Dated: November 3, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'82 NOV -8 A10:54

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

COMMONWEALTH EDISON COMPANY'S MOTION FOR SUMMARY DISPOSITION OF ROCKFORD LEAGUE OF WOMEN VOTERS CONTENTIONS 1A and 111

Pursuant to 10 CFR Section 2.749, Commonwealth Edison Company ("Edison") hereby moves this Board to issue an Order summarily disposing of certain contentions of the Rockford League of Women Voters ("the League"). The issues underlying League contention 1A and portions of League contention 111 have been previously adjudicated by this Board in connection with rulings summarily disposing of contentions submitted by intervenor DAARE/SAFE. Accordingly, the League should be barred from litigating these issues.

THE FACTUAL BACKGROUND OF THIS MOTION

On October 27, 1981, this Board dismissed the League as a party to this proceeding as a sanction for its

D503

willful failure to answer Edison's written interrogatories and obey certain orders of this Board. The League subsequently appealed this dismissal to the Atomic Safety and Licensing Appeal Board.

On June 7, 1982, Edison filed a motion for summary disposition of certain DAARE/SAFE contentions pursuant to 10 CFR Section 2.749. The NRC staff had filed a similar motion on June 2, 1982. While the scope of the motions was somewhat different, both sought summary disposition, inter alia, with respect to DAARE/SAFE contentions dealing with quality assurance and the health effects of routine airborne radioactive releases. DAARE/SAFE filed a consolidated response to these motions on July 19, 1982.

Meanwhile, on June 17, 1982, the Appeal Board issued an Order reinstating the League as a party. On June 23, 1982, a copy of Edison's motion for summary disposition of DAARE/SAFE contentions was served on the League. The NRC Staff's motion for summary disposition had been served on the League on June 4, 1982.

The League, on July 3, 1982, moved this Board for the entry of a protective order, asking that it not be prejudiced by an order summarily disposing of certain DAARE/SAFE contentions which were similar to League contentions. No other response to Edison's and the Staff's motions for summary disposition was submitted by the League. On July 26, 1982, this Board issued a ruling denying the League's request for a protective order.

On September 10, 1982, this Board issued an Order granting, in part, Edison's and the NRC Staff's motions for summary disposition of DAARE/SAFE contentions. Several issues raised by the League's contentions are identical to DAARE/SAFE issues as to which the Board granted the motions for summary disposition. The identical issues, and the contentions in which they are raised, are the following:

1. League contention 1A is substantively identical to dismissed DAARE/SAFE contention 1. Both contentions assert that Edison's ability to maintain quality assurance and control programs is insufficient to protect the public health and safety as required by 10 CFR Part 50.

2. League contention 111 raises the same issues as dismissed DAARE/SAFE contention 2 insofar as it alleges that routine releases of radiation from Byron will constitute an undue hazard to the health and welfare of the area residents.

To the extent issues raised in League contentions are identical to issues dismissed by the September 10, 1982 Board Order, principles of res judicata and collateral estoppel bar the League from further litigating such issues. Accordingly, Edison respectfully requests that this Board issue an Order, pursuant to 10 CFR § 2.749, summarily disposing of Contention 1A in its entirety and partially disposing of contention 111.

ARGUMENT

I. Summary Disposition Pursuant to 10 CFR Section 2.749 Can Have Foreclosure Consequences.

Summary procedures for disposing of all or part of a controversy are provided for in the Federal Rules of Civil Procedure. The similarity between summary judgment, as codified in Rule 56 F.R.C.P., and summary disposition pursuant to 10 CFR Section 2.749, has been expressly recognized and is now beyond reasonable dispute. "Motions for summary disposition under Section 2.749 are analogous to motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure, and the same standards are generally applied in considering the appropriateness of terminating a proceeding without an evidentiary hearing." Pacific Gas & Electric Co. (Stanislaus Nuclear Project, Unit 1), LBP-77-45, 6 NRC 159, 163 (1977). See also, Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-74-36, 7 AEC 877, 878-879 (1974).

