

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)

ComEd)
(Zion Plant, Units 1 and 2))

Docket Nos. 50-295/
50-304/

In the Matter of)

ComEd)
(Braidwood Plant, Units 1 and 2))

Docket Nos. 50-456/
50-457/

In the Matter of)

ComEd)
(Byron Plant, Unit 1 and Unit 2))

Docket Nos. 50-454/
50-455/

In the Matter of)

ComEd)
(Dresden Plant, Unit 2 and Unit 3))

Docket Nos. 50-237/
50-249/

In the Matter of)

ComEd)
(LaSalle County, Unit 1 and Unit 2))

Docket Nos. 50-373/
50-374/

In the Matter of)

ComEd)
(Quad Cities, Unit 1 and Unit 2))

Docket Nos. 50-254/
50-265/

**10 C.F.R. § 2.206 PETITION TO CORRECT ILLEGAL RESTRAINT ON
COMMUNICATION WITH NRC AND TO RECTIFY A CURRENT CHILLING
EFFECT ON THE REPORTING OF SAFETY CONCERNS**

9805080045 980429
PDR ADOCK 05000237
G PDR

EDO -- G980185

Pursuant to 10 C.F.R. § 2.206, The National Whistleblower Center and Randy Robarge (hereinafter "Petitioners") file this petition to seek immediate corrective action and imposition of civil penalties for 1) ComEd's interference with the willingness of employees to file "Problem Identification Forms" or "PIFs" for fear that the employee could lawfully be retaliated against by ComEd for doing such; and 2) the intentional prohibition of an employee from being able to directly communicate information to the U.S. Nuclear Regulatory Commission ("NRC").

ALLEGATION I

Petitioners summarize the first allegation as follows:

ComEd's Assertion in a Pending Nuclear Whistleblower Case That the Filing of a "PIF" Does Not Equate to Engaging in "Protected Activity" Fosters an Atmosphere of Intimidation and Chills the Reporting of Safety Concerns in Violation of 10 C.F.R. §50.7 .

BASIS FOR THE ALLEGATION

On March 4, 1998, ComEd's President and Chief nuclear officer, Oliver D. Kingsley, Jr., issued a memorandum to nuclear employers and contractors claiming that "ComEd is committed to a safety-conscious work environment in which nuclear workers are encouraged to identify safety issues" and that "[s]everal avenues exist within ComEd to report safety issues" and that the "use of Problem Identification Forms (PIFs)" is "the most appropriate method of reporting a safety issue." Mr. Kingsley then states "Acts of discrimination by a licensee, contractor or subcontractor taken against a worker for bringing safety issues to the attention of licensee management or the NRC are against the law." We attach a copy of Mr. Kingsley's memorandum hereto as Exhibit "1" (ComEd Nuclear Division Integrated Reporting Program, NSWP-A-15, adopts the PIF reporting mechanism as the core method of reporting safety-related concerns for

the Braidwood, Byron, Dresden, LaSalle County, Quad Cities, and Zion plants). The memo appears to state that the filing of a PIF constitutes core protected activity for which discrimination against an employee for filing a PIF will not be tolerated.¹ ComEd does not practice that which it preaches.

Mr. Robarge, a former employee at one of ComEd's plants, filed a complaint under Section 211 claiming that he was discriminated against and subjected to a retaliatory discharge for filing PIFs. This matter is known as Robarge v. Commonwealth Edison Company, 98-ERA-2. Two attorneys for Commonwealth Edison Company's legal department, Glenn D. Newman, Esq., and Robert E. Helfrich, Esq., filed notices of appearance in this matter (see Exhibit 2) as did two outside attorneys, Richard F. O'Malley, Jr., and David A. Goldberg (see Exhibit 3). On November 26, 1997, pursuant to Department of Labor discovery rules, Mr. Robarge filed requests for admission, seeking to establish that the filing of a PIF constitutes "protected activity."

Specifically, Admission Request No. 3 states:

The Complainant engaged in protected activity under Section 211 when he filed "PIFs" with the Respondent.

