



ADJUDICATORY ISSUE

(Affirmation)

July 25, 1983

SECY-83-301

COMMISSION LEVEL
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For: The Commission
From: Martin G. Malsch, Deputy General Counsel
Subject: CERTIFICATION TO THE COMMISSION FROM
BYRON LICENSING BOARD

Discussion: On June 17, 1983, the Atomic Safety and Licensing Board conducting the operating license proceeding for the Byron Nuclear Power Station, Units 1 and 2, certified to the Commission a question concerning whether its jurisdiction over the proceeding continues after the issuance of its initial decision on a full-power license. (Attachment 1)

As is detailed in the Licensing Board's memorandum to the Commission concerning the certification, this matter arises as a result of an agreement arrived at by applicant Commonwealth Edison Company, the NRC staff, and intervenors Rockford League of Women Voters, Dekalb Area Alliance for Responsible Energy, and Sinnissippi Alliance for the Environment to settle the intervenors' outstanding contentions relating to offsite

Contact:
Paul Bollwerk, GC
X-43224

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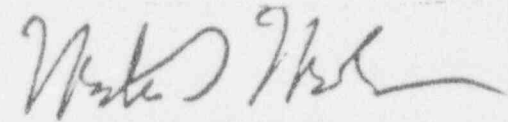
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emergency planning.¹ According to the terms of the settlement, the utility is to demonstrate to the intervenors that it has satisfied twenty-six emergency planning commitments before exceeding five percent power at Byron. That demonstration is to occur within fifteen days of the date the Federal Energy Management Agency (FEMA) issues its findings covering emergency planning at Byron, upon which the NRC staff relies to permit operation above five percent power. Under the settlement, the intervenors then have thirty days within which to petition the Board for a hearing in which they can contest whether the utility has satisfied the commitments.

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¹The Board's Certification to the Commission actually references two settlement agreements, one signed by the utility and the intervenors and one signed by the NRC staff and the utility. According to the Licensing Board, the only substantive difference between them is the manner in which the Licensing Board would retain jurisdiction. The utility/intervenor settlement is predicated on an assumption that Commission action is necessary to extend the Licensing Board's jurisdiction. In contrast, the NRC staff/utility settlement is based on staff's assumption that the Board can retain jurisdiction by not ruling on a pending intervenor motion to admit late-filed emergency planning contentions, which was the impetus for the negotiations that resulted in the settlement. The intervenors have declined to sign the NRC staff/utility settlement agreement because of their fear they will lose their hearing opportunity if the staff's legal analysis proves incorrect.

← [



Martin G. Malsch
Deputy General Counsel

Attachments:

1. 6/17/83 Certification
to the Commission
2. Proposed Order

]5

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Tuesday, August 9, 1983.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Tuesday, August 2, 1983, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of August 8, 1983. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

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ATTACHMENT 1

release

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Ivan W. Smith, Chairman
Dr. Dixon Callihan
Dr. Richard F. Cole

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

Docket Nos. STN 50-454 OL
STN 50-455 OL
(ASLBP No. 79-411-04 PE)

June 17, 1983

CERTIFICATION TO THE COMMISSION

I. INTRODUCTION

The Byron Station operating license proceeding potentially impacts upon plant operation. The evidentiary hearing has overtaken emergency planning for the Byron Station. Some emergency planning issues were not ripe for hearing but the evidentiary record is closed on all other issues. The Licensing Board is preparing the initial decision. The parties have worked out a possible settlement which would avoid a delay in the operation of the Byron Station because of outstanding emergency planning issues and which would protect the Interveners' right to be heard on these issues. The key to the settlement is that jurisdiction would remain with the Board after any decision authorizing full-power operation in order to preserve a forum for the resolution of emergency

planning disputes. However, it is questionable that, without Commission action, the Board would continue to have jurisdiction over the proceeding after any NRC authorization of full-power operation. At the request of the Applicant and the Intervenors, the Board recommends that the Commission either confer continuing jurisdiction or clarify that the Board already has jurisdiction to resolve specified emergency planning disputes after a decision authorizing full-power operation.

II. DISCUSSION

A. Background

The Intervenors, Rockford League of Women Voters, DeKalb Area Alliance for Responsible Energy (DAARE), and Sinnissippi Alliance for the Environment (SAFE) have been parties with admitted emergency planning contentions since the outset of the proceeding in 1979. However it was not until mid-December 1982 that the Intervenors had access to the initial draft of the Illinois Plan for Radiological Accidents (IPRA) for Byron when they also received a copy of the Applicant's evacuation time estimate study. On February 21, 1983, the eve of the beginning of the evidentiary hearing on March 1, the Intervenors jointly sought to have their initial emergency planning contentions superseded by a set of new subcontentions based upon the newly available documents. The new subcontentions met traditional substantive standards for acceptance as

issues. The issue of timeliness was initially raised but was mooted by settlement stipulations discussed below. We believe that the Intervenor acted with fairly reasonable dispatch in presenting their revised emergency planning issues.

From the beginning of the hearing it was apparent that emergency planning developments and implementations were continuing to unfold and that all such issues would not be resolved before the completion of construction of Byron Unit 1 then scheduled for August 1983. We remain of that view even though the construction completion date has since slipped to November 1983.

The Applicant acknowledges this state of affairs. The Intervenor has not avowed or demonstrated an interest in delay. The Intervenor recognizes the predictive nature of emergency planning requirements in NRC proceedings. They would prefer to see emergency plans actually implemented with their contribution. The Board has stressed to the Intervenor that informal cooperation with the cognizant emergency planning entities would probably produce better results than trying to hammer out the many details of emergency plans in the hearing room and they agree. These facts form the foundation of the proposed settlement.

B. The Stipulations

There are two stipulations: one between the Applicant and Intervenor, and one between the Applicant and the NRC Staff. They are

substantively alike differing only in the approach to post-operational Board jurisdiction. Each stipulation cleared away procedural obstacles to prompt Board action on some of the emergency planning issues.¹ The key aspect of the stipulations, as pertinent to this certification, is that the Intervenors agree not to litigate now many of their subcontentions based upon the Applicant's agreement to satisfy later twenty-six related commitments and to demonstrate that the commitments have been satisfied.

The Commitments

Applicant's commitments are set out in the attachment to this memorandum. They cover school evacuations, EPZ evacuation time estimates, protective actions, radiological emergency response training for emergency personnel, public information on emergency planning, notification of emergency personnel, discussions with local officials about their concerns, agreements among Applicant and emergency agencies and the evacuation of recreation areas and transport-dependent individuals.

¹ The Staff and Applicant withdrew their objections to most of the subcontentions. Those ripe for consideration were heard. The Intervenors acknowledged that two subcontentions were unjustified challenges to NRC regulations thereby permitting prompt dismissal of those issues.

Applicant agrees that it will satisfy the commitments before exceeding 5 percent power at Byron and will demonstrate to Intervenors that the commitments have been satisfied no later than 15 days after FEMA issues the findings upon which the NRC Staff relies to permit operation above 5 percent power. If Applicant prevails on all other issues in the proceeding, Intervenors agree not to object to the issuance of a full-power license for Byron based upon a claim that the emergency planning commitments have not been satisfied.

Enforcement of Commitments

Within 30 days following Applicant's notification to Intervenors that it believes it has satisfied the commitments, Intervenors may petition the Board for a hearing.² Before the Board may grant a hearing the Intervenors must make a prima facie showing that Applicant has not, will not or cannot satisfy one or more commitments. Intervenors may also request the Board to order Applicant to restrict Byron to 5 percent power or return to that level. After Applicant and Staff respond to Intervenors' request, the Board may order 5 percent power if

² Other provisions of the stipulation provided for Intervenors to notify Applicant and the Board that they cannot determine whether the commitments have been satisfied. These provisions could affect the 30-day period.

Intervenors have established that they are likely to prevail on the merits of their petition, that their interests will be irreparably damaged without such an order, and that the public interest requires the order. Although Applicant may appeal such an order, it agrees to comply with it during the appeal process.

C. Jurisdiction

All parties recognize that the stipulations could result in a hearing after the NRC has issued a full-power license for Byron. Applicant and Intervenors believe that there is significant doubt that Commission regulations, especially 10 CFR 2.717, grant licensing board jurisdiction to conduct hearings and to restrict power after full-power licensing, but that Section 2.717(a) anticipates that the Commission may extend the board's jurisdiction. Applicant and Intervenors request the Board to seek the extension.

The NRC Staff did not join in the Applicant/Intervenors' stipulation and request because it believes that it is unnecessary in that the Board may retain jurisdiction by deferring any ruling on whether the contentions underlying the commitments are admitted. However the Staff does not oppose the request by the Applicant and Intervenors for an express extension of jurisdiction.

