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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING APPEAL BOARD AIO:37

Administrative Judges:

Gary J. Edles, Chairman
Dr. W. Reed Johnson
Christine N. Kohl

OFFICE OF THE ADMINISTRATIVE JUDGES
DOCKETED

July 7, 1987

_____)
In the Matter of)
COMMONWEALTH EDISON COMPANY) Docket Nos. 50-456-OL
(Braidwood Station, Unit) 50-457-CL
Nos. 1 and 2))

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ORDER

On May 6, 1987, while this proceeding was pending before the Licensing Board, the intervenors filed a motion with that Board to admit a late-filed contention dealing with the financial qualifications of potential new owners of the Braidwood facility. The Board thereafter issued two partial initial decisions resolving all issues then before it except for the motion.¹ Subsequently intervenors Bridget Little Rorem, et al., filed an appeal from one of those partial initial decisions.

On June 10, the Licensing Board issued a memorandum and order denying the motion to reopen the record.² The Board

¹ See LBP-87-13, 25 NRC ____ (May 13, 1987); LBP-87-14, 25 NRC ____ (May 19, 1987).

² See LBP-87-19, 25 NRC ____.

found that its authority over the pending operating license application did not extend to matters involving any proposed operating license amendment for the authorization of a change in ownership. On June 15, however, it essentially deprived its June 10 order of finality, pending the submission of any petitions for reconsideration. The intervenors filed a petition for reconsideration³ and in addition, on July 1, tendered a new motion to admit a late-filed contention. They explained that "in case the Board continues to deny the May 6 Motion . . . Intervenors are also filing this Motion to cure any alleged defects in the May 6 Motion."⁴ Touching all the bases, they filed with us a "Motion in the Alternative," just in case "it is determined that jurisdiction over the motion [filed with the Licensing Board] has passed to the Appeal Board."⁵

The Licensing Board has now denied both the motion for reconsideration and the newly filed motion to admit a

³ Motion to Reconsider Memorandum and Order on Late-Filed Contention (undated but mailed on June 23, 1987).

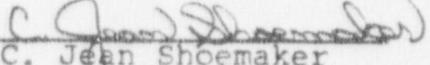
⁴ Motion to Reopen the Record to Admit Late-Filed Contentions on Financial Qualifications (July 1, 1987) at 2.

⁵ Motion in the Alternative Before the Appeal Board (July 1, 1987) at 2.

late-filed contention.⁶ In doing so, it did not determine that jurisdiction over the July 1 motion had passed to us.⁷ Thus, because the condition for the intervenors' "Motion in the Alternative" filed with us has not been fulfilled, we dismiss the motion.

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Shoemaker
Secretary to the
Appeal Board

⁶ See LBP-87-22, 26 NRC ____ (July 6, 1987).

⁷ The reason for the Board's denial is found in the Commission's comment in its recent "immediate effectiveness" decision in this proceeding. Id. at ____ (slip opinion at 3). The Commission stated:

Still before the Licensing Board is a motion to reopen the record to hear a contention that a new entity which the applicant has proposed separately to be allowed to operate the facility is not an "electric utility" under the Commission's financial qualification rule, 10 C.F.R. § 2.104(c)(4), and is not financially qualified to operate the facility. Since the new entity is not the applicant for the licenses whose issuance was authorized by the Board, we have not considered this new contention during our effectiveness review. The application to have the new entity operate the facility will be the subject of a separate proceeding.

CLI-87-7, 25 NRC ____, ____ (June 30, 1987) (slip opinion at 2 n.4).