ComEd responded as follows:

Respondent objects to this Request as being overly broad, vague and ambiguous in referring generally to "PIFs" and for calling for a legal conclusion and, therefore, this Request is denied.

A copy of Respondent's Response is attached hereto as Exhibit 4.

¹ The filing of internal safety reports constitutes core protected activity under Section 211 of the Energy Reorganizing Act 42 U.S.C. § 5851 (1993). The filing of a PIF therefore must constitute core protected activity.

This cavalier attitude and recalcitrance to admit that the filing of PIFs is protected activity will directly impact on the safe operation of all of ComEd's nuclear plants. Attached to this petition as Exhibit 5 is a redacted affidavit submitted by a current ComEd employee. This affidavit states that ComEd supervisors are angered by the filing of PIFs and that ComEd's denial that the filing of a PIF constitutes protected activity chills the willingness of employees to file PIFs.²

ARGUMENT

PIFs are absolutely essential to ComEd's safe operation of its nuclear plants. ComEd Nuclear Division Integrated Reporting Program, NSWP-A-15, Revision 1, p. 28, stresses the need for filing PIFs: "If question arises as to whether a PIF should be initiated, initiate the PIF. Data obtained from several seemingly unrelated and insignificant events may indicate areas needing improvement or adverse trends." Without the system of filing PIFs, safety concerns may go undocumented, unreported and, most importantly, unresolved. Such inaction places an undue risk on the health and safety of employees and the general public.

ComEd's public admission that the filing of a PIF is not absolutely and unquestionably core protected activity: 1) reinforces the current abhorrent behavior, as identified in paragraph 3 of the attached affidavit that supervisors currently vent anger towards employees for filing PIFs; and 2) demonstrates to the entire workforce that the memorandum sent out by Mr Kingsley and similar actions on the part of ComEd are meaningless and that the real sentiment of ComEd management is consistent with the anger shown by supervisors for the filing of PIFs. The

² The identity of the affiant can be released to NRC by entering into the execution confidentiality agreement with the employee. The basis for seeking confidentiality is set forth in paragraph 6 of the affidavit.

Commission's May 14, 1996 policy statement entitled: "Freedom for Employees in the Nuclear Industry to Raise Concerns Without Fear of Retaliation," provides that there is an "expectation that licensees and other employers subject to NRC authority will establish and maintain safety-conscious environments in which employees feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation." ComEd's public denial that the filing of a PIF is protected activity runs counter to the Commission's Policy Statement.

REQUESTED RELIEF

Given the extreme safety significance associated with the unhampered filing of PIFs, the Licensee knew or should have known that the assertion in the midst of a Section 211 proceeding that filing a PIF is not protected activity would further chill employees from the filing of PIFs. As such, ComEd's actions constitute a callous disregard towards the maintenance of a safety-conscious environment where employees are free to raise safety concerns without the fear of retaliation.

WHEREFORE, Petitioners respectfully requests that the Nuclear Regulatory Commission implement the following relief:

- 1) Immediate issuance of a show cause order requiring ComEd to explain why the filing of a PIF does not constitute core protected activity under Section 211 of the Energy Reorganization Act, 42 U.S.C. § 5851 (1993);
- 2) The issuance of a Level I violation and appropriate civil penalty for taking action that ComEd knew or should have known would chill employees from filing PIFs (a Level I violation is appropriate given the recent imposition of a Level III violation for a violation 10 C.F.R. §50.7 issued on November 28, 1995, see EA 95-235);
- 3) Require licensee to post a public apology for claiming that the filing of a PIF does not constitute protected activity.

ALLEGATION II

The second allegation is summarized as follows:

ComEd Intentionally Imposed Restrictive Confidentiality Aimed at Prohibiting Employees from Providing Information to the NRC in Violation of 10 C.F.R. §50.7.

BASIS FOR THE ALLEGATION

During the course of discovery undertaken on behalf of Randy Robarge in the Section 211 proceeding known as Robarge v. Commonwealth Edison, Case No. 98-ERA-2, Mr. Robarge's counsel agreed to a blanket confidentiality provision to expedite discovery. Counsel to ComEd and Mr. Robarge were to reduce the confidentiality agreement to writing. Because Mr. Robarge had uncovered information he wished to provide to NRC, his counsel specifically sought to gain ComEd's consent that Mr. Robarge could directly communicate information to NRC.

