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ADJUDICATORY ISSUE

February 10, 1993

(Information)

SECY-93-035

FOR: The Commission
FROM: John F. Cordes, Jr.
Solicitor
SUBJECT: LITIGATION REPORT - 1993 - 01

Local Union 1515, IBEW v. Commonwealth Edison Co.,
No. 93 CH 00794 (Circuit Court of Cook County, Ill.,
filed Jan. 27, 1993)

Plaintiff in this lawsuit is a labor union that seeks a state court order enforcing a subpoena for the testimony of six NRC employees at an arbitration proceeding. Two months ago, acting pursuant to the NRC's "Touhy" regulations, the NRC's General Counsel had issued a letter declining to permit the testimony. The General Counsel reasoned that there was no health and safety justification for the testimony, nor was there any showing that testimony by NRC employees was the sole means to elicit material factual information.

We have consulted with the United States Attorney's office in Chicago, which is filing papers to remove the case from state to federal court. We then plan to prepare a motion seeking dismissal of the suit.

Attachment: Complaint

Contact:
Carole F. Kagan
504-1620

NOTE: TO BE MADE PUBLICLY AVAILABLE
IN 10 WORKING DAYS FROM THE
DATE OF THIS PAPER

020014 XA

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DR2

DeLoatch v. Selin, Civ. No. 93-0163 (D.D.C., filed Jan. 26, 1993)

This is a Title VII lawsuit alleging race, gender and age discrimination in a promotion decision in the NRC's Division of Contracts and Property Management. Plaintiff's effort to obtain administrative relief proved unsuccessful, and he now seeks a remedy in federal district court in Washington, D.C. Plaintiff may have filed suit in the wrong court, as discrimination complaints against the NRC for headquarters activities normally lie in the federal district court for Maryland (in Baltimore). We will work with the United States Attorney's office both on this procedural problem and on the merits of the case.

Attachment: Complaint

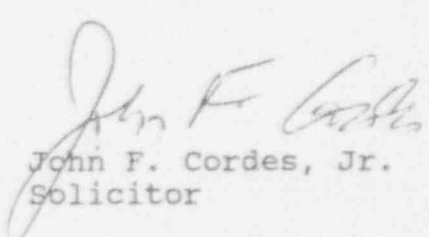
Contact:
Marvin L. Itzkowitz
504-1566

Combustion Engineering, Inc. v. NRC, No. 93-1094 (D.C. Cir., filed Jan. 29, 1993)

This suit challenges the NRC's denial of Combustion Engineering's request for an exemption from paying annual charges for fiscal year 1992. CE already is challenging the NRC's denial of an exemption for fiscal year 1991. See Litigation Report 1992-02, SECY-92-028. That case has been argued and is awaiting decision by the D.C. Circuit. This latest suit was filed to protect CE's position should it prevail on its 1991 claim. CE has asked the court of appeals to hold its new suit in abeyance.

Attachment:
Petition for Review

Contact:
L. Michael Rafky
504-1974


John F. Cordes, Jr.
Solicitor

DISTRIBUTION:	
Commissioners	OPP
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OCAA	EDO
OIG	ACRS
OPA	ASLBP
IP	SECY
OCA	

ATTACHMENT -

Local Union 1515, IBEW v. Commonwealth Edison Co.,
No. 93 CH 00794 (Circuit Court of Cook County, Ill.,
filed Jan. 27, 1993)

IN THE CIRCUIT COURT OF COOK COUNTY
STATE OF ILLINOIS

LOCAL UNION 1515, INTERNATIONAL)
BROTHERHOOD OF ELECTRICAL WORKERS;)
LOCAL UNION 1460, INTERNATIONAL)
BROTHERHOOD OF ELECTRICAL WORKERS;)
LOCAL UNION 1461, INTERNATIONAL)
BROTHERHOOD OF ELECTRICAL WORKERS;)
and LOCAL UNION 1469, INTERNATIONAL)
BROTHERHOOD OF ELECTRICAL WORKERS.)

Plaintiffs,)

vs.)

COMMONWEALTH EDISON COMPANY,)

Serve: J. Stanley Graves)
Commonwealth Edison Company)
1st National Bank Building)
10 S. Dearborn)
Chicago, Illinois 60603)

and)

UNITED STATES NUCLEAR REGULATORY)
COMMISSION, REGION III.)

Serve: A. Bert Davis, Regional)
Administrator,)
United States Nuclear)
Regulatory Commission,)
Region III,)
790 Roosevelt Road)
Glen Ellyn, IL 60137)

Defendants,)

No. _____

Div. CHANCERY

COMPLAINT IN CHANCERY
TO ENFORCE SUBPOENAS

NOW COME Plaintiffs Local Union 1515, International Brother-
hood of Electrical Workers; Local 1460, International Brotherhood
of Electrical Workers; Local 1461, International Brotherhood of

Electrical Workers; and Local 1469, International Brotherhood of Electrical Workers, by their attorneys, and for their cause of action against Defendants Commonwealth Edison Company and United States Nuclear Regulatory Commission, Region III, state as follows:

1. Plaintiffs Local Union 1515, International Brotherhood of Electrical Workers (hereafter referred to as "Local 1515, IBEW"); Local Union 1460, International Brotherhood of Electrical Workers (hereafter referred to as "Local 1460, IBEW"); Local Union 1461, International Brotherhood of Electrical Workers (hereafter referred to as "Local 1461, IBEW"); and Local Union 1469, International Brotherhood of Electrical Workers (hereafter referred to as "Local 1469, IBEW") bring their cause of action against Defendants under Chapter 10, Paragraph 107 (a) through (d), Uniform Arbitration Act of the State of Illinois; Supreme Court Rules 219 and 237; and the Code of Civil Procedure, Section 2-209.1.

2. Defendant Commonwealth Edison Company (hereafter referred to as "Company") is a public utility engaged in the generation, transmission, distribution and sale of electricity in the State of Illinois, and its main office is located in the City of Chicago, County of Cook, State of Illinois.

3. Defendant United States Nuclear Regulatory Commission, Region III (hereafter referred to as "NRC Region III") is an agency of the United States Government whose main office is located in Glen Ellyn, Du Page County, State of Illinois.

4. Locals 1515, 1460, 1461, and 1469, IBEW represent certain employees of the Company who work at the Company's Dresden, Quad Cities, Zion, Braidwood, La Salle, and Byron nuclear generating

stations; and the wages, hours and terms and conditions of employment of the employees are set forth in a Collective Bargaining Agreement, effective April 1, 1992 through March 31, 1994 (hereafter referred to as the "1992-94 Agreement").

5. The Nuclear Regulatory Commission regulates nuclear generating stations and issues licenses to public utilities to operate nuclear generating stations. The Nuclear Regulator Commission has issued operating licenses to the Company to operate the Dresden, Quad Cities, Zion, Braidwood, La Salle, and Byron nuclear generating stations.

6. The Nuclear Regulatory Commission has issued policies, guidelines, and other written statements concerning matters such as safety, fatigue and hours worked by operating personnel, and quality assurance programs for licensees of operating plants.

7. Defendant NRC Region III in the past and at the present time has assigned engineers, inspectors, and other personnel to work in the Dresden, Quad Cities, Zion, Braidwood, La Salle, and Byron nuclear generating stations of the Company to monitor, inspect, and to perform related duties and assignments in connection with the policies, guidelines, and other written statement issued by the Nuclear Regulatory Commission concerning matters such as safety, fatigue and hours worked by operating personnel, and quality assurance programs.

8. Locals 1515, 1460, 1461, and 1469, IBEW and the Company have negotiated collective bargaining agreements for many years, including the current 1992-94 Agreement, and these collective

bargaining agreements contain a grievance and arbitration procedure in ARTICLE VIII. A copy of ARTICLE VIII, paragraphs 1 through 12 is attached hereto as Attachment "A".

9. On or about September 6, 1991, Locals 1515, 1460, 1461, and 1469, IBEW filed a grievance with the Company [Case No. QC-50 89] alleging that the Company had violated the collective bargaining agreement and past practice in connection with hours of work, overtime, compensation, and other terms and conditions of employment. A copy of the grievance is attached hereto as Attachment "B".

10. The grievance was processed through the Steps of the grievance procedure, and when the parties were unable to resolve the grievance, the grievance was processed to arbitration in accordance with the provisions of ARTICLE VIII.

11. An arbitration hearing was initially scheduled for September 1 and 2, 1992; but, at the request of the Company, it was continued to December 10 and 11, 1992, to be held at the Midland Hotel, 172 West Adams, Chicago, Illinois.

12. The Arbitrator selected by the Company and Locals 1515, 1460, 1461, and 1469, IBEW to conduct the arbitration hearing and to render a final and binding decision as provided for in ARTICLE VIII is Steven Briggs.

13. Pursuant to Chapter 10, Paragraph 107, of the Uniform Arbitration Act, Locals 1515, 1460, 1461, and 1469, IBEW requested of Arbitrator Steven Briggs that he issue Subpoenas Ad Testificandum for the attendance of witnesses at the arbitration hearing,

and Arbitrator Briggs issued the Subpoenas Ad Testificandum for witnesses to appear at the arbitration hearing.

14. On November 6, 1992, attorney Charles A. Werner on behalf of Plaintiffs Locals 1515, 1460, 1461, and 1469, IBEW, pursuant to 10 CFR Ch. 1, Subpart D, Paragraphs 9.200 through 9.201, sent a letter to William C. Parler, General Counsel of the United States Nuclear Regulatory Commission, Washington, D.C., informing the Nuclear Regulatory Commission of the arbitration hearing scheduled for December 10 and 11, 1992, and requested that representatives of the NRC be available for testimony at the arbitration hearing concerning documents issued by the NRC which are involved in the arbitration hearing between Plaintiffs and the Company. A copy of the letter is attached hereto as Attachment "C".

15. Approximately 10 days to 2 weeks later, an attorney on behalf of the Nuclear Regulatory Commission spoke to Charles Werner about the November 6, 1992 letter, and inquired about the background of the request, the nature of the hearing, and the need for the appearance of representatives of the Nuclear Regulatory Commission at the arbitration hearing. The NRC attorney was informed that the issues involved in the arbitration hearing involved safety and health, and fitness for duty, and that Plaintiffs requested testimony from representatives of Defendant NRC Region III who were stationed in the six (6) nuclear generating stations concerning the policies and guidelines of the NRC which were being cited and relied on by the Company in violation of the terms and

conditions of the collection bargaining agreement and past practice.

16. The attorney for the NRC did not request that Plaintiffs submit either an affidavit or a detailed statement of the testimony sought from the NRC Region III representatives at the arbitration hearing scheduled for December 10 and 11, 1992.

17. Subsequently Plaintiffs served the Subpoenas Ad Testificandum on NRC Region III representatives Wayne Kroop, Tom Taylor, Dave Hills, Steve DuPont, Walt Roger, and Jim Smith, for appearance and testimony at the arbitration hearing scheduled for December 10 and 11, 1992. All six (6) of the NRC Region III representatives were served their Subpoenas more than seven (7) days prior to their scheduled appearance at the arbitration hearing, and each of the six NRC Region III representatives received a check for witness fee and mileage in accordance with the fees for attendance in the Circuit Court of Cook County. Copies of the Subpoenas are attached hereto as Attachment "D".

18. The arbitration hearing between Plaintiffs and the Company convened on December 10, 1992, at the Midland Hotel, 172 W. Adams, Chicago, Illinois, at 10:00 AM before Arbitrator Briggs. The arbitration hearing was opened by Arbitrator Briggs, Opening Statements were made by the attorneys for Plaintiffs and the Company, and Plaintiffs began their presentation by offering exhibits into evidence.

