY MESSENGER

Michael I. Miller, Esq.
Isham, Lincoln & Beale
One First National Plaza
Forty-Second Floor
Chicago, Illinois 60603

Re: Rockford League of Women Voters
v. Commonwealth Edison Company

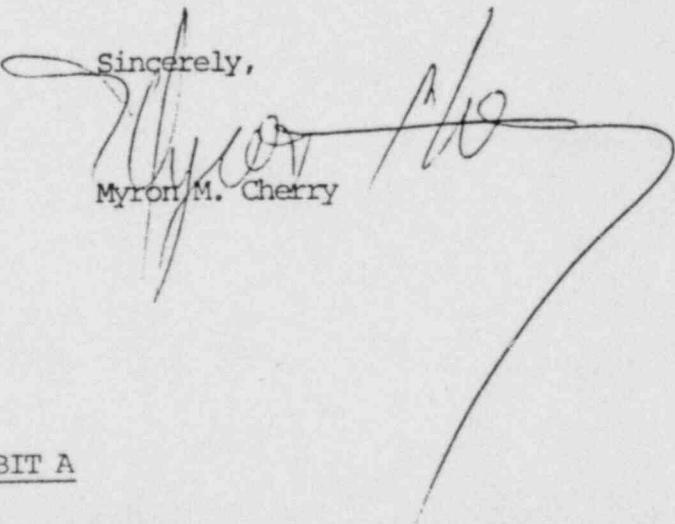
Dear Mike:

A few moments ago you called my office wanting to discuss depositions in the NRC case which you had scheduled without any consultation with me, or for that matter any other party to the NRC proceeding. I told you, among other things, that I was not interested in discussing one-sided discovery but would be more than willing to discuss the whole question about outstanding discovery in the NRC case, as well as the ICC case (which your associate Mr. Murphy had once agreed to but then breached), and you refused to do so.

I am quite disappointed in the manner of your representation, but I cannot in good conscience agree to one-sided bargaining.

Accordingly, I intend to inform the Board by Motion that these matters should be resolved in an appropriate manner under the Rules.

Sincerely,


Myron M. Cherry

MMC/dn

EXHIBIT A



TECHNICAL ASSOCIATES

TECHNICAL CONSULTANTS ON ENERGY & THE ENVIRONMENT

Dale G. Bridenbaugh
Richard B. Hubbard
Gregory C. Minor

October 12, 1981

1723 Hamilton Avenue—Suite K
San Jose, California 95125
Phone: (408) 266-2716

Mr. Peter Flynn, Esq.
CHERRY, FLYNN
One IBM Plaza, Suite 4501
Chicago, IL 60611

SUBJECT: Subpoenas - Byron Nuclear Station
NRC Docket Nos. 50-454 and 50-455

Dear Peter:

MHB was served with the attached three subpoenas from Commonwealth Edison (Isham, Lincoln and Beale) on October 12. Accompanying the subpoenas were three (3) checks for \$30 each.

As Greg and you have discussed in the past, we should obtain IL&B's payment in advance for the deposition and documents in accordance with the standard MHB rates as set forth in the July 1, 1981 MHB rate schedule. Let's also discuss the need per 10CFR 2.720(f) to submit a motion to quash.

Yours very truly,

MHB TECHNICAL ASSOCIATES

A handwritten signature in cursive script that reads 'Richard B. Hubbard'.

Richard B. Hubbard

RBH:ma

Enclosures

EXHIBIT B



TECHNICAL ASSOCIATES

TECHNICAL CONSULTANTS ON ENERGY & THE ENVIRONMENT

Dale G. Bridenbaugh

Richard B. Hubbard

Gregory C. Minor

COMPENSATION SCHEDULE

1723 Hamilton Avenue—Suite K

San Jose, California 95125

Phone: (408) 266-2716

THE COMPENSATION AND MANNER OF PAYMENT TO MHB TECHNICAL ASSOCIATES FOR ITS PROFESSIONAL SERVICES SHALL BE AS SET FORTH BELOW:

PRINCIPAL CONSULTANT:

- INCLUDES NORMAL OFFICE SUPPORT, PHONE, AND UP TO TWO COPIES OF MHB-PREPARED REPORTS. THIS RATE WILL ALSO APPLY TO TIME AS EXPERT WITNESS (DIRECT TESTIMONY, DEPOSITION, OR SUPPORT IN CROSS-EXAMINATION) IF PART OF AN MHB STUDY. RATES FOR SHORT-TERM EXPERT WITNESS SERVICES WILL BE QUOTED ON REQUEST.
- \$ 480.00 PER MAN-DAY
- \$ 2,400.00 PER MAN-WEEK

ASSOCIATE CONSULTANT:

- INCLUSIVE OF OFFICE SUPPORT.
- 2.5 X
$$\frac{\$ (\text{HOURLY RATE}) = \text{ANNUAL SALARY} \times 1.25}{2000}$$

TECHNICAL TYPING:

- FOR REPORTS, TESTIMONY AND AFFIDAVITS.
- \$ 18.00 PER HOUR

DIRECT EXPENSES:

- TRAVEL, LIVING, REPRODUCTION (0.15 PER PAGE), COMPUTER CHARGES, UNUSUAL LONG DISTANCE PHONE EXPENSES, SHIPPING CHARGES, AND SUBCONTRACTED SERVICES.
- TO BE BILLED AT COST

ABOVE RATES BASED ON AN EIGHT-HOUR DAY; PARTIAL DAYS TO BE BILLED AT PRO-RATA HOURLY RATES. SERVICES PROVIDED ON HOLIDAYS AND WEEKENDS WILL BE BILLED AT ABOVE RATES. SERVICES TO BE BILLED MONTHLY WITH PAYMENT DUE 30 DAYS FROM DATE OF BILLING. A FINANCE CHARGE OF 1-1/2 PERCENT PER MONTH ON THE OVERDUE BALANCE WILL BE ASSESSED ON ALL PAST DUE ACCOUNTS. ADVANCES OR RETAINER PAYMENTS SHALL BE APPLIED AS A CREDIT AGAINST THE FINAL BILL FOR SERVICES. THIS COMPENSATION SCHEDULE IS EFFECTIVE THROUGH DECEMBER 31, 1981.

DATE ISSUED: 7/1/81

EXHIBIT C

ISHAM, LINCOLN & BEALE

2473

COUNSELORS AT LAW
1120 CONNECTICUT AVE., N.W.
WASHINGTON, D.C. 2003615-52
540

9 October 1981

PAY TO THE
ORDER OF

RICHARD B. HUBBARD

\$ 30.00

Thirty and 00/100

DOLLARS

NS&T BANK

National Savings and Trust Company
Washington, D.C. 20005Witness fee for deposition to be held on
FOR 29 Oct 81 in San Jose, CA. Re: Commonwealth
Edison Co/Byron*Edison Co/Byron*

00 24 73 0540005221 057 1150994

ISHAM, LINCOLN & BEALE

2474

COUNSELORS AT LAW
1120 CONNECTICUT AVE., N.W.
WASHINGTON, D.C. 2003615-52
540

9 October 1981

PAY TO THE
ORDER OF

GREGORY C. MINOR

\$ 30.00

Thirty and 00/100

DOLLARS

NS&T BANK

National Savings and Trust Company
Washington, D.C. 20005Witness fee for deposition on 29 Oct 81
FOR in San Jose CA. Re: Commonwealth Edison Co.
Byron Station*Edison Co/Byron*

00 24 74 0540005221 057 1150994

ISHAM, LINCOLN & BEALE

2472

COUNSELORS AT LAW
1120 CONNECTICUT AVE., N.W.
WASHINGTON, D.C. 2003615-52
540

9 October 1981

PAY TO THE
ORDER OF

DALE G. BRIDENBAUGH

\$ 30.00

Thirty and 00/100

DOLLARS

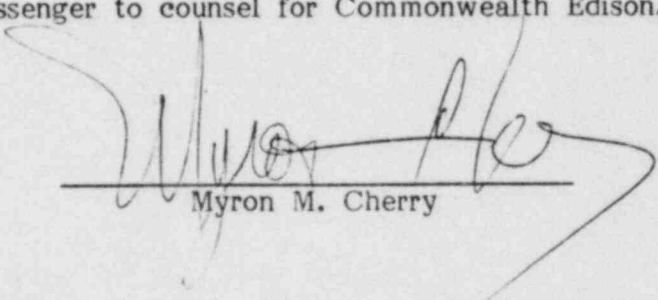
NS&T BANK

National Savings and Trust Company
Washington, D.C. 20005Witness fee for deposition to be held on
FOR 29 Oct 81 in San Jose, CA. Re: Commonwealth
Edison Co-Byron*Edison Co/Byron*

00 24 72 0540005221 057 1150994

PROOF OF SERVICE

The undersigned, one of the attorneys for the Rockford League of Women Voters, certifies that he filed an original and two copies of the attached pleading with the Secretary of the Nuclear Regulatory Commission and served a copy of the same on the Atomic Safety and Licensing Appeal Board herein, all counsel of record and the official service list by United States mail, postage prepaid, this 23rd day of October, 1981. In addition, counsel for all parties were notified by telephone of the filing of this Motion and in addition to the mail service a copy was delivered by messenger to counsel for Commonwealth Edison.



Myron M. Cherry

SERVICE LIST

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

Mr. Steven C. Goldberg
Ms. Mitzi A. Young
Office of the Executive
Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Paul M. Murphy, Esq.
Isham Lincoln & Beale
One First National Plaza
Chicago, Illinois 60603

Secretary:
Atten: Chief, Docketing and
Service Section
Washington, D.C. 20555

Ms. Betty Johnson
1907 Stratford Lane
Rockford, Illinois 61107

Dr. Axel Meyer
Department of Physics
Northern Illinois University
DeKalb, Illinois 60115