

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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OFFICE OF SECRETARY
REGULATORY & SERVICE
BRANCH

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

Docket Nos. 50-454-OL
50-455-OL

State of Illinois)
County of Cook) SS

AFFIDAVIT OF PAUL M. MURPHY

Paul M. Murphy being first duly sworn, on oath deposes and states as follows:

1) I am an attorney employed by the law firm of Isham, Lincoln & Beale, Chicago, Illinois. I am one of the attorneys of record for Commonwealth Edison Company ("Edison") in the Operating License ("O.L.") proceeding now pending before a Licensing Board of the Nuclear Regulatory Commission (NRC) to rule on Edison's application for an O.L. for the Byron Nuclear Power Station ("Byron"). The firm of Isham, Lincoln & Beale also represented Edison in a number of proceedings pending before the Illinois Commerce Commission ("ICC") in which the Rockford League of Women Voters (the "League") has attempted to stop construction of Byron.

2) My first contact in connection with the above referenced proceedings with the current counsel for the League,

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Mr. Myron M. Cherry, Esq., occurred on September 26, 1979. The parties to the NRC O.L. proceeding for Byron had been requested by the Presiding Officer to meet to attempt to arrive at a settlement on the contentions filed by the League. A meeting was set up on September 26, 1979 in the office of Myron M. Cherry at the request of Betty Johnson, the spokesperson for the League. In addition to Mr. Cherry and Mrs. Johnson, there was one other member of the League present. The other attendees were myself, Alan Bielawski, an associate at Isham, Lincoln & Beale, Leslie Bowen, an engineer in Edison's Station Nuclear Engineering Department, and Chuck McDonough, Edison's Director of Environmental Assessment, on behalf of Edison, as well as was Richard Goddard of the Office of the Legal Director and Calvin Moon, Project Manager, on behalf of the NRC Staff.

3) Mr. Cherry opened the meeting by stating that he did not represent the League generally in the Byron O.L. proceeding, but rather had agreed to assist the League solely for the purpose of negotiating contentions. He then stated that if the League did retain him to represent it in the O.L. proceeding, his tactic would be one of delay for the sake of delay. Mr. Cherry stated that he could not, in good faith, advise the League that by virtue of its participation in the Byron O.L. proceeding it would be able to stop the operation of Byron. He also stated that he would have to advise the League that the chance of its intervention resulting in any significant modifications of the plant was remote. Therefore,

he would advise a tactic of delay for the sake of delay so as to raise the cost of Byron to Edison. This tactic he asserted would discourage Edison, and all other utilities, from planning for the construction of additional nuclear power plants in the future.

4) After Mr. Cherry's speech was completed, the attendees turned to the business at hand, the discussion of the League's contentions. After a long negotiating session, at which very little actual agreement was reached, Mr. Cherry asked both Edison and the NRC Staff to put their position on each of the League's contentions in writing and he would respond in a timely fashion. On October 8, 1979, I mailed to Mr. Cherry a detailed statement of Edison's position on the contentions. Neither Mr. Cherry nor the League ever responded in any fashion to that statement of positions.

5) My next direct contact with Mr. Cherry, on behalf of the League, occurred on September 10, 1981. I had arranged, through Mr. Cherry's partner, Peter Flynn, to meet with Mr. Cherry in the offices of Isham, Lincoln & Beale for purposes of discussing discovery initiated by Edison on July 8, 1981 in the NRC Byron O.L. proceeding and discovery initiated by the League on August 28, 1981 in a proceeding which the League had initiated before the ICC approximately two years following its request for hearing on the Byron O.L. proceeding.

6) The only discovery at issue then pending in the NRC O.L. proceeding was a set of four interrogatories initiated by

Edison and directed at the League, dated July 8, 1981. The League had failed to respond to those interrogatories within the time limits set in 10 CFR §2.740. Edison had requested and been granted by the Board, on August 18, 1981, a motion to compel, but, had been directed by the Board to meet with the League to discuss these interrogatories.