19. None of the six (6) representatives of Defendant NRC Region III who were issued Subpoenas Ad Testificandum appeared

at the arbitration hearing, and there was no attorney or representative of Defendant NRC Region III present at the hearing.

20. No attorney appeared on behalf of the six (6) witnesses at the hearing to move that the Subpoenas be quashed, and there were no allegations made at the hearing that the Subpoenas were not properly issued.

21. The attorney for the Plaintiffs stated to Arbitrator Briggs at the arbitration hearing that Plaintiffs considered the testimony of the NRC Region III representatives to be critical to the presentation of their case.

22. Arbitrator Briggs acknowledged that the Subpoenas Ad Testificandum had been requested and issued in accordance with Chapter 10, Uniform Arbitration Act; but that only a Circuit Court could enforce the Subpoenas and order the witnesses to appear at the arbitration hearing.

23. The arbitration hearing was then adjourned so that the Plaintiffs could seek enforcement of the Subpoenas in Court.

24. Plaintiffs have no other remedy at law or equity to compel the enforcement of the Subpoenas and the appearance of the witnesses at the arbitration hearing.

25. Plaintiffs have been informed that Defendant NRC Region III will not permit the voluntary appearance of the requested representatives at the arbitration hearing, and that NRC Region III had directed the subpoenaed witnesses not to appear at the arbitration hearing on December 10 and 11, 1992.

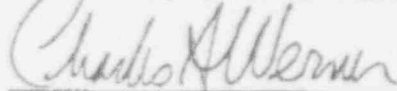
26. Plaintiffs submit that without the appearance and testi-

mony of the NRC Region III at the arbitration hearing, that they will not be able to fully and adequately present their case involving the issues concerning safety and health, and fitness for duty of the employees of the Company represented by Plaintiffs.

WHEREFORE, Plaintiffs pray that the Court forthwith enter its Order ordering Defendant NRC Region III and its employees who were issued Subpoenas Ad Testificandum in accordance with Chapter 10, Paragraph 107, Uniform Arbitration Act, to appear and testify at the arbitration hearing between Plaintiffs and the Company; that Defendant NRC Region III pay Plaintiffs their attorneys fees, costs and expenses resulting from the refusal of the subpoenaed representatives of Defendant NRC Region III to appear and testify at the arbitration hearing and the necessity of Plaintiffs to bring this law suit; and for such other and further relief as to the Court seems just.

Attorneys for Plaintiffs

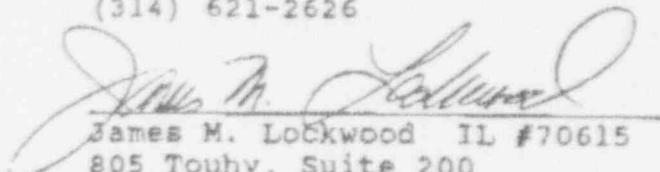
SCHUCHAT, COOK & WERNER



Charles A. Werner, MBE 17072



Neal M. Davis, IL #06202995
1221 Locust, Suite 250
St. Louis, MO 63103
(314) 621-2626



James M. Lockwood IL #70615
805 Touhy, Suite 200
Park Ridge, IL 60068
(708) 825-1965

would result in a rate higher than the schedule maximum of the job classification to which he is assigned.

When a qualified employee is temporarily assigned to and works in a management job classification he shall be paid for that day at a rate based upon his present rate plus \$4.00 per day.

Assignments of four hours or more in one day shall be considered a full day under this Section. No payment will be made for such temporary assignments if they amount to less than four hours in one day.

When promoting an employee who has had extensive upgrading over an extended period of time, consideration will be given, at the employee's request, to allowing time credit in the higher job classification not to exceed two time steps.

4. An employee returning from a military leave of absence, who is reemployed in his former job classification, or a job classification which is not higher than his former job classification, shall receive the rate of pay provided for in the then existing time steps of the job classification, taking into account the time credit which had accrued when he left for military service plus the period of his absence because of military service.

ARTICLE VIII

Stewards-Grievances-Arbitration

1. There shall be a reasonable number of Stewards, not to exceed 167 for all employees covered by this Agreement, who shall be selected by the Local Union they represent. Each Steward shall be assigned to a specific work group or work groups and in general the jurisdiction of one Steward shall not overlap that of any other Steward. The Union shall furnish the Company with a list of the names of the Stewards and the work groups they represent.

2. Chief Stewards shall be selected by the Local Union they represent. The Union shall furnish the Company with a list of the names of the employees selected as Chief Stewards.

The number of Chief Stewards shall be as follows:

<i>Location</i>	<i>Number of Chief Stewards</i>
Waukegan	5
Libertyville	5
Western Division	8
Rock River Division	14
Joliet	7
Harvey-Kankakee-Crestwood	4
Streator-Pontiac	8
Total	<u>51</u>

3. Only regular employees of the Company, employed in the respective work groups they represent, shall be designated as Stewards or Chief Stewards.

4. It shall be one of the duties of the Stewards and Chief Stewards to attempt to adjust disputes or differences referred to them by any of the employees they have been designated to represent.

5. Should any dispute or difference arise between the Company and the Union or its members as to the interpretation or application of any of the provisions of this Agreement or with respect to job working conditions, the term working conditions being limited to those elements concerned with the hours when an employee is at work and the acts required of him during such hours, the dispute or difference shall be settled through the grievance procedure, provided that no grievance will be considered which is more than four weeks old. A dispute as to whether a particular disagreement is a proper subject for the grievance procedure shall itself be treated as a grievance. The steps in the grievance procedure are:

- Step 1. The dispute or difference shall be presented and first discussed by the employee concerned and the immediate Supervisor. The employee shall be accompanied by a Steward if the employee so requests.
- Step 2. If the dispute or difference is not satisfactorily settled in Step 1, it shall be reduced to writing and presented by the Steward to the Division Commercial Manager, Division Operating Manager, Assistant Superintendent, or Superintendent, as the case may be, in the area in which the employee works. The management representative, who will be accompanied by the Industrial Relations Representative, shall discuss the grievance with the Steward, who may be accompanied by the Chief Steward having jurisdiction, within ten (10) working days after receipt of the grievance. Either party may be accompanied by one (1) additional representative. The management

AGREEMENT

representative shall give his answer within five (5) working days after the Step 2 discussion.

Step 3. If the dispute or difference is not satisfactorily settled in Step 2, it shall be presented to the Division Vice-President, Station Manager, or Plant Manager by the President of the employee's Local Union. The Division Vice-President, Station Manager, or Plant Manager and the Division Industrial Relations Manager and the General Office Labor Relations Representative will discuss the grievance with the President of the Local Union, who may be accompanied by the Chief Steward and Steward involved, within fifteen (15) working days after receipt of the grievance. Either party may be accompanied by one (1) additional representative. The management representative shall give his answer within five (5) working days after the Step 3 discussion.

Step 4. If the dispute or difference is not satisfactorily settled in Step 3, it shall be sent to the Director of Labor Relations by the President of the Local Union. The appropriate Company Vice-President shall, within thirty (30) working days meet and discuss the matter in dispute with a committee composed as follows:

Representatives of the Union:

The President from each of the seven Local Unions covered by this Agreement and the appropriate Chief Steward for the Department in which the dispute or difference has arisen, who may be accompanied by a representative of the Brotherhood.

Representatives of the Company:

The Vice President of the Company.
The Director of Labor Relations.

Additional Company representatives up to the number of Union representatives as stated above.

The Company shall give its answer within fifteen (15) working days after the date of this discussion.

Step 5. If the dispute or difference is not satisfactorily settled in Step 4, it shall be referred, at the request of either party, to an Arbitration Board consisting of not more than two representatives of the Company and not more than two

representatives of the Union. Should this Arbitration Board be unable to agree on any matter before them within forty-five (45) working days, the appointment of an impartial arbitrator shall be made from a list furnished to the parties under the procedure provided in the Voluntary Labor Arbitration Rules of the American Arbitration Association. The list shall contain the names of 15 arbitrators all whom are members of the National Academy of Arbitrators. No arbitrator shall be included in the list who has been selected to act or is acting as the impartial arbitrator in any other pending labor arbitration between the Company and System Council U-25 or any of their Local Unions. Each party will remove no more than seven of the arbitrators from the list and return it to the American Arbitration Association. When the appointment of an impartial arbitrator is made under such rules, the arbitration shall be conducted under the Voluntary Labor Arbitration Rules of the American Arbitration Association. All decisions rendered by the Arbitration Board shall be final and binding on both parties.

6. In all cases in this Article where a certain number of working days is stipulated, the said number of days shall not include Saturdays, Sundays, or holidays.

The time specified for each step in the grievance procedure may be extended by mutual agreement. By mutual consent, any step in the grievance procedure may be bypassed.

7. At each step of the grievance procedure, any appointed or elected union representative may serve as an alternate. However, any alternate appointed for the representative of the Brotherhood will not qualify for pay under Article VIII, Section 12.

At each step of the grievance procedure, the Company may appoint an alternate for any of its representatives.

8. At each step above Step 1 in the grievance procedure the answer given by the Company shall be in writing. In case the Union is not satisfied with the Company's reply, it shall present within fifteen (15) working days a written request for further consideration to the Company representative specified at the next higher step.

9. The Arbitration Board shall be governed wholly by the terms of this Agreement and shall have no power to add or to change its terms.

Each party in an arbitration proceeding may be represented in such

ceeding by any person authorized in writing by such party. Such representatives may examine all witnesses in the proceedings.

Each of the parties in the arbitration proceedings shall bear the fees and expenses of its own Arbitrators and the fees and expenses of the impartial Arbitrator shall be borne by both parties, provided, however, that the total compensation of such impartial Arbitrator shall be agreed upon in advance after submission of the matter in controversy to the five arbitrators.

10. In case of a grievance relative to disciplinary suspension or censure, or discharge for cause, such grievance shall be originated at Step 3 in the grievance procedure.

In grievances involving discharges, it is the objective of the parties that the grievance will normally be resolved within 9 months of the discharge. In order to accomplish this objective, if the grievance is processed to Step 5 and a panel of arbitrators is requested from the American Arbitration Association, the panel shall include the names of 4 arbitrators who are members of the National Academy of Arbitrators. The Company and the Union agree to strike no more than 5 names on the panel of arbitrators and to rank the remaining arbitrators. If the selected arbitrator is not available to conduct the arbitration hearing within 2 months of his or her selection, the next mutually agreeable arbitrator(s) in the panel will be contacted for their availability. If a transcript of the hearing is requested, it must be furnished within 3 weeks of the close of the hearing. By mutual consent, any of the foregoing time periods may be waived or modified.

If the charges are not sustained in the procedure outlined in this article, the employee's record shall be cleared of such charges and in case of loss of any wages he shall be reimbursed for such loss.

In case of a grievance as a result of implementation of a departmental reorganization or technological change affecting employees in the originating unit, changes in an existing job classification, or the establishment of a new job classification, such grievance may be originated at Step 4.

11. In the event of a dispute or difference, the parties hereto shall continue to transact and carry on their business in the same manner as at the time of the raising of the question or questions in dispute until a settlement is reached through the grievance or arbitration procedure provided in this Article.

12. Pay at their basic hourly rates of pay will be allowed officially designated Union representatives, or their alternates, as provided for in this Article, for the basic work days of their basic work week, while engaged in the following steps of the grievance procedure:

Stewards	Steps 1, 2 and 3
Chief Stewards	Steps 2, 3 and 4
Local Union Presidents	Steps 3 and 4

ARTICLE IX

Terms of Agreement

1. This Agreement, when signed by the proper officials of the Company and the Union and approved by the President of the Brotherhood, shall be effective as of April 1, 1992, for the employees on the payroll on and after April 1, 1992.