Accordingly, summary disposition will only be granted where the record clearly demonstrates that there is no possibility that there exists a litigable issue of fact. P.A.S.N.Y. (Greene County Nuclear Power Plant), LBP-79-8, 9 NRC 339, 340 (1979). In deciding such a motion, the record is viewed in the light most favorable to the party opposing the motion. Pacific Gas & Electric Co., supra, at 163. Moreover, as the Board recognized in its September 10, 1982

Order, "'The fact that the party opposing summary disposition failed to submit evidence controverting the conclusions reached in documents submitted in support of the motion for summary disposition does not mean that the motion must be granted. The proponent of the motion must still meet his burden of proof to establish the absence of a genuine issue of material fact.' Cleveland Electric Illuminating Co. et al. (Perry Nuclear Power Plant, Units 1 & 2), ALAB-443, 6 NRC 741, 753-54 (1977)." (September 10, 1982 Order, p.5).

Since the grant of summary judgment is a final judgment on the merits, res judicata and collateral estoppel principles may preclude relitigation of identical claims raised in subsequent proceedings. O'Neill v. Dell. Pub. Co., 630 F.2d 685, 690 (1st Cir. 1980); Jackson v. Hayakawa, 605 F.2d 1121, 1125 & n. 3 (9th Cir. 1979), cert. den., 445 U.S. 952 (1980). In other words, the fact that resolution of the litigation is based upon summary judgment procedures rather than evidentiary hearings does not detract from the preclusive nature of the findings. "To be sure, it might be possible to advance the sophistic argument that preclusion is inappropriate since there has been no resolution of questions of fact, only a determination that there are no questions of fact." Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction § 4444. As the Court of Appeals for the Fifth Circuit stated in response to such an argument:

> We reject out of hand the beguiling but superficial contention * * * that neither Suit No. 1

> nor No. 2 can have any collateral estoppel effect because no summary judgment can have such effect. This is based on an overemphasis of two assertions: (1) a collateral estoppel results only from an actual decision of an issue and (2) a summary judgment results from a finding that there is no genuine issue as to any material fact.
>
> It would be strange indeed if a summary judgment could not have collateral estoppel effect. This would reduce the utility of this modern device to zero. * * * Indeed, a more positive adjudication is hard to imagine.

Exhibitors Poster Exchange, Inc. v. National Screen Service Corp., 421 F.2d 1313, 1319 (5th Cir. 1970), cert. den., 400 U.S. 991 (1970). Thus, a summary judgment may, under appropriate circumstances, operate to bar relitigation of the same claim, or underlying factual issues, in subsequent proceed

In 1974, the Atomic Safety and Licensing Appeal Board ruled that the doctrines of res judicata and collateral estoppel are applicable to NRC proceedings. Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, 212-216 (1974), remanded on other grounds, CLI 74-12, 7 AEC 203 (1974). The Appeal Board also stated that it found "the judicial approach to the manner of disposition of res judicata and collateral estoppel questions to be instructive." 7 AEC at 218.

Clearly, then, summary disposition pursuant to 10 CFR Section 2.749 can operate to foreclose relitigation of decided issues. As we show in the following sections of this

motion, the Board's dismissal of DAARE/SAFE contentions 1 and 2 mandates dismissal of League contention 1A and portions of contention 111.

