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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

Alan S. Rosenthal, Chairman
Dr. Reginald L. Gotchy
Howard A. Wilber

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October 19, 1984

OFFICE OF SECRETARY
DOCKETING & SERVICE
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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

SERVED OCT 22 1984

MEMORANDUM AND ORDER

On October 16, 1984, the Licensing Board issued its supplemental initial decision in this operating license proceeding involving Units 1 and 2 of the Byron nuclear power facility.¹ In that decision, the Board resolved in the applicant's favor the quality assurance issues remanded to it in ALAB-770.² Accordingly, the Board authorized the Director of Nuclear Reactor Regulation to issue full-power operating licenses for the two units once he had made the findings required of him by 10 CFR 50.57(a).³ The Board

¹ LBP-84-41, 20 NRC ____.

² 19 NRC 1163 (1984).

³ LBP-84-41, 20 NRC at ____ (slip opinion at 160). The other issues in controversy had been determined in the applicant's favor in the Licensing Board's initial decision last January. LBP-84-2, 19 NRC 36. Some of those issues

(Footnote Continued)

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went on to note, however, that this authorization was subject to the provisions of 10 CFR 2.764(f)(2).⁴ Those provisions serve to preclude operation of a facility at more than five percent of rated power pending the Commission's determination on its own motion whether there should be a stay of the effectiveness of the initial decision authorizing issuance of a full-power operating license.⁵

In ALAB-770, we had retained jurisdiction over the proceeding to await the outcome of the remand to the Licensing Board.⁶ This meant, we explained, that "once the Licensing Board has completed the hearing on remand and rendered its supplemental decision, there will be no necessity for any party to file a new notice of appeal. Rather, upon receipt of the supplemental decision, we will

(Footnote Continued)
are pending before us. See ALAB-770, 19 NRC at 1182 n.73, and our June 13, 1984 unpublished order.

⁴ LBP-84-41, 20 NRC at ____ (slip opinion at 161).

⁵ Unless the Commission otherwise directs, its effectiveness determination is to have no bearing upon either (1) our disposition of a party's motion for a stay under 10 CFR 2.788 of the effectiveness of the initial decision; or (2) our consideration of the merits of that decision (usually in the context of an appeal taken pursuant to 10 CFR 2.762).

⁶ 19 NRC at 1168, 1182.

establish the procedures governing the submission of the parties' views on that decision."⁷

To this end, we conducted yesterday a telephone conference with counsel for the three parties.⁸ The conference dealt with two subjects: (1) the schedule for the briefing and argument of the intervenors' challenge to the supplemental initial decision; and (2) the procedure to be followed with respect to the seeking of a stay under 10 CFR 2.788 of the effectiveness of that decision (should the intervenors desire such relief).

The discussion of these matters was undertaken within the framework of two representations made at the inception of the conference. First, the NRC staff proposes to issue a license early next week (i.e., between October 22 and 24) that would allow -- for Unit 1 alone -- fuel loading and low-power (up to five percent of rated power) testing. Second, according to the applicant, assuming that fuel loading and pre-criticality testing were completed expeditiously and without incident, Unit 1 might be ready to achieve criticality in twenty-eight days from the date fuel

⁷ Id. at 1168 (footnotes omitted).

⁸ Those parties are the applicant, the intervenors (Rockford League of Women Voters and Dekalb Area Alliance for Responsible Energy/Sinissippi Alliance for the Environment) and the NRC staff.

loading commenced (i.e., possibly as early as November 19 if fuel loading were to start on October 22).

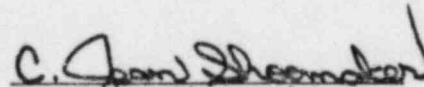
1. Stay relief. With respect to the matter of a stay of the effectiveness of the Licensing Board's supplemental initial decision, intervenors' counsel acknowledged that his clients would not sustain irreparable injury by reason of the fuel loading and pre-criticality testing of Unit 1 and that, therefore, any application for stay relief should be directed to the achievement of criticality and the activities following that event. With that in mind, it was agreed that, if intervenors decide to seek a stay, their motion is to be filed and served no later than Friday, October 26, 1984. Responses to the motion will then be due on Monday, November 5, 1984. For our part, we will endeavor to decide the motion no later than Friday, November 16. In this connection, if a stay motion is pending, Unit 1 is not to achieve criticality prior to November 19 except upon three business days prior notice to us.

2. Merits. Turning to the briefing and argument of the merits of the intervenors' challenge to the supplemental initial decision, their counsel indicated that it would be possible to have his brief filed and served by Friday, November 2, 1984. In the circumstances, applicant and staff counsel agreed to file and serve their responsive briefs by Tuesday, November 20, 1984. The oral argument will take place in Bethesda, Maryland, on Thursday, November 29, 1984.

We will endeavor to issue our decision by the end of the calendar year.⁹

It is so ORDERED.¹⁰

FOR THE APPEAL BOARD


C. Jean Shoemaker
Secretary to the
Appeal Board

⁹ We regard it as extraordinarily improbable that, prior to January 1985, Unit 1 will be ready for operation at a level above five percent of rated power. Thus, should intervenors choose to seek a stay pendente lite of the effectiveness of the Licensing Board's supplemental initial decision, they would be well-advised to cast their irreparable injury showing (see 10 CFR 2.788(e)) in terms of the harm that assertedly would be sustained from the achievement of criticality and the ensuing low-power testing -- the most that is likely to take place before our decision is rendered.

¹⁰ Where necessary to ensure receipt by the following day, all parties are to employ an overnight delivery service in connection with the filing and service of all briefs and other papers covered by this order.