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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OF SEC

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

PETITION OF DAARE/SAFE FOR WAIVER OF OR  
EXCEPTION TO FINANCIAL QUALIFICATIONS REGULATIONS

Intervenor DAARE/SAFE, by its undersigned attorneys, hereby petitions this Licensing Board, pursuant to 10 CFR §2.758(b), for waiver of or exception to the new NRC regulations relating to financial qualifications<sup>\*/</sup> in this pending operating license proceeding. In support of this Petition, DAARE/SAFE states as follows:

On July 6, 1982, Intervenor Rockford League of Women Voters submitted its Petition for Waiver of or Exception to Financial Qualifications Regulations ("League FQ Petition"), requesting that this Board certify to the Commission the question of admissibility of Commonwealth Edison's ("CE") financial qualifications in this operating license proceeding. The League's petition makes a prima facie showing sufficient to mandate

<sup>\*/</sup> Those new regulations, effective March 31, 1982, 47 Federal Register 13750 et seq., are 10 CFR §2.104(c)(4); 10 CFR Part 2, Appendix A, Section VIII(b)(4); 10 CFR §§50.33(f)(1), (f)(1)(ii), (f)(2), and (f)(3), 50.40(b) and 50.57(a)(4) and Part 50, Appendix M, ¶4(b).

certification of the question of admissibility to the Commission under 10 CFR §2.758. (See DAARE/SAFE's Reply to Responses of Commonwealth Edison and NRC Staff to Rockford League of Women Voters' Petition for Waiver or Exception, filed herewith.) DAARE/SAFE incorporates herein by reference the entirety of the League's FQ Petition and exhibits, and in addition submits the following further comments and exhibits to the Board for its consideration and for litigation following the Commission's admission of these issues. Because of the significant new evidence on which both the League's and DAARE/SAFE's petitions are based, and in order to expedite these proceedings, DAARE/SAFE submits herewith new contentions relating to CE's financial qualifications.\*/

For the reasons set forth in the League's FQ Petition as well as in the additional discussion herein, "special circumstances" are present here, such that the purpose of the new NRC regulations excluding issues of financial qualifications from operating license proceedings would not be served by applying those regulations here.\*\*/ Accordingly, this Board should certify the question of waiver of or exception to those regulations to the Commission for decision.

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\*/ DAARE/SAFE's prior contentions relating to financial qualifications which predate the new evidence and were different from the new contentions, were dismissed pursuant to the new NRC regulations on financial qualifications in April 1982. DAARE/SAFE was not represented by counsel at that time. Because the new contentions are based on new evidence, DAARE/SAFE is not hereby seeking reconsideration of the dismissal of its earlier contentions.

\*\*/ By submitting this petition for exception or otherwise, DAARE/SAFE does not concede the lawfulness of the new regulations relating to financial qualifications.

In addition, the Safety Evaluation Report (SER) issued by the NRC staff in February 1982, and supplemented in March, 1982, which analyzes in part CE's financial qualifications, should be supplemented to revise upward the estimated costs of Byron in light of League FQ Ex. H at 9, 11 and Schedule 3, page 1, and to correct the erroneous conclusion that CE is financially qualified safely to complete, operate and decommission Byron, in light of the new information contained in the League's FQ Petition and herein.

There are five "special circumstances" which call for waiver of or exception to the new financial qualifications regulations in this case. Four were identified in the League FQ Petition at 3-4 (CE's lack of sufficient funds, the unlikelihood of sufficient rate relief to finance Byron, cost over-runs, and the resultant threat to public health and safety).

In addition, the NRC has previously represented that issues of CE's financial qualifications would be heard in this operating license proceeding. On that basis, the United States Court of Appeals declined to compel a separate §2.206 proceeding on, among other issues, CE's financial qualifications. Rockford League of Women Voters v. NRC, 679 F.2d 1218, 1219, 1222 (7th Cir. 1982). Thus, but for the NRC's prior representations as construed and relied upon by the Court, the League - and DAARE/SAFE, which was likewise entitled to rely on the NRC's representations - would be assured of a pending proceeding in which CE's lack of financial qualifications could be litigated. The unfairness of the NRC's subsequent effort to deny the forum

in which the Court expected the financial issues to be heard constitutes another "special circumstance" not considered by the Commission in the generic rulemaking. For that additional reason, exception to or waiver of the new regulations on financial qualifications should be granted.

(For discussion of this point, not repeated here in order not to burden the Board with duplicative reading, see DAARE/SAFE's Reply to Responses of Commonwealth Edison and NRC Staff to Rockford League of Women Voters' Petitions for Waiver or Exception, filed herewith, at 2-4.)