II. It is Appropriate to Hold the League Bound by This Board's Earlier Summary Disposition Order.

Res judicata and collateral estoppel are judicially created doctrines which operate to prevent repetitious litigation. The differences between the two doctrines, and the manner in which they operate, are as follows:

> [Res judicata] rests upon considerations of economy of judicial time and public policy favoring the establishment of certainty in legal relations. The rule provides that when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and their privies are thereafter bound 'not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.' Cromwell v. County of Sac, 94 U.S. 351, 352. The judgment puts an end to the cause of action, which cannot be brought into litigation between the parties upon any ground whatever, absent fraud or some other factor invalidating the judgment...
>
> But where the second action between the same parties is upon a different cause or demand, the principle of res judicata is applied much more narrowly. In this situation, the judgment in the prior action operates as an estoppel, not as to matters which might have been litigated and determined, but 'only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered. [citations omitted].' Since the cause of action involved in the second proceeding is not swallowed by the judgment in the prior suit, the parties are free to litigate points which were not at issue in the first proceeding, even though such points might have been tendered and determined at that time. But matters which were actually litigated and determined in the first proceeding cannot later be relitigated.

Commissioner v. Summer, 333 U.S. 591, at 597-598 (1947).

The courts have developed rather flexible standards in determining whether it is appropriate to preclude a party from litigating an issue which was previously adjudicated. The key factor involves "determining whether the party against whom an estoppel is asserted had a full and fair opportunity to litigate" the already decided issue. Blonder-Tongue v. University Foundation, 402 U.S. 313 at 329 (1970); Adams v. Morton, 581 F.2d 1314 (9th Cir. 1978). In addition, it must generally be shown that the party had sufficient incentive to litigate the issue during the earlier proceeding. James Talcott, Inc. v. Allahabad Bank, Ltd., 444 F.2d 451 at 461-462 (5th Cir. 1971). If these requirements are met, foreclosure is appropriate.

There can be no question that these requirements have been satisfied in this case. The League was a party at the time of the prior action and had ample time to present arguments and evidence in opposition to Edison's motion for summary disposition. 1/ Moreover, the League had every incentive to participate in the summary disposition proceedings related to DAARE/SAFE contentions which raised identical or similar issues to those raised in League contentions. Indeed, the League fully recognized that its interests in pursuing these contentions might be jeopardized by its failure to participate in the summary disposition process. But, instead of participating in the process it chose to avoid the

1/ 10 CFR § 2.749(c) provides the procedural route by which the League could have attempted to forestall a decision on the motions for summary disposition pending before the Board when it was readmitted as a party.

consequences of its inaction by seeking a protective order. This Board made specific reference to these circumstances in its July 26, 1982 Order:

> The League was party to the proceeding for more than 2 years when it was dismissed in October 1982. Its reinstatement in the proceeding by the Appeal Board on June 17, 1982 came at a time when the League could have filed answers to the motions for summary disposition in accordance with the Commission's Rules of Practice. Section 2.749(a) of Title 10, Code of Federal Regulations gives a party 20 days to answer a motion for summary disposition. At the time of its admittance, intervenor DAARE/SAFE had already obtained a postponement of the time to answer to July 15, 1982, which we further extended to July 19, 1982.
>
> ... The League, at its peril, elected not to follow the procedure set forth in 10 CFR 2.749 but elected to seek special relief, by way of a protective order, which it has failed to justify.

Order, p. 6 (Emphasis added.) Thus, quite clearly, it is appropriate to apply the foreclosure doctrine against the League.

Finally, to understand how the foreclosure doctrine applies to this case, it is necessary to translate certain judicial terms into the parlance of the NRC adjudicatory process. When two contentions assert the existence of substantially identical conditions which, if true, demonstrate that an applicant will not comply with an applicable regulatory requirement with which it must comply to receive a license, the contentions, in the parlance of federal civil procedure, plead the same claim. Thus, when parties have an opportunity to litigate one of the contentions, and it is determined that the contention does not pose a barrier to the grant of a license, res judicata operates to bar litigation of the second con-

tention. This is so irrespective of the assertion that different evidentiary facts might be offered to support the second contention. Cf. Commissioner v. Summer, supra.

In contrast, when two contentions assert that a license cannot be granted because of conditions which are not substantially identical, the contentions cannot appropriately be deemed to plead the same claim. In that circumstance, disposition of one of the contentions only precludes relitigation of matters which were actually litigated and determined during the course of the adjudication of that contention.

