

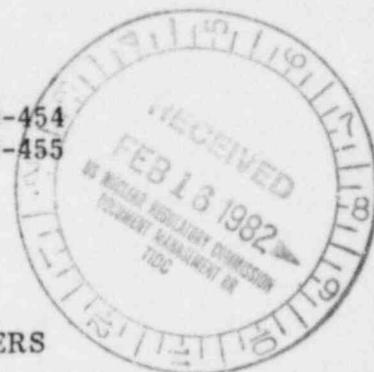
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)
)
COMMONWEALTH EDISON CO.,)
)
Byron Station)
(Units No. 1 and 2))

Docket Nos. STN 50-454
50-455



EXCEPTIONS OF THE ROCKFORD LEAGUE OF WOMEN VOTERS
TO THE LICENSING BOARD'S ORDERS OF
OCTOBER 27, 1981 AND JANUARY 27, 1982

The Rockford League of Women Voters (hereafter "the League"), by their attorneys, hereby appeals pursuant to 10 C.F.R., Section 2.762 and 2.785, from the Licensing Board's Orders of October 27, 1981 and January 27, 1982, and lists without argumentation the factual and legal errors appealed from as follows:

Exceptions To The Licensing
Board's Order Of October 27, 1981

1. The error of fact in the first sentence of the Memorandum and Order dated October 27, 1981, p. 1 (hereafter "Order") that the League was guilty of any continuing failure or refusal to answer interrogatories.
2. The error of fact at Order, pp. 2-3, that the interrogatories in their scope and breadth were "common and reasonable" particularly in light of the Board's admonition re interrogatories in its August 18, 1981 Order.
3. The absence of consideration, nowhere mentioned in the Order, of the failure of the Staff and Edison to answer interrogatories outstanding for some 19 months.

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4. The error in law in the Licensing Board not having ruled previously or considered at all in connection with the Order the League's outstanding request both to have interrogatories served on the Nuclear Regulatory Commission or to rule on the League's outstanding request to compel answers from the NRC.

5. The absence of consideration of Edison and the Staff's failure to respond to discovery earlier filed against them, notwithstanding the Board's August 18, 1981 Order which deemed past as well as future interrogatories as continuing in nature.

6. The implicit erroneous finding in the first sentence of the first full paragraph at Order, p. 3, that the League ignored discovery requests.

7. The conclusion in the first sentence in the second full paragraph at Order, p. 3, that answers to Applicant's interrogatories were due on July 27, 1981, under the circumstances presented by this case and in particular the Licensing Board having permitted Edison and the Staff to rely upon "prematurity" as a discovery objection.

8. The factual findings on pp. 3 and 4 of the Order that the League's assertions in connection with the discovery were "excuses."

9. The factual finding in the first sentence in the second full paragraph at Order, p. 6, that after August 18 the League neither requested nor furnished any discovery in this proceeding.

10. The factual findings in the second full paragraph at Order, p. 6, that the telephone conversations simply involved interrogatory answers by the League.

11. The factual finding in the third sentence of the second full paragraph at Order, p. 6, that the League furnished no response to Applicant's interrogatories.

12. The factual findings in the third full paragraph at Order, p. 6, resulting from improper incorporation of Exhibits A and B to the Order.

13. The factual conclusion in the third full paragraph at Order, p. 6, that the League has willfully failed and refused to obey the Board's August 18, 1981 Order.

14. The factual findings in the last paragraph at Order, p. 6, that the League's conduct was improper.

15. The factual findings in the last paragraph at Order, p. 6, that the League's arguments and exhibits referred to therein do not relate to the instant NRC proceeding.

16. The legal error throughout the Order of not according agreements of counsel re discovery as binding.

17. The legal error throughout the Order of adopting as facts, without hearing, Applicant's assertions, particularly when they were challenged by Affidavit.

18. The partly factual and partly legal error at the top of p. 7 of the Order that the Illinois Commerce Commission and NRC show cause hearing are irrelevant to this proceeding.

19. The implicit finding of noncompliance and express findings of deliberate failure and refusal to obey Orders in the first full paragraph at Order, p. 7.

20. The factual and legal error in failing to accord counsel's personal problems any degree of credibility under the circumstances. Order at pages 6-7.

21. The reliance upon the ex parte and without fair notice conversation and the findings made as a result thereof at Order, pp. 7 and 8.

22. The participation by the Board in an ex parte and without fair notice conference described at Order, pp. 7 and 8.

23. The failure of the Board objectively to deal, in the context of this proceeding, with the League's response to the Motion for Sanctions as related in the last paragraph at Order, p. 8.

24. The factual finding that the League and its counsel were dilatory. Last paragraph, Order, p. 8.

25. The legal conclusion at Order, p. 9, first paragraph, that the League and its counsel have deliberately and willfully refused to comply with Court Orders.