The Applicant also joined in the Staff's version of the stipulation because it would not be prejudiced regardless of whether the

jurisdictional premise of the Staff stipulation is correct. The Intervenor, however, could not risk losing a forum for enforcing the commitments and therefore declined to join in the Staff's stipulation. But the Intervenor would be satisfied with appropriate assurances that the Board may retain pertinent jurisdiction after full-power licensing -- assurances which we cannot offer.

The better reasoned position is that the Board will probably lose all jurisdiction in the proceeding after the issuance of a full-power license by the NRC. We do not find definite guidance in Commission case law. The general tenor of Commission practice is that licensing boards may not authorize full-power operation until all issues before them are decided; that they lose jurisdiction when they decide all the issues; and that post-operational jurisdiction passes on to the NRC Staff.³

As noted, the Staff would have the Board retain jurisdiction by retaining potential issues, i.e., preserve the pendency of the motion to admit the late filed emergency planning issues. Apparently the Staff's position takes into account 10 CFR 50.57(c) which empowers boards to authorize operations above low power but "short of full power operation"

³ E.g., Carolina Power and Light Company (Shearon Harris, Units 1, 2, 3, and 4), CLI-80-12, 11 NRC 514, 516, citing Florida Power and Light Company (Turkey Point, Units 3 and 4), 4 AEC 9, 15-16 (1967) (boards may not direct the holding of hearings after a construction permit); Duquesne Light Company (Beaver Valley Unit 1), ALAB-408, 5 NRC 1383, 1386 (1977); 10 CFR 2.206; 10 CFR 2.60a; 10 CFR 50.57(c).

when it has decided the issues in controversy. Were the contentions to be admitted, they would have to be decided before power above low-power could be authorized by the licensing board pursuant to 10 CFR 50.57(c). While the Staff's approach is arguable, it is too slim a reed to justify assuming continued Board jurisdiction. We are mindful of the Commission's practice to construe narrowly the jurisdiction of its adjudicating boards.⁴

III. CONCLUSION AND RECOMMENDATION

The Licensing Board supports the stipulation of the Applicant and the Intervenors and recommends that the Commission extend the Board's jurisdiction to conduct any necessary hearings on the issue of whether the Applicant has satisfied or can and will satisfy its commitments. In the alternative the Board requests a clarification that it presently has the authority to retain jurisdiction to consider those issues. Only the issues embodied in the commitments would be litigated and the time within which a hearing on them may be requested is also limited.

Notwithstanding the provisions of 10 CFR 2.780 (ex parte communications) the parties have agreed and in fact request that the Chairman of the Atomic Safety and Licensing Board Panel may communicate directly

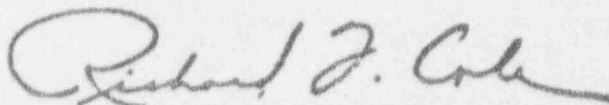
⁴ See Shearon Harris, supra, at 517.

with the Commission and the Office of General Counsel as appropriate to provide additional information.

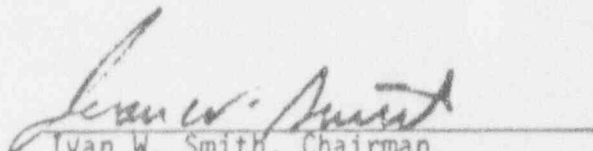
ATOMIC SAFETY AND LICENSING BOARD



Dixon Callihan
ADMINISTRATIVE JUDGE



Richard F. Cole
ADMINISTRATIVE JUDGE



Ivan W. Smith, Chairman
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland

June 17, 1983

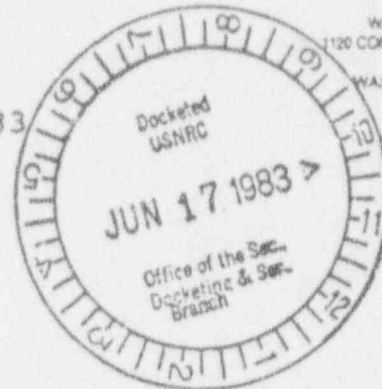
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June 14, 1983



Secretary
Attn: Chief, Docketing and
Service Section
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Commonwealth Edison Company (Byron Nuclear
Power Station Units 1 and 2)
Docket Nos. 50-454 OL and 50-455 OL

Dear Sir or Madam:

Please find enclosed for filing with the Commission
three copies of the following documents:

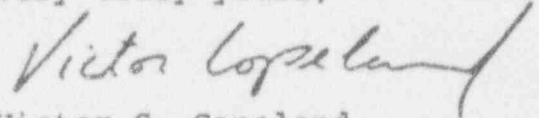
1. Memorandum, dated April 6, 1983, to
the Atomic Safety and Licensing Board,
from Alan P. Bielawski, Steven Goldberg
and Bryan Savage, regarding the Emergency
Planning Stipulation;
2. Stipulation, dated 3/30/83, executed by
Commonwealth Edison Company, DAARE/SAFE,
and the Rockford League of Women Voters;
with two attachments - one stating the
amended and consolidated emergency planning
contention and the other stating the commit-
ments that have been made regarding that
contention; and
3. Stipulation, undated, executed by Commonwealth
Edison Company and NRC Staff.

At the request of the Licensing Board in the
referenced proceeding, we are providing these copies to the

Secretary, U.S. NRC
June 14, 1983
Page 2

Secretary to accomplish their formal filing. These documents were previously served on the parties.

Very truly yours,



Victor G. Copeland

One of the attorneys for
Commonwealth Edison Company

VGC:mbn

Enclosure

cc: Per attached service list, with or without enclosure as indicated.

SERVICE LIST

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

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* With enclosure

All others without enclosure

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MEMORANDUM

TO: Atomic Safety and Licensing Board - Commonwealth
Edison Company
(Byron Station Operating License Docket Nos. 50-454 OL,
50-455 OL)

FROM: Alan P. Bielawski, Steven Goldberg
and Bryan Savage

SUBJECT: Emergency Planning Stipulation

DATE: April 6, 1983

The following is a chronology of events that led to the signing of the Stipulations regarding emergency planning contentions:

1. In 1979, DAARE/SAFE and the Rockford League of Women Voters were admitted as Intervenors in the Byron Station operating license proceedings. Both parties filed emergency planning contentions which were admitted as contested issues.
2. Early on, Commonwealth Edison Company served interrogations on these parties seeking to discover the facts on which Intervenors intended to rely in support of their contentions, and identification of any documentary or expert evidence in support thereof. Ultimately, the League's failure to respond to Edison's discovery led to the League's dismissal as a party by the Licensing Board. The Licensing Board's decision was eventually reversed by the Appeal Board, though the Appeal Board limited issues that the League could pursue at the hearings. For its part, DAARE/SAFE's response to the interrogatories consisted in large part of an identification

of various generic studies and reports regarding emergency planning; witnesses which DAARE/SAFE intended to present in support of its contention were not identified.

3. In mid-December, 1982, upon its publication, Intervenors were given access to a copy of the initial draft of the State of Illinois site specific emergency plan for Byron which consists of approximately 600 pages and was provided a copy of Edison's Evacuation Time Estimate Study. A copy of the State of Illinois plan was given to Intervenors in early January 1983.
4. Within two weeks of the start of the evidentiary hearings (March 1, 1983), Intervenors filed nine affidavits of individuals it intended to call as witnesses at the hearings, identified a number of additional individuals it intended to subpoena, and filed an "Amended and Consolidated" contention it sought to substitute for its existing emergency planning contentions. The Amended and Consolidated contention consisted of 13 subparts which focused more specifically upon the evidence Intervenors intended to present at the hearings on emergency planning matters.
5. Edison and the NRC Staff objected to the admission of Intervenors' late filed contention and its attempt to present witnesses at the hearing who had not been previously identified, claiming that Intervenors' failure to provide notice at an earlier date of its intentions severely prejudiced Edison's and the Staff's ability to present an effective response at the hearings. Intervenors claimed that they identified witnesses and filed their new contention as

soon as possible after receipt of the site specific emergency planning documents identified in paragraph 3 above. In the course of oral argument during the initial days of the hearings, the parties informed the Board that they were willing to discuss settlement possibilities. As a result the Board postponed deciding the dispute.