CE Lacks Reasonable Assurance Of The Funds  
Necessary To Complete, Operate and Decommission  
Byron Safely

As the League's FQ Petition amply demonstrates, CE lacks reasonable assurance of the funds needed to complete, operate and decommission Byron safely (League FQ Petition at 4-6), sufficient rate relief is unlikely (id. at 6-8), and Byron will cost far more to build than CE or the NRC staff (in the SER) have assumed (id. at 8-10).<sup>\*/</sup>

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<sup>\*/</sup> Exhibits A-M hereto are Exhibits A-M previously filed by the League, which are incorporated herein by reference. DAARE/SAFE files herewith (Exhibits N and O hereto) additional details relating to the financial data in Professor Bupp's testimony (League FQ Ex. E), along with excerpts from Illinois Commerce Commission transcripts indicating that various of the experts whose pre-filed testimony was submitted by the League subsequently placed their testimony under oath (Exhibit P hereto.)

CE's Lack Of Financial Qualifications Jeopardizes  
Public Health and Safety

The purpose of the new NRC regulations excluding issues of financial qualifications from operating license proceedings is to remove an issue not thought generally likely to affect public health and safety. 47 Fed. Reg. at 1375. The Commission found generally a "lack of any demonstrable link" between financial qualifications and public health and safety. Id. It also reasoned that, "in the absence of facts to the contrary," it could not accept "unsupported statements" that NRC inspection and enforcement efforts are, "as a general matter," inadequate. Id.

At the same time, the Commission noted that "an exception to or waiver from the rule would be possible to require the submission of financial information from a particular electric utility applicant if special circumstances are shown pursuant to 10 CFR §2.758 in an individual licensing hearing." 47 Fed. Reg. at 13752.

"Special circumstances" are present here. As set forth in the following, there is indeed a "link" between CE's lack of financial qualifications and a resultant threat to public health and safety, and there are indeed "contrary facts" to show that NRC inspection and enforcement is inadequate with respect to CE plants currently under construction, including Byron.

The "Link"

The Commission found no "link" between lack of financial qualifications and threats to public health and safety because

"most" utilities facing financial difficulties "postpone or cancel their plants, actions clearly not inimical to public health and safety." 47 Fed. Reg. at 13751.

With respect to two of its three plants under construction - LaSalle and Byron - CE has responded to its financial difficulties not by postponement or cancellation, but by speeding up construction, in an effort to bring the plants fully into CE's rate base and to avoid the financial costs of delay.<sup>\*/</sup> There is, of course, no question that construction delays at LaSalle and Byron serve to aggravate CE's financial difficulties. (E.g., League FQ Ex. E at 17.)

It is precisely CE's financially motivated speed-up at LaSalle and Byron that in this case supplies the missing "link" between dollars and danger. In its effort to expedite completion of LaSalle and Byron, CE has persistently "cut corners" on Quality Assurance and Quality Control ("QA/QC") at those two plants. Shortchanging QA/QC, in addition to reducing CE's QA/QC budget itself, in the short-run alleviates CE's financial difficulties in two far more significant respects: (1) it avoids the expensive delays required in order to carry out QA/QC procedures properly, and (2) it avoids expensive repairs and replacements. (League FQ Ex. I at 31.)

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<sup>\*/</sup> In contrast, "Braidwood's construction appears to be in a financially-dictated stretch-out mode, with total expenditures at a reduced level." (League FQ Ex. H at 4.) In other words, CE lacks the funds simultaneously to speed up construction at all three plants.

The adverse impact of CE's rush to complete LaSalle and Byron on QA/QC has been most recently and dramatically exemplified in the revelations concerning the HVAC system at LaSalle. (See Exhibits U and V hereto.)

The 27-page affidavit (Ex. V hereto) of Mr. Albert T. Howard, former Supervisor of Quality Assurance Documentation for LaSalle's HVAC contractor, details the relationship between CE's financial needs to expedite and resulting inadequate QA/QC. After the contractor had reported its lack of QA documentation to CE and after CE has sent a team to audit the contractor's QA documents on October 9, 1981, Mr. Howard relates:

It was around this time that it became apparent to me that the LaSalle situation was particularly unnerving to [the HVAC contractor's] management. Commonwealth Edison had been "pushing" for a final report - a complete and total update of the paperwork problems as they affected LaSalle. They needed the update so that the engineering department would make whatever evaluations had to be made.

(Ex. V at 7.)

Less than a month after CE's audit of the QA documents, on November 2, 1981, CE wrote the contractor. CE's letter stated that "additional information is urgently needed for engineering to expeditiously evaluate the indeterminate or unacceptable material properties." (Ex. W; emphasis added.)

