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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the matter of:

TELEPHONE CONFERENCE  
COMMONWEALTH EDISON COMPANY

Location: Bethesda, Maryland Pages: 8282-8300

Date: Friday, June 8, 1984

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1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION  
3 TELEPHONE CONFERENCE  
4

5 Nuclear Regulatory Commission  
6 4350 East West Highway  
7 Room 428  
8 Bethesda, Maryland

9 Friday, June 8, 1984

10 The Commission met, pursuant to notice, at  
11 3:00 p.m.

12 PARTICIPANTS:

13 I. SMITH, ADMINISTRATIVE JUDGE, CHAIRMAN  
14 M. MILLER  
15 J. WHICHER  
16 J. GALLO  
17 R. RAWSON  
18 D. CHAVES  
19 E. MCGREEVY  
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1 MR. SMITH: The conference will be a part  
2 of the transcript. We issued this afternoon -- it's  
3 already in the mail -- our memorandum and order  
4 following the prehearing conference.

5 The reason that I asked for this telephone  
6 conference is because it is late. I had hoped to get  
7 it out earlier. And I thought it might be helpful to  
8 inform the parties by this method as to the -- as to  
9 what our rulings were.

10 I might state that in general the rulings  
11 are, are much the way we indicated that they would  
12 probably be at the prehearing conference in Rockford,  
13 Illinois on May 30 and 31st. There are some changes,  
14 however, but in the meantime, Dr. Cole and Dr. Callahan  
15 and I spent most of this week reviewing the transcript  
16 of that prehearing conference and the relevant reports  
17 and documents and have come up with our rulings.

18 The -- we sent by separate first class  
19 mail this afternoon copies of this order. They should  
20 arrive, I would imagine, Monday. We sent them to  
21 everybody on this telephone conference call plus Mrs.  
22 Morrison.

23 MS. WHICHER: Those are not sent by express  
24 mail, Your Honor?

25 MR. SMITH: No, they're not.

1 MS. WHICHER: All right.

2 MR. SMITH: And the reason I didn't do that  
3 is that sometimes when you send by express mail, it  
4 seems like it always comes up on Friday. Saturday comes  
5 and they can't deliver it. So, they return it. So,  
6 you're in worse shape than if you use first class mail.

7 All right. The first section is the  
8 general scope of the remanded proceeding. And in that  
9 section we quote the -- what we regard as the relevant  
10 Appeal Board language. And our final ruling with  
11 respect to the general scope is and I'll quote from  
12 Page -- the beginning of Page 2 -- we rule that ALAB-  
13 770 requires a full evidentiary consideration of the  
14 reinspection program with respect to only Hatfield and  
15 Hunter. We must also, by specific direction, consider  
16 evidence of possible defects in the work of Systems  
17 Control Corporation.

18 That was pretty much as we had indicated  
19 that we believe the scope to be at the conclusion of  
20 the prehearing conference. We also discussed our  
21 discretionary authority.

22 Then we go to the applicant's request for  
23 guidance, pointing out that the letter of May 8th from  
24 Mr. Miller does not advocate any of the items to be  
25 issues to be litigated but identified that certain



1 items seem to, to capture the Board's concerns. And  
2 we stated that the applicant's list was accurate and  
3 fairly complete; however, the Board added the additional  
4 issue of whether applicant's commitment to be repair  
5 any defects identified during the reinspection program  
6 were satisfied and effective.

7 Our reference says to Transcript 8184. We  
8 also made it clear that contrary to the persistent  
9 suggestions by the Intervenors' counsel, we did not  
10 provide an advisory opinion nor did applicant request  
11 an advisory opinion and that applicant recognizes that  
12 the Board cannot provide assurances that the applicant  
13 will meet its burden of proof on remand simply by  
14 addressing identified Board concerns.

15 There is a -- did I -- did someone have a  
16 question there? Is everybody still here?

17 MS. WHICHER: Yes.

18 UNIDENTIFIED SPEAKER: Uh-huh.

19 MR. SMITH: Okay. And then we take up the  
20 issues proposed by the Intervenors. And we state that  
21 we considered the issues proposed by the Intervenors  
22 in terms of are they mandated under ALAB-770? Should  
23 the Board adopt them as discretionary questions under  
24 ALAB-770, footnote 72? And, finally, must the  
25 proposed issues meet the traditional three-part test

1 test for reopening an evidentiary record, and we cited  
2 in this instance, for example, the Diablo Canyon case  
3 and the three standards set out there.

