

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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 NEED FOR POWER AND
ALTERNATIVE ENERGY SOURCE REGULATIONS
10 CFR §§51.23(e) and 51.53(c)

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 10 CFR §§51.23(e) and 51.53(c), relating to need for power and alternative energy sources, 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 Need for Power and Alternative Energy Source Regulations 10 CFR §§51.23(e) and 51.53(c) ("League NFP Petition"), requesting that this Board certify to the Commission the question of admissibility of need for power and alternative energy source issues in this operating license proceeding. The League's petition makes a prima facie showing sufficient to mandate certification of the questions 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 NFP Petition and exhibits, and in addition submits the following further comments to the Board for its consideration before and following the Commission's admission of these issues. DAARE/SAFE originally submitted no contentions concerning need for power and alternative energy sources. However, 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 its contentions relating to those issues.

For the reasons set forth in the League's NFP Petition as well as in the additional discussion herein, "special circumstances" - the existence of environmentally and economically superior alternatives - are present here, such that the purpose of the new NRC regulations relating to need for power and alternative energy sources 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.

In addition, the staff's failure fully to evaluate need for power and alternative energy sources results in an invalid environmental statement for the Byron Operating License FES and is contrary to the statutory mandate of the National Environmental

^{*/} By submitting this petition for exception or otherwise, DAARE/SAFE does not concede the lawfulness of the new regulations relating to need for power and alternative energy sources.

Policy Act, 42 USC §4321 et seq. (NEPA), as applied to the facts of this case. The FES is further inadequate because since its issuance in April of 1982, significant new information, discussed in the League NFP Petition and in this Petition, has been developed. Indeed, further expert testimony relating to cogeneration, load management and other alternatives to Byron is expected to be available by September.^{*/}

NEED FOR POWER

The League's Petition amply demonstrates that there is no need for the power to be generated by Byron. DAARE/SAFE adds only the following brief comments:

The FES shows no need for the power to be generated by Byron by the scheduled on-line date of 1984 (Unit I) and 1985 (Unit II). It purports to justify the need for the Byron facility on the basis of CE's untested assertion that, without Byron, CE's desired 15% reserve margin will fall only slightly short on two occasions: to 14.7% at the time of projected 1985 peak demand and to 14.6% at the time of projected 1990 peak demand. (FES-OL at p. 2-6; CE's Comments to DES-OL, reprinted in FES-OL at A-29 et seq. at p. A-30.) Thus, even if CE's overstated projections of demand for power were to be accepted, the total "shortfall" would result not in any power shortage but only in a slightly lower reserve margin than the 15% figure. The staff's attempt to justify "need" for both Byron units, generating a total of

^{*/} Governor's Office of Consumer Services' (on behalf of "Seniors") Statement of Planned Studies for Phase II of the Construction Case, Illinois Commerce Commission No. 80-0706.

2330 MW, on this slender basis, is simply unsupportable.

ALTERNATIVE ENERGY SOURCES

In addition to the arguments in the League NFP Petition which adequately show the existence of environmentally and economically superior alternatives to Byron, DAARE/SAFE notes the following:

The League NFP Petition lists two alternatives - conservation and cogeneration - as environmentally and economically superior alternatives to Byron. With respect to CE, the cogeneration alternative is discussed in the testimony of John Martorella, "Seniors Exh. 6.0" included in League NFP Ex. A. According to Mr. Martorella, CE has underestimated the cogeneration possibilities for its service territory (id. at p. 3), and use of cogeneration could easily replace the 1985 and 1990 peak load reserve margin "shortfalls" which CE claims would occur without Byron. (Id. at p. 9.) Thus, cogeneration is an economically superior alternative to Byron. Moreover, since cogeneration by definition recaptures otherwise wasted energy or emissions (see id. at 2), its net effect is to reduce pollution, and it is thus environmentally superior to nuclear-generated power.^{*/}

A further alternative which must be considered in lieu of Byron is for CE, during its two alleged reserve margin "shortfalls," to purchase any power needed to reach its 15% reserve margin target. (See FES-OL at 3-1, mentioning non-operation

^{*/} Mr. Martorella's testimony to date discusses only the extent of cogeneration which can be expected under "business as usual" conditions. (League NFP Ex. A, Seniors Exh. 6.0 at 2.) Additional expert testimony is expected to be available by (footnote continues on next page)

but not purchased power.) As the staff admits, there are significant environmental impacts and increased risks associated with operating and decommissioning any nuclear plant. (FES-OL at 2-4, 2-9 and Chapter 5.) Thus, non-operation with occasional purchases of small amounts of power from plants already operating elsewhere would be environmentally superior. Because CE would be spared the expense of operating and maintaining the unneeded Byron plant and would need to purchase only a small amount of power, this alternative is also economically superior.