6. Following approximately three weeks of negotiation, the parties agreed upon a settlement. The parties agreed that they would litigate certain of the issues raised in Intervenor's amended and consolidated contention. In large measure, the issues selected for litigation concern disputes regarding interpretation of regulatory requirements and differences of opinion concerning methodological and philosophical approaches to emergency planning as well as certain factual disputes. The parties agreed that they would attempt to resolve the other issues informally. For the most part, these issues involved questions regarding the availability of emergency planning resources and steps that would be taken prior to conducting the FEMA emergency exercise. The mechanism selected for informal resolution consisted of Edison's making commitments to demonstrate to Intervenor, before the facility exceeded 5% power, that certain required aspects of the emergency plan were in place. Based on Edison's agreement to make these commitments, Intervenor agreed not to pursue litigation of various subparts of its amended and consolidated contentions.

7. Intervenors desired access to the Licensing Board to resolve any questions regarding whether Edison had satisfied its commitments. Inasmuch as the Board might be asked to resolve any such question following the Board's issuance of an initial decision authorizing full power operation and following the issuance of such a license by the NRC, the parties were concerned that the Board might not have the jurisdiction to conduct such post-licensing proceedings. Edison and Intervenors agreed that in view of the jurisdictional question, the Board should seek an order from the Commission which would grant the Board appropriate jurisdiction to enforce the stipulation.
8. The Staff agreed with the substantive objective of the Applicant-Intervenor stipulation. The Staff did not agree with the procedural vehicle for implementing that objective. The Applicant-Intervenor stipulation is predicated on the presumptive inability of the Licensing Board to entertain a post-initial decision motion to reopen the record and formally requests the Board (via the certification route) to obtain the necessary jurisdiction from the Commission pursuant to section 2.717. The proposed Staff stipulation is predicated on the presumptive ability of the Board to retain jurisdiction over a motion (to amend contentions in this case) filed prior to its rendition of an initial decision, which decision is specifically conditioned on the eventual post-decisional disposition of such motion.

The Staff believes that its proposed stipulation conforms with established NRC practice and procedure and would obviate the necessity to pursue the exceptional course of formally certifying the jurisdictional issue raised in the Applicant-Intervenor stipulation to the Commission. The Staff position on the Applicant-Intervenor stipulation is also influenced by the opinion that resort to formal Commission certification is premature given the distinct possibility that the subject matter of the stipulation can be resolved in such a timeframe that it would not adversely affect plant operational readiness and during the pendency of the case before the Board.

9. Intervenors are concerned about the manner in which Staff's stipulation addresses the jurisdictional question because it relies upon a mere presumption that the Licensing Board will have jurisdiction if the Intervenors submit a petition to reopen the hearing. Intervenors therefore prefer that the jurisdictional question be certified to the Commission and that the Commission confer appropriate jurisdiction on the Licensing Board to enforce the Applicant-Intervenor stipulation. However, if the Commission provides adequate assurance to Intervenors that the Board is authorized to enforce the Staff stipulation, Intervenors are willing to join that stipulation.
10. During the April 1 hearing session, the Board offered to elicit an informal opinion from the Commission or its officers on the acceptability of either the Applicant-Intervenor stipulation or proposed Staff stipulation, or both. The parties have no objection to such a course of action.

3/30/83

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

STIPULATION

The DeKalb Area Alliance for Responsible Energy, the Sinnissippi Alliance For the Environment, the Rockford League of Women Voters (hereinafter jointly referred to as "Intervenors"), Commonwealth Edison Company ("Edison") and the Nuclear Regulatory Commission Staff ("Staff") agree and stipulate that the issues raised in Intervenors' emergency planning contentions, previously admitted in this proceeding, and the "Amended and Consolidate" emergency planning contention, which Intervenors seek to have admitted in this proceeding, should be resolved in the following manner.

1. WITHDRAWAL OF OLD CONTENTIONS.

Intervenors agree to withdraw DAARE/SAFE Contention 3 and League Contentions 19 and 108 previously admitted as contested issues in this proceeding.

2. WITHDRAWAL OF OPPOSITION TO ADMISSION OF PORTIONS OF AMENDED AND CONSOLIDATED CONTENTIONS.

Edison and the Staff agree to withdraw their opposition except as provided in paragraph 2(a) below, to the admission of Intervenor's amended and consolidated contentions, as worded in Attachment 1 hereto.

(a) Edison and the Staff object to the admission of ¶11 and ¶12 on the ground that these paragraphs constitute challenges to Commission regulations. Intervenor's agree that these paragraphs constitute challenges to Commission regulations and that they have not made the showing of special circumstances as required by 10 CFR §2.758 to permit litigation of these issues in this proceeding.*

(b) Intervenor's agree to withdraw ¶2(1) as an issue to be litigated in this proceeding.

3. LITIGATION OF CONTENTIONS.

(a) Beginning the week of April 18, 1983, the parties agree to litigate the following paragraphs, or

*
/ Intervenor's willingness to reword ¶12 as a challenge to the Commission's regulations is based on Edison's agreeing to Commitment W, included in Attachment 2.

portions of paragraphs, set forth in Attachment 1:

(i) ¶2(c), (e) and (k)

(ii) ¶3

(iii) ¶8

(iv) ¶10

(v) ¶13

- (b) By March 18, 1983 the parties will provide the names of witnesses they expect to call for the purposes of litigating the issues raised in the paragraphs identified in 3(a) above.
- (c) By March 23, 1983 the parties agree to file any discovery requests pertaining to the issues identified in 3(a) above. Discovery shall be limited to document production and deposition requests. The parties agree to cooperate in providing such discovery so as to enable litigation of the issues identified in 3(a) above.
- (d) The parties agree to file any prefiled testimony, or supplement existing prefiled testimony, on the issues identified in 3(a) above by April 11, 1983.
- (e) Edison and the NRC Staff agree not to object to the admission of the affidavits bearing on emergency planning issues which have previously been filed by Intervenors based upon any alleged discovery violations. Edison and the NRC Staff reserve the right to object to the admission of the affidavits, or portions thereof, into the hearing record on all other grounds (e.g., relevance of testimony to contentions, hearsay, cumulative nature of testimony, etc.).

4. PROCESS FOR INFORMAL RESOLUTION OF REMAINING CONTENTIONS.

(a) Intervenors agree not to litigate the issues raised in the following paragraphs, contained in Attachment 1, based on Edison's agreement to satisfy the commitments attached as Attachment 2 (hereinafter "Commitments").

(i) ¶1

(ii) ¶2(a), (b), (d), (f), (g), (h), (j), (l), (m), and (n)

(iii) ¶4

(iv) ¶5

(v) ¶6

(vi) ¶7

(vii) ¶9

(b) Edison and Intervenors agree to cooperate in good faith to resolve questions regarding the manner in which Edison intends to meet the Commitments. Such good faith cooperation shall include:

(i) Scheduling meetings between CECo and Intervenors on a regular basis to exchange information so as to permit Intervenors' independent assessment that progress on satisfying Commitments is being made. Edison also agrees to make available to Intervenors relevant emergency planning documents which are available to Edison and to procure relevant documents which are not in its possession but which can be obtained. In addition, Edison will provide Intervenors with projected completion dates for resolving Commitments when formulated.

- (11) Use of Edison's best efforts to provide Intervenors access on a regular basis to emergency planning officials, so as to permit Intervenors' independent assessment that resolution of emergency planning issues is progressing.
- (c) Edison agrees that the Commitments will be satisfied before the Byron Station exceeds 5% power.
- (d) The parties recognize the possibility that they may ultimately disagree as to whether Edison has met, or can or will meet, all the Commitments in the time frame provided in 4(c) above. If this occurs Intervenors may request that the Licensing Board resolve said disagreement as provided in paragraph 6 of this Stipulation. Edison agrees to notify Intervenors in writing when it believes a Commitment has been satisfied and to set forth in reasonable detail the basis for such belief. Edison further agrees to provide such a notice with respect to all of the Commitments no later than 15 days after the issuance of findings by FEMA on which the NRC Staff relies to permit operation of the Byron Station at a level above 5% power. Intervenors agree to notify Edison in writing within 15 days of their receipt of a notice from Edison that a Commitment has been satisfied, of Intervenors' agreement

or disagreement whether the Commitment has been satisfied. If, despite having exercised reasonable diligence, it is not possible for Intervenors to determine whether a Commitment has been met within the 15 day period, Intervenors will so notify Edison. By failing to notify Edison of their disagreement, or inability to determine disagreement, or by submitting a notice that they agree that a Commitment has been satisfied, Intervenors will have waived any rights they may have had with respect to litigating the Commitments in question.

