

8/27/82

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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

Docket Nos. 50-454 0L
50-455 0L

MOTION FOR RULING ON APPLICANT'S
DISCLOSURE OBLIGATIONS

By this motion Commonwealth Edison Company ("Edison") requests that the Licensing Board modify its ruling set forth at page 10 of its "Memorandum and Order" dated July 26, 1982 instructing Edison to discontinue its practice of providing the Board with certain information concerning the Byron facility.

BACKGROUND

By letter dated May 24, 1982, counsel for Edison transmitted to the Board certain letters and attachments which Edison had previously submitted to the NRC Staff. These letters were provided to the Board based on counsel's judgment that the information contained therein was arguably relevant to pending contentions or to scheduling matters related to this proceeding and therefore should be disclosed in accordance with the applicable NRC Appeal Board precedents. In that letter, counsel also stated that in order to assure

that the Licensing Board would receive information pertinent to matters pending before it, counsel would thereafter submit copies of all Byron-related correspondence between the NRC Staff and Edison. We felt that this proposed method of disclosure would help assure that the Board was kept apprised of developments regarding the Byron Station and the NRC Staff review of Edison's operating license application. From time to time thereafter, Edison submitted copies of Byron-related correspondence to the Licensing Board and the parties.

The Rockford League of Women Voters ("League") raised an informal objection to Edison's disclosure practice in a letter from its counsel to the Licensing Board dated July 16, 1982. The thrust of the League's objection was that the information sent to the Board was in some way intended to provide support for Edison's position, and that this practice was improper since the correspondence contained unsworn representations concerning issues pending before the Board. In its Memorandum and Order of July 26, 1982, the Board sustained the League's objection and ordered that Edison's disclosure practice be discontinued. Edison has complied with the Board's directive.

These matters were discussed during the course of the Prehearing Conference held in Rockford on August 18-19, 1982. (Tr. at 76 through 89.) Following the discussion, the Board suggested that if a party desired that the Board's ruling be modified such a request should be

submitted in writing to the Board. This filing is in response to the Board's suggestion.

ARGUMENT

The obligation of parties to NRC licensing proceedings to provide information regarding the facility under review was set forth early on by the Appeal Board in Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 AEC 623 at 625.

In all future proceedings, parties must inform the presiding board and other parties of new information which is relevant and material to the matters being adjudicated.

To avoid any misunderstanding, we do not mean that necessary administrative actions by the regulatory staff should not go on while a proceeding is being adjudicated (See 10 CFR 2.717(b)). But this does not mean that the staff or applicant can be permitted to leave the presiding body and the other parties to the proceeding in the dark about any change which is relevant and material to the adjudication.^{15/}

[Text of Footnote 15] Any uncertainty regarding the relevancy and materiality of new information should be decided by the presiding board.

Matters such as changes to completion of construction schedules, NRC investigations of construction activities, reports on open items, amendments to an applicant's FSAR, incidents at other facilities which are similar in design to the facility under review, etc., may all be deemed "relevant and material to matters being adjudicated." These are precisely the types of matters which were being disclosed to the Board through Edison's disclosure practice. The League's

apparent suggestion that Edison was attempting in some way to predispose the Board to deciding issues in Edison's favor is wholly unwarranted.

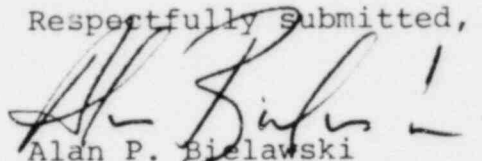
Given the relatively broad scope of the issues encompassed by pending contentions in this proceeding, and the Appeal Board's instruction that a party should err in favor of overdisclosure, Edison decided to submit copies of all correspondence between itself and the Staff to the Board and the parties relating to the Byron proceeding. We recognize that Edison's disclosure practice may have resulted in placing an undue burden on the Board due to the fact that some of the documents provided may not have been relevant and material to pending matters. In response to this concern, we would propose, in the future, to initially screen documents and other information to determine their relevancy and materiality. But see, Consumers Power Company (Midland Plant, Units 1 and 2) LBP-81-63, 14 NRC 1768 (1981); decision on appeal pending. We believe that this alternative disclosure practice will help to minimize the burden on the Board and the parties while, at the same time, permit Edison to meet its obligation to keep the Board and parties informed of developments relating to Byron.

WHEREFORE, Edison respectfully requests that the Board withdraw that portion of its July 26, 1982 Order

enjoining Edison from providing the Board and the parties information pertaining to matters pending before the Board and instruct Edison as to the manner in which Edison's disclosure obligations should be fulfilled.

Dated: August 27, 1982

Respectfully Submitted,



Alan P. Bielawski
One of the Attorneys for
Commonwealth Edison Company

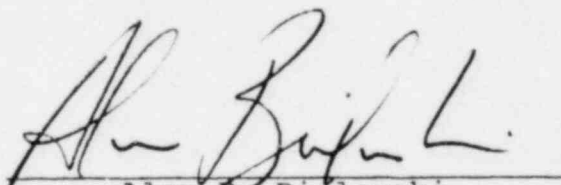
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CERTIFICATE OF SERVICE

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 the same on each of the persons at the addresses shown on the attached service list in the manner indicated.

Date: August 27, 1982


Alan B. Bielawski

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COMMONWEALTH Edison COMPANY -- Byron Station
Docket Nos. 50-454 and 50-455

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