Yet another alternative not considered by the staff in §3 of the FES is to license and operate only one of the two Byron units. Even assuming CE's overstated load forecast were correct, either of the 1100+ MW Byron units would more than cover CE's two anticipated reserve margin shortfalls of 41 MW at the 1985 peak and 70 MW at the 1990 peak. (FES-OL at 2-9.) Moreover, operation of only one unit would relieve customers of the need to incur further expense for the second, unneeded unit. Adverse environmental effects would also be cut proportionally.

The staff relies heavily on an "average annual savings" in fuel costs to consumers from Byron of \$266 million assuming 2% load growth and of \$201 million assuming zero load growth. (FES-OL at pp. 2-4, 3-1) but it fails to take into account the fact that CE is contractually obligated to purchase large amounts of coal regardless of whether Byron is operated or not. (League FQ Ex. E at 12-13.)

*/ (footnote continues from previous page)

this September addressing the amount and cost of electricity which could be cogenerated in CE's service territory if CE were to take steps to encourage cogeneration.

THE COST-BENEFIT BALANCE

For purposes of NEPA, the most significant benefit of any utility plant is the electricity it generates. When there is no need for that power, the benefit side of the NEPA balance is appreciably smaller. Where, as here, "environmentally and economically superior" alternatives (Final Rule, 47 Fed. Reg. at 12941) exist, the cost-benefit analysis can be expected to tip to the extent that the plant cannot be justified under NEPA.

The purpose of 10 CFR §51.23(e) and 51.53(c) is "to avoid unnecessary consideration of issues that are not likely to tilt the cost-benefit balance." 47 Fed. Reg. at 12940. That purpose would not be served by applying those regulations here since consideration of alternatives would in fact tilt the cost-benefit balance against further construction or operation of Byron.

Under NEPA, a new or supplemental Environmental Impact Statement is required when changed circumstances or new information render the old EIS inaccurate. E.g., Essex County Preservation Ass'n v. Campbell, 399 F.Supp. 208, 216 (D. Mass. 1975), aff'd, 536 F.2d 956 (1976); Nelson v. Butz, 377 F.Supp. 817, 822 (D. Minn. 1974). The regulations issued by the President's Council on Environmental Quality (CEQ), which must be followed here, PANE v. NRC, 678 F.2d 222, 231-35 (D.C. Cir. 1982), govern when such supplementation is required.

The relevant CEQ regulation, 40 CFR §1502.9(c), provides as follows:

Agencies

- (1) Shall prepare supplements to either draft or final environmental impact statements if:

* * *

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

* * *

- (4) Shall prepare, circulate, and file a supplement in the same fashion (exclusive of scoping) as a draft and final environmental impact statement unless alternative procedures are approved by the Council.

The new information submitted by the League and by DAARE/SAFE, all available only subsequent to the date of the Byron FES, constitute such "significant" and "relevant" new information. The CEQ regulations therefore mandate a supplemental impact statement. Such a statement should include a full and fair assessment of the need for power to be generated as well as of alternative energy sources.

CONCLUSION

For the reasons stated in the League NFP Petition and supplemented herein, the FES is inadequate in two respects: it draws unsupported conclusions from information supplied by CE upon which it relies, and it fails to take into account significant new information developed since the date of its issuance.

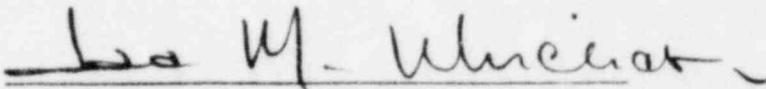
The FES must therefore be supplemented to reflect this new information. When that information is analyzed, the cost-benefit balance will "tilt" against issuance of an operating license for Byron. Thus, a "prima facie" case has been made that the purpose of the new NRC regulations on need for power and alternative energy sources would not be served by applying those regulations in this proceeding. The Board must therefore certify the question of waiver of or exception to those regulations to the Commission for decision.

DATED: July 30, 1982

Respectfully submitted,

Douglass W. Cassel, Jr.
Jane M. Whicher

By:



Jane M. Whicher

Attorneys for DAARE/SAFE with
respect to issues of financial
qualifications, need for power
and alternative energy sources

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AFFIDAVIT

Pursuant to 10 CFR §2.758(b), Jane M. Whicher, 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, and 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 her knowledge. She further deposes and says that, on information and belief, Exhibits A and B to the Petition of Rockford League of Women Voters for Waiver of or Exception to Need for Power and Alternative Energy Source Regulations 10 CFR §§51.23(e) and 51.53(c) are true and correct copies of the pre-filed expert testimony which they purport to be. As identified in the Petition, the specific aspects of the Byron operating license proceedings for which waiver or exception is sought are all issues and contentions relating to need for power and alternative energy sources.

Jane M. Whicher
Jane M. Whicher

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

Rella Kushba
Notary Public

My Commission Expires: Dec. 30, 1984