Therefore, to the extent Edison can show that League contention 1A is subsumed entirely by DAARE/SAFE contention 1, and that issues raised by League contention 111 were actually litigated in the context of the summary disposition process related to DAARE/SAFE contention 2, the League should be bound by this Board's earlier determinations. We make this showing below.

III. The Requirements for Barring Litigation of Particular League Contentions Have Been Satisfied.

A. League Contention 1A

On September 10, 1982, this Board granted summary disposition of DAARE/SAFE contention 1, a contention which challenged Edison's ability, willingness, and qualification to operate the Byron station within NRC regulations. (Order p.5) One of the specific bases offered in support of DAARE/SAFE's contention was an allegation that Edison had failed to observe applicable quality assurance and quality control

requirements.[2/] Citing affidavits submitted both by Edison and the NRC staff, this Board found that since 1978 Edison has directed its efforts toward eliminating deficiencies and achieving compliance with NRC regulations. (Order p.7) The Board also found that as a result of retaining an independent consulting firm in 1978, Edison has instituted significant improvements in the organization of its operating station management structure. (Order p.7) Finally, this Board found that Edison's record of compliance with NRC regulations presently compares favorably with other nuclear licensees both regionally and nationally, and is improving. (Order p.8) Based upon these findings, this Board granted summary disposition of the entire contention, thereby finding that no material issues of fact existed with respect to Edison's ability, willingness or qualification to operate the Byron plant in compliance with NRC regulations. Indeed, the sixteenth material fact listed by Edison, which DAARE/SAFE specifically denied and described as an "ultimate fact", states the following: "Edison is willing, able and technically qualified to operate the Byron Station safely and within NRC requirements so as to protect the public health and safety."

League contention 1A expressly declares that "the Applicant does not have the ability or the willingness to

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2/ See DAARE/SAFE Contention 1. For the Board's convenience the entire text of DAARE/SAFE Contention 1 and League Contention 1A is set forth in the Appendix to this Motion.

comply with 10 CFR Part 50, Appendix B, to maintain a quality assurance and quality control program, as evidenced by its past history of non-compliance." Not only is this issue entirely subsumed within this Board's previous finding that Edison will operate Byron in compliance with NRC regulations, it directly contradicts the 10th statement of material fact contained in Edison's original motion for summary disposition, which this Board adopted by its order. Material fact number 10 states: "The Quality Assurance program to be employed at Byron during station operation meets each of the eighteen criteria of Appendix B to 10 CFR Part 50." Thus, quite clearly, League contention 1A raises issues identical to those which were involved in the prior action.

The identity between the two contentions becomes even more apparent when one considers the League's answers to Edison's Amended Second Round of Interrogatories. For example, at page 1-3 of its Answers, the League cites a 1980 report of the Institute of Nuclear Power Operation for the proposition that "there exists an opportunity for the improvement of a number of CECO management practices, including management's handling of the definitions of individual responsibilities and authority, its adherence to administrative-type procedure and industrial safety policies, the effectiveness of its administrative controls on instrument setpoints, and the effectiveness of its maintenance, surveillance, and records program." As noted above, this

Board in its September 10, 1982 Order, found specifically that Edison has in fact significantly improved the organization of its operating plant management structure. (Order, p.7) In making this determination, the Board had before it a detailed description of the operational structure to be employed at the Byron Station. See Affidavit of Robert Querio, pages 5-7, attached to Edison's Motion for Summary Disposition of DAARE/SAFE contention 1, June 7, 1982.