4 With respect to Intervenors' proposed  
5 Issue No. 1, and here we're referring to, of course,  
6 to the enumeration in Mrs. Whicher's letter of May 18th.  
7 Well, with respect to proposed Issue No., No. 1, also  
8 our ruling is, it is too early to determine whether the  
9 allegations will develop into issues for the remanded  
10 hearing.

11 And we're talking about here the in-camera  
12 investigations.

13 With respect to Intervenors' proposed  
14 Issue No. 2, which is the December 22, 1983 Motion to  
15 Reopen, our ruling is the motion as such is denied and  
16 the request to make the subject matter an issue in the  
17 reopened proceeding is, for now, also denied. The  
18 parties, particularly the Applicant, must determine for  
19 themselves whether the circumstances surrounding the  
20 termination of Mr. Koca's employment are relevant to  
21 the reinspection program and the general issues of the  
22 reopened proceeding. The Board has insufficient  
23 information. Intervenors were granted the right to  
24 discover information concerning Mr. Koca's termination.

25 With respect to proposed Issue No. 3, which

1 relates to properational testing, our ruling is this  
2 proposed issue is rejected for lack of specificity and  
3 no apparent relevance to the remanded proceeding.

4           Intervenor's proposed Issue No. 4, our  
5 ruling is the Board is not persuaded to accept this  
6 issue into the reopened hearing. In our Initial  
7 Decision, we declined to accept a mere listing of civil  
8 penalties and enforcement actions as a valid indicator  
9 of management performance. And we're speaking here, of  
10 course, about the request to bring enforcement actions  
11 into the reopened hearing.

12           Intervenors' proposed Issue No. 5 relates  
13 to Mr. Rawson's notification to the Board, to the  
14 Appeal Board on March 7th, which is, you recall, a  
15 series of five I&E reports. We observed the Intervenors  
16 offered no specific reason why the five reports  
17 referred to should form issues in the reopened pro-  
18 ceeding. Two of the reports refer to allegations  
19 against -- worker allegations against Hatfield. We  
20 reviewed the allegations and with one exception, which  
21 we will discuss later, it relates to the cable over-  
22 stressing -- the Board could identify none that we  
23 would select for special evidentiary presentation.  
24 We also noted that we denied Intervenors' request for  
25 broad authority, for general broad authority to depose

1 staff officials on unspecified inspection reports, and  
2 we referred to Section 2.720(h)(2) of the Rules of  
3 Practice. Therefore, our ruling is except as  
4 especially noted, no particular allegation need be  
5 addressed; however, we have a rather lengthy paragraph  
6 or two discussing that.

7 And we state that we reviewed our discussion  
8 with the parties as we discussed this aspect under  
9 Applicant's Identified Issue 7, and we are concerned  
10 that insufficient guidance may have been provided at  
11 that time. And we're referring here to Transcript  
12 8134-86. We had informed the parties that any  
13 allegation, old or new, would come into the hearing  
14 as an issue on, after consideration on a case-by-case  
15 basis. Our guidance may have given the impression  
16 that we require no evidence whatever on worker  
17 allegations, but this may not be the case. In LBP-84-2,  
18 our Initial Decision, the Board found that the staff  
19 relies upon the reinspection program to dispose of  
20 some of the worker allegations, particularly welding  
21 work by Hatfield. And we give the citation. We  
22 expect the staff to present evidence as to whether that  
23 expectation has been realized; whether the reinspec-  
24 tion program has been effective for that purpose.  
25 Therefore, we cannot rule out now the possibility that



1 any particular allegation, as reflected in the  
2 completed inspection reports, may be an appropriate  
3 basis for questioning the staff's conclusions. That's  
4 a shorthand reference to the fact that we're not  
5 ruling out the possibility that those inspection  
6 reports of allegations could be used for cross  
7 examination and questioning of the witness, for example,  
8 although that language does not appear in the order.

9 We also state that if the staff or  
10 applicant identified any particular allegation or  
11 set of allegations as having independent and  
12 important relevance to the reinspection program, that  
13 information should be reflected in the respective  
14 presentations.