On March 12, 1998, Mr. Robarge's counsel submitted a letter to ComEd's counsel noting that Mr. Robarge objected to the wording of Section 3 (g) "because it interfered with Mr.

Robarge's right to directly communicate with the Nuclear Regulatory Commission."³ See

March 12, 1998 Letter from Michael Kohn to David Goldberg (copy enclosed as Exhibit 6)

² Section 3 reads as follows:

All information designated as confidential shall not be disclosed to any person other than:

- a. Counsel for the parties to this action including necessary secretarial, support and clerical personnel assisting such counsel;
- b. The individual parties and their employee or former employee witnesses or witnesses employed or formerly employed by Commonwealth Edison or any subsidiary thereof;
- c. Qualified persons transcribing or recording testimony involving such information or documents and necessary stenographic and clerical personnel thereof;
- d. Technical experts and their staff who are employed for the purpose of this litigation;
- e. The presiding Administrative Law Judge ("ALJ"), his assistants and such other personnel as may be authorized by him;
- f. Other persons by written consent of the person or party which furnished the confidential information;
- g. Governmental law enforcement agencies and other governmental bodies pursuant to valid subpoena, provided that:

(i) the subpoenaed party give counsel for the designating party written notice of such subpoena within five (5) days after service of the subpoena but not less than five (5) business days prior to the production of the documents in response thereto and shall, if so directed by the designating party, object to such subpoena on a timely basis so as to preserve the designating party's rights; and

(ii) at or before the time of production the subpoenaed party shall proceed in good faith to seek to obtain confidential treatment of such "Confidential" subpoenaed documents from the relevant governmental law enforcement agency or body to the fullest extent available under law.

To cure this problem Mr. Robarge's counsel requested the inclusion of an additional paragraph under subsection (g) that would read as follows:

Nothing in this agreement shall constitute a prohibition on either party to communicate directly with the U.S. Nuclear Regulatory Commission any information or documentation that is designated as "confidential" by either party except that the party seeking to provide that material to the NRC shall clearly designate the documents as 'confidential' and request that the documents be treated as confidential to the fullest extent reasonable under the circumstance.

Id., at p. 1.

On March 18, 1998, counsel to Mr. Robarge again wrote to ComEd's counsel noting that:

...the only outstanding dispute concerns complainant's insistence to the inclusion of subpart (iii) to Section 3(g). We are greatly disturbed by Respondent's refusal to incorporate this change into the agreement. In any event, I am herewith including a proposed addendum to the agreement that would incorporate the language Complainant wants included, i.e., Section 3(g)(iii). We have executed this proposed addendum in the hopes that you will agree to these terms.

Copies of the March 18, 1998 letter and addendum are attached hereto as Exhibit 7.⁴

Evidence of ComEd's specific intent to prohibit direct communication of information to the NRC is contained in the follow-up letter issued by ComEd's counsel on March 19, 1998.

Therein it states:

⁴ The addendum to 3(g) reads as follows:

(iii) nothing in this stipulation and order shall constitute a prohibition on either party to communicate directly or indirectly with the U.S. Nuclear Regulatory Commission ("NRC") any information or documentation that is designated "Confidential" by either party except that the party seeking to provide that material to the NRC shall clearly designate the document as "Confidential" and request that the document be treated as such by NRC to the fullest extent possible under the circumstances.

As I explicitly noted just three days ago in my letter to you, the language in your Addendum is not something ComEd will stipulate to in a confidentiality order (or an addendum to such order). On the merits, this section goes directly against the purpose for having the confidentiality order in the first place.

(Emphasis added)(copy attached as Exhibit 8)

It should be noted that Mr. David Goldberg, the author of the letters, confirmed to Michael Kohn that he discussed the prohibition of allowing Mr. Robarge to directly communicate with the NRC with the "client." Prior to that ComEd's counsel acknowledged to Stephen Kohn that the confidentiality terms represented the standard gag provisions ComEd requires in all such matters.