5. EFFECT OF ISSUANCE OF INITIAL DECISION.

If the Board issues a decision in favor of Edison with respect to (1) the issues litigated pursuant to paragraph 3 above, and (2) all other non-emergency planning issues, then, except as provided in paragraph 6 below, Intervenors agree not to object, before the Licensing Board or any other judicial or administrative forum, to Board authorization that a full power operating license be issued or to NRC issuance of a full power license based on a claim that the provisions of paragraph 4 have not been complied with.

6. PROCEEDINGS TO ENFORCE COMMITMENTS.

(a) Except as provided herein, Intervenors may petition the Board for a hearing at any time they believe Edison has not met or can or will not satisfy a Commitment. No later than 30 days after Intervenors' receipt of the notice from Edison, required by section 4(d) of this Stipulation, which establishes that Edison believes that all Commitments have been satisfied,

Intervenors may petition the Licensing Board for a hearing on the issue whether Edison has satisfied any of the Commitments. This 30 day period may be extended only on a showing by Intervenors that despite exercising due diligence in determining whether a Commitment, has been satisfied, it was not possible for Intervenors to establish Edison's failure to satisfy a Commitment within the 30 day period.

Intervenors shall be entitled to a hearing if, based on its petition and supporting affidavits, it makes a prima facie showing that Edison has not satisfied or will not or cannot satisfy one or more of the Commitments. If the Board decides Intervenors are entitled to a hearing on the issue of whether Edison has satisfied a Commitment, the parties shall be entitled to move for summary disposition of that issue.

- (ii) Intervenors may also petition the Licensing Board to order that operation of Byron be restricted to 5% power prior to a full evidentiary hearing on the question whether Edison has satisfied a Commitment. The Board may enter such an order if it finds, based on Intervenors' petition and Edison's and the Staff's responses thereto, that Intervenors have made a strong showing that they are likely to prevail on the merits, that Intervenors' interests will be irreparably injured unless the order is granted, and that the public interest requires the issuance of such an order.

- (111) If the Licensing Board grants Intervenor's a hearing pursuant to 6(a) (1) above, and following the hearing, the Board finds that Edison has failed to satisfy the Commitment in question, it may enter such orders as may be appropriate. Edison recognizes that such an order may require that a Commitment be satisfied or that Edison restrict operation of Byron to a level not to exceed 5% power. The burden of proof in any hearings pursuant to this section shall be as provided in 10 CFR §2.732.
- (iv) All orders, rulings, and decisions, entered pursuant to this Stipulation shall be subject to full appellate rights.
- (b) The parties recognize that the process described in 6(a) above may result in the Licensing Board holding hearings and seeking to enforce Commitments following the issuance of an initial decision by the Board authorizing the issuance of a full power operating license for the Byron Station and following the issuance of such a license by the NRC. In the opinion of the parties, there is significant doubt as to whether the Commission's Rules of Practice (specifically 10 CFR §2.717) and pertinent Commission decisions grant the Licensing Board the jurisdiction to order such hearings or restrict operation of a licensed facility. However, 10 CFR §2.717 contemplates that the Commission may modify the Licensing Board's jurisdiction in appropriate circumstances. Accordingly, the parties agree to jointly petition the Licensing Board to certify the question to the Commission and to request that the Commission grant the Licensing Board the jurisdiction necessary to fulfill the

provisions of this Stipulation. By approving this Stipulation the Licensing Board signifies its willingness to certify the question to the Commission seeking appropriate jurisdiction.

7. INTENT OF THE PARTIES.

The parties agree to proceed in good faith to attempt to accomplish the purposes of this Stipulation.

COMMONWEALTH EDISON COMPANY

By: Al Bilal Date: 4/5/83

DAARE/SAFE

By: Bryan F. Savage Date: 4/14/83

ROCKFORD LEAGUE OF WOMEN VOTERS

By: Bette Johnson Date: 4/14/83

NRC STAFF

By: _____ Date: _____

ATTACHMENT 1

The Emergency Plans for the Byron Station contains the following defects which will prohibit the Atomic Licensing and Safety Board from making the findings of fact required by 10 CFR Sections 50.47 (a), 50.57 (a) (3) (1), and 50.57 (a) (6):

1. In violation of 10 CFR Section 50.47 (b) (10), the evacuation plans for public and private schools within the EPZ do not adequately address the fact that these schools lack the communication systems necessary to initiate and coordinate an evacuation; that they lack a sufficient number of buses and support personnel to conduct a safe evacuation; that they cannot coordinate their efforts during an evacuation in order to render mutual aid; and that there is no reliable means of notifying school administrators that an evacuation should be conducted.
2. In violation of 10 CFR Section 50.47 (b) (10), Commonwealth Edison's "Evacuation Time Estimates for the Plume Exposure Pathway Emergency Planning Zone of the Byron Nuclear Generating Station" does not conform to NUREG 0654, Appendix 4 and will not provide accurate or useful guidelines for the choice of protective actions during an emergency because the study:
 - (a) uses fallacious transient population figures;
 - (b) does not indicate all of the actual assumptions which underlie the time estimates;

- (c) does not address the relative significance of alternative assumptions;
 - (d) does not make evacuation time estimates for each special facility on an individual basis;
 - (e) does not consider the impact of peak populations, including behavioral aspects;
 - (f) does not make any substantial recommendations for actions that could be taken to significantly improve evacuation time;
 - (g) does not contain comments from the principle organizations resulting from their review of a draft time estimate study;
 - (h) does not translate population data into auto-owning and transportation-dependent groups;
 - (i) does not give attention to special services required by households not owning autos;
 - (j) does not describe the means of transportation available to each special facility;
 - (k) does not use site weather characteristics as presented in the FSAR;
 - (l) falsely claims to have obtained mobilization and loading times for special facilities from administrators of those facilities;
 - (m) incorrectly assumes that IPRA Byron, Revision 0 has made adequate provisions for the evacuation of special facilities and the general populace;
- and

(n) makes further assumptions which contradict IPRA Byron, Revision O, and the Byron Annex to the GSEP.

3. In violation of 10 CRF Section 50.47 (b) (12), emergency planning for the Byron Station EPZ does not sufficiently address the fact that there are inadequate medical facilities to provide the equipment and trained personnel necessary to care for contaminated injured persons; that there are insufficient procedures for the screening, treatment, and isolation of persons sustaining radiological injuries; and that there is an insufficient number of materials, supplies, equipment, and vehicles to provide for the transportation of injured persons during a radiological disaster.
4. In violation of 10 CRF Section 50.47 (b) (10) the emergency planning for the Byron Station fails to include an adequate means for protecting those persons requiring special transportation considerations. The proposed evacuation plans state that local school districts, the Oregon police, and the Oregon Ambulance Service will provide transportation for camps, homebound and nursing home patients, and other special concerns despite the fact that all three of these organizations are already burdened with responsibilities which overestimate their capabilities and overtax their resources. Furthermore, comprehensive lists of shut-in populations and their specific transportation needs are not available; there has been no analysis conducted regarding the feasibility of sheltering or

as protective action. There are no provisions for relocation of those whose medical needs require hospitalization. There is no differentiation of host facilities to meet specific needs of individual populations. There are no provisions in the plans concerning the method to be used in distributing radioprotective drugs to mobility impaired individuals.

5. In violation of 10 CFR 50.47 (b) (1), (2), (3), and (12), the emergency planning for the Byron Station and the Byron Station EPZ does not include written agreements identifying the emergency measures to be provided and mutually accepted criteria for the implementation of procedures by support organizations having an emergency response role either inside or outside the EPZ.
6. In violation of 10 CFR 50.47 (b) (15), radiological emergency response training has not been provided to all response organizations and individuals who may be called upon to assist in an emergency, viz., directors and coordinators of the response organizations; first aid and rescue personnel; local support services personnel; medical support personnel; and those offsite organizations having mutual aid agreements with local agencies.
7. In violation of 10 CFR 50.47 (b) (7), emergency planning for the Byron Station has yet to include adequate dissemination of accurate information to the public regarding the effects of radiation, protective measures to be taken during an emergency,

or the special needs of the handicapped; nor has adequate assurance been presented as to the method, manner, and text of the publications to be posted for the information of the transient populations.