Similarly, the League, in its Answers to Edison's interrogatories, goes on to declare that "the underlying cause of identified QA/QC breakdown has been the failure of responsible management to properly emphasize the importance of compliance with the required QA/QC measures." (p. 1-3) Quite aside from the fact that this declaration is in general simply another variation of the League's attack on Edison's operational structure, which structure was upheld by this Board in its September 10, 1982 Order, the League's statement is specifically contradicted by affidavits which were submitted by Edison in support of its Motion for Summary Disposition of DAARE/SAFE contentions. For example, Wayne L. Stiede, Assistant Vice President for Nuclear Engineering, Nuclear Fuel Services and Nuclear Licensing, provided in his affidavit an illustration of how Edison would function at the corporate level in a non-compliance situation:

> In the event an item of non-compliance with applicable NRC regulations at an operating station comes to the attention of the Company, it is the

> responsibility of the affected station to take the necessary corrective action and it is the responsibility of the Nuclear Licensing Group to communicate the corrective action to the NRC. We do not stop there. The Division Vice President--Nuclear Stations or his staff also reviews the item of noncompliance to determine whether similar incidents could occur at our other stations. He is responsible for advising the remaining Station Superintendents of any need to amend their procedures or change their practices. The Company does not simply assume that any given incident of non-compliance with applicable regulations is an isolated incident. In addition to the internal review in the Nuclear Operations Department, the Company's nuclear operations are also reviewed by two independent organizations within the company.

Stiede Affidavit, pages 7-8, attached to Edison's Motion for Summary Disposition of DAARE/SAFE contention 1, June 7, 1982.

Robert Querio, Station Superintendent for the Byron Station, reiterated in his affidavit that Edison's commitment to safe operations of its nuclear power plants begins with the highest level of corporate management. "This commitment", he stated, "is reflected in Vice-President's Instruction No. 1-0-17 signed by the Vice-President of Nuclear Operations, Cordell Reed, which states in part:

> This Instruction reaffirms Company policy regarding adherence to nuclear procedures and technical specifications. The primary concern of the company with respect to the operation of its nuclear generating plants is to ensure the health and safety of the public as well as station personnel. All personnel within the Company share this responsibility.

Querio Affidavit, page 3, attached to Edison's Motion for Summary Disposition of DAARE/SAFE contention 1, June 7, 1982.

Clearly, the League's challenge to Edison's Quality Assurance and Quality Control program raises issues identical to those involved and adjudicated in the prior summary disposition action. The League had an opportunity to present any matters it thought pertinent to Edison's willingness and ability to conduct its activities in accordance with the quality assurance requirements mandated by the Commission's regulations. It chose not to do so, and is thus bound by the Board's decision on this issue. Accordingly, it is appropriate for this Board to summarily dispose of League Contention 1A.

B. League Contention 111

In its September 10, 1982 Order, this Board also granted full summary disposition of DAARE/SAFE Contention 2. That contention alleged the necessity of re-evaluating the dose impacts of projected routine releases of radioactive materials to determine the cumulative effects to residents from the addition of Byron releases to releases from the other 11 units.[3/] The following material facts were among those set forth and proved by Edison in its June 7 Motion for Summary Disposition and adopted by this Board by its Order:

1. There is no effect on the populations in De Kalb-Sycamore and Rockford areas from routine releases of radioactivity in liquid effluents from the Byron Station.

3/ Both DAARE/SAFE contention 2 and League contention 111 are reproduced in the Appendix to this Motion.

2. Airborne radioactive emissions from routine operations of the Byron Station will meet the regulatory requirements of 10 CFR Part 50, Appendix I and 40 CFR Part 190.
3. Estimated airborne radioactive emissions from routine operations of the Byron Station will result in .01 Millirem average annual dose to populations in the DeKalb-Sycamore and Rockford areas.

League contention 111 declares that "more adequate" monitoring of radioactive emissions from the Byron plant is necessary. This monitoring issue was raised expressly by DAARE/SAFE in its Response to Edison's Motion for Summary Disposition. (Response, contention 2, p.2). Moreover, since the overriding purpose of monitoring is to ensure that emissions do not exceed permissable levels, a finding of adequate monitoring was essential to, and therefore implicit in, this Board's September 10, 1982 holding that Byron emissions will not exceed levels set forth in 10 CFR Part 50. (Order, p. 11).