Notwithstanding the fact that CE had apprised itself of the extent of the documentation problem and notwithstanding that the problem was so severe that it was still not cleared up by May, 1982 despite a frenzied effort by the contractor (Ex. V at 8-14, 21-25) - CE's November 2, 1981 letter to the contractor

set an incredible 11-day deadline:

Specifically nonconformance report(s) must be submitted to this office detailing material certifications that are not in accordance with the S & L specifications and/or ASTM standards. . . . Due to commitments we have with the NRC, nonconformance reports are required to be submitted no later than November 13, 1981.

(Ex. W.)

As Mr. Howard explains, "The November 13 and December 1 deadlines [the contractor's own deadline] were not met, because it was impossible for our new QA documentation department to audit the remaining purchase order packages by those deadlines." (Ex. V at 8.)

In fact, by late February, 1982, the job was still far from finished. "There was incredible pressure," Mr. Howard states, "on our department to finish a final audit for Commonwealth Edison's LaSalle plant by March 1st." (Id. at 12.) On that date, Mr. Howard prepared a report, which the contractor's management wanted him to call "final," but he refused. "There were still hundreds of discrepancies left." (Id. at 12, 13.)

As one result of CE's "incredible pressure," the contractor allegedly attempted to take numerous shortcuts - including alleged falsification of documents - in order to show proper QA documentation. (See generally Ex. V hereto.)<sup>\*/</sup>

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<sup>\*/</sup> DAARE/SAFE submits Exhibit V merely as a succinct summary of the voluminous sworn affidavits and documents on file with the NRC under the LaSalle docket number.

The most recent result has been that the full power license was delayed at the last minute, by vote of the Commission, from July 27, 1982 until at least August 5, 1982, pending a review of the HVAC problems at LaSalle. (Chicago Tribune, July 28, 1982 at 1.) CE's reported reaction to even that brief delay was predictable. The 10-day delay, complained a CE spokesman, will cost "millions of dollars." (Id.)

CE's parallel rush to put Byron into service as soon as possible has also contributed to longstanding and continuing QA/QC deficiencies at Byron. (Exhibits Q-T hereto; see also League's Answers to CE Interrogatories for League Contention 1A, filed July 6, 1982, at 1A-1.)

Only most recently, on May 19, 1982, the NRC advised CE:

We are concerned about the lack of effectiveness of your quality assurance program that allowed these conditions to occur. Preoperational testing is a vital part of demonstrating that plant components and systems were designed, fabricated, and installed to requirements. In addition to your response to the item of noncompliance please outline the steps you plan to take to improve and increase your quality assurance activities in this area ....

(Ex. T-1 hereto.)

The report noted:

The inspector observed during performance of test ... that personnel were not properly briefed, procedural requirements were not being followed, procedures were not adequate, and that data was not being properly recorded.

(Id. at 2.)\*

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\*/ The multiple nature of these QA/QC deficiencies is unfortunately typical of Byron. (See, e.g., the "apparent noncompliance with seven different [QA] criteria" with respect to electrical cable installation (Ex. S hereto at 1) which resulted in an NRC immediate action letter (Ex. R hereto.)

CE's QA/QC shortcomings at Byron have been persistent. For example, a March, 1982 report states:

This is a repetitive item of noncompliance in that similar problems were identified in NRC Inspection Report No. ... dated September 2, 1981, and subsequent follow-up Inspection Reports No. ... dated November 17, 1981. Also Inspection Reports [earlier in 1982] ... indicated that progress in this area was insufficient to close the item.

(Ex. T-2 hereto.)

At least one longlasting QA/QC breakdown at Byron bears striking similarities to the HVAC problem at LaSalle. A December, 1980 NRC investigation report - based, as in the LaSalle situation, not on matters detected by NRC inspectors but on the fortuity of "whistle-blowing" by a contractor's former employee - substantiated allegations of falsified audit reports, the contractor's use of an unqualified QA/QC manager, the fact that the QA/QC manager reported to the contractor's Chief Engineer thereby eliminating independent review, and the failure of the QC Department to approve and review revisions to Shop Design drawings. (Ex. Q hereto at 3-4.)

This QA/QC breakdown contributed to CE's acceptance and installation of faulty instrument panels and control consols from the contractor. (Id.) In fact, independent testing later rejected 100% of all Class 1 safety-related instrument panels supplied to Byron by the contractor. Id. at 4.