8. In violation of 10 CFR 50.47 (b) (10), emergency plans are incapable of offering sufficient guidance for the choice of protective actions during an emergency since applicant and state planners have yet to adequately determine the local protection afforded (in dose reduction) by various protective measures including evacuation, sheltering, and radioactive prophylaxis.
9. In violation of 10 CFR 50.47 (b) (5) and (6), emergency planning for the Byron Station does not adequately provide for notification or communication of and between emergency response organizations and personnel so as to assure that communications necessary to timely and prompt evacuation can be implemented effectively.
10. The emergency planning relies too heavily upon volunteer personnel to effect an evacuation. The emergency plans fail to indicate the number of volunteer personnel who are necessary or available to perform the responsibilities assigned to them. Furthermore, the plans do not:
 - (a) assess the availability of volunteers during hours in which many are employed outside the EPZ;
 - (b) take into consideration inevitable personal conflicts in the responses of volunteers who have families in the EPZ;and

- (c) give consideration to the possibility that some volunteers who might perform well in non-radiological disasters might refuse to participate in a radiological disaster at the Byron Station.
11. The Licensing Board cannot make findings regarding the adequacy of emergency planning for Byron until after the plans have been tested during an exercise and until after FEMA has issued its findings regarding the plan.
 12. Emergency planning beyond the EPZ is a recognition of the residual risk associated with major reactor accidents whose consequences could exceed those associated with so-called design basis events. Because the major metropolitan areas which are located beyond 10 miles from Byron in the Byron region are not included in the plume exposure EPZ, the emergency plans are inadequate.
 13. In violation of 10 CFR 50.47 (b) (1), the emergency plans, specific tasks, and responsibilities have been formulated without sufficient communication between planning officials and primary and support response organizations so as to enable said organizations to fulfill their assigned roles.

ATTACHMENT 2

Commitments Regarding Proposed
Emergency Planning Contention 1

Goal:

I. To demonstrate that all public and private schools within the plume exposure EPZ have been identified and that the transportation and communication resources necessary to accomplish evacuation are available and provide reasonable assurance that the health and safety of students is adequately protected.

Commitments:

A. Demonstrate that the school officials who would be called upon to effectuate evacuation of the specific school population have been identified, and informed of the details of the evacuation plan applicable to his/her assigned responsibilities and that there is reasonable assurance that they will be able to fulfill such responsibilities.

B. Demonstrate that adequate notification facilities exist to notify school officials that it may be necessary to implement protective measures.

C. Demonstrate that adequate communications facilities exist to enable the local emergency response officials to contact and coordinate the activities of others whose assistance is necessary to effectuate evacuation of the school population.

D. Demonstrate that adequate transportation resources to effectuate school evacuation are available, such that there is reasonable assurance that the health and safety of students is adequately protected.

E. Where effecting evacuation is dependent upon utilization of resources other than those of the specific school district, demonstrate that these resources are available, that plans include the means to coordinate such mutual aid and that those responsible for the resources are informed and capable of executing their role in the emergency plan.

Commitments Regarding Proposed
Emergency Planning Contention 2(a),
(b), (d), (f), (g), (h), (j), (l), (m) and (n).

Goal

II. To demonstrate that the estimates contained in "Evacuation Time Estimates for the Plume Exposure Pathway Emergency Planning Zone of the Byron Nuclear Generating Station", including any changes, modifications or supplements thereto, provide a reasonable basis for recommending and deciding on protective actions.

Commitments

F. Demonstrate that the transient population figures used in the study are representative of conditions which are likely to exist during an evacuation.

G. Demonstrate that the principal assumptions used in developing the estimates are stated and defensible.

H. Demonstrate that specific recommendations for actions that could significantly improve evacuation time have been considered where feasible, or that such consideration is not warranted.

I. Demonstrate that comments with respect to the evacuation study from the principal emergency response organizations (Illinois ESDA and Ogle County ESDA) have been solicited and that the study takes these comments into consideration.

J. Demonstrate that the assumptions regarding the availability of autos to permanent residents are justified and that public transport-dependent populations have been considered in devising the estimates.

K. Demonstrate that there are no inconsistencies between the study and applicable portions of IPRA and GSEP which would significantly impact the reliability of the estimates.

L. Demonstrate that an Annex to the Evacuation Time Estimates Study has been developed which presents specific evacuation feasibility analyses for appropriate special facilities such that there is reasonable assurance that in the event of an evacuation of a special facility the health and safety of its residents can be adequately protected.

Commitments Regarding Proposed
Emergency Planning Contention 4

Goal

III. To demonstrate that IPRA includes guidelines for the choice of protective actions which adequately address concerns relating to protective measures to be taken for special transportation-dependent populations.

Commitments

M. Demonstrate that IPRA includes adequate provisions for alternate protective actions, in the event evacuation of homebound and nursing home patients is infeasible.

N. Demonstrate that there has been assessment of the number and location of special transportation-dependent individuals and that this information is available to Ogle County emergency response officials.

O. Demonstrate that, in the event evacuation of homebound and nursing home patients is necessary for those individuals whose medical needs require special care, there is reasonable assurance that adequate facilities to safely transport and host these individuals are available.

Commitment Regarding
Proposed Emergency Planning Contention 6

Commitment

P. Demonstrate that adequate radiological emergency response training has been made available and retraining will be made available to all response organizations and individuals who may be called upon to assist in an emergency, viz., directors and coordinators of the response organizations; first aid and rescue personnel; local support services personnel; medical support personnel; and those other offsite organizations identified in IPRA having mutual aid agreements or arrangements with local agencies.

Commitments Regarding Proposed
Emergency Planning Contention 7

Goal

IV. To demonstrate that there are adequate provisions to make accurate information available to the public regarding emergency planning.

Commitments

Q. Demonstrate that the public has received and will continue to receive on a periodic basis educational information on radiation.

R. Demonstrate that the public has received and will continue to receive on a periodic basis accurate information regarding the protective measures to be taken during an emergency.

S. Demonstrate that the public has received and will continue to receive on a periodic basis accurate information regarding special measures with respect to handicapped individuals to be taken during an emergency.

T. Demonstrate that adequate information has been made available and will be available on a periodic basis to transient populations.

Commitments Regarding
Emergency Planning Contention 9

Commitments

U. Demonstrate that there are adequate resources and procedures to effectuate notification by Edison of state and county emergency response organizations, and for notification of emergency personnel by these organizations.

V. Demonstrate that adequate communications capabilities exist for the Ogle County Emergency response organization.

Commitment Regarding Emergency
Planning Contention 12

Commitment:

- W.(a) Edison agrees to contact and make its personnel with knowledge of the Byron emergency plan available to the mayors of Rochelle, Dixon and Rockford to discuss emergency planning measures. Specifically, Edison agrees to discuss concerns identified by these officials related to emergency planning for Byron. In order to aid these officials in identifying concerns, Edison will send the mayor of Rochelle, Dixon and Rockford the following information:
- (i) a description and explanation of protective and parallel actions to be taken during an emergency;
 - (ii) a description and explanation of what would be required of each of the cities if they were designated as a host for evacuees;
 - (iii) a description and explanation of measures to be taken by the state for the ingestion exposure pathway;
 - (iv) relevant information on the planning bases for IPRA; and
 - (v) the complete procedure for protection and parallel actions to be followed by the city of Oregon.
- (b) Demonstrate that the Byron Station public information brochure has been made available to the mayors of Rockford, Rochelle and Dixon.
- (c) Edison further agrees to critically review any material, plans or proposals about protection action submitted to them by the mayors of Rockford, Rochelle and Dixon.

(d) Edison further agrees to demonstrate that it has developed an adequate procedure to assure that as new mayors of these communities take office they will be provided with the information described above and that Edison will make its personnel available to discuss emergency planning issues.

Commitment Regarding
Emergency Planning Contention 5

Commitment:

X. Demonstrate that there exist appropriate agreements and arrangements between Edison and those individuals and organizations who will provide emergency services to the Byron facility.

Additional Commitments Regarding
Emergency Planning Contention 4

Y. Demonstrate that IPRA includes adequate provisions to effectuate the evacuation of recreation areas with identifiable transport-dependent populations such that there is reasonable assurance that the health and safety of these individuals is adequately protected.

Z. Demonstrate that IPRA includes reasonable provisions to effectuate the evacuation of transport-dependent individuals.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

Docket Nos. 50-454 OL
50-455 OL

STIPULATION

The DeKalb Area Alliance for Responsible Energy, the Sinnissippi Alliance For the Environment, the Rockford League of Women Voters (hereinafter jointly referred to as "Intervenors"), Commonwealth Edison Company ("Edison") and the Nuclear Regulatory Commissions Staff ("Staff") agree and stipulate that the issues raised in Intervenors' emergency planning contentions, previously admitted in this proceeding, and in the Intervenors' "Motion to Amend and Cor 'idate" emergency planning contentions ("Motion to Amend"), dated uary 21, 1983, should be resolved in the following manner.

1. WITHDRAWAL OF OLD CONTENTIONS.

Intervenors agree to withdraw DAARE/SAFE Contention 3 and League Contentions 19 and 108 previously admitted as contested issues in this proceeding.