ARGUMENT

Interfering with an employee's right to directly communicate with NRC is repulsive to 10 C.F.R. §50.7(f).⁵ Most troubling is that the March 19, 1998 letter from ComEd's counsel demonstrates that the prohibition on communication with NRC was intentional rather than inadvertent. A pattern and practice of keeping information from the NRC is demonstrated by a statement made by ComEd's counsel to Stephen Kohn that identical the restrictive confidentiality language is routinely incorporated in agreements entered into by ComEd.

REQUESTED RELIEF

⁵ The term "employee" under Section 211 of the Energy Reorganization Act, 42 U.S.C. §5851, is specifically meant to including former employees. See, e.g., Hill, et al v TVA, Case No. 87-ERA-23/24, D&O f Remand by SOL, at p. 10 (May 24, 1989). As such, interfering with Mr. Robarge's right to communicate directly with NRC is no more permitted that prohibiting a current employee's right to communicate with NRC. Indeed, it is not uncommon for former employees to be more willing to provide information to NRC as they are no longer fearful of losing their job.

The wilful intent to interfere with an employee's right to directly communicate information to the NRC is a prohibited practice under 10 C.F.R. §50.7(f). To correct this prohibited practice, NRC should take the following action:

- 1) Issue a show cause order to ComEd requiring it to explain under oath why the imposition of restrictive confidentiality clauses prohibiting employees from directly communicating information to NRC should not be prohibited;
- 2) Imposition of a Level I violation and appropriate civil penalty against ComEd for the intentional violation of 10 C.F.R. §50.7(f);
- 3) Require ComEd to transmit to all individuals under similar restrictive confidentiality terms notice that they are now free to communicate information to NRC;
- 4) Require Licensee to release to the NRC copies of all restrictive confidentiality agreements entered into by ComEd and any subcontractors employed by ComEd since March 21, 1990 (the date of the Federal Register notice of 10 C.F.R. §50.7(f) was published).

Respectfully submitted:



Michael D. Kohn, Esq.
Stephen M. Kohn, Esq.
NATIONAL WHISTLEBLOWER
LEGAL DEFENSE AND EDUCATION FUND
P.O. Box 3768
Washington, D.C. 20007
www.whistleblowers.org
(202)342-2177 Fax (202)342-6984

On Brief: Melanie Olson

Dated: March 25, 1998

Memorandum

ComEd

Date: March 4, 1998
To: All NGG ComEd Employees and Contractors
From: Oliver D. Kingsley, Jr.
Subject: ComEd's Safety-Conscious Work Environment

ComEd is committed to a safety-conscious work environment in which nuclear workers are encouraged to identify safety issues. I expect and encourage a positive attitude toward safety. It is your obligation and duty as nuclear workers to identify any issue that may affect safe and reliable operations. This requires a safety ethic at all levels that reflects this attitude and personal responsibility for identifying safety issues. We must know the issues we face in order to resolve them.

The Nuclear Regulatory Commission (NRC) encourages nuclear workers to identify safety issues to their employer because licensees have primary responsibility for ensuring safe nuclear operations. The NRC believes that its licensees are in the best position to deal promptly and effectively with safety issues. Safety issues, when raised, will be promptly reviewed, given proper priority based upon safety significance, and resolved appropriately. We also will provide timely feedback to the originator of an issue and to other employees.

Several avenues exist within ComEd to report safety issues. The use of Problem Identification Forms (PIFs), generally the most appropriate method of reporting a safety issue, is strongly encouraged. Using the NGG Corrective Action Program in this way ensures appropriate assessment, documentation, and trending of issues. The NGG Employee Concerns Program provides an alternative avenue for reporting issues that cannot be resolved through line supervision or when confidentiality is desired. Nuclear workers may also raise issues directly with the NRC at any time, but the NRC expects that workers normally will have identified the issues to their employers either before or at the same time they contact the NRC.