2. The terms of the new Agreements shall be from April 1, 1992, to March 31, 1994. The Company or the Union shall have the right, upon at least sixty (60) days prior written notice, to reopen the Agreements as of March 31, 1993 for negotiation only of general wage changes effective April 1, 1993. Upon submission of a reopening notice, negotiations shall begin at least forty (40) days prior to the reopening date, and if negotiations are not resolved by the reopening date of March 31, 1993 the issue of any general wage changes shall be determined by an arbitration board appointed and acting in accordance with the provisions of Article VIII of the Agreements. The Agreements shall be considered renewed from term to term of one (1) year each at the expiration date of March 31, 1994 unless a written notice of desire to amend or terminate the Agreements is given by the Union or Company at least sixty (60) days prior to the expiration of the term of the Agreements or of any renewal period. In the event such written notice expresses a desire to amend the Agreements, such desired amendments shall be set forth in writing and accompany the notice of desire to amend. The parties agree to commence negotiations on any proposed amendments not less than forty (40) days prior to the end of the then current term, and further agree that if said negotiations are not completed by the expiration date of the then current term of the Agreements, then the term of the Agreements shall automatically be extended so long as negotiations are in progress. Changes in the Agreements can be made at any time by mutual consent.

JAMES K. COOK
CHARLES A. WERNER
CHRISTOPHER T. HEXTER
MARILYN S. TEITELBAUM
JAMES I. SINGER
LISA S. VANAMBERG
SALLY E. BARKER
ARTHUR J. MARTIN
NEAL M. DAVIS
JEANNE M. JORDAN

LAW OFFICES
SCHUCHAT, COOK & WERNER
THE SHILL BUILDING, SUITE 250
1221 LOCUST STREET
SAINT LOUIS, MISSOURI 63103
OPTIONAL FORM NO. 10 (7-81)

AREA CODE 314
621-2626
TELECOMPAR
621-2178
STANLEY R. SCHUCHAT
(1939-79)

FAX TRANSMITTAL

To: <u>Carole Logan</u>	From: <u>Bruce Benson</u>
Dept: <u>Agencies</u>	Phone: <u></u>
Fax: <u>301 504 1672</u>	Fax: <u></u>

NON 7541-01 317 (361) 5015-101 GENERAL SERVICES ADMINISTRATION

Jul

Mr. Robert E. Cronin
Sidley & Austin
One First National Plaza
Chicago, Illinois 60603

Re: Case No. 51 300 0151 92 S
Commonwealth Edison Company and Local Unions 1515,
1460, 1461, and 1469, IBEW
Grievance: QC-50-89

Dear Bob:

The above-captioned arbitration is scheduled for Tuesday and Wednesday, September 1st and 2nd, 1992. Kristin Allison, AAA Tribunal Administrator, noted in her Notice of Hearing that Arbitrator Steven Briggs has requested a Chicago location for the hearing. The Unions do not have any objection to this arbitration hearing being held in Chicago, and suggest that the Company or the Unions make arrangements at a Chicago hotel for these two dates. With respect to the starting time, the Unions prefer that we start at 9:00 a.m. on Tuesday, September 1st. The parties can agree on September 1st as to the starting time for September 2nd.

It is the position of the four Unions that this case involves three basic issues:

1. The Company violated and continues to violate the Collective Bargaining Agreement and past practice when it unilaterally instituted overtime guidelines and restrictions at the Zion, Dresden, and Quad Cities Nuclear Generating Stations.
2. The Company violated and continues to violate the Collective Bargaining Agreement and past practice when it unilaterally instituted overtime guidelines and restrictions on non-safety related classifications and functions at the Zion, Dresden, Quad Cities, Braidwood, Byron, and LaSalle Nuclear Generating Stations.

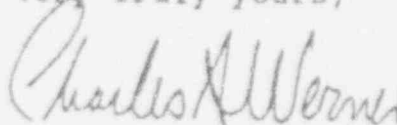
3. The Company violated and continues to violate the Collective Bargaining Agreement and past practice, including the call-out procedures, forcing employees to work overtime, and the computation of overtime hours, by its unilaterally instituted overtime guidelines and restrictions at the Zion, Dresden, Quad Cities, Braidwood, Byron, and LaSalle Nuclear Generating Stations, and the use and misuse of its Overtime Deviation Authorization Policy.

I believe that a great deal of the information and documents pertaining to this arbitration can be identified and agreed-upon prior to the arbitration hearing. These documents can then be stipulated as exhibits by the parties at the beginning of the hearing. Other documents can be identified and brought to the hearing as possible exhibits; or, at least, as references for either party and/or the Arbitrator.

With this in mind, I request that the Company gather together the documents listed in Attachment A to this letter, and make them available to me for my inspection on a day during the week of July 20th through 24th, 1992. After I review the documents, I will make arrangements with you for the copying of those documents I will need for the arbitration hearing.

Please give me a call next week as to the date that the documents will be available. I will probably have some Union representatives with me at the time the documents are inspected.

Very truly yours,



Charles A. Werner

CAW:dk

Enclosure

cc: Mr. Edward J. MacDonald
Mr. Richard Young, Local 1460, IBEW
Mr. Edward Holden, Local 1461, IBEW
Mr. Don Hardy, Local 1469, IBEW
Mr. Norman Willey, Local 1515, IBEW

12270.1

ATTACHMENT A

Local Unions 1460, 1461, 1469, and 1515, IBEW (hereafter "Unions") request that Commonwealth Edison Company (hereafter "Company") make available to the Unions' attorney and representatives the following information and documents in the possession of the Company for inspection and subsequent copying in connection with the arbitration hearing in Case No. 51 300 0151 92 S between Locals 1515, 1460, 1461, and 1469, IBEW and Commonwealth Edison Company:

1. Copies of all Company documents, policies, and memorandums, from January 1, 1986 to the present time, concerning overtime policies and guidelines at the Zion, Dresden, Quad Cities, Braidwood, Byron, and LaSalle Plants, including but not limited to the following:
 - a. Interim Policy Statement, dated 12/31/90.
 - b. Changes in Implementing NRC Generic Letter 82-12 Overtime Restrictions, dated 10/21/91.
 - c. Current and past copies of Nuclear Operations Directive NOD OA.13.
 - d. T.J. Kovach's letter to A.Bert Davis, dated 10/4/89, including enclosure.
 - e. Henry E. Bliss's letter to A.B. Davis, dated 7/5/88, including attachments.
 - f. T.J. Kovach's letter to A.Bert Davis, dated 2/15/90.
 - g. Overtime Guidelines, dated 3/15/90
2. Copies of all Nuclear Regulatory Commission (hereafter "NRC") memos and documents to the Company concerning overtime at the six (6) nuclear generating stations, including but not limited to:
 - a. GL 82-12
 - b. GL 82-02
 - c. NUREG 0737
 - d. GL 83-14
 - e. GL 84-01
 - f. The documents listed in Attachment II which is attached to this Attachment A.
 - g. Letter and attachment from Edward G. Greenman to Cordell Reed, dated 8/4/88.
 - h. The Diagnostic Evaluation Team Report For Zion Nuclear Station from James M. Taylor to James J. O'Connor, dated 9/4/90.
 - i. Letter and attachments from William L. Forney to Cordell Reed, dated 1/4/91.
 - j. Letter and attachments from W.D. Shafer to Cordell Reed, dated 3/29/91.
 - k. Letter and attachments from G.C. Wright to Cordell Reed, dated 3/29/88.
 - l. Letter and attachments to Cordell Reed regarding Dresden, from the NRC, dated 5/18/88.

ATTACHMENT A (Continued)

3. The initial, revised, and current NRC Operating Licenses for the Zion, Dresden, Quad Cities, Braidwood, Byron, and LaSalle Nuclear Generating Stations, including, but not limited to, NPF-11, NPF-18, NPF-19, NPF-25, NPF-29, NPF-30, NPF-37, NPF-39, NPF-48, NPF-66, NPF-72, and NPF-77.
4. All NRC Inspection Reports of the Zion, Dresden, Quad Cities, Braidwood, Byron, and LaSalle Generating Stations from January 1, 1986 to the present time.
5. The Overtime Guidance Procedures for the Zion, Dresden, Quad Cities, Braidwood, Byron, and LaSalle Generating Stations, which I believe are marked or numbered as follows:
 - a. Byron BAP 100-7
 - b. Braidwood BWAP 100-7
 - c. LaSalle LAP 100-17
 - d. Dresden DAP 7-1
 - e. Quad Cities QAP 300-3
 - f. ZION ZAP-09
6. Copies of all Overtime Deviation Authorizations, before and after the fact, for the Zion, Dresden, Quad Cities, Braidwood, Byron, and LaSalle Generating Stations from January 1, 1986 to the present time.
7. Copies of reports for the Zion, Dresden, Quad Cities, Braidwood, Byron, and LaSalle Generating Stations showing the overtime hours worked by employees covered by the Company's overtime guidelines, and hours worked and names of employees, including supervisors, who exceeded the Company's overtime guidelines.
8. Copies of all semi-annual reports and records submitted by the six (6) nuclear generating stations to the Company's Vice President showing deviation approvals.
9. Copies of any other documents, data, and information used or relied on by the Company in its preparation and implementation of overtime guidelines for employees at the Zion, Dresden, Quad Cities, Braidwood, Byron, and LaSalle Nuclear Generating Stations.

If you have questions concerning any of the above requests, please contact Charles A. Werner, attorney for the Unions, 1221 Locust, Suite 250, St. Louis, MO 63103 (Telephone: 314-621-2626).

ATTACHMENT II

ADDITIONAL REFERENCES

- References (c): US NRC I.B. Circular No. 80-02 dated February 1, 1980, "Nuclear Power Plant Staff Work Hours."
- (d): D. G. Eisenhower letter to All Licensees and Applicants dated July 31, 1980, Generic Letter 80-29, "Interim Criteria for Shift Staffing."
- (e): D. G. Eisenhower letter to All Licensees and Applicants dated October 31, 1980, Generic Letter 80-40, "Post-TMI Requirements" which transmitted NUREG 0737, including section I.A.1.3 Shift Manning.
- (f): D. G. Eisenhower letter to All Licensees and Applicants dated February 8, 1982, Generic Letter 82-02, "Nuclear Power Plant Staff Working Hours" which transmitted "Policy on Factors Causing Fatigue of Operating Personnel at Nuclear Reactors."
- (g): D. G. Eisenhower letter to All Licensees and Applicants dated June 15, 1982, Generic Letter 82-12, "Nuclear Power Plant Staff Working Hours", which transmitted revised pages of NUREG 0737 section I.A.1.3 Shift Manning, and "Policy on Factors Causing Fatigue of Operating Personnel at Nuclear Reactors."
- (h): D. G. Eisenhower letter to All Licensees and Applicants dated March 7, 1983, Generic Letter 83-14, "Definition of 'Key Maintenance Personnel' (Clarification of Generic Letter 82-12)." 178Y 159 17660 174 81-03-07
- (i): R. F. Janacek letter to D. G. Eisenhower dated November 5, 1980, "Response to NRC Request Concerning Interim Criteria for Shift Staffing."
- (j): J. S. Abel letter to D. G. Eisenhower dated December 15, 1980, "Confirmation of NUREG-0737 Implementation Dates and Justification for Delays."
- (k): J. S. Abel letter to D. G. Eisenhower dated January 30, 1981, "Supplemental Information Concerning Shift Overtime, NUREG 0737 Item I.A.1.3."
- (l): J. S. Abel letter to D.G. Eisenhower dated April 1, 1981, "Information Concerning NUREG-0737 Items With Submittals Due by April 1, 1981."