2. WITHDRAWAL OF OPPOSITION TO GRANT OF MOTION TO AMEND, IN PART, AND REQUEST TO DEFER RULING ON BALANCE OF MOTION.

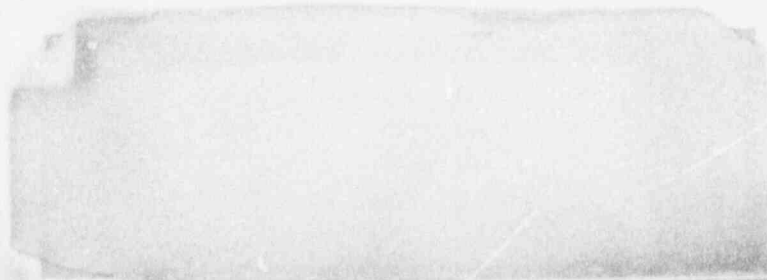
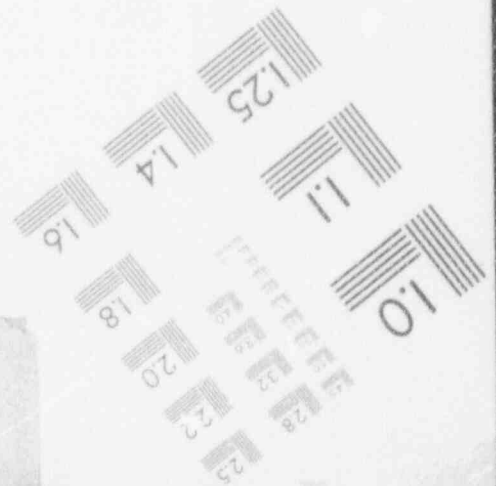
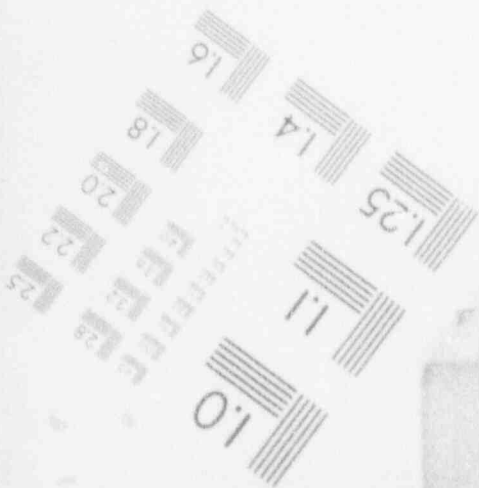
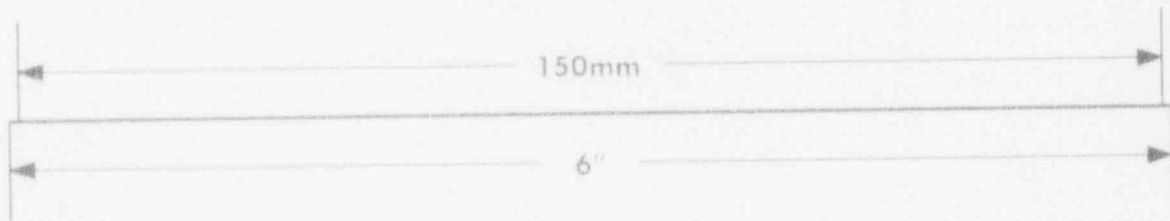
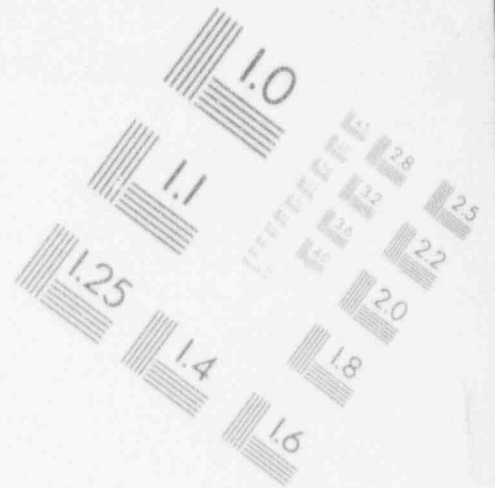
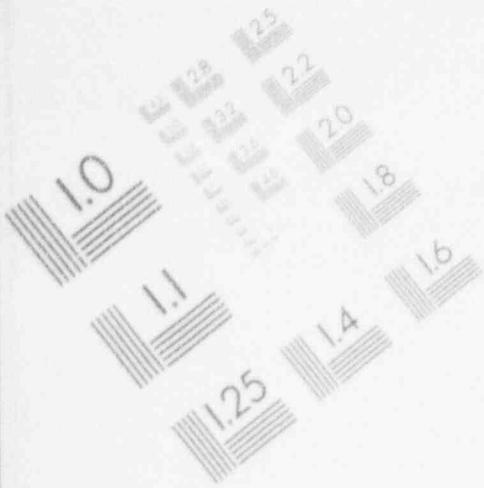
The amended and consolidated contentions proposed in the Intervenors' Motion to Amend are set forth in Attachment 1 hereto. Edison and the Staff agree to withdraw their opposition, except as provided in paragraph 2(a) below, to the admission of those Intervenors' amended and consolidated contentions demonimated in paragraph 3(a) below. Edison and the Staff agree to withdraw their opposition to the admission of any or all of those proposed amended and consolidated contentions demonimated in paragraph 4(a) below for which Intervenors may seek an eventual ruling pursuant to paragraph 6 below.

- (a) Edison and Staff object to the admission of ¶11 and ¶12 on the ground that these paragraphs constitute challenges to Commission regulations. Intervenors agree that these paragraphs constitute challenges to Commission regulations and that they have not made the showing of special circumstances as required by 10 CFR §2.758 to permit litigation of these issues in this proceeding.*
- (b) Intervenors agree to withdraw ¶2(i) as an issue to be litigated in this proceeding.
- (c) The parties request deferral of a ruling on the admissibility of the balance of the proposed amended and

* Intervenors' willingness to reword ¶12 as a challenge to the Commission's regulations is based on Edison's agreeing to Commitment, W, included in Attachment 2.

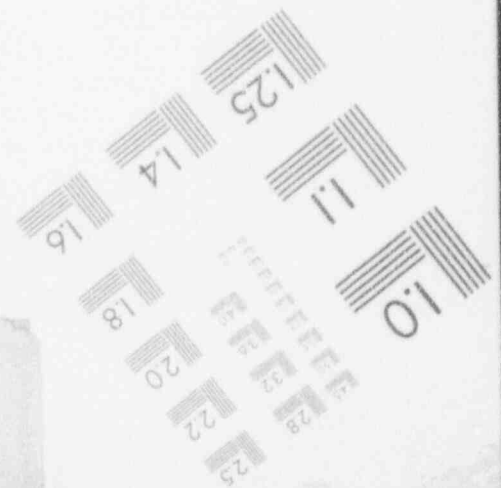
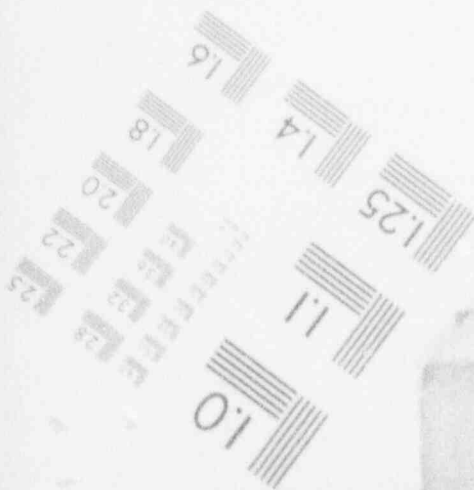
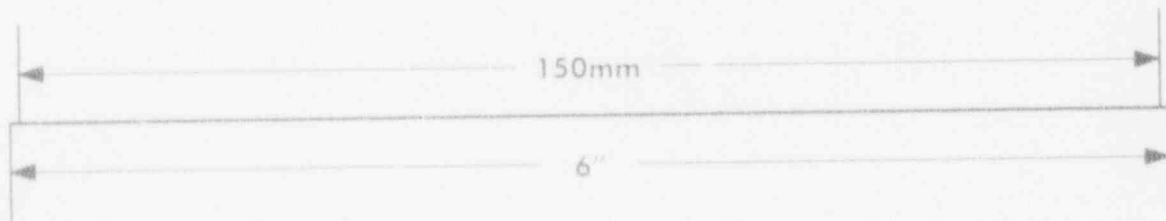
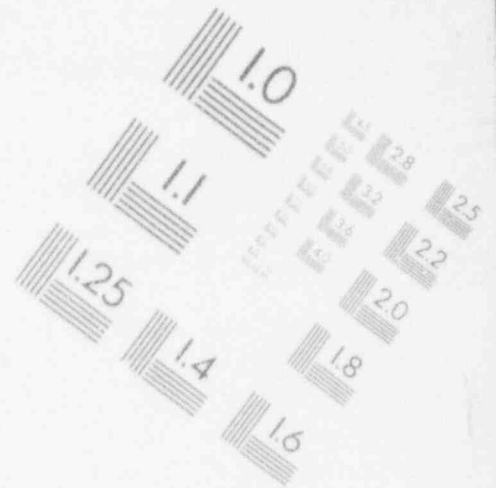
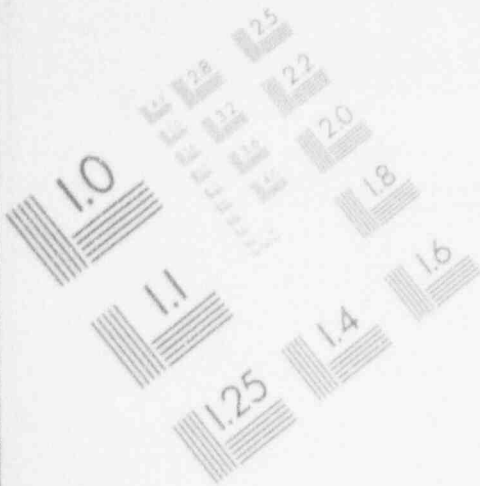
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IMAGE EVALUATION TEST TARGET (MT-3)