7) The meeting was set up for 1:00 p.m. at the offices of Isham, Lincoln & Beale. I had asked Mr. Alan Bielawski of my office, and Leslie Bowen, Tom Tramm, Ken Ainger, Jim Westermeier and Jack Lavin, all of Commonwealth Edison, to attend the meeting. The five Edison employees were in attendance because they were keepers of various records which the League had requested in a proceeding then pending before the ICC. The League's discovery request in the Commerce Commission had been initiated on August 28, 1981. This was the last day for discovery on that proceeding and, therefore, I had asked a number of employees at Edison to promptly search their files and come up with a list of the location and contents of files responsive to the League's request. The five individuals had with them that information, and we were prepared to discuss this with Mr. Cherry.

3) Prior to discussing any of the League's discovery pending before the ICC, I asked Mr. Cherry when the League intended to provide answers to the interrogatories which, on August 18, 1981, the NRC Licensing Board had ordered the League to answer. Mr. Cherry stated that the interrogatories were

premature, that the League needed to engage in discovery before it could provide meaningful answers and that the effort that he would need to put forth to answer these interrogatories was not worth the information the League had to provide. I stated to him that those same arguments had been presented to the Licensing Board and rejected and that Edison was entitled to answers to the interrogatories. Mr. Cherry argued that Edison should provide responses to the discovery initiated by the League in the ICC proceeding prior to insisting on answers to its' interrogatories in that the League would thereby be in a position to provide more meaningful answers. I told him that this proposal was totally unacceptable. I pointed out to him that the proceedings were entirely separate and that Edison had no intention of allowing discovery in an ICC case to in any way delay or affect discovery in the NRC case. I reminded Mr. Cherry that Edison had an order compelling him to answer the interrogatories, that if he did not intend to answer the interrogatories he should so state, and we would go on with the rest of the business of the day. At this point, Mr. Cherry said the League was not refusing to answer the interrogatories and the League would, in fact, answer them. I asked him to provide a date certain. Mr. Cherry said he could not because the League had as yet done nothing to begin to prepare answers for the interrogatories. He promised to contact me on Monday, September 14, 1981, with a date certain for responding to Edison's interrogatories in the Byron O L. proceeding.

10) The other item of discussion relating to the Byron O.L. proceeding was a proposal that Isham, Lincoln & Beale had prepared with the assistance of various Edison employees in an attempt to consolidate duplicative contentions of the League and to eliminate from those contentions issues which, based on Edison's interpretation of the Board's order admitting the League's contentions, were not at issue. Mr. Cherry stated he had skimmed the proposal and that he had no intention of accepting it. He stated that the Board had admitted the League's contentions, and that although there was significant duplication, the contentions differed slightly in wording. Mr. Cherry stated that if the League were to agree to any consolidation of contentions along the lines proposed by Edison, this would reduce his ability to prolong the O.L. hearing and might result in a waiver of issues the League might wish to raise on appeal from the Licensing Board's initial decision. Mr. Cherry said he would not consider Edison's proposal on consolidated contentions further. It was very clear that Edison's proposal, in this regard, had been flatly rejected and that no further discussions on the matter would take place. After completing the discussion of matters pending before the NRC, a discussion ensued concerning discovery before the ICC. These discussions had barely begun when Mr. Cherry stated he would no longer discuss ICC discovery and he walked out.

11) The next day, September 11, 1981, Mr. Cherry telephoned me, stated that he was apologizing for having been rude at the meeting the day before, and that I should extend his apologies to the Edison employees who had been at the meeting. He asked if we could meet on September 15 for the purpose of continuing our discussion on the ICC discovery. He insisted that no Edison employees be present. I told him I was willing to do so and we set up the meeting.