REFERENCES

- (m): J. S. Abel letter to D.G. Eisenhower dated May 29, 1981.
"Supplemental Response to NUREG 0737 Concerning Shift
Overtime."
- (n): T. A. Ippolito letter to L. DelGeorge dated November 10,
1981 "TMI Action Plan Items I.A.1.3(1), I.C.5, and I.C.6
As Described in NUREG-0737." ~ 3 ?
2 x f
- (o): E. D. Swartz letter to D.G. Eisenhower dated June 4, 1982,
"Response to Generic Letter 82-10 Concerning Various
NUREG 0737 Items."
- (p): Amendment No. 86 to Dresden Unit 2 Technical
Specifications, Item 6.2.A.14, issued March 20, 1985.
- (q): Amendment No. 79 to Dresden Unit 3 Technical
Specifications, Item 6.2.A.14, issued March 20, 1985.
- (r): C. W. Schroeder letter to A. Schwencer dated May 4,
1982, "LaSalle County Station Units 1 and 2
Interpretation of Technical Specifications-Plant Staff
Working Hours."

ATTACHMENT A (7/29/92 Supplement)

- No. 3 The sections and provisions of the initial, revised, and current Operating Licenses with the NRC for the Zion, Dresden, Quad Cities, Braidwood, Byron, and LaSalle Nuclear Generating Stations which contain provisions or refer to the technical specifications, overtime guidelines, fitness for duty, hours of personnel, and related matters concerning the scheduled and working hours of the employees at these six (6) stations [both Union employees and management].
- No. 4 The sections and provisions of all NRC Inspection Reports of the Zion, Dresden, Quad Cities, Braidwood, Byron, and LaSalle Nuclear Generating Stations from January 1, 1986 to the present time which contain any references to the technical specifications, overtime guidelines, fitness for duty, deviation authorizations (pre and post-act), and hours of personnel [both Union employees and management].
- No. 5 All Overtime Guideline Procedures for the Zion, Dresden, Quad Cities, Braidwood, Byron, and LaSalle Nuclear Generating Stations, included the current Procedure and all revised Overtime Guideline Procedures which have been issued. To the best of the Unions' knowledge the numbers and revisions are as follows [but all revisions are requested]:
- a. Byron BAP 100-7 Revisions 1 through 6.
 - b. Braidwood BWAP 100-7 Revisions 1 through 4.
 - c. LaSalle LAP 100-17 Revisions 1 through 8.
 - d. Dresden DAP 7-1 Revisions 1 through 12
DAP 7-21 Revision 0 (and other revisions)
 - e. Quad Cities QAP 300-3 Revisions 1 through 14.
 - f. Zion ZAP-09 All revisions
- No. 6 All Overtime Deviation Authorizations, before and after the fact, for the Zion, Dresden, Quad Cities and LaSalle Generating Stations, from January 1, 1986 to the present time.
- No. 7 Copies of records maintained by the Zion, Dresden, Quad Cities, Braidwood, Byron, and LaSalle Nuclear Generating Stations from January 1, 1986 to the present time [other than the Deviation Authorizations requested in No. 6 above] which show employees bypassed for overtime (because of alleged "tech spec out", "not available because of 16hours/24, 24/48, or 72 over 7 days", or required to work overtime because of another employee's "non-availability because of technical specifications". If this information is on computer, furnish sample of data on the computer.

ATTACHMENT A [7/29/92 Supplement] continued

- No. 9 Copies of any other documents, data, and information used or relied on by the Company in its preparation and implementation of overtime guidelines for employees at the Zion, Dresden, Quad Cities, Braidwood, Byron, and LaSalle Nuclear Generating Stations.
- No. 10 Copies of any Operating and/or Maintenance Memorandums issued by the Zion, Dresden, Quad Cities, Braidwood, Byron, and LaSalle Nuclear Generating Stations, and/or the Company for the implementation of GL82-12.
- No. 11 Copies of the Force Reports for the Zion, Dresden, Quad Cities, Braidwood, Byron, and LaSalle Nuclear Generating Stations for each month during the period January 1, 1986 to the present time.
- No. 12 Furnish the name of any employee (management or Union), name of station, date, and copies of all Company memorandums and records who was not fit for work and/or who caused an accident or safety-related incident because he/she worked in excess of 16 hours in a 24 hour period, 24 hours in a 48 hour period, and/or 72 hours in a 7-day period.

BEFORE STEVEN BRIGGS, ARBITRATOR

In the Matter of Arbitration Between:
COMMONWEALTH EDISON COMPANY,
and
LOCAL UNIONS 1460, 1461, 1469 and
1515, IBEW

Grv. No. QC-50-89
Case No.
51 300 0151 92 S

SUBPOENA AD TESTIFICANDUM

TO: Walt Rodgers
NRC Engineer, & Dresden Nuclear Generating Station

You are commanded, that setting aside all manner of excuse and delay, to appear and give oral testimony under oath before Steven Briggs, Arbitrator, on the 11 day of December , 1992, at 9:00 A.M. at The Midland Hotel, 172 W. Adams, Room (tba) Chicago, Illinois.

This Subpoena Ad Testificandum is issued in accordance with the authority granted to Arbitrators under Ill.Rev.Stat. 1991, Ch.10, Par.107.

Issued this 6th day of August, 1992.

Steven Briggs
Steven Briggs, Arbitrator

ATTACHMENT D

BEFORE STEVEN BRIGGS, ARBITRATOR

* * * * *
 In the Matter of Arbitration Between:
 COMMONWEALTH EDISON COMPANY,
 and
 LOCAL UNIONS 1460, 1461, 1469 and
 1515, IBEW
 * * * * *

Grv. No. QC-50-89
 Case No.
 51 300 0151 92 S

SUBPOENA AD TESTIFICANDUM

TO: STEVIE DUPONT
NRC Engineer, # Braidwood Nuclear Generating Station

You are commanded, that setting aside all manner of excuse and delay, to appear and give oral testimony under oath before Steven Briggs, Arbitrator, on the 11th day of December, 1992, at 9:00 A.M. at the Midland Hotel, 172 West Adams St., Chicago, Illinois.

This Subpoena Ad Testificandum is issued in accordance with the authority granted to Arbitrators under Ill.Rev.Stat. 1991, Ch.10, Par.107.

Issued this 6th day of August, 1992.

Steven Briggs
Steven Briggs, Arbitrator.

SERVED
11-25-92

13310.1

BY STEVE KING

BEFORE STEVEN BRIGGS, ARBITRATOR

* * * * *

In the Matter of Arbitration Between:

COMMONWEALTH EDISON COMPANY,

and

LOCAL UNIONS 1460, 1461, 1469 and
1515, IBEW

* * * * *

*
*
*
* Grv. No. QC-50-89
*
* Case No.
* 51 300 0151 92 S
*
*

SUBPOENA AD TESTIFICANDUM

TO: DAVE HILLS
NRC Engineer, & LaSalle Nuclear Generating Station

You are commanded, that setting aside all manner of excuse and delay, to appear and give oral testimony under oath before Steven Briggs, Arbitrator, on the 11th day of December, 1992, at 9:00 AM, at the Midland Hotel, 172 West Adams St., Chicago, Illinois.

This Subpoena Ad Testificandum is issued in accordance with the authority granted to Arbitrators under Ill.Rev.Stat. 1991, Ch.10, Par.107.

Issued this 6th day of August, 1992.

Steven Briggs
Steven Briggs, Arbitrator

SERVED
11-25-92
BY MARK NUDING

In the Matter of Arbitration Between:

COMMONWEALTH EDISON COMPANY,

and

LOCAL UNIONS 1460, 1461, 1469 and
1515, IBEW

Grv. No. QC-50-89

Case No.
51 300 0151 92 S

SUBPOENA AD TESTIFICANDUM

TO: JIM SMITH
NRC Engineer, Zion Nuclear Generating Station

You are commanded, that setting aside all manner of excuse and delay, to appear and give oral testimony under oath before Steven Briggs, Arbitrator, on the 10th day of December, 1992, at 1:30 P.M. at MIDLAND HOTEL 172 W. ADAMS, Chicago, Illinois.

This Subpoena Ad Testificandum is issued in accordance with the authority granted to Arbitrators under Ill.Rev.Stat. 1991, Ch.10, Par.107.

Issued this 6th day of August, 1992.

Steven Briggs
Steven Briggs, Arbitrator

BEFORE STEVEN BRIGGS, ARBITRATOR

In the Matter of Arbitration Between:

COMMONWEALTH EDISON COMPANY,

and

LOCAL UNIONS 1460, 1461, 1469 and
1515, IBEW

Grv. No. QC-50-89

Case No.
51 300 0151 92 S

SUBPOENA AD TESTIFICANDUM

TO: Wayne Kropp
NRC Engineer, & Byron Nuclear Generating Station

You are commanded, that setting aside all manner of excuse and delay, to appear and give oral testimony under oath before Steven Briggs, Arbitrator, on the 10th day of December, 1992, at 1:30 P.M. at Midland Hotel 172 W. Adams, Chicago, Illinois.

This Subpoena Ad Testificandum is issued in accordance with the authority granted to Arbitrators under Ill.Rev.Stat. 1991, Ch.10, Par.107.

Issued this 6th day of August, 1992.

Steven Briggs
Steven Briggs, Arbitrator

BEFORE STEVEN BRIGGS, ARBITRATOR

In the Matter of Arbitration Between: *

COMMONWEALTH EDISON COMPANY, *

and *

LOCAL UNIONS 1460, 1461, 1469 and
1515, IBEW *

Grv. No. QC-50-89 *

Case No.
51 300 0151 92 S *

SUBPOENA AD TESTIFICANDUM

TO: Tom Taylor
NRC Engineer, @ Quad Cities Nuclear Generating Stat on

You are commanded, that setting aside all manner of excuse and delay, to appear and give oral testimony under oath before Steven Briggs, Arbitrator, on the 10 day of December, 1992, at 1:30 P.M. at Midland Hotel 172 W. Adams, Chicago, Illinois.

This Subpoena Ad Testificandum issued in accordance with the authority granted to Arbitrators under Ill.Rev.Stat. 1991, Ch.10, Par.107.

Issued this 6th day of August, 1992.

Steven Briggs
Steven Briggs, Arbitrator

LOCAL NO. 1515 & 1460 & 1461 & 1469
CASE NO. QC-50-89

Steward Having
Jurisdiction _____

Chief Steward
Having Jurisdiction _____

Under Article THE C.B.A. AND ALL OTHER
Section AGREE, & PERTAINING

Step No. 5
Date 9-6-91

FACTS IN CASE (to be filled in by Union)

1. Name of Employee(s) ALL EFFECTED EMPLOYEES AT LASALLE, BRAIDWOOD ST TONS
ALL DEPT.s EFFECTED BY 8212
2. Department LETTER CHANGE
3. Location ABOVE NOTED LOCATIONS
4. Date Case Occurred REFER TO QC-50-89
4. Date Answered in Step 1 _____
6. Discussion in Step 1 was between _____
7. Answer in Step 1 was given by _____
8. Description of Case AFTER QC-50-89 AT STEP 4 AND LONG TIME FRAM OF COMP. AND

UNION NEGOTIATING COMM. IMPASS, THE UNIONS ARE FORCED TO MOVE THE ISSUE TO
STEP 5 ON THIS ISSUE, CHANGES IN METHODS OF WORK HOURS (OVERTIME) RELATED TOO
THE COMPANY CHANGE USING THE 8212 GENERIC LETTER OF THE N.R.C.. WE DEMAND THAT
THE COMPANY MAKE-UP LOST OVERTIME BY THE CONTRACT AND WE DEMAND THAT COMPENSAT
FOR HOURS OF WORK CHANGES RESULTING FROM THE 8212 LETTER BE PROPERLY COMPENSAT
FOR FUTURE CHANGES FROM THE METHODS USED TO THIS TIME.
ATTACHED ARE GRIEVANCE EXAMPLES TO BE USED FOR THIS CASE SOLUTION.