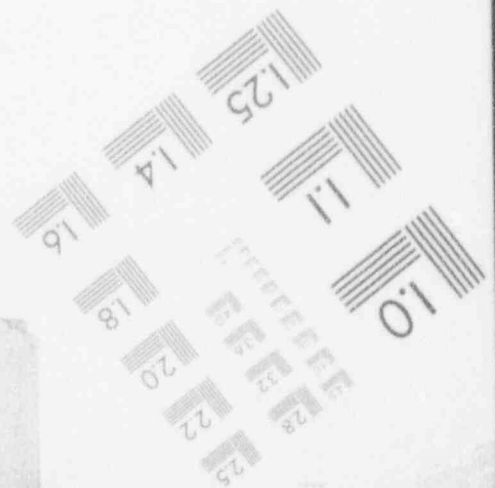
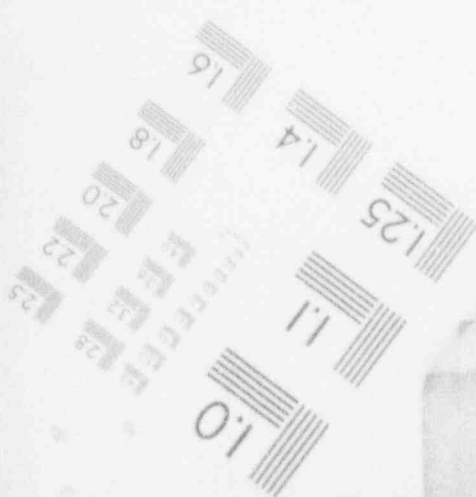
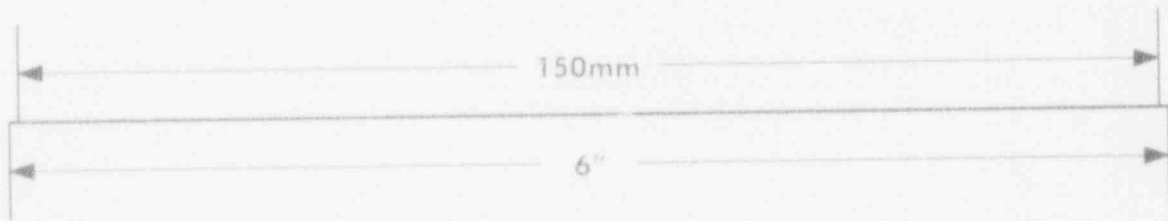
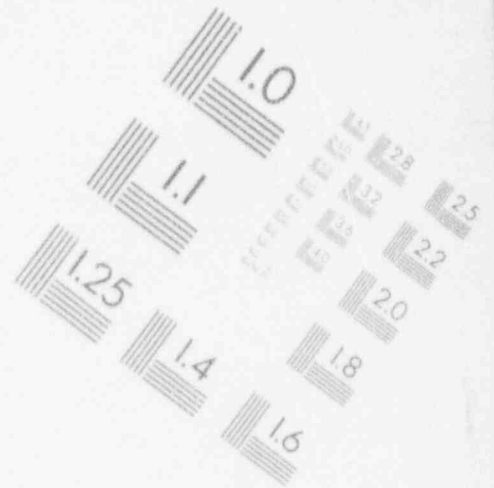
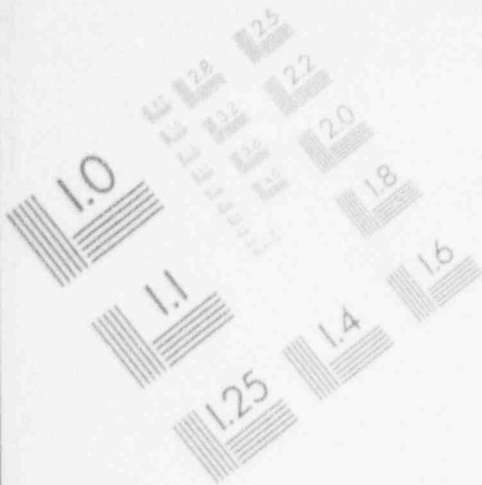
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IMAGE EVALUATION TEST TARGET (MT-3)



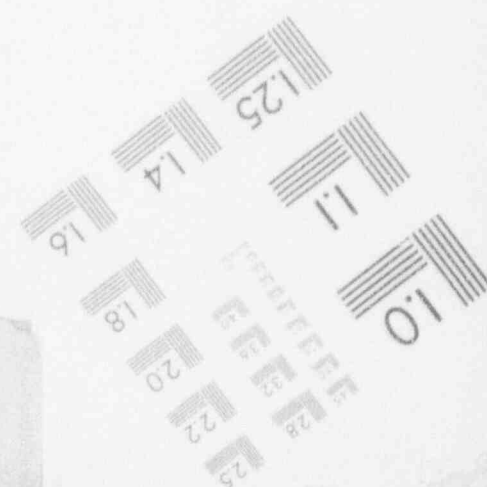
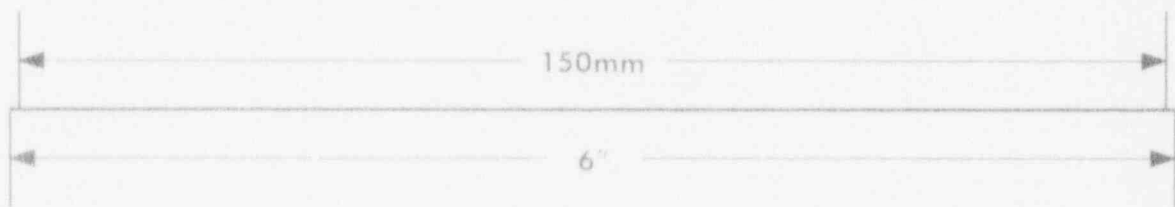
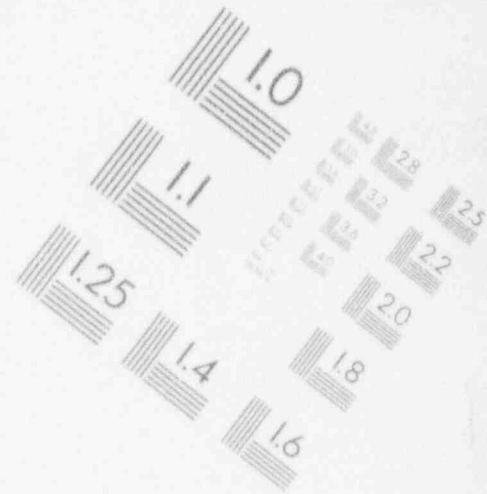
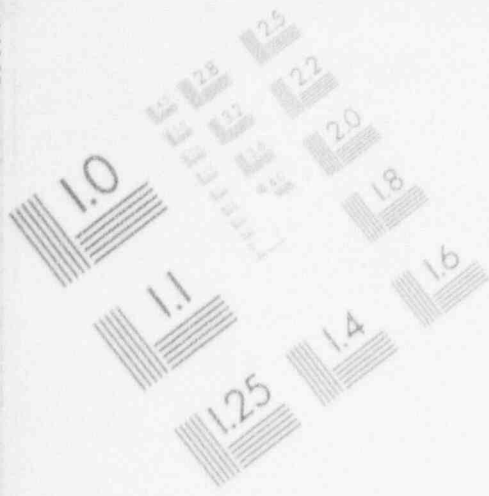
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IMAGE EVALUATION TEST TARGET (MT-3)



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IMAGE EVALUATION TEST TARGET (MT-3)



consolidated contentions, demonimated in paragraph 4(a) below, in furtherance of their informal resolution as provided in paragraph 4(a) below.