Contention 111 also challenges Edison's calculation of Byron design doses. Again, this calculation is important primarily to maintaining exposure levels within NRC regulations. Implicit in this Board's holding that exposure levels will be within NRC regulations is the necessary corollary that calculation of design doses have been accurate.

The League's concern with routine Byron emissions can also be seen in its Answers to the NRC Staff's Amended First Set of Interrogatories. Admittedly, this concern is couched in terms of recommendations for improved monitoring. However, a reading of the changes that the League proposes shows not an interest in better monitoring, but an indictment that without these changes radiation levels may rise to such an extent as to endanger the health and safety of the public. For example, the League states the following:

> In the case of the Byron plant, a chamber should be attached to each of the electric power meters at the homes of all persons living within 10 miles of the plant, several hundred additional chambers to be placed on power poles. Such chambers should contain TLD's to measure both beta and gamma radiation. Additionally, Byron should have 50 off-area stations equipped with air samplers, fallout trays, gummed paper collectors, and rain water collectors to evaluate the alpha as well as the beta and gamma activity.

(Answer to NRC Staff Interrogatories; p. III-4,5; October 15, 1982).

One might well ask why these changes are alleged to be necessary, if not to protect the public from excess radiation levels, as brought about either in the case of routine releases or in emergency situations. To the extent the League is challenging the levels of routine releases, it is precluded.

In addition, to the extent the League is alleging that untoward health effects will occur as a result of routine releases if their recommendations are not followed, they are also precluded. The affidavit of Dr. Jacob I.

Fabrikant, submitted by Edison in its Motion for Summary Disposition of DAARE/SAFE contention 2, identified three major health concerns from exposure to radiation. These are carcinogenesis, teratogenesie and genetic effects. At an annual average dose rate of .08 millirem, Dr. Fabrikant concluded that there will be no detectable cases of excess cancer in the DeKalb-Sycamore and Rockford areas, no injury to fetuses and no genetic effect. This conclusion was reached using the most conservative dose - response curve accepted by experts in radiation and the health effects of radiation. See Affidavit of Jacob I. Fabrikant; page 30, attached to Edison's Motion for Summary Disposition of DAARE/SAFE contention 2; June 7, 1982. These findings were cited specifically in this Board's September 10, 1982 Order. (Order, p. 11).

To the extent, then, that League contention 111 challenges either Byron's routine radiation emissions or any asserted health effects that may result therefrom, the contention raises issues that were actually litigated and decided in connection with the DAARE/SAFE contention 2 summary disposition proceedings. Therefore, the scope of contention 111 should be narrowed to exclude from future debate all questions relating to (1) whether radioactive emissions associated with routine operation of Byron will comport with regulatory limits, and (2) whether emissions at such levels are sufficiently small to prevent adverse health effects.

WHEREFORE, in accordance with the facts and principles of law discussed above, Commonwealth Edison Company respectfully requests that this Board issue an Order summarily disposing of League contention 1A in its entirety and those aspects of League contention 111 which duplicate issues already decided by this Board.

DATED: November 3, 1982

Respectfully submitted,

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APPENDIX

LEAGUE CONTENTIONS

REVISED CONTENTION 1A:

Intervenor contends that the Applicant does not have the ability or the willingness to comply with 10 CFR Part 50, Appendix B, to maintain a quality assurance and quality control program, as evidenced by its past history of noncompliance. In addition, Applicant's quality assurance program does not require complete independence of the quality assurance functions from other departments within the company.