(For additional space use other side)

Employee's Signature _____

Union Representative's Signature Gorman C Willey

DISPOSITION OF CASE (to be filled in by Company)
LABOR RELATIONS

1. Date form received SEP 06 1991
2. Date discussed by Company and Union _____
3. The Company's position _____
4. Date Answer Given to Union _____

ST EXHIBIT

2

Attachment B

JAMES K. COOK
CHARLES A. WEINER
CHRISTOPHER T. HENTER
MARILYN S. TITELBAUM
JAMES I. NINGER
LISA S. VANAMBERG
SALLY E. HARKER
ARTHUR J. MARTIN
NEAL M. DAVIS
THOMAS J. GRADY

LAW OFFICES

SCHUCHAT, COOK & WERNER
THE SHELL BUILDING, SUITE 250
1221 LOCUST STREET
SAINT LOUIS, MISSOURI 63103-2861

UNION EXHIBIT 21
621-2626
FAX: 621-2378

STANLEY R. SCHUCHAT
(1939-79)
ARTHUR H. NISSENBAUM
Of Counsel
MARSHAL K. SYMONBERG
Of Counsel

November 6, 1992

Mr. William C. Parler, General Counsel
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Re: Arbitration Between Commonwealth Edison
Company and Local Union Nos. 1460, 1461,
1469, & 1515, IBEW [Griev. No. QC-50-89]
AAA Case No. 51 300 0151 91 S

Dear Mr. Parler:

Local Union Nos. 1460, 1461, 1469, and 1515, IBEW ("Unions") and Commonwealth Edison Company ("Company") have an arbitration hearing scheduled in the above-captioned matter for December 10th and 11th, 1992 in Chicago, Illinois before Arbitrator Steven Briggs. The Arbitration was initially scheduled for September 1st and 2nd, 1992, but was continued at the request of the Company. I am enclosing a copy of my letter to Robert E. Cronin, attorney for the Company, with attachments, which will describe the issues before the Arbitrator and some of the documents that will be presented to the Arbitrator by the parties.

In August, 1992 (prior to the continuance of the hearing), I contacted Bruce Berson, Regional Counsel, NRC Region III, and informed him of the pending arbitration and requested the name of a representative of the NRC to be subpoenaed for the hearing. The Unions have requested, and Arbitrator Briggs has signed, a subpoena duces tecum and subpoena ad testificandum for the hearing. Mr. Berson informed me that I must seek approval from you, pursuant to 10 CFR Ch. 1, Subpart D, Paragraph 9.201, before an employee of the NRC can respond to a subpoena duly authorized under Illinois Law.


The issues in this arbitration hearing involve the interpretation and application of the Collective Bargaining Agreement and past practice between the Unions and the Company, and the Company's response and interpretation of NRC Generic Letters, Diagnostic Evaluation Team Reports, Deviation Authorizations, etc. It is anticipated that the Unions and the Company will present witnesses and evidence concerning the aforementioned NRC documents and matters such as work scheduling, overtime, rest

Attachment C

periods, deviation authorizations, safety versus non-safety related classifications, fitness for duty, etc. Since the heart of this arbitration hearing involves the NRC, it is essential that a representative of the NRC be present at the hearing to identify documents, explain the history and reasons for the issuance of the Generic Letters, explain the methodology and results of the Diagnostic Evaluation Team Reports, and other NRC documents, practices, and procedures.

The Unions request that a NRC representative be available on Thursday afternoon, December 10th, and if necessary, on Friday, December 11th, 1992 at the arbitration. We will pay a witness fee and mileage if requested. I would appreciate an immediate approval from your office, or the appropriate NRC Official, for the appearance of a designated NRC representative and the production of documents at the December, 1992 arbitration hearing.

Yours very truly,


Charles A. Werner, Attorney
for Local Unions 1460, 1461,
1469, and 1515, IBEW

CAW/bd

cc Mr. Bruce Berson, Regional Counsel
NRC Region III
799 Roosevelt Road
Glen Ellyn, Illinois 60137

Presidents, Local Unions 1460, 1461,
1469, and 1515, IBEW

Chairman, System Council U-25, IBEW

17474.1

IN THE CIRCUIT COURT OF COOK COUNTY
STATE OF ILLINOIS

Remaining pages
will be ~~so~~ faxed
as a separate
package

OPTIONAL FORM NO. 10 (7-90)

FAX TRANSMITTAL

of pages 17

To: <u>Carole Kagan, JCC</u>	From: <u>Gene Gerson</u>
Destination: <u>NBC</u>	Phone: <u>738 790 5732</u>
Fax: <u>301 504-1672</u>	Fax #
FD-36 (Rev. 11-17-85)	5099 101
GENERAL SERVICES ADMINISTRATION	

LOCAL UNION 1515, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS;
LOCAL UNION 1460, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS;
LOCAL UNION 1461, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS;
and LOCAL UNION 1469, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS.

Plaintiffs,

vs.

COMMONWEALTH EDISON COMPANY,

Serve: J. Stanley Graves
Commonwealth Edison Company
1st National Bank Building
10 S. Dearborn
Chicago, Illinois 60603

and

UNITED STATES NUCLEAR REGULATORY
COMMISSION, REGION III.

Serve: A. Bert Davis, Regional
Administrator,
United States Nuclear
Regulatory Commission
Region III,
790 Roosevelt Road
Glen Ellyn, IL. 60137

Defendants.

No. 93CH00794

Div. GENERAL CHANCERY

NOTICE

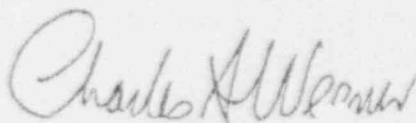
PLEASE TAKE NOTICE that Plaintiffs will call up Plaintiffs'
Complaint In Chancery To Enforce Subpoena on the 8th day of
FEBRUARY, 1993, in Division CHANCERY, 2201, of the Circuit Court

1-29-93
9:51 AM
RPH

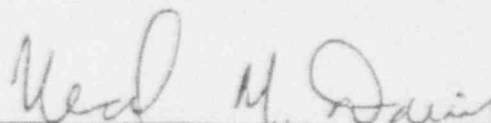
RICHARD J. DALEY Center,
of Cook County, State of Illinois at the hour of 10:00 A.M., or as
soon thereafter as the same may be heard.

Attorneys for Plaintiffs

SCHUCHAT, COOK & WERNER



Charles A. Werner, MBE 17072



Neal M. Davis, IL# 06202995
1221 Locust, Suite 250
St. Louis, Missouri 63103
(314) 621-2626



James M. Lockwood, IL# 70615
805 Touhy, Suite 200
Park Ridge, Illinois 60068
(708) 825-1965

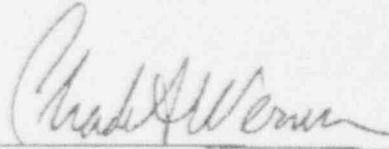
CERTIFICATE OF SERVICE

The undersigned hereby states that on this 27th day of JANUARY, 1993, a copy of the foregoing Notice was sent first-class mail, postage prepaid to the following:

J. Stanley Graves
Commonwealth Edison Company
1st National Bank Building
10 S. Dearborn
Chicago, Illinois 60603

and

A. Bert Davis, Regional Administrator
United States Nuclear Regulatory Commission
Region III
790 Roosevelt Road
Glen Ellyn, Illinois 60137



ATTACHMENT -

DeLoatch v. Selin, Civ. No. 93-0163 (D.D.C., filed
Jan. 26, 1993)

United States District Court

FOR THE DISTRICT OF COLUMBIA

Voneree Deloatch

SUMMONS IN A CIVIL ACTION

JACKSON, J. JR.

v.

CASE NUMBER: 93 0163

Ivan Selin, Chairman
U.S. Nuclear Regulatory Commission

TO: (Name and Address of Defendant)

Ivan Selin, Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (Name and Address): Gary Howard Simpson, Esq.,
Simpson & Ehrlich, P.A.
4800 Montgomery Lane
Suite 920
Bethesda, Maryland 20814

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

NANCY MAYER-WHITTINGTON

JAN 26 1993

CLERK

DATE

BY DEPUTY CLERK

[Signature]

United States District Court
For the District of Columbia
Office of the Clerk
3rd and Constitution Avenue, N.W.
Washington, DC 20001

Nancy M. Mayer-Whittington
Clerk

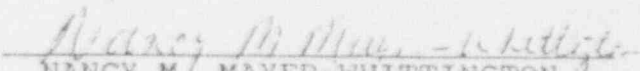
(202) 535-3584
FTS 535-3584
FAX 202-626-5079

NOTICE OF RIGHT TO CONSENT TO TRIAL
BEFORE A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of Title 28, U.S.C. Section 636(c), you are hereby notified that the United States Magistrate Judges of this District Court, in addition to their other duties, upon the consent of all parties in a civil case, may conduct any or all proceedings in a civil case, including a jury or nonjury trial, and order the entry of a final judgment.

You should be aware that your decision to consent, or not to consent, to the referral of your case to a United States Magistrate Judge must be entirely voluntary. Only if all the parties to the case consent to the reference to a Magistrate Judge will either the Judge or the Magistrate Judge to whom the case has been assigned be informed of your decision.

An appeal from a judgment entered by a Magistrate Judge may be taken directly to the United States Court of Appeals for this judicial circuit in the same manner as an appeal from any other judgment of a District Court. Alternatively, upon consent of all parties, an appeal from a judgment entered by a Magistrate Judge may be taken directly to a District Judge. Cases in which an appeal is taken to a District Judge may be reviewed by the United States Court of Appeals for this judicial circuit only by way of petition for leave to appeal.


NANCY M. MAYER-WHITTINGTON
Clerk of Court

CO-942A
Rev. 2/91

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

VONEREE DELOATCH,
612 Windmill Lane
Silver Spring, Maryland 20905

Plaintiff

vs.

Ivan Selin, Chairman
U.S. NUCLEAR REGULATORY COMMISSION
Washington, D.C. 20555

Serve: Ivan Selin, Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Defendant

C.A. No. _____

93 0163

COMPLAINT
(Violation of Title VII)

Jurisdiction

1. This action arises under the provisions of § 717 (c) and § 706 of Title VII, 42 U.S.C. § 2000e-16 (c) and 2000e-5, and 29 U.S.C. 633(a), the ADEA, and 28 U.S.C. § 1343 (4).

Parties

2. The Plaintiff, Voneree Deloatch, is a black male (born on November 11, 1940) employee of the Nuclear Regulatory Commission. At all times relevant to these proceedings Plaintiff has been employed by Defendant United States Nuclear Regulatory Commission. He is a citizen of the United States and resides in Silver Spring, Maryland.

3. The Defendant, United States Nuclear Regulatory Commission, (hereinafter "NRC") is an employer within the meaning of the ADEA and it maintains its principal offices in the District of Columbia. Ivan Selin is the Chairman of the U.S. Nuclear Regulatory Commission and is being sued in his official capacity.

