

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD *84 FEB -7 11:37

In the matter of)
COMMONWEALTH EDISON COMPANY)
(Byron Station, Units 1 and 2))

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Docket No. 50-454
50-455

INTERVENORS' MOTION TO LIMIT
CONSIDERATION OF POST-RECORD SUBMISSIONS

Intervenors, by their undersigned counsel, move to limit this Board's consideration of the post-record submissions proffered by Edison's letter of January 27, 1984. In support of this motion Intervenors state as follows:

1. Edison's January 27 letter transmitted two preliminary reports by Edison on the reinspection program it is now conducting at Byron, a staff critique of one of those preliminary reports, and one of several staff Inspection and Enforcement (I&E) reports relating to the reinspection program.

2. Edison's selective submission of partial post-record evidence relating to an incomplete, unevaluated, un-cross-examined program cannot be considered on the merits of Edison's appeal, for several reasons.

3. First, even once the reinspection program has been completed and evaluated by the NRC staff, its post-record developments cannot be considered on the merits until their

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evidentiary weight has been tested through opportunity for discovery, cross-examination and presentation of rebuttal evidence by Intervenors. */

4. Second, this fundamental rule is required not only by elementary due process but also by the facts of this case. The Licensing Board below was apprised of the nature of the reinspection program and yet its members concluded that "we have no confidence in the reinspection program." (Initial Decision at 5.) Until adversary, evidentiary proceedings are conducted, no conclusions on the merits can be drawn from post-record information relating to Edison's questionable reinspection program.

5. Third, it is premature at this time to consider post-record aspects of the reinspection program. Edison expects to complete physical reinspection by February 10. Additional time will be required for Edison to submit its final report to the staff, and for the staff to review and evaluate Edison's submission. As recently as the public meeting on the reinspection program on January 27 at NRC Region III offices, NRC staff officials voiced a number of substantial criticisms of the reinspection program. These criticisms reiterated some of

*/ These are basic rights under the Constitution, federal law, and NRC regulations. E.g., Ohio Bell Telephone Co. v. Public Utilities Comm'n, 301 U.S. 292, 300, 304-05 (1937) (constitutional due process); 5 U.S.C. §556 (d) (Administrative Procedure Act rights to present evidence, to cross-examine and to rebut); 10 C.F.R. §§2.740 and 2.743 (NRC regulations establishing rights to discovery, to present evidence and rebuttal evidence, and to cross-examine).

those noted by the Licensing Board (Initial Decision at 300), as well as concerns about the justification for the statistical sampling criteria and the engineering evaluations. In short, the time is not ripe for this Board to consider post-record submissions on the reinspection program for any purpose, let alone on the merits.

6. Fourth, even if consideration of post-record evidence on the reinspection program were appropriate at this time for any purpose, no such consideration could be allowed on the basis of selective, partial submissions by Edison. Edison has chosen to transmit to this Board fewer than all of the post-record documents relating to the reinspection program. At the same time, Edison has failed to respond to Intervenors' prior and continuing requests for its audit of the program. (See Exhibit A hereto, a letter from Intervenors' counsel to Edison's counsel dated February 1, 1984.)

7. In sum, Edison's selective post-record submissions relating to the incomplete, unevaluated reinspection program cannot properly be considered by the Board for any purpose at this time. In the future, once the reinspection report and the staff evaluation thereof are complete, post-record evidence relating to the reinspection program may properly

be considered for the sole and limited purpose of determining whether it has sufficient weight to justify a remand for further evidentiary proceedings before the Licensing Board.

DATED: February 3, 1984

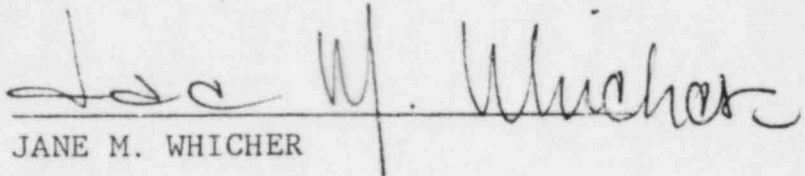
Respectfully submitted,

Douglass W. Cassel, Jr.
Jane M. Whicher

109 North Dearborn, #1300
Chicago, IL 60602

Attorneys for Intervenors
Rockford League of Women Voters
and DAARE/SAFE

By:


JANE M. WHICHER

For Service:

Douglass W. Cassel, Jr.
Jane M. Whicher
109 North Dearborn, #1300
Chicago, IL 60602

(312) 641-5570



BPI

Business and Professional People for the Public Interest

109 North Dearborn Street, Suite 1300 • Chicago, Illinois 60602 • Telephone: (312) 641-5570

February 1, 1984

Bruce Becker
13HAM, LINCOLN & BEALE
Three First National Plaza
52nd Floor
Chicago, IL 60602

Dear Bruce:

On January 4, 1984, I requested that you provide me with a copy of Commonwealth Edison's audit No. 6-83-124 of the reinspection program, which is mentioned in I & E report 50-454/83-39. I have twice reminded you of that request and have yet to receive a response as to whether you will provide me with that report.

According to Edison's January 12 submittal to Region III, there have been other audits and surveillances of the reinspection program in addition to the above audit and 6-83-66 which was produced at the August hearing. At this time I request all reinspection audit and surveillance reports from you.

I would appreciate a prompt response.

Very truly yours,

Jane M. Whicher

JMW:amh
cc: Service List

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CERTIFICATE OF SERVICE

I hereby certify this 3rd of February, 1984, that copies of "INTERVENORS' MOTION TO LIMIT CONSIDERATION OF POST-RECORD SUBMISSICNS" in the above-captioned proceeding were served on the following by deposit in the United States Mail, first class postage prepaid, or, as indicated by asterisk, by Federal Express.

* Alan S. Rosenthal, Chairman
Administrative Judge
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

* Christine N. Kohl
Administrative Judge
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

* Dr. Reginald L. Gotchy
Administrative Judge
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Ivan W. Smith, Chairman
Administrative Judge
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. A. Dixon Callihan
Administrative Judge
Union Carbide Corporation
P.O. Box Y
Oak Ridge, TN 37830

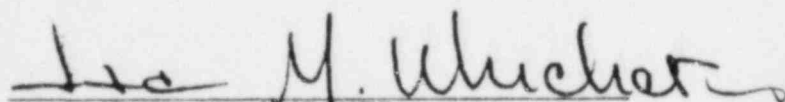
Dr. Richard F. Cole
Administrative Judge
Atomic Safety and Licensing
Board
Washington, D.C. 20555

Alan P. Bielawski, Esq.
Bruce Becker, Esq.
Isham Lincoln & Beale
Three First National Plaza
Chicago, IL 60603
(HAND DELIVERED)

* Richard J. Rawson, Esq.
Mitzi A. Young, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Joseph Gallo, Esq.
Isham, Lincoln & Beale
1120 Connecticut Ave., N.W.
Room 325
Washington, D.C. 20036

Office of the Secretary
of the Commission
ATTENTION: Docketing and
Service Section
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555


JANE M. WHICHER

February 3, 1984