CONTENTION 111:

C.E has not met the requirements of NEPA and the Regs, including but not limited to 10 CFR §§ 50.34(a) and 50.36(a) because C.E. has not adequately monitored and provided a design base for the Byron plant which will keep radiation levels as low as achievable as required for operation of the plant to protect the health and safety of the public. To keep radiation levels as low as achievable, C.E. should provide and utilize:

A. More adequate environmental and discharge monitoring of radioactive emissions from the Byron plant, which include:

1. Monitoring devices at more locations within and without the plant site.

2. Provisions for more frequent reading of monitors by independent analysts.

3. Better monitoring devices which include:

(a) An automatic system of monitoring that notifies local authorities by an alarm when discharge emission exceed design limits;

(b) Monitoring devices that measure differences in alpha, beta and gamma dose levels, which presently are not proposed to be considered and measured;

(c) Monitoring and recording of emissions of all dangerous long lived radionuclides, including especially I-129 and Plutonium;

(d) Bioaccumulative testing in a tiered system to assess the uptake of radioactive and chemical pollutants from bottom sediments or soil to lower organisms and to contamination of the food chain of man and other life.

B. More accurate calculation of design doses which can be accomplished by utilizing information from the improved monitoring suggested above and also by:

1. Providing for and constant update and replacement of equipment and analysis to respond to new experimental and analytical results. Byron was licensed for construction, for example, when some (including C.E.) asserted improperly that there was a threshold to radiation effects:

2. Including in calculation of doses the large transient populations in the low population zones around the plant, including school children when present in schools and others participating in recreational facilities;

3. Including internal radiation doses caused by inhaled and/or ingested radionuclides which are deposited in different parts of the body where they give repeated radiation or until they are eliminated from the body;

4. Including in calculation of radiation doses, cumulative doses to the general population outside the site boundary caused by overlapping circles of radiation from any nuclear facility (whether on or off the site), including Zion, Dresden, LaSalle, Quad Cities, and Braidwood Stations, as well as any new proposed facility and disposal facilities such as the Morris Waste Disposal Site; and

5. Including in the calculation, calculation of doses to people by utilizing actual radionuclies for and in food, animals, plants, soil, water, and in other parts of the environment in and around the Byron site.

As a result the applicable findings required by the Act, NEPA, and the Regs, cannot be made herein.

DAARE/SAFE CONTENTIONS

CONTENTION 1

Intervenors contend that the record of noncompliance with Nuclear Regulatory Commission regulations by the Applicant in its other nuclear stations demonstrates its inability, unwillingness, or lack of technical qualifications to operate the Byron station within NRC regulations and to protect the public health and safety as required under 10 C.F.R. 50.57(a)(1) (2) (3) (4) and (6), and that therefore the Applicant should not be granted an operating license unless it demonstrates that improvements in management, operations, and procedures will ensure its willingness, ability and technical qualifications to operate within NRC rules; that these improvements will be enforced; and that the Applicant is financially capable of supporting these improvements.

As bases for this contention, intervenors cite the following facts and other facts relevant to the contention which may become apparent through the procedures authorized by 10 C.F.R. 2.740-2.744.

a. Fines totalling $105,500.00 have been levied upon the Applicant during the years 1974 through 1978 due to the Applicant's noncompliance with the regulations of the Commission. In imposing some of these fines, Commission officials cited the Applicant for "continuing management inadequacies" and "a history of rad-waste management problems" and stated that operating errors in the Applicant's Dresden plant caused "serious concern about the Company's [Applicant's] regulatory performance in all of their nuclear plants."

b. An NRC Board Notification, released February 1977, reports survey and case study findings of plants nationwide, and notes continuing management and operating problems with Applicant's stations, especially Zion, which plant was also selected as the poor performer case for in-depth case analysis. In 1974, all three stations operated by Applicant were rated "C", the lowest rating given by the NRC.

c. Noncompliance with NRC regulations in 1977 and 1978 in the Dresden facility, including findings that both backup generators were inoperative, that there was a valve error in part of a backup system for shutting down the reactor and errors in testing for maintenance, led NRC to increase their inspection frequency to weekly inspections in the Dresden plant, and in Applicant's other two plants as well in December of 1977.