4. Plaintiff has exhausted his administrative remedies by seeking EEO counseling and filing administrative complaints of discrimination, and more than 180 days have elapsed since he has done so.

Facts

5. The position of Branch Chief GG-15 became vacant on or about December, 1989.

6. Deloatch was qualified for this position; he had supervisory experience and technical expertise which qualified him for this job. During the course of the administrative proceedings he became a Brigade Commander in the Army Reserves. The position carries the rank of Brigadier General. He applied for the Branch Chief, GG-15, position. He was not promoted into this position. He was not promoted into it because of his race and gender and his age.

7. Ms. Mary Mace (a white female born on July 17, 1950) was promoted into the Branch Chief GG-15 position. She was not as well qualified as Deloatch for the position.

8. Ms. Mace received better treatment than Deloatch because of her gender, race and age. Management non-competitively detailed Mace as the Chief, Contract Administration Section No. 1 from December 3, 1989 to June 3, 1990 (180 days). Ms. Mace had no prior supervisor experience.

9. Ms. Mace was non-competitively detailed as Chief, Contract Negotiation Branch 2 from June 3, 1990 to December 6, 1990 (180 days).

10. The position in issue (the GG-15 level job) was announced on October 29, 1990; the position was announced ten months after the position became vacant so that Mace, due to the preferential treatment in terms of being non-competitively detailed into supervisory positions, could meet the minimal qualifications for the position (which required supervisory experience as a matter of federal personnel law).

11. Ms. Mace was named Acting Chief, Contract Negotiation Branch No. 2 from December 7, 1990 through May 3, 1991 (150 days).

12. Ms. Mace was selected into the Branch Chief, GG-15 job, on May 15, 1991.

13. Mr. Edward L. Halman, the selecting official, knew that the position in question is a GG-15 with supervisory responsibilities. The vacancy announcement says that the applicant must have:

Demonstrated ability to manage and supervise a staff of Contracts Specialists and supporting clerical staff. One year of this experience must have been at the next lower grade level or equivalent.

14. Ms. Mace's only supervisory experience were her temporary assignments starting in December of 1989 which were given to her non-competitively. With regard to the qualifications question, Mr. James H. Snizek, Deputy Executive Director, stated:

... the vacancy announcement on its face requires demonstrated ability to manage and supervise -- not previous experience doing so. Thus the plain language of the provision requires a demonstration of supervisor ability -- not experience.

He knew that the selectee had not demonstrated supervisory experience.

15. Ms. Mace obtained the year's supervisory experience illegitimately. The position was vacant on or about December 1989. As of that date Ms. Mace had no supervisory experience. She was named acting chief of the

Contract Administration Branch on December 3, 1989. There is no suggestion in the record of a valid reason for having delayed a competitive announcement beyond December 1989.

16. NRC Appendix 4108, Part III A. 1. a., now NRC Management Directive 10.1. I.F. Tab 7, page 11 requires the NRC to use competitive procedures when NRC employees compete for "the potential for promotion." This regulation was violated literally and in spirit.

17. Mr. Deloatch was the victim of improper delay in the announcement of a temporary position that carried with it "the potential for promotion." This delay resulted in the appointment of a white female in preference to a black male. He was qualified for the position as of December 1989.

18. Although the number of employees involved is small, making statistical inferences difficult, there is a promotional pattern that makes it more difficult for a black male to be promoted than for a white female.

19. Had there been a prompt announcement of a competitive position, Ms. Mace would not have been qualified for the position to which she was appointed because she lacked one year of supervisory experience.

20. Ms. Mace's multiple appointments (each of which was for more than 90 calendar days), which resulted in

her becoming qualified for this competitive position, were covered by NRC Appendix 4108, Part III A.1.a. because the series of actions affected NRC employees competing for "the potential for a promotion."

21. Here are the facts in tabular form:

<u>Dates of Appointment</u>	<u>Title</u>
12/3/89 - 6/3/90	Chief, Contract Administration Section No. 1 (180 days)
6/3/90 - 12/6/90	Chief, Contract Negotiation Branch No. 2 (180 days)
12/7/90 - 5/3/91	Acting Chief, Contract Negotiation Branch No. 2 (150 days)

22. There is no suggestion in the record of a valid reason for delaying a competitive announcement beyond December 1989. Mr. Halman says:

We are generally slow in filling major positions. If we put a person in a job as acting and the work is getting done, the pressure is off. It does not become a priority at the time to advertise it quickly.

This is not an adequate reason to delay an announcement which would permit open competition for an advancement opportunity.

23. These facts indicate a failure to follow the letter and spirit of the Merit Selection regulations (NRC Appendix 4108, Part III). Each of the separate appointments

exceeded 90 days. Together, they exceeded one year and four months. The coverage of those regulations is:

Whenever NRC employees compete for promotion or the potential for a promotion. (A.1.a.)

For selection of an NRC employee for temporary promotion for more than 90 calendar days. (A.1.d.)

The spirit of these regulations has been captured in a memoranda for office directors and regional administrators, signed June 19, 1990 by Mr. James M. Taylor, Executive Director for Operations:

It has come to my attention that some offices are liberally using "accretion of duties" as a means of effecting noncompetitive promotions above the "full performance" level. Likewise, some staff have been assigned from nonsupervisory to supervisory positions at the same grade level.

While the foregoing actions are allowed under our personnel regulations, I believe that, whenever possible, promotions and assignments to supervisory positions should be on a competitive basis. Competition helps ensure that the best qualified candidate fills every position and that all staff are treated equitably. Since supervisory experience is one factor in selection for SES positions, noncompetitive lateral assignments from nonsupervisory to supervisory positions give an advantage to current supervisors in the SES competitive process. [Emphasis added].

24. Had the merit selection procedures been adhered to and the same position description announced as is

now in contest, the winning candidate, Mary H. Mace, would not have met the last required qualification.

Demonstrated ability to manage and supervise a staff of Contracts Specialists and supporting clerical staff. One year of this experience must have been at the next lower grade level or equivalent. Exhibit 33, Career Opportunity Announcement 91-8000-MB; Qualifications Required section, pp. 1 & 2. (See also Exhibit 34, 91-8001-MB, which contains the same required qualification.)

25. Deloatch was better qualified for the position than Ms. Mace.

26. Mr. Edward L. Halman is the Senior executive who has served as Director of the Division of Contracts and Property Management, Office of Administration. He is responsible for the Division in which the contested position occurred and he actively participated in the selection process.

27. On the record before the agency there are no black males who have favorable comments about how they have been treated by Mr. Halman. Although it is true that Mr. Halman is himself a black male, he has fallen into a pattern of supervision which favors females for promotion, particularly young females. Even though Mr. Halman has actively recruited black males, his management style favors female employees for promotion. In particular, there is no

indication that any black male was part of an upward mobility program under Mr. Halman. Since some of the black males were motivated enough to leave the agency to gain promotion, it is hard to understand why they could not be part of an upward mobility program within the agency.

28. On the record before the agency, all the favorable comments about Mr. Halman are by women. The comments of males in the record vary from bitter to scathing. First, there is the testimony of the complainant, Voneree Deloatch, who believes he has been discriminated against. The core of Mr. Deloatch's testimony is that:

In order to advance, and be promoted, all of the Black Males who have been employed under Mr. Halman, had to leave NRC and seek employment in other agencies. In fact, three of these Black males are presently Branch Chiefs in other Federal agencies. Currently there are no Black or any other minority males in DCPM in this pay plan and series.

29. A black male ex-employee who worked in the contracts division under Mr. Halman (and who was a coworker of Mr. Deloatch) states, in no uncertain terms, his conclusion that Mr. Halman was biased against black males. He states that his supervisor at the NRC, Mr. Morton, was black and was brought in as a GM-15 but that Mr. Halman

didn't find any of the black males qualified to move beyond GS-13. In my opinion the Blacks in the division who were not promoted

were just as qualified as the white males and the white females were.

There was one older black man in the division, Lee Murphy, who I think was adequately qualified for promotion, but was stuck at about a GS-9. He had a college degree and had studied for an advanced degree.

He also states that

All of the eligible white males were promoted past GS-13. None of the eligible black males were.

30. Consistent with this testimony is the testimony of another black male ex-employee who felt he was dead-ended in Mr. Halman's division and who achieved a GG-14 at the Government Printing Office after he left the NRC.

The ex-employee stated:

... I went to GPO to get into the management ranks, which I could not do at NRC. No black males in NRC, in the contracts division, moved beyond GS-13 in the seven years I was there.

When I arrived in NRC contracting, the ratio of females to males in the 1102 series was fairly equal. By the time I left the ratio had tipped to favor the female side.

I would characterize Mr. Halman as a consummate manager. He controlled most of the decision making in the division, even when he was not the first line supervisor. He obviously controlled the types of assignments that employees were given and helped decide who would get certain contracts [to work on]. In my opinion, Blacks did not receive equal or fair assignment of training

or the complex type of contract assignments. These decisions obviously have a bearing on the advancement of employees. I believe that, on the average, the black employees brought at least equal or better education and training to the job than the white employees did.

31. Deloatch is a highly qualified candidate. On rating factor 1, which deals with comprehensive knowledge of federal acquisition regulations and applicable agency regulations, he has seen the procurement regulations from a variety of perspectives: (1) as a business development specialist (GS-14), he has seen their impact on small disadvantaged business, labor surplus and woman-owned businesses; (2) he has developed policies on small business programs; (3) he has been a liaison to a Congressional committee and to the White House Staff; (4) he has developed procurement regulations and related NRC materials; (5) for about a year, he was a contract negotiator, administrator (January 1979 - February 1980).

32. Neither Mr. Hagan nor Mr. Halman reasonably considered the relative education and experience of the candidates with respect to management. Both by virtue of the number of years of management experience, including military experience (which Mr. Hagan inexplicably discounted totally) and education (Mr. Deloatch had taken 30 seminar

hours in management and 25 in administration). Rating Ms. Mace and Mr. Deloatch as equal on this rating factor is indicative of a bias resulting from generally favoring Ms. Mace. It is not necessarily a racial bias; but it is a bias that prevented a fair consideration of management skills and that contributed to a failure to consider all candidates, including those of minority groups.

33. Had the competition been held at an earlier time, Ms. Mace would not have had the required management experience at all and Mr. Deloatch would have to have been superior on this factor.

34. Defendant's reasons for not selecting Deloatch for the position are pretextual.

35. Plaintiff has exhausted his administrative remedies and this suit is timely filed.

36. Defendant has intentionally discriminated against Plaintiff due to his race (black) and gender (male).

WHEREFORE, Plaintiff prays that this court:

1. Declare the Defendants' conduct to be in violation of his rights under Title VII and enjoin them from engaging in such conduct.

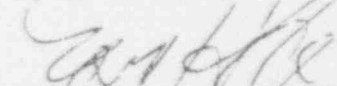
2. Place Plaintiff in his rightful place in Defendants' work force and order front pay relief and benefits until he attains his rightful place.

3. Award him equitable relief of back pay and benefits to the date of his promotion, front pay and benefits until he attains his rightful place and compensatory damages to the extent allowed by law.

4. Award his attorney's fees and costs.

5. Grant such other relief as it may deem just and proper.

Respectfully submitted,



Gary Howard Simpson
Simpson & Ehrlich, P.A.
4800 Montgomery Lane
Suite 920
Bethesda, Maryland 20814
(301) 656-7013

Attorney for Plaintiff

Jury Demand

Plaintiff demands a trial by jury on all issues so triable.