We must all communicate openly and accurately up and down the management chain in order to maintain a safety-conscious work environment. I encourage employees and contractor personnel to address safety issues to line supervision, up to and including Vice Presidents, or above, as appropriate. Supervisors are responsible for listening carefully, evaluating objectively, and acting promptly to address safety issues brought to their attention.

Acts of discrimination by a licensee, contractor or subcontractor taken against a worker for bringing safety issues to the attention of licensee management or the NRC are against the law. ComEd will not tolerate intimidation, harassment, discrimination, or retaliation of any kind against a nuclear worker for reporting a safety issue. To successfully improve on our nuclear performance, we must continue to identify, evaluate, and correct all safety issues in a timely manner. Thank you for your cooperation in fulfilling this important requirement of your job.

A Unicom Company

Exhibit 1

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)

RANDY D. ROBARGE,)

Complainant)

Case No. 98-ERA-2)

v.)

COMMONWEALTH EDISON COMPANY,)

Respondent)

NOTICE OF APPEARANCE

Pursuant to 29 C.F.R. § 18.34(b), Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, attorneys Glenn D. Newman and Robert E. Helfrich hereby notice their appearances in the above-captioned matter on behalf of Respondent, Commonwealth Edison Company.

Respectfully submitted,



Glenn D. Newman



Robert E. Helfrich

Commonwealth Edison Company
Legal Department
125 South Clark Street, Suite 1500
Chicago, Illinois 60690-0767

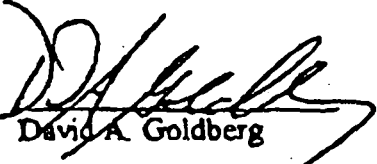
Exhibit

2

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he caused a true and correct copy of the attached NOTICE OF APPEARANCE to be served on the following party by U.S. Mail, first class postage pre-paid, and by U.S. First Class Mail, on this 6th day of November, 1997:

Stephen M. Kohn
Kohn, Kohn & Colapinto, P.C.
3233 P Street, N.W.
Washington, D.C. 20007-2756


David A. Goldberg

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)

RANDY D. ROBARGE,)

Complainant)

Case No. 98-ERA-2

v.)

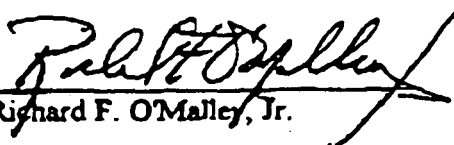
COMMONWEALTH EDISON COMPANY,)

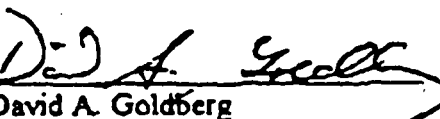
Respondent)

NOTICE OF APPEARANCE

Pursuant to 29 C.F.R. § 18.34(b), Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, attorneys Richard F. O'Malley, Jr. and David A. Goldberg hereby notice their appearance in the above-captioned matter on behalf of Respondent, Commonwealth Edison Company.

Respectfully submitted,


Richard F. O'Malley, Jr.


David A. Goldberg

SIDLEY & AUSTIN
One First National Plaza
Chicago, Illinois 60603
(312) 853-7000 (tel.)
(312) 853-7036 (fax)

Exhibit 3

BEFORE THE UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

RANDY D. ROBARGE,

Complainant,

V.

COMMONWEALTH EDISON,

Respondent.

Case No. 98-ERA-2

**RESPONDENT'S RESPONSE AND OBJECTIONS TO
COMPLAINANT'S REQUEST FOR PRODUCTION OF DOCUMENTS
AND REQUEST FOR ADMISSIONS**

Respondent, Commonwealth Edison Company, by and through counsel, hereby responds and objects to Complainant's Request for Production of Documents, Admissions and Interrogatory Questions to Respondent ("Complainant's Request").