d. The nature of the noncompliance by the Applicant with the regulations of the Commission ranges from "licensee event reports" to "violations" with "violations" constituting the most serious charge the Commission can cite as to the operator of a nuclear generating plant.

e. The Applicant has reported to the Commission "abnormal occurrences" at the nuclear generating plants wholly or predominantly owned by the Applicant at a rate which is proportionally in excess of the rate of "abnormal occurrences" reported by owners of other nuclear generating plants as to those plants in the rest of the United States.

f. Former guards at the Cordova nuclear generating plant, owned predominantly by the Applicant, have stated that they were told, by employees of the Cordova nuclear generating plant, not to report certain security violations on forms intended to be reviewed by inspectors for the Commission. Applicant, despite lack of full ownership, is solely responsible for the Cordova plant's operation. A federal grand jury, convened in January, 1978, to investigate the propriety of initiating criminal charges based in part upon the aforesaid, did on information, criminally indict Applicant and certain of its employees on or about March 26, 1980. It is reported that Applicant is charged therein with nine (9) counts of Federal criminal law violations, including fraud and conspiracy to evade NRC security regulations at the Cordova plant through Applicant's concealment of material facts from NRC and its maintaining of false records.

g. Applicant's record of laxity in the packaging and hauling of low level wastes caused it to be banned from South Carolina's low level waste disposal site, and in Washington, all importation of low level waste was banned after an incident of waste leakage in transport by Applicant.

h. The history at all of Applicant's plants (whether now operating) of its failure (and that of its architect-engineers and contractors) to observe on a continuing and adequate basis the applicable quality control and quality assurance criteria and plans adopted pursuant thereto.

i. The difficult financial position of Applicant, in that its credit ratings have been lowered, it is experiencing difficulty in raising money from traditional sources, and the Illinois Commerce Commission is presently re-evaluating Applicant's entire construction program (including Byron) to determine if funds by way of rates will be allowed.

j. Applicant does not have (nor is it likely it will have) research programs in place and resolved at the time of contemplated operation which it represented it would do (at or about time of issuance of construction permits) in connection with completion of the problems extant raised herein both by the Regulatory Staff and the Advisory Committee in Reactor Safeguards.

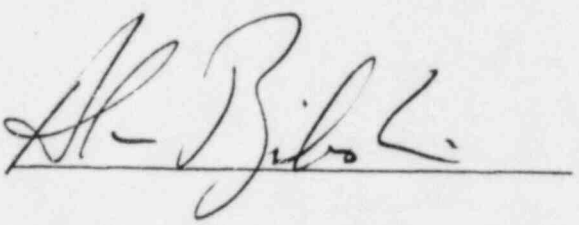
CONTENTION 2

Intervenors contend that since residents of the DeKalb-Sycamore and Rockford areas, the zones of interest of DAARE and SAFE, are surrounded by 11 other nuclear generating units in operation of under construction (at Dresden, Quad-Cities, LaSalle, Zion and Braidwood), in addition to the two units at Byron, that the Applicant should re-evaluate the dose impacts of projected routine releases of radioactive materials (Chapter 11, FSAR) to determine the cumulative effects to residents from the addition of Byron releases to releases from the other 11 units. This re-evaluation is especially critical in light of Applicant's record of incidents at its other plants, since the granting of the Byron Construction License. This re-evaluation should be performed to ensure that applicable NRC (10 C.F.R. Part 20 and 10 C.F.R. Part 50, Appendix 1) and EPA (40 C.F.R. 190) limits for radionuclide releases and exposures are not exceeded in practice for DeKalb-Sycamore and Rockford area residents due to the addition of the Bryon units to other units in operation or under construction, and should focus upon both the projected and potential aggregate dose levels to these residents, and upon the known and potential effects of such projected and potential cumulative dose levels.

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: November 3, 1982



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Docket Nos. 50-454 and 50-455

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