Another disturbing parallel with the LaSalle HVAC breakdown is that, as the NRC inspection revealed, CE officials had been

aware of the major deficiencies in the contractor's QA/QC program as early as May 19, 1977. On that date a CE audit discovered, among other violations, the contractor's failure to document any inspections, train quality assurance employees, or to meet welding qualifications. Id. at 29-30. Despite CE's awareness of this three-year history of inadequate QA/QC and failure to fabricate equipment to specification, the NRC report notes:

"Byron Construction Department personnel waived, without QA concurrence, final inspection of twenty safety-related local instrument panels at the SCC plant during the period from December 1979 to February 1980. The twenty local instrument panels were then receipt inspected at the Byron site by CE Station Construction Department, with no significant deficiencies noted, placed in the Unit 1 containment, and were later found, on reinspection in place, to require extensive repairs."

(Id. at 30.)

In short, at Byron as at LaSalle, CE's financial need to press the plant into service has led to serious and persistent QA/QC breakdowns, including serious contractor violations known to CE, but which CE chose not to remedy until "whistle-blowers" spurred NRC investigations. In the case of CE, at least at LaSalle and Byron, the "link" between financial pressures and threats to public health and safety is a documented reality.

#### NRC Inspection and Enforcement

The inability of NRC inspection and enforcement to detect every violation, including every serious violation, is inherent in the nature of the construction process. For example, after

detecting improperly bent anchor bolts at Byron Unit 2 in 1980, NRC happened upon the violation just in time: "The next installation activity would have been the grouting of the base plate (which would have precluded discovery of this condition)." (Ex. T-7 hereto at 4.) How many bent bolts - or worse - have been "grouted over" at Byron, no one will ever know.

In this case, however, the inadequacies of NRC inspection and enforcement activities go far beyond those inherent in the nature of the process. NRC Region III has a disturbing history of inadequacy, not only in failing to detect significant problems at LaSalle and Byron which came to light only because of "whistle-blowers" (see foregoing discussion), but also in failing to take effective action once the whistle-blowers stepped forward.

(Compare Exhibits U and V at 25-26 with the July 19, 1982 Region III letter attached to CE's Response to the League's Petitions for Waiver of or Exception to NRC Regulations.) Had Region III promptly and effectively investigated the LaSalle HVAC allegations brought to its attention by Mr. Howard on May 3 and 4, 1982 and repeatedly thereafter (Ex. V at 25-26), either there would have been no need for the Commission itself to initiate a last-minute investigation, or Region III would not have recommended LaSalle's full power license this July in the first place.

Thus, in the case of CE and NRC Region III, there is no need for "unsupported assertions" of the inadequacy of NRC inspection and enforcement to shield public health and safety from CE's financially motivated QA/QC shortcuts. Whatever may be

the general adequacy of NRC enforcement elsewhere, the facts here demonstrate "special circumstances." The purpose of the new financial qualifications regulations - to avoid issues having no impact on health and safety - would not be served by their application in this case. Exception to or waiver from these regulations should therefore be granted for the Byron proceeding.

CONCLUSION

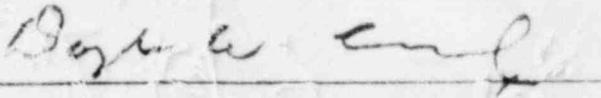
For the reasons stated in the League's FQ Petition and herein, the League and DAARE/SAFE have made a "prima facie" showing that application of the new financial qualifications regulations would not serve their intended purpose in this instance. Accordingly, the question of exception to or waiver of those regulations "shall ... [be] certifi[ed] directly to the Commission." 10 CFR §2.758(d).

DATED: July 30, 1982

Respectfully submitted,

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Jane M. Whicher

by.

  
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to issues of financial qualifications,  
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AFFIDAVIT

Pursuant to 10 CFR §2.758(b), Douglass W. Cassel, one of the attorneys for intervenor DAARE/SAFE on the issues of financial qualifications, need for power and alternative energy sources, being duly sworn, deposes and says, on information and belief, based on the affidavits and other exhibits attached to the foregoing Petition, that the statements made therein and incorporated therein by reference are true to the best of his knowledge. He further deposes and says that, on information and belief, each of the exhibits to the foregoing Petition and to the Petition of Rockford League of Women Voters for Waiver of or Exception to Financial Qualifications Regulations are true and correct copies of the documents they purport to be, and that those exhibits which are pre-filed testimony have subsequently been sworn under oath by the testifying witness, to the extent set forth in DAARE/SAFE FQ Exhibit P. As identified in the Petition, the specific aspects of the Byron operating license proceeding for which waiver or exception is sought are all issues and contentions relating to Commonwealth Edison's lack of financial qualifications safely to complete, operate and decommission the proposed Byron facility.

Douglass W. Cassel, Jr.  
Douglass W. Cassel, Jr.

Subscribed and sworn to  
before me this 30th day  
of July, 1982.

Julia Kishba  
Notary Public  
My Commission Expires: Dec. 30, 1984