3. LITIGATION OF CONTENTIONS.

- (a) Beginning the week of April 18, 1983, the parties agree to litigate the following paragraphs, or portions of paragraphs, set forth in Attachment 1:
 - (i) ¶2(c), (e) and (k)
 - (ii) ¶3
 - (iii) ¶8
 - (iv) ¶10
 - (v) ¶13
- (b) The parties have provided to one another the names of witnesses they expect to call for the purposes of litigating the issues raised in the paragraphs identified in 3(a) above.
- (c) The parties have filed any discovery requests pertaining to the issues identified in 3(a) above. Discovery shall be limited to document production and deposition requests. The parties agree to cooperate in providing such discovery so as to enable litigation of the issues identified in 3(a) above.
- (d) The parties agree to file any prefiled testimony, or supplement existing prefiled testimony, on the issues identified in 3(a) above by April 11, 1983.

(e) Edison and the NRC Staff agree not to object to the admission of the affidavits bearing on emergency planning issues which have previously been filed by Intervenor based upon any alleged discovery violations. Edison and the NRC Staff reserve the right to object to the admission of the affidavits, or portions thereof, into the hearing record on all other grounds (e.g., relevance of testimony to contentions, hearsay, cumulative nature of testimony, etc.).

4. PROCESS FOR INFORMAL RESOLUTION OF REMAINING PROPOSED CONTENTIONS.

(a) Attached as Attachment 2 is a list of commitments (hereinafter "Commitments") which, if met by Edison, will accommodate Intervenor's concerns raised in the following paragraphs and thereby eliminate any need for their admission as contested issues in this proceeding.

(i) ¶1

(ii) ¶2(a), (b), (d), (f), (g), (h),

(j), (l), (m), and (n)

(iii) ¶4

(iv) ¶5

(v) ¶6

(vi) ¶7

(vii) ¶9

Intervenor's therefore agree not to seek a Licensing Board ruling on the admission of these paragraphs of the proposed amended contentions except as provided in Section 6 below.

(b) Edison and Intervenors agree to cooperate in good faith to resolve questions regarding the manner in which Edison intends to meet the Commitments. Such good faith cooperation shall include:

(1) Scheduling meetings between CECo and Intervenors on a regular basis to exchange information so as to permit Intervenors' independent assessment that progress on satisfying Commitments is being made. Edison also agrees to make available to Intervenors relevant emergency planning documents which are available to Edison and to procure relevant documents which are not in its possession which can be obtained. In addition, Edison will provide Intervenors with projected completion dates for resolving Commitments when formulated.

(11) Use of Edison's best efforts to provide Intervenors access on a regular basis to emergency planning officials, so as to permit Intervenors' independent assessment that resolution of emergency planning issues is progressing.

(c) Edison agrees that the Commitments will be satisfied before the Byron Station exceeds 5% power.

(d) The parties recognize the possibility that they may ultimately disagree as to whether Edison has met, or can or will meet, all the Commitments in the time frame provided in 4(c) above. If this occurs Intervenors may request that the Licensing Board rule on the

admissibility of the underlying proposed contentions as provided in paragraph 6 of this Stipulation. Edison agrees to notify Intervenors in writing when it believes a Commitment has been satisfied and to set forth in reasonable detail the basis for such belief. Edison further agrees to provide such a notice with respect to all of the Commitments no later than 15 days after the issuance of findings by FEMA on which the NRC Staff relies to permit operation of the Byron Station at a level above 5% power. Intervenors agree to notify Edison in writing within 15 days of their receipt of a notice from Edison that a Commitment has been satisfied, of Intervenors' agreement or disagreement whether the Commitment has been satisfied. If despite exercising reasonable diligence, it is not possible for Intervenors to determine whether a Commitment has been met within the 15 day period, Intervenors will so notify Edison. By failing to notify Edison of their disagreement, or inability to determine disagreement, or by submitting a notice that they agree that a Commitment has been satisfied, Intervenors will have waived any rights they may have had with respect to litigating the Commitments in question.

5. EFFECT OF ISSUANCE OF INITIAL DECISION.

If the Board issues a decision in favor of Edison with respect to (1) the issues litigated pursuant to paragraph 3 above, and (2) all other non-emergency planning issues, and subject to the license condition set forth in paragraph 6(b) below than, except as provided in paragraph 6 below, Intervenor's agree not to object, before the Licensing Board or any other judicial or administrative forum, to Board authorization that a full power operating license be issued or to NRC issuance of a full power license based on a claim that the provisions of paragraph 4 have not been complied with.

6. FINAL DISPOSITION OF OUTSTANDING PORTION OF MOTION TO AMEND.

(a) Except as provided herein, Intervenor's may request this Licensing Board in writing to rule on the outstanding portion of the Intervenor's Motion to Amend and to reopen the record for a hearing at anytime on the issue whether Edison has not met or can or will not satisfy any commitment(s) relative to the proposed contentions denominated in section 4(a) above. Notwithstanding the foregoing, no later than 30 days after Intervenor's receipt of the notice from Edison, required by Section 4(d) of this Stipulation, which establishes that Edison believes that all Commitments have been satisfied, Intervenor's may request the Licensing Board in writing to rule on the outstanding portion of Intervenor's Motion to Amend and to reopen the record for a hearing on the issue whether Edison has satisfied any of the Commitments relative to the proposed Contentions denominated in

section 4(a) above. This 30 day period may be extended only on a showing by Intervenors that despite exercising due diligence in determining whether a Commitment has been satisfied, it was not possible for Intervenors to establish Edison's failure to satisfy a Commitment within the 30 day period. In the absence of any such request, the motion shall be deemed withdrawn and a Licensing Board decision entered accordingly.

- (i) Intervenors shall be entitled to reopen the record for a further hearing if, based on its request and supporting affidavits, it makes a prima facie showing that Edison has not satisfied one or more of the Commitments. The parties shall be afforded an opportunity to move for summary disposition of the issues raised in Intervenors' request.
- (ii) Intervenors may also petition the Licensing Board to order that operation of Byron be restricted to 5% power prior to a full evidentiary hearing on the question whether Edison has satisfied a Commitment. The Board may enter such an order if it finds, based on Intervenors' petition and Edison's and the Staff's responses thereto, that Intervenors have made a strong showing that they are likely to prevail on the merits, that Intervenors' interest will be irreparably injured unless the order is granted, and that the public interest requires the issuance of such an order.

- (iii) If the Licensing Board grants Intervenors' motion to reopen the record for litigation of the Commitment(s) pursuant to 6(a)(i) above, and following the hearing, the Board finds that Edison has failed to satisfy the Commitment(s) in question, it may enter such orders as may be appropriate. Edison recognizes that such an order may require that a Commitment(s) be satisfied or that Edison restrict operation of Byron to a level not to exceed 5% power. The burden of proof in any hearing pursuant to this section shall be as provided in 10 CFR §2.732.
- (iv) All orders, rulings, and decisions, entered pursuant to this stipulation shall be subject to full appellate rights.
- (b) The parties recognize that the process described in 6(a) above entails the retention of Licensing Board jurisdiction over elements of Intervenors' Motion to Amend and may result in a reopening of the record and a further hearing following the issuance of an initial decision by the Board authorizing the issuance of a full power operating license for the Byron Station and following the issuance of such a license by the NRC. The parties therefore agree that any such initial decision shall be subject to the following express license condition:

The issuance of this initial decision shall be subject to the final disposition of the Intervenors' pending motion to amend

emergency planning contentions, dated February 21, 1983, and the outcome of any further proceeding thereon. The final disposition of said motion shall be memorialized in the form of a supplemental initial decision.

7. INTENT OF THE PARTIES.

The parties agree to proceed in good faith to attempt to accomplish the purposes of this Stipulation.

COMMONWEALTH EDISON COMPANY

BY Al-Bid L. DATE 4/5/83

DAARE/SAFE

BY _____ DATE _____

ROCKFORD LEAGUE OF WOMEN VOTERS

BY _____ DATE _____

NRC STAFF

BY the staff DATE 4-7-83

ATTACHMENT 2