

427.
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

BEFORE ADMINISTRATIVE JUDGES:

Lawrence Brenner, Chairman
Dr. A. Dixon Callihan
Dr. Richard F. Cole

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USNRC

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

Docket Nos. 50-456 OL
50-457 OL

SERVED FEB 7 1985

February 6, 1985

MEMORANDUM AND ORDER RESPONDING TO LETTER FROM COUNSEL
FOR ROREM, AND DIRECTING PARTIES TO DISCUSS AND
COORDINATE STATUS REPORTS

By letter dated February 4, 1985, Mr. Douglass W. Cassel, Jr. counsel for Rorem, complains that he was not served with a January 10, 1985 Board order which he first learned about during a telephone call from NRC Staff counsel on or about January 31. He further requests the Board to arrange for service of the order upon him, and to instruct docketing personnel that orders should be sent to him and Mr. Wright, who several months ago replaced Ms. Whicher as counsel for Rorem. Mr. Cassel further states that upon receiving the order, he will endeavor promptly to respond to it.

The Board regrets that present counsel for Rorem did not receive the January 10 order. However, the present Board is at a loss to

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understand why not, since the order apparently was sent to previous counsel, Ms. Whicher, at the same address, including the detail of the correct suite number, as Messrs. Cassel and Wright. There may be some lack of coordination in counsel's own office which has caused counsel's lack of awareness of the January 10, 1985 order. In addition, the Board does not understand why counsel still requires the Board to forward the order. Why did counsel not simply request Staff counsel, on January 31, to read the short, three sentence January 10 order over the phone and mail a copy to him?

The Board also finds it disturbing that counsel for the other parties, particularly for the Applicant and NRC Staff, did not promptly react to the stimulus of the January 10 order to renew discussions among the parties. There is an obvious need for the parties to coordinate views on schedules and to discuss the possible rewording of contentions which now have been dormant for over four years, in an effort to better focus on what presently is really in issue. For example, it certainly appears that superseding regulations and case law would affect the old wording of contentions (such as those bearing on emergency planning), as well as the arguments on the admissibility of the two pending contentions. Also, it may be that superseding factual and technical developments would affect the contentions.

It is not clear whether counsel's letter is seeking some relief from the schedule in the January 10 order requiring that status reports

be filed by February 15. Preliminarily, this presents an occasion to generally advise all parties that letters to the Board are disfavored. Almost all, if not all, communications directed to the Board should be by formal pleading. This is particularly true if the writer is actually moving for relief from a requirement or seeking some other action by the Board. Among other problems, as in the instant example, letters often do not make clear whether some action by the Board is being requested, and if so what the precise ambit of the requested action is, or whether there is a need for other parties to respond to something in a letter.

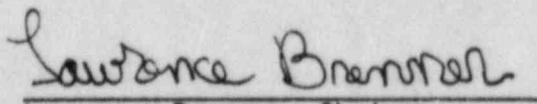
In the circumstances outlined above, counsel for Rorem would not be entitled to an extension of time, if indeed one is being sought, to file the report required by the January 10 order. However, the Board wishes to use this discussion of counsel's letter to inform the parties that they are hereby required to discuss and coordinate their status reports prior to filing them with the Board. This shall include discussion of the contentions, including substantive negotiations, informal exchanges of information and documents and rewording to better specify what remains in issue. As noted in Staff counsel's recent letter to the other parties, the status reports shall include the wording of the contentions. Ideally, the status reports can be coordinated to the point where a joint report can be filed on behalf of all parties which notes the agreements along with any remaining disagreements.

In view of the Board's express requirements, the filing date for the joint or coordinated status reports is extended to March 1, 1985. In the future, all parties are expected to aggressively initiate discussions among the parties to assure continued coordination and all reasonable attempts to reach mutual accommodations on procedural and substantive matters prior to resorting to motions to the Board.

A copy of the Board's January 10 order is being enclosed with the courtesy copy of this order being sent to counsel for Rorem. Counsel for Rorem is further advised that Ms. Whicher's name on the service list was replaced with present counsel on February 1, prior to receipt of his letter, as he should now know by virtue of his receipt of the February 1 notice reconstituting the Board.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD


Lawrence Brenner, Chairman
ADMINISTRATIVE JUDGE

February 6, 1985
Bethesda, Maryland

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50-457

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COURTESY NOTIFICATION

As circumstances warrant from time to time, the Board will mail copies of its memoranda and orders directly to each party, petitioner or other interested participant. This is intended solely as a courtesy and convenience to those served to provide extra time. Official service will be separate from the courtesy notification and will continue to be made by the Office of the Secretary of the Commission. Unless otherwise stated, time periods will be computed from the official service.

I hereby certify that I have today mailed copies of the Board's "Order Responding to Letter from Counsel for Rorem" to the persons designated on the attached Courtesy Notification List.

Valerie M. Lane
Valarie M. Lane
Secretary to Judge Brenner
Atomic Safety and Licensing
Board Panel

Bethesda, Maryland

Attachment

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