15 Now the one exception referred to in this  
16 discussion pertains to the allegation of overstressing  
17 or overextension of the electrical cables during pulling  
18 and related inspections as described in the documents  
19 that we had discussed at the prehearing conference and,  
20 particularly, Attachment 2 to the March 7th Board  
21 notification and the Inspection Report 84-09 and 84-07  
22 on the -- Mr. Rawson's March 28th Board notification.

23 We state that we will require a full  
24 evidentiary presentation on the cause and safety  
25 significance of the overstressing episodes and the

1 relationship to the reinspection program.

2 Intervenor indicated that they do not  
3 intend to litigate the subject matter of the third  
4 attachment to the March 7th transmittal. Here we're  
5 still talking about Intervenor's proposed Issue No. 5.

6 The fourth attachment pertains to the  
7 January 1984 Region III inspection of the reinspection  
8 program, and that -- the subject matter of that  
9 report will necessarily be a part of the evidentiary  
10 record in the reopened hearing at least as far as it  
11 concerns Hatfield Electric, Hunter, as we later rule,  
12 Pittsburgh Testing.

13 The fifth attachment to the March 7th, 1984  
14 Board notification relates to Reliable Sheet Metal,  
15 and we have not found any reason to request evidence  
16 concerning the report on Reliable.

17 Intervenor's proposed Issue No. 6 also  
18 relates to the cable overstressing, and we cover that  
19 in -- under our discussion under proposed Issue  
20 No. 5.

21 Intervenor's proposed Issue No. 7 recites  
22 the fact that Intervenor will renew their request to  
23 have the SALP findings litigated based on the 1983  
24 report when it is published.

25 Intervenor's proposed Issue No. 8, we dispose

1 of with the comment that this proposal is impossibly  
2 broad and is therefore rejected.

3           Intervenors' proposed Issue No. 9 relates  
4 to the integrated design inspection. We note that  
5 it talks about postulated failures to high and  
6 moderate energy piping and that it is not accepted  
7 as an issue at this time; however, we note that the  
8 Byron Integrated Design Inspection is an open item  
9 within the staff. It is premature to rule that the  
10 IDI or the Integrated Design Inspection may never  
11 become an issue.

12           Intervenors' proposed Issue No. 10 relates  
13 to the overstressing of, of steel beams and we simply  
14 recite the fact that the Intervenors do not now advance  
15 that matter as an issue, but they notify the parties  
16 and the Board that they are developing information  
17 and have the intention of moving later to reopen the  
18 record. We make no ruling on that proposed issue.

19           Intervenors' proposed Issue No. 11, we  
20 state that by advancing this proposed Issue No. 11,  
21 Intervenors, in effect, are either filing an untimely  
22 motion for reconsideration of the Initial Decision  
23 or moving to reopen the record with respect to Powers-  
24 Azco-Pope, Johnsor Controls and Reliable Sheet Metal.  
25 They have not carried their burden on either score.

1 The inspection of Systems Control's work is, of course,  
2 a mandated issue.

3 Then we go on to state that the discussion  
4 of proposed Issue No. 11 offered the focus for a  
5 larger Board concern about Pittsburgh Testing  
6 Laboratories. In retrospect, Pittsburgh's activities  
7 should have received greater attention during the  
8 main hearing and in the Initial Decision. Its  
9 importance in connection with Systems Control highlights  
10 the relevance of Pittsburgh's work. As a matter of  
11 discretion, the Board grants Intervenor's motion to  
12 have Pittsburgh Testing Laboratories included in the  
13 reopened proceeding. As to the Board's requirement,  
14 we expect a general showing of the scope of Pittsburgh's  
15 work and a discussion of whether the reinspection  
16 program has provided reasonable assurances that  
17 Pittsburgh's work presents no safety problems.

18 Intervenor, however, have indicated that  
19 they intend to discover vigorously on Pittsburgh's  
20 activities, and we authorize a broad discovery effort;  
21 however, we remind Intervenor of the Board's  
22 admonition during the prehearing conference. That  
23 admonition is that the nature of the evidence applicant  
24 would be required to present on Pittsburgh Testing  
25 will depend largely on the advance notice it has received



1 about particular concerns. And we cite to Transcript  
2 Page 8251. Our notice pertaining to the Board's  
3 notice is clearly general and a general response may  
4 be appropriate. The Board expects the parties to  
5 exchange freely information concerning particular  
6 aspects of Intervenors' concern so that the evidence  
7 may be sharply responsive.