26. The factual findings at Order, p. 9, first paragraph, that the League's arguments are "pretexts or excuses."

27. The factual finding in the first paragraph at Order, p. 9, that the League evidenced noncompliance or that such conduct was a pattern of behavior.

28. The factual finding (or legal conclusion) that the League's alleged conduct, as set forth in Order, p. 9, first paragraph, seriously impedes proceedings or impairs the integrity of the Orders of the Board.

29. The conclusion in the last sentence of Order, p. 9, first paragraph, that sanctions against the League are an appropriate exercise of due process.

30. The application of the erroneous legal standard, under the circumstances herein, that sanctions were necessary to "deter" others in the future, a form of punishment. Order, p. 9, first paragraph.

31. The improper application of the Commission's Policy Statement at Order, p. 9.

32. The improper application of the case law applied and cited at Order, p. 9, and note 14 thereon.

33. The implicit factual finding in the second paragraph at Order, p. 9, that the League's conduct (or that of its counsel) was equivalent to an unjustified refusal or failure to comply with discovery orders.

34. The incorporation in the Order and at p. 6 thereof of Exhibits A and B to the Order, without hearing, and which were challenged as contrary to facts.

35. The remedy of sanctions applied by the Board at Order, p. 10, in light of the procedural circumstances of this case and the seriousness of the League's contentions.

36. The legal conclusion that the League should be dismissed as a party, Order, p. 10.

37. The legal conclusion that the Applicant's Motion for Sanctions be granted, Order, p. 10.

38. The finding that the League's Motion for Sanctions against Applicant is meritless and frivolous, Order, p. 10.

39. The denial of the League's Motions for Sanctions and the absence of any hearing thereon, Order, p. 10.

40. The failure of the Board to have accorded agreements reached among counsel concerning discovery as binding (this failure underlies the entirety of the Order).

41. The failure of the Board to have held a hearing to inquire into the disagreement among counsel (as requested in the League's response to the Motion for Sanctions), a conference which was ordered by the Board in its August 18, 1981 Order (this exception goes to the entirety of the Order).

42. The failure of the Board to have considered the public interest or fairness in connection with the dismissal of the League's contentions (this exception goes to the entirety of the Order) and the resulting dismissal of the League.

43. The ultimate factual and legal conclusions made by the Board as a basis for its dismissal of the League (this goes to the entirety of the Order, and particularly at p. 10).

44. The ultimate factual and legal conclusions made by the Board as a basis for denying the Rockford League of Women Voters' Motion for Sanctions against the Applicant (this goes to the entirety of the Order, and particularly at p. 10).

Exceptions To The Licensing
Board's Order Of January 27, 1982

45. The finding in the first sentence of the third full paragraph on p. 2 that the League's Petition for Reconsideration seriously distorts facts.

46. The finding in the second sentence of the third full paragraph on p. 2 of the Order that the League asserted for the first time that Interrogatories were pending and unanswered.

47. The conclusion in the second sentence of the third full paragraph on p. 2 that the League flouted the Board's discovery orders.

48. The conclusion that the Staff was not obligated to respond to discovery set forth in the first two complete sentences on p. 3 (to the contrary, there has been outstanding for some time a request to have the Licensing Board order the Staff to answer discovery).

49. The legal conclusion in the first full paragraph on p. 3 that the Board's December 19, 1980 Order "for the first time" designated contentions in controversy.

50. The finding and conclusion in the second sentence of the second full paragraph on p. 4 that prior to March 1980 no contentions were held to be admissible.

51. The relevancy, to the issues before the Licensing Board on the sanctions motion, of the conclusion in the sentence beginning at the bottom of p. 4 and ending with the word "controversy" on p. 5.

52. The conclusion in the second full sentence on p. 5 that the Board had a particular intent.

53. The findings in the third sentence on p. 5 that as of December 1980 nothing remained pending or undisputed and the further finding that it was so understood by the parties.

54. The relevance of the statement in the last sentence of the first paragraph on p. 5 in light of the then-pending motions.

55. The findings in the first sentence of the first full paragraph on p. 5 that the League has not initiated any discovery in this proceeding since December 1980 or responded to the discovery requests of others.

56. The finding in the third sentence of the first full paragraph on p. 5 that the League and its counsel are engaged in a disingenuous effort to alter facts.

57. The findings in the second, third, fourth, fifth and sixth sentences of the opening paragraph on p. 6 as to the status of discovery and the League and its counsel's beliefs.

58. The finding in the last sentence of the first paragraph on p. 6 that the August 18, 1980 Order directed the League to furnish discovery promptly (in fact the Order directed negotiations concerning outstanding discovery).

59. The finding that the League's position is contrived contained in the first sentence of the first full paragraph on p. 6.

60. The implicit factual findings beginning in the second sentence of the first full paragraph on p. 6 through the end of that paragraph on p. 7 that consideration of joint discovery in parallel proceedings are improper and only create a procedural tangle.