Gary Howard Simpson

ATTACHMENT -

Combustion Engineering, Inc. v. NRC, No. 93-1094
(D.C. Cir., filed Jan. 29, 1993)

FILED JAN 29 1993

RON GARVIN
CLERK

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR REVIEW
OF ORDER OF
UNITED STATES NUCLEAR REGULATORY COMMISSION

COMBUSTION ENGINEERING, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA and
U.S. NUCLEAR REGULATORY
COMMISSION,

Respondents.

No.

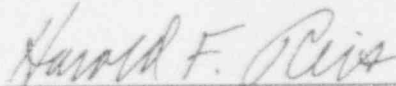
93-1094

PETITION FOR REVIEW

Pursuant to Section 189 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2239 (1988), and the Administrative Orders Review Act, 28 U.S.C. §§ 2341-2351 (1988), Combustion Engineering, Inc. ("CE") hereby petitions the Court for review of a final order issued by the United States Nuclear Regulatory Commission ("NRC") on December 17, 1992. The final order is in the form of a letter from James M. Taylor, NRC Executive Director for Operations, to Mr. A. Edward Scherer, Vice President, Regulatory Affairs, Combustion Engineering, Inc. It denies CE's request, submitted pursuant to 10 C.F.R. § 171.11(d), for an exemption from the payment of the NRC's fiscal year 1992 annual

fee and surcharge, published at 57 Fed. Reg. 32,691 (July 23, 1992). A copy of the final order is attached hereto.

Respectfully submitted,



Harold F. Reis
Michael F. Healy
R. Alexander Glenn
NEWMAN & HOLTZINGER, P.C.
1615 L St., N.W.
Suite 1000
Washington, D.C. 20036
Tel. (202) 955-6600

Attorneys for Petitioner
Combustion Engineering, Inc.

Dated: January 29, 1993
Attachment



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

December 17, 1992

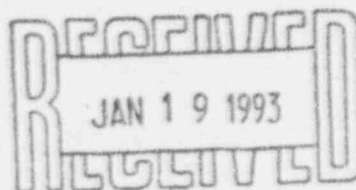
Mr. A. Edward Scherer
Vice President, Regulatory Affairs
Combustion Engineering, Inc.
1000 Prospect Hill Road
P.O. Box 500
Windsor, Connecticut 06095-0500

Dear Mr. Scherer:

I am responding to your November 19, 1992, letter requesting an exemption from payment of the annual fees for the two low enriched uranium (LEU) fuel manufacturing licenses for Combustion Engineering's (CE's) facilities in Hematite, Missouri and Windsor, Connecticut.

Your request for exemption from the FY 1992 annual fees raises the same issues that were raised in your August 8, 1991, request for exemption from the annual fees. These issues were fully addressed in our response to Mr. Richard S. Siudek dated December 17, 1991, which denied CE's request for exemption from the annual fees (copy enclosed). As you indicate in your November 19, 1992, letter, CE challenged the FY 1991 final rule as well as the NRC denial of your exemption request and this case is now pending before the U.S. Court of Appeals (D.C. Circuit), Combustion Engineering Inc. v. United States Nuclear Regulatory Commission and the United States of America, D.C. Cir. Nos. 91-1435 and 92-1001.

The NRC indicated in the final rule which was published July 23, 1992 (effective August 24, 1992), that the basic methodology used in developing the amount of the fees for FY 1992 was unchanged from that used in FY 1991 to calculate the Part 170 professional hourly rate, the specific materials licensing and inspection fees in Part 170, and the Part 171 annual fees (57 FR 32692). Therefore, and as you have indicated in your November 19, 1992, letter, the FY 1992 amendments to the fee regulations did not modify in any significant respect their impact on CE as compared with any other low enriched uranium fuel facility. Thus, the NRC concludes that your arguments regarding economic and competitive impact, and capacity, do not provide a basis for the NRC to grant CE an exemption from the annual fee for FY 1992. We believe that the annual fee, including the surcharge, is based on a practical, fair and equitable allocation of the costs attributable to the LEU fuel fabrication subclass of licensees.



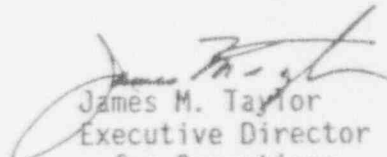
Newman & Holtzinger

Mr. A. Edward Scherer

-2-

Based on the above and the reasons specifically enunciated in our December 17, 1991, letter to CE, your request for exemption from the FY 1992 annual fee, including the surcharge, is denied and your request to base the annual fee on fuel fabrication capacity is denied.

Sincerely,


James M. Taylor
Executive Director
for Operations

Enclosure:
12/17/91 letter J. Taylor
to R. Siudek, CE



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

December 17, 1991

Mr. Richard S. Siudek
Vice President, Nuclear Fuel
Combustion Engineering, Inc.
1000 Prospect Hill Road
Post Office Box 500
Windsor, Connecticut 06095-0500

Dear Mr. Siudek:

I am responding to your August 8, 1991, letter requesting an exemption from payment of the annual fees for the two low enriched uranium (LEU) fuel manufacturing licenses for Combustion Engineering's (CE's) facilities in Hematite, Missouri and Windsor, Connecticut. For reasons specified in this letter, your request has been denied.

As stated in 10 CFR 171.11(d), the Commission may grant a materials licensee an exemption from the annual fee only if it determines that the annual fee is not based on a fair and equitable allocation of the NRC costs under 10 CFR 171.11. The following factors must be fulfilled as determined by the Commission for an exemption to be granted.

- 1) There are data specifically indicating that the assessment of the annual fee will result in a significantly disproportionate allocation of costs to the licensee, or class of licensees;
- 2) There is clear and convincing evidence that the budgeted generic costs attributable to the class of licensees are neither directly nor indirectly related to the specific class of licensee nor explicitly allocated to the licensee by Commission policy decision; and
- 3) Any other relevant matter that the licensee believes shows that the annual fee was not based on a fair and equitable allocation of NRC costs.

These criteria are consistent with the requirement of Public Law 101-508 that: "To the maximum extent practical, the charges shall have a reasonable relationship to the cost of providing regulatory services and may be based on the allocation of the Commission's resources among licensees or classes of licensees."

In support of the exemption request, CE has stated that:

"The new annual fee has an inequitable and disproportionate economic and competitive impact on CE as opposed to other fuel manufacturers and the imposition of the annual fee on both CE fuel facilities bears no "reasonable relationship to the cost of providing regulatory services" to CE, as required by OBRA. The NRC's generic costs for regulating fuel facilities are not substantially increased by the fact that CE has one process split between two facilities. However, even if CE were charged only one fee, under the new rule, CE would still pay a disproportionate amount of the generic NRC costs in relation to larger fuel manufacturers. For these reasons, the charges, therefore, also violate OBRA in that they have not been "fairly and equitably" allocated "among licensees."

Your request for an exemption from the annual fees raises two questions. The first question involves whether economic and competitive impacts, and capacity should be considered in assessing annual fees. The second question concerns whether there is a reasonable relationship between the LEU fuel manufacturing license to which the annual fee is assessed, and the regulatory services provided.

Economic and Competitive Impact and Capacity.

Most of the commenters on the proposed rule published April 12, 1991, indicated that the annual fees would result in some type of impact on the licensee. Many commenters, including fuel facilities, noted that the annual fees would result in adverse economic and competitive impacts. Therefore, in developing the final rule, the Commission considered generically the adverse impact of implementing Public Law 101-508. The Commission concluded that:

"to eliminate the adverse effects, the annual fees would have to be eliminated or reduced. Because Public Law 101-508 requires the NRC to assess and collect approximately 100 percent of its budget authority, a reduction in the fees assessed for one class of licensee would require a corresponding increase in the fees assessed for another class. Therefore, the impacts noted cannot be eliminated without creating

adverse effects for other licensees. For this reason, consideration has been given only to the effects that NRC is required to consider by law (i.e., the Atomic Energy Act, the Energy Reorganization Act, and the Regulatory Flexibility Act)." (56 FR 31476; July 10, 1991).

Consistent with the Commission conclusion in the final rule, the economic and competitive impacts you noted are not a basis for adjusting the annual fees. In addition, the Commission is not required to equalize the economic and competitive impacts on the more than 9,000 NRC licenses or on specific licensees (e.g., CE) within a specific class (e.g., LEU fuel manufacturers). The fact that the impact varies for the more than 9,000 licenses or within the LEU fuel class of licensees does not lead to the conclusion that the fees have not been fairly and equitably allocated among licensees or a class of licensees. In fact, it would be expected that the same annual fee could have different economic and competitive impacts on different licensees because of the different economies of scale, financial positions, business strategies, and other business and economic factors associated with the specific licensee. It would not constitute sound policy or the wise use of limited NRC resources to tailor fees to accommodate the particular situation of each of these licensees.

In discussing the impact of the new annual fees, you have provided data indicating that CE's annual fee per production capacity (kilograms of Uranium 235 (KGU)) is higher than that for other LEU fuel fabricators. The NRC does not debate this claim. However, the NRC does not agree with the implication that annual fees should be based on a licensee's size, production capacity or the actual production of LEU, and hence revenues generated by the organization. The annual fees are to recover the NRC's generic and other regulatory costs not appropriated from the Nuclear Waste Fund or recovered from license fees under 10 CFR Part 170. The amount of these costs is not materially affected by a facility's LEU fuel fabrication capacity, but is primarily dependent on NRC's regulations, guidance and policy development activities, research and other activities that are necessary for NRC to regulate safely a class of licensees. It is also noted that the annual fees for other classes of licensees are based on possession of a license and not on capacity (e.g., number of hospital beds, number of radioactive sources, or capacity to produce electricity).

For the above reasons, I conclude that your arguments regarding economic and competitive impact, and capacity do not support an exemption from the annual fee.

Allocation of NRC Costs to LEU Fuel Manufacturing Licensees

You indicated that the allocation of costs in the rule to LEU facilities results in a significantly disproportionate allocation of costs to CE as compared to other LEU fuel manufacturers. The basis for this claim is that you believe the generic and other regulatory costs for regulating LEU fuel facility licensees are not materially increased by the fact that CE operates two facilities as opposed to one.

The NRC has reexamined the allocation of costs to the LEU fuel manufacturing licenses. This reexamination has been accomplished within the framework of the Public Law and accompanying Conference Report, and the fundamental principles used by the Commission in establishing annual fees for all classes of licensees.

Public Law 101-508 and the accompanying Conference Report provide that to the maximum extent practicable, the annual fee shall have a reasonable relationship to the cost of providing regulatory services to the licensees. Consistent with the law and the guidance in the Conference Report, the NRC allocated its budgeted generic and other regulatory costs not recovered from 10 CFR Part 170 license fees to the major classes of licensees. To the extent practicable and where necessary for a more fair and equitable allocation of costs, a major class of licensees was further subdivided into subclasses. For example, NRC costs for the fuel facilities class of licensees were allocated further to UF₆ conversion, HEU fuel fabrication, LEU fuel fabrication and other licenses. Within a subclass, the cost was uniformly allocated to each license in the subclass based on the premise that there is no significant difference in the generic and other regulatory services provided to each license within a subclass. This approach and principle were used for all classes of licensees.

The costs allocated to the licenses within the LEU subclass are for the safety and safeguards generic and other regulatory activities that are attributable to this subclass of licensees and that are not recovered by 10 CFR Part 170 license and inspection fees. These costs were allocated uniformly to each of the six licenses within the LEU subclass, based on the premise that there is not a significant difference in the generic and other regulatory services provided to each of the six licenses. (The six licenses are shown in the enclosure.) Thus, the question presented is whether, in fact, there is a significant difference between the generic and other regulatory services provided to either of the two CE LEU licenses and to the other four LEU licenses.

