

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

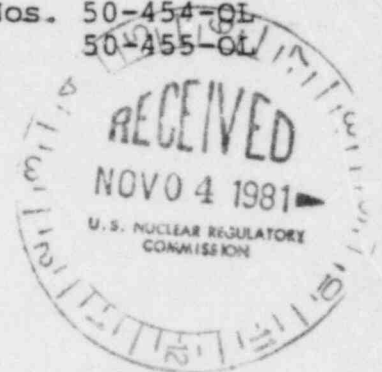
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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD *ew*

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of )  
 )  
COMMONWEALTH EDISON COMPANY )  
 )  
(Byron Nuclear Power Station, )  
Units 1 and 2) )

Docket Nos. 50-454-01  
50-455-01



APPLICANT'S OPPOSITION TO  
DAARE/SAFE'S MOTION FOR  
EXTENSION OF TIME

Commonwealth Edison Company ("Applicant") by its attorneys, opposes the motion of DAARE/SAFE for a 15 day extension to the discovery cutoff date set by this Board in its Revised Schedule of September 9, 1981. The asserted reason for the DAARE/SAFE motion, a claim that due to its own inattentiveness DAARE/SAFE failed to get timely notice of the discovery cut-off date, was expressly rejected by this Board during a conference call held on October 2, 1981. (See page 20 of the Transcript of the October 2, 1981 conference call.) Moreover, it is clear from correspondence between the NRC Staff and Dr. Von Zellen, that in fact Dr. Von Zellen was informed not later than September 21, 1981 of the November 1, 1981 cut-off date set by the Board. (See Exhibit A, hereto. Receipt of the September 21, 1981 letter from Mr. Goldberg of the NRC Staff to Dr. Von Zellen was acknowledged by Dr. Von Zellen at page 9 of the October 2, 1981 transcript.) Even before September 4, 1981 DAARE/SAFE had been advised of an impending discovery cut-off date and the need to act expeditiously on discovery matters. (See

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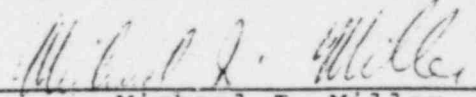
Exhibit B hereto, consisting of a letter from Paul M. Murphy to Dr. Axel Meyer of DAARE/SAFE.)

The problems alluded to in Dr. Von Zellen's letter motion of October 20, 1981, have plagued DAARE/SAFE's participation in this proceeding consistently. On February 28, 1979 Applicant's attorney brought this problem to the attention of the Board and all parties. (See Exhibit C hereto.) The correspondence referred to in Exhibit C turned out to be merely the first of a long series of letters intended to convince DAARE/SAFE that it was incumbent on DAARE/SAFE to keep the parties notified of its designated representative, and to serve all papers on all parties. DAARE/SAFE has been unable or-unwilling in the ensuing 2-1/2 years to take the minimum steps necessary to keep itself informed of the conduct of this proceeding.

WHEREFORE, Commonwealth Edison Company respectfully urges this Board to deny DAARE/SAFE's motion for extension of time.

Dated: October 27, 1981

Respectfully submitted,

  
\_\_\_\_\_  
Michael I. Miller  
One of the Attorneys  
for Commonwealth Edison Company

ISHAM, LINCOLN & BEALE  
One First National Plaza  
Suite 4200  
Chicago, Illinois 60603  
(312) 558-7500



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

DOCKETED  
USNRC

September 21, 1981

'81 NOV -2 P4:15

RELATED CORRESPONDENCE

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

DAARE  
P. O. Box 261  
DeKalb, Illinois 60015

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

Dear Professor Von Zellen:

I am in receipt of a letter from you to James Snell of the NRC Staff requesting certain information regarding the Byron operating license proceeding. As I indicated in my recent correspondence with you, as a member of Intervenor DAARE-SAFE, any requests for information must be pursued through the lawyer representing your organization in this matter. I am advised that prior NRC Staff counsel, Myron Karmon, conveyed similar information on an earlier occasion(s).

According to the Licensing Board's revised scheduling order, dated September 9, 1981, discovery must be completed by November 1, 1981. Your anticipated cooperation is appreciated.

