Dated: November 16, 1982

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 0L
	)	50-455 0L
	)	
(Byron Nuclear Power Station, Units 1 & 2)	)	

COMMONWEALTH EDISON COMPANY'S RESPONSE TO ROCKFORD LEAGUE OF WOMEN VOTER'S MOTION TO STAY

Commonwealth Edison Company ("Edison") hereby responds to the Rockford League of Women Voters' ("League") "Motion to Stay Briefing and Ruling on Edison's Motion for Summary Disposition of League Contentions 1A and 111" served November 8, 1982. For the reasons discussed below, Edison respectfully requests that the Board deny the League's Motion.

ARGUMENT

I.

The League requests that the Board await the completion of discovery prior to ruling on Edison's Motion for Summary Disposition of Contentions 1A and 111. There is, however, no supportable basis for the League's request. Edison's Motion presents a question of law based on facts which are entirely independent of any future discovery

D503

which may be conducted in this proceeding. The question is whether the League is attempting to raise issues identical to issues that this Board has already decided, and if so, whether the doctrines of res judicata and collateral estoppel preclude further litigation of these issues. Neither the quantity of documents which the League wishes to amass nor the League's belief that it may find particular documents helpful to its cause has any bearing either on the identity of issues or on the applicability of the doctrines of repose. These issues should properly be resolved by looking at the contentions themselves; the League's and DAARE/SAFE's answers to interrogatories, to the extent the answers more fully explain the contentions; the pleadings filed relating to summary disposition of DAARE/SAFE's contentions and the Board's ruling thereon. Therefore, further discovery is unnecessary as a precondition to a ruling on Edison's Motion. Indeed, further discovery would, we believe, be needless and wasteful since the League should be precluded from litigating issues already decided by the Board.

II.

The League declares that at the time Edison's motion for summary disposition of DAARE/SAFE contentions was pending, the League had yet to obtain substantive evidence through the discovery process. Therefore, the League argues, it had no responsibility to show that with respect to issues identical to those raised in its own contentions a question

of material fact existed. Such a responsibility, the League concludes, would have forced it to "litigate in the dark".

The League's argument ignores the history of its involvement in this proceeding. It must be remembered that the League had an opportunity to conduct discovery with respect to the contentions in question. The League's contentions were admitted in December, 1980. Ten months later, the League was dismissed from the proceeding for its failure to provide discovery. The League's dismissal came four days before the November 1, 1981 completion date for all discovery. See Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), ALAB-678, ____NRC____, slip op. at 10 and 16 (June 17, 1982). At the time of its dismissal, the League had not initiated any discovery to which it was entitled to responses in this proceeding. See ALAB-678, p. 19 fn. 22. Consequently, any difficulties which the League may have faced in presenting evidentiary support in opposition to summary disposition motions attacking DAARE/SAFE contentions were of the League's own making. Indeed, in its decision readmitting the League, the Appeal Board foreshadowed the results which might flow from the League's failure to have initiated discovery. "If the League wanted to walk into a hearing uninformed about the applicant's case, or thought it could resist a motion for summary disposition without having conducted discovery, it presumably was free to make those strategic decisions." ALAB-678, at 36.

In addition, as Edison's motion for summary disposition of League contentions 1A and 111 [*] and the Board's July 26, 1982 Order make clear, the League had ample opportunity to respond to the Motions for Summary Disposition of DAARE/SAFE contentions. In light of these matters, the League should not be permitted to delay a ruling by this Board on Edison's pending Motion.

III.

Finally, the League asserts that the matters raised in its contentions are different than those raised in the DAARE/SAFE contentions which have been summarily dismissed. [**] The very arguments presented by the League refute this assertion. The League admits that DAARE/SAFE contention 1 challenged the adequacy of Edison's QA/QC program. (League Motion, at 2). Yet, it is undisputed that the adequacy of Edison's QA/QC program is the only major issue raised by League contention 1A. The League also argues that the contentions raise different issues because the League intends to focus on a more recent period of time than did DAARE/SAFE. Focusing on a different time frame, however, is a

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[*] Commonwealth Edison Company's Motion For Summary Disposition of Rockford League of Women Voters' Contentions 1A and 111," November 3, 1982 at 8-9.

[**] Arguments related to the identity of issues raised by League and DAARE/SAFE contentions go more to the merits of Edison's motion than to the question of whether the Board's ruling should be stayed. We will address these arguments so as not to leave the impression that Edison believes there is any merit to the League's position.

purely evidentiary matter. Quite obviously, the mere fact that the League is considering presenting different evidence than was presented by DAARE/SAFE does not alter the conclusion that the issue raised in the contentions is identical. It is sufficient that in conjunction with the summary disposition process with respect to DAARE/SAFE contention 1, Edison had the full burden of showing that no material issue of fact existed with respect to the adequacy of its QA/QC program. The League's focus on a more recent time frame than that on which DAARE/SAFE focused does not change the fact that Edison met this heavy burden.

Likewise, the fact that League contention 1A asserts that Edison's QA department is insufficiently independent from other Company organizations does not support the League's assertion that its contention raises different matters than DAARE/SAFE contention 1. Given that Appendix B to 10 CFR 50 requires a finding of sufficient independence as a condition to a finding that a QA program is acceptable, and since this later finding has already been made by the Board in its ruling on DAARE/SAFE contention 1, it is clear that the League contention does not raise a different issue.

Similarly, with respect to League contention 111, the League fails to mention the fact that the issue of

monitoring, and not merely the issue of calculation of cumulative doses from other sites, was raised by DAARE/SAFE in its response to Edison's Motion for Summary Disposition of DAARE/SAFE Contention 2. (DAARE/SAFE Response, Contention 2 at 1). In addition, the League fails to mention that the affidavit of Dr. Jacob I. Fabrikant, submitted by Edison in support of its Motion for Summary Disposition of DAARE/SAFE Contention 2, identifies three major health concerns from exposure to radiation, and concludes that there will be no adverse health effects in the DeKalb-Sycamore and Rockford areas associated with operation of Byron. These findings were cited specifically in this Board's September 10, 1982 Order. (Order, at 11). In addition, it is significant that this Board found that Byron routine releases will comport with NRC regulations. (Order, at 11). Quite obviously the question of health effects of radiation has been litigated. The League's desire to reevaluate the entire basis of the expected dosage levels seems pointless in light of this Board's findings that untoward health effects will not result from operation of Byron.

WHEREFORE, Commonwealth Edison Company respectfully requests that the League's Motion to Stay Briefing and Ruling on Edison's Motion for Summary Disposition be denied,

and that the League be ordered to file its response within the time limits set forth in 10 CFR § 2.749.

Dated: November 16, 1982

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Commonwealth Edison Company, certifies that on this date he filed two copies (plus the original) of the attached pleading with the Secretary of the Nuclear Regulatory Commission and served a copy of the same on each of the persons at the addresses shown on the attached service list in the manner indicated.

Date: November 16, 1982

Alan P. Bielawski

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