

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 AGO 13 A11:26

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter Of:)
COMMONWEALTH EDISON COMPANY)
(Braidwood Nuclear Power)
Station, Units 1 and 2))

OFFICE OF SECRETARY
DOCKETING & SERVICE
Docket Nos. 50-456 06
50-457 06

COMMONWEALTH EDISON COMPANY'S
RESPONSE TO NEINER FARMS'
STATUS REPORT REGARDING CONTENTION 4

Commonwealth Edison Company ("Applicant") hereby submits this response to the document entitled "Status of Contentions -- Proposed Revisions and Amendments" which was filed on July 5, 1984 by Intervenor Bob Neiner Farms, Inc., insofar as that document concerns Neiner Farms' proposed Contention 4. (Applicant responded to the remainder of the Neiner Farms status report by letter from counsel dated July 11, 1984. At that time, Applicant advised the Licensing Board that it would seek leave to file an additional response regarding proposed Contention 4.) This response is necessary inasmuch as Intervenor Neiner Farms' status report seeks to introduce additional information regarding proposed Contention 4. That contention concerns the transportation of hazardous materials near the Braidwood plant. The admissibility of Contention 4 is currently pending before the Atomic Safety and Licensing Board, the issue having been briefed and

argued by the parties.^{*/} Essentially, Applicant's position is that the issue raised by proposed Contention 4 was litigated previously at the construction permit hearings. Thus, re-litigation of the issue is foreclosed under the doctrine of collateral estoppel unless Intervenor can demonstrate changed circumstances or special interest factors that might lead to a conclusion different than the one reached at the construction permit stage.

As the sole source of its additional information, Intervenor Neiner Farms relies on a newspaper article which reported, inter alia, that the Joliet Army Ammunition Plant (JAAP) is being considered for reactivation and production of a new chemical explosive. (Kankakee Daily Journal, March 23, 1984, pp. 1, 6.) Based on this article, Intervenor Neiner Farms asserts that:

1. The Army is planning to "reactivate and enlarge" the JAAP, and is budgeting between \$300 million and \$420 million to do so.
2. The TNT production facilities at the JAAP will be "enlarged and modernized."
3. The JAAP is being considered for production of a new explosive, specifically RDX and HMX.

^{*/} See Answer of Commonwealth Edison Company to the Contentions of Bob Neiner Farms, dated August 22, 1979; Special Prehearing Conference at Tr. 32-37 (August 23, 1979); Letter from Myron Karman to ASLB, dated September 12, 1979; Applicant's Supplemental Brief on Contention 4, dated September 12, 1979; and Supplemental Information of Bob Neiner Farms, Inc., dated September 12, 1979.

4. As a consequence of the possible increased activity and the change in the production possibilities at the JAAP, the Braidwood plant will be exposed to an increased hazard from the rail lines which pass near the Braidwood plant.

Intervenor Neiner Farms then reasserts its position, as stated in its proposed Contention 4, that the traffic flow considered in the analysis presented at the construction permit review is not representative of the traffic that can be expected in the future. Further, Intervenor Neiner Farms also asserts, in effect as an additional basis for proposed Contention 4, that the possible production of a new chemical explosive at the JAAP increases the hazard to Braidwood beyond that analyzed at the construction permit review.

In order to determine whether the points raised by the newspaper article constitute "new" information as asserted by Intervenor Neiner Farms, Applicant conducted its own informal investigation. The results of this inquiry are set forth in the attached affidavit of Mr. Daniel Demos, Applicant's District Supervisor for the Joliet Area. The affidavit is being offered solely to determine whether, within the context of the doctrine of collateral estoppel, new information in fact exists.

Mr. Demos talked with the managers of the two operating contractors at the JAAP -- Honeywell and Uniroyal.

From those discussions it is clear that neither Honeywell or Uniroyal has any plans for expansion of its present facilities or the production of explosives other than TNT. (The TNT production lines are currently inactive.) Moreover, neither Honeywell or Uniroyal ships explosives over the railroad line that runs near Braidwood. Any shipments of ammunition or stockpiled TNT are by truck.

Mr. Demos' discussion with the Uniroyal manager pointed out several errors in the newspaper article and Intervenor Neiner Farms' assertions. The \$300 million upgrading figure is deemed by the article and Intervenor Neiner Farms to be part of the \$420 million reactivation figure. In actuality, they are two separate amounts for distinct purposes. The \$300 million figure is the cost of upgrading the present TNT production facilities, keeping them ready for future reactivation if necessary. That upgrading will not increase the present TNT production capability as Intervenor Neiner Farms suggest. In any event, the upgrading has not been approved and, if it were, it would not necessarily show, as the newspaper article indicates, that the Army is planning reactivation of the JAAP.

The \$420 million dollar figure is the estimated cost of actual reactivation of the TNT production facilities at the JAAP. This cost would be separate from the upgrading

cost. As stated in Mr. Demos' affidavit, there are no plans for such reactivation.

In regards to the possible production of RDX and HMX explosives at the JAAP, it is evident that such a possibility is mere speculation at this time. As related to Mr. Demos, the Army is only developing a new process at this time which is yet unproven. At some indefinite time in the future, the Army may, if the process is found feasible, seek to produce RDX and HMX at another site. The mere candidacy of the JAAP as a site under these circumstances makes it far from certain that RDX and HMX will ever be produced at the JAAP.

Thus, Intervenor Neiner Farms offers no new substantial information regarding the transportation of hazardous materials near the Braidwood site. Intervenor Neiner Farms has failed to demonstrate either changed circumstances or special public interest factors which might lead to conclusion different than that reached at the construction permit review on this issue. Indeed, based on the affidavit of Mr. Demos the only changed circumstance is the fact that the rail line that passes near the Braidwood site is no longer used for shipment of explosives or ammunition. In the circumstances, Intervenor Neiner Farms' proposed Con-

tention 4 should be dismissed.

Respectfully submitted,

Victor G. Copeland

Victor G. Copeland
One of the attorneys for
Commonwealth Edison Company

Isham, Lincoln & Beale
1120 Connecticut Avenue, N.W.
Suite 840
Washington, D.C. 20036

DATED: August 9, 1984