61. The failure of the Board as set forth in its findings in the paragraph beginning on the bottom of p. 6 and ending at the top of p. 7 to consider parallel discovery agreed to among counsel in related proceedings as "voluntary discovery" contemplated by the Rules.

62. The finding in the third sentence of the first full paragraph on p. 6 that the League engaged in persistent defiance of the Board's Orders.

63. The finding in the second full sentence in the opening paragraph on p. 7 that disputes between counsel are contrived or that they have no relevance in light of the fact that the August 18, 1981 Order directed counsel to negotiate concerning discovery matters.

64. The finding in the third full sentence of the opening paragraph on p. 7 that the Board was unaware that negotiations among counsel contemplated overall discovery.

65. The finding in the last sentence of the opening paragraph on p. 7 that the Illinois Commerce Commission matter was a collateral inquiry which would delay the Licensing Board.

66. The finding that joint discovery among the parties in related matters would delay the operating license communication in opening paragraph on p. 7.

67. The finding in the first sentence in the first full paragraph of p. 7 that the League's argument in connection with the ex parte telephone call was specious.

68. The finding in the second sentence of the first full paragraph on p. 7 that the arguments by the League's counsel have been dilatory or untrue.

69. The finding in the third sentence of the first full paragraph on p. 7 that League counsel is trying to overrule the Board's directions.

70. The impropriety of the finding by the Licensing Board in the sentence beginning with the last sentence on p. 8 through the end of the opening paragraph.

71. The inapplicable legal test imposed by the Board in the first full paragraph on p. 8.

72. The finding in the last sentence of the first full paragraph on p. 8 that it was the intent of the League to see how close it could come to defy orders with impunity.

73. The finding in the first sentence of the first full paragraph on p. 8 that the League has successfully refused to provide any evidentiary basis for admitted contentions.

74. The conclusion in the first sentence of the second full paragraph on p. 8 that the Board's December 19, 1980 Order mandated any direction which the League violated.

75. The conclusion in the first sentence of the second full paragraph on p. 8 that the League violated a clear mandate in the August 18, 1981 Order.

76. The finding in the second sentence of the second full paragraph on p. 8 that the Petition for Reconsideration did not proffer the evidentiary or factual basis of any of the admitted contentions (in fact the contrary was true).

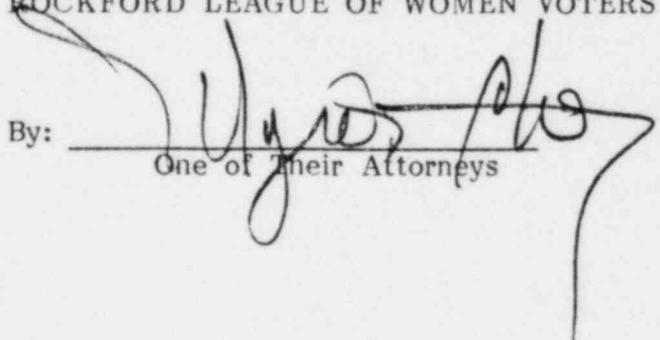
77. The finding in the sentence beginning at the bottom of p. 8 continuing on p. 9 that the League's or its counsel's efforts were deliberate or willful.

78. The inconsistency of the finding in the first full paragraph on p. 9 with the finding in the second full paragraph on p. 2 concerning what the Board relied upon.

79. The denial of the Petition for Reconsideration dismissing the League as a party and denying motions for sanctions against the applicant as set forth in the last paragraph on p. 9.

Respectfully submitted,

ROCKFORD LEAGUE OF WOMEN VOTERS

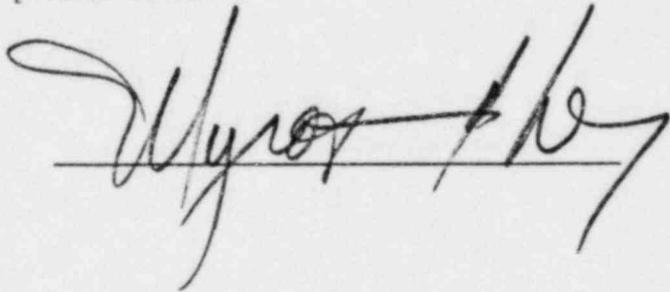
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PROOF OF SERVICE

I certify that four copies of the foregoing Exceptions were served on the Secretary of the Atomic Safety and Licensing Appeal Board, postage prepaid and properly addressed, on February 8, 1982, and on the same date a copy thereof was mailed postage prepaid and properly addressed to the Secretary of the Commission and all counsel of record (or in the event counsel has not appeared to the party itself) for the parties below.

A handwritten signature in black ink, written over a horizontal line. The signature is highly stylized and cursive, appearing to read "Myron H. [unclear]".