8 Intervenors' proposed Issue No. 12 states  
9 merely that -- it says that the proposal is obviously  
10 too broad and is rejected.

11 Now, all right. The only thing that we  
12 have new in our memorandum and order is the -- our  
13 comments on the -- on the so-called 50.55(e) report  
14 with respect to the electrical connector butt  
15 splices by Hatfield Electric, which is the subject  
16 matter of the letter of May 17, 1984, from Mr. Farrar  
17 to Mr. Keppler.

18 We -- the Intervenors seek to have that  
19 subject accepted as an issue and seek a special  
20 discovery order against applicant for, for an  
21 explanation of the circumstances. The Board recognizes  
22 that the notification to Region III is a tentative one  
23 and that is that has not been decided that this is  
24 a 50.55(e) matter.

25 We direct that the Board and the parties

1 be kept current on development and that we will discuss  
2 again with the parties the need to include the matter  
3 in the reopened hearing.

4 This is -- this is what I would like to  
5 discuss now. The, the Board members rather left the  
6 matter hanging. We didn't decide one way or the  
7 other that it had to be in the reopen hearing, but  
8 the more I begin to think about it, the more I  
9 think that it might be prudent, giving the time  
10 strictures. If the staff and the applicant would at  
11 least plan to make some type of explanation of what  
12 is involved there and what the safety significance  
13 is. I mean that is -- I don't know if you might want  
14 to have the Board decide it close to the last minute  
15 that we want to have that matter heard at the reopen  
16 hearing.

17 Therefore, a flow open discussion of  
18 whether we should not decide now, that the matter  
19 should be the subject of testimony.

20 MS. WHICHER: Well, Judge Smith, I -- this  
21 is Jane Whicher. I made my position clear, I believe,  
22 during our prehearing conference last week, that I  
23 believe the matter should be a subject of litigation,  
24 particularly because it concerns Hatfield Electric.

25 One problem that I did have with the

1 notification which I pointed out to the Board and the  
2 applicant was that it provides an absolute -- of  
3 information concerning what the problem actually is.  
4 And although it is tentative, my understanding is  
5 that the 30 days within which the applicant has to  
6 make the formal 50.55(e) notification will expire  
7 shortly within the next few days. Is that correct,  
8 Mr. Miller -- Mr. Gallo?

9 MR. GALLO: Excuse me, Jane, I didn't  
10 hear your, your question.

11 MS. WHICHER: I believe that the 30 days  
12 that Commonwealth Edison has to make this a formal  
13 50.55(e) notification or not is about to expires; is  
14 that correct?

15 MR. MILLER: That's correct, and there  
16 will be a report issuing, and you're welcome to look  
17 at it.

18 MS. WHICHER: Will you -- preview of it --

19 MR. SMITH: Wait a minute.

20 MS. WHICHICHER: -- trouble hearing you.

21 MR. SMITH: Please wait. Please wait. The  
22 reporter did not get Mr. Miller's last remark, in which  
23 you said the report, I believe the report will be  
24 available, and you're welcome to look at it, I believe.  
25 Would you start from there, please?

1 MR. MILLER: That is what I said, yes.

2 MR. SMITH: All right. All right, then,  
3 Miss Whicher, you'll have to repeat what you said.

4 MS. WHICHER: I, I was -- I was telling  
5 Mr. Miller that I was having a difficult time hearing  
6 what he was saying and that -- and asking him if he  
7 would just merely tell us right now what the contents  
8 of the report are and that might speed the discussion  
9 along.

10 MR. MILLER: I'm sorry, I wish I could be  
11 of assistance, but I, I simply don't know, but it  
12 will be made available.

13 MR. SMITH: Well, if the report is going  
14 to be made available to the parties to the Board,  
15 I, I guess the better approach would be for us to,  
16 to look at it, to make our decision then.

17 I, I did want to give warning, however, to  
18 the parties that is a matter that the Board cannot  
19 at this time, at least, walk away from. Anything else  
20 on that, that point?

21 MS. WHICHER: I would ask Mr. Miller  
22 when that report would be available. Hello?

23 MR. MILLER: Yes, I'm here. I think that  
24 -- I'm trying to determine. It's going to be probably  
25 early next week, but I just don't have the information



1 right at my fingertips that I can respond to that.