Sincerely,

*Steven C. Goldberg*  
Steven C. Goldberg  
Counsel for NRC Staff

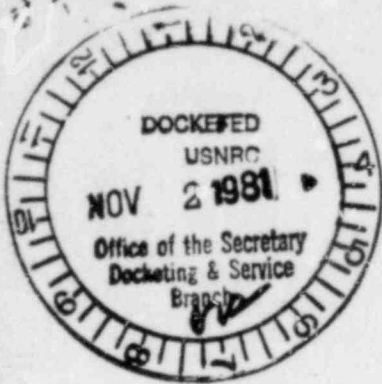
cc: Kenneth F. Levin, Esq.  
Paul M. Murphy, Esq.

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RELATED CORRESPONDENCE

ISHAM, LINCOLN & BEALE  
COUNSELORS AT LAWONE FIRST NATIONAL PLAZA FORTY-SECOND FLOOR  
CHICAGO, ILLINOIS 60603  
TELEPHONE 312-558-7500 TELEX: 2-5288

September 4, 1981

WASHINGTON OFFICE  
1120 CONNECTICUT AVENUE, N.W.  
SUITE 325  
WASHINGTON, D. C. 20036  
202-833-9730Dr. Axel Meyer  
Department of Physics  
Northern Illinois University  
DeKalb, Illinois 60115

Re: In the matter of Commonwealth Edison Company  
(Byron Station, Units 1 and 2), Docket Nos.  
STN 50-454-OL, STN 50-455-OL.

Dear Dr. Meyer:

I understand that your attorney of record, Mr. Kenneth F. Levin, no longer represents DAARE and SAFE in their intervention in the Byron Nuclear Station licensing proceeding before the Nuclear Regulatory Commission. Therefore, I am writing directly to you with regard to the interrogatories of Commonwealth Edison Company which we served on you on July 8, 1981 in this proceeding. As you are aware, on August 18, 1981, the Licensing Board ordered DAARE and SAFE to answer the interrogatories forthwith.

When I spoke to you on the telephone recently, you indicated that one of the members of DAARE had contacted Myron Cherry, Esq. for purposes of his aiding you in responding to interrogatories. I spoke to Myron Cherry's office yesterday and learned that Mr. Cherry is on trial and has been for some time. Mr. Cherry's partner also indicated that he had no knowledge of any contacts between Mr. Cherry and your organization. Thus, it is probable that no steps whatsoever have been taken to respond to the interrogatories.

As I previously informed you on the phone, Commonwealth Edison Company believes it has a right to the information requested in our interrogatories. The Board has set a schedule for discovery which contemplates the close of most discovery by the end of this year. Our first round of interrogatories are designed in part to obtain identification of the facts, evidence and witnesses on which you will rely at hearings. I expect that your responses to the interrogatories now outstanding will result in additional discovery requests,

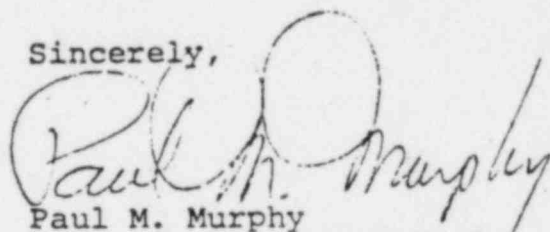
Dr. Axel Meyer  
Page Two  
September 4, 1981

in particular, depositions of experts. It will simply not be possible for us to wait additional months for your response to our discovery. Therefore, I would request that whoever is representing DAARE and SAFE at this moment direct his full attention to responding in a timely manner to our outstanding interrogatories so as to avoid the need to seek the imposition of sanctions for your failure to comply with the Licensing Board's order.

I also enclose for your consideration a proposal for consolidating the DAARE and SAFE contentions with those of the League. You will note that, for the most part, we have not significantly altered the language of the DAARE and SAFE contentions, inasmuch as we believe that the original contentions adequately frame issues for litigation in this proceeding.

If you have any comments or suggestions regarding our proposal, please do not hesitate to call.

Sincerely,



Paul M. Murphy  
One of the Attorneys for  
Commonwealth Edison Company

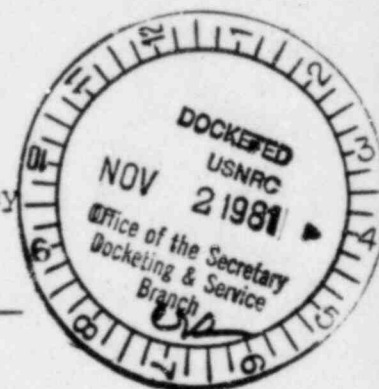
FMM/js  
Enclosure

cc: Kenneth F. Levin, Esq.  
Steven C. Goldberg, Esq.