GENERAL OBJECTIONS TO DOCUMENT REQUESTS

1. Some or all of the document requests are vague, ambiguous, ill-defined, and largely duplicative of the material requested in Complainant's prior requests.
2. The document requests are unduly burdensome for Respondent in light of the relevant facts and issues in this action, and they represent an improper attempt to harass and disrupt Respondent's business operations.
3. Some or all of the document requests seek production of materials which are not relevant to this case, and not likely to lead to relevant evidence. In particular, but without

Exhibit 4

3. The Complainant engaged in protected activity under Section 211 when he filed "PIFs" with the Respondent:

Response: Respondent objects to this Request as being overly broad, vague and ambiguous in referring generally to "PIFs" and for calling for a legal conclusion and, therefore, this Request is denied.

4. The Complainant engaged in protected activity when he raised issues concerning the conduct of Toni Myers:

Response: Respondent objects to this Request as being overly broad, vague and ambiguous in referring generally to "raised issues" and for calling for a legal conclusion and, therefore, this Request is denied.

5. The official who made the decision to terminate Mr. Robarge knew of the protected activity engaged in by the Complainant:

Response: Respondent objects to this Request in that it is vague and ambiguous by suggesting that a single "official" was involved in the decision to terminate Mr. Robarge, and to the extent it calls for a legal conclusion. Therefore, this Request is denied.

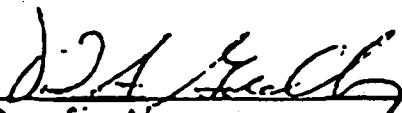
6. Other supervisors employed in the HP Department made remarks which were crude, rude, lured, vulgar and/or foul and did not obtain any discipline:

Response: Respondent objects to this Request on the basis that it is inherently vague and ambiguous and, therefore, this Request is denied.

Response: Respondent objects to this Request as being vague and ambiguous, in addition to being irrelevant to the extent it calls for information "prior to April 1996" given that Complainant was terminated on December 9, 1996. Therefore, this Request is denied.

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

By: 
One of its Attorneys

Richard F. O'Malley, Jr.
David A. Goldberg
SIDLEY & AUSTIN
One First National Plaza
Chicago, Illinois 60603

ODNIA PCDUCS CHICAGO 813979 2 February 5, 1996 (9:19am)

AFFIDAVIT

Under the pains and penalties of perjury, I, [REDACTED] hereby affirm that the following information is true and correct:

1. I am currently an employee of Commonwealth Edison at Plant Zion, and I have been employed by Commonwealth Edison for eight (8) years.
2. Filing a Problem Identification Form (PIF) is very important to public health and safety.
3. It is well known at Commonwealth Edison that other employees and supervisors may get angry at an employee for filing a PIF.
4. I have seen the official legal position of Commonwealth Edison regarding whether filing PIFs constitutes protected activity, and I was very upset by what I have read.
5. This type of statement by Commonwealth Edison confirms the *chilling* effect that it has on me and whether I will file PIFs in the future. I believe that this statement would clearly have a chilling effect on other employees as they continue to learn of Commonwealth Edison's position.
6. I am very concerned that filing this affidavit may result in retaliatory actions taken against me, and thus I request complete confidentiality from the Nuclear Regulatory Commission.

THE AFFIANT SAYETH FURTHER NOT.

[REDACTED]

2/26/98
Date

KOHN, KOHN & COLAPINTO, P.C.

3233 P Street, N.W.
Washington, D.C. 20007-2756
Tel: (202) 342-6980
Fax: (202) 342-6984

March 12, 1998

Via Fax No. 312-853-7036

David Goldberg
Sidley & Austin
One First National Plaza
Chicago, Il. 60603

Re: *Robarge v. Commonwealth Edison, 98-ERA-2*

Dear David:

I can only hope that the proposal set out in this letter can constitute a final agreement on the wording of a stipulated confidentiality agreement. Earlier today we briefly spoke about complainant's objected to the inclusion of Section (g) in the stipulated protective order. During our discussions I advised you that we object to the inclusion of Section (g) because it interfered with complainant's ability to directly communicate with the Nuclear Regulatory Commission ("NRC"). Your response to this concern was that the under the remainder of the agreement the complainant need only alert respondent as to which documents complainant would like to submit to NRC and that if we are unable to reach an agreement on this matter that we would then be required to obtain an order from the Department of Labor to secure the release of the documents. Since our last conversation I reviewed your original draft as well as the proposed draft Stephen forwarded to you on March 10, 1998. As it turns out, the mere deletion of section (g) did not cure the problem complainant sought to cure (i.e., an unhindered right to share documents directly with NRC without having to wait for a subpoena and exhaust the procedures stated in the agreement.). In fact, we can agree to the introduction of Section (g) simply by your agreeing to add a new subpart (iii) thereto, which would state as follows:

Nothing in this agreement shall constitute a prohibition on either party to communicate directly with the U.S. Nuclear Regulatory Commission any information or documentation that is designated as "confidential" by either party except that the party seeking to provide that material to the NRC shall clearly designate the document as "confidential" and request that the document be treated as confidential to the fullest extent reasonable under the circumstance.

Exhibit 6

Complainant also now seeks to include a new paragraph 12 as follows:

Nothing in this agreement shall constitute a waiver by any party thereto to seek a modification of the terms of this stipulated protective order with the presiding administrative law judge.

Finally, we agree to sign the agreement as counsel for Mr. Robarge and to modify paragraphs 7 and 8 as you requested. I am enclosing herewith a copy of "Exhibit A" (which should have been include in our March 10th transmission but may have been inadvertently omitted).

Complainant would like to wrap this matter up today. I am prepared to fax a signed agreement incorporating the above-identified changes today.

Very truly yours,



Michael D. Kohn

KOHN, KOHN & COLAPINTO, P.C.

3233 P Street, N.W.
Washington, D.C. 20007-2756
Tel: (202) 342-6980
Fax: (202) 342-6984

March 18, 1998

Via Fax No. 312-853-7036

David Goldberg
Sidley & Austin
One First National Plaza
Chicago, Il. 60603

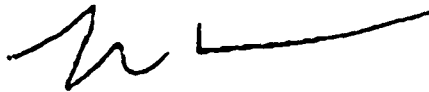
Re: *Robarge v. Commonwealth Edison. 98-ERA-2*

Dear David:

Please find enclosed an executed Stipulation and Order Governing Confidentiality of Documents and Information that incorporates all of your demands. As you are aware, the only outstanding dispute concerns complainant's insistence to the inclusion of subpart (iii) to Section 3(g). We are greatly disturbed by Respondent's refusal to incorporate this change into the agreement. In any event, I am herewith including a proposed addendum to the agreement that would incorporate the language Complainant wants included, i.e., Section 3(g)(iii). We have executed this proposed addendum in the hopes that you will agree to these terms. You are directed to execute and fax to me a copy of the agreement after you execute it. I anticipate that you will file an executed agreement with the Court today (and serve a copy on me as well).

As we have executed an agreement deleting the terms to which respondent was unwilling to incorporate, you are directed to immediately transmit all documents responsive to complainant's outstanding discovery requests. I anticipate that these documents will be shipped today. I continue to be mystified by respondent's continued refusal to produce documents you claim to constitute confidential material when these documents were protected from disclosure under the agreement set forth in the November 25, 1997 on-the-record agreement entered into between Stephen Kohn and Richard O'Malley, Jr. (See Strodl deposition at pages 49-52). Your continued refusal to produce documents has hampered and continues to hamper complainant's trial preparations

Very truly yours,



Michael D. Kohn

Exhibit

7

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

RANDY ROBARGE,

Complainant,

v.

COMMONWEALTH EDISON,

Respondent.

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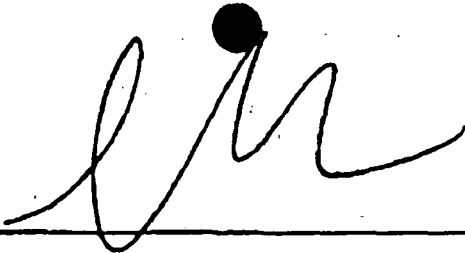
ADDENDUM TO STIPULATION AND ORDER GOVERNING CONFIDENTIALITY OF
DOCUMENTS AND INFORMATION