12) On September 15, Mr. Cherry and I met again to discuss the discovery pending by the League in the ICC. Mr. Alan Bielawski and Mr. Michael Miller from my office participated in very limited portions of this meeting. We reached a comprehensive agreement on most items then pending before the ICC, although there were a couple of issues on which we did not reach agreement and postponed those for further discussion on the following day. I also pressed Mr. Cherry for a date certain for the responses to Edison's interrogatories in the NRC O.L. proceeding. Mr. Cherry stated that he would answer those interrogatories by October 1, 1981. On September 16, 1981, I sent Mr. Cherry a letter confirming that date. There was no suggestion at this September 15 meeting that the League's responses to Edison's NRC interrogatories would in anyway be dependent on responses of Edison in the ICC proceeding. Indeed, any such connection would not have been possible. The only information that Edison stated that it would definitely provide before the October 1 date for the League's responses in the NRC

proceeding were financial data relating to a scheduled deposition of Mr. John C. Bukowski, Edison's Director of Economic Research. All other documentation and depositions were to follow the October 1 date for the League's response as is clearly reflected in the letters attached to the League's Petition for Reconsideration. (See Exhibit 13, thereto)

13) The items that had been left open after the September 15 meeting, all of which related to discovery pending before the Illinois Commerce Commission, were discussed further in a telephone conversation between Mr. Cherry and myself on September 16, 1981. These items were not resolved satisfactorily. Mr. Cherry had asked, on September 15, that Edison produce certain witnesses to testify on matters which I believed to be outside the scope of the ICC proceeding. After checking with Edison, I informed Mr. Cherry, on September 16, 1981, that Edison would not produce the requested witnesses (the request for which had been made after the close of discovery) unless ordered to do by the ICC. Mr. Cherry then informed me that I was a fool and an incompetent, and that if I did not agree to produce the witnesses, Mr. Cherry would delay the NRC O.L. proceeding for 10 years or more and thereby "bleed Edison white." Mr. Cherry stated that he had used such tactics successfully before, and would do so again. I told Mr. Cherry that he would have to obtain an order from the ICC if he wanted to depose the witnesses in question. I reiterated Edison's position in a

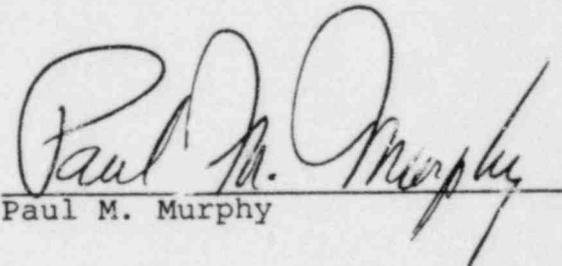
letter to Mr. Cherry dated September 17, 1981. The League did not attempt to seek a ruling from the ICC on this matter until after the NRC dismissed it from the Byron O.L. proceeding.

14) On October 1, 1981, at the request and in the presence of Mr. Michael I. Miller, Esq., a partner at Isham, Lincoln & Beale, I called Mr. Cherry to offer to have the answers of the League to Edison's NRC interrogatories picked up by a messenger from my office. Mr. Cherry stated that he had no answers to interrogatories and had no intention of answering any interrogatories. He stated that the League would not provide any discovery to Edison in the NRC Byron O.L. proceeding unless Edison agreed to the League's discovery then pending in the ICC proceeding. I reminded Mr. Cherry that these two proceedings were entirely separate and that if he disagreed with Edison's position in the ICC proceeding, he would have to go to the ICC Hearing Examiner and obtain a ruling. In the meantime, I informed Mr. Cherry that I intended to initiate a conference call the next day, October 2, 1981, with the NRC Licensing Board for the purpose of resolving, once and for all, the long standing dispute as to when, if ever, the League would respond to Edison's discovery initiated in the Byron O.L. proceeding. I told Mr. Cherry I would arrange the call at a time convenient to him. He stated he would be in his office all day on October 2, 1981 but refused to state a time that would be acceptable. The next day, in my presence, Mr. Mike Miller, also from Isham, Lincoln &

Beale, contacted Mr. Cherry to determine when would be a suitable time for the conference call. Immediately after that call, Mr. Miller began to take the steps necessary to set up the conference call for 1:30 p.m. central daylight time. While we were waiting in Mr. Miller's office for the conference operator to make the necessary connections for the conference call, we were handed a note from our switchboard operator which stated that Mr. Cherry had just called and stated he would not participate in the conference call. The conference call went forward without Mr. Cherry.

The foregoing statements are based on my own personal knowledge and are true in fact and substance.

Dated: November 20, 1981


Paul M. Murphy

SIGNED and SWORN
to before me this 20th
day of November, 1981


Notary Public