ISHAM, LINCOLN & BEALE  
COUNSELORS AT LAWONE FIRST NATIONAL PLAZA FORTY-SECOND FLOOR  
CHICAGO, ILLINOIS 60603  
TELEPHONE 312-786-7500 TELEX 2-5288

February 28, 1979

WASHINGTON OFFICE  
1050 17<sup>TH</sup> STREET, N.W.  
SEVENTH FLOOR  
WASHINGTON, D.C. 20036  
202-833-0720Edward Luton, Esq., Chairman.  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555Re: In the Matter of Commonwealth Edison Company  
(Byron Station, Units 1 and 2 and  
Braidwood Station, Units 1 and 2)  
Docket Nos. 50-454, 50-455, 50-456, 50-457

Dear Chairman Luton:

I enclose for your information, and for the information of the other members of the Board, the following correspondence received by this office:

- 1) A letter (with attachments) dated January 31, 1979, from Marilyn Shineflug of DAARE to Alan P. Bielawski
- 2) A letter (with attachments) dated February 3, 1979, from Betty Johnson of the League of Women Voters of Rockford, Illinois to John W. Rowe
- 3) A letter (with attachments) dated February 20, 1979, from Marilyn Shineflug of DAARE to Paul M. Murphy

These letters, and their attachments may be intended in part as amendments to earlier filed petitions to intervene. It is not clear that any of the above were properly served and filed, as required by the Commission's Rules of Practice. I responded to the first two letters and suggested that their authors follow the appropriate filing and service procedures if the letters were intended to amend earlier pleadings. Ms. Shineflug's letter of February 20, 1979, has attached to it an abbreviated service list which does not appear adequate to insure that all parties and the Board will, in fact, receive filings in a timely manner. I am forwarding copies of the letters to insure that the Board receives correspondence which it may consider relevant to issues now pending before it.

I am quite concerned that a misunderstanding of the filing and service requirements in the Commission's

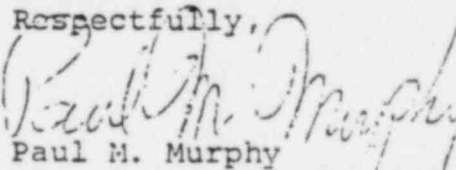
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Exhibit C

Edward Luton, Esq., Chairman  
Page Two  
February 28, 1979

Rules of Practice might result in an incomplete record at the Commission, or the Board, the parties or the petitioners may not receive necessary documents. This has the potential to disrupt delay this proceeding and to prejudice the rights of parties. As one of the attorneys for Commonwealth Edison Company, I do not feel that it is proper for me to offer advice or to interpret the Rules of Practice for the petitioners. I bring this matter to your attention in order that you might determine if any action by the Board would be appropriate. We will, of course, continue to serve copies of all pleadings and correspondence originating at this office on the Board and on each petitioner at the address they request (including Ms. Galbreath) pending a ruling by the Board on petitions to intervene.

Respectfully,



Paul M. Murphy  
One of the Attorneys for  
Commonwealth Edison Company

PMM/sag  
Enclosures  
cc w/encs.: Persons on attached service list

DOCKET  
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UP

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Commonwealth Edison Company, certifies that on this date he filed two 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, Express Mail, or Federal Express as appropriate, postage prepaid.

Dated: October 27, 1981

Paul M. Murphy



Marshall E. Miller, Esq., Chairman  
Atomic Safety and Licensing Board  
Panel  
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  
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

Ms. Diane Chavez  
SAFE  
602 Oak  
Rockford, Illinois 61104

Atomic Safety and Licensing Appeal  
Board Panel  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Atomic Safety and Licensing Board  
Panel  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Secretary  
Attn: Chief, Docketing and  
Service Section  
U.S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Chief Hearing Counsel  
Office of the Executive Legal  
Director  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Dr. Bruce Von Zellen  
Department of Biological Sciences  
Northern Illinois University  
DeKalb, Illinois 60115