To answer the above question, the NRC regulatory activities covered by the annual fee were reexamined to determine whether any vary to a significant degree from license to license. These activities and their relationship to the license are discussed below:

- Safety, Safeguards and Environmental Regulations, Guidance and Policies: The same NRC regulations (e.g., 10 CFR Parts 70, 73 and 74), guidance (e.g., Regulatory Guides) and policies are applied to each of the six licenses to the same degree. That is, the regulations, guidance and policy applied to the General Electric license, for example, are the same as those applied to the CE Windsor license or to the CE Hematite license. The NRC does not apply only a part of the regulations, guidance and policies to CE Hematite because the facility only converts UF_6 to UO_2 , and a different part to CE Windsor and B&W because they only convert UO_2 to finished fuel. Instead, the application of the regulations, guidance and policies is the same independent of what part of the conversion process is licensed or whether the entire process is licensed. For CE, this means that NRC regulations, guidance and policies are applied to each license separately.
- Safety and Safeguards Research: The research costs included in the annual fee are for research in the areas of safeguards and environmental policy/decommissioning. These research activities are uniformly applicable to each license, and do not depend on a specific part of the LEU fuel fabrication process. For example, CE has two licenses at separate locations to decommission and the research associated with decommissioning is applicable to each site.
- Inspection Procedures and Oversight of Regional Activities: As with the regulations and regulatory guides, the NRC does not apply one part of the inspection procedures to facilities that convert UF_6 to UO_2 and a different part to those that convert UO_2 to finished fuel. Instead, the same procedures are uniformly applicable to each license. In addition, headquarters oversight of the regional activities is uniformly applicable to each license. It is also noted that the two CE facilities are also located within and inspected by two different regions.

- Event Analysis: The analysis of events benefits each license the same. For example, generic communications resulting from an event are sent to CE for each license held by the company.
- Regional Enforcement: Allegation followup and regional enforcement are dependent on the fact that there is a facility (i.e., license), independent of what process is used. Enforcement regulations, for example, apply to a specific license and not to the process used by the licensee.
- Other Regulatory Activities: Other regulatory activities whose costs are included in the annual fee include, for example, responses to 2.206 petitions and responses to Congressional letters.

As indicated by the above discussion, the NRC costs attributable to the LEU facilities subclass are more related to the fact that a license exists and not to the LEU manufacturing process. Thus, a uniform allocation of costs to each license results in an annual fee that has a reasonable relationship to the generic and other regulatory services provided.

The surcharge part of the annual fee includes NRC budgeted costs that are not attributable to the LEU subclass, but it was assessed to the licensees in the subclass for policy reasons. For the LEU subclass of licensees, the surcharge includes a portion of low-level waste costs and costs not recovered from small entities. In the Conference Report, Congress indicated that these types of costs "may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment." Following this guidance, the Commission decided to uniformly allocate these costs to each fuel facility resulting in the same surcharge for each license.

For the above reasons, I conclude that the annual fee, including the surcharge, is based on a practical, fair and equitable allocation of the costs attributable to the LEU fuel fabrication subclass of licensees.

Conclusion:

The economic and competitive impacts noted in your exemption request do not provide a basis for the NRC to grant Combustion Engineering, Inc. an exemption from the annual fee. Based on a reexamination of the allocation of costs to the LEU fuel

manufacturing subclass of licensees, the NRC concludes that uniformly allocating the costs to the license to determine the amount of the annual fee is a fair, equitable and practical way to recover its costs attributable to the LEU fuel fabrication subclass of licensees. In addition, this method of allocating the costs results in annual fees that have a reasonable relationship to the cost of providing the regulatory services; therefore, the annual fees do not result in a disproportionate allocation of NRC generic and other regulatory costs to the LEU fuel fabrication licenses.

Based on the above, your request for an exemption from the FY 1991 through FY 1995 annual fees, including the surcharge, is denied and your request to base the annual fee on fuel fabrication capacity is denied.

Sincerely,

Original Signed By:
James M. Taylor

James M. Taylor
Executive Director
for Operations

Enclosure:
As stated

Enclosure

SUBCLASS

LOW ENRICHED URANIUM FUEL FACILITIES

	<u>Licenses</u>	<u>Docket #</u>	<u>Location</u>	<u>Fuel Fabrication Process</u>
-	Combustion Engineering (Hematite)	70-36	RIII	UF ₆ to UO ₂
-	Combustion Engineering (Windsor)	70-1100	RI	UO ₂ to finished fuel
-	Babcock and Wilcox	70-1201	RII	UO ₂ to finished fuel
-	Advanced Nuclear Fuels	70-1257	R-V	UF ₆ to UO ₂ to finished fuel
-	General Electric Co.	70-1113	RII	UF ₆ to UO ₂ to finished fuel
-	Westinghouse Electric Co.	70-1151	RII	UF ₆ to UO ₂ to finished fuel

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR REVIEW
OF ORDER OF
UNITED STATES NUCLEAR REGULATORY COMMISSION

COMBUSTION ENGINEERING, INC.)	
)	
Petitioner,)	
)	
v.)	No.
)	
UNITED STATES OF AMERICA AND)	
UNITED STATES NUCLEAR REGULATORY)	
COMMISSION,)	
)	
Respondents.)	
)	

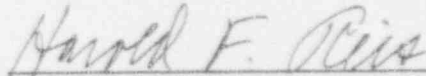
DISCLOSURE OF INTERESTS OF PARTIES

Pursuant to Rule 6A of the General Rules of the United States Court of Appeals for the District of Columbia Circuit there follows a disclosure statement identifying each of petitioner's parent companies, subsidiaries (except wholly-owned subsidiaries) and affiliates that have issued shares or debt securities to the public:

Asea Brown Boveri, Inc., a U.S. corporation
ABB Asea Brown Boveri Ltd., a Swiss corporation
Asea AB, a Swedish corporation
BBC Brown Boveri Ltd., a Swiss corporation
ABB Finance Inc., a U.S. corporation
ABB Special Finance, Inc., a U.S. corporation
ABB Finance B.V., the Netherlands
ABB Capital B.V., the Netherlands
ABB Special Investment N.V., Netherland Antilles
Elektrisk Bureau A/S, Norway
A/S Norsk Elektrisk Brown Boveri, Norway
Asea Brown Boveri AG, Germany

Asea Tolley Electric Company Ltd., New Zealand
Skulderbladet AB, Sweden
Asea Brown Boveri Ltd., India

Respectfully submitted,



Harold F. Reis
Michael F. Healy
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Tel. (202) 955-6600

Attorneys for Petitioner
Combustion Engineering, Inc.

Dated: January 29, 1993

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR REVIEW
OF ORDER OF
UNITED STATES NUCLEAR REGULATORY COMMISSION

COMBUSTION ENGINEERING, INC.

Petitioner,

v.

UNITED STATES OF AMERICA AND
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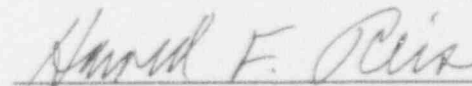
Respondents.

No.

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of January, 1993, served a copy of the "Petition for Review" and "Disclosure of Interests of Parties" in the above-captioned proceeding by first class mail, postage prepaid, upon the Attorney General of the United States and the Solicitor of the United States Nuclear Regulatory Commission.

Respectfully submitted,



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Attorneys for Petitioner
Combustion Engineering, Inc.

Dated: January 29, 1993

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR REVIEW
OF ORDER OF
UNITED STATES NUCLEAR REGULATORY COMMISSION

COMBUSTION ENGINEERING, INC.

Petitioner,

v.

No.

UNITED STATES OF AMERICA AND
UNITED STATES NUCLEAR REGULATORY
COMMISSION,

Respondents.

MOTION OF COMBUSTION ENGINEERING, INC.
TO CONSOLIDATE WITH CASE NO. 92-1390
AND DEFER FURTHER PROCEEDINGS

Combustion Engineering, Inc. ("CE") hereby moves the Court to consolidate this case with Case No. 92-1390 currently pending before the Court and defer further proceedings in these consolidated cases.

CE's Petition for Review, filed concurrently with this motion, seeks review of a final order of the United States Nuclear Regulatory Commission ("NRC") denying CE's request for exemption from the NRC's final rule published at 57 Fed. Reg. 32,691 (July 23, 1992) which imposes on CE annual fees and surcharges for fiscal year 1992. Case No. 92-1390 seeks review of that final rule. Both No. 92-1390 and the present Petition for Review involve the application to CE of different but related

provisions of the amendments to 10 C.F.R. Part 171 establishing the annual fee and surcharge for fiscal year 1992. In view of the close relationship of No. 92-1390 with the present Petition for Review, the substantially similar legal issues involved in the two cases, and "[i]n order to achieve the most efficient use of the Court's resources as well as to maintain consistency in its decisions," 1/ CE submits that the Court should consolidate these cases.

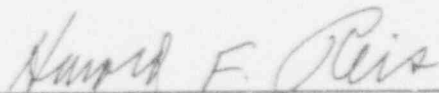
CE also requests that the Court defer further proceedings in this case. The 1992 fee is based upon the same statute, Section 6101(c) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, 104 Stat. 1388, 1388-298 (codified at 42 U.S.C.A. § 2214 (Supp. 1992)). It employs essentially the same methodology as that adopted by the NRC in an earlier rule promulgated for annual fees. 56 Fed. Reg. 31,472 (July 10, 1992). That latter rule and CE's related exemption request for fiscal years 1991-1995 are the subject of consolidated cases Nos. 91-1407, 92-1019, 91-1435 and 92-1001 (hereinafter "the Consolidated Cases") currently pending in this Court. Therefore, the disposition by this Court of the Petitions for Review in the Consolidated Cases may well determine the disposition of this case and No. 92-1390.

1/ Handbook of Practice and Internal Procedures of the United States Court of Appeals for the District of Columbia Circuit, Part V.A., p.26 (1987).

On August 25, 1992, CE filed a Motion to Defer Further Proceedings in No. 92-1390 for reasons similar to those set forth herein. On October 8, 1992, the Court granted CE's motion and deferred further proceedings in No. 92-1390 pending a final decision in the Consolidated Cases.

Accordingly, for the reasons stated above, and based on the Court's earlier order deferring further action in 92-1390, CE moves that the Court defer all further action on this case pending a final, non-reviewable decision in the Consolidated Cases or pending further motion of either CE or the Government Respondents. The NRC has authorized CE to advise the Court that the Government Respondents have no objection to the relief sought by this motion.

Respectfully submitted,



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Attorneys for Petitioner
Combustion Engineering, Inc.

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PETITION FOR REVIEW
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COMBUSTION ENGINEERING, INC.

Petitioner,

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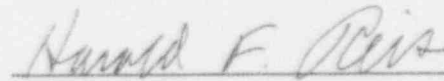
UNITED STATES OF AMERICA AND
UNITED STATES NUCLEAR REGULATORY
COMMISSION,

Respondents.

CERTIFICATE OF SERVICE

I hereby certify that I have on this 29th day of January, 1993, served Combustion Engineering, Inc.'s "Motion to Consolidate With Case No. 92-1390 and Defer Further Proceedings" by first class mail, postage prepaid, upon the Attorney General of the United States and the Solicitor of the United States Nuclear Regulatory Commission.

Respectfully submitted,



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Dated: January 29, 1993