2 MS. WHICHER: All right. That's fine.

3 So, within a matter of days, in any event?

4 MR. MILLER: Correct.

5 MS. WHICHER: Fine.

6 MR. SMITH: Okay. I, I might ask that --  
7 I might ask that when that report becomes available,  
8 you get it out as promptly as you can and the Board  
9 will take another look at it.

10 MR. MILLER: Yes, sir.

11 MR. SMITH: And we might have another  
12 conference call on it. I, I don't know. But we just  
13 wanted to put you on warning that we cannot -- we  
14 cannot foreclose. We just can't rule on it right  
15 now.

16 Anything further? Does, does anybody have  
17 any questions about this order?

18 MR. MILLER: Judge Smith, this is Mike  
19 Miller. I just have, have one. The, the list of  
20 issues that I submitted on behalf of Commonwealth  
21 Edison Company for your consideration, Issue No. 7 was  
22 the disposition of allegations open as of August 10,  
23 1983. I take it that your ruling on that particular  
24 numbered issue in my letter is, is the same as your  
25 ruling on -- that, that you've expressed so far on the

1 general subject of allegations?

2 MR. SMITH: Yes. Yes. You'll find that  
3 discussion generally on Page 8 and 9 of the memorandum  
4 and order. That is intended to be the guidance that  
5 we offer on your identified Issue No. 7, Mr. Miller.

6 MR. MILLER: Thank you.

7 MR. SMITH: Anything further?

8 MR. RAWSON: Judge Smith, this is Rich  
9 Rawson. I have one item that doesn't relate to the  
10 Board's order, and if there are other questions relating  
11 to that, I can hold it.

12 MR. SMITH: Are there any other questions  
13 about our order?

14 MS. WHICHER: Not from the Intervenors,  
15 Your Honor.

16 MR. MILLER: Not from the Applicant.

17 MR. SMITH: All right. Mr. Rawson?

18 MR. RAWSON: Thank you, sir. Judge Smith,  
19 during a conference last week, I informed the Board  
20 and the parties that the information I had from Mr.  
21 Fortuna (Phonetic) of the Office of Investigations at  
22 that time was that their report on the allegations  
23 that refer to that last summer, would be in everyone's  
24 hands this week. The week ends today, of course.

25 I spoke with Mr. Fortuna approximately an

1 hour ago, and he informs me that it will not be out this  
2 week but that it will be out next week. That's the  
3 best information I can give you at this point.

4 MR. SMITH: Thank you. If there's nothing  
5 further, I'll thank you for joining, joining me, and  
6 we'll adjourn. Is there anything further?

7 MR. GALLO: Judge Smith, this is Joe Gallo.

8 MR. SMITH: Yes.

9 MR. GALLO: I wondered if we could take  
10 advantage of this telephone hook-up among Steve  
11 Lewis, Jane Whicher, Mike Miller, myself and Mr.  
12 Rawson to discuss off the record deposition schedules.

13 MS. WHICHER: Yes. That's fine with me,  
14 Joe. Steve and I had talked about that this morning  
15 at another meeting.

16 MR. SMITH: All right. We've done this  
17 before, and I believe that you remain hooked up after  
18 I hang up. So, I'll try it. I recommend that if  
19 the line is connected, everybody remain where they  
20 are.

21 MS. WHICHER: All right. Intervenors are  
22 putting everyone on notice that if the line is  
23 disconnected, we're counting on the applicant to  
24 put the call back through, then.

25 MR. MILLER: All right.

1 MS. WHICHER: Fine.

2 MR. SMITH: Is there anything further with  
3 me?

4 MS. WHICHER: No, not from the Intervenors,  
5 Your Honor.

6 MR. RAWSON: Not from the staff, sir.

7 MR. SMITH: Okay. Now, let me see. Hang  
8 on a minute. I want to figure out how I keep this call  
9 going. I think I just put you on hold. I'm, I'm --  
10 all right.

11 In any event, the transcript of the pre-  
12 hearing conference is over and the prehearing conference  
13 is over.

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CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings before  
the NRC COMMISSION

In the matter of:

TELEPHONE CONFERENCE - RE: COMMONWEALTH EDISON CO.

Date of Proceeding: Friday, June 8, 1984

Place of Proceeding: Bethesda, Maryland

were held as herein appears, and that this is the original  
transcript for the file of the Commission.

\_\_\_\_\_  
Official Reporter - Typed  
Kim Schroeder

*Kim Schroeder / DTB*  
\_\_\_\_\_  
Official Reporter - Signature