On March __, 1998 the parties entered a Stipulation pertaining to the confidentiality of documents and information produced during discovery. The parties hereby agree to the inclusion of an additional subpart at the conclusion of section 3(g)(ii) which shall henceforth be designated as section 3(g)(iii), and which shall state as follows:

(iii) nothing in this stipulation and order shall constitute a prohibition on either party to communicate directly or indirectly with the U.S. Nuclear Regulatory Commission ("NRC") any information or documentation that is designated "Confidential" by either party except that the party seeking to provide that material to the NRC shall clearly designate the document as "Confidential" and request that the document be treated as such by NRC to the fullest extent possible under the circumstances.

[Signatures appear on following page]

By:



Attorney for Complainant:

Stephen M. Kohn
Michael D. Kohn
KOHN, KOHN & COLAPINTO, P.C.
3233 P Street, N.W.
Washington, D.C. 20007-2756
(202) 242-6980

Attorney for Respondent

Richard F. O'Malley, Jr.
David A. Goldberg
SIDLEY & AUSTIN
One First National Plaza
Chicago, IL 60603
(312) 853-7000

SO ORDERED:

Hon. Thomas F. Phalen, Jr.
Administrative Law Judge

Dated

518/po addendum

SIDLEY & AUSTIN

A PARTNERSHIP INCLUDING PARTNERSHIP CORPORATIONS

DALLAS
LOS ANGELES
NEW YORK

ONE FIRST NATIONAL PLAZA
CHICAGO, ILLINOIS 60603
TELEPHONE 312 853 7000
FACSIMILE 312 853 7036

WASHINGTON, D.C.
LONDON
SINGAPORE
TOKYO

FOUNDED 1866

TELETYPE SERVICE NUMBER
(312) 853 2216

March 19, 1998

Via Facsimile

Michael D. Kohn
Kohn, Kohn & Colapinto
1233 P Street, N.W.
Washington, D.C. 20007-2756

Re. Robarge v. Commonwealth Edison Company (98 ERA 2)

Dear Michael:

The form of executed confidentiality order that you forwarded to me yesterday continues to have errors and other problems that I have conveyed to you since we began talking on the subject recently. I am assuming that, given your revised order, you have chosen not to take me up on my suggestion to go back to ComEd's original order from January (which is puzzling, given that you have now basically incorporated all of the sections from the ComEd document that you once reported to be problematic). Nonetheless, I would recommend that until we either discuss these matters personally, or you circulate a draft for my review and comment, you refrain in the future from sending me an executed document that you prepared with a "direction" to sign and file it.

Here is a list of items that I have found for correction or modification:

- ¶ 3(e)(ii) reads "the subpoenaed party shall *produce* in good faith ..." This should read "*provided* in good faith..."
- ¶ 7 improperly reads "the party *requesting* confidentiality shall have twenty days following termination of such negotiations in which to make a motion..." It should read the party *objecting* to the confidentiality has to make any motion.
- As I explicitly noted just three days ago in my letter to you, the language in your Addendum is not something ComEd will stipulate to in a confidentiality order (or an addendum to such order). On the merits, this

Exhibit

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section goes directly against the purpose for having the confidentiality order in the first place. Further, there is already a provision in the order (once it is stated properly in ¶ 7) that gives both parties the ability to avoid a confidentiality designation if they so desire.

As we have since the beginning of this year, we remain ready to submit a workable and suitable confidentiality order for Judge Phalen to enter. Nothing should be causing you to be, as your letter puts it, "mystified" by CornEd's commitment to ensuring that an appropriate stipulation is finalized before further document production takes place — indeed, the deposition transcript pages you cite at the close of your letter expressly provide that your brother and Richard O'Malley agreed at the Strodl deposition back in November to eventually replace Steve's oral representations with a formal court order. I trust you will make the necessary corrections to the document, and if you are unable to drop your proposed NRC language, please let me know as soon as possible.

Finally, please find attached hereto a Notice of Continued Deposition for your client, Mr. Kobarge.

Very truly yours,


David A. Goldberg

enclosure

cc: Richard F. O'Malley, Jr.

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